



**DOC18/359992**

**File No:** 0721-2017  
**Entity:** Ridgелands Coal Resources Pty Ltd (ACN 141 312 727)  
**Issue:** Whether to accept an enforceable undertaking in relation to an alleged contravention of the Mining Act.  
**Decision maker:** Lee Shearer  
Deputy Secretary, Resources Regulator  
Coordinator General for the Central Coast

## **Section 378ZFB decision**

As authorised by section 378ZFB of the *Mining Act 1992*, and in accordance with the authority delegated to me by the Secretary of the Department of Planning and Environment, I, Lee Shearer, Deputy Secretary of the Resources Regulator and Coordinator General for the Central Coast, have decided to **accept** the enforceable undertaking given by Ridgелands Coal Resources Pty Limited, as attached to this decision.

## **Reasons for decision**

### **Legislation**

1. Section 378ZFB of the Mining Act 1992 provides that:
  - a) 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 the Act.
  - b) The giving of an enforceable undertaking does not constitute an admission of guilt by the person giving it in relation to the contravention or alleged contravention to which the undertaking relates;
  - c) The Secretary must issue, and make public, general guidelines for or in relation to the acceptance of enforceable undertakings under this Act.
2. Section 378ZFH of the Act provides that no proceedings for a contravention or alleged contravention of the Act may be brought against a person if an enforceable undertaking is in effect, or has been completely discharged, in relation to that contravention. If proceedings have already been commenced when the Secretary accepts an enforceable undertaking, then the Secretary must take all reasonable steps to have the proceedings discontinued as soon as possible.
3. Section 378ZFC of the Act provides that the Secretary is required to give the person seeking to make an enforceable undertaking written notice of the Secretary's decision to accept or reject the enforceable undertaking and the reasons for the decision.
4. In exercising functions under the Act, the Secretary must have regard to the objects set out in section 3A of the Act.

5. 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.

## **Background**

6. On 27 February 2013, Exploration Licence (EL) 8064 was granted to Ridgелands Coal Resources Pty Ltd - ACN 141 312 727 ("Ridgелands"). EL 8064 is located approximately 18 km north of Denman, NSW and authorises Ridgелands to prospect for Group 9 (Coal and Shale Oil) minerals.
7. In August 2017, the Division of Resources and Geoscience referred an allegation that Ridgелands had failed to comply with condition 58 of EL 8064 relating to the establishment of a \$5 million community fund to the NSW Resources Regulator.
8. Condition 58 of EL 8064 requires Ridgелands to do the following:
  - a) As soon as reasonably practical after the grant of EL 8064, set up a local community fund (Community Fund) to fund initiatives to benefit the local community; and
  - b) Contribute a minimum of \$5,000,000 to the Community Fund over the initial five-year term of EL 8064; and
  - c) Publicise to the local community the existence of the Community Fund and guidelines for applying for grants from the Community Fund; and
  - d) Remain responsible for the administration of the Community Fund and for any taxation or other obligations arising from or in connection with the Community Fund; and
  - e) Provide bi-annual written reports to the Minister through the Director Industry Coordination, in a form satisfactory to the Minister, detailing the payments made into and from the Community Fund and the results of initiatives funded; and
  - f) Respond to any request for information from the Minister related to the status and progress of the Community Fund, and provide such information in a timely fashion when requested; and
  - g) In good faith continue to contribute to and support the administration of the Community Fund after the grant (if any) of a mining lease, until such time as the licence holder ceases mining operations in the area.
9. Immediately following the referral, the Resources Regulator commenced an investigation into Ridgелands compliance with condition 58, and in particular, whether the Fund had been established 'as soon as reasonably practicable' after the grant of EL 8064.
10. If proven, the allegation would amount to a breach of section 378D(1) of the Act 'Contravention of condition of authorisation' which carries a maximum penalty of \$1.1 million for a corporation and \$110,000 for a natural person.
11. On 12 March 2018, Ridgелands proffered an enforceable undertaking proposal for the consideration of the Secretary. That proposal was rejected and reasons for the decision were published at [https://www.resourcesandenergy.nsw.gov.au/data/assets/pdf\\_file/0005/805856/Decision-Ridgелands\\_Coal\\_Resources-Enforceable\\_undertaking.pdf](https://www.resourcesandenergy.nsw.gov.au/data/assets/pdf_file/0005/805856/Decision-Ridgелands_Coal_Resources-Enforceable_undertaking.pdf).

### **Proposed undertaking**

12. On 19 June 2018, Ridgелands submitted an enhanced enforceable undertaking proposal to the Secretary. Consistent with the Enforceable Undertaking Guidelines the proposal was developed using the pre-proposal advisory services offered by the Resources Regulator which provided 'without prejudice' feedback on the proposed terms of the undertaking.
13. In summary, the Ridgелands undertaking proposes to:
  - a) Pay a further contribution of \$200,000 into the Ridgелands Community Fund
  - b) Conduct training for Ridgелands personnel about the compliance requirements of the Mining Act
  - c) Amend the Deed Poll by execution of the Supplementary Deed Poll within one month of acceptance of the undertaking to include enhanced governance arrangements
  - d) Comply with condition 58 of EL 8064 and the amended Deed Poll
  - e) Publish a list of the projects on the Ridgелands website that have been approved for funding from the Ridgелands Community Fund, subject to consent of the receiver of the funds
  - f) Fund the projects approved by the Ridgелands Investment Committee within six months of approval of the project (or as otherwise agreed by the parties)
  - g) Fund a minimum of \$5,200,000 of Approved Funding Proposals (as defined by the Deed Poll) by 30 June 2019
  - h) Report to the Regulator on the disbursement of funds quarterly until all funds are expended
  - i) Pay the Regulator's investigation and legal costs of \$28,800
  - j) Pay the Regulator \$2,000 for the cost of monitoring the undertaking
  - k) Report to the Regulator on progress of the undertaking.

