

Environmental Protection Act 1994

Environmental Protection Order

This environmental protection order is issued by the administering authority pursuant to section 358 of the Environmental Protection Act 1994.

Wilton Coking Coal Pty Ltd ACN: 147 034 277
Level 1, 52 Phillip Street
SYDNEY NSW 2000

CC: Wilton Coking Coal Pty Ltd
PO Box 1864
EMERALD QLD 4720

Your reference: EA0002046

Our reference: C-CPLRC-100638513; STAT-E-100638568

3/07/2024

Dear Directors

Take notice: that under the *Environmental Protection Act 1994* (EP Act) this environmental protection order (EPO) is issued to Wilton Coking Coal Pty Ltd ACN: 147 034 (you) by the administering authority. The administering authority is the Chief Executive of the Department of Environment, Science and Innovation (the department).

The EPO is issued with respect to the activities of Wilton Coking Coal Pty Ltd.'s at the Wilton Coal Mine on land described as mining lease (ML) 700028 and ML700029 situated at Wyuna Road, Wyuna QLD 4871 (the premises).

This varied EPO now replaces the amended EPO issued on 3 July 2024. The variations made to the requirements in this notice superseded the previous versions of the EPO.

A. Grounds

This EPO is issued on the following grounds:

1. To secure compliance by Wilton Coking Coal Pty Ltd with the "general environmental duty" pursuant to section 358(d)(i) of the *Environmental Protection Act 1994* (EP Act). The General Environmental Duty is defined in section 319 of the EP Act which states the following: 'A person must not carry out any activity that causes, or is likely to cause, environmental harm unless the person takes all reasonable and practicable measures to prevent or minimise the harm (the **general environmental duty**)'.
2. To secure compliance by Wilton Coking Coal Pty Ltd with conditions of Environmental Authority (EA) EA0002046 pursuant to section 358(d)(iii) of the EP Act.

Condition J1 of EA EA0002046 states: 'Significant residual impacts to prescribed environmental matters are not authorised under this environmental authority or the *Environmental Offsets Act 2014* unless the impact(s) is specified in **Table J1 – Significant residual impacts to prescribed environmental matters**'.



Table J1 - Significant residual impacts to prescribed environmental matters

Prescribed Environmental Matter (PEM)	Location of Impact	Maximum Extent of Impact (ha)	Environmental Offset Required
Wetlands and Watercourses			
Un-named watercourse (stream order 1)	Figure 4 - (Location of Impact to Prescribed Environmental Matters)	5.50	Yes

Condition J3 of EA EA0002046 states: ‘An environmental offset made in accordance with the *Environmental Offsets Act 2014* and *Queensland Environmental Offsets Policy*, as amended from time to time, must be undertaken for the maximum extent of impact to each prescribed environmental matter authorised in **Table J1 – Significant residual impacts to prescribed environmental matters**’.

Condition J4 of EA EA0002046 states: ‘Prior to the commencement of any impacts to a prescribed environmental matter for which an environmental offset is required by condition **J3**, a report completed by an appropriately qualified person that contains an analysis of the estimated maximum extent of impact to each prescribed environmental matter must be provided to the administering authority’.

Condition J5 of EA EA0002046 states: ‘The report required by condition **J4** must be approved by the administering authority before the notice of election, if applicable, is given to the administering authority’.

Condition J6 of EA EA0002046 states: ‘The notice of election for the environmental offset required by condition **J5**, if applicable, must be provided to the administering authority no less than **three (3) months** (or a lesser timeframe agreed to by the administering authority) before the proposed commencement of the significant residual impacts for which the environmental offset is required’.

Deemed condition 19B of the *Environmental Offsets Act 2014* (EO Act) states: ‘It is a condition of the authority that the authority holder must have entered into an agreed delivery arrangement with the administering agency, before starting – (a) any works that impact on the prescribed environmental matter to which the offset condition relates; or (b) if the authority allows the prescribed activity to be carried out in stages – any works for the stage that impact on the prescribed environmental matter to which the offset condition relates.’

The facts and circumstances forming the basis for these grounds are:

1. Wilton Coking Coal Pty Ltd is the holder of EA EA0002046 dated 5 February 2021.
2. Department of Resources records identify Wilton Coking Coal Pty Ltd as the sole holder of ML700028 and ML700029, which is authorised under the *Mineral Resources Act 1989*.
3. Section 107 of the EP Act states: ‘A resource activity is an activity that involves – (a) a geothermal activity; or (b) a GHG storage activity; or (c) a mining activity; or (d) a petroleum activity’.
4. Section 110 of the EP Act states: ‘A mining activity is – (a) an activity that is an authorised activity for a mining tenement under the *Mineral Resources Act*; or (b) another activity that is authorised under an approval under the *Mineral Resources Act* that grants rights over land’.
5. The EA, which came into effect upon grant of the mining leases (20 November 2022), authorises the following environmentally relevant activities (ERAs) on ML700028 and ML700029:
 - ERA 13 – Mining black coal; and
 - ERA 60 – Waste disposal 1: Operating a facility for disposing of, in a year, the following quantity of waste mentioned in subsection (1)(a) (a) less than 50,000t.

