

Enquiries: Annie Ireland
Telephone: (07) 3330 6184
Our reference: LIT1720



XX May 2019

The Registrar
Bowen Magistrates Court
Herbert Street
Bowen Qld 4805

Department of
Environment and Science

By email - courthouse.bowen@justice.qld.gov.au

Dear Registrar

Black v Abbot Point Bulkcoal Pty Ltd

We refer to the above matter.

We write on behalf of the complainant, Mr Black of the Department of Environment and Science. This letter is sent with the consent of the defendant, Abbot Point Bulkcoal Pty Ltd.

The matter is currently listed for a five-day hearing commencing 22 July 2019 before the Bowen Magistrates Court.

On 17 May 2019, an enforceable undertaking was approved by the Department of Environment and Science pursuant to section 507 of the *Environmental Protection Act 1994* (**the Act**). In accordance with section 507(7) of the Act, once an enforceable undertaking is accepted, the Department is to take all reasonable steps to have proceedings (in relation to the contravention the subject of the undertaking) discontinued as soon as possible.

Accordingly, in relation to the complaint made and filed with the Bowen Magistrates Court by the complainant Mr Black on 5 September 2018, the complainant offers no evidence in respect of the charge under section 357I. We **enclose** a copy of the complaint for convenience. In those circumstances, we ask the Court to please vacate the hearing dates.

Neither the prosecution or the defendant seeks any costs in respect of the proceeding.

In light of this correspondence, would you please advise whether the Court is prepared to dismiss the complaint without the need for any appearances from the parties.

Alternatively, should the Court wish for the parties to appear, we ask whether the matter could please be listed for mention and leave be granted for the prosecution and defence to appear by telephone for the mention.

Should you wish to discuss further please contact me on 3330 6184 or anne-maree.ireland@des.qld.gov.au.

Kind regards

Anne-Maree Ireland
Principal Lawyer, Litigation Branch

Published on DES Disclosure Log
RTI Act 2009

Date : 13/05/2019 2:12:54 PM

From : "WATSON Matthew"

To : "IRELAND Anne-Maree" , "WELLS Melissa" , "CAGNEY Justin"

Cc : "Media DES"

Subject : Anne - Mel - Justin: Amended media release attached

Attachment : 090519 - MR - Greater marine protection for Abbot Point.docx;image001.png;image002.png;

Anne – Mel and Justin,

Please see amended release below and attached, as discussed with Anne.

Cheers

Department of Environment and Science

Draft media release

Deadline: ASAP	Briefing officer:
Media Services contact: Kieran Lewis	Phone:
Phone: 3339 5887 / (6) Personal info	DDG:
Approved: Annie Ireland, Justin Cagney	Phone:
Geographical area/s of interest: Queensland wide	

Greater marine protection for Abbot Point

An agreement between Abbot Point Bulkcoal Pty Ltd and the Queensland Government will mean greater marine protection for waters off Abbot Point.

Abbot Point Bulkcoal is to invest \$100,000 in installing monitoring equipment to record any stormwater discharges to the marine environment from its Abbot Point Coal Terminal, north of Bowen.

The company is also continuing work to improve water management at the coal terminal.

The \$100,000 investment by Abbot Point Bulkcoal is by way of an "Enforceable Undertaking" agreement the company has signed with the Department of Environment and Science (DES).

Under the *Environmental Protection Act 1994*, an Enforceable Undertaking is an agreement that may be considered as an alternative to prosecution.

In this case, DES today [add date], accepted an Enforceable Undertaking from Abbot Point Bulkcoal in relation to the discharge event that occurred at the coal terminal during Tropical Cyclone Debbie in March 2017.

DES had originally issued Abbot Point Bulkcoal with a \$12,190 penalty infringement notice, alleging the event contravened the company's temporary emissions licence for discharges at that time.

Abbot Point Bulkcoal elected to contest the infringement notice and DES commenced a prosecution in the Bowen Magistrates Court, which is currently listed for a hearing commencing 22 July 2019.

However, the company has now applied for an Enforceable Undertaking under the Environmental Protection Act, and DES has accepted that this agreement be entered into.

This Enforceable Undertaking will help secure improved monitoring in relation to terminal operations at Abbot Point.

In accordance with the Environmental Protection Act, DES will now take steps to discontinue the prosecution.

DES expects Abbot Point Bulkcoal to comply fully with the undertaking and will monitor its compliance.

Failing to comply with an Enforceable Undertaking may attract significant penalties, including a fine of more than \$4 million for a wilful contravention by a company.

A copy of the Enforceable Undertaking is available on the DES website at [add URL].

ENDS

AGENCY BACKGROUND (for internal information):

During Tropical Cyclone Debbie, Abbot Point Bulkcoal Pty Ltd was granted a temporary emissions licence which allowed discharges to occur subject to certain limits. A discharge event occurred from an authorised discharge location known as W2, which flows into the marine environment. No environmental harm is known to have occurred but sampling of the discharge revealed a total suspended solids concentration of over 800mg/L when the licence allowed discharges of up to 100 mg/L.

The current maximum penalties relating to failing to comply with an Enforceable Undertaking are \$4,079,687.50 for wilful contravention for a company and \$2,937,375 for non-wilful for a company. (Penalties for an individual differ.)



Matt Watson

Principal Media Officer

Media Services | Corporate Communications

Department of Environment and Science

P 07 3339 5819 or ext 74819 M (6) Personal info

GPO Box 2454, Brisbane QLD 4001

If it's a media matter, please include the group email media@des.qld.gov.au

Website www.des.qld.gov.au

Published on DES Disclosure Log
RTI Act 2009

Draft media release

Deadline: ASAP	Briefing officer:
Media Services contact: Kieran Lewis	Phone:
Phone: 3339 5887 / (p4(6) Personal informa	DDG:
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Geographical area/s of interest: Queensland wide	

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Date : 9/05/2019 2:00:57 PM

From : "Media DES"

To : "ELLWOOD Dean"

Cc : "CAGNEY Justin" , "IRELAND Anne-Maree" , "WELLS Melissa" , "Media DES" , "LEWIS Kieran" , "ESR" , "DAUNT Bettina"

Subject : Dean - for approval - draft holding statement re Abbot Point BulkCoal Enforceable Undertaking

Attachment : 090519 - MR - Greater marine protection for Abbot Point.docx;

Hi Dean

For approval, please.

Annie Ireland, Justin Cagney, and Melissa Wells have approved the attached media release re the Enforceable Undertaking for Abbot Point Bulkcoal.

Regards

Kieran Lewis

Media Services

Department of Environment and Science

media@des.qld.gov.au

Level 31 | 400 George Street | Brisbane

Tel 07 3339 5887 /4(6) Personal inform

www.des.qld.gov.au

If you are emailing about a media matter, please cc media@des.qld.gov.au

Published on DES Disclosure Log
RTI Act 2009

Draft media release

Deadline: ASAP	Briefing officer:
Media Services contact: Kieran Lewis	Phone:
Phone: 3339 5887 / 14p4(6) Personal informat	DDG:
Approved: Annie Ireland, Justin Cagney, Melissa Wells	Phone:
Geographical area/s of interest: Queensland wide	

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DES had originally issued Abbot Point Bulkcoal with a \$12,190 penalty infringement notice, alleging the event contravened the company's temporary emissions licence for discharges at that time.

Abbot Point Bulkcoal elected to contest the infringement notice and DES commenced a prosecution in the Bowen Magistrates Court, which is currently listed for a hearing commencing 22 July 2019.

However, the company has now applied for an Enforceable Undertaking under the Environmental Protection Act, and DES has accepted that this agreement be entered into.

The positive environmental outcomes from an Environmental Undertaking are often of much greater value than any fine that may have been imposed by a Court.

In accordance with the Environmental Protection Act, DES will now take steps to discontinue the prosecution.

DES expects Abbot Point Bulkcoal to comply fully with the undertaking and will monitor its compliance.

Failing to comply with an Enforceable Undertaking may attract significant penalties, including a fine of more than \$4 million for a wilful contravention by a company.

A copy of the Enforceable Undertaking is available on the DES website at [\[add URL\]](#).

ENDS

AGENCY BACKGROUND (for internal information):

During Tropical Cyclone Debbie, Abbot Point Bulkcoal Pty Ltd was granted a temporary emissions licence which allowed discharges to occur subject to certain limits. A discharge event occurred from an authorised discharge location known as W2, which flows into the marine environment. No environmental harm is known to have occurred but sampling of the discharge revealed a total suspended solids concentration of over 800mg/L when the licence allowed discharges of up to 100 mg/L.

The current maximum penalties relating to failing to comply with an Enforceable Undertaking are \$4,079,687.50 for wilful contravention for a company and \$2,937,375 for non-wilful for a company. (Penalties for an individual differ.)

Date : 23/05/2019 5:07:07 PM
From : "IRELAND Anne-Maree"
To : "ELLWOOD Dean"
Subject : Document
Attachment : Letter to BMC re complaint 21.5.19.docx;

Published on DES Disclosure Log
RTI Act 2009

Enquiries: Annie Ireland
Telephone: (07) 3330 6184
Our reference: LIT1720



21 May 2019

The Registrar
Bowen Magistrates Court
Herbert Street
Bowen Qld 4805

Department of
Environment and Science

By email - courthouse.bowen@justice.qld.gov.au

Dear Registrar

Black v Abbot Point Bulkcoal Pty Ltd

We refer to the above matter.

We write on behalf of the complainant, Mr Black of the Department of Environment and Science. This letter is sent with the consent of the defendant, Abbot Point Bulkcoal Pty Ltd.

The matter is currently listed for a five-day hearing commencing 22 July 2019 before the Bowen Magistrates Court.

On 17 May 2019, an enforceable undertaking was approved by the Department of Environment and Science pursuant to section 507 of the *Environmental Protection Act 1994* (**the Act**). In accordance with section 507(7) of the Act, once an enforceable undertaking is accepted, the Department is to take all reasonable steps to have proceedings (in relation to the contravention the subject of the undertaking) discontinued as soon as possible.

Accordingly, in relation to the complaint made and filed with the Bowen Magistrates Court by the complainant, Mr Black, on 5 September 2018, the complainant offers no evidence in respect of the charge under section 357I. We **enclose** a copy of the complaint for convenience. In those circumstances, we ask the Court to please vacate the hearing dates.

Neither the prosecution nor the defendant seeks any costs in respect of the proceeding.

In light of this correspondence, would you please advise whether the Court is prepared to dismiss the complaint without the need for any appearances from the parties.

Alternatively, should the Court wish for the parties to appear, we ask whether the matter could please be listed for mention and leave be granted for the prosecution and defence to appear by telephone for the mention.

Should you wish to discuss further please contact me on 3330 6184 or anne-maree.ireland@des.qld.gov.au.

Kind regards

Anne-Maree Ireland
Principal Lawyer, Litigation Branch

Published on DES Disclosure Log
RTI Act 2009

Date : 9/05/2019 2:14:47 PM

From : "WELLS Melissa"

To : "ESR"

Cc : "CAGNEY Justin" , "IRELAND Anne-Maree" , "LEWIS Kieran" , "ELLWOOD Dean" , "LOWE Trinity"

Subject : ESR ALERT - Enforceable Undertaking likely to be accepted from Abbot Point Bulkcoal Pty Ltd under section 507 of the Environmental Protection Act 1994.

Attachment : 090519 - MR - Greater marine protection for Abbot Point.docx;

Hi ESR please find attached alert with draft holding statement for DDG urgent attention. Thanks, Melissa.

ALERT CATEGORY:

- Enforcement activity.

ALERT NAME:

- Enforceable Undertaking likely to be accepted from Abbot Point Bulkcoal Pty Ltd under section 507 of the *Environmental Protection Act 1994*.

CUSTOMER DETAILS:

- Abbot Point Bulkcoal Pty Ltd (APBC).
- Abbot Point Coal Terminal, Bowen, Lot 48 on SP243724, Lot 49 on SP243724, Lot 50 on SP243721, Lot 51 on SP243721, Lot 52 on SP243721, Lot 3 on SP227557, Lot 4 on SP227557, Lot 58 on SP240224 and Lot 49 on SP185904.
- Contact [REDACTED] s.73 – Chief Executive Officer, Abbot Point Bulkcoal Pty Ltd.
- Environmental Authority (EA) EPPR00577113.

SUMMARY OF ISSUE/S:

- APBC operates the Abbot Point Coal Terminal (the Terminal) under environmental authority EPPR00577113 which authorises it to conduct environmental relevant activities 50(1a) for bulk material handling and 63(1b)(i) for sewage treatment.
- The Terminal is located in Central Queensland, approximately 25km north of Bowen and has been in operation since 1984.
- The offence relates to a release during Tropical Cyclone (TC) Debbie in March 2017 from an authorised discharge location named W2. At the sampling point, total suspended solids were measured at 806mg/L and 834mg/L which exceeded the temporary emissions licence limit of 100mg/L.
- DES originally issued a penalty infringement notice in the amount of \$12,190 for the contravention of the licence. Abbot Point Bulkcoal Pty Ltd elected to contest the infringement notice and DES commenced a prosecution in the Bowen Magistrates Court.
- On 5 September 2018, prosecution proceedings were commenced against APBC for one offence of failing to comply with a condition of a temporary emissions licence, contrary to section 357I of the *Environmental Protection Act 1994*.
- The matter is listed for a five day hearing before the Bowen Magistrates Court on **22 July 2019**.
- On 26 April 2019, the Department of Environment and Science (DES) received an application for an enforceable undertaking from APBC under section 507 of the *Environmental Protection Act 1994* in relation to the matter.
- As an alternative to prosecution, an enforceable undertaking seeks to achieve environmental outcomes. Such outcomes are often of greater value than any fine which may have been imposed by a Court.
- DES considers that this undertaking, which requires Abbot Point Bulkcoal Pty Ltd to install monitoring at a cost of over \$100,000, will help protect the marine environment.

POTENTIAL IMPACTS / RISKS:

- In accordance with section 507 of the *Environmental Protection Act 1994*, if DES decides to accept the enforceable undertaking, the department must take all reasonable steps to have the current proceedings discontinued as soon as possible.
- DES must also publish a copy of the enforceable undertaking on its website.
- There is significant public interest in the Abbot Point Coal Terminal, particularly in relation to release events and compliance with the environmental authority for the site.

DEPARTMENT ACTIONS:

[HISTORICAL ACTIONS]

- On 11 September 2018, DES issued ABPC with a 2018/19 Pre Wet Season Preparedness Letter, inviting APBC to submit information detailing any changes or improvements to on site water management systems or infrastructure that have been undertaken since the 2017/18 wet season.
- On 13 December 2018, DES attended a meeting at Abbot Point Coal Terminal. During the meeting, APBC provided an overview of operations at the coal terminal and a detailed briefing on the water management system improvements being implemented at the site. APBC has invested significantly in undertaking major upgrades to the water management system on site.
- DES is currently undertaking a monitoring program in the Caley Valley Wetland to identify and describe any adverse impacts on environmental values as a result of activities conducted at the Abbot Point Coal Terminal.
- DES officers most recently attended the Caley Valley Wetlands on 5 and 6 March 2019 to continue sampling in accordance with the monitoring program.
- DES has commenced prosecution proceedings against APBC for the offence of contravening a condition of a temporary emissions licence (TEL) during TC Debbie in March 2017. The matter was mentioned in the Bowen Magistrates Court on 5 March 2019, where the matter was listed for a five day hearing commencing 22 July 2019.

[PLANNED ACTIONS]

- On Friday **10 May 2019**, DES is likely to be in a position to accept the enforceable undertaking from APBC under section

507 of the *Environmental Protection Act 1994*.

- On Monday **14 May 2019**, if accepted, DES will likely update the departments website with a copy of the EU and release a media statement (**draft attached**).

LOCALITY DETAILS AND PHOTOGRAPHS:

- Abbot Point Coal Terminal is situated at the Port of Abbot Point, approximately 25 kilometres north-west of Bowen, Central Queensland.

KEY COMMUNICATION MESSAGES:

- As an alternative to prosecution, an enforceable undertaking seeks to achieve environmental outcomes. Such outcomes are often of greater value than any fine which may have been imposed by a Court.
- In accordance with the Act, if the EU is accepted, DES will take steps to discontinue the prosecution. DES expects Abbot Point Bulkcoal Pty Ltd to fully comply with the undertaking and will monitor its compliance. Failing to comply with the undertaking attracts significant penalties.

CONTACT DETAILS:

- Name: Melissa Wells, Executive Director, Coal and Central Queensland Compliance.
- Phone number: (07) 4987 9343.
- Division: Environmental Services and Regulation.

This email is an initial alert in respect of this matter.

If further advice or action is required, it will be communicated via normal channels such as a briefing note.

END

Published on DES Disclosure Log
RTI Act 2009

Draft media release

Deadline: ASAP	Briefing officer:
Media Services contact: Kieran Lewis	Phone:
Phone: 3339 5887 <small>Ap4(6) Personal informa</small>	DDG:
Approved: Annie Ireland, Justin Cagney, Melissa Wells	Phone:
Geographical area/s of interest: Queensland wide	

Greater marine protection for Abbot Point

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The company is also continuing work to improve water management at the coal terminal.

The \$100,000 investment by Abbot Point Bulkcoal is by way of an “Enforceable Undertaking” agreement the company has signed with the Department of Environment and Science (DES).

Under the *Environmental Protection Act 1994*, an Enforceable Undertaking is an agreement that may be considered as an alternative to prosecution.

In this case, DES today **[add date]**, accepted an Enforceable Undertaking from Abbot Point Bulkcoal in relation to the discharge event that occurred at the coal terminal during Tropical Cyclone Debbie in March 2017.

DES had originally issued Abbot Point Bulkcoal with a \$12,190 penalty infringement notice, alleging the event contravened the company’s temporary emissions licence for discharges at that time.

Abbot Point Bulkcoal elected to contest the infringement notice and DES commenced a prosecution in the Bowen Magistrates Court, which is currently listed for a hearing commencing 22 July 2019.

However, the company has now applied for an Enforceable Undertaking under the Environmental Protection Act, and DES has accepted that this agreement be entered into.

The positive environmental outcomes from an Environmental Undertaking are often of much greater value than any fine that may have been imposed by a Court.

In accordance with the Environmental Protection Act, DES will now take steps to discontinue the prosecution.

DES expects Abbot Point Bulkcoal to comply fully with the undertaking and will monitor its compliance.

Failing to comply with an Enforceable Undertaking may attract significant penalties, including a fine of more than \$4 million for a wilful contravention by a company.

A copy of the Enforceable Undertaking is available on the DES website at [\[add URL\]](#).

ENDS

AGENCY BACKGROUND (for internal information):

During Tropical Cyclone Debbie, Abbot Point Bulkcoal Pty Ltd was granted a temporary emissions licence which allowed discharges to occur subject to certain limits. A discharge event occurred from an authorised discharge location known as W2, which flows into the marine environment. No environmental harm is known to have occurred but sampling of the discharge revealed a total suspended solids concentration of over 800mg/L when the licence allowed discharges of up to 100 mg/L.

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Published on DES Disclosure Log
RTI Act 2009

Date : 9/05/2019 10:02:10 AM

From : "CAGNEY Justin"

To : "WELLS Melissa"

Cc : "IRELAND Anne-Maree"

Subject : ESR ALERT - Enforceable Undertaking to be accepted from Abbot Point Bulkcoal Pty Ltd under section 507 of the Environmental Protection Act 1994.

Melissa,

Draft alert below for your review and escalation as you see fit.

ALERT CATEGORY:

- Enforcement activity.

ALERT NAME:

- Enforceable Undertaking to be accepted from Abbot Point Bulkcoal Pty Ltd under section 507 of the *Environmental Protection Act 1994*.

CUSTOMER DETAILS:

- Abbot Point Bulkcoal Pty Ltd (APBC).
- Abbot Point Coal Terminal, Bowen, Lot 48 on SP243724, Lot 49 on SP243724, Lot 50 on SP243721, Lot 51 on SP243721, Lot 52 on SP243721, Lot 3 on SP227557, Lot 4 on SP227557, Lot 58 on SP240224 and Lot 49 on SP185904.
- Contact: s.73 – Chief Executive Officer, Abbot Point Bulkcoal Pty Ltd.
- Environmental Authority (EA) EPPR00577113.

SUMMARY OF ISSUE/S:

- On 5 September 2018, prosecution proceedings were commenced against APBC for one offence of failing to comply with a condition of a temporary emissions licence, contrary to section 357I of the *Environmental Protection Act 1994*.
- The matter is listed for a five day hearing before the Bowen Magistrates Court on **22 July 2019**.
- APBC operates the Abbot Point Coal Terminal (the Terminal) under environmental authority EPPR00577113 which authorises it to conduct environmental relevant activities 50(1a) for bulk material handling and 63(1b)(i) for sewage treatment.
- The Terminal is located in Central Queensland, approximately 25km north of Bowen and has been in operation since 1984.
- The offence relates to a release during Tropical Cyclone (TC) Debbie in March 2017 from an authorised discharge location named W2. At the sampling point, total suspended solids were measured at 806mg/L and 834mg/L which exceeded the temporary emissions licence limit of 100mg/L.
- On 26 April 2019, the Department of Environment and Science (DES) received an application for an enforceable undertaking from APBC under section 507 of the *Environmental Protection Act 1994* in relation to the matter.

POTENTIAL IMPACTS / RISKS:

- In accordance with section 507 of the *Environmental Protection Act 1994*, if DES decides to accept the enforceable undertaking, the department must take all reasonable steps to have the current proceedings discontinued as soon as possible.
- DES must also publish a copy of the enforceable undertaking on its website.
- There is significant public interest in the Abbot Point Coal Terminal, particularly in relation to release events and compliance with the environmental authority for the site.

DEPARTMENT ACTIONS:

[HISTORICAL ACTIONS]

- On 11 September 2018, DES issued ABPC with a 2018/19 Pre Wet Season Preparedness Letter, inviting APBC to submit information detailing any changes or improvements to on site water management systems or infrastructure that have been undertaken since the 2017/18 wet season.
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[PLANNED ACTIONS]

- On 10 May 2019, DES will accept the enforceable undertaking from APBC under section 507 of the *Environmental Protection Act 1994*.

LOCALITY DETAILS AND PHOTOGRAPHS:

- Abbot Point Coal Terminal is situated at the Port of Abbot Point, approximately 25 kilometres north-west of Bowen, Central

Queensland.

KEY COMMUNICATION MESSAGES:

- As an alternative to prosecution, an enforceable undertaking seeks to achieve environmental outcomes. Such outcomes are often of greater value than any fine which may have been imposed by a Court.
- In accordance with the Act, DES will now take steps to discontinue the prosecution. DES expects Abbot Point Bulkcoal Pty Ltd to fully comply with the undertaking and will monitor its compliance. Failing to comply with the undertaking attracts significant penalties.

CONTACT DETAILS:

- Name: Melissa Wells, Executive Director, Coal and Central Queensland Compliance.
- Phone number: (07) 4987 9343.
- Division: Environmental Services and Regulation.

This email is an initial alert in respect of this matter.

If further advice or action is required, it will be communicated via normal channels such as a briefing note.

END

Published on DES Disclosure Log
RTI Act 2009

Date : 29/04/2019 3:21:13 PM
From : "IRELAND Anne-Maree"
To : "WELLS Melissa"
Subject : EU
Attachment : EU Application.pdf;image001.png;image003.png;
Dear Melissa

Please see **attached** enforceable undertaking application submitted by APBC on 26 April 2019.

sch3(7) Information subject to legal professional privilege

Kind regards
Annie



Anne-Maree Ireland
Principal Lawyer
Litigation Branch I Environmental Services and Regulation
Department of Environment and Science

P 07 3330 6184 | F 07 3330 5634
Level 7, 400 George Street, Brisbane Qld 4000
GPO Box 2454, Brisbane Qld 4001

IMPORTANT NOTICE: CONFIDENTIALITY AND LEGAL PRIVILEGE:

This e-mail may contain privileged and/or confidential information intended for the person addressed and must not be quoted or distributed to unintended recipients. If you receive this e-mail and you are not the intended recipient, please notify the sender immediately. Please delete the communication (and any attachments) and destroy all copies. There is no waiver of any confidentiality or privilege by your inadvertent receipt of this email or its attachments.

