

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

**Wollongong Coal Limited**

**ACN 111 244 896**

**Wongawilli Coal Pty Ltd**

**ACN 111 928 762**

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

## Details

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Date

June 2018

### Background

- A The Resources Regulator within the Department of Planning and Environment (**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 Wollongong Coal Limited (**WCL**) is the holder of mining titles CCL 745 (1973), ML 1575 (1992) and MPL 271 (1973).
- D Wongawilli Coal Pty Limited (**WCPL**) is a wholly owned subsidiary of Wollongong Coal Limited and is the holder of mining titles CCL 766 (1973), ML 1565 (1992) and ML 1596 (1992) (**Authorisations**).
- E WCL and WCPL have made a number of late payments with respect to rental fees and administrative levies (**Authorisation Fees**) payable under Part 14A of the Mining Act in relation to the Authorisations.
- F On 8 November 2017, a conviction was recorded in the Downing Centre Local Court for the failure of WCL and WCPL to pay annual rental fees and administrative levies under section 292C(3) of the Mining Act. The convictions are currently on appeal in the District Court of New South Wales, ref 2017/00188548 Wongawilli Coal Pty Ltd v Orr, Department of Planning and Environment; 2017/00188577 Wollongong Coal Ltd v Orr, Department of Planning and Environment (**Appeal**).
- G Further Court Attendance Notices (**CANs**) for the failure to pay rental fee and administrative levies between September and November 2017 were issued to WCPL for authorisations CCL 766 (Court refs 2018/83375 and 2018/83349) and ML1565 (Court refs 2018/83379 and 2018/83383) and to WCL for authorisation ML1575 on 8 March 2018 (Court refs 2018/83385 and 2018/83388) (also referred to as the **Alleged Contraventions**).
- H The Secretary has been considering whether to suspend operations at WCL and WCPL given its concerns about the financial viability of WCL and WCPL.
- I WCL and WCPL are of the view that an enforceable undertaking is the most effective and appropriate regulatory outcome in the circumstances to prevent the Alleged Contraventions from occurring again.
- J WCL and WCPL have proffered and the Department has accepted the commitments set out in the undertaking.
- K The undertaking has been prepared in accordance with, and satisfies the specific requirements for, an undertaking contained in the 'Enforceable Undertakings Guidelines' prepared by the Department dated February 2017 (version 3).

## Agreed terms

### 1.1 Undertakings

- (a) Under section 378ZFB of the Mining Act, WCL and WCPL have proffered and the Secretary has accepted the following undertakings in relation to the Alleged Contraventions set out in Table 1 at 1.2 below.
- (b) For the avoidance of doubt, all obligations in this undertaking are undertaken jointly and severally by WCL and WCPL.

### 1.2 Acknowledgment of contravention

WCL and WCPL acknowledge:

- (a) A series of invoices for Authorisation Fees were paid after the date on which the Secretary specified the payment must be made in accordance with sections 292E(5) and 292I(6) of the Mining Act, with respect to the Authorisations as follows:

**Table 1**

<b>2017 authorisation fees</b>			
<b>Authorisation</b>	<b>ML 1575</b>	<b>CCL 766</b>	<b>ML 1565</b>
<b>Holder</b>	WCL	WCPL	WCPL
<b>Administrative Levy payable</b>	\$25,053.33	\$119,600.00	\$119,600.00
<b>Rental Fee payable</b>	\$3,538.60	\$3,341.00	\$20,650.50
<b>Invoice total</b>	\$28,591.93	\$122,941.00	\$140,250.50
<b>Invoice due date</b>	9 September 2017	9 November 2017	11 October 2017
<b>Paid date</b>	1 November 2017	28 November 2017	1 November 2017

**Table 2**

<b>2016 authorisation fees (on Appeal)</b>			
<b>Authorisation</b>	<b>ML 271</b>	<b>CCL 766</b>	<b>ML 1565</b>
<b>Holder</b>	WCL	WCPL	WCPL
<b>Administrative Levy payable</b>	\$25,053.33	\$119,600.00	\$20,650.50
<b>Rental Fee payable</b>	\$100.00	\$3,341.00	\$119,600.00
<b>Invoice total</b>	\$25,153.33	\$122,941.00	\$140,250.50
<b>Invoice due date</b>	26 June 2016	24 October 2016	24 September 2016
<b>Paid date</b>	3 August 2016	23 December 2016	23 December 2016

- (b) It is an offence under section 292C(3) of the Mining Act to fail to pay an annual rental fee or administrative levy.