6. The department is satisfied that Wilton Coking Coal Pty Ltd is responsible for the operation and maintenance of the premises under the EA.
7. On 5 February 2021, the department issued Wilton Coking Coal Pty Ltd with EA EA0002046 which prescribed locations of authorised impacts to prescribed environmental matters. Conditions in Schedule J of the EA require that an environmental offset for significant residual impacts to prescribed environmental matters authorised in Table J1 of the EA.
8. On 20 February 2024, Futura Resources employees representing Wilton Coking Coal Pty Ltd met with Business Centre (Coal) staff of the department to discuss a number of matters including significant residual impacts on prescribed environmental matters.
9. On 1 March 2024, an email was sent from Wilton Coking Coal Pty Ltd to the Business Centre (Coal) that included an attachment titled, *'Extent of impact to vegetation within 25m of watercourses at the Wilton Coal Mine'* (the memo). The email states: *'As discussed in the meeting on 20 February 2024, EA0002046 Condition J4 requires us to assess the maximum extent of impact to Prescribed Environmental Matters (PEM). The attached report is our assessment in fulfilment of Condition J4. It concludes that we will not have a Significant Residual Impact on Prescribed Environmental Matters'*.
10. The memo dated 16 February 2024, states: *'METServe was engaged to assist Futura Resources (the "client") at Wilton Coal Mine (the "Project") to analyse the maximum extent of impact on the prescribed environmental matters which are authorised to be impacted, in accordance with Condition J4 of EA0002046 (EA)'*.
11. The memo also states: *'Some of the areas of vegetation subject of the analysis had been cleared during Project-related works'*. This is evident in *Figure 4 Transect Site 1* of the memo which details that the watercourse and area surrounding the watercourse has been disturbed for mining purposes.
12. The department notes that the memo is based on an assessment that was conducted after the disturbance had been undertaken, including clearing of approximately 2.7ha. The findings of this report are therefore not representative of conditions at the premises prior to the disturbance and are not consistent with the findings of the department during the EA application process in 2018, at which time it was determined that the expansion of your activity would cause significant residual impacts to 5.5ha of a prescribed environmental matter.
13. On 10 March 2024, further information provided in the form of a supplementary report titled, *'Maximum extent of impact to certified vegetation within 25m of surveyed watercourses at the Wilton Coal Mine – supplementary'* (the supplementary memo). The supplementary memo states: *'In addition to the assessment, METServe was subsequently requested to provide this further assessment regarding the maximum extent of impact to vegetation within 25m of surveyed watercourses, using Queensland Government certified regional ecosystem mapping, instead of field-based observations, for comparisons. Section 4 Extent of impacts of the supplementary memo states: 'Using certified regional ecosystem mapping, 2.7ha of remnant watercourse vegetation occurs on site and is subject to a Significant Residual Impact test. As outlined in the Significant Residual Impact Guideline (QLD Government 2014), project-related clearing for non-linear infrastructure in a regional ecosystem that is within the defined distance of a relevant watercourse is considered to have a significant residual impact for areas greater than 2ha in a sparse (structural category) regional ecosystem. Res 11.7.1, 11.7.2 and 11.9.2 ha are considered 'sparse' under the vegetation mapping structure category as outlined in the Regional Ecosystem Description Database V13 (REDD) (Queensland Herbarium 2023)'*.
14. The department has not approved the report prior to clearing occurring as per condition J5 of the EA.
15. Using available aerial imagery, authorised officers confirmed that clearing of Matters of State Environmental Significance (MSES) Remnant vegetation associated with a defined watercourse commenced in December 2023.
16. A review of departmental records and the Environmental Offsets Register failed to identify any existing Notices of Election, Agreed Delivery Arrangements or any offset being provided for the premises.

