



**Planning,
Industry &
Environment**

WHS undertaking

Undertaking to the Secretary,
Department of Planning, Industry and Environment
given for the purposes of Part 11 of the *Work Health and Safety Act 2011*

by

Maules Creek Coal Pty Limited

ACN 140 533 875

ABN 70 140 533 875

Purpose

The purpose of this WHS undertaking is to document the undertaking given to the **regulator**, the Secretary of the Department of Planning, Industry and Environment, for the purposes of Part 11 of the *Work Health and Safety Act 2011 (WHS Act)* in connection with a matter relating to a contravention or alleged contravention by the person of the WHS Act.

Section A - general information

1. details of the company or individual proposing the undertaking

Name of company or individual	Maules Creek Coal Pty Limited (MCCPL)		
Registered address	[REDACTED]		
Mailing address (if different from above)	[REDACTED]		
Telephone	[REDACTED]		
Email address	[REDACTED]		
Legal structure	Australian proprietary company, limited by shares		
Type of business	Coal mine operator of the Maules Creek Coal Mine, located near Boggabri, NSW		
Commencement date of the entity	12 November 2009		
Workers	Full time:424	Part time:3	Other:274
Products and services	Coal		
Comments	[REDACTED]		

2. the details of the alleged contravention

It is alleged that on 21 April 2018, MCCPL being a person conducting a business or undertaking at the Maules Creek Coal Mine, NSW (the **Mine**), failed to discharge its obligations under section 19(1) of the *Work Health and Safety Act 2011 (NSW)* (the **WHS Act**) to ensure, so far as is reasonably practicable, the health and safety of workers at the Mine while the workers were at work in the business or undertaking conducted by MCCPL.

3. details of the events surrounding the alleged contravention, e.g. incident details

Just before 8am on 21 April 2018, a Caterpillar 773 service truck and a fully-laden Hitachi EH5000 haul truck collided at a major four-way intersection on the mine haul road. At the time of the incident, the service truck was travelling east. The haul truck was fully loaded and travelling north.

The intersection road signs were changed during the day shift the day before the incident, to allow haul trucks to drive straight through the intersection from the mine's production area. To give effect to this change, the intersection's stop signs were relocated to the eastern haul road, requiring traffic travelling east and west to stop and give way to other traffic.

The change to the intersection road signs was not communicated to all workers.

The haul truck driver was aware of the change to the intersection signs as he had driven through the intersection earlier that morning. He understood that he had right of way.

The 100-tonne GVM service truck collided with the side of the 500-tonne GVM haul truck, resulting in catastrophic damage to the service truck [REDACTED]. The haul truck stopped about 100 metres past the impact point.

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Hereafter the above will be referred to as 'the **Incident**'.

4. an acknowledgement that the regulator alleged a contravention has occurred

It is acknowledged that the regulator has alleged that MCCPL contravened the WHS Act in respect of the Incident.

5. the details of any injury that arose from the alleged contravention

6. the details of any enforcement notices issued that relate to the alleged contravention

Notices received:

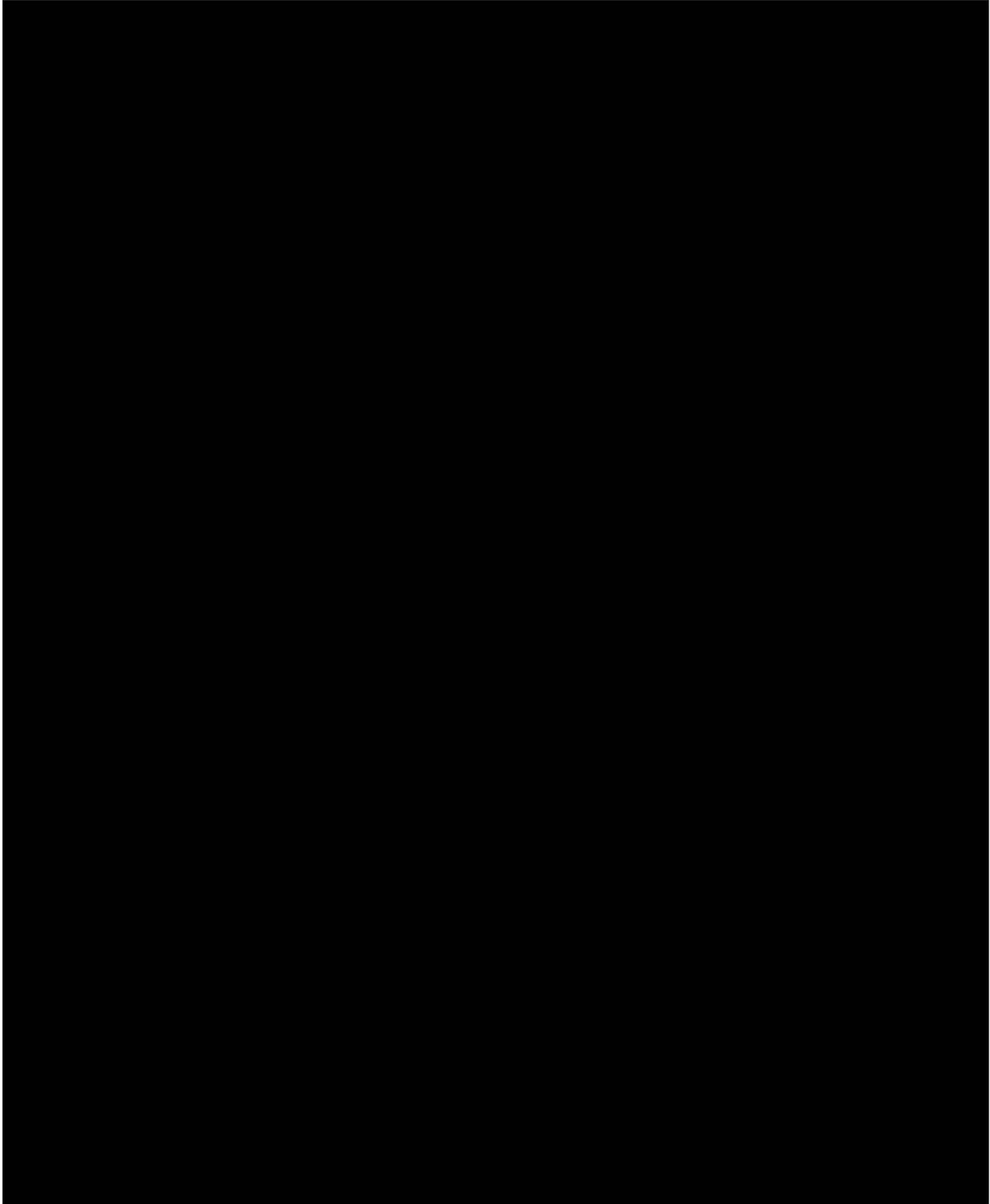
Yes (provide details)

No

Date issued	Notice type	Notice number	Contravention	Action taken to respond to notice
24 June 2018	section 171	180424-AT002	Seizure requirement notice	Complied with direction
22 June 2018	section 155	180622TF001	Notice to give information or records to the NSW Resources Regulator	Information provided as requested
17 December 2018	section 155	181217TF001	Notice to give information or records to the NSW Resources Regulator	Information provided as requested
4 October 2019	section 155	191004SB01	Notice to give information or records to the NSW Resources Regulator	Information provided as requested

7. a statement of assurance about future work health and safety behaviour

MCCPL is committed to complying with its obligations under the WHS Act and the *Work Health and Safety (Mines and Petroleum Sites) Act 2013* (NSW) (the **WHS Mines Act**) and their applicable regulations to ensure, as far as is reasonable practicable, the health and safety of all workers engaged or caused to be engaged by MCCPL and all workers whose activities are influenced or directed by MCCPL while the workers are at work in the business or undertaking.



9. the details of any existing safety management systems at the workplace including the level of auditing currently undertaken

MCCPL has a safety management system (**SMS**) in place in accordance with the WHS Act, WHS Mines Act (including their applicable regulations), other applicable legislative requirements and Australia Standards.