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RTI Act 2009

Application form

Environmental Protection Act 1994

Enforceable Undertaking

This form must be used to submit a proposed enforceable undertaking to the Department of Environment and Science (the department) pursuant to Chapter 10, Part 5 of the Environmental Protection Act 1994 (the Act).

For further information please refer to the Enforceable Undertakings Statutory Guideline (ESR/2016/2272).

Once a decision on the application is made, the department will issue a notice informing the applicant if the enforceable undertaking is accepted or rejected. If the department decides to accept the enforceable undertaking, the decision notice will be issued with the enforceable undertaking in the approved form to be signed by the Applicant and the department. The contents of this application will be used to draft the enforceable undertaking.

ENFORCEABLE UNDERTAKING

The objectives in this proposal for an undertaking are submitted to the department for consideration by: Abbot Point Bulkcoal Pty Ltd ACN 010 183 534 (the corporation).

COMMENCEMENT OF UNDERTAKING

An enforceable undertaking commences on the date that the department signs the corporation's enforceable undertaking. Upon the enforceable undertaking taking effect, the enforceable undertaking commences as a legally binding agreement between the department and the applicant.

SECTION 1: GENERAL INFORMATION

1. Details of the applicant proposing an enforceable undertaking

NAME – INDIVIDUAL OR AUTHORISED CONTACT PERSON (if applicant is a company)	
s.73 Director, Abbot Point Bulkcoal Pty Ltd	
COMPANY NAME	ACN (if relevant)
Abbot Point Bulkcoal Pty Ltd	ACN 010 183 534
RESIDENTIAL OR REGISTERED COMPANY ADDRESS (not a post office box)	PHONE
Level 15, 10 Eagle Street, Brisbane Queensland 4000	+61 7 4786 0332
	s.73

POSTAL ADDRESS (if different from above) As above	FACSIMILE N/A
EMAIL s.73 @adani.com.au	
ENVIRONMENTAL AUTHORITY PERMIT NUMBER (relevant to this enforceable undertaking, if applicable) EPPR00577113	SUITABLE OPERATOR NUMBER (if applicable) 401618
ENVIRONMENTAL AUTHORITY HOLDER'S NAME (relevant to this enforceable undertaking, if applicable) Abbot Point Bulkcoal Pty Ltd ACN 010 183 534	
ACTIVITY DETAILS (if no relevant environmental authority) N/A	

SECTION 2: ALLEGED CONTRAVENTION

2.1 Detail the alleged contravention (press 'enter' at the end of each statement to create a new row):

2.1.1 The complaint and summons filed by the Department in the Bowen Magistrates Court on 5 September 2018 alleges that the corporation "failed to comply with a condition of a temporary emissions licence, contrary to section 357I of the Environmental Protection Act 1994".

2.1.2 The particulars of the complaint and summons allege a failure to comply with condition TEL1 of the temporary emissions licence.

2.1.3 On 24 March 2017, the corporation applied for a temporary emissions licence in relation to its activities at the Abbot Point Coal Terminal (Terminal) due to predictions of a major rainfall event associated with Tropical Cyclone Debbie.

2.1.4 The Department issued a temporary emissions licence to the corporation on 27 March 2017, and the amended temporary emissions licence (TEL) to the corporation on 28 March 2017.

2.1.5 Relevantly, the TEL authorised a temporary increase of the EA quality criteria for total suspended solids to 100mg/L at discharge location W2.

2.1.6 Following Tropical Cyclone Debbie, sampling results from the primary rising stage sample bottle at W2 indicated elevated suspended solids of 806mg/L.

2.1.7 The Department alleges a release to waters from release location W2 pursuant to section 357I of the Environmental Protection Act 1994, however, this Enforceable Undertaking does not constitute an admission of guilt on behalf of the corporation.

2.1.8 Neither the Department nor the corporation is aware of any environmental impacts arising as a result of the alleged contravention.

2.2 Detail the conduct or events surrounding the alleged contravention (press 'enter' at the end of each statement to create a new row):

2.2.1 Please refer to Attachment 1.

2.2.2 <Enter details>

2.2.3 <Enter details>

2.3 Description of any land affected by the alleged contravention (including land on which the alleged contravention occurred and any impacted land):

LOCATION OF LAND (E.G. STREET ADDRESS OR GEOGRAPHICAL COORDINATES) Abbot Point Coal Terminal, Bowen, QLD	
LOT PLAN Lot 48 SP243721 and Lot 22 SP271830	WHOLE/PART Part
TENURES N/A	

2.4 Landowner/landholder details (if location of contravention is not a site owned or leased by the applicant or the person/company they are representing)

LANDOWNER/LANDHOLDER NAME(S) North Queensland Bulk Ports Corporation
CONTACT PERSON'S NAME Paul Crack, Commercial Manager

2.5 Detail the environmental harm (including potential harm) as a consequence of the alleged contravention detailed at section 2 (press 'enter' at the end of each statement to create a new row):

2.5.1 Please refer to Attachment 1.

2.5.2

2.6 Detail the consultation undertaken in relation to this proposed enforceable undertaking (press 'enter' at the end of each statement to create a new row):

2.6.1 Representatives from both the corporation and the Department have undertaken a consultative process in relation to this proposed enforceable undertaking.

2.6.2 Representatives of the corporation have also consulted with North Queensland Bulk Ports Corporation.

SECTION 3: ACKNOWLEDGMENTS AND STATEMENTS

3.1 Acknowledgement that an alleged contravention occurred, as detailed in section 2:

The corporation acknowledges that a contravention is alleged to have occurred, as detailed in section 2 and Attachment 1.

3.2 Statement of regret that the alleged contravention occurred:

The circumstances described are regrettable and this is reflected by the range of improvement works that are being undertaken. This is also acknowledgement by the corporation that it operates in an important coastal environment, and it always strives to take active steps to protect it.

3.3 Statement of reasons why the person considers an enforceable undertaking is a more appropriate response to the alleged contravention than a court imposed sanction:

Please refer to Attachment 1.

3.4 Statement of commitment that the behaviour, activities and other factors which caused or led to the alleged contravention has ceased and will not reoccur:

Please refer to Attachment 1.

3.5 Statement of any action that has been undertaken to prevent the alleged contravention:

Please refer to Attachment 1.

3.6 Acknowledgment of the guideline published by the department for the acceptance of an enforceable undertaking:

I have read and understood:

Guideline: Enforceable undertakings under the Environmental Protection Act 1994 (ESR/2016/2272)

Dated: Version 2.0, dated 21 July 2016.

3.7 Acknowledgment that an enforceable undertaking will be published on the department's website and may be publicised elsewhere:

The corporation acknowledges that:

3.7.1 This undertaking will be published on the department's website and may be referred to or referenced in other ways (including in newspapers or media releases).

3.8 Acknowledgment that proceedings will be brought against the person for the contraventions of an enforceable undertaking:

The corporation acknowledges that:

3.8.1 As provided for in section 508(2) of the Act, the department's acceptance of an undertaking means that proceedings will not be brought by the department against the person for the contraventions alleged in section 2 of this proposal, as long as the person subject to the relevant enforceable undertaking is fully complying, or has fully complied, with the undertaking.

3.8.2 If the person withdraws an undertaking before it has been fulfilled, proceedings may be brought for the offences constituted by the contraventions alleged in section 2 of this proposal for an undertaking.

3.8.3 The department's acceptance of this proposal for an undertaking does not affect the department's power to:

3.8.3.1 bring proceedings against the person;

3.8.3.2 issue penalty infringement notices; or

3.8.3.3 take any other enforcement action against the person;

in relation to any subsequent contravention or alleged contravention of the Act, that is not the subject of an undertaking. This is regardless of whether or not the subsequent contravention or alleged contravention involves a provision of the Act that is referred to in section 2 of this proposal.

3.9 Acknowledgment that this proposal for an undertaking does not derogate from other rights and remedies:

The corporation acknowledges that this proposal for an undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this proposal or arising from subsequent conduct.

3.10 Acknowledgment that an enforceable undertaking has been offered to the department:

The corporation acknowledges that:

3.10.1 They have offered an undertaking in the terms set out in this approved form.

3.10.2 This proposed undertaking does not take effect until the department gives the person who made the proposal for an undertaking notice of the decision to accept the proposal on terms satisfactory to the department. The person and the department acknowledge that the date of the undertaking is the date on which the notice of the decision to accept the undertaking is given.

3.11 Statement of the person's ability to comply with the terms of any undertaking and meet the projected costs of the activities:

3.11.1 The corporation has the financial ability to comply with the terms proposed for the undertaking and have provided evidence by way of confirmation provided in section 10 of Attachment 1 with this application to support this declaration.

3.11.2 In the event of impending liquidation or sale of the entity, the corporation will advise the department of the relevant circumstances and its capacity to comply with the outstanding terms of this undertaking.

3.11.3 In the event that the entity is sold, the corporation will advise any future owners or operators of the existence of this undertaking, and provide a copy of this correspondence to the department.

3.12 Statement of relationship with any corporations, officers, employees, contractors, proposed beneficiaries of donations or scholarship or other recipient of financial benefit contained in this proposal:

Note: If a financial benefit is to be given to a person any relationship between the applicant for the enforceable undertaking and the person receiving the financial benefit must be disclosed here.

3.13 Acknowledgment that communications regarding this enforceable undertaking must state that an enforceable undertaking is in effect:

The corporation acknowledges that any public communications regarding any of the actions contained within this undertaking must clearly link the actions to the undertaking and state that the undertaking was entered into as a result of a contravention or alleged contravention of the Act.

3.14 Acknowledgment that the person may be required to provide a statutory declaration:

The department has requested a statutory declaration outlining details of any prior convictions or findings of guilt under the Environmental Protection Act 1994 or a corresponding law¹ whether in Queensland or elsewhere:

☐ YES ☒ NO

The statutory declaration is attached (if applicable):

☐ YES ☐ NO

3.15 Statement of commitment from the person to participate constructively in all compliance monitoring activities for this undertaking:

- 3.15.1 It is acknowledged that responsibility for demonstrating compliance with this undertaking rests with the person.
- 3.15.2 Evidence to demonstrate compliance with the terms will be provided to the department within two business days after the due date.
- 3.15.3 The evidence provided to demonstrate compliance with this undertaking will be retained by the person until advised by the department that this undertaking has been completely discharged.
- 3.15.4 It is acknowledged that any failure to meet the due date for a term will result in the matter being escalated and may lead to enforcement action.
- 3.15.5 It is acknowledged that the department may undertake other compliance monitoring activities to verify the evidence and compliance with a term, and the applicant agrees to cooperate with the department in any investigation or compliance activity in respect of the enforceable undertaking such as site access and provision of documents upon reasonable notice.

SECTION 4: KEY OBJECTIVES

4. This enforceable undertaking is a binding agreement that aims to (press 'enter' at the end of each statement to create a new row):

- 4.1 Improve environmental monitoring at the Terminal;
- 4.2 Deliver benefits to the environment and local community; and
- 4.3 Promote the objects of the Act.

SECTION 5: TERMS

5.1 Please refer to Attachment 1 for the terms of this enforceable undertaking.

ACTIVITIES		COST	TIMEFRAME
5.2.1.1	Meet with representatives of NQPB to seek consent for the installation of an AWQS on lot 22 on SP271830	\$-	Within six months of the date of this undertaking

¹ Corresponding law means under a law of the Commonwealth or another State that provides for the same or similar matters as the Environmental Protection Act 1994.

Approved form
Enforceable undertaking

5.2.1.2	<p>Install an AWQS on lot 22 on SP271830 capable of recording the pH and flow of a release from the Terminal at discharge location W2. The AWQS will collect data in direct response to releases, and facilitate informed management and mitigation strategies where necessary, to secure compliance with the Act and enhance the protection of the Environment. The AWQS, which will provide for real time monitoring of water flows at the discharge location may include, for example:</p> <ul style="list-style-type: none"> (i) hydrolab sonde with sensors and cable; (ii) level-pro sensor, tubing and bubbler; (iii) data logger and terminal strip; (iv) ISCO carousel autosampler including peristaltic pump; (v) modem, batteries, cabling, solar panel, frame and housing; and (vi) engineered concrete formwork and channelling. <p>The corporation will be responsible for determining the final design of the AWQS</p>	\$100,000	Within six months of obtaining consent pursuant to section 5.2.1.1
5.2.1.3	Provide an interim progress report to the Department	\$-	Within three months after the date of this undertaking
5.2.1.4	Provide a final compliance report to the Department	\$-	Within one month of completion of all activities

(press tab at the end of the last row to create new rows)

Total estimated cost of benefits for the environment	\$100,000
---	------------------

5.2 Please refer to Attachment 1 for the terms of this enforceable undertaking

ACTIVITIES		COST	TIMEFRAME
<<5.3.1.1>>	<<INSERT Activity>>	\$<<INSERT Cost>>	<<INSERT Timeframe>>
<<5.3.1.2>>	<<INSERT Activity>>	\$<<INSERT Cost>>	<<INSERT Timeframe>>
<<5.3.1.3>>	<<INSERT Activity>>	\$<<INSERT Cost>>	<<INSERT Timeframe>>

--	--	--	--

(press tab at the end of the last row to create new rows)

Total estimated cost of benefits for the environment	\$<<INSERT Cost>>
---	-------------------

5.3 Please refer to Attachment 1 for the terms of this enforceable undertaking

ACTIVITIES		COST	TIMEFRAME
<<5.4.1.1>>	<<INSERT Activity>>	\$<<INSERT Cost>>	<<INSERT Timeframe>>
<<5.4.1.2>>	<<INSERT Activity>>	\$<<INSERT Cost>>	<<INSERT Timeframe>>
<<5.4.1.3>>	<<INSERT Activity>>	\$<<INSERT Cost>>	<<INSERT Timeframe>>

(press tab at the end of the last row to create new rows)

Total estimated cost of benefits for the environment	\$<<INSERT Cost>>
---	-------------------

5.4 Please refer to Attachment 1 for the terms of this enforceable undertaking

5.1.1 >

<INSERT person> agrees to pay the department's costs associated with this undertaking, as itemised below, and it is acknowledged that payment is due 30 days after receipt of the department's invoice:

- Administrative costs \$-
- Legal costs \$-
- Compliance monitoring costs \$-
- Publication costs \$-
- Total recoverable costs \$-**

SECTION 6: CERTIFICATION

As per section 481 of the Act it is an offence to state anything to an authorised person that you know is false or misleading in a material particular or omit from a statement made to an authorised person anything without which the statement is, to your knowledge, misleading in a material particular.

I declare that the information provided is true and correct.

INDIVIDUAL OR ENTITY NAME:

Abbot Point Bulkcoal Pty Ltd ACN 010 183 534

NAME and POSITION TITLE (if applicant is company)

s.73

Director

SIGNATURE

If signing on behalf of company, by signing this application form I declare I am authorised to sign on behalf of this company:

Abbot Point Bulkcoal Pty Ltd

DATE

24 April 2019

s.73

FURTHER INFORMATION

The latest version of the Enforceable Undertaking Guideline and other publications referenced in this document can be found at www.des.qld.gov.au using the relevant publication number (ESR/2016/2272) as a search term.

DEFINITIONS

Where there is inconsistency between the definition of terms here and the terms used in the Act, the terms in the Act apply.

Act means the Environmental Protection Act 1994

Administering authority is the Chief Executive of the Department of Environment and Science

Authorised person is generally an employee of the Department of Environment and Science who has been appointed as an authorised person under the Environmental Protection Act 1994

Company means the corporation proposing this enforceable undertaking

Department means the Department of Environment and Science

Local affected community means the residents of the impacted area the subject of this enforceable undertaking

Non-compliance /contravene means a breach or failure to comply with

Person means the individual/corporation (legal entity) proposing this enforceable undertaking

Proceedings means a legal or other action or proceeding

Undertaking means this enforceable undertaking made pursuant to Chapter 10, Part 5 of the Act

Please return your completed enforceable undertaking to:

Post:

Courier or hand delivery:

Litigation Unit
Department of Environment and Science
GPO Box 2454, BRISBANE QLD 4001

Litigation Unit
Department of Environment and Science
Level 3, 400 George Street, BRISBANE QLD 4001
Hours: 8.30 am—5.00 pm business days

Enquiries:

Litigation Unit
Phone: 07 3330 5535
Email: litigation.unit@des.qld.gov.au

Privacy statement

The department is committed to protecting the privacy, accuracy and security of your personal information in accordance with the Information Privacy Act 2009. The department is collecting your personal information to determine whether to accept or reject your enforceable undertaking under section 507 of the Act. The information will only be accessed by authorised employees within the department and will not be given to any other person or agency unless you have given us permission or we are authorised or required by law. However, if your enforceable undertaking is accepted, the undertaking including your name, address and ABN/ACN will be publically available on the department's website. This disclosure is authorised by section 507(5) of the Act. Additionally, the information supplied on this form may be disclosed publicly in accordance with the Right to Information Act 2009 and Evidence Act 1977. For queries about privacy matters email: privacy@des.qld.gov.au or telephone: 13 QGOV (13 74 68).

ATTACHMENT 1

Enforceable undertaking

Abbot Point Bulkcoal Pty Ltd

ACN 010 183 534

Published on DES Disclosure Log
RTI Act 2009

2019

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THIS ENFORCEABLE UNDERTAKING is made on 24 April 2019

This enforceable undertaking is submitted to the Department of Environment and Science by Abbot Point Bulkcoal Pty Ltd ACN 010 183 534 of Level 15, 10 Eagle Street Brisbane, Queensland 4000.

1. DEFINITIONS

The following definitions apply in this document.

Act means the *Environmental Protection Act 1994* (Qld).

AWQS means automatic water quality station.

Corporation means Abbot Point Bulkcoal Pty Ltd ACN 010 183 534.

Department means the Department of Environment and Science.

EA means environmental authority EPPR00577113.

Guideline means the *Guideline – Enforceable undertakings under the Environmental Protection Act 1994* ESR/2016/2272 Version 2.00.

NQBP means North Queensland Bulk Ports Corporation.

PIN means penalty infringement notice No. 200000040442385 dated 20 July 2017.

Proceedings means the proceedings commenced by the Department against the corporation in the Bowen Magistrates Court by the complaint of Robert James Black dated 5 September 2018.

TEL means amended temporary emissions licence ENEL07198317 dated 28 March 2017.

Terminal means the Abbot Point Coal Terminal.

Undertaking means this enforceable undertaking made pursuant to Chapter 10, Part 5 of the Act.

2. BACKGROUND

- (a) The corporation is the holder of the EA, which has been issued in relation to activities at the Terminal.
- (b) The EA relevantly authorises discharges to waters from discharge location W2 if the discharges meet the specified quality criteria.

3. ALLEGED CONTRAVENTION

- (a) The complaint and summons filed by the Department in the Bowen Magistrates Court on 5 September 2018 alleges that the corporation "failed to comply with a condition of a temporary emissions licence, contrary to section 357I of the *Environmental Protection Act 1994*".
- (b) The particulars of the complaint and summons allege a failure to comply with condition TEL1 of the TEL.

4. CIRCUMSTANCES OF THE CONTRAVENTION

- (a) On 24 March 2017, the corporation applied for a temporary emissions licence in relation to its activities at the Terminal, due to predictions of a major rainfall event associated with Tropical Cyclone Debbie.

- (b) The Department issued a temporary emissions licence to the corporation on 27 March 2017, and the TEL to the corporation on 28 March 2017.
- (c) Relevantly, the TEL authorised a temporary increase of the EA quality criteria for total suspended solids to 100mg/L at discharge location W2.
- (d) Following Tropical Cyclone Debbie, sampling results from the primary rising stage sample bottle at W2 indicated elevated suspended solids of 806mg/L.
- (e) The Department alleges a release to waters from release location W2 pursuant to section 357I of the Act, however, this Undertaking does not constitute an admission of guilt on behalf of the Corporation.
- (f) Neither the Department nor the Corporation is aware of any environmental impacts arising as a result of the alleged contravention.

5. **ACTIONS TAKEN TO PREVENT RECURRENCE OF THE ALLEGED CONTRAVENTION**

- (a) As previously communicated to the Department, the corporation has continuously improved its water management infrastructure to further mitigate and manage water from high intensity and/or sustained rainfall events, including:
 - (i) improving sediment removal from primary and secondary settlement ponds to facilitate improved runoff capture and retention periods, allowing for more sediment to drop out of suspension;
 - (ii) reducing the catchment area surrounding the settlement ponds to the west and south west, by use of a clean water diversion to reduce the volume of clean water that reports to the settlement ponds (partially complete); and
 - (iii) upgrading the secondary settlement pond spillway.
- (b) A further package of works to continue improving the corporation's water management infrastructure, and further manage water from high intensity and/or sustained intense rainfall events, is currently underway. The works include:
 - (i) significantly increasing the size of pumping capabilities, along with the sump and drainage system capacities in the surrounding surge bin areas;
 - (ii) reducing the catchment surrounding surge bin areas, by use of a clean water diversion to reduce the volume of clean water that reports to the water management infrastructure surrounding the surge bin;
 - (iii) increasing the capacity of the primary and secondary settlement ponds and western drain;
 - (iv) installing a diversion bund along the western lease boundary to:
 - (A) reduce the overall catchment size of the site;
 - (B) act as an all-weather access road to authorised discharge location W1; and
 - (v) installing an earth-fill finger bund extending out into the secondary sediment pond, to increase the flow path of water within the pond and allow greater opportunity for sediment to drop out of suspension.

6. **OBJECTIVES**

The objectives of this Undertaking are to:

- (a) improve environmental monitoring at the Terminal;
- (b) deliver benefits to the environment and local community; and
- (c) promote the objects of the Act.

7. **TERMS OF THE UNDERTAKING**

The corporation must:

- (a) within six months of the date of this Undertaking, have met with representatives of NQBP to seek consent for the installation of an AWQS on lot 22 on SP271830; and
- (b) within six months of obtaining consent pursuant to clause 7(a), install an AWQS on lot 22 on SP271830 capable of recording the pH and flow of a release from the Terminal at discharge location W2, at an approximate cost to the corporation of \$100,000. The AWQS will collect data in direct response to releases, and facilitate informed management and mitigation strategies where necessary, to secure compliance with the Act and enhance the protection of the Environment. The AWQS, which will provide for real time monitoring of water flows at the discharge location may include, for example:
 - (i) hydrolab sonde with sensors and cable;
 - (ii) level-pro sensor, tubing and bubbler;
 - (iii) data logger and terminal strip;
 - (iv) ISCO carousel autosampler including peristaltic pump;
 - (v) modem, batteries, cabling, solar panel, frame and housing; and
 - (vi) engineered concrete formwork and channelling.

The corporation will be responsible for determining the final design of the AWQS;

- (c) provide an interim progress report to the Department three months after the date of this Undertaking; and
- (d) provide a final compliance report to the Department within one month of completion of all activities.

8. **WHY UNDERTAKING IS A MORE APPROPRIATE RESPONSE TO THE ALLEGED CONTRAVENTION THAN COURT PROCEEDING**

- (a) The factors that led to the alleged contravention have ceased, and preventative actions have been, and are being taken as set out in clause 5.
- (b) This Undertaking is a commitment by the corporation to take active steps to address the Department's concerns in respect of the alleged contravention, improve environmental monitoring and deliver benefits to the environment and local community.
- (c) As such, this Undertaking will result in a net benefit to the environment and the community.

- (d) This is a better overall outcome than a court imposed sanction such as a fine, and in the corporation's submission better achieves the objects of the Act.
- (e) This Undertaking is also a more efficient means of resolving the matter, as it will save the parties time and resources associated with resolving the matter in court.

9. **ACKNOWLEDGEMENTS**

- (a) The corporation acknowledges that:
 - (i) it has read and understood the Guideline;
 - (ii) this Undertaking will be published on the Department's website and may be referred to or referenced in other ways;
 - (iii) the Department's acceptance of this Undertaking means that the Department:
 - (A) must take all reasonable steps to have the Proceedings discontinued as soon as practicable; and
 - (B) will not recommence proceedings against the corporation for the alleged contravention described in clause 3 as long as the corporation is fully complying, or has fully complied, with the Undertaking;
 - (iv) the Department's acceptance of this Undertaking does not affect the Department's power to:
 - (A) bring proceedings against the person;
 - (B) issue penalty infringement notices; or
 - (C) take any other enforcement action against the person;
 in relation to any subsequent contravention or alleged contravention of the Act, that is not the subject of an undertaking;
 - (v) this Undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this proposal or arising from subsequent conduct;
 - (vi) it has offered an undertaking in the terms set out in this approved form;
 - (vii) the Undertaking does not take effect until the Department gives the corporation notice of the decision to accept the Undertaking.
- (b) The corporation and the Department acknowledge that the date of the Undertaking is the date on which the notice of the decision to accept the Undertaking is given.

