

Undertaking to the Secretary of the Department of Industry, Skills and Regional Development

WorleyParsons Services Pty Limited
ACN 001 279 812

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

Details

Date: August 2016

Background

- A The Division of Resources and Energy (**DRE**) within the Department of Industry, Skills and Regional Development (**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 a contravention or alleged contravention of the Mining Act by the person pursuant to section 378ZFB of the Mining Act.
- C KEPCO Bylong Australia Pty Limited (ACN 075 361 769) (**KEPCO**) is the holder of Authorisation 342 (**A342**) and Authorisation 287 granted under the Mining Act (together, **Coal Titles**).
- D KEPCO is the proponent of the Bylong Coal Project (**Bylong Project**).
- E The Bylong Project comprises the proposed development of an open cut and underground coal mine (including associated infrastructure) and is generally described in the Environmental Impact Statement dated September 2015 in support of State significant development application number SSD 14_6367.
- F In August 2014, KEPCO engaged WorleyParsons Services Pty Limited (ACN 001 279 812) (**WorleyParsons**) to manage the Bylong Project on its behalf, this included providing services in respect of the management and maintenance of the Coal Titles.
- G On 7 and 8 May 2015, WorleyParsons submitted a Surface Disturbance Notice Application (**SDN Application**) in respect of proposed exploration activities associated with A342. The SDN Application sought approval to drill six exploration boreholes on the property known as 'Oakdale' at Upper Bylong comprising:
- (i) Lots 76, 82 and 83 in DP 755438; and
 - (ii) Lots 20, 36 and 58 in DP 755420,
- (Oakdale Property)**.
- H The SDN Application was accompanied by a number of attachments including a document titled "Proposed Drill Holes on the Property 'Oakdale'". This document comprised six photographs that were not photographs of the proposed locations of the

six exploration boreholes on the Oakdale Property (**Photographs**).

I On or about 22 June 2015, the Department was advised that the Photographs provided in the SDN Application were not taken on the Oakdale Property and did not show the proposed locations of the proposed boreholes on the Oakdale Property.

J The Department alleges that the provision of the Photographs in the SDN Application is furnishing information in or in connection with an application under the Mining Act that a person knows to be false or misleading in a material particular, in breach of section 378C of the Mining Act (**alleged contravention**).

K On 11 March 2016, the Department issued a Court Attendance Notice in the Local Court (Case Number 2016/0079870) (**Proceedings**) on WorleyParsons alleging that the information provided in connection with the SDN Application constituted an alleged contravention (**Alleged Offence**).

L WorleyParsons acknowledges the concerns of the Department, the industry and the community in relation to the Alleged Offence and has already implemented, and undertakes to implement, additional preventative measures which are set out in this undertaking, and in Annexure A of this undertaking.

M WorleyParsons has offered, and the Secretary has accepted, the commitments set out in this undertaking as the most effective and appropriate regulatory outcome in the circumstances, and as a means by which WorleyParsons will address the alleged conduct that led to the Alleged Offence and to prevent the alleged conduct from occurring again.

N As far as WorleyParsons is aware, the Bylong Project is the only project in which documents and information have been:

(a) prepared by WorleyParsons in relation to applications under the Mining Act; and

(b) provided directly by WorleyParsons to the DRE,

in the period commencing 3 years before this undertaking takes effect.

O This undertaking has been prepared in accordance with, and satisfies the specific requirements for undertakings contained in the *Enforceable Undertakings Guideline* prepared by the Department dated March 2016 as follows:

(a) Dates or timeframes for completing actions.

Clause 1.2 of this undertaking provides that WorleyParsons will report to the Department on the implementation of the measures stated in Annexure A of this undertaking within the timeframes specified in clause 2.4 of Annexure A.

Clause 1.3(d) of this undertaking also provides that WorleyParsons will use its best endeavours to ensure that the Fact Sheet is completed within 6 months of the date on which this undertaking takes effect.

Clause 1.4(d) provides that the required payments will be made by WorleyParsons to the Department within 28 days of receipt of both a written direction to pay from the Secretary for the payments and a completed WorleyParsons Business Services Center Master Request Form.

- (b) How the alleged offender will address the conduct that led to the alleged contravention and prevent that conduct from occurring again.

Clause 1.2 and Annexure A set out the measures that WorleyParsons has and will undertake to prevent the provision of incorrect information to the Department.

- (c) Initiate tangible actions that will benefit industry and community.

