
Mining Act undertaking

Reason for decision



Enforceable undertaking given by Rangott Mineral Exploration Pty Ltd accepted

Entity	Rangott Mineral Exploration Pty Ltd (ACN 002 536 825)
Issue	Whether to accept or reject a Mining Act undertaking given by Rangott Mineral Exploration 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 to me by 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 Rangott Mineral Exploration Pty Ltd, attached to this decision.

Reasons for decision

Legislation

- Section 378ZFB of the *Mining Act 1992* (**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 Mining 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. On 4 May 2021 Exploration Licence No. 9155 (Act 1992) (EL 9155) was granted to Catalina Resources Limited (then known as Shree Resources Limited) (Catalina) for a term of five years ending on 4 May 2026. EL 9155 comprises an area of 59 units and is located about 25km south-south-west of Cooma.
8. The authorisation for EL 9155 gives Catalina exclusive rights to prospect for group one minerals in respect of the land to which the licence relates and advises Catalina that it may need to obtain further approvals before carrying out prospecting operations.
9. On 10 September 2021 an ESF4 Application to conduct assessable prospecting operations was submitted to the Regulator to undertake the activities consisting of up to 25 Reverse Circulation drillholes with possible diamond drill tails within two project areas to test geophysical targets and historical workings.
10. On 1 October 2021, the Regulator granted the activity approval [MAAG0012185 – LETT0006595] (the Activity Approval) under section 23A(7) of the Act. The Activity Approval required Catalina to carry out the Activity in accordance with the Application and to carry out the Activity in accordance with Part B of the Exploration Code of Practice: Environmental Management.
11. The works under the drill program were carried out by Rangott Mineral Exploration Pty Ltd (**Rangott**) (ACN 002 536 825)
12. The Directors of Rangott are Maxel Franz Rangott and Joy Muriel Rangott.
13. On 14 April 2022, the Regulator conducted an announced inspection of EL 9155, specifically project area 1 as defined in the Application.
14. As a result, the Regulator commenced an investigation into the actions of Catalina regarding its failure to comply with the Activity Approval.

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15. On 21 April 2022, the Regulator issued Catalina a commencement of investigation letter and a Notice under section 240(1)(d) of the Act [NTCE0010106] directing Catalina to immediately cease all works associated with the activity approval until it is notified that this notice has been revoked.
16. On 16 May 2022 the Regulator issued Rangott with an investigation commencement letter.
17. On 28 June 2022, following a show cause process, Catalina’s activities were suspended under s.240AA to “immediately suspend all operations under Exploration Licence No. EL 9155 (Act 1992), with the exception of those activities required to maintain a safe workplace or as otherwise directed by the NSW Resources Regulator under a notice issued pursuant to section 240 of the Mining Act 1992”
18. 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 Mining Act 1992. The allegations include,

- a) **Allegation 1 - Breach of s.378EA (Aid and abet) by causing or permitting the commission of an offence under s.378D (NCN00010106)**

Fail to comply with Mandatory requirement 6.3 of the Exploration Code of Practice: Environmental Management requiring the title holder to implement all measures to prevent, so far as is practicable, causing any land degradation or pollution of land or water. No evidence of any mitigation to prevent erosion and sedimentation on drill traverse SRL013-SRL016 in contravention of an activity approval.

- b) **Allegation 2 - Breach of s.378EA (Aid and abet) by causing or permitting the commission of an offence under s.378D (NCN00010107)**

Fail to comply with Mandatory requirement 6.3 of the Exploration Code of Practice: Environmental Management requiring the title holder to implement all measures to prevent, so far as is practicable, causing any land degradation or pollution of land or water. No evidence of any mitigation to prevent erosion and sedimentation on drill traverse SRL008-SRL011 in contravention of an activity approval.

- c) **Allegation 3 – Breach of s.378EA (Aid and abet) by causing or permitting the commission of an offence under s.378D (NCN00010108)**

Fail to comply with Mandatory requirement 6.3 of the Exploration Code of Practice: Environmental Management requiring the title holder to implement all measures to prevent, so far as is practicable, causing any land degradation or pollution of land or water. No evidence of any mitigation to prevent erosion and sedimentation on drill traverse SRL004-SRL005 in contravention of an activity approval.

- d) **Allegation 4 – Breach of s.378EA (Aid and abet) by causing or permitting the commission of an offence under s.378D (NCN00010109)**

Fail to comply with Mandatory requirement 6.2a of the Exploration Code of Practice: Environmental Management requiring the title holder to implement all measures to prevent, so far as is practicable, adverse impacts to fauna caused by vegetation clearing or surface disturbance. Commitments in the application indicated no trees or bushes will be removed however evidence

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showed canopy and understory was cleared beyond the commitments in the application and no measures were put in place to protect against impacts to fauna in contravention of an activity approval.

e) **Allegation 5 – Breach of s.378EA (Aid and abet) by causing or permitting the commission of an offence under s.378D (NCN00010110)**

Fail to comply with Mandatory requirement 6.2b of the Exploration Code of Practice: Environmental Management requiring the title holder to inspect trees and canopy branches for fauna prior to felling or branch removal, and clearly demarcate any hollows or active bird nests. No evidence has been observed or provided to show compliance with this requirement which is a contravention of an activity approval.

f) **Allegation 6 – Breach of s.378EA (Aid and abet) by causing or permitting the commission of an offence under s.378D (NCN00010111)**

Fail to comply with Mandatory requirement 13.1 of the Exploration Code of Practice: Environmental Management requiring the title holder to keep and maintain the records set out in the following table (as applicable). The table prescribes that, in respect of Vegetation clearing and surface disturbance (6.2) that records (including photos where relevant) of fauna habitat inspections, fauna habitat demarcation and any fauna relocation. No evidence has been observed or provided to show compliance with this requirement which is a contravention of an activity approval.

