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**Wambo Coal Pty Limited**  
(ACN: 000 668 057)

**Undertaking to the Environment Protection Authority  
given for the purposes of section 253A of the  
*Protection of the Environment Operations Act 1997***

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## 1 BACKGROUND

- 1.1 The Environment Protection Authority of New South Wales ("the EPA") is a statutory body created by the *Protection of the Environment Administration Act 1991* (NSW) which has primary responsibility for the administration and enforcement of the *Protection of the Environment Operations Act 1997* (NSW) ("the POEO Act").
- 1.2 Wambo Coal Pty Limited (ACN 000 668 057) ("Wambo") operates a coal mine at Jerry's Plains Road, Warkworth, near Singleton. Wambo holds an environment protection licence under the POEO Act in relation to the coal mine.
- 1.3 As part of an expansion of the coal mine, Wambo diverted a section of North Wambo Creek (the "Diversion"). The Diversion was planned in consultation with the Department of Natural Resources and Energy and the NSW Office of Water and with development consent given by the NSW Department of Planning and Infrastructure.
- 1.4 Wambo engaged Gilbert and Associates, consultants in hydrology and design of water management structures, to design the Diversion. Wambo engaged Daracon Mining Ltd (ACN 117 236 272) ("Daracon") to construct the Diversion. Construction of Stage 3 of the Diversion was completed on 22 January 2013, whereupon Stage 3 of the Diversion was opened to water flow.
- 1.3 On 7 February 2013, the EPA received information about discharge of sediment from the Diversion into North Wambo Creek. The discharge likely occurred following rainfall events on 27 to 29 January 2013 and on 1 to 2 February 2013. Approximately 150m<sup>3</sup> to 250m<sup>3</sup> (250 to 500 tonnes) of sediment from the bed and banks of the low flow channel, the floodplain and the long banks bordering the floodplain of the Diversion was discharged into North Wambo Creek (the Incident). The majority of sediment settled out within the first 50 metres of North Wambo Creek below the outlet of Stage 3 of the Diversion.

Wambo took the following actions post incident:

- engaged Daracon to commence desilting the affected area;
- undertook soil sampling to classify the sediment;
- installed sediment mitigation barriers, such as sediment fences, hay bales and rock bridges;
- implemented inspections of the sediment mitigation barriers;
- implemented procedures to trigger inspections of sediment mitigation barriers immediately following rainfall events;
- engaged expert terrestrial and aquatic ecologists, Niche Environmental and Heritage, to prepare a remediation, monitoring and management plan; and

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- engaged Gilbert and Associates to prepare a management report and mitigation plan.

According to Gilbert and Associates, prior to completion of the Diversion, an extensive seeding and hydromulching programme was undertaken to promote rapid establishment of vegetation of exposed batters and berms, but low rainfall and high temperatures led to low seed strike and high mortality of emergent vegetation. Despite emplacement of stockpiled stripped timber and vegetation along the Diversion to provide early stabilisation, the low vegetation cover over significant areas of the Diversion led to limited resistance to erosion.

According to Niche, based on survey data, there was little if any impairment to aquatic macroinvertebrate assemblages present within North Wambo Creek as a result of the Incident. Prior to the Incident, North Wambo Creek had not flowed since 2009.

- 1.4 The EPA is concerned that the Incident was contrary to section 120(1) of the POEO Act.
- 1.5 The EPA's investigation of the Incident has included:
  - (a) conducting site inspections;
  - (b) requesting a report on the Incident from Wambo under condition R3 of the environmental protection licence;
  - (c) amending the environmental protection licence to implement pollution reduction programs under section 60 of the POEO Act;
  - (d) requiring Wambo to provide information and/or records under section 191 of the POEO Act and reviewing the information/records provided by Wambo; and
  - (e) requiring Daracon to provide information and/or records under section 191 of the POEO Act and reviewing the information/records provided by Daracon.
- 1.6 Wambo acknowledges the EPA's concerns in relation to the Incident. Wambo has offered, and the EPA has accepted, the commitments set out in this enforceable undertaking.

