

**Undertaking to the Secretary of the
Department**

Boral Bricks Pty Limited

ABN 66 082 448 342

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

Details

Date

Background

- A The Division of Resources and Energy within the Department of Industry, Skills and Regional Development (**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 a contravention or 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 Bricks Pty Limited ABN 66 082 448 342 (**Boral Bricks**) has conducted mining activities in breach of the Mining Act (including in contravention of section 5) at various locations, including Morgan's Clay Pit at Lockhart, Lot 1 DP 1153001 (**Lockhart**), Jervois Shale Deposit, Part 3/883808, and Part 11/862965 (**Jervois**) and Jindera Brickworks, Lot 4 DP 581243 (**Jindera**), (**the Allegations**).
- C Boral Bricks was the mine operator of Lockhart and Jindera until 1 May 2015, at which time the East Coast brick operations (including activities at Lockhart and Jindera) were transferred to Boral CSR Bricks Pty Ltd (ABN 68 168 794 821).
- D Boral Bricks has not been the mine operator for Jervois since 2001.
- E On 16 December 2014, the Department issued a Notice under s.248B(1) of the Mining Act (**Notice**) requiring Boral Bricks to produce records and information in relation to Lockhart. On 21 May 2015, the Department issued a second Notice requesting information in relation to various sites, including Jindera and Jervois, as well as Andersons Clay Deposit, Andersons Shale Deposit, and Coorabin Kaolin Clay Deposit. Boral Bricks complied with these notices on 30 January and 25 June 2015 respectively.
- F On 16 December 2015, the Department issued another Notice requiring Boral Bricks to produce records and information in relation to Jindera and Jervois. Boral Bricks complied with this notice on 29 January 2016 and 6 May 2016 respectively.
- G Boral Bricks 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 Bricks 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.
- H Boral Bricks has offered, and the Secretary has accepted, the commitments set out in this undertaking.
- I 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 March 2016.

Agreed terms

1.1 Undertakings

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

1.2 Acknowledgment of contravention

Boral Bricks acknowledges that the Department has alleged that it has carried out mining operations in breach of Mining Act, including in contravention of section 5 of the Mining Act.

1.3 Prevention of future incidents

Boral Bricks undertakes to:

- (a) cease any activity that is not in compliance with section 5 of the Mining Act;
- (b) take the actions stated in **Annexure A** to this undertaking to ensure all relevant Boral Bricks' (or those of its related bodies corporate) NSW operations are in compliance with section 5 of the Mining Act; and
- (c) 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.

1.4 Financial

- (a) Boral Bricks undertakes to implement the actions in Annexure A, up to a total amount of \$100,000
- (b) Boral Bricks undertakes to pay royalties of \$15,885 and rents and levies of \$17,671.07 to the Department for mining undertaken (if any) by or on behalf of Boral Bricks since 1 November 2010 at Lockhart and Jindera.
- (c) Boral Bricks undertakes to pay the Department's investigation costs totalling \$18,000 (excluding GST) incurred in the course of the Department's investigation into the Allegations, including the costs of reviewing this undertaking.
- (e) Boral Bricks agrees to reimburse the Department for its reasonable costs incurred in monitoring compliance with this undertaking totalling \$2000 (excluding GST).
- (f) Boral Bricks undertakes to pay the Department the amounts due under this clause 1.4 within 42 days from the date on which all parties have signed this undertaking.

1.5 Persons Responsible

- (a) Boral Bricks nominates Wayne Manners (Executive General Manager WA / NT and Boral Building Products) 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) Wayne Manners (or such replacement person nominated by Boral Bricks to the Department in writing from time to time);

- (i) Will be responsible for monitoring and ensuring Boral Bricks compliance with this undertaking; and
 - (ii) Will submit a written status report, setting out Boral Bricks progress with the undertaking given in Annexure A every 3 months (until such time as the final report has been provided to the Department).
- (c) David Muxlow, Manager Compliance Coordination (or such replacement person nominated by the Department to Boral Bricks in writing from time to time) will be the Departmental officer to whom information or documents will be submitted by Boral Bricks in connection with this undertaking.