10. **ABILITY TO COMPLY WITH THE UNDERTAKING**

- (a) The corporation has the financial ability to comply with the terms of this Undertaking.
- (b) In the event of impending liquidation or sale of the corporation, the corporation will advise the Department of the relevant circumstances and its capacity to comply with the outstanding terms of this Undertaking.

- (c) In the event the corporation is sold, the corporation will advise any future owners or operators of the existence of this Undertaking, and provide a copy of this correspondence to the Department.

11. CONTACT DETAILS

- (a) Any written notification to the Department pursuant to this Undertaking is to be provided to:

Melissa Wells
Executive Director, Coal and Central Qld Compliance, Department of
Environment and Science
GPO Box 2454
BRISBANE QLD 4001

Email: melissa.wells@des.qld.gov.au

- (b) Any written notification to the corporation pursuant to this Undertaking is to be provided to:

s.73
Director, Abbot Point Bulkcoal Pty Ltd
Level 15, 10 Eagle Street
BRISBANE QLD 4000

Email: s.73@adani.com.au

12. EXECUTION

**SIGNED by ABBOT POINT BULKCOAL
PTY LTD** in the presence of:

Signature of party

Signature of witness

Name

**ACCEPTED by DEPARTMENT OF
ENVIRONMENT AND SCIENCE** in the
presence of:

Signature of party

Signature of witness

Name

Date : 14/05/2019 10:12:20 AM

From : "DAUNT Bettina"

To : "CAGNEY Justin"

Cc : "IRELAND Anne-Maree"

Subject : EU

Attachment : dauntb_14-05-2019_10-06-37.pdf;dauntb_14-05-2019_10-06-37_1.pdf;image001.png;image002.png;

Justin, as discussed, please see attached.

Thanks

Bettina



Bettina Daunt

Executive Assistant to Dean Ellwood

Deputy Director-General, Environmental Services and Regulation Division

Department of Environment and Science

P 07 3330 5550

Level 7, 400 George St, Brisbane QLD 4000

GPO Box 2454, Brisbane QLD 4001

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Our ref: CA\PWI\1000 031 311
Partner: [REDACTED]
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Direct line: [REDACTED]
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www.ashurst.com

13 May 2019

BY HAND

Dean Ellwood
Deputy Director-General, Environmental Services
and Regulation
Department of Environment and Science
GPO Box 2454
Brisbane QLD 4000

ashurst

Dear Mr Ellwood

Black v Abbot Point Bulkcoal Pty Ltd

We act on behalf of Abbot Point Bulkcoal Pty Ltd (**APB**).

We refer to the enforceable undertaking in respect of the Abbot Point Coal Terminal that was provided to the Department of Environment and Science (**Department**) on 26 April 2019.

APB retracts the enforceable undertaking that was provided to the Department on 26 April 2019, and replaces it with the **enclosed** enforceable undertaking in respect of the Abbot Point Coal Terminal pursuant to section 507 of the *Environmental Protection Act 1994* (Qld).

We look forward to the Department's acceptance of the enclosed enforceable undertaking.

Yours faithfully

Ashurst

Ashurst

Application form

Environmental Protection Act 1994

Enforceable Undertaking

This form must be used to submit a proposed enforceable undertaking to the Department of Environment and Science (the department) pursuant to Chapter 10, Part 5 of the Environmental Protection Act 1994 (the Act).

For further information please refer to the Enforceable Undertakings Statutory Guideline (ESR/2016/2272).

Once a decision on the application is made, the department will issue a notice informing the applicant if the enforceable undertaking is accepted or rejected. If the department decides to accept the enforceable undertaking, the decision notice will be issued with the enforceable undertaking in the approved form to be signed by the Applicant and the department. The contents of this application will be used to draft the enforceable undertaking.

ENFORCEABLE UNDERTAKING

The objectives in this proposal for an undertaking are submitted to the department for consideration by: Abbot Point Bulkcoal Pty Ltd ACN 010 183 534 (the corporation).

COMMENCEMENT OF UNDERTAKING

An enforceable undertaking commences on the date that the department signs the corporation's enforceable undertaking. Upon the enforceable undertaking taking effect, the enforceable undertaking commences as a legally binding agreement between the department and the applicant.

SECTION 1: GENERAL INFORMATION

1. Details of the applicant proposing an enforceable undertaking

NAME – INDIVIDUAL OR AUTHORISED CONTACT PERSON (if applicant is a company)	
s.73, Director, Abbot Point Bulkcoal Pty Ltd	
COMPANY NAME Abbot Point Bulkcoal Pty Ltd	ACN (if relevant) ACN 010 183 534
RESIDENTIAL OR REGISTERED COMPANY ADDRESS (not a post office box) Level 15, 10 Eagle Street, Brisbane Queensland 4000	PHONE +61 7 4786 0332 s.73

POSTAL ADDRESS (if different from above) As above	FACSIMILE N/A
EMAIL s.73 @adani.com.au	
ENVIRONMENTAL AUTHORITY PERMIT NUMBER (relevant to this enforceable undertaking, if applicable) EPPR00577113	SUITABLE OPERATOR NUMBER (if applicable) 401618
ENVIRONMENTAL AUTHORITY HOLDER'S NAME (relevant to this enforceable undertaking, if applicable) Abbot Point Bulkcoal Pty Ltd ACN 010 183 534	
ACTIVITY DETAILS (if no relevant environmental authority) N/A	

SECTION 2: ALLEGED CONTRAVENTION

2.1 Detail the alleged contravention (press 'enter' at the end of each statement to create a new row):

- 2.1.1 The complaint and summons filed by the Department in the Bowen Magistrates Court on 5 September 2018 alleges that the corporation "failed to comply with a condition of a temporary emissions licence, contrary to section 357I of the *Environmental Protection Act 1994*".
- 2.1.2 The particulars of the complaint and summons allege a failure to comply with condition TEL1 of the temporary emissions licence.
- 2.1.3 On 24 March 2017, the corporation applied for a temporary emissions licence in relation to its activities at the Abbot Point Coal Terminal (Terminal) due to predictions of a major rainfall event associated with Tropical Cyclone Debbie.
- 2.1.4 The Department issued a temporary emissions licence to the corporation on 27 March 2017, and the amended temporary emissions licence (TEL) to the corporation on 28 March 2017.
- 2.1.5 Relevantly, the TEL authorised a temporary increase of the EA quality criteria for total suspended solids to 100mg/L at discharge location W2.
- 2.1.6 Following Tropical Cyclone Debbie, sampling results from the primary rising stage sample bottle at W2 indicated elevated suspended solids of 806mg/L.
- 2.1.7 The Department alleges a release to waters from release location W2 pursuant to section 357I of the Environmental Protection Act 1994, however, this Enforceable Undertaking does not constitute an admission of guilt on behalf of the corporation.
- 2.1.8 Neither the Department nor the corporation is aware of any environmental impacts arising as a result of the alleged contravention.

2.2 Detail the conduct or events surrounding the alleged contravention (press 'enter' at the end of each statement to create a new row):

2.2.1 Please refer to Attachment 1.

2.2.2 <Enter details>

2.2.3 <Enter details>

2.3 Description of any land affected by the alleged contravention (including land on which the alleged contravention occurred and any impacted land):

LOCATION OF LAND (E.G. STREET ADDRESS OR GEOGRAPHICAL COORDINATES) Abbot Point Coal Terminal, Bowen, QLD	
LOT PLAN Lot 48 SP243721 and Lot 22 SP271830	WHOLE/PART Part
TENURES N/A	

2.4 Landowner/landholder details (if location of contravention is not a site owned or leased by the applicant or the person/company they are representing)

LANDOWNER/LANDHOLDER NAME(S) North Queensland Bulk Ports Corporation	
CONTACT PERSON'S NAME s.73 Commercial Manager	

2.5 Detail the environmental harm (including potential harm) as a consequence of the alleged contravention detailed at section 2 (press 'enter' at the end of each statement to create a new row):

2.5.1 Please refer to Attachment 1.

2.5.2

2.6 Detail the consultation undertaken in relation to this proposed enforceable undertaking (press 'enter' at the end of each statement to create a new row):

2.6.1 Representatives from both the corporation and the Department have undertaken a consultative process in relation to this proposed enforceable undertaking.

2.6.2 Representatives of the corporation have also consulted with North Queensland Bulk Ports Corporation.

SECTION 3: ACKNOWLEDGMENTS AND STATEMENTS

3.1 Acknowledgement that an alleged contravention occurred, as detailed in section 2:

The corporation acknowledges that a contravention is alleged to have occurred, as detailed in section 2 and Attachment 1.

3.2 Statement of regret that the alleged contravention occurred:

The circumstances described are regrettable and this is reflected by the range of improvement works that are being undertaken. This is also acknowledgement by the corporation that it operates in an important coastal environment, and it always strives to take active steps to protect it.

3.3 Statement of reasons why the person considers an enforceable undertaking is a more appropriate response to the alleged contravention than a court imposed sanction:

Please refer to Attachment 1.

3.4 Statement of commitment that the behaviour, activities and other factors which caused or led to the alleged contravention has ceased and will not reoccur:

Please refer to Attachment 1.

3.5 Statement of any action that has been undertaken to prevent the alleged contravention:

Please refer to Attachment 1.

3.6 Acknowledgment of the guideline published by the department for the acceptance of an enforceable undertaking:

I have read and understood:

Guideline: Enforceable undertakings under the *Environmental Protection Act 1994* (ESR/2016/2272)

Dated: Version 2.0, dated 21 July 2016.

3.7 Acknowledgment that an enforceable undertaking will be published on the department's website and may be publicised elsewhere:

The corporation acknowledges that:

3.7.1 This undertaking will be published on the department's website and may be referred to or referenced in other ways (including in newspapers or media releases).

3.8 Acknowledgment that proceedings will be brought against the person for the contraventions of an enforceable undertaking:

The corporation acknowledges that:

3.8.1 As provided for in section 508(2) of the Act, the department's acceptance of an undertaking means that proceedings will not be brought by the department against the person for the contraventions alleged in section 2 of this proposal, as long as the person subject to the relevant enforceable undertaking is fully complying, or has fully complied, with the undertaking.

3.8.2 If the person withdraws an undertaking before it has been fulfilled, proceedings may be brought for the offences constituted by the contraventions alleged in section 2 of this proposal for an undertaking.

3.8.3 The department's acceptance of this proposal for an undertaking does not affect the department's power to:

3.8.3.1 bring proceedings against the person;

3.8.3.2 issue penalty infringement notices; or

3.8.3.3 take any other enforcement action against the person;

in relation to any subsequent contravention or alleged contravention of the Act, that is not the subject of an undertaking. This is regardless of whether or not the subsequent contravention or alleged contravention involves a provision of the Act that is referred to in section 2 of this proposal.

3.9 Acknowledgment that this proposal for an undertaking does not derogate from other rights and remedies:

The corporation acknowledges that this proposal for an undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this proposal or arising from subsequent conduct.

3.10 Acknowledgment that an enforceable undertaking has been offered to the department:

The corporation acknowledges that:

3.10.1 They have offered an undertaking in the terms set out in this approved form.

3.10.2 This proposed undertaking does not take effect until the department gives the person who made the proposal for an undertaking notice of the decision to accept the proposal on terms satisfactory to the department. The person and the department acknowledge that the date of the undertaking is the date on which the notice of the decision to accept the undertaking is given.

3.11 Statement of the person's ability to comply with the terms of any undertaking and meet the projected costs of the activities:

3.11.1 The corporation has the financial ability to comply with the terms proposed for the undertaking and have provided evidence by way of confirmation provided in section 10 of Attachment 1 with this application to support this declaration.

3.11.2 In the event of impending liquidation or sale of the entity, the corporation will advise the department of the relevant circumstances and its capacity to comply with the outstanding terms of this undertaking.

3.11.3 In the event that the entity is sold, the corporation will advise any future owners or operators of the existence of this undertaking, and provide a copy of this correspondence to the department.

3.12 Statement of relationship with any corporations, officers, employees, contractors, proposed beneficiaries of donations or scholarship or other recipient of financial benefit contained in this proposal:

Note: If a financial benefit is to be given to a person any relationship between the applicant for the enforceable undertaking and the person receiving the financial benefit must be disclosed here.

3.13 Acknowledgment that communications regarding this enforceable undertaking must state that an enforceable undertaking is in effect:

The corporation acknowledges that any public communications regarding any of the actions contained within this undertaking must clearly link the actions to the undertaking and state that the undertaking was entered into as a result of a contravention or alleged contravention of the Act.

3.14 Acknowledgment that the person may be required to provide a statutory declaration:

The department has requested a statutory declaration outlining details of any prior convictions or findings of guilt under the *Environmental Protection Act 1994* or a corresponding law¹ whether in Queensland or elsewhere:

☐ YES ☒ NO

The statutory declaration is attached (if applicable):

☐ YES ☐ NO

3.15 Statement of commitment from the person to participate constructively in all compliance monitoring activities for this undertaking:

- 3.15.1 It is acknowledged that responsibility for demonstrating compliance with this undertaking rests with the person.
- 3.15.2 Evidence to demonstrate compliance with the terms will be provided to the department within two business days after the due date.
- 3.15.3 The evidence provided to demonstrate compliance with this undertaking will be retained by the person until advised by the department that this undertaking has been completely discharged.
- 3.15.4 It is acknowledged that any failure to meet the due date for a term will result in the matter being escalated and may lead to enforcement action.
- 3.15.5 It is acknowledged that the department may undertake other compliance monitoring activities to verify the evidence and compliance with a term, and the applicant agrees to cooperate with the department in any investigation or compliance activity in respect of the enforceable undertaking such as site access and provision of documents upon reasonable notice.

SECTION 4: KEY OBJECTIVES

4. This enforceable undertaking is a binding agreement that aims to (press 'enter' at the end of each statement to create a new row):

- 4.1 Improve environmental monitoring at the Terminal;
- 4.2 Deliver benefits to the environment and local community; and
- 4.3 Promote the objects of the Act.

SECTION 5: TERMS

5.1 Please refer to Attachment 1 for the terms of this enforceable undertaking.

ACTIVITIES		COST	TIMEFRAME
5.2.1.1	Meet with representatives of NQPB to seek consent for the installation of an AWQS on lot 22 on SP271830	\$-	Within six weeks of the date of this undertaking

¹ Corresponding law means under a law of the Commonwealth or another State that provides for the same or similar matters as the *Environmental Protection Act 1994*.

Approved form
Enforceable undertaking

5.2.1.2	<p>Install an AWQS on lot 22 on SP271830 capable of recording the pH and flow of a release from the Terminal at discharge location W2. The AWQS will collect data in direct response to releases, and facilitate informed management and mitigation strategies where necessary, to secure compliance with the Act and enhance the protection of the Environment. The AWQS, which will provide for real time monitoring of water flows at the discharge location may include, for example:</p> <ul style="list-style-type: none"> (i) hydrolab sonde with sensors and cable; (ii) level-pro sensor, tubing and bubbler; (iii) data logger and terminal strip; (iv) ISCO carousel autosampler including peristaltic pump; (v) modem, batteries, cabling, solar panel, frame and housing; and (vi) engineered concrete formwork and channelling. <p>The corporation will be responsible for determining the final design of the AWQS</p>	\$100,000	Within six months of obtaining consent pursuant to section 5.2.1.1
5.2.1.3	Provide an interim progress report to the Department	\$-	Within three months after the date of this undertaking
5.2.1.4	Provide a final compliance report to the Department	\$-	Within one month of completion of all activities

(press tab at the end of the last row to create new rows)

Total estimated cost of benefits for the environment	\$100,000
---	------------------

5.2 Please refer to Attachment 1 for the terms of this enforceable undertaking

ACTIVITIES		COST	TIMEFRAME
<<5.3.1.1>>	<<INSERT Activity>>	\$<<INSERT Cost>>	<<INSERT Timeframe>>
<<5.3.1.2>>	<<INSERT Activity>>	\$<<INSERT Cost>>	<<INSERT Timeframe>>
<<5.3.1.3>>	<<INSERT Activity>>	\$<<INSERT Cost>>	<<INSERT Timeframe>>

--	--	--	--

(press tab at the end of the last row to create new rows)

Total estimated cost of benefits for the environment	\$<<INSERT Cost>>
---	-------------------

5.3 Please refer to Attachment 1 for the terms of this enforceable undertaking

ACTIVITIES		COST	TIMEFRAME
<<5.4.1.1>>	<<INSERT Activity>>	\$<<INSERT Cost>>	<<INSERT Timeframe>>
<<5.4.1.2>>	<<INSERT Activity>>	\$<<INSERT Cost>>	<<INSERT Timeframe>>
<<5.4.1.3>>	<<INSERT Activity>>	\$<<INSERT Cost>>	<<INSERT Timeframe>>

(press tab at the end of the last row to create new rows)

Total estimated cost of benefits for the environment	\$<<INSERT Cost>>
---	-------------------

5.4 Please refer to Attachment 1 for the terms of this enforceable undertaking

5.1.1 >

<INSERT person> agrees to pay the department's costs associated with this undertaking, as itemised below, and it is acknowledged that payment is due 30 days after receipt of the department's invoice:

- Administrative costs \$-
- Legal costs \$-
- Compliance monitoring costs \$-
- Publication costs \$-
- Total recoverable costs \$-**

SECTION 6: CERTIFICATION

As per section 481 of the Act it is an offence to state anything to an authorised person that you know is false or misleading in a material particular or omit from a statement made to an authorised person anything without which the statement is, to your knowledge, misleading in a material particular.

I declare that the information provided is true and correct.

INDIVIDUAL OR ENTITY NAME:

Abbot Point Bulkcoal Pty Ltd ACN 010 183 534

NAME and POSITION TITLE (if applicant is company)

Dwayne Freeman, Director

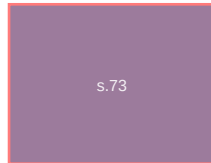
SIGNATURE

If signing on behalf of company, by signing this application form I declare I am authorised to sign on behalf of this company:

Abbot Point Bulkcoal Pty Ltd

DATE

13 May 2019



FURTHER INFORMATION

The latest version of the Enforceable Undertaking Guideline and other publications referenced in this document can be found at www.des.qld.gov.au using the relevant publication number (ESR/2016/2272) as a search term.

DEFINITIONS

Where there is inconsistency between the definition of terms here and the terms used in the Act, the terms in the Act apply.

Act means the *Environmental Protection Act 1994*

Administering authority is the Chief Executive of the Department of Environment and Science

Authorised person is generally an employee of the Department of Environment and Science who has been appointed as an authorised person under the *Environmental Protection Act 1994*

Company means the corporation proposing this enforceable undertaking

Department means the Department of Environment and Science

Local affected community means the residents of the impacted area the subject of this enforceable undertaking

Non-compliance /contravene means a breach or failure to comply with

Person means the individual/corporation (legal entity) proposing this enforceable undertaking

Proceedings means a legal or other action or proceeding

Undertaking means this enforceable undertaking made pursuant to Chapter 10, Part 5 of the Act

Please return your completed enforceable undertaking to:

Post:

Courier or hand delivery:

Litigation Unit

Department of Environment and Science

GPO Box 2454, BRISBANE QLD 4001

Litigation Unit

Department of Environment and Science

Level 3, 400 George Street, BRISBANE QLD 4001

Hours: 8.30 am—5.00 pm business days

Enquiries:

Litigation Unit

Phone: 07 3330 5535

Email: litigation.unit@des.qld.gov.au

Privacy statement

The department is committed to protecting the privacy, accuracy and security of your personal information in accordance with the *Information Privacy Act 2009*. The department is collecting your personal information to determine whether to accept or reject your enforceable undertaking under section 507 of the Act. The information will only be accessed by authorised employees within the department and will not be given to any other person or agency unless you have given us permission or we are authorised or required by law. However, if your enforceable undertaking is accepted, the undertaking including your name, address and ABN/ACN will be publically available on the department's website. This disclosure is authorised by section 507(5) of the Act. Additionally, the information supplied on this form may be disclosed publicly in accordance with the *Right to Information Act 2009* and *Evidence Act 1977*. For queries about privacy matters email: privacy@des.qld.gov.au or telephone: 13 QGOV (13 74 68).

ATTACHMENT 1

Enforceable undertaking

Abbot Point Bulkcoal Pty Ltd

ACN 010 183 534

Published on DES Disclosure Log
RTI Act 2009

2019

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THIS ENFORCEABLE UNDERTAKING is made on 13 May 2019

This enforceable undertaking is submitted to the Department of Environment and Science by Abbot Point Bulkcoal Pty Ltd ACN 010 183 534 of Level 15, 10 Eagle Street Brisbane, Queensland 4000.

1. **DEFINITIONS**

The following definitions apply in this document.

Act means the *Environmental Protection Act 1994* (Qld).

AWQS means automatic water quality station.

Corporation means Abbot Point Bulkcoal Pty Ltd ACN 010 183 534.

Department means the Department of Environment and Science.

EA means environmental authority EPPR00577113.

Guideline means the *Guideline – Enforceable undertakings under the Environmental Protection Act 1994* ESR/2016/2272 Version 2.00.

NQBP means North Queensland Bulk Ports Corporation.

PIN means penalty infringement notice No. 200000040442385 dated 20 July 2017.

Proceedings means the proceedings commenced by the Department against the corporation in the Bowen Magistrates Court by the complaint of Robert James Black dated 5 September 2018.

TEL means amended temporary emissions licence ENEL07198317 dated 28 March 2017.

Terminal means the Abbot Point Coal Terminal.

Undertaking means this enforceable undertaking made pursuant to Chapter 10, Part 5 of the Act.

2. **BACKGROUND**

- (a) The corporation is the holder of the EA, which has been issued in relation to activities at the Terminal.
- (b) The EA relevantly authorises discharges to waters from discharge location W2 if the discharges meet the specified quality criteria.

3. **ALLEGED CONTRAVENTION**

- (a) The complaint and summons filed by the Department in the Bowen Magistrates Court on 5 September 2018 alleges that the corporation "failed to comply with a condition of a temporary emissions licence, contrary to section 357I of the *Environmental Protection Act 1994*".
- (b) The particulars of the complaint and summons allege a failure to comply with condition TEL1 of the TEL.

4. **CIRCUMSTANCES OF THE CONTRAVENTION**

- (a) On 24 March 2017, the corporation applied for a temporary emissions licence in relation to its activities at the Terminal, due to predictions of a major rainfall event associated with Tropical Cyclone Debbie.

- (b) The Department issued a temporary emissions licence to the corporation on 27 March 2017, and the TEL to the corporation on 28 March 2017.
- (c) Relevantly, the TEL authorised a temporary increase of the EA quality criteria for total suspended solids to 100mg/L at discharge location W2.
- (d) Following Tropical Cyclone Debbie, sampling results from the primary rising stage sample bottle at W2 indicated elevated suspended solids of 806mg/L.
- (e) The Department alleges a release to waters from release location W2 pursuant to section 357I of the Act, however, this Undertaking does not constitute an admission of guilt on behalf of the Corporation.
- (f) Neither the Department nor the Corporation is aware of any environmental impacts arising as a result of the alleged contravention.

5. **ACTIONS TAKEN TO PREVENT RECURRENCE OF THE ALLEGED CONTRAVENTION**

- (a) As previously communicated to the Department, the corporation has continuously improved its water management infrastructure to further mitigate and manage water from high intensity and/or sustained rainfall events, including:
 - (i) improving sediment removal from primary and secondary settlement ponds to facilitate improved runoff capture and retention periods, allowing for more sediment to drop out of suspension;
 - (ii) reducing the catchment area surrounding the settlement ponds to the west and south west, by use of a clean water diversion to reduce the volume of clean water that reports to the settlement ponds (partially complete); and
 - (iii) upgrading the secondary settlement pond spillway.
- (b) A further package of works to continue improving the corporation's water management infrastructure, and further manage water from high intensity and/or sustained intense rainfall events, is currently underway. The works include:
 - (i) significantly increasing the size of pumping capabilities, along with the sump and drainage system capacities in the surrounding surge bin areas;
 - (ii) reducing the catchment surrounding surge bin areas, by use of a clean water diversion to reduce the volume of clean water that reports to the water management infrastructure surrounding the surge bin;
 - (iii) increasing the capacity of the primary and secondary settlement ponds and western drain;
 - (iv) installing a diversion bund along the western lease boundary to:
 - (A) reduce the overall catchment size of the site;
 - (B) act as an all-weather access road to authorised discharge location W1; and
 - (v) installing an earth-fill finger bund extending out into the secondary sediment pond, to increase the flow path of water within the pond and allow greater opportunity for sediment to drop out of suspension.

