



DOC18/359129

**File No:** 0453 - 2017

**Entity:** Tahmoor Coal Pty Ltd (ACN 076 663 968)

**Authorisation:** Consolidated Coal Lease No. 716 (1973)

**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, Resources Regulator and Coordinator General for the Central Coast, have decided to **accept** the enforceable undertaking given by Tahmoor Coal Pty Ltd, as attached to this decision.

## Reasons for decision

### Legislation

1. Section 378ZFG of the Mining Act 1992 (the Act) 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. 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 undertaking and the reason 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.
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. Tahmoor Coal Pty Ltd (ACN 076 663 968) is the holder of Consolidated Coal Lease No. 716 (1973), Mining Lease No. 1308 (1992), Mining Lease No. 1376 (1992), Mining Lease No 1539 (1992).
7. Tahmoor Coal Pty Ltd operates the Tahmoor Colliery, an underground hard coking coal mine.
8. On 25 February 2016, the the Department of Planning and Environment (the Department) issued Tahmoor Coal Pty Ltd a notice under section 240(1)(a) of the Act. This notice required Tahmoor Coal Pty Ltd to take the following Specified Measures:
  - Recommendations in the report titled "Reject Emplacement Area Contour Drains Review, December 2015" submitted on the 30 December 2015 are implemented as soon as reasonably practicable and the details of the works carried out are reported to the Department once complete.
  - The measure referred to above must be carried out by 30 December 2016.
9. Tahmoor Coal Pty Ltd wrote to the Department on 30 December 2016 to advise that the requirements of the notice had been met.
10. On 30 May 2017, an inspection by the Department determined that Tahmoor Coal Pty Ltd had not complied with the Specified Measures set out in the notice.
11. A subsequent investigation by the NSW Resources Regulator (the Regulator) found that Tahmoor Coal Pty Ltd had failed to comply with the notice, and alleged a contravention of section 240C of the Act.
12. Tahmoor Coal Pty Ltd has subsequently completed the Specified Measures.

## **Proposed undertaking**


13. On 22 May 2018, Tahmoor Coal Pty Ltd submitted an enforceable undertaking proposal to the Regulator. 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.
14. In summary, Tahmoor Coal Pty Ltd undertakes to:
  - a) Conduct training for its environment and community staff regarding compliance with statutory notices,
  - b) Update its induction training to ensure all new staff are made aware of their obligations regarding compliance with statutory notices,
  - c) Implement a management system requiring all statutory notices to be brought to the attention of the Operations Manager,
  - d) Ensure that information lodged with the Department in response to statutory notices has been thoroughly checked for compliance with the requirements of the statutory notice by the relevant Tahmoor manager,
  - e) Report to the Regulator on the implementation of each of the above measures within 3 months,
  - f) Make the financial contribution of \$40,000 to Wollondilly Shire Council towards weed control, signage, litter reduction and vegetation management of Douglas Park causeway at Douglas Park,
  - g) Pay the Regulator's investigation costs of \$10,000 incurred during the course of investigation the alleged breach, and

- h) Reimburse the Regulator \$3,000 for its reasonable costs of monitoring compliance with the undertaking.

### Considerations and findings

15. While under the Act the giving of an enforceable undertaking does not constitute an admission of guilt, I note that Tahmoor Coal Pty Ltd acknowledges the allegation that it failed to comply with the requirements of a notice and that such conduct is a contravention of section 240C of the Act.
16. There is a strong expectation that companies such as Tahmoor Coal Pty Ltd are aware of their statutory obligations and comply with statutory notices issued by the Regulator.
17. Of importance, I note that Tahmoor Coal Pty Ltd has now rectified the alleged contravention by completing the works required by the section 240 notice to the satisfaction of the Regulator.
18. I also note that Tahmoor Coal Pty Ltd has committed to implement measures to minimise the likelihood of a similar contravention from occurring in the future.
19. In this regard, I note that Tahmoor Coal Pty Ltd has committed to implement a management system and staff training program regarding compliance with statutory notices within three months. These commitments are appropriate and address the behaviour that led to the alleged contravention.
20. I am satisfied that the contribution of \$40,000 to Wollondilly Shire Council towards weed control, signage, litter reduction and vegetation management of the Douglas Park causeway will provide tangible community benefits and have a positive environmental impact.
21. I also note that Tahmoor Coal Pty Ltd has agreed to pay the Regulator's investigation costs of \$10,000 and reasonable costs totalling \$3,000 for monitoring compliance with the undertaking. I consider this undertaking to be appropriate in that it 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.
22. I am satisfied that the quantum of \$53,000 to be paid by Tahmoor Coal Pty Ltd, having regard to the specific circumstances of this case, provides a significant deterrent effect and achieves better outcomes than prosecution alone.
23. I am also satisfied that the terms of the undertaking, and the requirement under the Act to publish the undertaking and this decision, will provide similar specific and general deterrence to prosecution proceedings.
24. Accordingly, I have determined to accept the enforceable undertaking proposed by Tahmoor Coal Pty Ltd.

Date of decision:

  
**Lee Shearer** 18/6/2018  
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.**