The industry and community will benefit from:

- (i) the Fact Sheet (clause 1.3),
- (ii) the preventative action (clause 1.2 and Annexure A), and
- (iii) the payment of the Department's investigation and legal costs (clause 1.4(a) and 1.4(b)).

- (d) Reimburse the Department's agreed costs associated with any monitoring of the enforceable undertaking.

Clause 1.4(c) requires WorleyParsons to pay the Department's costs associated with entering into and monitoring compliance with this undertaking.

- (e) The name of the senior manager or director who will be responsible for monitoring or complying with the undertaking (the Contact Officer).

Clause 1.5(a) of this undertaking provides the name of the WorleyParsons employee person responsible for monitoring compliance with this undertaking.

- (f) The name of the officer at the Department to whom the contact officer must report.

This undertaking provides the name of the relevant officer: see clause 1.5(b).

- (g) Details of how the Contact Officer will monitor and report to the Department in relation to the implementation of the undertaking.

Clause 1.2 and Annexure A outlines the internal and external compliance measures that will be undertaken, how monitoring and auditing will occur, and that reports will be provided to the Department in accordance with the timeframes specified in clause 2.4 of Annexure A.

- (h) Acknowledgement that the enforceable undertaking will be published on the Department's website.

Clause 2(a) acknowledges that this undertaking will be published by the Department on the Department's public register.

- (i) Agreement to pay the Department's investigation and any legal costs incurred in anticipated or potential legal proceedings.

Clauses 1.4(a) and 1.4(b) obliges WorleyParsons to pay the Department in relation to the Department's investigation and legal costs incurred in relation to the Alleged Offence.

1. Agreed Terms

1.1 Undertakings

Under section 378ZFB of the Mining Act, WorleyParsons has given and the Secretary has accepted the following undertakings.

1.2 Prevention of future incidents

WorleyParsons undertakes to take the actions stated in Annexure A to this undertaking to prevent the provision of incorrect information to the Department, and to report to the Department on the implementation of each of the measures in this undertaking in accordance with the timeframes specified in clause 2.4 of Annexure A.

1.3 Development of Fact Sheet

- (a) WorleyParsons undertakes to develop itself or engage a suitably qualified consultant to develop a best practice document management fact sheet for preparing statutory applications under the Mining Act (**Fact Sheet**).

- (b) WorleyParsons undertakes that the Fact Sheet is to include the following matters:

- (i) Legislative context / requirements;
- (ii) Application content;
- (iii) Agent involvement (i.e. if the application is on behalf of a proponent);

- (iv) Peer review process;
 - (v) Communication (internal and with the Department);
 - (vi) Approval process;
 - (vii) Code of Conduct;
 - (viii) Skills and Training requirements;
 - (ix) Governance structure;
 - (x) Penalties / consequences of not following legislative processes; and
 - (xi) Where to find additional resources i.e. guidance material / reference material.
- (c) WorleyParsons undertakes that the Fact Sheet is to be developed in consultation with the Department and will be managed through a formal review process comprising 2 reviews. WorleyParsons will take all reasonable steps to ensure that the first review is completed within 2 months of the date on which this undertaking takes effect and becomes enforceable in accordance with section 378ZFD of the Mining Act (**Acceptance Date**), and the second review is completed within 4 months of the Acceptance Date.
- (d) WorleyParsons must use its best endeavours to ensure the Fact Sheet is completed within 6 months of the Acceptance Date.
- (e) WorleyParsons must present the Fact Sheet to the NSW Minerals Council Environment and Community Conference, or such other similar conference as may be agreed by the parties.
- (f) WorleyParsons assigns the copyright in the final version of the Fact Sheet to the Department on its completion.
- (g) The Department grants WorleyParsons a royalty-free licence to use the Fact Sheet on its completion.

1.4 **Financial**

- (a) WorleyParsons undertakes to provide a total payment of \$24,799.00 (exclusive of GST) to the Department to reimburse the Department's investigation costs incurred in relation to the Alleged Offence.
- (b) WorleyParsons undertakes to provide a total payment of \$36,833.54 (exclusive of GST) to the Department to reimburse the Department's legal costs incurred in relation to the Alleged Offence.