6. **OBJECTIVES**

The objectives of this Undertaking are to:

- (a) improve environmental monitoring at the Terminal;
- (b) deliver benefits to the environment and local community; and
- (c) promote the objects of the Act.

7. **TERMS OF THE UNDERTAKING**

The corporation must:

- (a) within six weeks of the date of this Undertaking, have met with representatives of NQBP to seek consent for the installation of an AWQS on lot 22 on SP271830; and
- (b) within six months of obtaining consent pursuant to clause 7(a), install an AWQS on lot 22 on SP271830 capable of recording the pH and flow of a release from the Terminal at discharge location W2, at an approximate cost to the corporation of \$100,000. The AWQS will collect data in direct response to releases, and facilitate informed management and mitigation strategies where necessary, to secure compliance with the Act and enhance the protection of the Environment. The AWQS, which will provide for real time monitoring of water flows at the discharge location may include, for example:
 - (i) hydrolab sonde with sensors and cable;
 - (ii) level-pro sensor, tubing and bubbler;
 - (iii) data logger and terminal strip;
 - (iv) ISCO carousel autosampler including peristaltic pump;
 - (v) modem, batteries, cabling, solar panel, frame and housing; and
 - (vi) engineered concrete formwork and channelling.

The corporation will be responsible for determining the final design of the AWQS;

- (c) provide an interim progress report to the Department three months after the date of this Undertaking; and
- (d) provide a final compliance report to the Department within one month of completion of all activities.

8. **WHY UNDERTAKING IS A MORE APPROPRIATE RESPONSE TO THE ALLEGED CONTRAVENTION THAN COURT PROCEEDING**

- (a) The factors that led to the alleged contravention have ceased, and preventative actions have been, and are being taken as set out in clause 5.
- (b) This Undertaking is a commitment by the corporation to take active steps to address the Department's concerns in respect of the alleged contravention, improve environmental monitoring and deliver benefits to the environment and local community.
- (c) As such, this Undertaking will result in a net benefit to the environment and the community.

- (d) This is a better overall outcome than a court imposed sanction such as a fine, and in the corporation's submission better achieves the objects of the Act.
- (e) This Undertaking is also a more efficient means of resolving the matter, as it will save the parties time and resources associated with resolving the matter in court.

9. **ACKNOWLEDGEMENTS**

- (a) The corporation acknowledges that:
 - (i) it has read and understood the Guideline;
 - (ii) this Undertaking will be published on the Department's website and may be referred to or referenced in other ways;
 - (iii) the Department's acceptance of this Undertaking means that the Department:
 - (A) must take all reasonable steps to have the Proceedings discontinued as soon as practicable; and
 - (B) will not recommence proceedings against the corporation for the alleged contravention described in clause 3 as long as the corporation is fully complying, or has fully complied, with the Undertaking;
 - (iv) the Department's acceptance of this Undertaking does not affect the Department's power to:
 - (A) bring proceedings against the person;
 - (B) issue penalty infringement notices; or
 - (C) take any other enforcement action against the person;

in relation to any subsequent contravention or alleged contravention of the Act, that is not the subject of an undertaking;
 - (v) this Undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this proposal or arising from subsequent conduct;
 - (vi) it has offered an undertaking in the terms set out in this approved form;
 - (vii) the Undertaking does not take effect until the Department gives the corporation notice of the decision to accept the Undertaking.
- (b) The corporation and the Department acknowledge that the date of the Undertaking is the date on which the notice of the decision to accept the Undertaking is given.

10. **ABILITY TO COMPLY WITH THE UNDERTAKING**

- (a) The corporation has the financial ability to comply with the terms of this Undertaking.
- (b) In the event of impending liquidation or sale of the corporation, the corporation will advise the Department of the relevant circumstances and its capacity to comply with the outstanding terms of this Undertaking.

- (c) In the event the corporation is sold, the corporation will advise any future owners or operators of the existence of this Undertaking, and provide a copy of this correspondence to the Department.

11. **CONTACT DETAILS**

- (a) Any written notification to the Department pursuant to this Undertaking is to be provided to:

Melissa Wells
Executive Director, Coal and Central Qld Compliance, Department of
Environment and Science
GPO Box 2454
BRISBANE QLD 4001

Email: melissa.wells@des.qld.gov.au

- (b) Any written notification to the corporation pursuant to this Undertaking is to be provided to:

s.73
Director, Abbot Point Bulkcoal Pty Ltd
Level 15, 10 Eagle Street
BRISBANE QLD 4000

Email: s.73 [@adani.com.au](mailto:s.73@adani.com.au)

12. **EXECUTION**

**SIGNED by ABBOT POINT BULKCOAL
PTY LTD** in the presence of:

sch4p4(6) Personal information

Signature of witness

sch4p4(6) Personal information

Name

Signature of party

**ACCEPTED by DEPARTMENT OF
ENVIRONMENT AND SCIENCE** in the
presence of:

Signature of party

Signature of witness

Name

Date : 9/05/2019 12:24:00 PM

From : "Media DES"

To : "WELLS Melissa" , "IRELAND Anne-Maree" , "CAGNEY Justin"

Cc : "GRANT Andrea" , "Media DES" , "LEWIS Kieran"

Subject : For approval - draft holding statement re Abbot Point BulkCoal Enforceable Undertaking

Attachment : 090519 - MR - Greater marine protection for Abbot Point.docx;image001.png;image003.png;image004.png;

Dear all

Attached is a draft holding statement re the Abbot Point BulkCoal Enforceable Undertaking. It reflects the MO's general request that our media statements highlight outcomes rather than processes.

If we can add penalties where highlighted that will round it out. If not, we can omit.

Regards

Kieran Lewis

Media Services

Department of Environment and Science

media@des.qld.gov.au

Level 31 | 400 George Street | Brisbane

Tel 07 3339 5887 / p4(6) Personal information

www.des.qld.gov.au

If you are emailing about a media matter, please cc media@des.qld.gov.au

From: WELLS Melissa <Melissa.Wells@des.qld.gov.au>

Sent: Thursday, 9 May 2019 12:05 PM

To: Media DES; IRELAND Anne-Maree; CAGNEY Justin

Cc: GRANT Andrea; LEWIS Kieran

Subject: RE: Draft statement

Yes thanks Kieran asap would be great



Melissa Wells

Executive Director

Coal and Central Qld Compliance

Department of Environment and Science

P 07 4987 9343

99 Hospital Road, Emerald QLD 4720
PO Box 3028, Emerald QLD 4720

From: Media DES <Media@des.qld.gov.au>

Sent: Thursday, 9 May 2019 12:02 PM

To: WELLS Melissa; IRELAND Anne-Maree; CAGNEY Justin

Cc: Media DES; GRANT Andrea; LEWIS Kieran

Subject: RE: Draft statement

Hi

I understand you require this as soon as possible. I am working on it now.

Kieran Lewis

Media Services

Department of Environment and Science

media@des.qld.gov.au

Level 31 | 400 George Street | Brisbane

Tel 07 3339 5887 / p4(6) Personal information

www.des.qld.gov.au

If you are emailing about a media matter, please cc media@des.qld.gov.au

From: Media DES
Sent: Thursday, 9 May 2019 10:35 AM
To: WELLS Melissa; IRELAND Anne-Maree; GRANT Andrea
Cc: CAGNEY Justin; Media DES; LEWIS Kieran
Subject: RE: Draft statement

Hi

I've been asked to turn this into a media release. I will get to it when I sort out the Courier Mail's questions on coal mines.

Kieran

Kieran Lewis
Media Services
Department of Environment and Science
media@des.qld.gov.au

Level 31 | 400 George Street | Brisbane
Tel 07 3339 5887 /p4(6) Personal inform
www.des.qld.gov.au

If you are emailing about a media matter, please cc media@des.qld.gov.au

From: WELLS Melissa <Melissa.Wells@des.qld.gov.au>
Sent: Thursday, 9 May 2019 10:33 AM
To: IRELAND Anne-Maree; GRANT Andrea
Cc: CAGNEY Justin; LEWIS Kieran
Subject: RE: Draft statement

Thanks Annie.

Highlighted below should read Tropical Cyclone Debbie (back to front) and appreciate we publish the EU but not sure we want to state that up front. Maybe if we get further enquires we could than respond with that.



Melissa Wells
Executive Director
Coal and Central Qld Compliance
Department of Environment and Science

P 07 4987 9343

99 Hospital Road, Emerald QLD 4720
PO Box 3028, Emerald QLD 4720

From: IRELAND Anne-Maree <Anne-Maree.Ireland@des.qld.gov.au>
Sent: Thursday, 9 May 2019 9:14 AM
To: GRANT Andrea
Cc: WELLS Melissa; CAGNEY Justin; LEWIS Kieran
Subject: Draft statement

Hi Andrea

As discussed, a draft below for your review and amendment.

Kind regards
Annie

The Department of Environment and Science has today XXXX accepted an enforceable undertaking from Abbot Point Bulkcoal Pty Ltd in relation to a discharge event that occurred during Tropical Cyclone Debbie in March 2017.

During Cyclone Tropical Debbie, Abbot Point Bulkcoal Pty Ltd was granted a temporary emissions licence which allowed discharges to occur subject to certain limits. A discharge event occurred from an authorised discharge location known as W2, which flows into the marine environment. No environmental harm is known to have occurred but sampling of the discharge revealed a total suspended solids concentration of over 800mg/L when the licence allowed discharges of up to 100 mg/L.

Ltd elected to contest the infringement notice and DES commenced a prosecution in the Bowen Magistrates Court. The prosecution is currently listed for a five day hearing commencing on 22 July 2019.

Under the *Environmental Protection Act 1994*, a person may apply for an enforceable undertaking in relation to certain contraventions of the Act. An enforceable undertaking is an agreement between DES and the person applying for the undertaking that sets out details of the alleged contravention and obligations on the applicant.

As an alternative to prosecution, an enforceable undertaking seeks to achieve environmental outcomes. Such outcomes are often of greater value than any fine which may have been imposed by a Court.

DES considers that this undertaking, which requires Abbot Point Bulkcoal Pty Ltd to install monitoring at a cost of over \$100,000, will help protect the marine environment. DES is also pleased to see that Abbot Point Bulkcoal has already undertaken, and continues to undertake works to improve its water management at the Terminal. **The enforceable undertaking is available on the DES website.**

In accordance with the Act, DES will now take steps to discontinue the prosecution. DES expects Abbot Point Bulkcoal Pty Ltd to fully comply with the undertaking and will monitor its compliance. Failing to comply with the undertaking attracts significant penalties.

Published on DES Disclosure Log
RTI Act 2009

Draft media release

Deadline: ASAP	Briefing officer:
Media Services contact: Kieran Lewis	Phone:
Phone: 3339 5887 / p4(6) Personal information	DDG:
Approved:	Phone:
Geographical area/s of interest: Queensland wide	

Greater marine protection for Abbot Point

An agreement between Abbot Point Bulkcoal Pty Ltd and the Queensland Government will mean greater marine protection for waters off Abbot Point.

Abbot Point BulkCoal is to invest \$100,000 in installing monitoring equipment at its Abbot Point coal handling terminal, north of Bowen.

The company is also continuing work to improve water management at the terminal.

The \$100,000 investment by Abbot Point BulkCoal is by way of an "Enforceable Undertaking" agreement the company has signed with the Department of Environment and Science (DES).

Under the *Environmental Protection Act 1994*, an Enforceable Undertaking is an agreement that may be considered as an alternative to prosecution.

In this case, DES today [add date], accepted an Enforceable Undertaking from Abbot Point Bulkcoal in relation to the discharge event that occurred at the coal terminal during Tropical Cyclone Debbie in March 2017.

DES subsequently issued Abbot Point BulkCoal with a \$12,190 penalty infringement notice, alleging the release contravened the company's temporary emissions licence for discharges at that time.

Abbot Point Bulkcoal had elected to contest the infringement notice and DES commenced a prosecution in the Bowen Magistrates Court, which is currently listed for a hearing commencing 22 July 2019.

However, the company has now applied for an Enforceable Undertaking under the Environmental Protection Act.

DES has agreed to this, as the positive environmental outcomes from an Environmental Undertaking are often of much greater value than any fine that may have been imposed by a Court.

In accordance with the Environmental Protection Act, DES will now take steps to discontinue the prosecution.

DES expects Abbot Point Bulkcoal Pty Ltd to comply fully with the undertaking and will monitor this compliance.

Failing to comply with an Environmental Undertaking may attract significant penalties, including a fine of up to \$xxx,xxx.

The enforceable undertaking is available on the DES website at [add URL].

ENDS

AGENCY BACKGROUND (for internal information):

During Cyclone Tropical Debbie, Abbot Point Bulkcoal Pty Ltd was granted a temporary emissions licence which allowed discharges to occur subject to certain limits. A discharge event occurred from an authorised discharge location known as W2, which flows into the marine environment. No environmental harm is known to have occurred but sampling of the discharge revealed a total suspended solids concentration of over 800mg/L when the licence allowed discharges of up to 100 mg/L.

Published on DES Disclosure Log
RTI Act 2009

Date : 20/05/2019 10:37:58 AM

From : "CAGNEY Justin"

To : "GOLDSWORTHY Stephen" , "IRELAND Anne-Maree"

Subject : FW: Alert attachment - MR - Greater marine protection for Abbot Point

Attachment : 090519 - MR - Greater marine protection for Abbot Point.docx;image001.png;image004.jpg;image002.png;image006.png;



Justin Cagney
Program Manager Compliance
Coal and Central Queensland Compliance
Department of Environment and Science

P 07 4837 3318

209 Bolsover Street Rockhampton 4700
PO Box 413 Rockhampton 4700



From: LOWE Trinity <Trinity.Lowe@des.qld.gov.au>

Sent: Monday, 20 May 2019 9:30 AM

To: CAGNEY Justin

Cc: ELLWOOD Dean; WELLS Melissa; LAWRENCE Rob; ESR

Subject: Alert attachment - MR - Greater marine protection for Abbot Point

Hi Justin – Please see the attached draft media statement approved by Dean to be included as an attachment with the Alert.

Note – we will need the website link from Coms to be added into the bottom of the statement.

Thanks & Cheers

Trin



Trinity Lowe
Executive Officer
Office of the Deputy Director General
Environmental Services and Regulation Division
Department of Environment and Science

P 07 3330 5812

Level 7 400 George St Brisbane

Draft media release

Greater marine protection for Abbot Point

An agreement between Abbot Point Bulkcoal Pty Ltd and the Queensland Government will mean greater marine protection for waters off Abbot Point.

Abbot Point Bulkcoal is to invest \$100,000 in installing monitoring equipment to record any stormwater discharges to the marine environment from its Abbot Point Coal Terminal, north of Bowen.

The company is also continuing work to improve water management at the coal terminal.

The \$100,000 investment by Abbot Point Bulkcoal is by way of an “Enforceable Undertaking” agreement the company has signed with the Department of Environment and Science (DES).

Under the *Environmental Protection Act 1994*, an Enforceable Undertaking is an agreement that may be considered as an alternative to prosecution.

In this case, DES has accepted an Enforceable Undertaking from Abbot Point Bulkcoal in relation to the discharge event that occurred at the coal terminal during Tropical Cyclone Debbie in March 2017.

DES had originally issued Abbot Point Bulkcoal with a \$12,190 penalty infringement notice, alleging the event contravened the company’s temporary emissions licence for discharges at that time.

Abbot Point Bulkcoal elected to contest the infringement notice and DES commenced a prosecution in the Bowen Magistrates Court, which is currently listed for a hearing commencing 22 July 2019.

However, the company has now applied for an Enforceable Undertaking under the Environmental Protection Act, and DES has accepted that this agreement be entered into.

This Enforceable Undertaking will secure improved monitoring in relation to terminal operations at Abbot Point.

In accordance with the Environmental Protection Act, DES will now take steps to discontinue the prosecution.

DES expects Abbot Point Bulkcoal to comply fully with the undertaking and will monitor its compliance.

A copy of the Enforceable Undertaking is available on the DES website at [\[add URL\]](#).

ENDS

Date : 21/05/2019 4:23:04 PM
From : "GOLDSWORTHY Stephen"
To : "IRELAND Anne-Maree"
Subject : FW: APBC EU
Attachment : 190423 HS Port EU accepted.docx;090519 - MR - Greater marine protection for Abbot Point.docx;image001.png;image002.png;
[In case you don't already have this](#)

From: LOWE Trinity <Trinity.Lowe@des.qld.gov.au>
Sent: Tuesday, 21 May 2019 4:21 PM
To: GOLDSWORTHY Stephen
Subject: FW: APBC EU

From: ELLWOOD Dean
Sent: Monday, 20 May 2019 3:51 PM
To: GRANT Andrea
Cc: LAWRENCE Rob; TRACEY Alena; CAGNEY Justin; WELLS Melissa; LOWE Trinity
Subject: APBC EU

Please find attached APBC's draft media statement in which they intend to issue later today or tomorrow. Also attached is the media statement to be used by DES either proactively or as a follow up. Please note our statement will need amending subject to when it goes out and Corp Comms having the EU up on the DES web page.



Dean Ellwood
Project Executive
Department of Environment and Science
400 George St, Brisbane QLD 4000
GPO Box 2454, Brisbane QLD 4001

Media Statement

((insert date))

The following statement can be attributed to an Abbot Point Operations spokesperson:

"Over the past two years Abbot Point Operations has continued to evolve and improve our environmental management practices.

"This has included significant enhancements to our infrastructure and to the way we operate.

"As part of this commitment to continually improve our environmental management, we welcome the Queensland Government's acceptance of an Enforceable Undertaking application that we lodged voluntarily in order to deliver additional water quality monitoring at our site.

"This Enforceable Undertaking will help ensure positive environmental outcomes are achieved in the near-term instead of continuing prolonged court proceedings in the Magistrates Court related to an alleged floodwater release during Cyclone Debbie.

"This new water monitoring infrastructure will allow us to measure water quality in real-time to assist in managing stormwater impacting our site. It will give the regulator and the community further confidence that our operations are being managed safely and responsibly.

"It is proposed that this new automated water quality monitoring system would be installed at the authorised flood water release point opposite the ocean to provide real-time monitoring of water flows.

"This new initiative is in addition to the three-year major infrastructure upgrade program currently underway at the Terminal to improve water and environmental management.

"More than \$15 million in upgrades are in the process of final execution in what will be a series of multi-million dollar projects that will include: increasing the volume of water storage ponds, upgrade of a bund wall, including new piping and pump facilities, as well as our early works program on the redesign of remaining water management infrastructure at other release points.

"Further upgrades will be delivered by 2021 and will include: design and construction of an additional water storage pond, upgrades to all other release points, including upgrades to sumps, pumps, and piping."

ENDS

Draft media release

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An agreement between Abbot Point Bulkcoal Pty Ltd and the Queensland Government will mean greater marine protection for waters off Abbot Point.

Abbot Point Bulkcoal is to invest \$100,000 in installing monitoring equipment to record any stormwater discharges to the marine environment from its Abbot Point Coal Terminal, north of Bowen.

The company is also continuing work to improve water management at the coal terminal.

The \$100,000 investment by Abbot Point Bulkcoal is by way of an “Enforceable Undertaking” agreement the company has signed with the Department of Environment and Science (DES).

Under the *Environmental Protection Act 1994*, an Enforceable Undertaking is an agreement that may be considered as an alternative to prosecution.

In this case, DES has accepted an Enforceable Undertaking from Abbot Point Bulkcoal in relation to the discharge event that occurred at the coal terminal during Tropical Cyclone Debbie in March 2017.

DES had originally issued Abbot Point Bulkcoal with a \$12,190 penalty infringement notice, alleging the event contravened the company’s temporary emissions licence for discharges at that time.

Abbot Point Bulkcoal elected to contest the infringement notice and DES commenced a prosecution in the Bowen Magistrates Court, which is currently listed for a hearing commencing 22 July 2019.

However, the company has now applied for an Enforceable Undertaking under the Environmental Protection Act, and DES has accepted that this agreement be entered into.

This Enforceable Undertaking will secure improved monitoring in relation to terminal operations at Abbot Point.

In accordance with the Environmental Protection Act, DES will now take steps to discontinue the prosecution.

DES expects Abbot Point Bulkcoal to comply fully with the undertaking and will monitor its compliance.

A copy of the Enforceable Undertaking is available on the DES website at [\[add URL\]](#).

ENDS

Date : 20/05/2019 2:26:52 PM

From : "CAGNEY Justin"

To : "IRELAND Anne-Maree"

Subject : FW: Enforceable Undertaking

Attachment : EU NOD APBC 16052019.pdf;image001.png;image003.jpg;image004.png;image006.png;

Hi Annie,

For your awareness.

Regards,



Justin Cagney
Program Manager Compliance
Coal and Central Queensland Compliance
Department of Environment and Science

P 07 4837 3318

209 Bolsover Street Rockhampton 4700
PO Box 413 Rockhampton 4700



From: CAGNEY Justin

Sent: Monday, 20 May 2019 2:21 PM

To: s.73 @apogroup.com.au'

Cc: ELLWOOD Dean; WELLS Melissa

Subject: Enforceable Undertaking

Good afternoon

s.73

I refer to the application for an enforceable undertaking made by Abbot Point Bulkcoal Pty Ltd on 13 May 2019.

Please find attached Notice of Decision to accept the enforceable undertaking.

A copy of the enforceable undertaking is required to be published on the department's website and the department will meet this requirement as a priority, however please be aware it may take two or three days for the website to be updated.

Section 507 of the *Environmental Protection Act 1994* requires that the department take all reasonable steps to have proceedings in relation to the alleged contravention discontinued as soon as practicable after accepting an enforceable undertaking. The department's Litigation branch will arrange for the current proceedings in the Bowen Magistrates Court to be discontinued as soon as possible.

Regards,



Justin Cagney
Program Manager Compliance
Coal and Central Queensland Compliance
Department of Environment and Science

P 07 4837 3318

209 Bolsover Street Rockhampton 4700
PO Box 413 Rockhampton 4700



Notice

Environmental Protection Act 1994

Decision to accept an Enforceable Undertaking

This notice is issued by the administering authority pursuant to section 507 of the Environmental Protection Act 1994 to advise of a decision made on an enforceable undertaking.

Abbot Point Bulkcoal Pty Ltd ACN 010 183 534
Level 15, 10 Eagle Street
BRISBANE QLD 4000

Your reference:

Our reference: CR78081

16 May 2019

Take notice: that under the provisions of the *Environmental Protection Act 1994* (the Act) this notice advising of the decision to accept an Enforceable Undertaking is issued to Abbot Point Bulkcoal Pty Ltd ACN 010 183 534 (you) by the administering authority. The administering authority is the Chief Executive of the Department of Environment and Science (the department).

This notice is issued with respect to your activities at the following locations:

- on land described as Lot 48 on SP243721 and Lot 22 on SP271830, situated at the Abbot Point Coal Terminal in Bowen, Queensland;
- at the location of stormwater discharge from discharge location W2 to waters.

A. Application details

On 13 May 2019, the department received an Enforceable Undertaking Application (the application) from you.

The application included the Application form – Enforceable Undertaking and Attachment – the proposed Enforceable Undertaking.

The objectives of the Enforceable Undertaking are stated to be to:

- Improve environmental monitoring at the site;
- Deliver benefits to the environment and the local community;
- Promote the object of the Act.

B. Material considered by the department in making the decision

In making the decision, the department had before it:

- *Environmental Protection Act 1994*;
- Environmental Authority EPPR00577113;
- Guideline: Enforceable Undertakings under the *Environmental Protection Act 1994*;
- Completed Application form dated 13 May 2019;
- Attachment 1 dated 13 May 2019;
- Complaint and Summons filed with the Bowen Magistrates Court on 5 September 2018;
- Enforcement Guidelines.