### 1.3 Prevention of future Incidents

- (a) WCL and WCPL undertake to commission a suitably qualified independent person to conduct a review of WCL and WCPL's systems and processes for meeting its compliance obligations under Part 14A of the Mining Act (**Systems Review**), in accordance with the due dates set out in **Annexure A**.
- (i) The Systems Review is to:

- (A) identify any time that WCL or WCPL have failed to meet their obligations under section 292C of the Mining Act since 1 January 2014,
  - (B) review and summarise the processes and systems with regard to WCL and WCPL's obligations under Part 14A of the Mining Act;
  - (C) identify the apparent causal factors for the non-compliance, and
  - (D) make recommendations for improvement.
- (ii) A report of the Systems Review is to be provided to the satisfaction of the Secretary (**Systems Review Report**), in accordance with **Annexure A**.
- (iii) WCL and WCPL will prepare a detailed report (**Response to Systems Review**), to the satisfaction of the Secretary, that details:
- (A) how WCL and WCPL will respond to the key findings and recommendations arising from the Systems Review;
  - (B) the financial and other compliance obligations under Part 14A of the Mining Act arising for the term of this undertaking; and
  - (C) systems and processes in place to ensure future and ongoing compliance with such obligations;

in accordance with the due date set out in **Annexure A**.

- (b) WCL and WCPL undertake to commission a suitably qualified independent person to undertake a review of the current and ongoing financial capacity of WCL and WCPL (**Financial Audit**), in accordance with the due dates set out in **Annexure A**.
- (c) WCL and WCPL undertake to provide refresher training to all relevant WCL and WCPL administration staff on WCL and WCPL's compliance obligations under Part 14A of the Mining Act, in accordance with the due date set out in **Annexure A**.

#### 1.4 Financial

- (a) WCL and WCPL as holders of the Authorisations described at C and D of the Background above, undertake to pay the 2018 Authorisation Fees for each Authorisation in accordance with the schedule in **Annexure A**.
- (b) WCL and WCPL undertake to pay the 2019 to 2022 Authorisation Fees for each Authorisation 12 months in advance of the anniversary of the date upon which the mining authorisation was granted (**Grant Anniversary Date**) for each respective Authorisation, as set out in the schedule in **Annexure A**.
- (c) Authorisation Fees will be paid by bank transfer into WCL's account with the Department, reference 9001397.
- (d) WCL and WCPL will each provide to the Secretary a bank guarantee (two bank guarantees in total) with each bank guarantee having a face value equivalent to AUD150,000 (AUD300,000 in total) to secure all of the undertakings agreed to by WCL and WCPL under this enforceable undertaking including, but not limited to, securing WCL and WCPL's obligation to pay the Authorisation Fees in accordance with the terms set out in **Annexure A**.
- (e) If the Authorisation Fee is paid between 1 and 30 days after the Grant Anniversary Date for any Authorisation Fee of any Authorisation, the Authorisation holder will pay a late payment penalty of 15% in addition to the annual Authorisation Fee.
- (f) If WCL or WCPL fail to meet its financial obligations under this undertaking, the Secretary will be entitled to draw monies from the bank guarantees to satisfy WCL and WCPL's financial obligations. An administration fee which covers the Department's reasonable costs will be charged by the Secretary in these circumstances.

- (g) WCL and WCPL undertake to make an annual donation of \$5,000 each to a local charity or community organisation by 30 June each year for the term of this undertaking.
- (h) WCL and WCPL commit to paying the Department's investigation and legal costs of \$24,350 in relation to the Alleged Contraventions set out in Table 1 within one month of the acceptance of this undertaking.
- (i) WCL has undertaken recent community investment in the Wongawilli community, leasing WCL property to the Little School Preschool Inc. at a reduced rent of \$1 per annum, reduced from \$26,000 per annum. This reduced lease will continue for at least the term of this undertaking.

