

DOC18/964832

SUSPENSION NOTICE

FILE NO: NCN0005828

TITLEHOLDER: TOTAL MINERALS PTY LTD (ACN 169 328 090)

AUTHORISATION: Exploration Licence No. 8625 (Act 1992)

LEGISLATION: Section 240AA of the *Mining Act 1992*

DECISION-MAKER: Anthony Keon
Chief Compliance Officer
NSW Resources Regulator

SECTION 240AA DIRECTION

As authorised by Section 240AA of the Mining Act 1992 (**Act**), I Anthony Keon, having delegated authority from the Secretary of the Department of Planning and Environment, direct TOTAL MINERALS PTY LTD (ACN 169 328 090) (**TMPL**) to:

“Immediately suspend all operations on Exploration Licence No. 8625 (Act 1992), with the exception of those activities required to maintain a safe workplace and/or to undertake environmental rehabilitation of the exploration licence.”

This direction takes effect and is in force immediately upon the titleholder being notified of this decision. The direction remains in force until the suspension notice is revoked or varied by written notice of the Secretary or delegate.

REASONS FOR DECISION

Legislation

1. Section 240AA(1) of the Act provides that the Secretary may, by written notice (a **suspension notice**), direct a responsible person to suspend (for such period as is specified in the direction or until further notice) all, or any specified, operations under an authorisation or suspend any activity approval relating to the operations if the Secretary considers that:

- a. circumstances exist that could constitute a ground for cancellation of the authorisation under section 125(1)(b)-(g), 203(1)(b)-(e) or (h) or 233(1)(b)-(d), or
 - b. circumstances exist that could constitute a ground for cancellation of the authorisation under section 125(1)(h), 203(1)(i) or 233(1)(f), in relation to a breach of a direction under section 240 only.
2. Section 240AA(2) provides that before giving a suspension notice, the Secretary is to:
 - a. cause written notice of the proposed suspension notice and the grounds for it to be served on the holder of the authorisation, and
 - b. give the holder a reasonable opportunity to make representations with respect to the proposed suspension notice, and
 - c. take any such representations into consideration.
 3. Section 125(1) sets out some of the grounds for cancellation which can be relied upon in issuing a suspension notice. These include if the decision-maker is satisfied that:
 - a. the holder of the authority has contravened a provision of the Act or the regulations (whether or not the holder is prosecuted or convicted of any offence arising from the contravention), or
 - b. a person has contravened a condition of the authority (whether or not the person is prosecuted or convicted of any offence arising from the contravention).
 4. Section 363(2) of the Act provides that the Secretary may delegate any function under the Act to any person, except this power of delegation or any function delegated to the Secretary by the Minister. The Secretary has delegated the functions to suspend all, or any specified, operations under an authorisation or suspend any activity approval relating to the operations under section 240AA of the Act to the Chief Compliance Officer of the NSW Resources Regulator (**Regulator**).

Background

5. On 17 July 2017, Exploration Licence No. 8625 (Act 1992) (**EL 8625**) was first granted to TMPL for the purpose of prospecting Group One minerals and is due to expire on 17 July 2020.
6. The following 'Nymboida River Fish Protection Zone' condition was imposed on EL 8625 at the time the licence was granted and continues to have effect:

"13. The licence holder must:

 - a) *Prevent erosion and sedimentation from work areas and tracks*

The title holder must take appropriate measures such as upslope diversion of surface flow and downslope run-off controls (eg Sedimentation ponds and silt traps) to prevent erosion and sedimentation from work areas and tracks. Appropriate rehabilitation/stabilisation of disturbed areas immediately following completion of work is also required."
7. EL 8625 is located approximately 40 km West-North-West of Grafton.
8. EL 8625 adjoins Exploration Licence No. 8635 (Act 1992) (**EL 8635**) held by TOTAL IRON PTY LTD (ACN: 167 004 104) (**TIPL**).

