

**Undertaking to the Secretary of the
Department of Planning and
Environment**

The Austral Brick Co Pty Ltd

ACN 000 005 550

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

Details

Background

- A** The Resources Regulator (**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.
- C** On 3 March 2003, ownership of the Bunnygalore quarry located on Lot 2 DP 630269 (**Lot 2 Property**) transferred to The Austral Brick Co Pty Ltd ACN 000 005 550 (**Austral**). The Lot 2 Property is in the Parish of Belanglo in the Wingecarribee Local Government Area.
- D** Bowral Bricks Pty Ltd operated a clay/shale quarry on the Lot 2 Property which Austral continued to operate from 3 March 2003.
- E** On 12 September 2017, Austral lodged Mining (Mineral Owner) Lease Application 28 (**M(MO)LA 28**) with the Department over the Lot 2 Property. The Department holds no record of any mining authority previously being in place for the Lot 2 Property.
- F** The Department commenced an investigation into allegations that Austral has conducted mining operations for privately owned minerals at the Lot 2 Property, without authorisation, a contravention of section 5 of the Mining Act.
- G** On 25 January 2018, the Regulator issued a Notice requiring Austral to produce records and information in relation to the Lot 2 Property. Austral complied with this notice on 26 February 2018.
- H** It is alleged that Austral continued to mine the Lot 2 Property until 7 February 2018, extracting 105,527 tonnes of white burning structural shale.
- I** On 27 February 2018, Austral self-reported similar concerns at its mining operations at the Bowral Quarry, located on Lot 3 DP 1028745, Lot 14 DP 1022146 and Lot 15 DP 1022146 (**Bowral Quarry Extension**). The Bowral Quarry Extension is in the Parish of Berrima in the Wingecarribee Local Government Area.
- J** Austral purchased the Bowral Quarry Extension from Bowral Brickworks Pty Ltd on or around March 2001 and has been responsible for the control and management of all activities since then.
- K** Operations at the Bowral Quarry Extension were included in the Regulator's investigation where it is also alleged that privately owned minerals had been mined without authorisation, a contravention of section 5 of the Mining Act.
- L** On 7 March 2018, a site inspection by the Regulator of the Lot 2 Property and Bowral Quarry Extension found evidence of active mining.
- M** On 29 March 2018, Austral voluntarily produced records and information in relation to the Bowral Quarry Extension to the Regulator.
- N** It is alleged that Austral continued to mine the Bowral Quarry Extension until 31 January 2018, extracting approximately 789,860 tonnes of dark/light firing Ashfield Shale (structural shale).
- O** On 20 April 2018, Austral lodged Mining (Mineral Owner) Lease Application 29 (**M(MO)LA 29**) with the Department over the Bowral Quarry Extension. The Department holds no record of any mining authority previously being in place for the Bowral Quarry Extension.
- P** On 4 May 2018, Austral was granted a mining lease (**M(MO)L 8**) in respect of M(MO)LA 28.
- Q** Any minerals mined at the Lot 2 Property or the Bowral Quarry Extension would be privately owned for the purposes of the Mining Act. The Bowral Quarry Extension or the Lot 2 Property were never subject to a Private Mining Agreement.

- R** Austral acknowledges the Department's concerns in relation to the above Allegations and undertakes to carry out the commitments and preventative measures which are set out in this undertaking. Austral 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.
- S** Austral has offered the commitments set out in this undertaking.
- T** 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 June 2018.
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Agreed terms

1.1 Undertakings

Under section 378ZFB of the Mining Act, Austral has given the following undertakings.

1.2 Acknowledgment of contravention

Austral acknowledges that the Regulator has alleged that Austral has carried out illegal mining operations in breach of section 5 of the Mining Act, at the Lot 2 Property and the Bowral Quarry Extension.

1.3 Prevention of future incidents

(a) Austral undertakes to:

- (i) cease any activity at the Lot 2 Property and the Bowral Quarry Extension that is not in compliance with section 5 of the Mining Act by 3 September 2018;
- (ii) take the actions stated in **Annexure A** to this undertaking to ensure all relevant NSW operations of Austral (or those of its related bodies corporate) (as identified in **Annexure A**) are in compliance with section 5 of the Mining Act;
- (iii) report to the Regulator on the implementation of each of the measures provided for in **Annexure A** on a quarterly basis until they are completed; and
- (iv) provide additional reports as requested by the Regulator as required to ensure compliance with this undertaking.

