
Mining Act undertaking

Reason for decision



Enforceable undertaking given by Marble Craft and Granite Supplies Pty Ltd accepted

Entity	Marble Craft and Granite Supplies Pty Ltd (ACN 167 536 414)
Issue	Whether to accept or reject a Mining Act undertaking given by Marble Craft and Granite Supplies Pty Ltd
Legislation	Part 17A, Division 4B of the <i>Mining Act 1992</i>
Decision maker	Peter Day Executive Director, NSW Resources Regulator Department of Regional NSW

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 Regional New South Wales (**Department**), I, Peter Day, Executive Director, NSW Resources Regulator (**Regulator**), have decided to **accept** the enforceable undertaking given by Marble Craft and Granite Supplies Pty Ltd, attached to this decision.

Reasons for decision

Legislation

- Section 378ZFB of the Act provides that:
 - The Secretary of the Department (**Secretary**) is the Regulator for the purposes of the 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 this Act.
 - 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.
 - The Secretary must issue, and make public, general guidelines for or in relation to the acceptance of an enforceable undertaking under this Act.
- 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

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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.

3. In exercising functions under the Act, the Secretary must have regard to the 'Objects' set out in section 3A of the Act.
4. 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.
5. The Secretary has issued, and published on the Regulator's website www.resourcesregulator.nsw.gov.au, guidelines relevant to the acceptance of Mining Act enforceable undertakings (**Guidelines**) as required by section 378ZFB(3) of the Act.
6. The Secretary has delegated the functions to accept or reject an enforceable undertaking under section 378ZFB of the Act to the Executive Director of the NSW Resources Regulator.

Background

7. Marble Craft and Granite Supplies Pty Ltd (**Marble Craft**) (ACN 167 536 414) is the holder of Exploration Licence No. 8371 (Act 1992) (**EL8371**), a title that was first granted on 7 May 2015 and authorises exploration for Group 2 minerals. The title incorporates land covering the Grandee Granite Quarry, situated 25kms southeast of Forbes in the Forbes Local Government Area.
8. The Directors of Marble Craft are Damian Morris and his wife, Cheree Morris.
9. The Grandee Granite Quarry has operated since the 1960's and up until 2014 operated under a Private Mining Agreement (**PMA**). Legislation amendments in around 2014 then dissolved PMA's and required former PMA holders to obtain a mining lease.
10. Within the boundaries of EL8371 and over the Grandee Granite Quarry is Mining Lease Application MLA516, an application area submitted by Grandee Quarries Australia Pty Ltd (ACN 606 745 313), a company of which Damian Morris and his father Colin Morris are directors. The application for MLA516 was lodged on 29 October 2015.
11. Within the boundary of EL8371 is Mining Lease Application MLA587, an application area to the southeast of MLA516, submitted by Grandee Trading Co Pty Ltd (ACN 622 827 089), a company of which Damian Morris is the sole director. MLA587 was lodged on 5 May 2020.
12. Delays in the granting of these titles has been affected by landowner disputes, lack of development consents and stop the clocks regarding investigations into matters forming this enforceable undertaking.
13. On 26 May 2021, Inspectors from the Regulator attended EL8371 and the Grandee Quarry after a complaint had been received that mining without authorisation was occurring.
14. Based upon the observations and evidence taken from this inspection the Regulator formed the reasonable belief that the activities on said lands were being undertaken in contravention of the Act. The allegations include,
 - I. NCN0009231 – s.5 of the Act – Mining or Prospecting without authorisation – that Marble Craft conducted mining activities at the Grandee Quarry by extracting and stockpiling dimension stone to sell once a mining lease was granted.

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- II. NCN0010023 – s.378D of the Act – Contravention of a condition authorisation (Breach of s.23A(1)) – that Marble Craft conducted prospecting activities on EL8371 by excavating around a granite outcrop to determine the depth of the outcrop without approval.
 - III. NCN0010026 – s.378D of the Act – Contravention of a condition of authorisation (Breach of s.23A(1)) – that Marble Craft conducted prospecting activities on EL8371 by drilling 3 holes without activity approval from the Department.
 - IV. NCN0010027 – s.378D of the Act – Contravention of a condition of authorisation – that Marble Craft failed to submit an Annual Activity Report for year 20/21 to the Department, as required by condition 8 of EL8371.
 - V. NCN0010029 – s.248S of the Act – Breach of notice – that Marble Craft failed to comply with a s.248B notice NTCE0009064 to provide information and records by failing to provide all the information as required by the notice.
15. The Regulator has issued Marble Craft with a prohibition notice pursuant to s.240A of the Act.

