



OUT18/2834

## SUSPENSION NOTICE

**FILE NO:** RRAR-2017/00014

**TITLEHOLDER:** Abterra Australia Pty Limited (ACN 150 010 763)

**AUTHORISATION:** Mining Lease No. 1616 (Act 1992)

**LEGISLATION:** Section 240AA of the *Mining Act 1992*

**DECISION-MAKER:** Anthony Keon  
Chief Compliance Officer  
NSW Resources Regulator

## SECTION 240AA DIRECTION

As authorised by Section 240AA of the Mining Act 1992 ("the Act"), I Anthony Keon, having delegated authority from the Secretary of the Department of Planning and Environment, direct Abterra Australia Pty Limited (ACN 150 010 763) ("the titleholder") to:

**"Immediately suspend all operations on mining lease No. 1616 (Act 1992), with the exception of those activities required to maintain a safe workplace or to undertake environmental rehabilitation of the mining lease."**

This direction takes effect and is in force immediately upon the titleholder being notified of this decision. The direction remains in force until the suspension notice is revoked or varied by written notice of the Secretary or delegate.

## REASONS FOR DECISION

### Legislation

1. Section 240AA(1) of the Act provides that the Secretary may, by written notice (a **suspension notice**), direct a responsible person to suspend (for such period as is specified in the direction or until further notice) all, or any specified, operations under an authorisation or suspend any activity approval relating to the operations if the Secretary considers that:

- (a) circumstances exist that could constitute a ground for cancellation of the authorisation under section 125(1)(b)-(g), 203(1)(b)-(e) or (h) or 233(1)(b)-(d), or
  - (b) circumstances exist that could constitute a ground for cancellation of the authorisation under section 125(1)(h), 203(1)(i) or 233(1)(f), in relation to a breach of a direction under section 240 only.
2. Section 240AA(2) provides that before giving a suspension notice, the Secretary is to:
  - (a) cause written notice of the proposed suspension notice and the grounds for it to be served on the holder of the authorisation, and
  - (b) give the holder a reasonable opportunity to make representations with respect to the proposed suspension notice, and
  - (c) take any such representations into consideration.
3. Section 125(1) sets out some of the grounds for cancellation which can be relied upon in issuing a suspension notice. These include if the decision-maker is satisfied that:
  - a. the holder of the authority has contravened a provision of the Act or the regulations (whether or not the holder is prosecuted or convicted of any offence arising from the contravention), or
  - b. a person has contravened a condition of the authority (whether or not the person is prosecuted or convicted of any offence arising from the contravention), or
  - c. there has been a contravention of a direction under section 240.
4. Section 363(2) of the Act provides that the Secretary may delegate any function under the Act to any person, except this power of delegation or any function delegated to the Secretary by the Minister. The Secretary has delegated the functions to suspend all, or any specified, operations under an authorisation or suspend any activity approval relating to the operations under section 240AA of the Act to the Chief Compliance Officer of the NSW Resources Regulator ("the Regulator").

## **Background**

5. Mining Lease No. 1616 (Act 1992) ("the Authorisation") was first granted on 31 March 2008 for a term of 21 years. The Authorisation was granted for the purposes of prospecting and mining for agricultural lime, iron minerals and limestone.
6. On 3 August 2011, the Authorisation was transferred to the titleholder.
7. The Authorisation is 33.91 hectares in size and is located about 17.44km west south-west of Cowra. The Broula Magnetite and Limestone Mine operated on the Authorisation.
8. The titleholder is registered with the Australian Securities and Investment Commission as an Australian proprietary company limited by shares. The current company officers include Mr Sui Xin Cai ("Mr Cai") as a Director, Mr Yu Lau ("Lau") as a Director, and Mr Hing Loong Wong also known as Edman Wong ("Mr Wong") as the Secretary and Director. Mr Cai and Mr Lau were appointed as Directors on 2 December 2013. Mr Wong was appointed as the Secretary and Director on 7 August 2013.

