

**Undertaking to the Secretary of the
Department**

BLOOMFIELD COLLIERIES PTY LTD

ACN 000 106 972

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

Details

Date

Contact details

Name **Bloomfield Collieries Pty Ltd** ACN 000 106 972
Short form name **Bloomfield**
Notice details PO Box 4, East Maitland NSW 2323
Email: [REDACTED]
Attention: Garry Bailey

Background

- A The Division of Resources and Energy within the NSW 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 Bloomfield Group is an Australian owned and operated group of private companies with interests in mining and engineering in the Hunter Valley. It employs around 500 people and operates two open cut mines: Bloomfield Colliery at East Maitland and Rix's Creek Mine.
- C The Rix's Creek Mine operates pursuant to Coal Lease (CL) 352 and Mining Lease (ML) 1432 which are held by Bloomfield.
- D Rix's Creek Mine operates pursuant to the development consent, DA No. 49/94 (**Development Consent**), granted by the Minister for Urban Affairs and Planning for the Rix's Creek Coal Mine on 16 October 1995
- E It is apparent that Bloomfield and the Department have taken different interpretations of the Development Consent. Bloomfield acknowledges the Department's view that it has carried out mining operations at the Rix's Creek Mine in breach of the Development Consent.
- F Separate compliance action is being taken in respect of this by the Department.
- G Bloomfield relied on its interpretation of the Development Consent when lodging the required Mine Operations Plans (**MOP**) under CL352 and ML1432.
- H 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. The Department has been conducting an investigation into allegations that Bloomfield has provided false and misleading information in respect of its MOPs for the years 2001, 2005 and 2013 (**Allegations**).
- I In respect of these there were numerous engagements and consultations with the Department prior to their lodgement and approval by the Department. These include:
- (i) 2001 MOP -
 - Meeting with Department, 31/03/2000
 - Meeting Mine Safety Officer, 01/11/2000

Meeting Mine Safety Officer and Team Leader Northern Regions Environmental Sustainability Unit, 22/06/2001

Meeting Mine Safety Officer

MOP accepted 07/11/01 and reviewed at mine site visit 12/11/2001 by Mine Safety Officer and Mines Inspector.

MOP amendments 06/09/2002

Meeting re MOP with Mine Safety Officer, 17/10/2003 and Mine Safety Officer visit to site.

(ii) 2005 MOP

Meeting with Department Mine Safety Officer 25/05/2005

MOP approved 15/09/2005

(iii) 2013 MOP

Meeting with Department Regional Environmental Officer 15/02/13 to review draft MOP.

MOP accepted 13/03/2013.

- J On 6 April 2017, the Department issued a Notice requiring Bloomfield to produce records and information in relation to the Allegations. Bloomfield complied with this notice on 11 April 2017.
- K On 29 May 2017 the Department also interviewed Garry Bailey in respect of the Allegations.
- L Bloomfield acknowledges the Department's concerns in relation to the Allegations and is implementing additional preventative measures which are set out in **Annexure A** of this undertaking. Bloomfield is of the view that an enforceable undertaking is the most effective and appropriate regulatory outcome in the circumstances, and as such will address the alleged conduct that led to the alleged offence and prevent the alleged conduct from occurring again.
- M Bloomfield has offered, and the Secretary has accepted, the commitments set out in this undertaking.
- N This undertaking has been prepared in accordance with, and satisfies the specific requirements for an undertaking contained in the *Guideline Enforceable Undertakings* prepared by the Department dated February 2017.

Agreed terms

1.1 Undertakings

Under section 378ZFB of the Mining Act, Bloomfield has given and the Secretary has accepted the following undertakings and as per sub-section (2) 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.

1.2 Acknowledgment of contravention

Bloomfield acknowledges that the Department alleges that the various MOP's have been submitted for open cut mining operations (including, in particular, surface disturbance) that do not have development consent, and also alleges that information has been included in these MOP's that purported to describe these mining operations and areas of surface disturbance other than as presented in the Development Consent, and further alleges that this conduct was in breach of section 378C of the Mining Act.

1.3 Prevention of future incidents

Bloomfield undertakes to:

- (a) take the actions stated in **Annexure A** to this undertaking to ensure all relevant Bloomfield (or those of its related bodies corporate) NSW operations are in compliance with section 378C of the Mining Act;
- (b) without limiting (a) above, Bloomfield will ensure that information lodged with the Department in MOP's and proposed MOP's and proposed amended MOP's from time to time has been thoroughly checked for consistency with any applicable development consent, on each occasion;
- (c) Bloomfield undertakes to take all and necessary actions to ensure that they work with the Department in a cooperative manner to ensure future compliance with section 378C of the Mining Act; and
- (d) report to the Department on the implementation of each of the measures provided for in **Annexure A** on a quarterly basis until they are completed.

Bloomfield has already: carried out an initial audit of its existing operations to ensure future compliance with planning approvals.

1.4 Financial

- (a) Bloomfield undertakes to implement the actions in Annexure A, up to a total amount of \$87,500
- (b) Bloomfield undertakes to pay the Department's legal costs totalling \$5,575.00 (excluding GST) incurred in the course of the Department's investigation into the Allegations, including the costs of reviewing this undertaking.
- (c) Bloomfield undertakes to pay the Department's investigation costs totalling \$10,000 (excluding GST) incurred in the course of the Department's investigation into the Allegations, including the costs of reviewing this undertaking.

