

## Enforceable undertaking given by Total Minerals Pty Ltd and Total Iron Pty Ltd accepted.

Entity	Total Minerals Pty Ltd (ACN 169 328 090) Total Iron Pty Ltd (ACN 167 004 104)
Issue	Whether to accept or reject a Mining Act undertaking given by Total Minerals Pty Ltd and Total Iron Pty Ltd
Legislation	Part 17A, Division 4B of the <i>Mining Act 1992</i>
Decision maker	Anthony Keon Executive Director, NSW Resources Regulator Department of Planning, Industry and Environment

### Section 378ZFB decision

As authorised by section 378ZFB of the *Mining Act 1992* (**Act**), and in accordance with the authority delegated by me the Secretary of the Department of Planning, Industry and Environment (**Department**), I, Anthony Keon, Executive Director, NSW Resources Regulator (**Regulator**), have decided to **accept** the enforceable undertaking given by Total Minerals Pty Ltd and Total Iron Pty Ltd, attached to this decision.

### Reasons for decision

#### Legislation

1. Section 378ZFG of the *Mining Act 1992* (Act) provides that:
  - a) The Secretary of the Department of Planning, Industry and Environment (**Secretary**) is the Regulator for the purposes of the *Mining Act*. The Secretary may accept a written undertaking (**an enforceable undertaking**) given by a person in connection with a matter relating to a contravention or alleged contravention by the person of the Act.
  - b) The giving of an enforceable undertaking does not constitute an admission of guilt by the person giving it in relation to the contraventions or alleged contraventions to which the undertaking relates.
  - c) The Secretary must issue, and make public, general guidelines for or in relation to the acceptance of an enforceable undertaking under this Act.

2. Section 378ZFH of the Act provides that no proceedings for a contravention or alleged contravention of the Act may be brought against a person if an enforceable undertaking is in effect, or has been completely discharged, in relation to that contravention. If proceedings have already commenced when the Secretary accepts an enforceable undertaking, the Secretary must take all reasonable steps to have the proceedings discontinued as soon as possible.
3. The Secretary is required, under section 378ZFC of the Act, to give the person seeking to make an enforceable undertaking written notice of the Secretary's decision to accept or reject the enforceable undertaking and the reasons for the decision. Further, the Secretary must publish, and make public, notice of a decision to accept an enforceable undertaking and the reasons for that decision.
4. In exercising functions under the Act, the Secretary must have regard to the 'Objects' set out in section 3A of the Act.
5. The maximum penalty for failing to comply with an enforceable undertaking is \$1.1 million in the case of a corporation and \$220,000 in the case of a natural person.
6. The Secretary has issued, and published on the Regulator's website, guidelines relevant to the acceptance of Mining Act enforceable undertakings (**Guidelines**) as required by section 378ZFB(4) of the Mining Act.<sup>1</sup>

## Background

7. Castillo Copper Ltd, through its wholly owned subsidiaries, Total Minerals Pty Ltd and Total Iron Pty Ltd is the holder of Exploration Licence No. 8625 (EL 8625) and Exploration Licence No. (EL 8635). Together they form the Cangai Copper Project, located approximately 40 km west-north-west of Grafton, New South Wales.

### **Total Minerals Pty Ltd**

8. Between December 1 December 2017 and 22 November 2018, it is alleged that Total Minerals Pty Ltd contravened section 378D(1) of the Mining Act by failing to comply with a condition of its authority (EL 8625) on six (6) occasions.

### **Total Iron Pty Ltd**

9. Between 1 December 2017 and 22 November 2018, it is alleged that Total Iron Pty Ltd contravened section 378D(1) of the Mining Act by failing to comply with a condition of its authority on eleven (11) occasions.
10. On 19 December 2018 both titles were issued with a suspension notice under section 240AA of the Act in relation to the above alleged contraventions.<sup>2</sup> Following the completion of remedial actions, on 24 May 2019 the Regulator revoked the suspension notices.

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<sup>1</sup> [www.resourcesregulator.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0010/539326/Enforceable-Undertaking-Guidelines.pdf](http://www.resourcesregulator.nsw.gov.au/__data/assets/pdf_file/0010/539326/Enforceable-Undertaking-Guidelines.pdf)

<sup>2</sup> <https://www.resourcesregulator.nsw.gov.au/compliance-and-enforcement/mining-act-cancellations-and-suspensions>

## Proceeding for alleged contravention

11. Section 378ZFH(1) of the Mining Act requires that no proceedings for a contravention or alleged contravention of this Act may be brought against a person if the person has given an enforceable undertaking in relation to that contravention and the enforceable undertaking is in effect.

