
Mining Act undertaking

Reason for decision



Enforceable undertaking given by Catalina Resources Ltd accepted

Entity	Catalina Resources Ltd (ACN 130 618 683)
Issue	Whether to accept or reject a Mining Act undertaking given by Catalina Resources Ltd (formerly known as Shree Minerals Limited)
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* (**Mining 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 Catalina Resources Ltd, attached to this decision.

Reasons for decision

Legislation

- Section 378ZFB of the Mining 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 Minerals 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. Catalina is a Western Australian based company. The Directors of Catalina are Sanjay Loyalka and Richard Beazley.
12. COVID-19 travel restrictions impeded Catalina's capacity to attend EL 9155. Catalina engaged Rangott Mineral Exploration Pty Ltd (**Rangott**) (ACN 002 536 825) to carry out the works under the drill program.
13. On 14 April 2022, the Regulator conducted an announced inspection of EL 9155, specifically project area 1 as defined in the Application.

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14. As a result, the Regulator has commenced an investigation into the actions of Catalina regarding its failure to comply with the Activity Approval.
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. 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. The allegations include,
 - a. **Allegation 1 - Breach of s.378D of the Mining Act by failing to comply with general statutory condition pursuant to s.23A(7) of the Mining Act (NCN0009986)**

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.378D of the Mining Act by failing to comply with general statutory condition pursuant to s.23A(7) of the Mining Act (NCN0009990)**

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.378D of the Mining Act by failing to comply with general statutory condition pursuant to s.23A(7) of the Mining Act (NCN0009988)**

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.378D of the Mining Act by failing to comply with general statutory condition pursuant to s.23A(7) of the Mining Act (NCN0009991)**

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

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as 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 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.378D of the Mining Act by failing to comply with general statutory condition pursuant to s.23A(7) of the Mining Act (NCN0009989)

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.378D of the Mining Act by failing to comply with general statutory condition pursuant to s.23A(7) of the Mining Act (NCN0009985)

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.378D of the Mining Act by failing to comply with general statutory condition pursuant to s.23A(7) of the Mining Act (NCN0009984)

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.378D of the Mining Act by failing to comply with general statutory condition pursuant to s.23A(7) of the Mining Act (NCN0009987)

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.

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i. **Allegation 9 – Breach of s.378D of the Mining Act by failing to comply with general statutory condition pursuant to s.23A(7) of the Mining Act (NCN0009948)**

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

19. 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

20. On 5 May 2023, Catalina 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.

21. In summary, the Catalina enforceable undertaking submitted on 5 May 2023 proposed to:

- a. Pay \$67,500 to South East Local Land Services (**SE LLS**) towards undertaking project/s to assist with environmental protection in the local area.

Within 30 days of receiving invoice or payment instructions from SE LLS. Catalina proposed to then provide evidence of payment to the Regulator within 14 days of making the payment and report within 3 months of the completion of works.

- b. Engage Umwelt (Australia) Pty Ltd to author an article focussing on 'best practice requirements for ensuring aboriginal ecological requirements are met', providing a copy of the article to the Regulator for approval prior to publishing in the Digging & Drilling magazine.

Once approved by the Regulator, Catalina were to arrange publication of the article within 12 months following the acceptance of the undertaking and provide evidence of publication to the Regulator. (minimum cost \$6,964.00).

- c. Pay \$52,500 to Upper Snowy Landcare Network to undertake projects to assist in improving local vegetation and protecting the natural environment in the region of the Central Monaro.

Payment of donations to the Upper Snowy Landcare group were proposed to be made within 30 days of acceptance of the undertaking. Catalina proposed to provide evidence of payment to the

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Regulator within 14 days of making the payment and report within 3 months of the completion of works.