C. Application of legislation to the decision

Section 507 of the *Environmental Protection Act 1994* provides that:

- The administering authority may accept a written undertaking (Enforceable Undertaking) made by a person in relation to a contravention or alleged contravention by the person of the *Environmental Protection Act 1994*, other than an indictable offence; and
- The administering authority must give the person written notice of the administering authority's decision to accept or reject the Enforceable Undertaking, and the reasons for the decision.
- If the administering authority decides to accept the enforceable undertaking, the administering authority must publish a copy of the undertaking on the administering authority's website.

D. Decision

The department has decided to accept your application for an Enforceable Undertaking. The approved Enforceable Undertaking is attached to this decision notice.

E. Reasons for the decision

1. The alleged contravention the subject of the Enforceable Undertaking is not an indictable offence.
2. The alleged contravention is the subject of a complaint before the Bowen Magistrates Court. Whilst the prosecution proceedings are at an advanced stage, proceedings have not yet ended and the likely outcome of the prosecution proceedings (if successful) would not better achieve the object of the *Environmental Protection Act 1994*.
3. You promptly notified the department about the incident.
4. You had no motivation or intention to obtain a financial or material benefit from the incident and no known environmental harm was caused from the incident.
5. You are committed to preventing further incidents in relation to discharges of stormwater from the site including by the commissioning of a number of improvements to the site's water management infrastructure to mitigate and manage water from high intensity and sustained rainfall events.

Notice Decision to accept an Enforceable Undertaking

6. You have demonstrated your ability to make and deliver on your commitments through improvements already made to water management infrastructure at the site. You have committed to completing additional works to further improve the water management infrastructure at the site.
7. The cost to you for the improvements to the site's water management infrastructure has been significant and demonstrates the seriousness within which you have treated the incident and your commitment to prevent future releases.
8. You have given an undertaking to install an automatic water quality station (AWQS) for real-time recording of any future stormwater discharges from the site at discharge location W2.
9. Operation of a AWQS at discharge location W2 will provide for collection of data in direct response to stormwater discharges and will facilitate informed management and mitigation strategies where necessary, to secure compliance with the Act and enhance protection of the environment.

F. Additional information

Obligations under the Act

In addition to the requirements of the Enforceable Undertaking and the conditions imposed, you must also meet your obligations under the *Environmental Protection Act 1994*, and associated regulations. For example:

- you must comply with the following provisions of the Act:
 - general environmental duty (section 319); and
 - duty to notify of environmental harm (sections 320 - 320G);
- you must also ensure that you do not commit offences in relation to the *Environmental Protection Act 1994*, including but not limited to, the following:
 - causing serious or material environmental harm (sections 437 - 439);
 - causing environmental nuisance (section 440);
 - depositing prescribed water contaminants in waters and related matters (section 440ZG); and
 - placing a contaminant where environmental harm or nuisance may be caused (section 443).

Should you have any queries in relation to this notice, please contact Alisha Stewart, Compliance Delivery Manager (Mackay) of the department, on telephone number (07) 4999 6885 or email

Alisha.stewart@des.qld.gov.au.

sch4p4(6) Personal information

Justin Cagney
Program Manager Compliance
Delegate of the Chief Executive
Department of Environment and Science
Environmental Protection Act 1994

16 May 2019

Date

Enquiries:

Level 1 22-30 Wood Street
MACKAY QLD 4740
Ph: (07) 4999 6883
Email: cwes_mackay@des.qld.gov.au

ATTACHMENT 1

Enforceable undertaking

Abbot Point Bulkcoal Pty Ltd

ACN 010 183 534

Published on DES Disclosure Log
RTI Act 2009

2019

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THIS ENFORCEABLE UNDERTAKING is made on 13 May 2019

This enforceable undertaking is submitted to the Department of Environment and Science by Abbot Point Bulkcoal Pty Ltd ACN 010 183 534 of Level 15, 10 Eagle Street Brisbane, Queensland 4000.

1. **DEFINITIONS**

The following definitions apply in this document.

Act means the *Environmental Protection Act 1994* (Qld).

AWQS means automatic water quality station.

Corporation means Abbot Point Bulkcoal Pty Ltd ACN 010 183 534.

Department means the Department of Environment and Science.

EA means environmental authority EPPR00577113.

Guideline means the *Guideline – Enforceable undertakings under the Environmental Protection Act 1994* ESR/2016/2272 Version 2.00.

NQBP means North Queensland Bulk Ports Corporation.

PIN means penalty infringement notice No. 200000040442385 dated 20 July 2017.

Proceedings means the proceedings commenced by the Department against the corporation in the Bowen Magistrates Court by the complaint of Robert James Black dated 5 September 2018.

TEL means amended temporary emissions licence ENEL07198317 dated 28 March 2017.

Terminal means the Abbot Point Coal Terminal.

Undertaking means this enforceable undertaking made pursuant to Chapter 10, Part 5 of the Act.

2. **BACKGROUND**

- (a) The corporation is the holder of the EA, which has been issued in relation to activities at the Terminal.
- (b) The EA relevantly authorises discharges to waters from discharge location W2 if the discharges meet the specified quality criteria.

3. **ALLEGED CONTRAVENTION**

- (a) The complaint and summons filed by the Department in the Bowen Magistrates Court on 5 September 2018 alleges that the corporation "failed to comply with a condition of a temporary emissions licence, contrary to section 357I of the *Environmental Protection Act 1994*".
- (b) The particulars of the complaint and summons allege a failure to comply with condition TEL1 of the TEL.

4. **CIRCUMSTANCES OF THE CONTRAVENTION**

- (a) On 24 March 2017, the corporation applied for a temporary emissions licence in relation to its activities at the Terminal, due to predictions of a major rainfall event associated with Tropical Cyclone Debbie.

- (b) The Department issued a temporary emissions licence to the corporation on 27 March 2017, and the TEL to the corporation on 28 March 2017.
- (c) Relevantly, the TEL authorised a temporary increase of the EA quality criteria for total suspended solids to 100mg/L at discharge location W2.
- (d) Following Tropical Cyclone Debbie, sampling results from the primary rising stage sample bottle at W2 indicated elevated suspended solids of 806mg/L.
- (e) The Department alleges a release to waters from release location W2 pursuant to section 357I of the Act, however, this Undertaking does not constitute an admission of guilt on behalf of the Corporation.
- (f) Neither the Department nor the Corporation is aware of any environmental impacts arising as a result of the alleged contravention.

5. ACTIONS TAKEN TO PREVENT RECURRENCE OF THE ALLEGED CONTRAVENTION

- (a) As previously communicated to the Department, the corporation has continuously improved its water management infrastructure to further mitigate and manage water from high intensity and/or sustained rainfall events, including:
 - (i) improving sediment removal from primary and secondary settlement ponds to facilitate improved runoff capture and retention periods, allowing for more sediment to drop out of suspension;
 - (ii) reducing the catchment area surrounding the settlement ponds to the west and south west, by use of a clean water diversion to reduce the volume of clean water that reports to the settlement ponds (partially complete); and
 - (iii) upgrading the secondary settlement pond spillway.
- (b) A further package of works to continue improving the corporation's water management infrastructure, and further manage water from high intensity and/or sustained intense rainfall events, is currently underway. The works include:
 - (i) significantly increasing the size of pumping capabilities, along with the sump and drainage system capacities in the surrounding surge bin areas;
 - (ii) reducing the catchment surrounding surge bin areas, by use of a clean water diversion to reduce the volume of clean water that reports to the water management infrastructure surrounding the surge bin;
 - (iii) increasing the capacity of the primary and secondary settlement ponds and western drain;
 - (iv) installing a diversion bund along the western lease boundary to:
 - (A) reduce the overall catchment size of the site;
 - (B) act as an all-weather access road to authorised discharge location W1; and
 - (v) installing an earth-fill finger bund extending out into the secondary sediment pond, to increase the flow path of water within the pond and allow greater opportunity for sediment to drop out of suspension.

6. **OBJECTIVES**

The objectives of this Undertaking are to:

- (a) improve environmental monitoring at the Terminal;
- (b) deliver benefits to the environment and local community; and
- (c) promote the objects of the Act.

7. **TERMS OF THE UNDERTAKING**

The corporation must:

- (a) within six weeks of the date of this Undertaking, have met with representatives of NQBP to seek consent for the installation of an AWQS on lot 22 on SP271830; and
- (b) within six months of obtaining consent pursuant to clause 7(a), install an AWQS on lot 22 on SP271830 capable of recording the pH and flow of a release from the Terminal at discharge location W2, at an approximate cost to the corporation of \$100,000. The AWQS will collect data in direct response to releases, and facilitate informed management and mitigation strategies where necessary, to secure compliance with the Act and enhance the protection of the Environment. The AWQS, which will provide for real time monitoring of water flows at the discharge location may include, for example:
 - (i) hydrolab sonde with sensors and cable;
 - (ii) level-pro sensor, tubing and bubbler;
 - (iii) data logger and terminal strip;
 - (iv) ISCO carousel autosampler including peristaltic pump;
 - (v) modem, batteries, cabling, solar panel, frame and housing; and
 - (vi) engineered concrete formwork and channelling.

The corporation will be responsible for determining the final design of the AWQS;

- (c) provide an interim progress report to the Department three months after the date of this Undertaking; and
- (d) provide a final compliance report to the Department within one month of completion of all activities.

8. **WHY UNDERTAKING IS A MORE APPROPRIATE RESPONSE TO THE ALLEGED CONTRAVENTION THAN COURT PROCEEDING**

- (a) The factors that led to the alleged contravention have ceased, and preventative actions have been, and are being taken as set out in clause 5.
- (b) This Undertaking is a commitment by the corporation to take active steps to address the Department's concerns in respect of the alleged contravention, improve environmental monitoring and deliver benefits to the environment and local community.
- (c) As such, this Undertaking will result in a net benefit to the environment and the community.

- (d) This is a better overall outcome than a court imposed sanction such as a fine, and in the corporation's submission better achieves the objects of the Act.
- (e) This Undertaking is also a more efficient means of resolving the matter, as it will save the parties time and resources associated with resolving the matter in court.

9. **ACKNOWLEDGEMENTS**

- (a) The corporation acknowledges that:
 - (i) It has read and understood the Guideline;
 - (ii) this Undertaking will be published on the Department's website and may be referred to or referenced in other ways;
 - (iii) the Department's acceptance of this Undertaking means that the Department:
 - (A) must take all reasonable steps to have the Proceedings discontinued as soon as practicable; and
 - (B) will not recommence proceedings against the corporation for the alleged contravention described in clause 3 as long as the corporation is fully complying, or has fully complied, with the Undertaking;
 - (iv) the Department's acceptance of this Undertaking does not affect the Department's power to:
 - (A) bring proceedings against the person;
 - (B) issue penalty infringement notices; or
 - (C) take any other enforcement action against the person;
 in relation to any subsequent contravention or alleged contravention of the Act, that is not the subject of an undertaking;
 - (v) this Undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this proposal or arising from subsequent conduct;
 - (vi) it has offered an undertaking in the terms set out in this approved form;
 - (vii) the Undertaking does not take effect until the Department gives the corporation notice of the decision to accept the Undertaking.
- (b) The corporation and the Department acknowledge that the date of the Undertaking is the date on which the notice of the decision to accept the Undertaking is given.

10. **ABILITY TO COMPLY WITH THE UNDERTAKING**

- (a) The corporation has the financial ability to comply with the terms of this Undertaking.
- (b) In the event of impending liquidation or sale of the corporation, the corporation will advise the Department of the relevant circumstances and its capacity to comply with the outstanding terms of this Undertaking.

- (c) In the event the corporation is sold, the corporation will advise any future owners or operators of the existence of this Undertaking, and provide a copy of this correspondence to the Department.

11. **CONTACT DETAILS**

- (a) Any written notification to the Department pursuant to this Undertaking is to be provided to:

Melissa Wells
Executive Director, Coal and Central Qld Compliance, Department of
Environment and Science
GPO Box 2454
BRISBANE QLD 4001

Email: melissa.wells@des.qld.gov.au

- (b) Any written notification to the corporation pursuant to this Undertaking is to be provided to:

s.73
Director, Abbot Point Bulkcoal Pty Ltd
Level 15, 10 Eagle Street
BRISBANE QLD 4000

Email: s.73@adani.com.au

12. **EXECUTION**

**SIGNED by ABBOT POINT BULKCOAL
PTY LTD** in the presence of:

Signature of party

Signature of witness

Name

**ACCEPTED by DEPARTMENT OF
ENVIRONMENT AND SCIENCE** in the
presence of:

Signature of witness

Name

Date : 9/05/2019 1:47:58 PM

From : "Media DES"

To : "WELLS Melissa"

Cc : "CAGNEY Justin" , "IRELAND Anne-Maree" , "ESR" , "ELLWOOD Dean" , "Media DES" , "LEWIS Kieran"

Subject : Melissa - for approval - draft holding statement re Abbot Point BulkCoal Enforceable Undertaking

Attachment : 090519 - MR - Greater marine protection for Abbot

Point.docx;image001.png;image005.jpg;image002.png;image006.png;image008.png;image009.png;

Hello Melissa

For approval, please.

The attached draft media holding statement re Abbot Point BulkCoal Enforceable Undertaking now includes changes from Annie Ireland and Justin Cagney.

Regards

Kieran Lewis

Media Services

Department of Environment and Science

media@des.qld.gov.au

Level 31 | 400 George Street | Brisbane

Tel 07 3339 5887 / 4(6) Personal inform

www.des.qld.gov.au

If you are emailing about a media matter, please cc media@des.qld.gov.au

From: CAGNEY Justin <Justin.Cagney@des.qld.gov.au>

Sent: Thursday, 9 May 2019 1:39 PM

To: Media DES; IRELAND Anne-Maree; WELLS Melissa

Cc: GRANT Andrea; LEWIS Kieran

Subject: RE: For approval - draft holding statement re Abbot Point BulkCoal Enforceable Undertaking

Kieran,

Please find attached with suggested changes.

Regards,



Justin Cagney

Program Manager Compliance

Coal and Central Queensland Compliance

Department of Environment and Science

P 07 4837 3318

209 Bolsover Street Rockhampton 4700

PO Box 413 Rockhampton 4700



From: Media DES <Media@des.qld.gov.au>

Sent: Thursday, 9 May 2019 1:02 PM

To: IRELAND Anne-Maree; WELLS Melissa; CAGNEY Justin

Cc: GRANT Andrea; Media DES; LEWIS Kieran

Subject: RE: For approval - draft holding statement re Abbot Point BulkCoal Enforceable Undertaking

Thanks

I've amended to address your concerns. If we know where the equipment is going to be placed (I see it's not at the terminal) we can add that information.

See attached.

Kieran Lewis
Media Services
Department of Environment and Science
media@des.qld.gov.au

Level 31 | 400 George Street | Brisbane
Tel 07 3339 5887 /4(6) Personal inform
www.des.qld.gov.au

If you are emailing about a media matter, please cc media@des.qld.gov.au

From: IRELAND Anne-Maree <Anne-Maree.Ireland@des.qld.gov.au>
Sent: Thursday, 9 May 2019 12:54 PM
To: Media DES; WELLS Melissa; CAGNEY Justin
Cc: GRANT Andrea; LEWIS Kieran
Subject: RE: For approval - draft holding statement re Abbot Point BulkCoal Enforceable Undertaking

Hi all

My suggestions and comments attached in track changes for consideration.

Thanks
Annie



Anne-Maree Ireland
Principal Lawyer
Litigation Branch | Environmental Services and Regulation
Department of Environment and Science

P 07 3330 6184 | F 07 3330 5634
Level 7, 400 George Street, Brisbane Qld 4000
GPO Box 2454, Brisbane Qld 4001

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From: Media DES
Sent: Thursday, 9 May 2019 12:24 PM
To: WELLS Melissa <Melissa.Wells@des.qld.gov.au>; IRELAND Anne-Maree <Anne-Maree.Ireland@des.qld.gov.au>; CAGNEY Justin <Justin.Cagney@des.qld.gov.au>
Cc: GRANT Andrea <Andrea.Grant@des.qld.gov.au>; Media DES <Media@des.qld.gov.au>; LEWIS Kieran <Kieran.Lewis@des.qld.gov.au>
Subject: For approval - draft holding statement re Abbot Point BulkCoal Enforceable Undertaking

Dear all

Attached is a draft holding statement re the Abbot Point BulkCoal Enforceable Undertaking. It reflects the MO's general request that our media statements highlight outcomes rather than processes.

If we can add penalties where highlighted that will round it out. If not, we can omit.

Regards

Kieran Lewis
Media Services
Department of Environment and Science
media@des.qld.gov.au

Level 31 | 400 George Street | Brisbane
Tel 07 3339 5887 /p4(6) Personal inform
www.des.qld.gov.au

If you are emailing about a media matter, please cc media@des.qld.gov.au

From: WELLS Melissa <Melissa.Wells@des.qld.gov.au>

Sent: Thursday, 9 May 2019 12:05 PM
To: Media DES; IRELAND Anne-Maree; CAGNEY Justin
Cc: GRANT Andrea; LEWIS Kieran
Subject: RE: Draft statement

Yes thanks Kieran asap would be great



Melissa Wells
Executive Director
Coal and Central Qld Compliance
Department of Environment and Science

P 07 4987 9343

99 Hospital Road, Emerald QLD 4720
PO Box 3028, Emerald QLD 4720

From: Media DES <Media@des.qld.gov.au>
Sent: Thursday, 9 May 2019 12:02 PM
To: WELLS Melissa; IRELAND Anne-Maree; CAGNEY Justin
Cc: Media DES; GRANT Andrea; LEWIS Kieran
Subject: RE: Draft statement

Hi

I understand you require this as soon as possible. I am working on it now.

Kieran Lewis
Media Services
Department of Environment and Science
media@des.qld.gov.au

Level 31 | 400 George Street | Brisbane
Tel 07 3339 5887 / 4(6) Personal Inform
www.des.qld.gov.au

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From: Media DES
Sent: Thursday, 9 May 2019 10:35 AM
To: WELLS Melissa; IRELAND Anne-Maree; GRANT Andrea
Cc: CAGNEY Justin; Media DES; LEWIS Kieran
Subject: RE: Draft statement

Hi

I've been asked to turn this into a media release. I will get to it when I sort out the Courier Mail's questions on coal mines.

Kieran

Kieran Lewis
Media Services
Department of Environment and Science
media@des.qld.gov.au

Level 31 | 400 George Street | Brisbane
Tel 07 3339 5887 / 4(6) Personal Inform
www.des.qld.gov.au

If you are emailing about a media matter, please cc media@des.qld.gov.au

From: WELLS Melissa <Melissa.Wells@des.qld.gov.au>
Sent: Thursday, 9 May 2019 10:33 AM
To: IRELAND Anne-Maree; GRANT Andrea

Cc: CAGNEY Justin; LEWIS Kieran

Subject: RE: Draft statement

Thanks Annie.

Highlighted below should read Tropical Cyclone Debbie (back to front) and appreciate we publish the EU but not sure we want to state that up front. Maybe if we get further enquires we could than respond with that.



Melissa Wells
Executive Director
Coal and Central Qld Compliance
Department of Environment and Science

P 07 4987 9343

99 Hospital Road, Emerald QLD 4720
PO Box 3028, Emerald QLD 4720

From: IRELAND Anne-Maree <Anne-Maree.Ireland@des.qld.gov.au>

Sent: Thursday, 9 May 2019 9:14 AM

To: GRANT Andrea

Cc: WELLS Melissa; CAGNEY Justin; LEWIS Kieran

Subject: Draft statement

Hi Andrea

As discussed, a draft below for your review and amendment.

Kind regards

Annie

The Department of Environment and Science has today XXXX accepted an enforceable undertaking from Abbot Point Bulkcoal Pty Ltd in relation to a discharge event that occurred during Tropical Cyclone Debbie in March 2017.

During Cyclone Tropical Debbie, Abbot Point Bulkcoal Pty Ltd was granted a temporary emissions licence which allowed discharges to occur subject to certain limits. A discharge event occurred from an authorised discharge location known as W2, which flows into the marine environment. No environmental harm is known to have occurred but sampling of the discharge revealed a total suspended solids concentration of over 800mg/L when the licence allowed discharges of up to 100 mg/L.

DES subsequently issued a penalty infringement notice in the amount of \$12,190 for the contravention of the licence. Abbot Point Bulkcoal Pty Ltd elected to contest the infringement notice and DES commenced a prosecution in the Bowen Magistrates Court. The prosecution is currently listed for a five day hearing commencing on 22 July 2019.

Under the *Environmental Protection Act 1994*, a person may apply for an enforceable undertaking in relation to certain contraventions of the Act. An enforceable undertaking is an agreement between DES and the person applying for the undertaking that sets out details of the alleged contravention and obligations on the applicant.

As an alternative to prosecution, an enforceable undertaking seeks to achieve environmental outcomes. Such outcomes are often of greater value than any fine which may have been imposed by a Court.

DES considers that this undertaking, which requires Abbot Point Bulkcoal Pty Ltd to install monitoring at a cost of over \$100,000, will help protect the marine environment. DES is also pleased to see that Abbot Point Bulkcoal has already undertaken, and continues to undertake works to improve its water management at the Terminal. The enforceable undertaking is available on the DES website.

In accordance with the Act, DES will now take steps to discontinue the prosecution. DES expects Abbot Point Bulkcoal Pty Ltd to fully comply with the undertaking and will monitor its compliance. Failing to comply with the undertaking attracts significant penalties.

Draft media release

Deadline: ASAP	Briefing officer:
Media Services contact: Kieran Lewis	Phone:
Phone: 3339 5887 / <small>4p4(6) Personal informa</small>	DDG:
Approved: Annie Ireland, Justin Cagney	Phone:
Geographical area/s of interest: Queensland wide	

Greater marine protection for Abbot Point

An agreement between Abbot Point Bulkcoal Pty Ltd and the Queensland Government will mean greater marine protection for waters off Abbot Point.

Abbot Point Bulkcoal is to invest \$100,000 in installing monitoring equipment to record any stormwater discharges to the marine environment from its Abbot Point Coal Terminal, north of Bowen.

The company is also continuing work to improve water management at the coal terminal.

The \$100,000 investment by Abbot Point Bulkcoal is by way of an “Enforceable Undertaking” agreement the company has signed with the Department of Environment and Science (DES).

Under the *Environmental Protection Act 1994*, an Enforceable Undertaking is an agreement that may be considered as an alternative to prosecution.

In this case, DES today [add date], accepted an Enforceable Undertaking from Abbot Point Bulkcoal in relation to the discharge event that occurred at the coal terminal during Tropical Cyclone Debbie in March 2017.

DES had originally issued Abbot Point Bulkcoal with a \$12,190 penalty infringement notice, alleging the event contravened the company’s temporary emissions licence for discharges at that time.

Abbot Point Bulkcoal elected to contest the infringement notice and DES commenced a prosecution in the Bowen Magistrates Court, which is currently listed for a hearing commencing 22 July 2019.

However, the company has now applied for an Enforceable Undertaking under the Environmental Protection Act, and DES has accepted that this agreement be entered into.

The positive environmental outcomes from an Environmental Undertaking are often of much greater value than any fine that may have been imposed by a Court.

In accordance with the Environmental Protection Act, DES will now take steps to discontinue the prosecution.

DES expects Abbot Point Bulkcoal to comply fully with the undertaking and will monitor its compliance.

Failing to comply with an Enforceable Undertaking may attract significant penalties, including a fine of more than \$4 million for a wilful contravention by a company.

A copy of the Enforceable Undertaking is available on the DES website at [\[add URL\]](#).

ENDS

AGENCY BACKGROUND (for internal information):

During Tropical Cyclone Debbie, Abbot Point Bulkcoal Pty Ltd was granted a temporary emissions licence which allowed discharges to occur subject to certain limits. A discharge event occurred from an authorised discharge location known as W2, which flows into the marine environment. No environmental harm is known to have occurred but sampling of the discharge revealed a total suspended solids concentration of over 800mg/L when the licence allowed discharges of up to 100 mg/L.

The current maximum penalties relating to failing to comply with an Enforceable Undertaking are \$4,079,687.50 for wilful contravention for a company and \$2,937,375 for non-wilful for a company. (Penalties for an individual differ.)