9. I note that Mr Wong has been the principal point of contact between the Department and the titleholder.

## **Grounds for Cancellation**

10. Having regard to section 125(1) of the Act, I have reviewed the Authorisation and I am satisfied that the following grounds for cancellation exist.
11. **Ground 1** is based upon section 125(1)(b) of the Act, in which the titleholder has contravened section 378D(1) of the Act 'Contravention of condition of authorisation – offence by holder'.
12. Ground 1 alleges that in 2013 the titleholder failed to comply with condition 3 'Mining Operations Plan' ("MOP") by carrying out mining operations otherwise than in accordance with an approved MOP – disturbance footprint.
13. **Ground 2** is based upon section 125(1)(b) of the Act, in which the titleholder has contravened section 378D(1) of the Act 'Contravention of condition of authorisation – offence by holder'.
14. Ground 2 alleges that in 2013 the titleholder failed to comply with condition 3 'Mining Operations Plan' by carrying out mining operations otherwise than in accordance with an approved MOP - management of soil.
15. **Ground 3** is based upon section 125(1)(b) of the Act, in which the titleholder has contravened section 378D(1) of the Act 'Contravention of condition of authorisation – offence by holder'.
16. Ground 3 alleges that the titleholder failed to provide a MOP in accordance with condition 3 with the last approved MOP expiring on 31 January 2016.
17. **Ground 4** is based upon section 125(1)(b) of the Act, in which the titleholder has contravened section 378D(1) of the Act 'Contravention of condition of authorisation – offence by holder'.
18. Ground 4 alleges that the titleholder failed to lodge its annual 2015 Environment Management Report (EMR) by 1 May 2015.
19. **Ground 5** is based upon section 125(1)(b) of the Act, in which the titleholder has contravened section 378D(1) of the Act 'Contravention of condition of authorisation – offence by holder'.
20. Ground 5 alleges that the titleholder failed to lodge its annual 2017 Environment Management Report (EMR) by 1 May 2017.
21. **Ground 6** is based upon section 125(1)(b) of the Act, in which the titleholder has contravened section 163C of the Act 'Reports'.
22. Ground 6 alleges that the titleholder failed to prepare and lodge an annual report (formerly known as an annual exploration report) within one calendar month of the grant anniversary date being 30 April 2016, in accordance with clause 57(2) of the *Mining Regulation 2010* (repealed).

23. **Ground 7** is based upon section 125(1)(b) of the Act, in which the titleholder has contravened section 163C of the Act 'Reports'.
24. Ground 7 alleges that the titleholder failed to prepare and lodge an annual report (formerly known as an annual exploration report) within one calendar month of the grant anniversary date being 30 April 2017, in accordance with clause 59 of the *Mining Regulation 2016*.
25. **Ground 8** is based upon section 125(1)(b) of the Act, in which the titleholder has contravened section 292C of the Act 'Fees payable in respect of authorisation'.
26. Ground 8 alleges that the titleholder failed to pay invoice No. 765282 in the amount of \$3,546.42 for the annual rental fee and administrative levy by the due date, being 26 April 2016. Payment was made on 16 February 2018.
27. **Ground 9** is based upon section 125(1)(b) of the Act, in which the titleholder has contravened section 292C of the Act 'Fees payable in respect of authorisation'.
28. Ground 9 alleges that the titleholder failed to pay invoice No. 1018818 in the amount of \$3,546.42 for the annual rental fee and administrative levy by the due date, being 10 May 2017. Payment was made on 16 February 2018.
29. **Ground 10** is based upon section 125(1)(b) of the Act, in which the titleholder has contravened section 240C of the Act 'Breach of direction or notice'.
30. Ground 10 alleges that the titleholder failed to comply with a direction issued by the Division of Resources and Geoscience, previously known as the Division of Resources and Energy ("DRG") on 18 June 2013, under section 240(1)(a) of the Act, to submit a revised MOP within 21 days.
31. **Ground 11** is based upon section 125(1)(b) of the Act, in which the titleholder has contravened section 240C of the Act 'Breach of direction or notice'.
32. Ground 11 alleges that the titleholder failed to comply with a direction issued by DRG on 13 June 2017, under section 240(1)(a) of the Act, to prepare a MOP and Rehabilitation Cost Estimate by 31 August 2017.
33. **Ground 12** is based upon section 125(1)(c) of the Act, in which a person has contravened a condition of the Authority, being condition 3 'Mining Operations Plan'.
34. The information relied upon for Ground 12 is the same as Ground 1.
35. **Ground 13** is based upon section 125(1)(c) of the Act, in which a person has contravened a condition of the Authority, being condition 3 'Mining Operations Plan'.
36. The information relied upon for Ground 13 is the same as Ground 2.
37. **Ground 14** is based upon section 125(1)(c) of the Act, in which a person has contravened a condition of the Authority, being condition 3 'Mining Operations Plan'.
38. The information relied upon for Ground 14 is the same as Ground 3.