The SMS includes a range of work health and safety matters applicable to open cut mining.

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The SMS is designed in line with Whitehaven Coal's overarching Seven Safehaven Rules, namely:

1. Never work at heights above 2 metres without fall protection.
2. Always confirm equipment is correctly isolated and de-energised before commencing work.
3. Never operate maintenance of operational equipment unless trained and authorised.
4. Never work on a tyre without first deflating the tyre to a safe working pressure.
5. Always follow positive communication requirements.
6. Never enter designated exclusion or no go zones without appropriate authorisations.
7. Always ensure you are not standing or working within the fall zone of a suspended load, unsupported roof, unstable high wall or inadequately supported load.

The SMS includes a process for conducting audits to verify that the SMS meets MCCPL's legislative requirements and is being complied with. Such audits include:

- (a) planned task observations and safety observations undertaken on a frequent basis;
- (b) critical control monitoring;
- (c) internal and external audits.

10. the details of any consultation undertaken within the workplace regarding the proposal of a WHS undertaking (including workers and work health and safety representatives)

MCCPL has undertaken a significant amount of consultation in relation to this WHS undertaking, including:

- (a) with members of Whitehaven Coal's (MCCPL's parent company) executives and leadership team (including the Chief Executive Officer, Chief Operating Officer, General Manager for Health Safety and Environment);
- (b) at the Mine with members of MCCPL's management team, including General Manager, Mining Engineering Manager, HSEC Manager and Safety Officer;
- (c) Site Safety Health Representative;
- (d) MCCPL's WHS Committee; and
- (e) Whitehaven Coal's Manager, Aboriginal Community Relations.

Separately, MCCPL reached out to the injured workers to ask if they would like to be involved in the WHS undertaking.

11. a statement of regret that the incident occurred (ie not an admission of guilt)

MCCPL regrets that the Incident occurred and the workers suffered injury as a result of the Incident.

12. any rectifications made as a result of the alleged contravention

Following the Incident, MCCPL undertook the following steps to rectify the alleged contravention:

- (a) improved its pre-start presentation pack to include intersection changes that have occurred prior to the shift;
- (b) made it a requirement for field maintenance personnel to attend the production pre-start;
- (c) improved its risk assessment process for evaluating changes to intersections;
- (d) implemented a process which requires an engineering review to be conducted when changes to intersections are proposed; and
- (e) trained its relevant employees in the above improvements.

The rectification measures detailed above were undertaken internally by MCCPL.

13. an acknowledgement that the WHS undertaking may be published and publicised

MCCPL acknowledges that the undertaking will be published on the regulator's website and may be referenced in NSW Resources Regulator material.

MCCPL acknowledges that the undertaking may be publicised in newspapers or other publications (where applicable, as specified in Section B – enforceable terms).

14. a statement of ability to comply with the terms of the undertaking

MCCPL has the resources and financial ability to comply with the terms of this WHS undertaking and have provided evidence with this undertaking to support this declaration.

15. statement regarding relationships with beneficiaries

MCCPL acknowledges that there are no known current relationships with any of the beneficiaries outlined in the WHS undertaking, other than the current workers of MCCPL, MCCPL's contractors and the broader industry.

16. intellectual property licence

MCCPL grants the regulator 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 this WHS undertaking.

17. the company or individual may be required to provide information of any prior work health and safety convictions

The regulator requests a list outlining details of any prior work health and safety convictions or findings of guilt under work health and safety legislation² or work health and safety related legislation.

Does MCCPL have any such prior convictions or findings?

Yes No

² Subject to any local legal constraints such as spent conviction legislation.

The list is attached (if applicable)

Yes No

18. a commitment to participate constructively in all compliance monitoring activities of the undertaking

MCCPL acknowledges that responsibility for demonstrating compliance with this enforceable undertaking rests with the organisations who have given this enforceable undertaking. Evidence to demonstrate compliance with the terms will be provided to the regulator by the due date for the term.