9. Both EL 8625 and EL 8635 have the same company directors and secretary.
10. CASTILLO COPPER LIMITED (**CCL**) is the sole shareholder of TMPL and TIPL.
11. On 17 November 2017 CCL applied to conduct exploration activities with the Department of Planning and Environment (**Department**). The application sought the approval of three drilling pads for a total of 120m² surface disturbance, 50m³ of excavation and drilling of 7-9 reverse circulation (**RC**) boreholes. On 12 December 2017, the application was approved subject to terms by the Department.
12. On approval, the following term was imposed:
 - “4. *The Division does not support the storage and disposal techniques for waste and excess material management outlined in the NON CEA applications by placement and disposal on the Cangai historic ore/waste pads. Disposal of the waste and excess material must be undertaken at a licensed facility or backfilled in the drill holes.*”
13. On 6 June 2018, UTM Global Pty Ltd (**UTMGPL**) applied to conduct further exploration activities on EL 8625. The application sought the approval of two drilling pads with three RC boreholes to be completed within each drilling pad and new 68m access track, involving 212.6m² surface disturbance and 418.8m³ of excavation. On 18 June 2018, the application was approved subject to terms by the Department.
14. In approving these applications, the Department requires TMPL to comply with the mandatory requirements under Part B of the Exploration Code of Practice: Environmental Management (**Code**).
15. On 15 October 2018, Mr Mark Vile, an environmental representative for CCL confirmed that a total of 14 RC boreholes had been drilled under the exploration activity approved on 12 December 2017, five more than approved.
16. On 22 November 2018, a site inspection was conducted by Inspectors from the Regulator which identified the following:
 - a. A lack of, or inadequate provisioning of sediment and erosion controls resulting in tunnel, rill and gully erosion and associated migration of sediment into the environment, including waterways result in potential harm to the environment (Mandatory Requirement 2.1 and 6.3 of the Code);
 - b. Poor management and storage of drill cuttings and associated plastic sample bags with evidence cuttings have migrated into the environment, including waterways resulting in potential harm to the environment (Mandatory Requirement 5.1 and 6.3 of the Code and term 4 of the activity approval granted on 12 December 2017);
 - c. Clearing and excavation works that have been undertaken outside of limits specified within the activity approvals; and
 - d. Five additional RC boreholes drilled under the exploration activity approved on 12 December 2017.
17. On 29 November 2018, a notice was issued under sections 240(1)(a), 240(1)(c) and 240(2A) of the Act in response to the inspection conducted on 22 November 2018, reference number DI 0856 2018.

18. This notice directed TMPL to:
- a. Implement immediate controls to ameliorate impacts to the environment associated with prospecting operations including rill, gully and tunnel erosion and migration of sediment and drill cuttings into the environment, including waterways (by 11 December 2018);
 - b. Appoint a suitably qualified independent expert to complete a site-based performance and risk assessment of surface disturbances associated with prospecting operations to identify deficient or absent controls employed to prevent environmental harm (by 20 December 2018);
 - c. Develop and implement adequate controls recommended by the suitable qualified independent expert to minimise so far as is reasonably practicable, any harm to the environment arising from activities carried out under this licence including any emerging or potential risks (by 14 January 2019); and
 - d. Submit a report to the Department that details actual and potential impacts to the environment identified by the site-based performance and risk assessment and control actions implemented to ameliorate impacts / minimise risk carried out by a suitably qualified independent expert (by 20 January 2019).
 - e. Appoint a suitably qualified independent expert to complete an independent compliance audit (Audit) of the exploration activities undertaken to date on EL 8625. The Audit must:
 1. Be led and conducted by a suitably qualified, experienced and independent expert whose appointment has been endorsed by the Director: Compliance Operations.
 2. Provide information on compliance or otherwise with obligations under EL 8625, the terms of activity approvals (OUT17/49220 and DOC18/390476) or other legal requirements under the Mining Act 1992 from the impacts of, or the rehabilitation of land affected by, activities under EL 8625.
 3. Recommend appropriate measures or actions to address any non-compliances identified and to improve the environmental performance of the exploration program.
 4. Be conducted and reported to the satisfaction of the Director: Compliance Operations by 1 February 2019.