39. **Ground 15** is based upon section 125(1)(c) of the Act, in which a person has contravened a condition of the Authority, being condition 4 'Environment Management Report'.
40. The information relied upon for Ground 15 is the same as Ground 4.
41. **Ground 16** is based upon section 125(1)(c) of the Act, in which a person has contravened a condition of the Authority, being condition 4 'Environment Management Report'.
42. The information relied upon for Ground 16 is the same as Ground 5.
43. **Ground 17** is based upon section 125(1)(h) of the Act, in which there has been a contravention of a direction under section 240 of the Act.
44. The information relied upon for Ground 17 is the same as Ground 10.
45. **Ground 18** is based upon section 125(1)(h) of the Act, in which there has been a contravention of a direction under section 240 of the Act.
46. The information relied upon for Ground 18 is the same as Ground 11.

## **Representations**

47. On 16 November 2017, I wrote to the directors for the titleholder inviting them to provide a submission in response to my proposed decision to cancel the Authorisation by no later than 5pm, 15 December 2017. My decision was based on the before mentioned grounds for cancellation (Ground 1 to 18 inclusive).
48. At 4.45pm on 15 December 2017, Mr Paul Drohan, Manager Compliance Projects with the Regulator received an email from Mr Hing Loong Wong, also known as Edman Wong (Mr Wong).
49. In this email, Mr Wong stated:

"We would like to keep the ML1616 and we would like to commit to the following items:

  - Set up a solid repayment schedule for following items
    - Land Tax
    - Annual Admin and Levy
    - EPA annual fee
    - Council rate on ML1616
    - Royalty discrepancy (audited)
    - All the fine / penalty
  - Commence MOP modification immediately and have it updated and lodged
  - Prepare AMER and lodge it once the MOP modification is done"
50. On 22 December 2017, I again wrote to the titleholder inviting them to provide a further submission in response to my proposed decision to cancel the Authority by no later than 5pm 17 January 2018.
51. In this letter I referred to the review undertaken by DRG that determined that the current security deposit was inadequate and should be \$2,129,000. I also made clear

that the following steps, as a minimum, would need to be taken to bring the Authorisation into compliance with the Act:

- “Immediate payment of all outstanding annual rental fees and administrative levies
- Compliance with any variation in the security deposit condition imposed on ML1616 in accordance with Part 12A of the Act
- Submission of a Mining Operation Plan in accordance with Condition 3 of the authorisation by no later than 1 March 2018
- Immediate submission of the two outstanding Annual Reports in accordance with section 163C of the Act and Clause 59 of the Regulation – period 31 March 2015 to 30 March 2016 and period 31 March 2016 to 30 March 2017.”

52. At 4.44pm on 17 January 2018, Mr Paul Drohan, Manager Compliance Projects with the Regulator received an email from Mr Wong.

53. In this email, Mr Wong stated that the titleholder had a buyer, Techo Elite International Holdings Limited (“Techo Elite”) who are willing to invest as a ‘strategic investor’. In addition, Mr Wong stated that the new buyer was committed to bring the Authorisation into compliance by setting up a ‘solid repayment schedule’ and the titleholder had engaged R.W. Corkery & Co Pty Limited to undertake the following work:

- Review DRG’s Rehabilitation Cost Estimate (“RCE”) provided in response to the proposed increase in security deposit;
- Prepare outstanding Annual Reports and Environmental Management Reports as soon as possible;
- Prepare a Mining Operations Plan for care and maintenance by no later than 1 March 2018; and
- Seek a Ministerial Review of the revised security deposit.