- (c) WorleyParsons undertakes to pay the Department's agreed costs of \$3,000.00 (exclusive of GST) associated with monitoring of this undertaking, including consultation in relation to the development of the Fact Sheet.
- (d) WorleyParsons undertakes to pay the Department in accordance with clauses 1.4(a), 1.4(b) and 1.4(c) within 28 days from the date on which it receives both a written direction to pay from the Secretary for the payments and a completed WorleyParsons Business Services Center Master Request Form.
- (e) The Department accepts and acknowledges that the payments made by WorleyParsons pursuant to clauses 1.4(a), 1.4(b) and 1.4(c) are in full and final satisfaction of WorleyParsons' obligations to make payments to the Department in relation to the Alleged Offence and the monitoring of and compliance with this undertaking.

1.5 Persons responsible for this undertaking

- (a) Francis Brown is the person responsible for monitoring WorleyParsons' compliance with this undertaking and reporting to the Department on the implementation of the measures in this undertaking (**Contact Officer**).
- (b) David Muxlow, Compliance Manager of the Department, is the Department officer to whom the Contact Officer must report in relation to this undertaking (**Department Officer**).
- (c) The Contact Officer will monitor and report to the Department Officer in relation to the monitoring of and compliance with this undertaking as follows:
 - (i) WorleyParsons is to advise the Department Officer in writing within 7 days of any change in the person who is the Contact Officer.
 - (ii) The Department is to notify the Contact Officer in writing within 7 days of any change in the person who is the Department Officer.

2. Acknowledgements

- (a) WorleyParsons 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 from time to time publicly refer to this undertaking; and
 - (iii) will publish this undertaking.

- (b) WorleyParsons acknowledges that the Secretary's acceptance of this undertaking only relates to the Department's concerns regarding the Alleged Offence and, other than provided for in the Act, does not affect the Department's powers.
- 2.2 WorleyParsons acknowledges that this undertaking does not affect the rights or remedies available to any other person or entity, other than WorleyParsons and the Department (including any successors in title), nor does it affect any other statutory obligations under the Mining Act.
- 2.3 WorleyParsons acknowledges that this undertaking takes effect and becomes enforceable when the Secretary's decision to accept the undertaking is given to WorleyParsons.
- 2.4 WorleyParsons acknowledges that this undertaking may only be varied in accordance with the Mining Act.
- 2.5 WorleyParsons acknowledges that this undertaking, as varied from time to time, will remain in force until withdrawn in accordance with the Mining Act.

Signing Page

Executed as an agreement

Accepted by **WorleyParsons Services Pty)**
Limited ACN 001 279 812 in accordance with **)**
Section 127 of the Corporations Act 2001 **)**
(Cth)



Signature of Director

Andrew Wood

Name of Director (print)

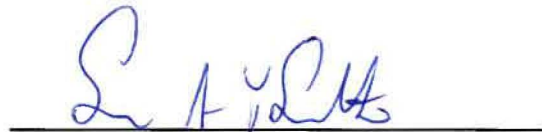


Signature of ~~Director~~/Company Secretary

Nuala O'Leary

Name of ~~Director~~/Company Secretary (print)

**ACCEPTED BY THE SECRETARY OF THE DEPARTMENT OF INDUSTRY, SKILLS AND
REGIONAL DEVELOPMENT PURSUANT TO SECTION 378ZFB OF THE MINING ACT:**



Signature of the Secretary

Date: 5/8/16

Annexure A

Preamble

WorleyParsons, under the direction of its senior management, has undertaken a review of its Project Execution Plan and Administration and Communication Plan for the Bylong Project (collectively referred to as the **Project Plans**) which, among other things, describe the management process for the delivery of the Project. The changes to these documents, and the processes described therein, are intended to implement best project compliance practices to ensure that the Alleged Offence is not repeated on projects involving the preparation of documents and information in relation to applications under the Mining Act, and that are prepared and provided directly by WorleyParsons to the DRE.

Operative Provisions

In relation to the Alleged Offence, WorleyParsons has done, or undertakes to do, the following (as indicated below):

1. Internal Compliance:

1.1 Compliance training:

- (a) all personnel involved in the preparation of documents and information in relation to applications under the Mining Act, that are to be provided directly by WorleyParsons to the DRE will receive in-house compliance training on the changes to the Project Plans as well as re-affirming WorleyParsons' and the DRE's expectations for the preparation of documents, especially those that are intended for the public record or community stakeholder consultation using the Alleged Offence as a 'lessons learnt' exercise to prevent similar, and avoidable, incidents. In addition to the items listed in this Annexure, the training will feature expectations for compliance with the requirements of the Mining Act, reporting of incidents and breaches (including potential incidents and breaches) and community expectations in relation to the preparation and provision of documents and information to the DRE in relation to applications under the Mining Act; and
- (b) the extension of similar training to become mandatory as part of induction on-boarding for all new Project personnel; and
- (c) refresher training will be offered periodically.