MCCPL acknowledges that the regulator may undertake other compliance monitoring activities to verify the evidence that is provided and compliance with the relevant terms of this enforceable undertaking. The evidence provided to demonstrate compliance with the enforceable undertaking will be retained by the organisations who have given this enforceable undertaking until advised by the regulator that the enforceable undertaking has been completely discharged.

MCCPL acknowledges that the regulator may initiate additional compliance monitoring activities of compliance with the terms of the enforceable undertaking, such as inspections, as considered necessary at the regulator's expense.

19. a commitment that the behaviour that led to the alleged contravention has ceased and will not reoccur

MCCPL commits that the behaviour that led to the alleged contravention has ceased and that it will take steps to prevent recurrence of the incident, so far as is reasonably practicable.

20. a commitment to the ongoing effective management of work health and safety risks

MCCPL is committed to the ongoing effective management of WHS risks in accordance with the WHS Act, the WHS Mines Act and their applicable regulations.

21. acknowledgment of WHS undertaking guidelines

MCCPL has read and understood:

NSW Resources Regulator Enforceable undertakings guidelines version August 2019.

Section B – enforceable terms

1. Publication of information about the undertaking

MCCPL must, within 30 days of receiving notification from the regulator of the acceptance of the WHS undertaking, cause a public notice to be published in the Northern Daily Leader and Sydney Morning Herald which will be drafted using the script provided in Attachment A.

2. A commitment to disseminate information about the undertaking to workers, and other relevant parties (which may include work health and safety representatives), and in the annual report (if applicable)

MCCPL must disseminate information by implementing the following:

- (a) within 30 days of receiving notification from the regulator of the acceptance of the WHS undertaking, issue a written communication to all Whitehaven Coal workers Australia-wide in relation to the WHS undertaking. The written communication will provide information about the WHS undertaking and the initiatives;
- (b) display a summary of the WHS undertaking on all mine, mine office and contractor notice boards at the Mine for a period of at least 30 days commencing within 30 days of receiving notification from the regulator of the acceptance of the WHS undertaking;
- (c) review the implementation and progress of the WHS undertaking each month at the Site Leadership Team meeting; and
- (d) review the implementation and progress of the WHS undertaking each month at the Site Health and Safety Committee meeting.

The reviews in paragraphs (c) and (d) must continue throughout the life of the WHS undertaking.

3. Strategies that will deliver worker benefits

MCCPL:

- (a) will purchase 4 solar powered trailer mounted variable message signs to be utilised as message boards around the Mine to convey messages to workers on changes to roads and intersections. The use of these variable message signs will require an update to MCCPL's applicable management plans;

The cost of this purchase is \$100,000

- (b) will employ a newly created graduate safety officer role for a period of 2 years with a focus on the assessment and management of operational risks. A position description for the role is set out in Attachment B to this WHS undertaking; and

The cost of this engagement is \$250,000

- (c) will, within 12 months after the date this WHS undertaking is accepted by the regulator, develop a mentoring program to support the progression of its indigenous employees to management roles within MCCPL. A description of the scope and objectives for the mentoring program is set out in Attachment C to this WHS undertaking.

The cost of this program is \$100,000

These strategies will improve worker benefits by:

- (a) reducing the potential for accidents and injuries;
- (b) delivering enhanced WHS outcomes as a result of increasing and longer-term WHS supervision; and
- (c) facilitating the longer-term retention of indigenous employees.

4. Strategies that will deliver industry benefits

MCCPL believes there will be a benefit to the industry by sharing learnings from the Incident with other industry members by developing a 3 minute educational video (in consultation with the regulator) on the importance of communicating major changes in roads and intersections at mines. The video will be:

- (a) presented at a major mining conference (either NSWMC or one of the regulator's mining conferences (in consultation with the regulator));
- (b) made available on Whitehaven Coal's website within 30 days following the abovementioned conference;
- (c) following the conference presented to all workers (including contractors) at MCCPL [number of workers (including contractors) to view the video will be approximately 700] at tool box talks, briefings, inductions, emailed links or similar so that each crew and operational area has viewed the video within 30 days following the abovementioned conference; and
- (d) provide to the regulator to use.

The cost for the production of this video is \$45,000

This will allow the wider mining industry to benefit from learnings from the Incident.