(b) Austral 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 Lot 2 Property and Bowral Quarry Extension to ensure compliance with the Mining Act;
- (ii) committed to updating training of relevant staff at the Lot 2 Property and Bowral Quarry Extension;
- (iii) and have engaged an independent tenement review for the Lot 2 Property and Bowral Quarry Extension.

1.4 Financial

(a) Austral undertakes to donate \$50,000 to Wingecarribee Shire Council for use as set out in **Annexure A**.

(b) Agreement is given by Austral to pay the Regulator's agreed amounts for royalties, rents and levies for alleged mining undertaken on behalf of Austral on the Lot 2 Property and Bowral Quarry Extension as itemised below:

- (i) \$20,760 (excluding GST) for administration levies;
- (ii) \$1,200 (excluding GST) for rental fees; and
- (iii) \$30,000 (excluding GST) for royalties.

Total agreed amount of \$51,960 (excluding GST).

(c) Austral undertakes to pay the Regulator's costs of \$12,500 (excluding GST) incurred in the course of the investigation into the Allegations, and the Regulator's compliance

monitoring costs of \$3,000 (excluding GST) incurred in the course of monitoring compliance with this undertaking.

Total agreed amount of \$15,500 (excluding GST).

- (d) Austral undertakes to pay the Department the amounts due under this clause 1.4 within **30 days** after receipt of the Regulator's invoices.

1.5 Persons Responsible

- (a) Austral nominates Peter Young-Whitford as the contact officer responsible for monitoring and ensuring Austral complies with the undertaking. The contact officer will report to the Regulator in accordance with the reporting requirements outlined under clause 1.3 of the undertaking and at **Annexure A**.
- (b) Peter Young-Whitford's contact details are:
- Peter Young-Whitford
- Mining & Raw Materials Manager – Austral Bricks
- Mobile: [REDACTED]
- Email: [REDACTED]
- (c) Peter Young-Whitford (or such replacement person nominated by Austral to the Regulator in writing from time to time);
- (i) Will be responsible for monitoring and ensuring Austral compliance with this undertaking; and
- (ii) Will submit a written status report, setting out Austral 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) Paul Drohan, Manager Enforcement, Resources Regulator (or such replacement person nominated by the Department to Austral in writing from time to time) will be the Departmental officer to whom information or documents will be submitted by Austral in connection with this undertaking.

2. Acknowledgements

- (a) Austral 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) Austral 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) Austral 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) Austral acknowledges that this undertaking does not affect the rights or remedies available to any other person or entity, other than Austral 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) Austral acknowledges that this undertaking takes effect and becomes enforceable when the Secretary's decision to accept the undertaking is given to Austral (by executing this undertaking) or at such later date specified by the Secretary in writing.
- (f) Austral acknowledges that this undertaking may only be varied in accordance with the Mining Act.
- (g) Austral acknowledges that this undertaking, as may be varied from time to time, will remain in force until completely discharged or withdrawn in accordance with the Mining Act.
- (f) Austral acknowledges that the publication Guideline Enforceable Undertakings has been read and understood, in particular version 4 dated June 2018.

Signing page

As a duly appointed and authorised officer or agent of **The Austral Brick Co Pty Ltd**, ACN 000 005 550, I offer this undertaking and commit The Austral Brick Co Pty Ltd to the terms herein.

EXECUTED as an agreement.

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Signature of Director

Mark Andrew Ellenor

Name of Director (print)

Position: Director

Dated at Horsley Park, NSW this 3rd day of September, 2018
(place)

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Signature of Director or Company Secretary

Peter James Baker

Name of Director or Company Secretary (print)

Position: Director

Dated at Horsley Park, NSW this 3rd day of September, 2018
(place)

Secretary acceptance of undertaking

I accept this undertaking as an enforceable undertaking under section 378ZFB of the *Mining Act 1992*.

Signed: 
Lee Shearer

Position: Deputy Secretary delegate of the Secretary
Department of Planning and Environment

Dated at Manildra this 29th day of September, 2018

Annexure A

(This annexure is incorporated in and considered part of this enforceable undertaking for the purposes stated herein, and are enforceable terms given under the undertaking by The Austral Brick Co Pty Ltd)

Austral commits to undertake and carryout the following.