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

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

22. Catalina was to spend a minimum of \$141,964.00, excluding GST, in carrying out the terms of the proposed enforceable undertaking, inclusive of the Regulator's recoverable costs.
23. However, on 20 June 2023 the Executive Director rejected the proposed undertaking on the basis that strategy 1, being a payment of \$67,500 to SE LLS to undertake projects to assist with environmental protection in the local area, could be perceived as a conflict interest given that SE LLS is also an agency within the Department of Regional NSW. Catalina were advised of the reason for rejection.
24. On 5 July 2023 Catalina submitted an amended enforceable undertaking signed 4 July 2023 for the consideration of the Secretary. Consistent with the Enforceable Undertaking Guidelines, the proposal was developed using the preproposal advisory services offered by the Regulator which provided 'without prejudice' feedback on the proposed terms of the undertaking.
25. In summary, the Catalina enforceable undertaking proposes to:
 - a. Pay \$67,500 to Monaro District Rural Fire Service (**MRFS**) towards the purchase of training aids within 30 days of receiving invoice or payment instructions from MRFS. Catalina will then provide evidence of payment to the Regulator within 14 days of making the payment and will report within 3 months of the completion of works.
 - b. Engage Umwelt (Australia) Pty Ltd to author an article focussing on 'best practice requirements for ensuring aboriginal ecological requirements are met', providing a copy of the article to the Regulator for approval prior to publishing in the Digging & Drilling magazine. Once approved by the Regulator, Catalina will arrange publication of the article within 12 months following the acceptance of the undertaking and provide evidence of publication to the Regulator. (minimum cost \$6,964.00).
 - c. Pay \$52,500 to Upper Snowy Landcare Network to undertake projects to assist in improving local vegetation and protecting the natural environment in the region of the Central Monaro. Payment of donations to the Upper Snowy Landcare group within 30 days of acceptance of the undertaking. Catalina will provide evidence of payment to the Regulator within 14 days of making the payment and will report within 3 months of the completion of works.
 - d. Pay 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.

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- e. Catalina propose to spend a minimum of **\$141,964.00**, excluding GST, in carrying out the terms of the proposed enforceable undertaking, inclusive of the Regulator's recoverable costs.

26. The activities proposed in delivering this undertaking must be completed within 12 months of the acceptance of the undertaking.

Considerations and findings

27. Whilst under the Mining Act the giving of an enforceable undertaking does not constitute an admission of guilt, Catalina has acknowledged the 9 alleged contraventions of s.378D of the Act.

28. There is a fundamental expectation that companies exploring in New South Wales (**NSW**) adhere to their legislative obligations and requirements when conducting exploration activities.

29. As outlined in the Exploration Code of Practice: Environmental Management, these companies must ensure that they have adequate controls in place to manage potential impacts on the environment associated with their exploration activities, including amongst other things, soil erosion; damage to flora, fauna and habitat; and damage to places of Aboriginal significance, Aboriginal objects and items of heritage significance.

30. This is especially important when engaging and relying on contractors or consultants to manage and oversee any works being conducted. Whilst the responsibility for compliance or the implementation of environmental controls is often passed to the contractor, the licence holder will retain accountability for compliance with its licence conditions and other compliance obligations.

31. Further, there is an expectation by the community of NSW that Explorers take all practicable steps to conserve and manage possible harm to places, objects and features of significant to Aboriginal people, especially where there are known locations.

32. Having considered the information before me, I am of the view that the terms referred to in the undertaking deliver tangible benefits to the community and are commensurate to the alleged offending by Catalina. This includes the provision of \$52,500 to the Upper Snowy Landcare Network and the provision of \$67,500 to the Monaro District Rural Fire Service.

33. In addition, the publication of an approved article addressing '*best practice requirements for ensuring aboriginal ecological requirements*' will likely promote awareness to the best practice methods of preserving aboriginal cultural heritage in NSW.

34. 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.

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35. The total of \$141,964 to be paid by Catalina, having regard to the specific circumstances of this case, provides a significant deterrent effect and achieves better outcomes than prosecution action alone.
36. I also note that Catalina intends on complying with all conditions and rectification works required under the suspension notice. These include the commission of suitably qualified independent persons to conduct a review of its systems and processes for meeting its compliance obligations under the Mining Act, and conduct an ecological review and assessment of the vegetation community within Project Area 1; report on the findings, recommendations and corrective actions arising from these reviews; report on its intended response to the sediment and erosion issue and rehabilitation requirements; and apply for an Aboriginal Heritage Impact Permit.
37. I am satisfied that the enforceable undertaking given by Catalina meets the requirements of the Mining Act and the Enforceable Undertakings Guidelines.
38. 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.
39. Accordingly, I have determined to accept the enforceable undertaking given by Catalina.

Date of decision: 17 July 2023

A handwritten signature in black ink, appearing to read "P Day".

Peter Day

Executive Director

Resources Regulator

Department of Regional NSW

NOTE: In accordance with section 378ZFG 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