

Centennial Airly Pty Ltd

**Undertaking to the Planning Secretary under section
9.5 of the Environment Planning and Assessment
Act 1979 (NSW)**

Undertaking to the Planning Secretary under section 9.5 of the Environment Planning and Assessment Act 1979 (NSW)

Date

Parties

- 1 Centennial Airly Pty Ltd (ABN 84 078 693 722) (Airly)**
Address: 319 Glen Davis Road, Capertee NSW, 2846
Email: AirlyColliery.Compliance@centennialcoal.com.au
Contact: Greg Shields (Executive General Manager Mining Risk and Compliance)

Background

- A** Airly is an underground coal mine located near Capertee Village, approximately 40 kilometres North West of Lithgow. Airly commenced operations in 2009.
- B** Airly operates under development consent SSD-5581 (**Consent**) held by Centennial Airly Pty Ltd (**Centennial**). The Consent authorises extraction of up to 1.8 million tonnes of ROM coal per annum from the site for a period of 20 years.
- C** On 22 October 2021, the then Department of Planning, Industry and Environment, now the Department of Planning and Environment (**Department**) issued a show cause notice to Centennial alleging that Centennial committed an offence against section 4.2(1)(b) of the *Environment Planning and Assessment Act 1979 NSW (EPA Act)* by carrying out development not in accordance with the conditions of the Consent.
- D** The Department alleged that Centennial had failed to ensure that certain performance measures related to subsidence impacts in Schedule 3 Condition 2 Table 1 of the Consent had, to the satisfaction of the Planning Secretary, not been exceeded, and consequently Centennial had committed an offence under section 4.2(1)(b) of the EPA Act by carrying out development not in accordance with the conditions of the Consent.
- E** The relevant background is as follows:
- (a) Schedule 3 Condition 2 Table 1 of the Consent, states: "The Applicant must ensure that the development does not cause any exceedances of the performance measures in Table 1 to the satisfaction of the Secretary."
 - (b) Table 1 relevantly describes the performance measure for the land described as 'All other land not covered by a performance measure above as:

No greater subsidence impacts or environmental consequences than predicted in the EIS
 - (c) Chapter 8 of the Environmental Impact Statement (**EIS**) addresses mine design and subsidence. Section 8.3.7.2 – Subsidence Predictions & Impacts, states that in relation to subsidence for the Panel and Pillar Mining Zone that surface cracking is not expected.
 - (d) On 24 November 2020, the Departments Compliance Team received an incident notification from Centennial in accordance with reporting requirements of Schedule 6 Condition 9 of the Consent. The incident notification reported subsidence impacts attributed from mining operations in the Mt Airly Panel and Pillar Mining Zone which resulted in surface fractures in the Mugii Murum-ban State Conservation Area (MMBSCA).

- (e) Centennial provided an Incident Investigation Report dated 2 December 2020 (**Report**) to the Department which included the following in relation to the incident:
- (i) "Surface Crack (Fracture 01) was identified during visual surface inspections by Centennial Airly on Mt Airly on 7 July 2020. Surface Fracture 01 is approximately 55 metres long, 11 millimetres wide and 120 metres from the nearest cliff in the Cliff Zone of First Workings."
 - (ii) "Surface Crack (Fracture 02) was identified during visual surface inspections of Mt Airly on 10 July 2020. Fracture 02 is in two parts. An approximately 90 metre section and a 15 metre section to the east. The surface crack/fracture is less than 20 millimetres wide and is approximately 70 metres from the nearest cliff in the Cliff Zone of First Workings."
 - (iii) "Table 1 of Condition 2 of Schedule 3 of the Airly Mine Extension Project SSD 5581 development consent details the performance criteria for land. Land areas are divided into separate sub categories with each area of land assigned a corresponding performance measure. The surface cracking is associated with mining in the Panel and Pillar Mining Zone and in the area described in Table 1 as 'all other land not covered by a performance measure above'."
 - (iv) "The performance criteria for this land is 'No greater subsidence impacts or environmental consequences than predicted in the EIS'. The EIS states that in relation to subsidence predictions for the Panel and Pillar Mining Zone that surface cracking is not expected."
- (f) Following the submission of the Incident Investigation Report dated 2 December 2020, a site inspection was held on 18 February 2021 with representatives from Centennial, the Department, National Parks and Wildlife Service and the Resources Regulator to discuss the agencies concerns regarding the incident, the potential impacts and remediation options available. It was agreed during that meeting that to better understand the impacts and risks associated with remediation options of the surface fractures that an independent risk and environmental assessment should be undertaken.
- (g) On 17 March 2021, correspondence was received from the Department requesting, in accordance with Schedule 2 Condition 4 of the Consent, that Centennial commission and pay the full cost of an independent risk and environmental assessment of the remediation options available for the subsidence surface fractures in the MMBSA.
- (h) With regards to the independent risk and environmental assessment, the Department requested:
- (i) it be conducted by a suitably qualified, experienced and independent expert and/or expert team whose appointment has been approved by the Planning Secretary;
 - (ii) an application seeking endorsement of the expert is to be submitted to the Department within two weeks from the date of the letter;
 - (iii) the endorsed independent expert and/or expert team is to be commissioned within two weeks from the date of the Planning Secretary's approval;