54. Five documents were attached to this email. These included:

- Letter of intent for acquisition of the titleholder from Techo Elite, dated 29 December 2017.
- Proposed repayment schedule.
- Westpac Bank payment summary in the amount of \$1,000 with the description ‘Abterra fine’, dated 17 January 2018.
- Westpac Bank payment summary in the amount of \$2,500 with the description ‘Abterra fine’, dated 17 January 2018.
- Westpac Bank payment summary in the amount of \$1,466 with the description ‘ASIC abterra’, dated 17 January 2018.

55. At 10.12pm on 22 January 2018 Mr Paul Drohan, Manager Compliance Projects with the Regulator received a further email from Mr Wong

56. In this email, Mr Wong provided information of further payments made and stated that the titleholder ‘will keep settling the outstanding invoices’. Mr Wong further stated that the Ministerial Review of the revised security deposit had been submitted.

57. A further five documents were attached to this email. These included:
- Westpac Bank payment summary in the amount of \$5,000 with the description 'DRE Fine', dated 22 January 2018.
  - Westpac Bank payment summary in the amount of \$5,000 with the description 'DRE fine 3', dated 22 January 2018.
  - Westpac Bank payment summary in the amount of \$5,000 with the description 'DRE fine 4', dated 22 January 2018.
  - Westpac Bank payment summary in the amount of \$1,098.48 with the description 'EPA annual fee', dated 22 January 2018.
  - Westpac Bank payment summary in the amount of \$586.28 with the description 'NSW rate and levy', dated 22 January 2018.
58. On 5 February 2018, I again wrote to the titleholder advising them of my proposed decision to suspend mining operations in preference to cancelling the Authorisation, with my decision to cancel being deferred for the time being. The titleholder was invited to provide a submission in response to the proposed decision to suspend mining operations by no later than 5pm, 16 February 2018. This decision was based on the before mentioned grounds for cancellation (Ground 1 to 18 inclusive), as outlined in my letter dated 16 November 2017.
59. Included in this letter was the following proposed direction:
- "All mining operations, with the exception of those required to maintain a safe workplace or undertaking environmental rehabilitation, are suspended until such time as the decision-maker is satisfied that:*
- 1. A detailed report has been submitted, to the satisfaction of the decision-maker that details:*
    - a. (sic.) any future mining operations proposed, including associated timeframes and approvals required from the consent authority;*
    - b. the period for care and maintenance before it is proposed that mining operations recommence;*
    - c. the role Techo Elite International Holdings including any proposed change of control or transfer of title; and*
    - d. the ongoing capacity to meet financial and other compliance obligations under the Mining Act 1992 and the Mining Regulation 2016.*
  - 2. Payment of any variation in the security deposit following the finalisation of the Minister's review of the assessed deposit;*
  - 3. Payment of the outstanding 2016 and 2017 annual rental fee and administrative levy;*
  - 4. A Mining Operation Plan has been submitted to the Division of Resources and Geoscience and is approved by the Secretary of the Department of Planning and Environment or delegate; and*

5. *All outstanding Annual Reports and Environment Management Reports have been submitted to the Division of Resources and Geoscience.*"
60. At 3.43pm on 16 February 2018, Mr Paul Drohan, Manager Compliance Projects with the Regulator received an email from Mr Wong
61. In this email, Mr Wong provided an update of payments made.
62. Three documents were attached to the email. These included:
- Westpac Bank payment summary in the amount of \$2,612 with the description 'Office State Reven', dated 16 February 2018.
  - Westpac Bank payment summary in the amount of \$7,092.84 with the description 'NSW Planning & Env', dated 16 February 2018.
  - Letter from Mr Scott Hollamby, Senior Environmental Consultant, R.W. Corkery & Co Pty Limited, dated 16 February 2018.
63. In the letter from R.W. Corkery & Co Pty Limited, Mr Hollamby stated the following:
- A review of the RCE had been completed and a Ministerial review is currently underway.
  - It is the titleholder's preference that the Annual Reporting and MOP be completed in light of and taking into account the outcomes of the Ministerial review, with a proposed schedule of two weeks after the Ministerial review is determined for the Annual Reporting and a further four weeks for the MOP.
  - The MOP will provide for a 12-month care and maintenance period to allow time for other matters to be resolved and an operational MOP to be prepared.
  - DRG has indicated that it is likely they will conduct a site inspection in early March.

## **Considerations and findings**

64. After careful consideration, I am satisfied that the before mentioned grounds (Grounds 1 to 18 inclusive) stand. This decision is founded solely on the information set out below.