Representations

19. On 5 December 2018, I wrote to TMPL in accordance with section 240AA(2) of the Act, inviting them to provide a submission in response to my proposed decision to suspend EL 8625 by on later than 4.30pm on 12 December 2018.
20. I also wrote to TIPL inviting them to provide a submission in response to my proposed decision to suspend EL 8635.

21. On 12 December 2018, Mr Alan Armstrong, a director of TMPL, TIPL and CCL, responded to the proposed decision to suspend EL 8625 and EL 8635 with a single 14-page submission on behalf of CCL.

22. In this response, Mr Armstrong submitted *inter alia* that:

a. Management of drilling waste:

“Castillo Copper accepts that there were drilling wastes placed on the ground at its approved drilling sites 2018_3, 2018_1, Pad 2, Pad 4, and Pad 6 ahead of anticipated disposal under approved methods. Castillo Copper contests that this material has migrated into the environment, including waterways and does not consider that this has caused environmental harm or land pollution.

These drilling wastes have now been either:

- backfilled into the drill holes,*
- contained in ‘bulka bags’ and removed from the site;*
- contained in bulka bags and awaiting transport offsite; or*
- stockpiled and banded awaiting placement in ‘bulka bags’.*

Castillo considers this immediate response has eliminated any current or future risk from this material. Once all the material has been placed into bulka bags, it is planned to be removed from the site prior to 21 December, weather permitting.”

b. Erosion and sediment control

“Castillo Copper commenced full scale rehabilitation activities on 30 November 2018 and have been ongoing since. Rehabilitation works have included:

- Bunding and formation of drainage on drill pads and tracks.*
- Battering of drill pad walls to reduce slopes similar to surrounding areas.*
- Installation of erosion and sediment control features, such as forming low flow drains, swales across access tracks, and installation of geofabric.*
- Placement of rock piles and sand bags to slow water flow in areas such as long road lengths, and low flow drains.*
- Application of vegetation (branches, leaves) across batters, slopes and disused access tracks to slow water flow, control erosion and accumulate resources for rehabilitation (e.g. soil, leaf litter, seeds).*
- Revegetation with grass seed for further stabilisation.*

Castillo Copper considered that the rehabilitation works and controls implemented have minimised so far as is reasonably practicable, any harm to the environment arising from the exploration activities.

Further, in accordance with the Section 240 notice, Castillo Copper has commissioned a suitably qualified independent expert to complete a site based performance and risk assessment of the surface disturbances to identify deficient or absent controls employed to prevent environmental harm. This action is to be undertaken on Monday 17 December and any further requirements recommended by the expert is proposed to be implemented immediately.”

c. Clearing and excavation works

“Castillo has endeavoured to utilise existing tracks and cleared land surfaces from previous mining activities to conduct its drilling activities. In a few instances in Stage 1, tracks needed to be widened from 2m-3m to allow safe access for the track mounted drill rig and contractors. Castillo has recorded 30m of track that was widened, resulting in clearance/disturbance and excavation work not envisaged during the works program planning.

This resulted in 90m² (0.009 Ha) of extra clearance/disturbance activity and 15m³ of excavation work.”

d. Rehabilitation timelines

“Castillo Copper specified in its Activity Approvals the following:

- Stage 1 (Approvals received December 2017) – It is anticipated (subject to all regulatory approvals and drill rig availability) to be drilling by mid December [2017]. The drilling of 7 – 9 RC holes is likely to take 24 days. There will be break over the Christmas – New Year holidays and the program will be completed in January [2018].
- Stage 2 (Approvals received June 2018) – It is anticipated (subject to all regulatory approvals and drill rig availability) to be drilling by 15th June 2018. The drilling of 6 RC holes is likely to take 6 days.