### **Considerations and findings**

14. While the Act does not set out a threshold test for the acceptance or rejection of a proposal for an enforceable undertaking, the Secretary has approved guidelines under section 378ZFB of the Act for this purpose.
15. The guidelines provide that enforceable undertakings should be designed to deliver tangible benefits to the industry and broader community, and that these initiatives should seek to resolve both the behaviour of concern that has led to the alleged contravention and seek to rectify the consequences of that behaviour.
16. The guidelines further set out a number of considerations for determining whether to accept an enforceable undertaking. These include the nature of the alleged contravention, potential impacts on any worker, the industry, the community or the environment, and the compliance history of the company.
17. While I note that Ridgелands has no adverse compliance history, I do not accept, as previously submitted by Ridgелands in their first undertaking proposal, that there was limited impact as a result of the alleged contravention for the reasons set out at paragraphs 17 to 20 in my decision of 6 April 2018.

18. I am of the view that the current proposal now recognises the significance of the potential impact of the alleged behaviour, and the proposed terms more adequately, and directly, address the behaviours and harms of the alleged contravention. I also note that Ridgелands has acknowledged the concerns of the Department in relation to the alleged contravention.
19. In weighing up the seriousness of the alleged contravention, I have also had specific regard to the conduct of Ridgелands and the information it has provided to the Department during the term of the exploration licence.
20. In this respect I note that Ridgелands had, on various occasions, provided information to the Department from which the status of the Fund could clearly be discerned i.e. that it had not been established.
21. Further, I particularly note that representatives for Ridgелands met with representatives from the Division of Resources and Geoscience in April 2017, during which they provided information which again showed that the Fund had not yet been established.
22. While the provision of this information does not abrogate Ridgелands from the requirement to establish the Fund as soon as reasonably practicable, I am satisfied that there were no deliberate attempts by Ridgелands to hide any alleged non-compliance, and any alleged contravention was a result of negligence as opposed to a deliberate or wilful act.
23. In this regard I am satisfied that the specific undertakings proffered by Ridgелands in the enhanced undertaking will adequately resolve the behaviour that led to the alleged contravention and appropriately seek to rectify the consequences of the behaviour.
24. There is a strong community expectation that companies such Ridgелands are aware of their obligations under the Mining Act and have systems in place to ensure compliance.
25. The agreed terms proposed by Ridgелands are estimated to cost \$235,800, including a further contribution of \$200,000 to the Ridgелands Community Fund.
26. Ridgелands have given a commitment in relation to the current and future operation of the Community Fund, with improved governance and reporting arrangements set out in an amended Deed Poll.
27. In particular I note that these new governance arrangements effectively remove Ridgелands' ability to veto any community proposals, and in fact now allow the community and council representatives on the Investment Committee the ability to form a majority to approve project proposals.
28. I am further of the view that there are some material deficiencies in the current drafting of condition 58. On a very strict reading of the requirements, while Ridgелands is required to establish the Fund, there is no requirement to expend any of the monies within a specified period, nor at all.
29. As part of the undertaking Ridgелands have now committed to fund approved projects within 6 months and expend all \$5.2 million dollars on approved projects by 30 June 2019. This commitment provides an assurance that all funds will be spent on community related projects and attaches both financial and criminal penalties in the event that Ridgелands fails to do so.
30. Notably, prosecution action could not have achieved this outcome as these types of orders would not be available to the court.

31. Through this undertaking the community now has access to further funds, and can have increased confidence that the Fund is operating in an appropriate and efficient manner. Indeed, I note that Ridgелands has, based on the pre-proposal advisory discussions held with the Regulator, in good faith already commenced implementing the terms proposed in this undertaking and has now approved funding for \$5 million worth of community projects.
32. Ridgелands has also undertaken to pay the Regulator's costs of \$30,800 to cover investigation, legal and monitoring costs. This is an appropriate undertaking that will ensure that the Regulator, and ultimately the taxpayer, does not bear undue financial costs as a result of its actions in investigating and pursuing the alleged contravention.
33. The acceptance of the undertaking will ensure that the Regulator does not incur further costs in relation to the matter, particularly in relation to investigation and legal costs, which may never fully be recouped through prosecution action.
34. Finally, Ridgелands have committed to conducting training for Ridgелands personnel about the compliance requirements of the Mining Act. This undertaking will help ensure that Ridgелands is compliant into the future, and reduce the risk of any further contraventions.
35. Having regard to the above, I am satisfied that the undertaking proffered in this instance appropriately reflects the significance of the alleged behaviour or will deliver better compliance outcomes, and general and specific deterrence, than other alternative enforcement actions.
36. Accordingly, I have determined to accept the enforceable undertaking proposed by Ridgелands Coal Resources Pty Limited.

Date of decision: 22 June 2018



**Lee Shearer**  
Deputy Secretary Resources Regulator  
Coordinator General for the Central Coast  
Department of Planning and Environment

**NOTE**

**In accordance with section 378ZFC of the Mining Act 1992 this decision will be published on the Regulator's website.**