5. Strategies that will deliver community benefits

MCCPL will consult with:

- (a) the local SES to identify emergency life-saving equipment for purchase and fund the purchase of that equipment; and

An amount of \$20,000 in funds

- (b) the Boggabri Hospital (as the nearest hospital to the Mine) to identify emergency equipment that can be upgraded or purchased to assist the Boggabri Hospital in responding to emergencies.

An amount of \$80,000 in funds

These strategies will allow a broad range of people in the local community to receive a benefit from this WHS undertaking.

MCCPL will undertake the consultation and provide the funding within 6 months after the date this WHS undertaking is accepted by the regulator.

6. A commitment regarding linking the strategy and promotion of benefits to the WHS undertaking

MCCPL is committed to linking any promotion of a benefit arising from this WHS undertaking to the WHS undertaking.

7. Reimbursement of the regulator's agreed costs associated with, and any monitoring of, the enforceable undertaking

MCCPL must pay the regulators recoverable costs associated with the undertaking, as itemised below, and acknowledges that payment is due **30 days** after receipt of the regulator's invoice:

<input type="checkbox"/> investigative, legal and administrative costs	\$100,499
<input type="checkbox"/> compliance monitoring costs	\$10,000
<input type="checkbox"/> publication costs	\$0

Total amount **\$110,499**

Insert case, if any, for why the regulator would not seek to recover costs.

Nil

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8. Minimum spend

MCCPL must spend a minimum of \$705,499, excluding GST, in carrying out its obligations as set out in this WHS undertaking, inclusive of the regulator's recoverable costs.

MCCPL acknowledges the minimum spend comprises of:

Activities to deliver	Total estimated cost
Benefits to workers	\$450,000 (excl GST)
Benefits to industry	\$45,000 (excl GST)
Benefits to community	\$100,000 (excl GST)
Regulator recoverable costs	\$110,499 (excl GST)
Estimated total value of the undertaking	\$705,499 (excl GST)

9. Project of undertaking

Where a project or projects are proposed to deliver benefits to workers, industry and community MCCPL offers and will carry out the projects set out in Items 3, 4 and 5 of section B of this WHS undertaking.

10. Timeframe for delivery

The strategies set out in this WHS undertaking must be completed by MCCPL on or before 30 months following acceptance of this enforceable undertaking by the regulator.

Section C - Offer of undertaking

BY AN INDIVIDUAL

I offer this undertaking and commit to the terms herein.

Signed:

[Person]

Name:

[Print name]

Position:

Dated at this

..... day of, 20.....

BY A CORPORATION

As a duly appointed and authorised officer or agent of
Maules Creek Coal Pty Limited (ACN 140 533 875)

I offer this undertaking and commit

Maules Creek Coal Pty Limited (ACN 140 533 875)

to the terms herein.

Signed:

[Director]

KEVIN BALL

Name:

[Print name]

Position: Director

Dated at SYDNEY this

17 day of JANUARY, 2020

Signed:

[Director or company secretary]

Name: TIMOTHY BURT

[Print name]

Position: COMPANY SECRETARY

Dated at SYDNEY this

17 day of JANUARY, 2020

Section D – Regulator’s acceptance of undertaking

I accept this undertaking as an enforceable undertaking under section 216 of the *Work Health and Safety Act 2011*.

Signed:

Position: delegate of the Secretary,

Department of Planning, Industry and Environment

Dated at this day of, 20.....

ATTACHMENT A

(This attachment is incorporated in and considered part of the WHS undertaking given by Maules Creek Coal Pty Limited for the purposes stated herein, and are enforceable terms given under section B of the WHS undertaking by Maules Creek Coal Pty Limited)

Public Notice of regulator's acceptance of WHS Undertaking

Notice of acceptance of a WHC undertaking under Part 11 of the Work Health and Safety Act 2011

On 21 April 2018, at the Maules Creek Coal Mine (the **Mine**), a service cart and fully laden rear dump truck collided at an intersection (the **Incident**). [REDACTED]

Maules Creek Coal Pty Limited (**MCCPL**) is the operator of the Mine. The NSW Resources Regulator (a division of the Department of Planning, Industry and Environment) investigated the incident and subsequently alleged MCCPL contravened section 19(1) of the Work Health and Safety Act 2011 (the **WHS Act**) by failing to ensure, as far as reasonably practicable, the health and safety of workers at the Mine.