## Terms of Enforceable Undertaking

12. On 22 July 2019, Total Minerals Pty Ltd and Total Iron Pty Ltd submitted a signed undertaking for the consideration of the Secretary. Consistent with the Enforceable Undertaking Guidelines the proposal was developed using the pre-proposal advisory services offered by the Regulator which provided 'without prejudice' feedback on the proposed terms of the undertaking.
13. In summary, the Total Minerals Pty Ltd and Total Iron Pty Ltd enforceable undertaking will impose obligations on both companies to jointly and severally deliver the following:
- Total Minerals Pty Ltd must spend a minimum of \$60,500, excluding GST, in carrying out the terms of the enforceable undertaking.
  - Total Iron Pty Ltd must spend a minimum of \$30,500, excluding GST, in carrying out the terms of the enforceable undertaking.
14. The specific terms of the undertaking include:
- Pay \$55,000 to the Clarence Valley District NSW Rural Fire Service, for bushfire prevention and response:
    - i. Total Minerals Pty Ltd to pay \$40,000 and
    - ii. Total Iron Pty Ltd to pay \$15,000
  - Deliver compliance training to all employees and contractors of companies.
  - Commission an independent auditor to carry out an audit of the exploration leases to ensure compliance with legal requirements and conditions of authorisation.
  - Develop and implement revised quality assurance protocols to ensure exploration and activities conducted on the two leases meet, as a minimum, the requirements of the Mining Act and conditions of authorisation.
  - Pay the Regulator's costs as follows:

### **Total Minerals Pty Ltd**

- i. \$10,000 costs incurred during the investigation; and
- ii. \$1,500 costs for monitoring compliance with the undertaking.

## Total Iron Pty Ltd

- i. \$10,000 costs incurred during the investigation and
- ii. \$1,500 costs for monitoring compliance with the undertaking.

## Considerations and findings

15. Whilst under the Mining Act the giving of an enforceable undertaking does not constitute an admission of guilt, Total Minerals Pty Ltd and Total Iron Pty Ltd acknowledge the alleged contraventions of sections 378D(1) and 23A of the Act.
16. The community expects that companies such as Total Minerals Pty Ltd and Total Iron Pty Ltd are aware of their obligations under the Mining Act and associated regulations and have systems in place to ensure compliance.
17. I note that Total Minerals Pty Ltd and Total Iron Pty Ltd were subject to a suspension notice and have taken steps to rehabilitate the affected sites at a cost of about \$300,000. These remedial actions have mitigated any environmental harm and I am satisfied that these works have been completed in full.
18. I also note that Total Minerals Pty Ltd and Total Iron Pty Ltd self-reported one of the alleged offences to the Regulator and fully cooperated with the Regulator's investigation.
19. Total Minerals Pty Ltd and Total Iron Pty Ltd have further committed to implement measures, to minimise the likelihood of similar contraventions from occurring in the future.
20. In this regard, I note that Total Minerals Pty Ltd and Total Iron Pty Ltd have committed to spending \$91,000 in delivering the terms of the undertaking.
21. I am satisfied that the terms of the undertaking deliver tangible benefits to the community through the provision of \$55,000 to the Clarence Valley Rural Fire Service for bushfire prevention and response activities.
22. The compliance training and auditing components for the undertaking will enable Total Minerals Pty Ltd and Total Iron Pty Ltd to identify areas for improvement and develop systems which reinforce future compliance with the mining laws.
23. Further, the undertaking enables the Regulator to recover its investigation and monitoring costs. These terms will ensure that the Regulator, and ultimately the taxpayer, does not incur further costs, particularly in relation to investigation and legal costs, which may never fully be recouped through prosecution proceedings.
24. The quantum of \$91,000 to be paid by Total Minerals Pty Ltd and Total Iron Pty Ltd, having regard to the specific circumstances of this case, provides a significant deterrent effect and achieves better outcomes than prosecution action alone.

# Mining Act undertaking

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Reasons for decision



Planning,  
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25. I am satisfied that the enforceable undertaking given by Total Minerals Pty Ltd and Total Iron Pty Ltd meets the requirements of the Mining Act and the Enforceable Undertakings Guidelines.
26. I note that the requirement under the Mining Act to publish the undertaking and this decision, is likely to achieve a more balanced approach than prosecution action and will provide a similar level of general deterrence to successful legal proceedings.
27. Accordingly, I have determined to accept the enforceable undertaking given jointly and severally by Total Minerals Pty Ltd and Total Iron Pty Ltd.

Date of decision: **21 August 2019**

A handwritten signature in black ink, appearing to read 'Anthony Keon'.

Anthony Keon  
**Executive Director**  
**Resources Regulator**  
**Department of Planning, Industry and Environment**

## NOTE

**In accordance with section 378ZFG of the Mining Act this decision will be published on the regulator's website**

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