Proceeding for alleged contravention

16. Section 378ZFH(1) of the 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

17. On 18 January 2023, Marble Craft submitted a signed undertaking for the consideration of the Secretary. Consistent with the 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.
18. In summary, the Marble Craft enforceable undertaking proposes to:
- a. Cause a public notice about the enforceable undertaking to be published in the Forbes Advocate newspaper.

The Public notice must be published within 30 days of the acceptance of the enforceable undertaking.
 - b. Pay \$25,000 to Sydney Children's Hospital Foundation for a program to support children with complex feeding difficulties.

Payment will be made in full within 30 days of receiving notification of the acceptance of the undertaking.
 - c. Pay \$15,000 Central Tablelands Landcare Group in accordance with an agreement for the development of a website, provide starter kits local schools and purchase of nursery supplies.

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Payment will be made in full within 30 days of receiving notification of the acceptance of the undertaking.

- d. Engage RW Corkery and Associates to prepare a reporting tracker and procedure for implementation and ongoing review and to undertake a desktop audit of documentation to assess ongoing compliance with the Act, Mining Regulation and authorisation conditions and provide recommendations to Marble Craft. (Minimum Spend \$13,964)

Within 3 months of the acceptance of the undertaking Marble Craft will require RW Corkery's to prepare a compliance and reporting tracker and simple procedure for ongoing use. A copy of the tool and will be provided within 4 months of the acceptance of the undertaking.

Within 9 months of the acceptance of the undertaking Marble Craft will require RW Corkery's to have completed a desktop audit of systems and compliance obligations with a copy of the audit to be provided within 10 months of the acceptance of the undertaking.

- e. Pay the Regulator's costs as follows:
 - i. \$15,000 costs incurred during the investigation, and
 - ii. \$3,000 costs for monitoring compliance of the undertaking will be paid within 30 days of receipt an invoice from the Regulator.

19. Marble Craft must spend a minimum of **\$72,387.00**, excluding GST, in carrying out the terms of the proposed enforceable undertaking, inclusive of the Regulator's recoverable costs.
20. The activities proposed in delivering the benefits of this undertaking must be completed on or before 31 December 2021.

Considerations and findings

21. Whilst under the Act the giving of an enforceable undertaking does not constitute an admission of guilt, Marble Craft has acknowledged the alleged contraventions of section 5, section 378D and section 248S of the Act.
22. The community expects that companies such as Marble Craft comply with their obligations under the Act and associated regulations by having systems in place to ensure compliance.
23. I note that Grandee Quarries Australia Pty Ltd and Grandee Trading Co Pty Ltd, both companies where Damian Morris is a director, had lodged applications for mining authorisations prior to the commencement of this investigation.
24. I am satisfied that Marble Craft have ceased undertaking all activities that requires mining authorisations or approvals.
25. In considering this matter I have considered the submission from Mr Damian Morris in respect of delays in obtaining relevant Act approvals since the change from PMA's. I also note the hardships

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expressed by Mr Morris due the recent flooding in Eugowra where a family linked business and a house jointly owned by Mr Morris was severely affected.

26. I note the commitment to publish a public notice of the terms of the undertaking in the Forces Advocate and acknowledge the significant deterrent effect of such a notice in the local community.
27. I am satisfied that the terms of the undertaking delivers tangible benefits to the community through the provision of \$25,000 to the Sydney Children's Hospital Foundation supporting children with complex feeding difficulties and \$15,000 to the Central Tablelands Landcare Group for the development of a website, provide starter kits local schools and purchase of nursery supplies.
28. The audit and reporting tracker will enable Marble Craft to identify areas for improvement and develop systems which reinforce future compliance with the mining laws.
29. 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, which may never be recouped through prosecution proceedings.
30. The total of \$72,387 to be paid by Marble Craft, having regard to the specific circumstances of this case, provides a significant deterrent effect and achieves better outcomes than prosecution action alone.
31. I am satisfied that the enforceable undertaking given by Marble Craft meets the requirements of the Act and the Guidelines.
32. I note that the requirement under the 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.
33. Accordingly, I have determined to **accept** the enforceable undertaking given by Marble Craft.

Date of decision: 24 January 2023

A handwritten signature in black ink that reads "P Day".

Peter Day

Executive Director

Resources Regulator - Department of Regional NSW

NOTE: In accordance with Part 17A, Division 4B of the *Mining Act 1992*, a copy of the enforceable undertaking and this decision will be published on the regulator's website: www.resourcesregulator.nsw.gov.au.