### 1.5 Discontinuance of court proceedings

- (a) Within seven days of this undertaking being accepted by the Secretary, WCL and WCPL will withdraw their Appeals in the District Court of New South Wales in the proceedings 2017/00188548 and 2017/00188577 (refer Table 2 in Part 1.2) by filing a "Notice of Discontinuance" with the Court.

### 1.6 Persons Responsible

- (a) WCL and WCPL nominate Milind K Oza as the contact officer responsible for monitoring and complying with this enforceable undertaking. The contact officer will report to the Department in accordance with the reporting requirements outlined at **Annexure A**.
- (b) Milind K Oza's contact details are:
  - Milind K Oza, Chairman and CEO
  - Mobile: [REDACTED]
  - Email: [REDACTED]
- (c) Milind Oza (or such replacement person nominated by WCL and WCPL to the Department in writing from time to time) will be responsible for monitoring and ensuring WCL and WCPL's compliance with the undertaking.
- (d) The Secretary nominates Mark Freeman (or such replacement person nominated by the Secretary to WCL and WCPL in writing from time to time) to be the Departmental officer to whom information or documents will be submitted by WCL and WCPL in connection with the undertaking.

### 1.7 Term

This undertaking expires on 1 January 2023.

## 2. Acknowledgements

- (a) WCL and WCPL acknowledge that the Secretary:
  - (i) must publish, and make public, notice of a decision to accept the undertaking and the reasons for that decision;
  - (ii) may issue a media release on execution of the 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 the undertaking; and
  - (iv) will place a copy of the executed undertaking on the Department's public register.
- (b) WCL and WCPL grant 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) WCL and WCPL acknowledge that the Secretary's acceptance of the undertaking only relates to the Department's concerns regarding the Alleged Contraventions 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) WCL and WCPL acknowledge that this undertaking does not affect the rights or remedies available to any other person or entity, other than WCL and WCPL and the Department (including any successors in title), nor does it affect any other statutory obligations (other than those statutory obligations connected with the contraventions) under the Mining Act.
- (e) WCL and WCPL acknowledge that this undertaking takes effect and becomes enforceable when the Secretary's decision to accept the undertaking is given to WCL and WCPL or at such later date specified by the Secretary.
- (f) WCL and WCPL acknowledge that the undertaking may only be varied in accordance with the Mining Act.
- (g) WCL and WCPL acknowledge that the undertaking, as varied from time to time, will remain in force until withdrawn in accordance with the Mining Act.
- (f) WCL and WCPL acknowledge that the publication 'Enforceable Undertakings Guidelines' has been read and understood, in particular version 3 dated July 2017.

Signing page

As a duly appointed and authorised officer or agent of **Wollongong Coal Limited**, ACN 111 244 896,

I offer this undertaking and commit

Wollongong Coal Limited

to the terms herein.

Signed: 

[Director]

Name: MILIND K. OZA  
[Print name]

Position: Director

Dated at Corrimal this  
5<sup>th</sup> day of June, 2018

Signed: 

[Director or company secretary]

Name: SANJAY SHARMA  
[Print name]

Position: Company Secretary

Dated at Corrimal this  
5<sup>th</sup> day of June, 2018

As a duly appointed and authorised officer or agent of **Wongawilli Coal Pty Ltd**, ACN 111 928 762,

I offer this undertaking and commit

Wongawilli Coal Pty Ltd

to the terms herein.

Signed: 

[Director]

Name: MILIND K. OZA  
[Print name]

Position: Director

Dated at Corrimal this  
5<sup>th</sup> day of June, 2018

Signed: 

[Director or company secretary]

Name: SANJAY SHARMA  
[Print name]

Position: Company Secretary

Dated at Corrimal this  
5<sup>th</sup> day of June, 2018

Secretary acceptance of undertaking

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

Signed: 

Deputy Secretary, Resources Regulator

Position: Secretary (or delegate)  
Department of Planning and Environment

Dated at Maitland this 7<sup>th</sup> day of June, 2018

## Annexure A

WCL and WCPL agree to the following terms.

