

**Undertaking to the Secretary of the
Department**

Boral Limited

ACN 008 421 761

**Given for the purposes of section 378ZFB of the *Mining Act 1992*
(NSW)**

Details

Date

Background

- A The Resources Regulator within the Department of Planning and Environment (Resources and Energy) (**Department**) has responsibility for the administration and enforcement of the *Mining Act 1992* (NSW) (**Mining Act**) and associated regulations.
- B The Secretary of the Department (**Secretary**) may accept a written undertaking given by a person in connection with a matter relating to an alleged contravention of the Mining Act by the person pursuant to section 378ZFB of the Mining Act. The Department has been conducting an investigation into allegations that Boral Limited ACN 008 421 761 (**Boral**) has conducted mining operations in breach of the Mining Act at the "drift" within Lot 57 in Deposited Plan 751251 in the Parish of Belanglo in the Wingecarribee Local Government Area (**the Allegations**). The drift is located on CCL748. The alleged contravention related to works carried out as part of the closure of the mine located on CCL748, and in particular the rehabilitation of an adit located at the bottom of the drift.
- C On 1 March 2017 an officer of Boral, David Spears, gave a recorded interview at the Berrima Colliery. The drift was also inspected by inspectors from the Department on 1 March 2017.
- D On 11 April 2017, the Department issued a Notice requiring Boral to produce records and information in relation to the Allegations. Boral complied with this notice on 28 April 2017.
- E Boral acknowledges the Department's concerns in relation to the Allegations and is implementing additional preventative measures which are set out in **Annexure A** of this undertaking. Boral is of the view that an enforceable undertaking is the most effective and appropriate regulatory outcome in the circumstances, and as such will address the alleged conduct that lead to the alleged offence and to prevent the alleged conduct from occurring again.
- F Boral has offered, and the Secretary has accepted, the commitments set out in this undertaking.
- G This undertaking has been prepared in accordance with, and satisfies the specific requirements for an undertaking contained in the "Enforceable Undertaking Guidelines" prepared by the Department dated February 2017.

Agreed terms

1.1 Undertakings

Under section 378ZFB of the Mining Act, Boral has given and the Secretary has accepted the following undertakings.

1.2 Acknowledgment of contravention

Boral acknowledges:

- (a) that the Department has alleged that it has carried out mining operations in breach of Mining Act, including in contravention of section 378D of the Mining Act.
- (b) that the Department alleges that Boral acted without proper approval in clearing the Drift and therefore contravened Condition 3A of CCL748 in so far as they did not conduct the activities in accordance with their approved MOP.
- (c) that the Department allegation involves an allegation that Boral has caused harm to the environment by way of clearing vegetation in contravention of their approved MOP.

1.3 Prevention of future incidents

- (a) Boral undertakes to:
 - (i) cease any activity that is not in compliance with section 378D of the Mining Act;
 - (ii) take the actions stated in **Annexure A** to this undertaking to ensure all relevant Boral (or those of its related bodies corporate) NSW operations are in compliance with section 378D of the Mining Act; and
 - (iii) report to the Department on the implementation of each of the measures provided for in **Annexure A** on a quarterly basis until they are completed.
- (b) Boral has already implemented the following systems to ensure that the situation that gave rise to the allegations does not occur again:
 - (i) full review of all the planning and mining approvals applying to the Berrima Mine to ensure compliance;
 - (ii) an update on training of relevant staff at the Berrima Mine;
 - (iii) update of procedure for clearing of vegetation for toolbox talks.

1.4 Financial

- (a) Boral undertakes to implement the actions in **Annexure A**, to a value of at least \$90,000, but not more than \$150,000.
- (b) Boral undertakes to pay the Department's investigation costs totalling \$15,000 (excluding GST) incurred in the course of the Department's investigation into the Allegations, including the costs of reviewing this undertaking.
- (e) Boral agrees to reimburse the Department for its reasonable costs incurred in monitoring compliance with this undertaking totalling \$3000 (excluding GST).
- (f) Boral undertakes to pay the Department the amounts due under this clause 1.4 within 30 days of being issued with an invoice from the Department of Planning and Environment.

1.5 Persons Responsible

- (a) Boral nominates Greg Johnson as the contact officer responsible for monitoring and complying with the undertaking. The contact officer will report to the Department in accordance with the reporting requirements outlined at **Annexure A**.
- (b) Greg Johnson's contact details are:
 - GREG JOHNSON
 - Regional Environment Manager NSW / ACT
 - Mobile: [REDACTED]
 - Email: [REDACTED]
- (c) Greg Johnson (or such replacement person nominated by Boral to the Department in writing from time to time);
 - (i) Will be responsible for monitoring and ensuring Boral compliance with this undertaking; and
 - (ii) Will submit a written status report, setting out Boral progress with the undertaking given in **Annexure A** every 3 months (until such time as the final report has been provided to the Department).
- (d) Nicholas Harrigan, Manager Compliance Coordination (or such replacement person nominated by the Department to Boral in writing from time to time) will be the Departmental officer to whom information or documents will be submitted by Boral in connection with this undertaking.