1.2 Delegations of authority – the delegations of authority on the Bylong Project have been revised to ensure that all Project tasks are appropriately assigned to staff with the relevant seniority for approval. The delegations of authority will be regularly reviewed, no less often than annually, to ensure adequacy and currency of delegations set. The delegations will be

communicated to all Project personnel as part of compliance training, and separately after any significant update or amendment.

1.3 Communications protocol – the communications protocol on the Bylong Project has been revised to ensure that all communications are only sent after they have been:

- (a) peer reviewed and verified by a qualified senior titled person expressly confirming as part of sign-off for the relevant communication that the document has been checked against input data (among other things); and
- (b) approved by the relevant approver who expressly confirms that the communications process in the Project Plans has been complied with in respect of the relevant communication. Any items which cannot be verified are to be reported to the Project Manager for determination.

In the case of external communications intended for the public record (specifically key Project documents / applications to the DRE), final approval can only be given by the Project Manager.

1.4 Internal Prospective Audits

The Contact Officer will have internally audited for their compliance with the Project Plans, documents and information:

- (i) prepared in relation to any application under the Mining Act for the Bylong Project; and
- (ii) that has been prepared and provided directly by WorleyParsons to the DRE.

Audit reports are to be provided to the Contact Officer and where an assessment reveals a deficiency or non-conformance, a non-conformance report will be initiated and steps undertaken by the relevant process owner to resolve the deficiency. The Contact Officer will follow-up and verify that suitable corrective action has dealt with the identified deficiency and that adequate steps have been taken to prevent a similar deficiency recurring. Audits will be conducted annually for a period of 3 years from the Acceptance Date.

2. External compliance

2.1 Retrospective audit

- (a) Within 6 months of the parties signing this undertaking, an external auditor (to be agreed by WorleyParsons and the DRE) is to audit for their compliance with the requirements of the Mining Act, documents and information:
- (i) that have been prepared in relation to any application under the Mining Act;
 - (ii) that have been prepared by WorleyParsons for the purpose of providing to the DRE; and
 - (iii) that have been provided to the DRE either:
 - (A) directly by WorleyParsons; or
 - (B) by a client of WorleyParsons,
- for the period commencing 3 years before the Acceptance Date and ending on the Acceptance Date.
- (b) The external auditor is to prepare a report setting out the findings of his or her audit. Where the assessment reveals a deficiency or non-conformance, the report is to include recommendations and any steps to be undertaken by WorleyParsons to resolve the deficiency or non-conformance.
- (c) After receiving the auditor's report, WorleyParsons is to prepare and submit to the Department an action plan setting out how and by when, it will implement the recommendations, if any, in the external auditor's report.

2.2 Independent Review of Internal Audits

WorleyParsons will engage an external auditor (to be agreed by WorleyParsons and the DRE) to independently review and confirm the results of the internal audits in accordance with clause 1.4, within 3 months of the outcome of the internal audits.

2.3 External lawyers – WorleyParsons will engage external legal advisers to review external communications intended for the public record (specifically key project documents / applications to the DRE for the Bylong Project) to ensure compliance with the Mining Act.

2.4 Reporting to the Department:

- (a) WorleyParsons will report to the Department within 12 months of the Acceptance Date on the steps taken by WorleyParsons in accordance with the requirements in clauses 1.1, 1.2, and 1.3 of this Annexure A;
- (b) Subject to clause 2.5, WorleyParsons will report to the Department:
 - (i) by 1 June 2017, on the outcome of the external retrospective audit undertaken in accordance with clause 2.1, and submit a copy of its action plan, prepared in accordance with clause 2.1(c);
 - (ii) within 3 months of the outcome of each of the internal audits undertaken by WorleyParsons in accordance with clause 1.4(b); and
 - (iii) within 3 months of the outcome of each of the independent reviews undertaken by an external auditor in accordance with clause 2.2.

2.5 The Department acknowledges and agrees that the reports provided by WorleyParsons in accordance with clause 2.4 may be provided to the Department in confidence where WorleyParsons is bound by an obligation of confidentiality to a person or persons who are not a party to this undertaking.