Undertaking	Terms	Due Date
Systems Review	WCL and WCPL will commission a suitably qualified independent person to conduct a review of WCL and WCPL's systems and processes for meeting their obligations under Part 14A of the Mining Act.	Within two months of the acceptance of this undertaking.
Systems Review Report	<p>The Systems Review Report will:</p> <ul style="list-style-type: none"> <li>- identify any time that WCL or WCPL has failed to comply with its obligations under section 292C of the Mining Act since 1 January 2014;</li> <li>- review the systems and processes for receipting, authorising and processing invoices, to identify causal factors for the non-compliance to ensure that the systems adequately address the requirement to comply with the provisions of Part 14A of the Mining Act;</li> <li>- make recommendations for improvements; and</li> <li>- encompass the term of the undertaking.</li> </ul>	Within three months of the acceptance of this undertaking.
Systems Review Report to be provided to Secretary	WCL and WCPL are to provide the Secretary with the Systems Review Report.	Within five months of the acceptance of the undertaking.
Response to Systems Review Report	<p>WCL and WCPL will prepare a detailed report, to the satisfaction of the Secretary, that details:</p> <ul style="list-style-type: none"> <li>- how WCL and WCPL will respond to the key findings and recommendations arising from the Systems Review;</li> <li>- the financial and other compliance obligations under Part 14A of the Mining Act arising for the term of this undertaking; and</li> <li>- systems and processes in place to ensure future and ongoing compliance with such obligations.</li> </ul>	Within six months of the acceptance of the undertaking.
Financial Audit	<p>WCL and WCPL undertake to commission a suitably qualified independent person to undertake a review of WCL and WCPL's current and ongoing financial capacity to meet their obligations under the Mining Act for the term of this undertaking.</p> <p>The review must be carried out by a qualified party that is independent to the company and the company's normal accountants.</p>	WCL and WCPL will advise of the appointment of the person undertaking the review within two months of the acceptance of this undertaking.



Undertaking	Terms	Due Date
Audit Report	The Financial Audit must result in an <b>Audit Report</b> setting out the findings of the financial audit and any recommendations concerning the financial capacity of WCL and WCPL to meet their future obligations under the Mining Act for the term of this undertaking.	WCL and WCPL must provide the Secretary with the Audit Report within five months of acceptance of this undertaking.
Staff refresher training	WCL and WCPL undertake to provide refresher training to all relevant WCL and WCPL administration staff on compliance obligations under Part 14A of the Mining Act.	Training to be completed within eight months of the finalisation of the Systems Review Report.
Payment of 2018 Authorisation Fees	<p style="text-align: center;"><b>Authorisation fee due dates for 2018 (Grant Anniversary Dates)</b></p> <p>MPL 271 (1973): 9 May 2018</p> <p>ML 1575 (1992): 9 July 2018</p> <p>ML 1565 (1992): 2 Aug 2018</p> <p>CCL 766 (1973): 16 Sep 2018</p> <p>ML 1596 (1992): 19 Dec 2018</p> <p>CCL 745 (1973): 27 Dec 2018</p>	All 2018 Authorisation Fees will be paid within one month of acceptance of this undertaking.
Payment of 2019 Authorisation Fees	<p style="text-align: center;"><b>Authorisation fee due dates for 2019 (Grant Anniversary Dates)</b></p> <p>MPL 271 (1973): 9 May 2019</p> <p>ML 1575 (1992): 9 July 2019</p> <p>ML 1565 (1992): 2 Aug 2019</p> <p>CCL 766 (1973): 16 Sep 2019</p> <p>ML 1596 (1992): 19 Dec 2019</p> <p>CCL 745 (1973): 27 Dec 2019</p>	Payment of 2019 Authorisation Fees to be made twelve months in advance of the Authorisation fee due date for 2019 or within one month of acceptance of this undertaking, whichever is the later date
Payment of 2020 Authorisation Fees	<p style="text-align: center;"><b>Authorisation fee due dates for 2020 (Grant Anniversary Dates)</b></p> <p>MPL 271 (1973): 9 May 2020</p> <p>ML 1575 (1992): 9 July 2020</p> <p>ML 1565 (1992): 2 Aug 2020</p> <p>CCL 766 (1973): 16 Sep 2020</p> <p>ML 1596 (1992): 19 Dec 2020</p> <p>CCL 745 (1973): 27 Dec 2020</p>	Payment of 2020 Authorisation Fees to be made twelve months in advance of the Authorisation fee due date for 2020