Castillo Copper specified timing of rehabilitation in its Rehabilitation Objectives to be “late February, early March 2018”.

Castillo response

Due to weather and other logistics interruptions to commencement of construction and operations, drilling activities for Stage 1 did not commence until December 2017, and was completed in March 2018. Stage 2 works did not commence until July 2018, whereby Pads 2, 4, 6, 9 and 11 were prepared, and Pads 2, 4, and 6 were drilled only. The final drilling was completed in November 2018.

Rehabilitation actions commenced planning in late September, early October and the works commenced implementation on 30 November once Castillo Copper had completed its program of drilling.

Castillo Copper understands that the dates proposed for commencement of works, and rehabilitation were not as per the approval documentation, however it commenced rehabilitation as soon as practicable at the point of completion of drilling. It was not deemed safe or appropriate to run complete rehabilitation work whilst drilling continued.”

e. Nymboida fish protection zone

“Castillo Copper considers that the rehabilitation works and controls implemented have minimised so far as is reasonably practicable, any harm to the environment arising from the exploration activities.”

f. Additional drill holes undertaken

“Drilling was proposed for up to 9 holes on EL 8625, however 14 holes were actually drilled. The additional drill holes did not increase the disturbance footprint and the exceedance was self reported to the Resources Regulator both verbally and in its Compliance Report.

This occurred do (sic) to incorrect advice received by Castillo Copper and the person responsible for this advice has been removed from further association with Castillo Copper. Further, Castillo Copper is implementing an internal ground disturbance and drilling permit which will need to be signed off by a suitably qualified person or persons.”

g. Contravention of a condition of an authority

“Castillo Copper requests the following in regard to alleged contravention of an authority.

1. *Castillo requests the Resources Regulator to consider the extensive rehabilitation works already undertaken as described above and shown in the attached photos.*
2. *Castillo Copper is undertaking other activities in accordance with the Section 240 notice (i.e. it has commissioned a ‘suitably qualified and independent expert’ in regard to erosion and sediment control to undertake a performance review of the site, and will be commissioning a third party independent audit of its whole operations).*
3. *Castillo Copper is proposing to continue to cease all activities other than rehabilitation works until the requirements of the Section 240 notice are fulfilled to the satisfaction of the Resources Regulator*
4. *Therefore, Castillo Copper is requesting that no suspension is enforced as it is undertaking all works in accordance with the direction of the Resources Regulator and is not proposing any further drilling until such a time as the Resources Regulator is satisfied (effectively voluntarily suspending its operations).”*

23. No other submissions were received by the Regulator.

Considerations

24. I have closely considered the evidence before me, including the representations made by Mr Armstrong. In doing so I have given due regard to the following:

- a. The self-reporting of the drilling of the additional five RC boreholes by Mr Vile on 15 October 2018;
- b. The outcomes from the inspection conducted by the Regulator on 22 November 2018, as outlined at paragraph 16;
- c. The representations made by Mr Armstrong which:
 - i. Accepted the placement of drilling waste on site ahead of anticipated disposal;
 - ii. Refutes claims that the drilling waste has migrated into the environment, including waterways, and has not caused environmental harm or land pollution
 - iii. That full-scale rehabilitation activities were commenced on 30 November 2018 and that these works and controls have minimised any harm to the environment.
 - iv. Acknowledgement that CCL has endeavoured to utilise existing tracks and cleared surfaces from previous mining activities; however, in a few instances in Stage 1, tracks were widened resulting in clearance/disturbance and excavation work not envisaged during the works program planning.
 - v. Acknowledge the additional five RC drill holes on EL 8625 outside of the activity approval.
 - vi. CCL is complying with the notice issued under section 240 of the Act and has commissioned a suitably qualified and independent expert to undertake a performance review of the site.