Date : 24/05/2019 10:45:22 AM
From : "IRELAND Anne-Maree"
To : "[REDACTED]@ashurst.com", [REDACTED]@ashurst.com"
Cc : "[REDACTED]@ashurst.com"
Subject : RE: Black v APBC [BD-AUS.20255284.1000-031-311.FID3715864]
Attachment : image001.png;image003.png;image004.png;

Hi Paul

Thank you, those amendments are fine. I just have to run to a meeting but will send as soon as I return and copy you in.

Thanks
Annie



Anne-Maree Ireland
Principal Lawyer
Litigation Branch | Environmental Services and Regulation
Department of Environment and Science

P 07 3330 6184 | F 07 3330 5634
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GPO Box 2454, Brisbane Qld 4001

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From: [REDACTED]@ashurst.com <[REDACTED]@ashurst.com>
Sent: Friday, 24 May 2019 10:29 AM
To: IRELAND Anne-Maree; [REDACTED]@ashurst.com
Cc: [REDACTED]@ashurst.com
Subject: RE: Black v APBC [BD-AUS.20255284.1000-031-311.FID3715864]

Hi Annie

Thank you for providing a draft copy of the Department's letter to us for review. Some minor amendments are marked up in the **attached**.

If you have any questions regarding these amendments, please feel free to contact us. Otherwise, we are instructed that APB consents to the amended letter being sent to the Court.

Kind regards

[REDACTED]
[REDACTED]
Senior Associate
[REDACTED]@ashurst.com

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From: IRELAND Anne-Maree [<mailto:Anne-Maree.Ireland@des.qld.gov.au>]
Sent: Tuesday, 21 May 2019 1:52 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Black v APBC

Hi [REDACTED] so sorry – we have been having some trouble with Windows 10 upgrading. Please see if it is **attached** now.

Thanks and apologies
Annie

From: [REDACTED]@ashurst.com [[mailto:\[REDACTED\]@ashurst.com](mailto:[REDACTED]@ashurst.com)]
Sent: Tuesday, 21 May 2019 1:27 PM
To: IRELAND Anne-Maree
Cc: [REDACTED]@ashurst.com; [REDACTED]@ashurst.com
18-501

File C

Page 83 of 139

Subject: RE: Black v APBC

Dear Annie

Thank you for your email.

It does not appear that the draft letter was attached to your email. Could you please send us a copy?

Kind regards

s.73

Lawyer

s.73@ashurst.com

Ashurst

D: s.73

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From: IRELAND Anne-Maree [<mailto:Anne-Maree.Ireland@des.qld.gov.au>]

Sent: Tuesday, 21 May 2019 12:14 PM

To: s.73

Cc: s.73

Subject: Black v APBC

Dear s.73

We refer to the above matter.

Please find **attached** a draft letter (and enclosure) to the Bowen Magistrates Court in relation to discontinuing the prosecution for your review and consideration.

Would you please advise if your client consents to the email letter or mark up any proposed changes.

Kind regards

Annie



Anne-Maree Ireland
Principal Lawyer
Litigation Branch | Environmental Services and Regulation
Department of Environment and Science

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RTI Act 2009

Date : 24/05/2019 10:29:05 AM

From : [REDACTED] s.73 @ashurst.com

To : "IRELAND Anne-Maree" , "[REDACTED] s.73 @ashurst.com"

Cc : "[REDACTED] s.73 @ashurst.com"

Subject : RE: Black v APBC [BD-AUS.20255284.1000-031-311.FID3715864]

Attachment : 655575828_1_Letter to BMC re complaint 21.5.19 (Ashurst markup).DOCX;image002.png;

Hi Annie

Thank you for providing a draft copy of the Department's letter to us for review. Some minor amendments are marked up in the **attached**.

If you have any questions regarding these amendments, please feel free to contact us. Otherwise, we are instructed that APB consents to the amended letter being sent to the Court.

Kind regards

[REDACTED] s.73

[REDACTED] s.73

Senior Associate

[REDACTED] @ashurst.com

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D: [REDACTED] s.73

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Sent: Tuesday, 21 May 2019 1:52 PM

To: [REDACTED]

Cc: [REDACTED] s.73

Subject: RE: Black v APBC

Hi [REDACTED] s.73 so sorry – we have been having some trouble with Windows 10 upgrading. Please see if it is **attached** now.

Thanks and apologies

Annie

From: [REDACTED] @ashurst.com [mailto:[REDACTED] s.73 @ashurst.com]

Sent: Tuesday, 21 May 2019 1:27 PM

To: IRELAND Anne-Maree

Cc: [REDACTED] s.73 @ashurst.com; [REDACTED] s.73 @ashurst.com

Subject: RE: Black v APBC

Dear Annie

Thank you for your email.

It does not appear that the draft letter was attached to your email. Could you please send us a copy?

Kind regards

[REDACTED] s.73

Lawyer

[REDACTED] s.73 @ashurst.com

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D: [REDACTED] s.73

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[Read more](#)

From: IRELAND Anne-Maree [mailto:Anne-Maree.Ireland@des.qld.gov.au]

Sent: Tuesday, 21 May 2019 12:14 PM

To: [REDACTED]

Cc: [REDACTED] s.73

Subject: Black v APBC

Dear [REDACTED]

We refer to the above matter.

Please find **attached** a draft letter (and enclosure) to the Bowen Magistrates Court in relation to discontinuing the prosecution for your review and consideration.

Would you please advise if your client consents to the email letter or mark up any proposed changes.

Kind regards
Annie



Anne-Maree Ireland
Principal Lawyer
Litigation Branch | Environmental Services and Regulation
Department of Environment and Science

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GPO Box 2454, Brisbane Qld 4001

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Enquiries: Annie Ireland
Telephone: (07) 3330 6184
Our reference: LIT1720



21 May 2019

The Registrar
Bowen Magistrates Court
Herbert Street
Bowen Qld 4805

Department of
Environment and Science

By email - courthouse.bowen@justice.qld.gov.au

Dear Registrar

Black v Abbot Point Bulkcoal Pty Ltd

We refer to the above matter.

We write on behalf of the complainant, Mr Black of the Department of Environment and Science. This letter is sent with the consent of the defendant, Abbot Point Bulkcoal Pty Ltd.

The matter is currently listed for a five-day hearing commencing 22 July 2019 before the Bowen Magistrates Court.

On 17-16 May 2019, an enforceable undertaking was approved by the Department of Environment and Science pursuant to section 507 of the *Environmental Protection Act 1994* (**the Act**). In accordance with section 507(7) of the Act, once an enforceable undertaking is accepted, the Department is to take all reasonable steps to have proceedings (in relation to the alleged contravention the subject of the undertaking) discontinued as soon as possible.

Accordingly, in relation to the complaint made and filed with the Bowen Magistrates Court by the complainant, Mr Black, on 5 September 2018, the complainant offers no evidence in respect of the charge under section 357I. We **enclose** a copy of the complaint for convenience. In those circumstances, we ask the Court to please vacate the hearing dates.

Neither the prosecution nor the defendant seeks any costs in respect of the proceeding.

In light of this correspondence, would you please advise whether the Court is prepared to dismiss the complaint without the need for any appearances from the parties.

Alternatively, should the Court wish for the parties to appear, we ask whether the matter could please be listed for mention and leave be granted for the prosecution and defence to appear by telephone for the mention.

Should you wish to discuss further please contact me on 3330 6184 or anne-maree.ireland@des.qld.gov.au.

Kind regards

Anne-Maree Ireland
Principal Lawyer, Litigation Branch

Published on DES Disclosure Log
RTI Act 2009

Date : 24/05/2019 10:46:04 AM
From : [REDACTED] s.73 @ashurst.com
To : "IRELAND Anne-Maree"
Subject : RE: Black v APBC [BD-AUS.20255284.1000-031-311.FID3715864]
Attachment : image001.png;image002.png;image003.png;

Great, thanks Annie.

[REDACTED] s.73
Senior Associate
[REDACTED] s.73 @ashurst.com

Ashurst

D: [REDACTED] s.73

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From: IRELAND Anne-Maree [mailto:Anne-Maree.Ireland@des.qld.gov.au]
Sent: Friday, 24 May 2019 10:45 AM
To [REDACTED] s.73
Cc [REDACTED] s.73
Subject: RE: Black v APBC [BD-AUS.20255284.1000-031-311.FID3715864]

Hi [REDACTED] s.73

Thank you, those amendments are fine. I just have to run to a meeting but will send as soon as I return and copy you in.

Thanks
Annie



Anne-Maree Ireland
Principal Lawyer
Litigation Branch | Environmental Services and Regulation
Department of Environment and Science

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From: [REDACTED] (6) Personal info ashurst.com [REDACTED] (6) Personal info @ashurst.com>
Sent: Friday, 24 May 2019 10:29 AM
To: IRELAND Anne-Maree; Roxane.Read@ashurst.com
Cc: sch4p4 [REDACTED] (6) Personal information @ashurst.com
Subject: RE: Black v APBC [BD-AUS.20255284.1000-031-311.FID3715864]

Hi Annie

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Kind regards

[REDACTED] s.73
[REDACTED] s.73
Senior Associate
[REDACTED] s.73 @ashurst.com

Ashurst

D: [REDACTED] s.73

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Sent: Tuesday, 21 May 2019 1:52 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Black v APBC

Hi [REDACTED], so sorry – we have been having some trouble with Windows 10 upgrading. Please see if it is **attached** now.

Thanks and apologies
Annie

From: [REDACTED] @ashurst.com [[mailto:\[REDACTED\]@ashurst.com](mailto:[REDACTED]@ashurst.com)]
Sent: Tuesday, 21 May 2019 1:27 PM
To: IRELAND Anne-Maree
Cc: [REDACTED] @ashurst.com; [REDACTED] @ashurst.com
Subject: RE: Black v APBC

Dear Annie

Thank you for your email.

It does not appear that the draft letter was attached to your email. Could you please send us a copy?

Kind regards

[REDACTED]

Lawyer
[REDACTED] @ashurst.com

Ashurst

D: + [REDACTED]

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From: IRELAND Anne-Maree [<mailto:Anne-Maree.Ireland@des.qld.gov.au>]
Sent: Tuesday, 21 May 2019 12:14 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: Black v APBC

Dear [REDACTED]

We refer to the above matter.

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Would you please advise if your client consents to the email letter or mark up any proposed changes.

Kind regards
Annie



Anne-Maree Ireland
Principal Lawyer
Litigation Branch | Environmental Services and Regulation
Department of Environment and Science

P 07 3330 6184 | F 07 3330 5634
Level 7, 400 George Street, Brisbane Qld 4000
GPO Box 2454, Brisbane Qld 4001

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Date : 21/05/2019 1:26:47 PM
From : [REDACTED] s.73 ashurst.com
To : "IRELAND Anne-Maree"
Cc : "[REDACTED] s.73 @ashurst.com" , [REDACTED] s.73 @ashurst.com"
Subject : RE: Black v APBC
Attachment : image001.png;image002.png;

Dear Annie

Thank you for your email.

It does not appear that the draft letter was attached to your email. Could you please send us a copy?

Kind regards

[REDACTED] s.73

Lawyer

[REDACTED] s.73 ashurst.com

Ashurst

D: [REDACTED] s.73

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T: +61 7 3259 7000 | F: +61 7 3259 7111 | DX 388 Brisbane
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MOST INNOVATIVE LAW FIRM (INTERNATIONALLY HEADQUARTERED LAW FIRMS), FT INNOVATIVE LAWYERS AWARDS ASIA-PACIFIC 2018
[Read more](#)

From: IRELAND Anne-Maree [mailto:Anne-Maree.Ireland@des.qld.gov.au]
Sent: Tuesday, 21 May 2019 12:14 PM
To: (6) Personal info 67456
Cc: Wilson, Paul 67193; Ammundsen, Caroline 67098
Subject: Black v APBC

Dear [REDACTED] Personal info

We refer to the above matter.

Please find **attached** a draft letter (and enclosure) to the Bowen Magistrates Court in relation to discontinuing the prosecution for your review and consideration.

Would you please advise if your client consents to the email letter or mark up any proposed changes.

Kind regards
Annie



Anne-Maree Ireland
Principal Lawyer
Litigation Branch | Environmental Services and Regulation
Department of Environment and Science

P 07 3330 6184 | F 07 3330 5634
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18-501 File C Page 93 of 139

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Date : 23/05/2019 10:21:00 AM

From : [REDACTED]@ashurst.com

To : "IRELAND Anne-Maree"

Cc : "[REDACTED]@ashurst.com" , "[REDACTED]@ashurst.com"

Subject : RE: Black v APBC

Attachment : image002.png;

Hi Annie

Just by way of update, we are in the process of obtaining instructions on the draft letter and we will get back to you as soon as we can.

Kind regards

[REDACTED]
s.73

Lawyer

[REDACTED]@ashurst.com

Ashurst

D: [REDACTED] s.73

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From: IRELAND Anne-Maree [mailto:Anne-Maree.Ireland@des.qld.gov.au]

Sent: Tuesday, 21 May 2019 1:52 PM

To: [REDACTED] s.73

Cc: [REDACTED]

Subject: RE: Black v APBC

Hi [REDACTED] so sorry – we have been having some trouble with Windows 10 upgrading. Please see if it is **attached** now.

Thanks and apologies

Annie

From: [REDACTED]@ashurst.com [mailto:[REDACTED]@ashurst.com]

Sent: Tuesday, 21 May 2019 1:27 PM

To: IRELAND Anne-Maree

Cc: [REDACTED]@ashurst.com; [REDACTED]@ashurst.com

Subject: RE: Black v APBC

Dear Annie

Thank you for your email.

It does not appear that the draft letter was attached to your email. Could you please send us a copy?

Kind regards

[REDACTED]
s.73

[REDACTED]
s.73

Lawyer

(6) Personal info ashurst.com

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D: [REDACTED] s.73

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[Read more](#)

From: IRELAND Anne-Maree [mailto:Anne-Maree.Ireland@des.qld.gov.au]

Sent: Tuesday, 21 May 2019 12:14 PM

To: [REDACTED] 67456

Cc: [REDACTED] s.73

Subject: Black v APBC

Dear (6) Personal info

We refer to the above matter.

Please find **attached** a draft letter (and enclosure) to the Bowen Magistrates Court in relation to discontinuing the prosecution for your review and consideration.

Would you please advise if your client consents to the email letter or mark up any proposed changes.

Kind regards
Annie



Anne-Maree Ireland
Principal Lawyer
Litigation Branch I Environmental Services and Regulation
Department of Environment and Science

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Date : 9/05/2019 10:40:22 AM

From : "WELLS Melissa"

To : "CAGNEY Justin"

Cc : "IRELAND Anne-Maree"

Subject : RE: ESR ALERT - Enforceable Undertaking to be accepted from Abbot Point Bulkcoal Pty Ltd under section 507 of the Environmental Protection Act 1994.

Attachment : image001.png;image003.png;

Justin I think the alert needs a point to mention the PIN, its value and what the EU will do i.e. \$100k monitoring equipment similar to the media release



Melissa Wells
Executive Director
Coal and Central Qld Compliance
Department of Environment and Science

P 07 4987 9343

99 Hospital Road, Emerald QLD 4720
PO Box 3028, Emerald QLD 4720

From: CAGNEY Justin <Justin.Cagney@des.qld.gov.au>

Sent: Thursday, 9 May 2019 10:02 AM

To: WELLS Melissa

Cc: IRELAND Anne-Maree

Subject: ESR ALERT - Enforceable Undertaking to be accepted from Abbot Point Bulkcoal Pty Ltd under section 507 of the Environmental Protection Act 1994.

Melissa,

Draft alert below for your review and escalation as you see fit.

ALERT CATEGORY:

- Enforcement activity.

ALERT NAME:

- Enforceable Undertaking to be accepted from Abbot Point Bulkcoal Pty Ltd under section 507 of the *Environmental Protection Act 1994*.

CUSTOMER DETAILS:

- Abbot Point Bulkcoal Pty Ltd (APBC).
- Abbot Point Coal Terminal, Bowen, Lot 48 on SP243724, Lot 49 on SP243724, Lot 50 on SP243721, Lot 51 on SP243721, Lot 52 on SP243721, Lot 3 on SP227557, Lot 4 on SP227557, Lot 58 on SP240224 and Lot 49 on SP185904.
- Contact: [REDACTED] s.73 – Chief Executive Officer, Abbot Point Bulkcoal Pty Ltd.
- Environmental Authority (EA) EPPR00577113.

SUMMARY OF ISSUE/S:

- On 5 September 2018, prosecution proceedings were commenced against APBC for one offence of failing to comply with a condition of a temporary emissions licence, contrary to section 357I of the *Environmental Protection Act 1994*.
- The matter is listed for a five day hearing before the Bowen Magistrates Court on **22 July 2019**.
- APBC operates the Abbot Point Coal Terminal (the Terminal) under environmental authority EPPR00577113 which authorises it to conduct environmental relevant activities 50(1a) for bulk material handling and 63(1b)(i) for sewage treatment.
- The Terminal is located in Central Queensland, approximately 25km north of Bowen and has been in operation since 1984.
- The offence relates to a release during Tropical Cyclone (TC) Debbie in March 2017 from an authorised discharge location named W2. At the sampling point, total suspended solids were measured at 806mg/L and 834mg/L which exceeded the temporary emissions licence limit of 100mg/L.
- On 26 April 2019, the Department of Environment and Science (DES) received an application for an enforceable undertaking from APBC under section 507 of the *Environmental Protection Act 1994* in relation to the matter.

POTENTIAL IMPACTS / RISKS:

- In accordance with section 507 of the *Environmental Protection Act 1994*, if DES decides to accept the enforceable undertaking, the department must take all reasonable steps to have the current proceedings discontinued as soon as possible.
- DES must also publish a copy of the enforceable undertaking on its website.
- There is significant public interest in the Abbot Point Coal Terminal, particularly in relation to release events and compliance with the environmental authority for the site.

DEPARTMENT ACTIONS:

18-501

[HISTORICAL ACTIONS]

- On 11 September 2018, DES issued ABPC with a 2018/19 Pre Wet Season Preparedness Letter, inviting APBC to submit information detailing any changes or improvements to on site water management systems or infrastructure that have been undertaken since the 2017/18 wet season.
- On 13 December 2018, DES attended a meeting at Abbot Point Coal Terminal. During the meeting, APBC provided an overview of operations at the coal terminal and a detailed briefing on the water management system improvements being implemented at the site. APBC has invested significantly in undertaking major upgrades to the water management system on site.
- DES is currently undertaking a monitoring program in the Caley Valley Wetland to identify and describe any adverse impacts on environmental values as a result of activities conducted at the Abbot Point Coal Terminal.
- DES officers most recently attended the Caley Valley Wetlands on 5 and 6 March 2019 to continue sampling in accordance with the monitoring program.
- DES has commenced prosecution proceedings against APBC for the offence of contravening a condition of a temporary emissions licence (TEL) during TC Debbie in March 2017. The matter was mentioned in the Bowen Magistrates Court on 5 March 2019, where the matter was listed for a five day hearing commencing 22 July 2019.

[PLANNED ACTIONS]

- On 10 May 2019, DES will accept the enforceable undertaking from APBC under section 507 of the *Environmental Protection Act 1994*.

LOCALITY DETAILS AND PHOTOGRAPHS:

- Abbot Point Coal Terminal is situated at the Port of Abbot Point, approximately 25 kilometres north-west of Bowen, Central Queensland.

KEY COMMUNICATION MESSAGES:

- As an alternative to prosecution, an enforceable undertaking seeks to achieve environmental outcomes. Such outcomes are often of greater value than any fine which may have been imposed by a Court.
- In accordance with the Act, DES will now take steps to discontinue the prosecution. DES expects Abbot Point Bulkcoal Pty Ltd to fully comply with the undertaking and will monitor its compliance. Failing to comply with the undertaking attracts significant penalties.

CONTACT DETAILS:

- Name: Melissa Wells, Executive Director, Coal and Central Queensland Compliance.
- Phone number: (07) 4987 9343.
- Division: Environmental Services and Regulation.

**This email is an initial alert in respect of this matter.
If further advice or action is required, it will be communicated via normal channels such as a briefing note.**

END

Date : 21/05/2019 11:09:03 AM

From : "VOGES-HAUG Bianca"

To : "CAGNEY Justin"

Cc : "NARDO Charles" , "DEHAAN Rebecca" , "IRELAND Anne-Maree" , "CAMERON Samantha" , "Public Register"

Subject : RE: Urgent request for update to Enforcement Register

Attachment : Enforceable Undertaking_MAN19900_Abbot Point Bulkcoal Pty Ltd.pdf;image001.png;image006.jpg;image002.png;image003.png;

Hi Justin,

I have added the metadata to your provided PDF - Enforceable Undertaking (MAN19900), see attached.

We are now progressing to Web Services for publishing, pending Omar's approval. I will brief Omar this morning to let him know it's coming and is urgent.

It should be available on the web tomorrow if all goes to plan, but we will keep you updated.

Public Register Inbox – Please note, we are taking urgent carriage of this matter. I have spoken to Samuel Hedge this morning.

Any questions, please let me know.

Kind regards,



Bianca Voges-Haug
A/Team Leader
Intelligence & GIS Team
Regulatory Support
Department of Environment and Science

P 07 3330 6029
Level 9, 400 George Street, Brisbane QLD 4000
GPO Box 2454, Brisbane QLD 4001

From: CAGNEY Justin <Justin.Cagney@des.qld.gov.au>

Sent: Monday, 20 May 2019 5:12 PM

To: Public Register

Cc: VOGES-HAUG Bianca; NARDO Charles; DEHAAN Rebecca; IRELAND Anne-Maree

Subject: Urgent request for update to Enforcement Register

Hi Team,

I have today accepted and issued the Notice of Decision for an enforceable undertaking (attached).

It is a requirement of the EP Act (s507) that the enforceable undertaking be published on the department's website. I understand from speaking with Communication Services, that the appropriate location for the publishing of this document is within the Enforcement Register on the DES website (consistent with the other enforceable undertakings accepted by the department to date).

There is likely to be media interest in relation to this enforceable undertaking and an expectation that the document is available on the department's website, as required by the legislation.

I am seeking an urgent update to the Enforcement Register on the DES website, to include this enforceable undertaking as soon as possible please.

I would appreciate advice as to the expected timeframe for the document to be successfully published please.

Thank you.

Regards,



Justin Cagney
Program Manager Compliance
Coal and Central Queensland Compliance
Department of Environment and Science

P 07 4837 3318
209 Bolsover Street Rockhampton 4700
PO Box 413 Rockhampton 4700

Notice

Environmental Protection Act 1994

Decision to accept an Enforceable Undertaking

This notice is issued by the administering authority pursuant to section 507 of the Environmental Protection Act 1994 to advise of a decision made on an enforceable undertaking.

Abbot Point Bulkcoal Pty Ltd ACN 010 183 534
Level 15, 10 Eagle Street
BRISBANE QLD 4000

Your reference:

Our reference: CR78081

16 May 2019

Take notice: that under the provisions of the *Environmental Protection Act 1994* (the Act) this notice advising of the decision to accept an Enforceable Undertaking is issued to Abbot Point Bulkcoal Pty Ltd ACN 010 183 534 (you) by the administering authority. The administering authority is the Chief Executive of the Department of Environment and Science (the department).

This notice is issued with respect to your activities at the following locations:

- on land described as Lot 48 on SP243721 and Lot 22 on SP271830, situated at the Abbot Point Coal Terminal in Bowen, Queensland;
- at the location of stormwater discharge from discharge location W2 to waters.

A. Application details

On 13 May 2019, the department received an Enforceable Undertaking Application (the application) from you.

The application included the Application form – Enforceable Undertaking and Attachment – the proposed Enforceable Undertaking.

The objectives of the Enforceable Undertaking are stated to be to:

- Improve environmental monitoring at the site;
- Deliver benefits to the environment and the local community;
- Promote the object of the Act.

B. Material considered by the department in making the decision

In making the decision, the department had before it:

- *Environmental Protection Act 1994*;
- Environmental Authority EPPR00577113;
- Guideline: Enforceable Undertakings under the *Environmental Protection Act 1994*;
- Completed Application form dated 13 May 2019;
- Attachment 1 dated 13 May 2019;
- Complaint and Summons filed with the Bowen Magistrates Court on 5 September 2018;
- Enforcement Guidelines.