- (iv) within four weeks of being commissioned, the endorsed independent expert and/or expert team is to prepare a scope of works for the independent risk and environmental assessment report and submit it to the Department for approval of the Planning Secretary;
 - (v) the preparation of the scope of works is to include consultation with the Department, National Parks and Wildlife Service, DPIE Biodiversity Conservation & Science Directorate and Resources Regulator; and
 - (vi) within eight weeks from the date of the approved scope of works, the final independent risk and environmental assessment report is to be submitted to the Department for the Planning Secretary's approval.
- (i) The independent risk and environmental assessment report was prepared by Will Wright of Douglas Partners (endorsed by the Department on 7 April 2021) and in accordance with the scope of works approved by the Department on 17 June 2021 (**IREA Report**).
 - (j) The IREA Report was submitted to the Department on 12 August 2021.
 - (k) Following the initial incident notification and investigation, Centennial provided the Department with an additional four notifications in relation to further subsidence impacts within the MMBSA. The dates of those four additional incident notifications and a summary are outlined below:
 - (i) 18 February 2021 - Fractures comprising of a cluster of horizontally oriented shear type fractures near MW06. These cracks are predominantly horizontal and range from 1m to 3m long and less than 5mm wide;
 - (ii) 4 June 2021 - An additional surface crack above MW 10 chain pillar, sub-parallel with the MW09 goaf edge and is approximately 10mm wide and a length of approximately 250m;
 - (iii) 1 September 2021 - An additional surface crack above the chain pillar of MW10, the crack extends at a 45-degree angle into Maingate 10 between 4 cut-through. The crack extends approximately 146 metres and ranges in width of between 5 mm to 15mm; and
 - (iv) 16 September 2021 - An additional surface crack above the chain pillar of MW06, the crack extends at a 350-degree angle into Maingate 6 between 5 cut-through and 6 cut-through. The crack extends approximately 50 metres and ranges in width of between 5 mm to 60 mm.
 - (l) Centennial acknowledge that additional subsidence cracks may have occurred within the MMBSA as a result of mining within the Mt Airly Panel and Pillar Mining Zone that have not been identified to date.
 - (m) As an alternative to separate compliance actions being pursued by the Department, the Planning Secretary may accept a written undertaking given by the person under section 9.5 of the EPA Act.
 - (n) Centennial acknowledges that the identified, and any yet to be identified, subsidence cracks within the MMBSA as a result of mining within the Mt Airly Panel and Pillar Mining Zone is likely to constitute a breach of the subsidence performance criteria detailed in Schedule 3 Condition 2 Table 1 of the Consent.
 - (o) This undertaking has been prepared in accordance with, and satisfies the requirements of, the Enforceable Undertakings Guideline Dated July 2020.

- (p) The commitments in this undertaking have been developed in consultation with the National Parks and Wildlife Service and the Environment, Energy and Science Group of the Department of Planning, Industry and Environment.
-

1 Definitions

The following definitions apply in this Undertaking.

Mt Airly Panel and Pillar Mining Zone means the area comprising of the Panel and Pillar Mining Zone located beneath Mt Airly, as shown in Figure 2 in Appendix 3 of the Consent, or as may be modified by an approved Extraction Plan.

Mugii Murum-ban State Conservation Area means the area identified in:

- (a) yellow in Figure 1 in Appendix 2; and
- (b) blue in Figure 5 in Appendix 4 of the consent.

Report on Subsidence Crack Remediation means the "Report on Risk Assessment of Subsidence Crack Remediation Mugii Murum-ban State Conservation Area" prepared by Douglas Partners dated 11 April 2022 together with Appendix A and Appendix B dated 10 August 2021, as approved by the Planning Secretary.