2. Acknowledgements

- (a) Boral acknowledges that the Secretary:
 - (i) must publish, and make public, notice of a decision to accept this undertaking and the reasons for that decision;
 - (ii) may issue a media release on execution of this undertaking referring to its terms and to the concerns of the Department which led to its execution;
 - (iii) may from time to time publicly refer to this undertaking; and
 - (iv) will place a copy of the executed undertaking on the Department's public register.
- (b) Boral grants the Department a permanent, irrevocable, royalty-free, world-wide, non-exclusive licence to use, reproduce, publish, distribute, electronically transmit, electronically distribute, adapt and modify any materials developed as a result of the undertaking.
- (c) Boral acknowledges that the Secretary's acceptance of this undertaking only relates to the Department's concerns regarding the Allegations and does not affect the Department's power to investigate a contravention arising from future conduct or pursue a criminal prosecution, or to lay charges or exercise other civil or regulatory powers under the Mining Act, in relation to such future conduct.
- (d) Boral acknowledges that this undertaking does not affect the rights or remedies available to any other person or entity, other than Boral and the Department (including any successors in title), nor does it affect any other statutory obligations (other than those statutory obligations connected with the Allegations) under the Mining Act.
- (e) Boral acknowledges that this undertaking takes effect and becomes enforceable when the Secretary's decision to accept the undertaking is given to Boral or at such later date specified by the Secretary.

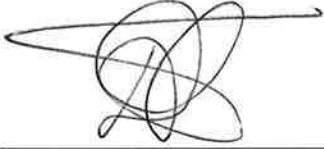
- (e) Boral acknowledges that this undertaking may only be varied in accordance with the Mining Act.
- (f) Boral acknowledges that this undertaking, as varied from time to time, will remain in force until withdrawn in accordance with the Mining Act.

Signing page

EXECUTED as an agreement.

Accepted by Boral Limited

By:



Signature of Authorised Representative

DOMINIC PAUL MILLGATE

Name of Authorised Representative

In the presence of:



Signature of Witness

AMY JILL JACKSON.

Name of Witness

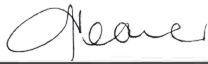
**ACCEPTED BY THE SECRETARY OF THE DEPARTMENT OF PLANNING AND ENVIRONMENT
PURSUANT TO SECTION 378ZFB OF THE MINING ACT.**

Lee Shearer

Name of the Secretary

Deputy Secretary Resources Regulator
Coordinator General Central Coast

Title of the Secretary



Signature

Date: 6 March 2018

Annexure A

Boral has done, or undertakes to do, the following (as indicated below) to a value of at least \$90,000, but not more than \$150,000:

Program	Outline of program	Completion Date
Boral community contribution	<p>Boral will contribute \$50,000 to the Wall 2 Wollondilly' (Wingecarribee reservoir wall to the confluence of the Wollondilly River) project being run by Greening Australia.</p> <p><i>Estimated cost: \$50,000</i></p>	<p>Within 8 weeks of this undertaking taking effect in accordance with clause 2(d) payment will be made.</p> <p>That Boral will within (1) month of funding of the stated projects provide evidence of payment to the Department.</p>
Boral training of operations	<p>Boral carry out training of all key management of its NSW operations which hold a mining lease in respect of the operation and compliance with conditions of mining leases.</p> <p>This training will be provided in respect of the following positions and in respect to the following operations:</p> <p>Positions:</p> <ul style="list-style-type: none"> - Mine manager - Supervisors <p>Operations:</p> <ul style="list-style-type: none"> - Berrima Shale mine (operated by Boral Cement Ltd); - Marulan South Limestone Mine (operated by Boral Cement Ltd); and - Wyee Terracotta mine (operated by Boral Montoro Pty Ltd). <p><i>Estimated cost: \$5,000</i></p>	<p>Within 6 months of this undertaking taking effect in accordance with clause 2(d).</p> <p>Boral will report the findings of this training to the Department within (1) month of the completion of the training being completed. This will include providing the following details:</p> <ul style="list-style-type: none"> - the date of the training; - evidence of who attended the training; - details of who conducted the training; and - details on the training that was undertaken (such as copy of powerpoint presentation and copies of handouts).
Boral induction training to new staff	<p>Boral will develop material to include in inductions for new staff who will have management responsibility in respect of operations that have an authorisation under the Mining Act that apply to them.</p> <p><i>Estimated cost: \$5,000</i></p>	<p>Within 6 months of this undertaking taking effect in accordance with clause 2(d) Boral to provide a copy of the induction material to the Department.</p>
Boral Undertakes to carry out audits of the following operations by an auditor	<p>Boral and the Department will agree on an independent auditor to carry out an independent audit of all the</p>	<p>Within 6 months of this undertaking taking effect in accordance with clause 2(d)</p>

Program	Outline of program	Completion Date
<p>agreed to by the Department, The audit will cover these operations:</p> <ul style="list-style-type: none"> - Berrima Shale mine (operated by Boral Cement Ltd); - Marulan South Limestone Mine (operated by Boral Cement Ltd); and - Wyee Terracotta mine (operated by Boral Montoro Pty Ltd). 	<p>following NSW operations to ensure compliance against the conditions of any authorisations under the Mining Act, including compliance in respect of operations against the conditions in the relevant Mine Operations Plans.</p> <p><i>Estimate cost: \$50,000</i></p>	<p>Boral to provide a copy of the audit report to the Department.</p>
<p>Boral will audit its internal compliance programs.</p>	<p>Boral will audit its internal compliance programs to ensure that they adequately address the requirement to comply with the provisions of the Mining Act.</p> <p><i>Estimate cost: \$5,000</i></p>	<p>Within 6 months of this undertaking taking effect in accordance with clause 2(d) Boral to provide a copy of the audit to the Department.</p>

Annexure B - Plan of Area that has been cleared (shown in green)