C. Application of legislation to the decision

Section 507 of the *Environmental Protection Act 1994* provides that:

- The administering authority may accept a written undertaking (Enforceable Undertaking) made by a person in relation to a contravention or alleged contravention by the person of the *Environmental Protection Act 1994*, other than an indictable offence; and
- The administering authority must give the person written notice of the administering authority's decision to accept or reject the Enforceable Undertaking, and the reasons for the decision.
- If the administering authority decides to accept the enforceable undertaking, the administering authority must publish a copy of the undertaking on the administering authority's website.

D. Decision

The department has decided to accept your application for an Enforceable Undertaking. The approved Enforceable Undertaking is attached to this decision notice.

E. Reasons for the decision

1. The alleged contravention the subject of the Enforceable Undertaking is not an indictable offence.
2. The alleged contravention is the subject of a complaint before the Bowen Magistrates Court. Whilst the prosecution proceedings are at an advanced stage, proceedings have not yet ended and the likely outcome of the prosecution proceedings (if successful) would not better achieve the object of the *Environmental Protection Act 1994*.
3. You promptly notified the department about the incident.
4. You had no motivation or intention to obtain a financial or material benefit from the incident and no known environmental harm was caused from the incident.
5. You are committed to preventing further incidents in relation to discharges of stormwater from the site including by the commissioning of a number of improvements to the site's water management infrastructure to mitigate and manage water from high intensity and sustained rainfall events.

Notice

Decision to accept an Enforceable Undertaking

6. You have demonstrated your ability to make and deliver on your commitments through improvements already made to water management infrastructure at the site. You have committed to completing additional works to further improve the water management infrastructure at the site.
7. The cost to you for the improvements to the site's water management infrastructure has been significant and demonstrates the seriousness within which you have treated the incident and your commitment to prevent future releases.
8. You have given an undertaking to install an automatic water quality station (AWQS) for real-time recording of any future stormwater discharges from the site at discharge location W2.
9. Operation of a AWQS at discharge location W2 will provide for collection of data in direct response to stormwater discharges and will facilitate informed management and mitigation strategies where necessary, to secure compliance with the Act and enhance protection of the environment.

F. Additional information

Obligations under the Act

In addition to the requirements of the Enforceable Undertaking and the conditions imposed, you must also meet your obligations under the *Environmental Protection Act 1994*, and associated regulations. For example:

- you must comply with the following provisions of the Act:
 - general environmental duty (section 319); and
 - duty to notify of environmental harm (sections 320 - 320G);
- you must also ensure that you do not commit offences in relation to the *Environmental Protection Act 1994*, including but not limited to, the following:
 - causing serious or material environmental harm (sections 437 - 439);
 - causing environmental nuisance (section 440);
 - depositing prescribed water contaminants in waters and related matters (section 440ZG); and
 - placing a contaminant where environmental harm or nuisance may be caused (section 443).

Should you have any queries in relation to this notice, please contact Alisha Stewart, Compliance Delivery Manager (Mackay) of the department, on telephone number (07) 4999 6885 or email

Alisha.stewart@des.qld.gov.au.

sch4p4(6) Personal information

16 May 2019

Date

Justin Cagney
Program Manager Compliance
Delegate of the Chief Executive
Department of Environment and Science
Environmental Protection Act 1994

Enquiries:

Level 1 22-30 Wood Street
MACKAY QLD 4740
Ph: (07) 4999 6883
Email: cwes_mackay@des.qld.gov.au

ATTACHMENT 1

Enforceable undertaking

Abbot Point Bulkcoal Pty Ltd

ACN 010 183 534

Published on DES Disclosure Log
RTI Act 2009

2019

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THIS ENFORCEABLE UNDERTAKING is made on 13 May 2019

This enforceable undertaking is submitted to the Department of Environment and Science by Abbot Point Bulkcoal Pty Ltd ACN 010 183 534 of Level 15, 10 Eagle Street Brisbane, Queensland 4000.

1. **DEFINITIONS**

The following definitions apply in this document.

Act means the *Environmental Protection Act 1994* (Qld).

AWQS means automatic water quality station.

Corporation means Abbot Point Bulkcoal Pty Ltd ACN 010 183 534.

Department means the Department of Environment and Science.

EA means environmental authority EPPR00577113.

Guideline means the *Guideline – Enforceable undertakings under the Environmental Protection Act 1994* ESR/2016/2272 Version 2.00.

NQBP means North Queensland Bulk Ports Corporation.

PIN means penalty infringement notice No. 200000040442385 dated 20 July 2017.

Proceedings means the proceedings commenced by the Department against the corporation in the Bowen Magistrates Court by the complaint of Robert James Black dated 5 September 2018.

TEL means amended temporary emissions licence ENEL07198317 dated 28 March 2017.

Terminal means the Abbot Point Coal Terminal.

Undertaking means this enforceable undertaking made pursuant to Chapter 10, Part 5 of the Act.

2. **BACKGROUND**

- (a) The corporation is the holder of the EA, which has been issued in relation to activities at the Terminal.
- (b) The EA relevantly authorises discharges to waters from discharge location W2 if the discharges meet the specified quality criteria.

3. **ALLEGED CONTRAVENTION**

- (a) The complaint and summons filed by the Department in the Bowen Magistrates Court on 5 September 2018 alleges that the corporation "failed to comply with a condition of a temporary emissions licence, contrary to section 357I of the *Environmental Protection Act 1994*".
- (b) The particulars of the complaint and summons allege a failure to comply with condition TEL1 of the TEL.

4. **CIRCUMSTANCES OF THE CONTRAVENTION**

- (a) On 24 March 2017, the corporation applied for a temporary emissions licence in relation to its activities at the Terminal, due to predictions of a major rainfall event associated with Tropical Cyclone Debbie.

- (b) The Department issued a temporary emissions licence to the corporation on 27 March 2017, and the TEL to the corporation on 28 March 2017.
- (c) Relevantly, the TEL authorised a temporary increase of the EA quality criteria for total suspended solids to 100mg/L at discharge location W2.
- (d) Following Tropical Cyclone Debbie, sampling results from the primary rising stage sample bottle at W2 indicated elevated suspended solids of 806mg/L.
- (e) The Department alleges a release to waters from release location W2 pursuant to section 357I of the Act, however, this Undertaking does not constitute an admission of guilt on behalf of the Corporation.
- (f) Neither the Department nor the Corporation is aware of any environmental impacts arising as a result of the alleged contravention.

5. ACTIONS TAKEN TO PREVENT RECURRENCE OF THE ALLEGED CONTRAVENTION

- (a) As previously communicated to the Department, the corporation has continuously improved its water management infrastructure to further mitigate and manage water from high intensity and/or sustained rainfall events, including:
 - (i) improving sediment removal from primary and secondary settlement ponds to facilitate improved runoff capture and retention periods, allowing for more sediment to drop out of suspension;
 - (ii) reducing the catchment area surrounding the settlement ponds to the west and south west, by use of a clean water diversion to reduce the volume of clean water that reports to the settlement ponds (partially complete); and
 - (iii) upgrading the secondary settlement pond spillway.
- (b) A further package of works to continue improving the corporation's water management infrastructure, and further manage water from high intensity and/or sustained intense rainfall events, is currently underway. The works include:
 - (i) significantly increasing the size of pumping capabilities, along with the sump and drainage system capacities in the surrounding surge bin areas;
 - (ii) reducing the catchment surrounding surge bin areas, by use of a clean water diversion to reduce the volume of clean water that reports to the water management infrastructure surrounding the surge bin;
 - (iii) increasing the capacity of the primary and secondary settlement ponds and western drain;
 - (iv) installing a diversion bund along the western lease boundary to:
 - (A) reduce the overall catchment size of the site;
 - (B) act as an all-weather access road to authorised discharge location W1; and
 - (v) installing an earth-fill finger bund extending out into the secondary sediment pond, to increase the flow path of water within the pond and allow greater opportunity for sediment to drop out of suspension.

6. **OBJECTIVES**

The objectives of this Undertaking are to:

- (a) improve environmental monitoring at the Terminal;
- (b) deliver benefits to the environment and local community; and
- (c) promote the objects of the Act.

7. **TERMS OF THE UNDERTAKING**

The corporation must:

- (a) within six weeks of the date of this Undertaking, have met with representatives of NQBP to seek consent for the installation of an AWQS on lot 22 on SP271830; and
- (b) within six months of obtaining consent pursuant to clause 7(a), install an AWQS on lot 22 on SP271830 capable of recording the pH and flow of a release from the Terminal at discharge location W2, at an approximate cost to the corporation of \$100,000. The AWQS will collect data in direct response to releases, and facilitate informed management and mitigation strategies where necessary, to secure compliance with the Act and enhance the protection of the Environment. The AWQS, which will provide for real time monitoring of water flows at the discharge location may include, for example:
 - (i) hydrolab sonde with sensors and cable;
 - (ii) level-pro sensor, tubing and bubbler;
 - (iii) data logger and terminal strip;
 - (iv) ISCO carousel autosampler including peristaltic pump;
 - (v) modem, batteries, cabling, solar panel, frame and housing; and
 - (vi) engineered concrete formwork and channelling.

The corporation will be responsible for determining the final design of the AWQS;

- (c) provide an interim progress report to the Department three months after the date of this Undertaking; and
- (d) provide a final compliance report to the Department within one month of completion of all activities.

8. **WHY UNDERTAKING IS A MORE APPROPRIATE RESPONSE TO THE ALLEGED CONTRAVENTION THAN COURT PROCEEDING**

- (a) The factors that led to the alleged contravention have ceased, and preventative actions have been, and are being taken as set out in clause 5.
- (b) This Undertaking is a commitment by the corporation to take active steps to address the Department's concerns in respect of the alleged contravention, improve environmental monitoring and deliver benefits to the environment and local community.
- (c) As such, this Undertaking will result in a net benefit to the environment and the community.

- (d) This is a better overall outcome than a court imposed sanction such as a fine, and in the corporation's submission better achieves the objects of the Act.
- (e) This Undertaking is also a more efficient means of resolving the matter, as it will save the parties time and resources associated with resolving the matter in court.

9. **ACKNOWLEDGEMENTS**

- (a) The corporation acknowledges that:
 - (i) It has read and understood the Guideline;
 - (ii) this Undertaking will be published on the Department's website and may be referred to or referenced in other ways;
 - (iii) the Department's acceptance of this Undertaking means that the Department:
 - (A) must take all reasonable steps to have the Proceedings discontinued as soon as practicable; and
 - (B) will not recommence proceedings against the corporation for the alleged contravention described in clause 3 as long as the corporation is fully complying, or has fully complied, with the Undertaking;
 - (iv) the Department's acceptance of this Undertaking does not affect the Department's power to:
 - (A) bring proceedings against the person;
 - (B) issue penalty infringement notices; or
 - (C) take any other enforcement action against the person;
 in relation to any subsequent contravention or alleged contravention of the Act, that is not the subject of an undertaking;
 - (v) this Undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this proposal or arising from subsequent conduct;
 - (vi) it has offered an undertaking in the terms set out in this approved form;
 - (vii) the Undertaking does not take effect until the Department gives the corporation notice of the decision to accept the Undertaking.
- (b) The corporation and the Department acknowledge that the date of the Undertaking is the date on which the notice of the decision to accept the Undertaking is given.

10. **ABILITY TO COMPLY WITH THE UNDERTAKING**

- (a) The corporation has the financial ability to comply with the terms of this Undertaking.
- (b) In the event of impending liquidation or sale of the corporation, the corporation will advise the Department of the relevant circumstances and its capacity to comply with the outstanding terms of this Undertaking.

- (c) In the event the corporation is sold, the corporation will advise any future owners or operators of the existence of this Undertaking, and provide a copy of this correspondence to the Department.

11. CONTACT DETAILS

- (a) Any written notification to the Department pursuant to this Undertaking is to be provided to:

Melissa Wells
Executive Director, Coal and Central Qld Compliance, Department of
Environment and Science
GPO Box 2454
BRISBANE QLD 4001

Email: melissa.wells@des.qld.gov.au

- (b) Any written notification to the corporation pursuant to this Undertaking is to be provided to:

s.73
Director, Abbot Point Bulkcoal Pty Ltd
Level 15, 10 Eagle Street
BRISBANE QLD 4000

Email: s.73 @adani.com.au

12. EXECUTION

**SIGNED by ABBOT POINT BULKCOAL
PTY LTD in the presence of:**

Signature of party

Signature of witness

Name

**ACCEPTED by DEPARTMENT OF
ENVIRONMENT AND SCIENCE in the
presence of:**

Signature of witness

Name

Date : 21/05/2019 12:39:33 PM

From : "CAGNEY Justin"

To : "VOGES-HAUG Bianca"

Cc : "NARDO Charles" , "DEHAAN Rebecca" , "IRELAND Anne-Maree" , "CAMERON Samantha" , "MACINTYRE Aislinn"

Subject : Re: Urgent request for update to Enforcement Register

Attachment : image004.png;image005.png;image007.png;image008.jpg;

Hi Bianca,

Thank you to all involved.

The timely turnaround is very much appreciated.

Thank you.

Regards,

null

Justin Cagney

Program Manager Compliance

Coal and Central Queensland Compliance

Department of Environment and Science

P [07 4837 3318](tel:0748373318)

[209 Bolsover Street Rockhampton 4700](#)

PO Box 413 Rockhampton 4700

On 21 May 2019, at 12:24 pm, VOGES-HAUG Bianca <Bianca.Vogeshaug@des.qld.gov.au> wrote:

Hi Justin,

The public Enforcement Register has now been updated as requested. See here: <https://apps.des.qld.gov.au/enforcement-tools/?id=MAN19900>

Any questions, let me know.

Kind regards,

<image004.png>

Bianca Voges-Haug

A/Team Leader

Intelligence & GIS Team

Regulatory Support

Department of Environment and Science

P 07 3330 6029

Level 9, 400 George Street, Brisbane QLD 4000

GPO Box 2454, Brisbane QLD 4001

From: VOGES-HAUG Bianca

Sent: Tuesday, 21 May 2019 11:09 AM

To: CAGNEY Justin

Cc: NARDO Charles; DEHAAN Rebecca; IRELAND Anne-Maree; CAMERON Samantha; Public Register

Subject: RE: Urgent request for update to Enforcement Register

Hi Justin,

I have added the metadata to your provided PDF - Enforceable Undertaking (MAN19900), see attached.

We are now progressing to Web Services for publishing, pending Omar's approval. I will brief Omar this morning to let him know it's coming and is urgent.

It should be available on the web tomorrow if all goes to plan, but we will keep you updated.

Public Register Inbox Please note, we are taking urgent carriage of this matter. I have spoken to Samuel Hedge this morning.

Any questions, please let me know.

Kind regards,

File C

Page 110 of 139

<image005.png> **Bianca Voges-Haug**
A/Team Leader
Intelligence & GIS Team
Regulatory Support
Department of Environment and Science

P 07 3330 6029
Level 9, 400 George Street, Brisbane QLD 4000
GPO Box 2454, Brisbane QLD 4001

From: CAGNEY Justin <Justin.Cagney@des.qld.gov.au>
Sent: Monday, 20 May 2019 5:12 PM
To: Public Register
Cc: VOGES-HAUG Bianca; NARDO Charles; DEHAAN Rebecca; IRELAND Anne-Maree
Subject: Urgent request for update to Enforcement Register

Hi Team,

I have today accepted and issued the Notice of Decision for an enforceable undertaking (attached).

It is a requirement of the EP Act (s507) that the enforceable undertaking be published on the department's website. I understand from speaking with Communication Services, that the appropriate location for the publishing of this document is within the Enforcement Register on the DES website (consistent with the other enforceable undertakings accepted by the department to date).

There is likely to be media interest in relation to this enforceable undertaking and an expectation that the document is available on the department's website, as required by the legislation.

I am seeking an urgent update to the Enforcement Register on the DES website, to include this enforceable undertaking as soon as possible please.

I would appreciate advice as to the expected timeframe for the document to be successfully published please.

Thank you.

Regards,

<image007.png> **Justin Cagney**
Program Manager Compliance
Coal and Central Queensland Compliance
Department of Environment and Science

P 07 4837 3318
209 Bolsover Street Rockhampton 4700
PO Box 413 Rockhampton 4700

<[image008.jpg](#)>

Application form

Environmental Protection Act 1994

Enforceable Undertaking

This form must be used to submit a proposed enforceable undertaking to the Department of Environment and Science (the department) pursuant to Chapter 10, Part 5 of the Environmental Protection Act 1994 (the Act).

For further information please refer to the Enforceable Undertakings Statutory Guideline (ESR/2016/2272).

Once a decision on the application is made, the department will issue a notice informing the applicant if the enforceable undertaking is accepted or rejected. If the department decides to accept the enforceable undertaking, the decision notice will be issued with the enforceable undertaking in the approved form to be signed by the Applicant and the department. The contents of this application will be used to draft the enforceable undertaking.

ENFORCEABLE UNDERTAKING

The objectives in this proposal for an undertaking are submitted to the department for consideration by: Abbot Point Bulkcoal Pty Ltd ACN 010 183 534 (the corporation).

COMMENCEMENT OF UNDERTAKING

An enforceable undertaking commences on the date that the department signs the corporation's enforceable undertaking. Upon the enforceable undertaking taking effect, the enforceable undertaking commences as a legally binding agreement between the department and the applicant.

SECTION 1: GENERAL INFORMATION

1. Details of the applicant proposing an enforceable undertaking

NAME – INDIVIDUAL OR AUTHORISED CONTACT PERSON (if applicant is a company)	
s.73	Director, Abbot Point Bulkcoal Pty Ltd
COMPANY NAME Abbot Point Bulkcoal Pty Ltd	ACN (if relevant) ACN 010 183 534
RESIDENTIAL OR REGISTERED COMPANY ADDRESS (not a post office box) Level 15, 10 Eagle Street, Brisbane Queensland 4000	PHONE +61 7 4786 0332 s.73

POSTAL ADDRESS (if different from above) As above	FACSIMILE N/A
EMAIL s.73 @adani.com.au	
ENVIRONMENTAL AUTHORITY PERMIT NUMBER (relevant to this enforceable undertaking, if applicable) EPPR00577113	SUITABLE OPERATOR NUMBER (if applicable) 401618
ENVIRONMENTAL AUTHORITY HOLDER'S NAME (relevant to this enforceable undertaking, if applicable) Abbot Point Bulkcoal Pty Ltd ACN 010 183 534	
ACTIVITY DETAILS (if no relevant environmental authority) N/A	

SECTION 2: ALLEGED CONTRAVENTION

2.1 Detail the alleged contravention (press 'enter' at the end of each statement to create a new row):

2.1.1 The complaint and summons filed by the Department in the Bowen Magistrates Court on 5 September 2018 alleges that the corporation "failed to comply with a condition of a temporary emissions licence, contrary to section 357I of the Environmental Protection Act 1994".

2.1.2 The particulars of the complaint and summons allege a failure to comply with condition TEL1 of the temporary emissions licence.

2.1.3 On 24 March 2017, the corporation applied for a temporary emissions licence in relation to its activities at the Abbot Point Coal Terminal (Terminal) due to predictions of a major rainfall event associated with Tropical Cyclone Debbie.

2.1.4 The Department issued a temporary emissions licence to the corporation on 27 March 2017, and the amended temporary emissions licence (TEL) to the corporation on 28 March 2017.

2.1.5 Relevantly, the TEL authorised a temporary increase of the EA quality criteria for total suspended solids to 100mg/L at discharge location W2.

2.1.6 Following Tropical Cyclone Debbie, sampling results from the primary rising stage sample bottle at W2 indicated elevated suspended solids of 806mg/L.

2.1.7 The Department alleges a release to waters from release location W2 pursuant to section 357I of the Environmental Protection Act 1994, however, this Enforceable Undertaking does not constitute an admission of guilt on behalf of the corporation.

2.1.8 Neither the Department nor the corporation is aware of any environmental impacts arising as a result of the alleged contravention.

2.2 Detail the conduct or events surrounding the alleged contravention (press 'enter' at the end of each statement to create a new row):

2.2.1 Please refer to Attachment 1.

2.2.2 <Enter details>

2.2.3 <Enter details>

2.3 Description of any land affected by the alleged contravention (including land on which the alleged contravention occurred and any impacted land):

LOCATION OF LAND (E.G. STREET ADDRESS OR GEOGRAPHICAL COORDINATES) Abbot Point Coal Terminal, Bowen, QLD	
LOT PLAN Lot 48 SP243721 and Lot 22 SP271830	WHOLE/PART Part
TENURES N/A	

2.4 Landowner/landholder details (if location of contravention is not a site owned or leased by the applicant or the person/company they are representing)

LANDOWNER/LANDHOLDER NAME(S) North Queensland Bulk Ports Corporation	
CONTACT PERSON'S NAME s.73 Commercial Manager	

2.5 Detail the environmental harm (including potential harm) as a consequence of the alleged contravention detailed at section 2 (press 'enter' at the end of each statement to create a new row):

2.5.1 Please refer to Attachment 1.

2.5.2

2.6 Detail the consultation undertaken in relation to this proposed enforceable undertaking (press 'enter' at the end of each statement to create a new row):

2.6.1 Representatives from both the corporation and the Department have undertaken a consultative process in relation to this proposed enforceable undertaking.

2.6.2 Representatives of the corporation have also consulted with North Queensland Bulk Ports Corporation.

SECTION 3: ACKNOWLEDGMENTS AND STATEMENTS

3.1 Acknowledgement that an alleged contravention occurred, as detailed in section 2:

The corporation acknowledges that a contravention is alleged to have occurred, as detailed in section 2 and Attachment 1.

3.2 Statement of regret that the alleged contravention occurred:

The circumstances described are regrettable and this is reflected by the range of improvement works that are being undertaken. This is also acknowledgement by the corporation that it operates in an important coastal environment, and it always strives to take active steps to protect it.

3.3 Statement of reasons why the person considers an enforceable undertaking is a more appropriate response to the alleged contravention than a court imposed sanction:

Please refer to Attachment 1.

3.4 Statement of commitment that the behaviour, activities and other factors which caused or led to the alleged contravention has ceased and will not reoccur:

Please refer to Attachment 1.

3.5 Statement of any action that has been undertaken to prevent the alleged contravention:

Please refer to Attachment 1.

3.6 Acknowledgment of the guideline published by the department for the acceptance of an enforceable undertaking:

I have read and understood:

Guideline: Enforceable undertakings under the Environmental Protection Act 1994 (ESR/2016/2272)

Dated: Version 2.0, dated 21 July 2016.

3.7 Acknowledgment that an enforceable undertaking will be published on the department's website and may be publicised elsewhere:

The corporation acknowledges that:

3.7.1 This undertaking will be published on the department's website and may be referred to or referenced in other ways (including in newspapers or media releases).

3.8 Acknowledgment that proceedings will be brought against the person for the contraventions of an enforceable undertaking:

The corporation acknowledges that:

3.8.1 As provided for in section 508(2) of the Act, the department's acceptance of an undertaking means that proceedings will not be brought by the department against the person for the contraventions alleged in section 2 of this proposal, as long as the person subject to the relevant enforceable undertaking is fully complying, or has fully complied, with the undertaking.

3.8.2 If the person withdraws an undertaking before it has been fulfilled, proceedings may be brought for the offences constituted by the contraventions alleged in section 2 of this proposal for an undertaking.

3.8.3 The department's acceptance of this proposal for an undertaking does not affect the department's power to:

3.8.3.1 bring proceedings against the person;

3.8.3.2 issue penalty infringement notices; or

3.8.3.3 take any other enforcement action against the person;

in relation to any subsequent contravention or alleged contravention of the Act, that is not the subject of an undertaking. This is regardless of whether or not the subsequent contravention or alleged contravention involves a provision of the Act that is referred to in section 2 of this proposal.

3.9 Acknowledgment that this proposal for an undertaking does not derogate from other rights and remedies:

The corporation acknowledges that this proposal for an undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this proposal or arising from subsequent conduct.

3.10 Acknowledgment that an enforceable undertaking has been offered to the department:

The corporation acknowledges that:

3.10.1 They have offered an undertaking in the terms set out in this approved form.

3.10.2 This proposed undertaking does not take effect until the department gives the person who made the proposal for an undertaking notice of the decision to accept the proposal on terms satisfactory to the department. The person and the department acknowledge that the date of the undertaking is the date on which the notice of the decision to accept the undertaking is given.