### **Grounds 1 and 12**

65. 'Condition 3. Mining Operations Plan' was imposed on the Authorisation when it was first granted. This condition continued to have effect upon transfer of Authorisation to the titleholder on 3 August 2011.
66. Condition 3 states that mining operations must not be carried out otherwise than in accordance with a MOP which has been approved by the Director-General, now Secretary of the Department of Planning and Environment ("the Department").
67. Site inspections conducted by DRG in May 2013 confirmed non-compliance with Condition 3, in particular the disturbance footprint. It was identified that the titleholder had placed waste rock in areas that were not authorised to be disturbed in the approved 2008 – 2015 MOP.



68. On 19 September 2013, DRG wrote to the titleholder notifying their intention to issue two penalty notices pursuant to section 378D(1) of the Act 'Contravention of condition of authorisation – offence by holder' for failing to comply with condition 3.
69. A letter dated 26 September 2013 was received from Mr Wong contending that the issuing of penalty notices would be unreasonable.
70. On 8 October 2013, DRG finalised this matter by way of a written warning for contravening Condition 2, an offence under section 378D(1) of the Act.
71. No comment was made in relation to Grounds 1 and 12 in any of the submissions made by the titleholder.

### **Grounds 2 and 13**

72. Condition 3. Mining Operations Plan' was imposed on the Authorisation when it was first granted. This condition continued to have effect upon transfer of the Authorisation to the titleholder on 3 August 2011.
73. Condition 3 states that mining operations must not be carried out otherwise than in accordance with a MOP which has been approved by the Director-General, now Secretary of the Department of Planning and Environment ("the Department").
74. Site inspections conducted by DRG in May 2013 confirmed non-compliance with Condition 3, in particular the management of soil. It was identified that the titleholder had failed to manage its soil resources as provided for in the 2008 – 2015 MOP.
75. On 19 September 2013, DRG wrote to the titleholder notifying their intention to issue two penalty notices pursuant to section 378D(1) of the Act 'Contravention of condition of authorisation – offence by holder' for failing to comply with condition 3.
76. A letter dated 26 September 2013 was received from Mr Wong contending that the issuing of penalty notices would be unreasonable.
77. On 8 October 2013, DRG finalised this matter by way of a written warning for contravening Condition 2, an offence under section 378D(1) of the Act.
78. No comment was made in relation to Grounds 2 and 13 in any of the submissions made by the titleholder.

### **Grounds 3 and 14**

79. 'Condition 3. Mining Operations Plan' was imposed on the Authorisation when it was first granted. This condition continued to have effect upon transfer of the Authorisation to the titleholder on 3 August 2011.
80. Condition 3 states that mining operations must not be carried out otherwise than in accordance with a MOP which has been approved by the Director-General, now Secretary of the Department of Planning and Environment ("the Department").
81. The titleholders last MOP was approved by DRG on 23 October 2013 and was due to expire on 31 January 2015.

82. On 17 December 2014, upon request by the titleholder, DRG granted a MOP extension until 31 January 2016.
83. On 20 April 2016, Mr Wong wrote to DRG seeking a further extension of the MOP until 31 January 2017, however this request was not granted.
84. This matter was finalised by the Regulator on 2 March 2018 with penalty notice No. 3148488506 issued against the titleholder in the amount of \$2,500 for contravening condition 3, an offence under section 378D(1) of the Act.
85. As of the date of this decision Departmental records indicate that no further MOP has been submitted by the titleholder for approval.
86. I note that in the email submission by Mr Wong, dated 17 January 2018 in response to my request for further submissions in response to my proposed decision to cancel the Authorisation, a commitment was initially made to have a MOP for care and maintenance by no later than 1 March 2018.
87. I further note that in the letter from R.W. Corkery & Co Pty Limited attached to the email submission of 16 February 2018 concerning the proposed notice of suspension, it was the titleholder's preference that the MOP be completed in light of and taking into account the outcomes of the Ministerial review, with a proposed schedule of six weeks after the Ministerial review is determined; and that the MOP will provide for a 12-month care and maintenance period to allow time for other matters to be resolved and an operational MOP to be prepared.