g) **Allegation 7 – Breach of s.378EA (Aid and abet) by causing or permitting the commission of an offence under s.378D (NCN00010112)**

Fail to comply with Mandatory requirement 2.1 of the Exploration Code of Practice: Environmental Management requiring the title holder to implement all measures to prevent, so far as practicable, causing adverse impacts on water quality and quantity, including groundwater levels and pressure. Commitments in the application indicated no activities would occur within 40m of a watercourse however evidence showed 2 drill pads and a creek crossing were installed in contravention of the commitments in the application and in contravention of an activity approval.

h) **Allegation 8 – Breach of s.378EA (Aid and abet) by causing or permitting the commission of an offence under s.378D (NCN00010113)**

Fail to comply with Mandatory requirement 10.1 of the Exploration Code of Practice: Environmental Management requiring the title holder to implement all measures to prevent, so far as practicable, harm to Aboriginal cultural heritage and non-indigenous cultural heritage. Commitments in the application indicated identified aboriginal sites would not be impacted during the drilling program and that drilling would not occur near those identified site however evidence showed 6 identified aboriginal sites had been harmed in contravention of the commitments in the application and in contravention of an activity approval.

i) **Allegation 9 – Breach of s.378EA (Aid and abet) by causing or permitting the commission of an offence under s.378D (NCN00010114)**

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Fail to comply with Mandatory requirement 13.1 of the Exploration Code of Practice: Environmental Management requiring the title holder to keep and maintain the records set out in the following table (as applicable). The table prescribes that, in respect of Culture and Heritage (10.1) that Records (including photos where relevant) of actions and decisions taken in exercising due diligence to protect Aboriginal cultural heritage and non-indigenous cultural heritage. No evidence has been observed or provided to show compliance with this requirement which is a contravention of an activity approval.

Proceeding for alleged contravention

16. Section 378ZFH(1) of the Mining 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 28 April 2023, Rangott submitted a signed undertaking for the consideration of the Secretary. Consistent with the Enforceable Undertaking 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 Rangott enforceable undertaking proposes to:
- a. Pay \$52,500 to Upper Snowy Landcare Network projects that includes protection and management of threatened ecological communities.

Within 30 days of the acceptance of the undertaking payment of donations to the Upper Snowy Landcare group will be made and Rangott will then provide evidence of payment and within 3 months of the completion of works will provide a report on the outcome of those works.
 - b. Engage a speaker (RW Corkery) to prepare and carry out research and deliver the results of that research to the NSW Minerals Council Community and Environment Conference on best practice for consultants engaged to carry out work on behalf of tenement holders. (Minimum Spend \$10,000)

Within 9 months of the acceptance of the undertaking Rangott will require RW Corkery to research and provide the results to the NSW Minerals Council Community and Environment Conference.
 - c. Engage RW Corkery and Associates to conduct a review of Rangott systems and processes for meeting obligations under the Mining Act and provide training to Rangott staff on meeting those obligations. A report on the findings and training will be prepared and provided to the Regulator. (Minimum Spend \$10,000)

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Within 6 months of the acceptance of the undertaking Rangott will require RW Corkery to review of operations and will provide the report to the Regulator within one week of the completion of that review. Rangott will then provide evidence to the Regulator within 3 months of receiving that review that the recommendations have been implemented.

Within 6 months of the acceptance of the undertaking Rangott will require RW Corkery to undertake training for all staff, contractors and those who supervise those employees in compliance obligations under the Mining Act. Rangott will within 1 month of the completion of that training will provide a report to the Regulator that the compliance training has been finalised.

- d. Paying the Regulators investigation costs (\$12,000) and compliance monitoring costs (\$3,000)

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

19. Rangott must spend a minimum of **\$87,500.00**, 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 this undertaking must be completed within 12 months of the acceptance of the undertaking.

Considerations and findings

21. Whilst under the Act the giving of an enforceable undertaking does not constitute an admission of guilt, Rangott has acknowledged the 9 alleged contraventions of s.378EA (Aid and abet) by causing or permitting the commission of an offence under s.378D of the Act.
22. Whilst Rangott is not the holder of an authorisation under the Mining Act, the community expects that companies such as Rangott have systems in place to ensure any works being undertaken for authorisation holders are carry out in accordance with obligations under the Mining Act and associated regulations.
23. I am satisfied that Rangott has ceased undertaking all activities that requires mining authorisations or approvals.
24. I am satisfied that the terms referred to in the undertaking deliver tangible benefits to the community through the provision of \$52,500 to the Upper Snowy Landcare Network which includes activities that protect and manage threatened ecological communities.
25. The systems review and compliance training will enable Rangott to identify areas for improvement and develop systems which reinforce future compliance with the mining laws.
26. The research and delivery of the results of that research to the NSW Minerals Council Community and Environment Conference will benefit other consultants engaged to carry out work on behalf of tenement holders.

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27. 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.
28. The total of \$87,500 to be paid by Rangott, having regard to the specific circumstances of this case, provides a significant deterrent effect and achieves better outcomes than prosecution action alone.
29. I am satisfied that the enforceable undertaking given by Rangott meets the requirements of the Mining Act and the Enforceable Undertakings Guidelines.
30. I note that the requirement under the Mining 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.
31. Accordingly, I have determined to accept the enforceable undertaking given by Rangott.

Date of decision: 5 May 2023

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

Peter Day
Executive Director
Resources Regulator
Department of Regional NSW

1 NOTE

In accordance with section 378ZFG of the Mining Act this decision will be published on the regulator's website