
Mining Act undertaking

Reason for decision



Decision to accept a Mining Act undertaking given by RZ Resources Ltd

Entity	RZ Resources Ltd (ACN 160 863 892)
Issue	Whether to accept or reject a Mining Act undertaking given by RZ Resources Ltd
Legislation	Part 17A, Division 4B of the <i>Mining Act 1992</i>
Decision maker	Peter Day Executive Director, NSW Resources Regulator Department of Regional NSW

Section 378ZFB decision

As authorised by section 378ZFB of the *Mining Act 1992* (**Act**), and in accordance with the authority delegated by me the Secretary of the Department of Regional New South Wales (**Department**), I, Peter Day, Executive Director, NSW Resources Regulator (**Regulator**), have decided to **accept** the enforceable undertaking given by RZ Resources Ltd (**RZR**), as attached to this decision.

Reasons for decision

Legislation

- Section 378ZFB of the Act provides that:
 - The Secretary of the Department (**Secretary**) is the Regulator for the purposes of the Act. The Secretary may accept a written undertaking (**an enforceable undertaking**) given by a person in connection with a matter relating to a contravention or alleged contravention by the person of this Act.
 - The giving of an enforceable undertaking does not constitute an admission of guilt by the person giving it in relation to the contraventions or alleged contraventions to which the undertaking relates.
 - The Secretary must issue, and make public, general guidelines for or in relation to the acceptance of an enforceable undertaking under this Act.
- The Secretary is required, under section 378ZFC of the Act, to give the person seeking to make an enforceable undertaking written notice of the Secretary's decision to accept or reject the enforceable

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undertaking and the reasons for the decision. Further, the Secretary must publish, and make public, notice of a decision to accept an enforceable undertaking and the reasons for that decision.

3. In exercising functions under the Act, the Secretary must have regard to the 'Objects' set out in section 3A of the Act.
4. The maximum penalty for failing to comply with an enforceable undertaking is \$1.1 million in the case of a corporation and \$220,000 in the case of a natural person.
5. The Secretary has issued, and published on the Regulator's website www.resourcesregulator.nsw.gov.au, guidelines relevant to the acceptance of Mining Act enforceable undertakings (**Guidelines**) as required by section 378ZFB(3) of the Act.
6. The Secretary has delegated the functions to accept or reject an enforceable undertaking under section 378ZFB of the Act to the Executive Director of the NSW Resources Regulator.

Background

7. RZR currently holds 14 exploration licences, Exploration Licence (**EL**) No. 8308, 8309, 8310, 8312, 8385, 8769, 8865, 9219, 9221, 9222, 9223, 9496, 9499 and 9500 (Act 1992). RZR previously held EL 8311 (Act 1992) which is now expired and EL 8569 and 8648 (Act 1992) which have been cancelled.
8. The Regulator commenced an investigation into 10 of these exploration licences following a site inspection as part of a compliance audit in late 2020.
9. This investigation focused on the Copi and Magic project and identified numerous alleged breaches of the Act. Details of these allegations are attached to the undertaking at Appendix 1. They include contraventions of conditions of authorisation across the 10 exploration licences; an offence under section 37D(1) of the Act; a failure to comply with a notice requiring RZR to provide information and records issued under section 248B of the Act, an offence under section 248S of the Act; and the failure to comply with a notice issued under section 240 of the Act, an offence under 240C of the Act.

Proceeding for alleged contravention

16. Section 378ZFH(1) of the Act requires that no proceedings for a contravention or alleged contravention of this Act may be brought against a person if the person has given an enforceable undertaking in relation to that contravention and the enforceable undertaking is in effect.

Terms of Enforceable Undertaking

17. On 6 March 2023, RZR submitted a signed undertaking for the consideration of the Secretary.
18. Consistent with the Guidelines, the proposal was developed using the pre-proposal advisory services offered by the Regulator which provided 'without prejudice' feedback on the proposed terms of the undertaking.

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19. In summary, the RZR enforceable undertaking proposes to:

- a. Purchase a software licence (Pix4d) for tracking a more conclusive picture of pre and post rehabilitation within three months of signing this undertaking.