#### **Grounds 4 and 15**

88. Environmental Management Reporting conditions were imposed on the Authorisation when it was first granted. The requirement to lodge EMRs with the Secretary of the Department annually or at dates otherwise directed by the Secretary continued to have effect upon transfer of the Authorisation to the titleholder on 3 August 2011 under 'Condition 4. Environment Management Report'.
89. On 19 September 2014, DRG wrote to the titleholder accepting the 2014 EMR. In this letter the titleholder was advised that the 2015 EMR was due on 1 May 2015.
90. On 28 July 2015, DRG sent an overdue letter to the titleholder giving them a further 30 days to submit the EMR.
91. The EMR was lodged by the titleholder on 26 August 2015.
92. On 12 October 2015 DRG wrote to titleholder confirming that the EMR had been reviewed and accepted.
93. No formal compliance action was commenced under section 378D(1) of the Act in relation to this contravention.
94. I note in the email submission by Mr Wong, dated 17 January 2018 in response to my request for further submissions in response to my proposed decision to cancel the Authorisation, a commitment was made to preparing outstanding Environmental Management Reports as soon as possible.

95. I further note that although no specific reference was made concerning the preparation of the outstanding Management Reports in the email submission of 16 February 2018 concerning the proposed notice of suspension, reference was made to competing all reporting within two weeks following the determination of the Ministerial review.

#### **Grounds 5 and 16**

96. Environmental Management Reporting conditions were imposed on the Authorisation when it was first granted. The requirement to lodge EMRs with the Secretary of the Department annually or at dates otherwise directed by the Secretary continued to have effect upon transfer of the Authorisation to the titleholder on 3 August 2011 under 'Condition 4. Environment Management Report'.
97. On 24 April 2017, DRG wrote to the titleholder advising that the 2017 annual EMR was due on 1 May 2017.
98. The matter was referred to the Regulator for investigation as the titleholder failed to lodge the 2017 annual EMR by 1 May 2017.
99. On 15 August 2017 a warning letter was sent to the titleholder. In this letter a further request was made for the EMR to be lodged by 12 September 2017.
100. On 28 August 2017 the titleholder lodged the EMR, however the report failed to comply with the condition requirements, being that the EMR was unable to report against compliance with the MOP as the MOP had expired on 31 January 2016.
101. On 27 September 2017, DRG wrote to the titleholder advising that the EMR had been formally refused and could not be accepted until a new MOP had been submitted and approved.
102. This matter was finalised by the Regulator on 8 November 2017 with penalty notice No. 3149610458 issued against the titleholder in the amount of \$2,500 for contravening condition 4, an offence under section 378D(1) of the Act.
103. I note in the email submission by Mr Wong, dated 17 January 2018 in response to my request for further submissions in response to my proposed decision to cancel the Authorisation, a commitment was made to preparing outstanding Environmental Management Reports as soon as possible.
104. I further note that although no specific reference was made concerning the preparation of the outstanding Management Reports in the email submission of 16 February 2018 concerning the proposed notice of suspension, reference was made to competing all reporting within two weeks following the determination of the Ministerial review.

#### **Grounds 6 and 7**

105. The titleholder must prepare and lodge an annual report (formerly known as an annual exploration report) within one calendar month of the grant anniversary date, being 30 April.
106. DRG records indicate that only two combined annual exploration reports, covering 2008 and 2011 and 2011 to 2015 have been lodged for the Authorisation.

107. In 2016, the titleholder failed to lodge the annual report by 30 April 2016, being one calendar month of the grant anniversary date (Ground 6).
108. In 2017, the titleholder failed to lodge the annual report by 30 April 2017, being one calendar month of the grant anniversary date (Ground 7).
109. These matters were referred to the Regulator for investigation. The investigation was finalised on 8 December 2017 with two penalty notices being issued against the titleholder in the amount of \$5,000 each for contravening section 163C of the Act by failing to lodge the 2016 and 2017 annual reports. Penalty notice No. 3149610595 was issued for the 2016 contravention and penalty notice No. 314610604 was issued for the 2017 contravention.
110. As of the date of this decision the titleholder has not lodged the annual reports for 2015/16 or 2016/17.
111. I note in the email submission by Mr Wong, dated 17 January 2018 in response to my request for further submissions in response to my proposed decision to cancel the Authorisation, a commitment was made to preparing outstanding annual reports as soon as possible.
112. I further note that in the letter from R.W. Corkery & Co Pty Limited attached to the email submission of 16 February 2018 concerning the proposed notice of suspension, it was the titleholder's preference that the annual reports be completed in light of and taking into account the outcomes of the Ministerial review, with a proposed schedule of two weeks after the Ministerial review is determined.