2. Acknowledgements

- (a) Boral Bricks 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 Bricks 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.
- (c) Boral Bricks acknowledges that this undertaking does not affect the rights or remedies available to any other person or entity, other than Boral Bricks 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.
- (d) Boral Bricks acknowledges that this undertaking takes effect and becomes enforceable when the Secretary's decision to accept the undertaking is given to Boral Bricks or at such later date specified by the Secretary.
- (e) Boral Bricks acknowledges that this undertaking may only be varied in accordance with the Mining Act.
- (f) Boral Bricks 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 Bricks Pty Ltd in accordance with section 127 of the Corporations Act 2001 (Cth)



Signature of Director



Signature of Director/Company Secretary

JOSEPH GOOSS

Name of Director (print)

DOMINIC PAUL MILLGATE

Name of Director/Company Secretary (print)

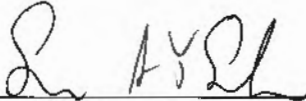
ACCEPTED BY THE SECRETARY OF THE DEPARTMENT OF TRADE AND INVESTMENT, REGIONAL INFRASTRUCTURE AND SERVICES PURSUANT TO SECTION 378ZFB OF THE MINING ACT.

SIMON SMITH

Name of the Secretary (block letters)

Secretary

Title of the Secretary (block letters)



Signature

Date: 16/11/16

Annexure A

Boral Bricks has done, or undertakes to do, the following (as indicated below) to a maximum value of \$100,000:-

Program	Outline of program	Completion Date
Boral Bricks compliance training	<p>Boral Bricks will carry out training on the applicable requirements of the Mining Act for all employees who have operational control (such as quarry managers, quarry supervisors and senior managers of business units with such personnel reporting to them) of an extractive industry process which extracts scheduled minerals from the earth. This will be via amendment or supplement to Boral Group existing compliance-training programs.</p> <p><i>Estimated cost: \$5,000</i></p>	<p>Boral Bricks will, within 6 months of this undertaking taking effect in accordance with clause 2(d), report to the Department the exact number of staff trained as well as details of the training undertaken.</p>
Boral Bricks audit of operations	<p>Boral Bricks and the Department will agree an independent auditor to carry out independent audit of all NSW operations operated by Boral Bricks (or any of its related bodies corporate) to extract scheduled minerals from the earth to confirm whether a mining authority is required and, if required and such authority:</p> <ul style="list-style-type: none"> • is in place, whether Boral Bricks (or the relevant related body corporate) is complying with all applicable authority conditions; or • is not in place, whether Boral Bricks (or the relevant related body corporate) is taking steps to obtain the required authority. <p><i>Estimated cost: \$35,000</i></p>	<p>Within 6 months of this undertaking taking effect in accordance with clause 2(d).</p> <p>Boral Bricks will report the findings of this independent audit to the Department within (1) month of the completion of the audit</p>
Boral CSR Bricks Pty Ltd – compliance training	<p>Boral Bricks will pay for training on the requirements of the Mining Act for all relevant Boral CSR Bricks Pty Ltd personnel (noting that Boral CSR Bricks Pty Ltd has agreed in writing to this occurring) who have operational control (such as quarry managers,</p>	<p>Boral Bricks will, within 6 months of this undertaking taking effect in accordance with clause 2(d), report to the Department the exact number of staff trained as well as details of the training</p>

Program	Outline of program	Completion Date
	<p>quarry supervisors and senior managers of business units with such personnel reporting to them) of an extractive industry process which extracts scheduled minerals from the earth.</p> <p><i>Estimated cost:\$5,000</i></p>	undertaken.
Boral CSR Bricks Pty Ltd – audit of operations	<p>Boral Bricks will pay for an independent auditor (as agreed between Boral Bricks and the Department) to carry out an independent audit of all NSW operations operated by Boral CSR Bricks Pty Ltd (noting that Boral CSR Bricks Pty Ltd has agreed in writing to this occurring) that extract scheduled minerals from the earth to confirm whether a mining authority is required and, if required and such authority:</p> <ul style="list-style-type: none"> • is in place, whether Boral CSR Bricks Pty Ltd is complying with all applicable authority conditions; or • is not in place, whether Boral CSR Bricks Pty Ltd is taking steps to obtain the required authority. <p>If this offer is accepted, Boral Bricks will pay for the provision of this audit.</p> <p><i>Estimated cost:\$35,000</i></p>	<p>Within 6 months of this undertaking taking effect in accordance with clause 2(d).</p> <p>Boral CSR Bricks Pty Ltd will report the findings of the independent audit to the Department within (1) month of the completion of the audit</p>
Provision of industry training	<p>Boral Bricks will pay for an external consultant (the consultant to be selected after consultation with the Department) to present at the NSW Institute of Quarrying (or other relevant industry body) events for at least 6 regions on the application and obligations of the Mining Act.</p> <p><i>Estimated cost: \$20,000</i></p>	<p>Within 12 months of this undertaking taking effect in accordance with clause 2(d). with status reporting every 3 months in line with clause 1.5(a)(2)</p>