

October 2022

## WHS undertaking

## Notice of variation

### WHS undertaking varied by Winder Controls Australia Pty Limited

Entity	Winder Controls Australia Pty Limited
Issue	Application to vary a WHS undertaking made by Winder Controls Australia Pty Limited
Legislation	Part 11 of the Work Health and Safety Act 2011
Decision maker	Peter Day Executive Director, NSW Resources Regulator Regional NSW

### Section 221 agreement

Pursuant to section 221 of the *Work Health and Safety Act 2011*, I, Peter Day, having a delegated authority from the Secretary of Regional NSW (the Regulator), give written agreement to the varying of the WHS undertaking made by Winder Controls Australia Pty Limited (WCA) as follows:

- The timeframe for Term B-4 Project 1 is extended to within 12 months from acceptance of the WHS undertaking
- The timeframe for Term B-4 Project 2 is extended to within 24 months from acceptance of the WHS undertaking
- The timeframe for Term B-4 Project 4 is extended to within 12 months from acceptance of the WHS undertaking

All other terms and commitments within the WHS undertaking remain in force.

In accordance with section 221(3) of the WHS Act, the notice of variation of the WHS undertaking will be published on the regulator's website.

### Reasons for agreement

#### Legislation

1. The Secretary of the Department of Regional NSW (Secretary) is the Regulator for the purposes of the WHS Act. The Secretary has delegated the function under section 221 of the WHS Act to the Executive Director, Resources Regulator<sup>1</sup>.
2. Section 221 of the WHS Act relevantly states:
  - (1) *A person who has made a WHS undertaking may at any time, with the written agreement of the regulator:*
    - (a) *withdraw the undertaking, or*
    - (b) *vary the undertaking.*

<sup>1</sup> Work Health and Safety Act 2011, sch 2 cl 1(1)(b) and Work Health and Safety (Mines and Petroleum Sites) Act 2013, s 5(1).

- (2) *However, the provisions of the undertaking cannot be varied to provide for a different alleged contravention of the Act.*
  - (3) *The regulator must publish, on the regulator’s website, notice of the withdrawal or variation of a WHS undertaking.*
3. The Secretary has issued, and published on the Resources Regulator’s website, guidelines relevant to the varying of WHS undertakings (Guidelines), as required by section 230(4) of the WHS Act.

## Background

4. On 6 October 2020 at the Appin East Mine, during the removal of a winder rope from the drift winder as part of an equipment upgrade project, the head sheave pulley wheel (weighing several tonnes) dislodged from its support frame and fell approximately 13 metres to the ground below.
5. At the time a contract worker was positioned on ground level, within a taped off restricted access area, directly below the pulley wheel. The worker had to move to avoid being struck by the falling object. No injuries resulted from the incident.
6. On 7 February 2022 the Secretary’s delegate accepted a WHS undertaking from WCA.

## Reasons for variation

7. The current timeframes for Term B-4, Projects 1, 2 & 4 of Attachment A to the WHS undertaking are not achievable due to circumstances outside the control of WCA.
8. Projects 1 and 4 involve the production of animations by Coal Services. The timeframes have not been met due to the significant workload of Coal Services in 2022 including the production of several incident animations for the regulator.
9. The presentations to be delivered as part of Project 2 were unable to proceed in 2022 due to the animations, upon which the presentations were contingent, not being completed and approved for use for the presentations.
10. The variation to the timeframes of the WHS undertaking is agreed between WCA and the Regulator.

## Conclusion

11. I am satisfied that the varying of the undertaking meets the requirements of the WHS Act and the Enforceable Undertakings Guidelines.
12. Accordingly, I have determined to agree to vary the WHS undertaking made by WCA as proposed.

Date of decision: **31 October 2022**



**Peter Day**  
**Executive Director, Resources Regulator**  
**Regional NSW**

Note: In accordance with Section 221 of the Work Health and Safety Act 2011 this will be published on the Regulator’s website

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