3.11 Statement of the person's ability to comply with the terms of any undertaking and meet the projected costs of the activities:

3.11.1 The corporation has the financial ability to comply with the terms proposed for the undertaking and have provided evidence by way of confirmation provided in section 10 of Attachment 1 with this application to support this declaration.

3.11.2 In the event of impending liquidation or sale of the entity, the corporation will advise the department of the relevant circumstances and its capacity to comply with the outstanding terms of this undertaking.

3.11.3 In the event that the entity is sold, the corporation will advise any future owners or operators of the existence of this undertaking, and provide a copy of this correspondence to the department.

3.12 Statement of relationship with any corporations, officers, employees, contractors, proposed beneficiaries of donations or scholarship or other recipient of financial benefit contained in this proposal:

Note: If a financial benefit is to be given to a person any relationship between the applicant for the enforceable undertaking and the person receiving the financial benefit must be disclosed here.

3.13 Acknowledgment that communications regarding this enforceable undertaking must state that an enforceable undertaking is in effect:

The corporation acknowledges that any public communications regarding any of the actions contained within this undertaking must clearly link the actions to the undertaking and state that the undertaking was entered into as a result of a contravention or alleged contravention of the Act.

3.14 Acknowledgment that the person may be required to provide a statutory declaration:

The department has requested a statutory declaration outlining details of any prior convictions or findings of guilt under the Environmental Protection Act 1994 or a corresponding law¹ whether in Queensland or elsewhere:

☐ YES ☒ NO

The statutory declaration is attached (if applicable):

☐ YES ☐ NO

3.15 Statement of commitment from the person to participate constructively in all compliance monitoring activities for this undertaking:

- 3.15.1 It is acknowledged that responsibility for demonstrating compliance with this undertaking rests with the person.
- 3.15.2 Evidence to demonstrate compliance with the terms will be provided to the department within two business days after the due date.
- 3.15.3 The evidence provided to demonstrate compliance with this undertaking will be retained by the person until advised by the department that this undertaking has been completely discharged.
- 3.15.4 It is acknowledged that any failure to meet the due date for a term will result in the matter being escalated and may lead to enforcement action.
- 3.15.5 It is acknowledged that the department may undertake other compliance monitoring activities to verify the evidence and compliance with a term, and the applicant agrees to cooperate with the department in any investigation or compliance activity in respect of the enforceable undertaking such as site access and provision of documents upon reasonable notice.

SECTION 4: KEY OBJECTIVES

4. This enforceable undertaking is a binding agreement that aims to (press 'enter' at the end of each statement to create a new row):

- 4.1 Improve environmental monitoring at the Terminal;
- 4.2 Deliver benefits to the environment and local community; and
- 4.3 Promote the objects of the Act.

SECTION 5: TERMS

5.1 Please refer to Attachment 1 for the terms of this enforceable undertaking.

ACTIVITIES		COST	TIMEFRAME
5.2.1.1	Meet with representatives of NQPB to seek consent for the installation of an AWQS on lot 22 on SP271830	\$-	Within six months of the date of this undertaking

¹ Corresponding law means under a law of the Commonwealth or another State that provides for the same or similar matters as the Environmental Protection Act 1994.

Approved form
Enforceable undertaking

5.2.1.2	<p>Install an AWQS on lot 22 on SP271830 capable of recording the pH and flow of a release from the Terminal at discharge location W2. The AWQS will collect data in direct response to releases, and facilitate informed management and mitigation strategies where necessary, to secure compliance with the Act and enhance the protection of the Environment. The AWQS, which will provide for real time monitoring of water flows at the discharge location may include, for example:</p> <ul style="list-style-type: none"> (i) hydrolab sonde with sensors and cable; (ii) level-pro sensor, tubing and bubbler; (iii) data logger and terminal strip; (iv) ISCO carousel autosampler including peristaltic pump; (v) modem, batteries, cabling, solar panel, frame and housing; and (vi) engineered concrete formwork and channelling. <p>The corporation will be responsible for determining the final design of the AWQS</p>	\$100,000	Within six months of obtaining consent pursuant to section 5.2.1.1
5.2.1.3	Provide an interim progress report to the Department	\$-	Within three months after the date of this undertaking
5.2.1.4	Provide a final compliance report to the Department	\$-	Within one month of completion of all activities

(press tab at the end of the last row to create new rows)

Total estimated cost of benefits for the environment	\$100,000
---	------------------

5.2 Please refer to Attachment 1 for the terms of this enforceable undertaking

ACTIVITIES		COST	TIMEFRAME
<<5.3.1.1>>	<<INSERT Activity>>	\$<<INSERT Cost>>	<<INSERT Timeframe>>
<<5.3.1.2>>	<<INSERT Activity>>	\$<<INSERT Cost>>	<<INSERT Timeframe>>
<<5.3.1.3>>	<<INSERT Activity>>	\$<<INSERT Cost>>	<<INSERT Timeframe>>

Approved form
Enforceable undertaking

--	--	--	--

(press tab at the end of the last row to create new rows)

Total estimated cost of benefits for the environment	\$<<INSERT Cost>>
---	-------------------

5.3 Please refer to Attachment 1 for the terms of this enforceable undertaking

ACTIVITIES		COST	TIMEFRAME
<<5.4.1.1>>	<<INSERT Activity>>	\$<<INSERT Cost>>	<<INSERT Timeframe>>
<<5.4.1.2>>	<<INSERT Activity>>	\$<<INSERT Cost>>	<<INSERT Timeframe>>
<<5.4.1.3>>	<<INSERT Activity>>	\$<<INSERT Cost>>	<<INSERT Timeframe>>

(press tab at the end of the last row to create new rows)

Total estimated cost of benefits for the environment	\$<<INSERT Cost>>
---	-------------------

5.4 Please refer to Attachment 1 for the terms of this enforceable undertaking

5.1.1 >

<INSERT person> agrees to pay the department's costs associated with this undertaking, as itemised below, and it is acknowledged that payment is due 30 days after receipt of the department's invoice:

- Administrative costs \$-
- Legal costs \$-
- Compliance monitoring costs \$-
- Publication costs \$-
- Total recoverable costs \$-**

SECTION 6: CERTIFICATION

As per section 481 of the Act it is an offence to state anything to an authorised person that you know is false or misleading in a material particular or omit from a statement made to an authorised person anything without which the statement is, to your knowledge, misleading in a material particular.

I declare that the information provided is true and correct.

INDIVIDUAL OR ENTITY NAME:

Abbot Point Bulkcoal Pty Ltd ACN 010 183 534

NAME and POSITION TITLE (if applicant is company)

s.73

SIGNATURE

If signing on behalf of company, by signing this application form I declare I am authorised to sign on behalf of this company:

Abbot Point Bulkcoal Pty Ltd
DATE

24 April 2019

s.73

FURTHER INFORMATION

The latest version of the Enforceable Undertaking Guideline and other publications referenced in this document can be found at www.des.qld.gov.au using the relevant publication number (ESR/2016/2272) as a search term.

DEFINITIONS

Where there is inconsistency between the definition of terms here and the terms used in the Act, the terms in the Act apply.

Act means the Environmental Protection Act 1994

Administering authority is the Chief Executive of the Department of Environment and Science

Authorised person is generally an employee of the Department of Environment and Science who has been appointed as an authorised person under the Environmental Protection Act 1994

Company means the corporation proposing this enforceable undertaking

Department means the Department of Environment and Science

Local affected community means the residents of the impacted area the subject of this enforceable undertaking

Non-compliance /contravene means a breach or failure to comply with

Person means the individual/corporation (legal entity) proposing this enforceable undertaking

Proceedings means a legal or other action or proceeding

Undertaking means this enforceable undertaking made pursuant to Chapter 10, Part 5 of the Act

Please return your completed enforceable undertaking to:

Post:

Courier or hand delivery:

Litigation Unit
Department of Environment and Science
GPO Box 2454, BRISBANE QLD 4001

Litigation Unit
Department of Environment and Science
Level 3, 400 George Street, BRISBANE QLD 4001
Hours: 8.30 am—5.00 pm business days

Enquiries:

Litigation Unit
Phone: 07 3330 5535
Email: litigation.unit@des.qld.gov.au

Privacy statement

The department is committed to protecting the privacy, accuracy and security of your personal information in accordance with the Information Privacy Act 2009. The department is collecting your personal information to determine whether to accept or reject your enforceable undertaking under section 507 of the Act. The information will only be accessed by authorised employees within the department and will not be given to any other person or agency unless you have given us permission or we are authorised or required by law. However, if your enforceable undertaking is accepted, the undertaking including your name, address and ABN/ACN will be publically available on the department's website. This disclosure is authorised by section 507(5) of the Act. Additionally, the information supplied on this form may be disclosed publicly in accordance with the Right to Information Act 2009 and Evidence Act 1977. For queries about privacy matters email: privacy@des.qld.gov.au or telephone: 13 QGOV (13 74 68).

ATTACHMENT 1

Enforceable undertaking

Abbot Point Bulkcoal Pty Ltd

ACN 010 183 534

Published on DES Disclosure Log
RTI Act 2009

2019

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THIS ENFORCEABLE UNDERTAKING is made on 24 April 2019

This enforceable undertaking is submitted to the Department of Environment and Science by Abbot Point Bulkcoal Pty Ltd ACN 010 183 534 of Level 15, 10 Eagle Street Brisbane, Queensland 4000.

1. DEFINITIONS

The following definitions apply in this document.

Act means the *Environmental Protection Act 1994* (Qld).

AWQS means automatic water quality station.

Corporation means Abbot Point Bulkcoal Pty Ltd ACN 010 183 534.

Department means the Department of Environment and Science.

EA means environmental authority EPPR00577113.

Guideline means the *Guideline – Enforceable undertakings under the Environmental Protection Act 1994* ESR/2016/2272 Version 2.00.

NQBP means North Queensland Bulk Ports Corporation.

PIN means penalty infringement notice No. 200000040442385 dated 20 July 2017.

Proceedings means the proceedings commenced by the Department against the corporation in the Bowen Magistrates Court by the complaint of Robert James Black dated 5 September 2018.

TEL means amended temporary emissions licence ENEL07198317 dated 28 March 2017.

Terminal means the Abbot Point Coal Terminal.

Undertaking means this enforceable undertaking made pursuant to Chapter 10, Part 5 of the Act.

2. BACKGROUND

- (a) The corporation is the holder of the EA, which has been issued in relation to activities at the Terminal.
- (b) The EA relevantly authorises discharges to waters from discharge location W2 if the discharges meet the specified quality criteria.

3. ALLEGED CONTRAVENTION

- (a) The complaint and summons filed by the Department in the Bowen Magistrates Court on 5 September 2018 alleges that the corporation "failed to comply with a condition of a temporary emissions licence, contrary to section 357I of the *Environmental Protection Act 1994*".
- (b) The particulars of the complaint and summons allege a failure to comply with condition TEL1 of the TEL.

4. CIRCUMSTANCES OF THE CONTRAVENTION

- (a) On 24 March 2017, the corporation applied for a temporary emissions licence in relation to its activities at the Terminal, due to predictions of a major rainfall event associated with Tropical Cyclone Debbie.

- (b) The Department issued a temporary emissions licence to the corporation on 27 March 2017, and the TEL to the corporation on 28 March 2017.
- (c) Relevantly, the TEL authorised a temporary increase of the EA quality criteria for total suspended solids to 100mg/L at discharge location W2.
- (d) Following Tropical Cyclone Debbie, sampling results from the primary rising stage sample bottle at W2 indicated elevated suspended solids of 806mg/L.
- (e) The Department alleges a release to waters from release location W2 pursuant to section 357I of the Act, however, this Undertaking does not constitute an admission of guilt on behalf of the Corporation.
- (f) Neither the Department nor the Corporation is aware of any environmental impacts arising as a result of the alleged contravention.

5. **ACTIONS TAKEN TO PREVENT RECURRENCE OF THE ALLEGED CONTRAVENTION**

- (a) As previously communicated to the Department, the corporation has continuously improved its water management infrastructure to further mitigate and manage water from high intensity and/or sustained rainfall events, including:
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The objectives of this Undertaking are to:

- (a) improve environmental monitoring at the Terminal;
- (b) deliver benefits to the environment and local community; and
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The corporation must:

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The corporation will be responsible for determining the final design of the AWQS;

- (c) provide an interim progress report to the Department three months after the date of this Undertaking; and
- (d) provide a final compliance report to the Department within one month of completion of all activities.

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 - (i) it has read and understood the Guideline;
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 - (A) must take all reasonable steps to have the Proceedings discontinued as soon as practicable; and
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 - (A) bring proceedings against the person;
 - (B) issue penalty infringement notices; or
 - (C) take any other enforcement action against the person;
 in relation to any subsequent contravention or alleged contravention of the Act, that is not the subject of an undertaking;
 - (v) this Undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this proposal or arising from subsequent conduct;
 - (vi) it has offered an undertaking in the terms set out in this approved form;
 - (vii) the Undertaking does not take effect until the Department gives the corporation notice of the decision to accept the Undertaking.
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11. CONTACT DETAILS

- (a) Any written notification to the Department pursuant to this Undertaking is to be provided to:

Melissa Wells
Executive Director, Coal and Central Qld Compliance, Department of
Environment and Science
GPO Box 2454
BRISBANE QLD 4001

Email: melissa.wells@des.qld.gov.au

- (b) Any written notification to the corporation pursuant to this Undertaking is to be provided to:

s.73
Director, Abbot Point Bulkcoal Pty Ltd
Level 15, 10 Eagle Street
BRISBANE QLD 4000

Email: s.73@adani.com.au

12. EXECUTION

SIGNED by **ABBOT POINT BULKCOAL
PTY LTD** in the presence of:

Signature of party

Signature of witness

Name

ACCEPTED by **DEPARTMENT OF
ENVIRONMENT AND SCIENCE** in the
presence of:

Signature of party

Signature of witness

Name

Date : 20/05/2019 5:11:32 PM

From : "CAGNEY Justin"

To : "Public Register"

Cc : "VOGES-HAUG Bianca" , "NARDO Charles" , "DEHAAN Rebecca" , "IRELAND Anne-Maree"

Subject : Urgent request for update to Enforcement Register

Attachment : MAN19900.pdf;image001.png;image003.jpg;image002.png;

Hi Team,

I have today accepted and issued the Notice of Decision for an enforceable undertaking (attached).

It is a requirement of the EP Act (s507) that the enforceable undertaking be published on the department's website. I understand from speaking with Communication Services, that the appropriate location for the publishing of this document is within the Enforcement Register on the DES website (consistent with the other enforceable undertakings accepted by the department to date).

There is likely to be media interest in relation to this enforceable undertaking and an expectation that the document is available on the department's website, as required by the legislation.

I am seeking an urgent update to the Enforcement Register on the DES website, to include this enforceable undertaking as soon as possible please.

I would appreciate advice as to the expected timeframe for the document to be successfully published please.

Thank you.

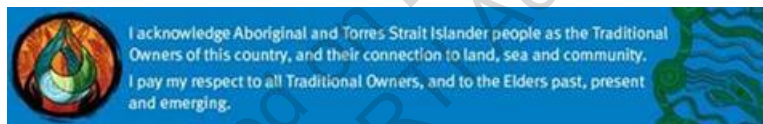
Regards,



Justin Cagney
Program Manager Compliance
Coal and Central Queensland Compliance
Department of Environment and Science

P 07 4837 3318

209 Bolsover Street Rockhampton 4700
PO Box 413 Rockhampton 4700



Notice

Environmental Protection Act 1994

Decision to accept an Enforceable Undertaking

This notice is issued by the administering authority pursuant to section 507 of the Environmental Protection Act 1994 to advise of a decision made on an enforceable undertaking.

Abbot Point Bulkcoal Pty Ltd ACN 010 183 534
Level 15, 10 Eagle Street
BRISBANE QLD 4000

Your reference:

Our reference: CR78081

16 May 2019

Take notice: that under the provisions of the *Environmental Protection Act 1994* (the Act) this notice advising of the decision to accept an Enforceable Undertaking is issued to Abbot Point Bulkcoal Pty Ltd ACN 010 183 534 (you) by the administering authority. The administering authority is the Chief Executive of the Department of Environment and Science (the department).

This notice is issued with respect to your activities at the following locations:

- on land described as Lot 48 on SP243721 and Lot 22 on SP271830, situated at the Abbot Point Coal Terminal in Bowen, Queensland;
- at the location of stormwater discharge from discharge location W2 to waters.

A. Application details

On 13 May 2019, the department received an Enforceable Undertaking Application (the application) from you.

The application included the Application form – Enforceable Undertaking and Attachment – the proposed Enforceable Undertaking.

The objectives of the Enforceable Undertaking are stated to be to:

- Improve environmental monitoring at the site;
- Deliver benefits to the environment and the local community;
- Promote the object of the Act.

B. Material considered by the department in making the decision

In making the decision, the department had before it:

- *Environmental Protection Act 1994*;
- Environmental Authority EPPR00577113;
- Guideline: Enforceable Undertakings under the *Environmental Protection Act 1994*;
- Completed Application form dated 13 May 2019;
- Attachment 1 dated 13 May 2019;
- Complaint and Summons filed with the Bowen Magistrates Court on 5 September 2018;
- Enforcement Guidelines.

C. Application of legislation to the decision

Section 507 of the *Environmental Protection Act 1994* provides that:

- The administering authority may accept a written undertaking (Enforceable Undertaking) made by a person in relation to a contravention or alleged contravention by the person of the *Environmental Protection Act 1994*, other than an indictable offence; and
- The administering authority must give the person written notice of the administering authority's decision to accept or reject the Enforceable Undertaking, and the reasons for the decision.
- If the administering authority decides to accept the enforceable undertaking, the administering authority must publish a copy of the undertaking on the administering authority's website.

D. Decision

The department has decided to accept your application for an Enforceable Undertaking. The approved Enforceable Undertaking is attached to this decision notice.

E. Reasons for the decision

1. The alleged contravention the subject of the Enforceable Undertaking is not an indictable offence.
2. The alleged contravention is the subject of a complaint before the Bowen Magistrates Court. Whilst the prosecution proceedings are at an advanced stage, proceedings have not yet ended and the likely outcome of the prosecution proceedings (if successful) would not better achieve the object of the *Environmental Protection Act 1994*.
3. You promptly notified the department about the incident.
4. You had no motivation or intention to obtain a financial or material benefit from the incident and no known environmental harm was caused from the incident.
5. You are committed to preventing further incidents in relation to discharges of stormwater from the site including by the commissioning of a number of improvements to the site's water management infrastructure to mitigate and manage water from high intensity and sustained rainfall events.

Notice

Decision to accept an Enforceable Undertaking

6. You have demonstrated your ability to make and deliver on your commitments through improvements already made to water management infrastructure at the site. You have committed to completing additional works to further improve the water management infrastructure at the site.
7. The cost to you for the improvements to the site's water management infrastructure has been significant and demonstrates the seriousness within which you have treated the incident and your commitment to prevent future releases.
8. You have given an undertaking to install an automatic water quality station (AWQS) for real-time recording of any future stormwater discharges from the site at discharge location W2.
9. Operation of a AWQS at discharge location W2 will provide for collection of data in direct response to stormwater discharges and will facilitate informed management and mitigation strategies where necessary, to secure compliance with the Act and enhance protection of the environment.

F. Additional information

Obligations under the Act

In addition to the requirements of the Enforceable Undertaking and the conditions imposed, you must also meet your obligations under the *Environmental Protection Act 1994*, and associated regulations. For example:

- you must comply with the following provisions of the Act:
 - general environmental duty (section 319); and
 - duty to notify of environmental harm (sections 320 - 320G);
- you must also ensure that you do not commit offences in relation to the *Environmental Protection Act 1994*, including but not limited to, the following:
 - causing serious or material environmental harm (sections 437 - 439);
 - causing environmental nuisance (section 440);
 - depositing prescribed water contaminants in waters and related matters (section 440ZG); and
 - placing a contaminant where environmental harm or nuisance may be caused (section 443).

Should you have any queries in relation to this notice, please contact Alisha Stewart, Compliance Delivery Manager (Mackay) of the department, on telephone number (07) 4999 6885 or email

Alisha.stewart@des.qld.gov.au.

sch4p4(6) Personal information

Justin Cagney
Program Manager Compliance
Delegate of the Chief Executive
Department of Environment and Science
Environmental Protection Act 1994

16 May 2019

Date

Enquiries:

Level 1 22-30 Wood Street
MACKAY QLD 4740
Ph: (07) 4999 6883
Email: cwes_mackay@des.qld.gov.au

ATTACHMENT 1

Enforceable undertaking

Abbot Point Bulkcoal Pty Ltd

ACN 010 183 534

Published on DES Disclosure Log
RTI Act 2009

2019

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THIS ENFORCEABLE UNDERTAKING is made on 13 May 2019

This enforceable undertaking is submitted to the Department of Environment and Science by Abbot Point Bulkcoal Pty Ltd ACN 010 183 534 of Level 15, 10 Eagle Street Brisbane, Queensland 4000.

1. **DEFINITIONS**

The following definitions apply in this document.

Act means the *Environmental Protection Act 1994* (Qld).

AWQS means automatic water quality station.

Corporation means Abbot Point Bulkcoal Pty Ltd ACN 010 183 534.

Department means the Department of Environment and Science.

EA means environmental authority EPPR00577113.

Guideline means the *Guideline – Enforceable undertakings under the Environmental Protection Act 1994* ESR/2016/2272 Version 2.00.

NQBP means North Queensland Bulk Ports Corporation.

PIN means penalty infringement notice No. 200000040442385 dated 20 July 2017.

Proceedings means the proceedings commenced by the Department against the corporation in the Bowen Magistrates Court by the complaint of Robert James Black dated 5 September 2018.

TEL means amended temporary emissions licence ENEL07198317 dated 28 March 2017.

Terminal means the Abbot Point Coal Terminal.

Undertaking means this enforceable undertaking made pursuant to Chapter 10, Part 5 of the Act.

2. **BACKGROUND**

- (a) The corporation is the holder of the EA, which has been issued in relation to activities at the Terminal.
- (b) The EA relevantly authorises discharges to waters from discharge location W2 if the discharges meet the specified quality criteria.

3. **ALLEGED CONTRAVENTION**

- (a) The complaint and summons filed by the Department in the Bowen Magistrates Court on 5 September 2018 alleges that the corporation "failed to comply with a condition of a temporary emissions licence, contrary to section 357I of the *Environmental Protection Act 1994*".
- (b) The particulars of the complaint and summons allege a failure to comply with condition TEL1 of the TEL.

4. **CIRCUMSTANCES OF THE CONTRAVENTION**

- (a) On 24 March 2017, the corporation applied for a temporary emissions licence in relation to its activities at the Terminal, due to predictions of a major rainfall event associated with Tropical Cyclone Debbie.

- (b) The Department issued a temporary emissions licence to the corporation on 27 March 2017, and the TEL to the corporation on 28 March 2017.
- (c) Relevantly, the TEL authorised a temporary increase of the EA quality criteria for total suspended solids to 100mg/L at discharge location W2.
- (d) Following Tropical Cyclone Debbie, sampling results from the primary rising stage sample bottle at W2 indicated elevated suspended solids of 806mg/L.
- (e) The Department alleges a release to waters from release location W2 pursuant to section 357I of the Act, however, this Undertaking does not constitute an admission of guilt on behalf of the Corporation.
- (f) Neither the Department nor the Corporation is aware of any environmental impacts arising as a result of the alleged contravention.

5. ACTIONS TAKEN TO PREVENT RECURRENCE OF THE ALLEGED CONTRAVENTION

- (a) As previously communicated to the Department, the corporation has continuously improved its water management infrastructure to further mitigate and manage water from high intensity and/or sustained rainfall events, including:
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The objectives of this Undertaking are to:

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The corporation must:

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BRISBANE QLD 4000

Email: s.73 [@adani.com.au](mailto:s.73@adani.com.au)

12. **EXECUTION**

**SIGNED by ABBOT POINT BULKCOAL
PTY LTD** in the presence of:

Signature of party

Signature of witness

Name

**ACCEPTED by DEPARTMENT OF
ENVIRONMENT AND SCIENCE** in the
presence of:

Signature of witness

Name