Program	Outline of program	Completion Date
<p>Austral training of operations. These operations include:</p> <ul style="list-style-type: none"> • Lot 2 Property; • Bowral Quarry Extension; • New Berrima; • Rockleigh; • Paddys River; • Marulan; and • Plant 23. 	<p>Austral carry out training of all key management of its NSW operations (as identified in column 1) in respect of the operation and compliance with conditions of mining leases. This training will supplement the existing Austral compliance training programs.</p> <p>This training will be provided in respect of the following positions and in respect to the following operations:</p> <p><u>Positions targeted:</u></p> <ul style="list-style-type: none"> - Austral Bricks NSW - General Manager - Austral Bricks NSW - Mining and Raw Minerals Manager - Austral Bricks NSW – Compliance and Environmental Officer - Austral Bricks NSW - Mining and Raw Minerals Supervisor - Brickworks Limited - National Raw Minerals Manager - WHS & Compensation Manager NSW - Brickworks Limited – Group Manager Environment Environmental Manager <p><u>Operations:</u></p> <ul style="list-style-type: none"> - Lot 2 Property (operated by Austral); - Bowral Quarry Extension - New Berrima; - Rockleigh; - Paddys River; - Marulan; and - Plant 23. <p><i>Minimum cost: \$10,000</i></p>	<p>Within 6 months of this undertaking taking effect in accordance with clause 2(e).</p> <p>Prior to carrying out the training Austral will provide a copy of the proposed training to the Department.</p> <p>Austral will report the findings of this training to the Department within one month 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).

Program	Outline of program	Completion Date
<p>Austral induction training to new staff</p>	<p>Austral will develop material to include in inductions for new staff who will have management responsibility in respect of NSW operations that have an authorisation under the Mining Act that apply to them.</p> <p><i>Minimum cost: \$5,000</i></p>	<p>Within 6 months of this undertaking taking effect in accordance with clause 2(e).</p> <p>Austral to provide a copy of the induction material to the Department.</p>
<p>Austral undertakes to carry out audits of the following operations by a suitably qualified independent auditor. The audit will cover these operations:</p> <ul style="list-style-type: none"> - Lot 2 Property; - Bowral Quarry Extension - New Berrima; - Rockleigh; - Paddys River; - Marulan; and - Plant 23. 	<p>Austral will commission a suitably qualified independent auditor to carry out an independent audit of all the NSW operations (identified in Column 1) to ensure compliance against the conditions of any authorisations under the Mining Act, including to determine whether appropriate authorisations are in place. This includes auditing the operation against the requirements of any mine operations plan.</p> <p>In addition, this will include auditing Austral's internal compliance programs to ensure that they adequately address the requirement to comply with the provisions of the Mining Act.</p> <p><i>Minimum cost: \$35,000</i></p>	<p>Within 6 months of this undertaking taking effect in accordance with clause 2(e)</p> <p>Austral to engage a suitably qualified independent auditor and provide a copy of the report and report findings to the Department within one month of completion of the audit.</p>
<p>Austral to donate \$50,000 to Wingecarribee Shire Council for use in the restoration of land recently acquired by Council as part of the Bong Bong Common 'the Common' as confirmed in the letter of endorsement dated 21 August 2018.</p> <p>Council's letter has been supplied to the Regulator.</p>	<p>The Common is the location of the first European settlement in the Southern Highlands, and one of the first outside of Sydney. The settlement was established in 1821 and the bicentennial celebrations are being planned by the Council 355 Management Committee. The Common likely to contain archaeological remains dating back to the 1821 settlement. The area has been used for farming purposes for many years and is covered in environmental weeds and invasive species (such as radiate pines) to restore positive environmental outcomes to the land. The Common adjoins the Wingecarribee River, an important waterway in the Shire which is a habitat of flora and fauna improvement of which will contribute to positive biodiversity outcomes for the Shire.</p> <p><i>Minimum cost: \$50,000</i></p>	<p>Within 2 months of this undertaking taking effect in accordance with clause 2(e)</p> <p>Austral will provide the Regulator evidence that payment has been made.</p>