#### **Ground 8**

113. On 12 April 2016, invoice No. 765282 was raised against the titleholder for the annual rental fee and administrative levy in the amount of \$3,546.42, with a due date being 26 April 2016.
114. As the titleholder failed to make payment by the due date the matter was referred to the Regulator for investigation; and on 8 February 2017 the Regulator sent a warning letter to the titleholder seeking payment by 8 March 2017.
115. The investigation was finalised by the Regulator on 7 April 2017 with penalty notice No. 3149610045 issued against the titleholder in the amount of \$1,000 for contravening clause 292C(3) of the Act by failing to pay the annual rental fee and administrative levy by the due date specified.
116. I note that as part of the proposed payment schedule outlined in the titleholder's submissions, payment was made on 16 February 2018.

#### **Ground 9**

117. On 10 April 2017, invoice No. 1018818 was raised against the titleholder for the annual rental fee and administrative levy in the amount of \$3,546.42, with a due date being 10 May 2017.

118. As the titleholder failed to make payment by the due date the matter was referred to the Regulator for investigation; and on 2 August 2017 the Regulator sent a warning letter to the titleholder seeking payment by 30 August 2017.
119. The investigation was finalised by the Regulator on 19 December 2017 with penalty notice No. 3149092614 issued against the titleholder in the amount of \$1,000 for contravening section 292C(3) of the Act by failing to pay the annual rental fee and administrative levy by the due date specified.
120. I note that as part of the proposed payment schedule outlined in the titleholder's submissions, payment was made on 16 February 2018.

#### **Grounds 10 and 17**

121. On 18 June 2013, a notice pursuant to section 240(1)(a) of the Act was issued by DRG directing the titleholder to submit a revised MOP within 21 days.
122. On 25 July 2013 DRG sent a warning letter for failing to comply with the notice without reasonable excuse.
123. A revised MOP was not lodged until 18 October 2013 and was approved by DRG on 23 October 2013.
124. Of note, no formal regulatory action was commenced under section 240C of the Act in relation to this contravention.

#### **Grounds 11 and 18**

125. As outlined at Grounds 3 and 14, the titleholder's last MOP expired on 31 January 2016.
126. On 13 June 2017, a notice pursuant to section 240(1)(a) of the Act was issued by DRG directing the titleholder to comply with condition 3 of the Authorisation and provide a RCE by 31 August 2017.
127. The titleholder failed to comply with this direction and the matter was referred to the Regulator for investigation.
128. The investigation was finalised by the Regulator on 8 December 2017 with penalty notice No. 314610604 issued against the titleholder in the amount of \$5,000 for contravening section 240C of the Act by failing to comply with the notice.
129. I note that in the email submission by Mr Wong, dated 17 January 2018 in response to my request for further submissions in response to my proposed decision to cancel the Authorisation, a commitment was initially made to have a MOP for care and maintenance by no later than 1 March 2018.
130. I further note that in the letter from R.W. Corkery & Co Pty Limited attached to the email submission of 16 February 2018 concerning the proposed notice of suspension, it was the titleholder's preference that the MOP be completed in light of and taking into account the outcomes of the Ministerial review, with a proposed schedule of six weeks after the Ministerial review is determined; and that the MOP will provide for a 12-month


care and maintenance period to allow time for other matters to be resolved and an operational MOP to be prepared.