Undertaking	Terms	Due Date
Payment of 2021 Authorisation Fees	<p data-bbox="539 230 978 291"><b>Authorisation fee due dates for 2021 (Grant Anniversary Dates)</b></p> <p data-bbox="523 320 914 353">MPL 271 (1973): 9 May 2021</p> <p data-bbox="523 376 914 409">ML 1575 (1992): 9 July 2021</p> <p data-bbox="523 432 914 465">ML 1565 (1992): 2 Aug 2021</p> <p data-bbox="523 488 914 521">CCL 766 (1973): 16 Sep 2021</p> <p data-bbox="523 544 914 577">ML 1596 (1992): 19 Dec 2021</p> <p data-bbox="523 600 914 633">CCL 745 (1973): 27 Dec 2021</p>	Payment of 2021 Authorisation Fees to be made twelve months in advance of the Authorisation fee due date for 2021
Payment of 2022 Authorisation Fees	<p data-bbox="539 678 978 739"><b>Authorisation fee due dates for 2022 (Grant Anniversary Dates)</b></p> <p data-bbox="523 768 914 801">MPL 271 (1973): 9 May 2022</p> <p data-bbox="523 824 914 857">ML 1575 (1992): 9 July 2022</p> <p data-bbox="523 880 914 913">ML 1565 (1992): 2 Aug 2022</p> <p data-bbox="523 936 914 969">CCL 766 (1973): 16 Sep 2022</p> <p data-bbox="523 992 914 1025">ML 1596 (1992): 19 Dec 2022</p> <p data-bbox="523 1048 914 1081">CCL 745 (1973): 27 Dec 2022</p>	Payment of 2022 Authorisation Fees to be made twelve months in advance of the Authorisation fee due date for 2022

Bank Guarantee	<p>WCL and WCPL will each provide to the Secretary a bank guarantee (two bank guarantees in total) with each bank guarantee having a face value equivalent to AUD150,000 (AUD300,000 in total) to secure all of the undertakings agreed to by WCL and WCPL under this enforceable undertaking, including, but not limited to, securing WCL's and WCPL's obligation to pay any amounts in connection with this enforceable undertaking, including but not limited to the Authorisation Fees, any administrative fees and penalties in accordance with the terms set out in this enforceable undertaking and <b>Annexure A</b>.</p> <p>The Bank Guarantee will include securing WCL's and WCPL's obligation to pay the annual Authorisation Fees for the following Authorisations by the due dates indicated in this Annexure A:</p> <ul style="list-style-type: none"> <li>(b) CCL 745 (1973)</li> <li>(c) ML 1575 (1992)</li> <li>(d) MP 271 (1973)</li> <li>(e) CCL 766 (1973)</li> <li>(f) ML 1565 (1992)</li> <li>(g) ML 1596 (1992)</li> </ul> <p>The Bank Guarantee must grant the Secretary the option to call in the guarantee for any outstanding amount for any Authorisation Fee.</p> <p>The Bank Guarantee must be an irrevocable, unconditional and undertaking:</p> <ul style="list-style-type: none"> <li>(a) by an Australian bank, which is an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014 (as amended, supplemented or substituted from time to time); and</li> <li>(b) on terms acceptable to the Secretary, in the Secretary's absolute discretion, to pay up to the face value of the Bank Guarantee on demand.</li> </ul> <p>The Secretary can draw on the Bank Guarantee and may apply the monies obtained from the security to fulfil any of the obligations of WCL and WCPL under this enforceable</p>	<p>The two Bank Guarantees must be provided to the Secretary by the earliest date of:</p> <ul style="list-style-type: none"> <li>(a) Within 14 days of the acceptance of this undertaking by the Secretary, or</li> <li>(b) 1 July 2018.</li> </ul>
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Undertaking	Terms	Due Date
	<p>undertaking, including in the event that any of WCL's and WCPL's obligations under this enforceable undertaking are not met by the date required in this enforceable undertaking. If WCL or WCPL fail to meet its financial obligations under this undertaking, the Secretary will be entitled to draw monies from the bank guarantees to satisfy WCL's and WCPL's financial obligations. An administration fee which covers the Department's reasonable costs will be charged by the Secretary in these circumstances.</p> <p>The Bank Guarantees must be unconditional and remain in effect for the term of this undertaking.</p>	