- (d) Bloomfield agrees to reimburse the Department for its reasonable costs incurred in monitoring compliance with this undertaking totalling \$2000 (excluding GST).
- (e) Bloomfield undertakes to pay the Department the amounts due under this clause 1.4 within 30 days of being issued with an invoice from the Department.

1.5 Persons Responsible

- (a) Bloomfield nominates its General Manager of Mining Development, Garry Bailey as the contact officer responsible for monitoring and complying with the undertaking. The contact officer will report to the Department in accordance with the reporting requirements outlined at Annexure A.
- (b) Garry Bailey (or such replacement person at an equivalent level of seniority nominated by Bloomfield to the Department in writing from time to time) (the "contact officer");
 - (i) Will be responsible for monitoring and ensuring Bloomfield's compliance with this undertaking; and
 - (ii) Will submit a written status report, setting out Bloomfield progress with the undertaking given in Annexure A every 3 months (until such time as the final report has been provided to the Department).
- (c) David Muxlow, Manager Compliance Coordination (or such replacement person nominated by the Department to Bloomfield in writing from time to time) will be the Departmental officer to whom information or documents will be submitted by Bloomfield in connection with this undertaking.

2. Acknowledgements

- (a) Bloomfield acknowledges that:
 - (i) the undertaking may be published on the Department's website and may be referred in the Department's publications;
 - (ii) a public notice of the undertaking may be publicised in newspapers and other media as determined by the Department; and
 - (iii) this undertaking grants 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.
- (b) Bloomfield acknowledges that the Secretary's acceptance of this undertaking only relates to the Department's concerns regarding the Allegations 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.
- (c) Bloomfield acknowledges that this undertaking does not affect the rights or remedies available to any other person or entity, other than Bloomfield and the Department (including any successors in title), nor does it affect any other statutory obligations (other than those statutory obligations connected with the Allegations) under the Mining Act.

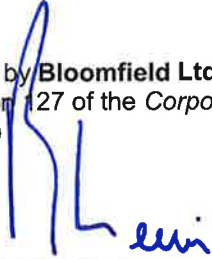
- (d) Bloomfield acknowledges that this undertaking takes effect and becomes enforceable when the Secretary's decision to accept the undertaking is given to Bloomfield or at such later date specified by the Secretary.
- (e) Bloomfield acknowledges that this undertaking may only be varied in accordance with the Mining Act.
- (f) Bloomfield acknowledges that this undertaking, as varied from time to time, will remain in force until withdrawn in accordance with the Mining Act.

Nov. 16

Signing page

EXECUTED as an agreement.

Accepted by **Bloomfield Ltd** in accordance with section 127 of the *Corporations Act 2001* (Cth)



Signature of Director

Roger Lewis

Name of Director (print)



Signature of Director/Company Secretary

NORTH ST GEORGE

Name of Director/Company Secretary (print)

ACCEPTED BY THE SECRETARY OF THE NSW DEPARTMENT OF PLANNING AND ENVIRONMENT PURSUANT TO SECTION 378ZFB OF THE MINING ACT.

CAROLYN McNALLY

Name of the Secretary (block letters)

Title of the Secretary (block letters)



Signature

Date: 23.6.17

Annexure A

Bloomfield has done, or undertakes to do, the following (as indicated below) to a maximum value of \$87,500:-

Program	Outline of program	Completion Date
Bloomfield contribution to indigenous program	<p>Bloomfield will provide \$25,000 to Associate Professor Kym Rae for Testing Kidney Health in Gomerol Gaaynggal Indigenous Mothers & Babies for Early Intervention.</p> <p><i>Estimated cost: \$25,000</i></p>	<p>Within 4 weeks of this undertaking taking effect in accordance with clause 2(d) payment will be made.</p>
Bloomfield contribution to land care.	<p>Bloomfield will provide \$25,000 to Singleton Council and/or a local land care group for Hunter River improvement works.</p> <p><i>Estimated cost: \$25,000</i></p>	<p>Within 4 weeks of this undertaking taking effect in accordance with clause 2(d) payment will be made.</p>
Bloomfield training of operations	<p>Bloomfield carry out training of all key management of its NSW operations which hold a mining lease in respect of the operation and compliance with conditions of mining leases and development consents.</p> <p><i>Estimated cost: \$5,000</i></p>	<p>Within 6 months of this undertaking taking effect in accordance with clause 2(d).</p> <p>Bloomfield will report the findings of this training to the Department within (1) month of the completion of the training being completed. This will include providing details of who attended the training, details of who conducted the training and details on the training that was undertaken. (such as copy of powerpoint presentation and copies of handouts).</p>
Bloomfield undertakes audit of operations	<p>Bloomfield will complete an audit of all NSW operations operated by Bloomfield (or any of its related bodies corporate) to ensure compliance with authorisation conditions of mining leases and development consents.</p> <p>Bloomfield has appointed Umwelt to carry out this audit.</p> <p><i>Estimated cost: \$30,000</i></p>	<p>Within 6 months of this undertaking taking effect in accordance with clause 2(d).</p> <p>Bloomfield will report the findings of this independent audit to the Department within (1) month of the completion of the training being completed.</p>
Bloomfield induction training	Bloomfield will update its induction	Within 1 month of this

Program	Outline of program	Completion Date
to new staff	process to include a section on compliance with planning approvals. Estimate cost: \$2,500	undertaking taking effect in accordance with clause 2(d). Bloomfield will report to the Department within 2 weeks of the completion of this being updated.