17. On 18 April 2024, the department provided Wilton Coking Coal Pty Ltd with a summary of the identified non-compliances.
18. On 23 April 2024, departmental officers conducted an inspection of the Wilton Coal Mine, having particular focus on the areas prescribed in EA EA0002046 as prescribed environmental matters. The inspection identified that clearing of areas described as Prescribed Environmental Matters in the EA had occurred. During the inspection, departmental officers were advised that a spotter catcher was not present throughout the duration of the clearing and that a Permit to Disturb was not approved and in place.
19. As a spotter catcher was not present throughout the duration of the clearing and a Permit to Disturb was not approved and in place, the department considers that not all reasonable and practicable measures had been taken to prevent or minimise the potential for environmental harm.
20. On 26 April 2024, WCC confirmed:
 - a. from 1 December 2023 to 4 December 2023, disturbance at Prescribed Environmental Matter 1 occurred;
 - b. from 8 December 2023 to 11 December 2023, disturbance at Prescribed Environmental Matter 2 occurred; and
 - c. from 2 January 2024 to 6 January 2024, disturbance at Prescribed Environmental Matter 3 occurred.
21. Under condition J3 of the EA, you are not authorised to provide offsets in stages and an environmental offset must be undertaken for the maximum extent (5.5ha) of impact to the prescribed environmental matter authorised in condition J1 of the EA.
22. The department considers it appropriate to require you to take reasonable measures to comply with your general environmental duty and to achieve compliance with conditions J1, J3, J4, J5 and J6 of the EA and the deemed condition as set out in section 19B of the EO Act.

B. Requirements

In accordance with this EPO, you are required to do the following:

1. By 5pm on 28 May 2024, you must cease conducting activities that cause further disturbance within areas specified as prescribed environmental matters (MSES – Remnant Vegetation Associated with a Defined Watercourse), identified in Attachment A, until you have complied with the requirements of this EPO’.
2. You must notify the department in writing within 24 hours of ceasing the disturbance in accordance with Requirement 1.
3. By 5pm on 1 October 2024, you must provide to the administering authority a report by an appropriately qualified person that contains an analysis of the estimated maximum extent of impact to each prescribed environmental matter.
4. By 5pm on 31 January 2025 and following approval of the report by the administering authority required under Requirement 3, you must provide a notice of election to the administering authority.
5. By 5pm on 31 March 2025, you must provide the administering authority with evidence that you have secured an offset for the disturbance within areas specified as prescribed environmental matters (MSES – Remnant Vegetation Associated with a Defined Watercourse), identified in Attachment A.

The following definitions apply to the requirements of this EPO:

- An **appropriately qualified person (AQP)** is a person who has professional qualifications, training, skills, or experience relevant to the requirements of this EPO, and can give authoritative assessment,

advice, and analysis on performance relating to the subject matter using the using the relevant protocols, methods, or literature.

- **Disturbance** means the same as disturbance as defined in EA EA0002046.

C. Obligations

If you propose to dispose of the place or business to which the EPO relates, you **must** advise the buyer of the existence of this EPO.

If you cease to carry out the activity to which this EPO relates, you **must** give written notice of ceasing to carry out the activity to the department within 10 days of ceasing the activity.

Take notice:

- the requirements of this order take effect immediately upon service of the order;
- failure to comply with this order is an offence under the EP Act;
- this order remains in force until further notice from the administering authority.

D. Penalty

It is important that you know the impact to you personally as an individual or as a corporation for not meeting your obligations.

Failure to comply with an EPO is an offence.

- The maximum penalty for wilfully contravening an EPO is 6250 penalty units, totalling \$ 967,500 or five years imprisonment for an individual or \$ 4,837,500 for a corporation.
- The maximum penalty for contravening an EPO is 4500 penalty units, totalling \$ 696,600 for an individual or \$ 3,483,000 for a corporation.

Failure to provide written notice to the buyer of the existence of the order is an offence.

- The maximum penalty is 50 penalty units, totalling \$ 7,740, for an individual or \$ 38,700 for a corporation

Failure to provide written notice to the department within 10 business days of ceasing the activity to which an environmental protection order relates is an offence.

- The maximum penalty is 50 penalty units, totalling \$ 7,740 for an individual or \$ 38,700 for a corporation.

Section 3 of the *Penalties and Sentences Regulation 2015* prescribes the monetary value of a penalty unit.

E. Reviews and appeals

The provisions regarding reviews of decisions and appeals are found in sections 519 to 539 of the EP Act.

A person who is dissatisfied with an original decision made by the Department of Environment, Science and Innovation (the department) may apply to have that decision internally reviewed.

Information about initiating an appeal in relation to this notice is contained within the [Internal Reviews and Appeals Information Sheet](#) (available at www.qld.gov.au using the publication number ESR /2015/1742 as a search term)

A request for review or appeal is to be made using the approved form '[Application for review of original decision](#)' (available at www.qld.gov.au using the publication number ESR/2015/1573 as a search term.

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Applications for reviews are to be sent to Permit and Licence Management, Department of Environment, Science and Innovation: via email at palm@des.qld.gov.au , or by mail to the following address: GPO. Box 2454, Brisbane, QLD, 4001.