## Conclusion

131. I am satisfied that the requirements of section 240AA(2) of the Act to notify the titleholder in writing of the proposed suspension notice have been adhered to. The titleholder was afforded reasonable opportunity to make representations and these representations were considered in making my decision.
132. Based on the Department's compliance with the requirements of section 240AA(2) of the Act, I believe that the titleholder has been afforded procedural fairness in respect of my decision to issue a suspension notice.
133. In making my decision I gave due regard to the significant number of contraventions of both the conditions of authority and various provisions of the Act over a period of years.
134. Based on the material before me, I am satisfied that the titleholder:
  - a. Has contravened the following sections of the Act, which provides for grounds for cancellation of the Authorisation under section 125(1)(b) of the Act:
    - i. Section 378D(1) of the Act 'Contravention of conditions for authorisation – offence by holder' – Grounds 1, 2, 3, 4, and 5
    - ii. Section 163C of the Act 'Reports' – Grounds 6 and 7
    - iii. Section 292C of the Act 'Fees payable in respect of authorisation' – Ground 8 and 9
    - iv. Section 240C of the Act 'Breach of direction or notice' Ground 10 and 11
  - b. Has contravened the following conditions of authority which provides grounds for cancellation of the Authorisation under section 125(1)(c) of the Act:
    - i. Condition 3 'Mining Operations Plan' attached to the Endorsement Schedule transferring the Authorisation, dated 3 August 2011 – Grounds 12, 13 and 14
    - ii. Condition 4 'Environment Management Report' attached to the Endorsement Schedule transferring the Authorisation, dated 3 August 2011 – Grounds 15 and 16.
  - c. Has contravened two directions under section 240 of the Act, which provides for cancellation of the Authorisation under section 125(1)(h) of the Act – Grounds 17 and 18.
135. Having due regard to the regulatory options available to me, and after considering the representations made by the titleholder, in particular the in-principle commitment to bring the Authorisation back into compliance, I am satisfied that the above grounds warrant the suspension of all operations under the Authorisation, with the exception of those activities required to maintain a safe workplace or to undertake environmental rehabilitation of the mining lease.

136. In particular, I remain significantly concerned that despite ongoing and extensive regulatory engagement the titleholder has not been able to fully address the Regulator's concerns and remains in non-compliance with a number of requirements under the Act.
137. Accordingly I have determined to issue this suspension notice under section 240AA(1) of the Act.
138. The suspension notice takes effect is effective immediately upon the titleholder being notified of the decision and will remain in force until such time as the suspension notice is revoked or varied by written notice of the Secretary or delegate.
139. Consideration will be given to revoking the suspension notice once the titleholder completes all of the following:
- a. Submits a detailed report, to the satisfaction of the decision-maker that details:
    - i. Any future mining operations proposed, including associated timeframes and approval required from the consent authority;
    - ii. The period for care and maintenance before it is proposed that mining operations recommence;
    - iii. The ongoing capacity to meet financial and other compliance obligations under the Act and Regulation.
  - b. Payment of any required rents, levies or security deposits.
  - c. Submits a Mining Operations Plan that is approved by the Secretary of the Department of Planning or Environment or delegate
  - d. Submits the annual Environment Management Reports for the outstanding periods 2015/16 and 2016/17.
  - e. Submits the Annual Reports for the outstanding periods 2015/16 and 2016/17.
140. The Regulator will continue to closely monitor the titleholder over the next three months. Should the titleholder fail to bring the Authorisation into compliance or meet the above requirements, consideration will be given to re-enlivening the cancellation process

Date of decision: 07 March 2018



**Anthony Keon**  
Chief Compliance Officer  
NSW Resources Regulator

## **WARNING AND INFORMATION ABOUT THIS NOTICE**

- It is an offence under section 240C of the *Mining Act 1992* to fail to comply with this direction.
- The maximum penalty for this offence is, for a corporation, \$1,100,000 and a further \$110,000 for each day the offence continues, and, for a natural person, \$220,000 and a further \$22,000 for each day the offence continues.
- An offence against section 240C may attract executive liability against a director of the corporation, or an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation – section 378F of the *Mining Act 1992*.
- If you fail to take the measures specified above, the Minister may take any action necessary to give effect to the direction including authorising another person to take those measures and recover the costs and expenses so incurred from you, or applying to the Land and Environment Court for an injunction directing you to comply with this direction – section 241 of the *Mining Act 1992*.
- The serving of this direction and the matters required of you pursuant to this direction in no way preclude, hinder or otherwise restrain the Department of Planning and Environment from taking further action against you including by commencing legal proceedings.
- This notice issued under section 240AA of the *Mining Act 1992*.
- The words and expressions used in this direction have the same meaning as they have in the *Mining Act 1992*.