25. After careful consideration, I am satisfied that TMPL has failed to conduct exploration activities in accordance with the approvals granted by the Department on 12 December 2017 and 18 June 2018.
26. Section 23A of the Act states:
- (1) *an exploration licence is subject to a statutory condition that the holder must not carry out an assessable prospecting operation on land over which the licence is granted unless an activity approval has been obtained for the carrying out of the assessable prospecting operation in relation to that land and is in force.*"
- ...
- (7) *For the purposes of this Act, it is a statutory condition of an exploration licence that the holder must comply with any activity approval granted to the holder and in force."*
27. Having regard to the section 23A of the Act, I am satisfied that TMPL has contravened a statutory condition, an offence under section 378D(1) of the Act 'Contravention of condition of authorisation – offence by holder'.
28. In addition, I am also satisfied that the lack of, or inadequate provisioning of sediment and erosion controls has resulted in tunnel, rill and gully erosion and associated migration of sediment into the environment, including waterways, is a breach of general condition 13 'Nymboida River Fish Protection Zone'; a further offence under section 378D(1) of the Act 'Contravention of condition of authorisation – offence by holder'.
29. Contravening a provision of the Act or a condition of the authorisation constitutes grounds for the decision-maker to cancel an authorisation, pursuant to section 125(1)(b) and 125(1)(c) of the Act.

Conclusion

30. I am satisfied that the requirements of section 240AA(2) of the Act to notify the titleholder in writing of the proposed suspension notice have been adhered to. TMPL was afforded reasonable opportunity to make representations and these representations were considered in making my decision.
31. Based on the Department's compliance with the requirements of section 240AA(2) of the Act, I believe that TMPL has been afforded procedural fairness in respect of my decision to issue a suspension notice.
32. Based on the material before me, I am satisfied that circumstances exist that constitute a ground for cancellation of EL 8625 under section 125(1)(b) and 125(1)(c) of the Act.
33. In making my decision I gave due regard to the seriousness of the contraventions. I do however note CCL's willingness to comply with the statutory notice DI 0856 2018 and decision to cease operations until such time as this notice has been fully complied with.
34. Having due regard to the regulatory options available to me, and after considering the representations made by CCL, I am satisfied that the above grounds warrant the suspension of all operations under EL 8625, with the exception of those activities required to maintain a safe workplace and/or to undertake environmental rehabilitation of the exploration licence.

35. Accordingly I have determined to issue this suspension notice under section 240AA(1) of the Act.
36. The suspension notice takes effect is effective immediately upon TMPL being notified of the decision and will remain in force until such time as the suspension notice is revoked or varied by written notice of the Secretary or delegate.
37. Consideration will be given to revoking the suspension notice once TMPL complies with statutory notice DI 0856 2018, as detailed at paragraph 18, and is otherwise in compliance with the Act and *Mining Regulation 2016*.

Date of decision: 19 December 2018

A handwritten signature in black ink, appearing to read 'Anthony Keon', with a large, sweeping flourish extending to the left.

Anthony Keon
Chief Compliance Officer
NSW Resources Regulator

WARNING AND INFORMATION ABOUT THIS NOTICE

- It is an offence under section 240C of the *Mining Act 1992* to fail to comply with this direction.
- The maximum penalty for this offence is, for a corporation, \$1,100,000 and a further \$110,000 for each day the offence continues, and, for a natural person, \$220,000 and a further \$22,000 for each day the offence continues.
- An offence against section 240C may attract executive liability against a director of the corporation, or an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation – section 378F of the *Mining Act 1992*.
- If you fail to take the measures specified above, the Minister may take any action necessary to give effect to the direction including authorising another person to take those measures and recover the costs and expenses so incurred from you, or applying to the Land and Environment Court for an injunction directing you to comply with this direction – section 241 of the *Mining Act 1992*.
- The serving of this direction and the matters required of you pursuant to this direction in no way preclude, hinder or otherwise restrain the Department of Planning and Environment from taking further action against you including by commencing legal proceedings.
- This notice issued under section 240AA of the *Mining Act 1992*.
- The words and expressions used in this direction have the same meaning as they have in the *Mining Act 1992*.