MCCPL entered into a work health and safety enforceable undertaking with the Department of Planning, Industry and Environment in relation to the Incident (**WHS undertaking**).

This notice has been published under the terms of a WHS undertaking and acknowledges acceptance of an undertaking, that is enforceable under the WHS Act.

The WHS undertaking requires the following actions:

- (a) The purchase 4 solar powered trailer mounted variable message signs to be utilised as message boards around the Mine to convey messages to workers on changes to roads and intersections. The use of these variable message signs will require an update to MCCPL's applicable management plans.
- (b) The employing of a newly created graduate safety officer role for a period of 2 years with a focus on the assessment and management of risks in pit.
- (c) The development of a mentoring program to support the progression of its indigenous employees to management roles within MCCPL.
- (d) The production of a 3 minute educational video on the importance of communicating major changes in roads and intersections at mines.
- (e) Provision of funding to the SES and Boggabri Hospital for the purchase of life-saving and emergency equipment.

The total value of the WHS undertaking is \$705,499.

The full WHS undertaking and general information about undertakings is available at www.resourcesregulator.nsw.gov.au.

ATTACHMENT B

MCCPL Graduate Safety Officer Position Description

Description:

The primary role of the Graduate Safety Officer is to provide technical advice and pragmatic solutions to health and safety matters at the Maules Creek Coal Mine.

Qualifications and Experience:

Students who have attained their Health and Safety tertiary qualifications within the past two years.

The successful graduate will be innovative, passionate and results driven individuals with strong problem-solving skills and demonstrated analytical capability. Additionally, strong self-motivation, drive towards learning, and excellent verbal and written communication skills are crucial determinants for this opportunity. Previous work experience relevant to the Health and Safety discipline is an advantage but not essential.

Key responsibilities include:

- (a) Ensuring consistent implementation, adherence and compliance to relevant WHS legislation.
- (b) Ensuring all activities are carried out in accordance with all company WHS standards and procedures.
- (c) Supporting Company and Contractor representatives and all other relevant stakeholders to ensure WHS standards and processes are maintained and effective.
- (d) Assist with WHS audits and risk assessments.
- (e) Scheduling and completing regular workplace inspections.
- (f) Identify and assess hazards in the mine and ensure appropriate control measures.
- (g) Participating in incident investigations.
- (h) Coordinating the development and roll out of safety promotional material, initiatives and campaigns.
- (i) Analysing WHS data, identify trends, and prepare improvement plans.
- (j) Monitoring Contractor WHS performance and compliance and prepare improvement plans as required.
- (k) Actively participating in meetings including daily pre starts, contractor and operational meetings, weekly and monthly safety meetings.

ATTACHMENT C

MCCPL Indigenous Mentoring Program

Overview:

The development of an indigenous mentoring program to support the development of indigenous employees to management roles within the Maules Creek Coal Mine.

The program will be developed with the following objectives to achieve the following proposed benefits:

1. **Relationships:** Develop good relationships at work that provide support to mentees encouraging them to feel part of the company and be more engaged with their work.
2. **Retention:** Setting clear objectives will mean mentees can be comfortable knowing what is expected and how they should deliver it and encouraging employees to remain with the company.
3. **Training:** The delivery of training the delivery with outcomes measured/discussed/further goals set.
4. **Professional and personal development:** A structured, career-focused mentoring process providing professional and personal development.

Proposed Benefits:

- (a) Increased self-confidence;
- (b) Greater job satisfaction;
- (c) Development of professional direction through mentors and mentees working together over defined periods;
- (d) Provision of career guidance and increased awareness of possible future career opportunities in leadership and management roles for mentees;
- (e) Improved interpersonal and communication skills; and
- (f) Encouragement to identify and participate in training opportunities and development programs or relevant work experience.