## 2. UNDERTAKINGS

Under s 253A of the POEO Act, Wambo has given and the EPA has accepted the following undertakings.

### Remediation

- 2.1 Wambo undertakes to implement the following plans in order to remediate the part of North Wambo Creek affected by the Incident:
  - a) *Aquatic Riparian Management and Monitoring Plan – North Wambo Creek* prepared by Niche Environmental and Heritage dated April 2013; and

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- b) *Remediation Plan – North Wambo Creek Diversion, Stage 3* prepared by Gilbert and Associates dated March 2013.

### **Prevention of future incidents**

- 2.2 Wambo undertakes to take the following action to prevent any similar incidents in future:
- a) maintain sediment mitigation barriers, such as sediment fences, hay bales and rock bridges in and around the Diversion,
  - b) continue inspections of the sediment mitigation barriers,
  - c) continue procedures put in place to trigger inspections of sediment mitigation barriers immediately following rainfall events,
  - d) implement the Aquatic Riparian Management and Monitoring Plan prepared by Niche Environmental and Heritage, and
  - e) implement the Remediation Plan prepared by Gilbert and Associates.

### **Financial**

- 2.3 Wambo undertakes to contribute \$30,000 to Singleton Shire Council ("the Council"). The Council plans to spend the money over 12 months on rehabilitation and revegetation works on the Hunter River at Singleton from the Singleton Railway Bridge to 500 metres downstream of the Rebourberry Bridge. The works will involve weed spraying and new tree plantings for bank restoration and longer term protection.
- 2.4 Wambo undertakes to pay to the EPA its investigation and legal costs totalling \$7,000 incurred in the course of the EPA's investigation into the incident.
- 2.5 Wambo undertakes to pay the EPA in accordance with clause 2.4 within 28 days from the date on which all parties have signed this undertaking.
- 2.6 Wambo undertakes to pay the Council in accordance with clause 2.3 within 42 days from the date on which all parties have signed this undertaking.
- 2.7 The EPA will notify Wambo in writing when the EPA is satisfied that the obligations of Wambo under clauses 2.3 to 2.6 have been met.

### **3. ACKNOWLEDGEMENTS**

- 3.1 Wambo acknowledges that the EPA:

- (a) may issue a media release on execution of this undertaking referring to its terms and to the concerns of the EPA which led to its execution;
- (b) may from time to time publicly refer to this undertaking; and
- (c) will place a copy of the executed undertaking on the public register.

3.2 Wambo acknowledges that the EPA's acceptance of this undertaking does not affect the EPA'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 POEO Act in relation to such future conduct.

3.3 Wambo acknowledges that this undertaking does not affect the rights or remedies available to any other person or entity nor does it affect any statutory obligations under the POEO Act.


3.4 Wambo acknowledges that this undertaking has no operative force until accepted by the EPA.

3.5 Wambo acknowledges that this undertaking may only be varied in accordance with the POEO Act.

3.6 Wambo acknowledges that this undertaking, as varied from time to time, will remain in force until withdrawn in accordance with the POEO Act.

EXECUTED on 6 February 2014

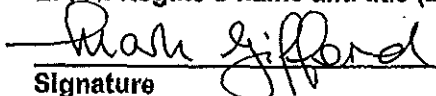
BY WAMBO COAL PTY LIMITED  
ACN 000 668 057 in accordance with s 127 of  
the Corporations Act

  
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Signature of Director  
  
Peter Bavel  
\_\_\_\_\_  
Name of Director

  
\_\_\_\_\_  
Signature of Director/Company Secretary  
MURRAY PAUL HUNDLEBY  
\_\_\_\_\_  
Name of Director/Company Secretary (print)

ACCEPTED BY THE ENVIRONMENT PROTECTION AUTHORITY OF NEW SOUTH WALES PURSUANT TO SECTION 253A OF THE POEO ACT BY ITS DULY AUTHORISED DELEGATE:

Mark Gifford, Chief Environmental Regulator  
EPA Delegate's name and title (Block Letters)

  
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Signature

Date: 6/2/14