



<b>File No:</b>	0030-2015, 1200-2015 and 2014-0047
<b>Entity:</b>	Boral Bricks Pty Ltd (ABN 66 082 448 342)
<b>Issue:</b>	Whether to accept a variation to an enforceable undertaking
<b>Legislation:</b>	<i>Mining Act 1992</i> – Part 17A, Division 4B
<b>Decision maker:</b>	Lee Shearer Deputy Secretary, Resources Regulator Coordinator General for the Central Coast Department of Planning and Environment

## Section 378ZFB decision

As authorised by section 378ZFB of the *Mining Act 1992*, and in accordance with the authority delegated to me by the Secretary of the Department of Planning and Environment, I, Lee Shearer, Deputy Secretary of the Resources Regulator and Coordinator General for the Central Coast, have decided to **agree to a variation** of the enforceable undertaking previously given by Boral Bricks Pty, as attached to this decision.

## Reasons for decision

### Legislation

1. Section 378ZFG of the *Mining Act 1992* provides that a person who has made an enforceable undertaking may, with the written agreement of the Secretary, seek to withdraw or vary that undertaking.
2. The Secretary must publish, and make public, notice and copy of the variation of an enforceable undertaking.

### Background

3. On 16 November 2016 the then Secretary of the Department of Industry accepted an enforceable undertaking proffered by Boral Bricks Pty Ltd (Boral) for alleged offences of mining without an authorisation in contravention of section 5 of the *Mining Act 1992*
4. In summary, the Boral Bricks undertaking committed to the following under the enforceable undertaking:
  - a) Cease any activity that contravenes section 5 of the Act.

- b) Undertake compliance training of relevant staff, including staff employed by related bodies corporate in NSW including Boral CSR bricks Pty Ltd. Relevant staff being those who have operational control of an extractive industry process. This training will supplement the existing Boral Group compliance training programs.
- c) Engage an independent auditor (as agreed with the department) to review all operations of Boral Bricks (and related bodies corporate) and Boral CSR Bricks Pty Ltd to determine whether appropriate authorisations are in place. The audit will also look at whether operations which are being carried out under an authorisation are complying with all issued conditions.
- d) Engage a consultant to carry out industry training and present at the NSW Institute of Quarrying (or other relevant industry body) events for 6 regions on the application of, and obligations under, the Act.
- e) The total value of these actions is estimated to be \$100,000.
- f) In addition, Boral Bricks will report to the department on the implementation of these measures quarterly.
- g) Boral Bricks will, further to these commitments, pay royalties of \$15,885 and rents and levies of \$17,671.07 to the department for mining undertaken (if any) on behalf of Boral Bricks since 1 November 2010 at Lockhart and Jindera.
- h) Boral Bricks will pay the department's costs of \$18,000 incurred during the investigation and review of the undertaking.
- i) Boral Bricks agrees to reimburse the department the sum of \$2,000 to cover costs associated with monitoring the undertaking.
- j) Boral Bricks commits to pay the above costs and fees within 42 days of the undertaking commencing.

## **Proposed variation to the undertaking**

- 5. On 19 March 2018 Boral submitted a signed amended enforceable undertaking for consideration.
- 6. Boral had previously notified the Resources Regulator that the NSW Institute of Quarrying had reduced their regions from six to four, thus making it impossible for Boral to comply with their enforceable undertaking that required them to present to six regions within the Institute. Boral confirmed that they had presented to three regions and were awaiting confirmation from the Institute for the next and final (Northern) region meeting expected to be some time in 2018.
- 7. To ensure compliance with their enforceable undertaking Boral has proposed to vary the undertaking by presenting at the four remaining regions. In lieu of the now defunct further two regions, Boral has instead proposed to publish an article in the NSW Institute of Quarrying magazine, a publication which is widely disseminated to the Institute's membership base.

## **Considerations and findings**

- 13. In determining to agree to the variation of the enforceable undertaking I note that:
  - a) The original commitment given by Boral to undertake presentations in six regions can no longer be achieved due to circumstances outside of their control.

- b) Boral have otherwise complied with all other requirements set out in the undertaking within the required timeframes.
  - c) The proposed amendment to publish an article in the NSW Institute of Quarrying magazine will likely reach a broader audience than solely a presentation to regions within the Institute alone.
  - d) The proposed amendment to the undertaking will achieve the same outcomes of the original undertaking by presenting to the NSW quarrying industry on the application and obligations of the *Mining Act 1992*.
14. Accordingly, I am satisfied that the proposed variation achieves the same outcomes and benefits as the original undertaking and will continue to deliver tangible benefits to industry and community by further strengthening the compliance of the proponent and providing educational workshops and information to industry.

Date of decision: 18 April 2018



**Lee Shearer**  
Deputy Secretary Resources Regulator  
Coordinator General for the Central Coast  
Department of Planning and Environment