Where an application has been made for a decision to be reviewed, the applicant may also apply to the relevant court for a stay of the decision to secure the effectiveness of the review.

Once the original decision has been reviewed, a person who is dissatisfied with the review decision may be able to appeal against that decision to the relevant court within 22 business days after receiving notice of the review decision.

A person whose interests are or would be adversely affected by a decision of the department may be able to request a statement of reasons for a decision or a statutory order review under the *Judicial Review Act 1991*.

You may have other legal rights or obligations and should seek your own legal advice.

Pursuant to section 540 of the Act, the department is required to maintain a register of certain documents and information authorised under the Act. A copy of this document will be kept on the public register. The register is available for inspection by members of the public who are able take extracts, or copies of the documents from the register. Documents that are required to be kept on the register are published in their entirety, unless alteration is required by the Act. There is no general discretion allowing the department to withhold documents or information required to be kept on the public register. For more information on the department's public register, search 'public register' at www.qld.gov.au. For queries about privacy matters please email privacy@des.qld.gov.au or telephone 13 74 68.

Should you have any queries in relation to the notice, please contact Brianna Ryan on (07) 4837 3499.



Signature

3 July 2024

Date

Anthony Baker

Director

Delegate of the Chief Executive

Department of Environment, Science and Innovation

Environmental Protection Act 1994

Enquiries: Brianna Ryan

COMPLIANCE CENTRE: Rockhampton

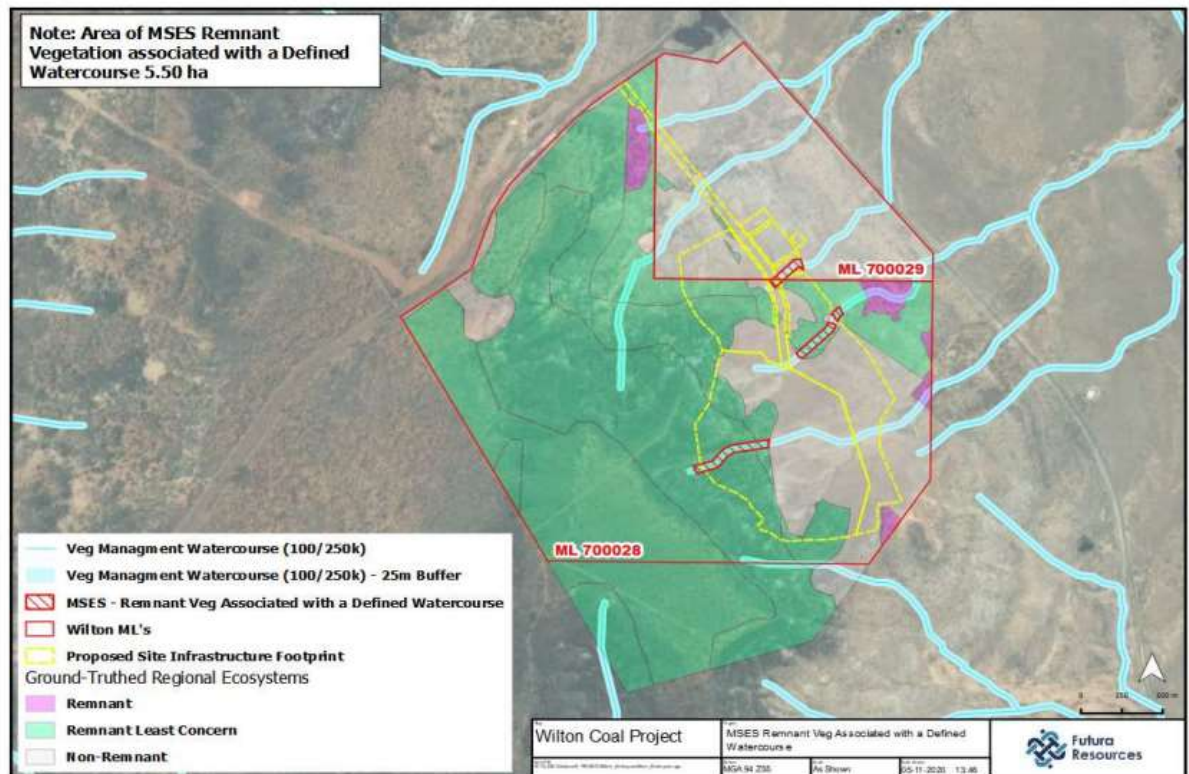
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CWES_Rockhampton@des.qld.gov.au

Attachment A

Figure 4 - (Location of Impact to Prescribed Environmental Matters)



ENDs.