2 Commencement of this Undertaking

This Undertaking comes into effect when:

- (a) this Undertaking is executed by Centennial, and
 - (b) this Undertaking so executed as accepted by the Planning Secretary of the Department, or her delegate.
-

3 Undertaking

In response to the identified, and any yet to be identified, subsidence cracks within the MMBSCA as a result of the contraventions or incidents set out in this undertaking resulting from mining within the Mt Airly Panel and Pillar Mining Zone, Centennial undertakes for the purposes of section 9.5 of the EP&A Act that it will:

- (a) on or before June 30th 2022, provide to the Planning Secretary a schedule of the works (including timeframes) required to prepare, gain approvals from the relevant authorities and implement all of the recommendations set out in the Report on Subsidence Crack Remediation;
- (b) implement all recommended works within the timeframes and as set out in the Report on Subsidence Crack Remediation and the schedule to be provided under paragraph (a) above;
- (c) provide monthly updates (to be submitted within seven days following the end of each month) to the Planning Secretary on the progress and implementation of the works to be undertaken in accordance with paragraph (b);
- (d) undertake independent reviews for the purposes of assessing and establishing whether there are any subsidence cracks in the MMBSCA as a result of Centennial's operations within the Mt Airly Panel and Pillar Mining Zone which have not already been addressed in the Report on Subsidence Crack Remediation. Such reviews must be carried out by an appropriately qualified independent consultant at least

every 6 months commencing on the date of this Undertaking. The last review must be carried out no earlier than 6 months and no later than 9 months after Centennial ceases operations under the Consent. Centennial must submit reports, to the satisfaction of the Planning Secretary, detailing the findings of each independent review and setting out recommendations for the remediation of any cracks that are identified during any review including timeframes for the completion of all recommended works. These reports must be prepared by the appropriately qualified independent consultant that carried out the relevant review and must be submitted to the Planning Secretary within 2 weeks of the end of the relevant review period to which the particular report relates;

- (e) implement all recommended works within the timeframes as identified by the independent review outlined in paragraph (d) above;
- (f) the appropriately qualified independent expert referred to in (d) above will be approved by the Planning Secretary prior to undertaking any reviews;
- (g) within 2 weeks of the completion of any works and/or recommendations that are required as a result of this Undertaking, submit to the satisfaction of the Planning Secretary, independent certification that the works and/or recommendations to which the independent certification relates have been carried out in accordance with the relevant requirements applicable to the works and/or recommendations. Such certification must be prepared by an appropriately qualified independent consultant who has been approved by the Planning Secretary; and
- (h) pay to the National Parks and Wildlife Service the amounts in Column 1 in the table below for the projects identified in Column 2 by the time specified in Column 3;

Column 1 – Amounts payable	Column 2 – Projects	Column 3 - Time for payment
\$50,000	<ul style="list-style-type: none"> • Installation of permanent solar powered cameras for monitoring exclusion fencing / visitor use Genowlan Point. • Implementation of a pest monitoring program in 2022. 	30 June 2022
\$50,000	<ul style="list-style-type: none"> • Funding towards an annual aerial shoot in 2022. • Tramway trail prioritised protection work plan (Conservation management plan/strategy preparation) • Implementation of a pest monitoring program in 2023. 	31 December 2022
\$50,000	<ul style="list-style-type: none"> • Tramway trail prioritised protection work plan. • Implementation of a pest monitoring program in 2024. 	31 December 2023

- (i) provide a written notice to the Department confirming payment of the amounts in clause (h) above.

4 Acknowledgments


Centennial acknowledges that:

- (a) the Department will make this Undertaking publicly available including by publishing it on the Department's public register of section 9.5 undertakings on its website;
- (b) the Department will, from time to time, make public reference to this Undertaking including in news media statements and in the Department's publications;
- (c) this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct; and
- (d) the Department is not barred from future enforcement or other actions arising as a result of any contraventions or incidents in the future, including with respect to the enforcement of this undertaking.

Execution

EXECUTED as an Undertaking

Executed by **Centennial Airly Pty Ltd** in
accordance with section 127 of the
Corporations Act 2001 (Cth) by:



Director signature

Craig Gillard

Director full name
(BLOCK LETTERS)



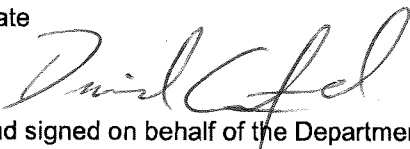
Director/Secretary signature

Melinda Loh

Director/Secretary full name
(BLOCK LETTERS)

Accepted by the Planning Secretary of the Department Planning, Industry and Environment pursuant to
Section 9.5 of the *Environmental Planning and Assessment Act 1979* on:

Date



and signed on behalf of the Department:



Planning Secretary or delegate

Date

26/5/22