Provide a report that demonstrates the capabilities of the software and processes, and how it is utilised to benefit title management within six months of signing this undertaking.

- b. Donate \$20,000 to the Association of Mining and Exploration Committee (**AMEC**) within three months of signing this undertaking, to develop a workshop and resource package to support continuous improvement, education and compliance of NSW explorers (in accordance with a sponsorship agreement made on 8 November 2022).

Submit a report to the Regulator on the outcomes of the workshop within 12 months of signing of this undertaking.

- c. Donate \$80,000 to Wentworth Shire Council within six months of signing this agreement, as a contribution to the local council Junction Island project viewing platform and walkway (in accordance with the donation/sponsorship agreement made on 15 November 2022).

Within 12 months of signing this undertaking, a report will be provided to the Regulator on expenditure of funds and outcomes of the project.

- d. Pay the Regulator's costs as follows:
 - i. Compliance monitoring costs - \$3,000
 - ii. Investigation costs - \$50,000

19. RZR must spend a minimum of **\$163,945**, including GST, in carrying out the terms of the proposed enforceable undertaking, inclusive of the Regulator's recoverable costs.

Considerations and findings

20. Whilst under the Act the giving of an enforceable undertaking does not constitute an admission of guilt, RZR has acknowledged the alleged contraventions of the Act.

21. In considering this matter, I have given due regard to the objects of the Act, in particular:

- Section 3A(b) which identifies the need for an integrated framework for the effective regulation of authorisations for prospecting and mining operations
- section 3A(f) which relates to the need to ensure effective rehabilitation of disturbed land and water

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- section 3A(g) which identifies the need to ensure mineral resources are identified and developed in ways that minimize impacts on the environment.
22. It is essential that explorers conduct their activities in a responsible manner and in accordance with the Act and regulation. It is an expectation that explorers are familiar with all conditions and legislative obligations and adhere strictly to these obligations, including statutory notices and directions issued by the Regulator.
 23. A fundamental requirement of explorers is that they adhere closely to any activity approvals when conducting assessable prospecting operations and ensuring these activities are rehabilitated to the required standards as identified in the Code of Practice: Rehabilitation.
 24. Furthermore, for successful exploration, explorers must engage in adequate, inclusive, and appropriate community consultation in relation to the planning for, and conduct of, exploration activities in accordance with the Exploration Code of Practice: Community Consultation, which includes the development of an adequate community consultation strategy.
 25. Furthermore, the community expects that exploration companies such as RZR comply with their obligations under the Act and associated regulations when conducting exploration activities.
 26. I note from the undertaking that RZR has undertaken significant changes since the commencement of the investigation to prevent further occurrences and that RZR states that, *“the behaviour and actions that led to the contravention have ceased and shall not reoccur”*.
 27. I am satisfied that the terms of the undertaking deliver tangible benefits to explorers through the development of the workshop and resource package by AMEC and to the community through the provision of \$80,000 to the Wentworth Shire Council, as a contribution to the local council Junction Island project viewing platform and walkway.
 28. I also note that the purchase of the software licence (Pix4d) for tracking a more conclusive picture of pre and post rehabilitation will assist RZR in managing rehabilitation in the future.
 29. Further, the undertaking enables the Regulator to recover its investigation and monitoring costs. This term will ensure that the Regulator, and ultimately the taxpayer, does not incur further costs, particularly in relation to investigation, which may never be recouped through prosecution proceedings.
 30. Having regard to the specific circumstances of this case, I am satisfied that the quantum of \$163,945 provides a significant deterrent effect and achieves better outcomes than prosecution action alone.
 31. I am satisfied that the enforceable undertaking given by RZR meets the requirements of the Act and the Guidelines.

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32. Accordingly, I have determined to **accept** the enforceable undertaking given by RZR.

Date of decision: 13 March 2023

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

Peter Day

Executive Director

Resources Regulator - Department of Regional NSW

**NOTE: In accordance with section 378ZFC of the *Mining Act 1992*, a copy of the enforceable undertaking and this decision will be published on the regulator's website:
www.resourcesregulator.nsw.gov.au.**