

ENFORCEABLE UNDERTAKING

PORT KEMBLA COPPER PTY LTD ACN 076 258 976 (PKC)

PKC PROPERTIES PTY LTD ACN 602 368 472 (PKCP)

and

NSW ENVIRONMENT PROTECTION AUTHORITY (EPA) ABN 43 692 285 758.

Enforceable Undertaking to the EPA given for the purposes of section 96A of the *Contaminated Land Management Act 1997 (NSW) (CLM Act)* by:

PORT KEMBLA COPPER PTY LTD ACN 076 258 976

PKC PROPERTIES PTY LTD ACN 602 368 472

MILITARY ROAD, PORT KEMBLA NSW 2505

1. BACKGROUND

- 1.1 The EPA is a statutory body created by the *Protection of the Environment Administration Act 1991 (NSW)* and has primary responsibility for the administration and enforcement of the CLM Act and the POEO Act.
- 1.2 PKC and PKCP are both corporations incorporated under the *Corporations Act 2001 (Cth)*. As at the date of this undertaking, PKC is the holder of Environment Protection Licence number 1753 (EPL) for the Premises and PKCP is the registered proprietor of the Premises. Electrolytic Refining and Smelting Company of Australia Ltd and Southern Copper Ltd operated the Premises as a copper smelter and refinery from 1908 until it closed in 1995.
- 1.3 PKC has occupied the Premises since 1996. Following upgrade and expansion works, PKC re-opened and operated the copper smelter and refinery at the Premises under the EPL for the scheduled activity of 'Mineral processing or metallurgical works' until its closure in 2003. The copper smelter and refinery was then decommissioned, and demolition activities occurred at the Premises between 2011 and 2014.
- 1.4 The EPL has been subsequently varied to reflect the activities being carried on at the Premises over time.
- 1.5 In 2015, PKC notified the EPA of its intent to transfer the EPL to PKCP as part of a divestment strategy. The EPA asked PKC to undertake a range of investigations to address reasonably foreseeable environmental and human health risks from former smelting operations at the Premises and areas surrounding the Premises. This included an assessment of the necessary financial requirements to ensure those risks are adequately provisioned for.
- 1.6 To date, in discussions with the EPA, NSW Health, and Wollongong City Council, PKC and PKCP have undertaken extensive investigations voluntarily to assess the Contamination in soil, indoor dust and roof dust surrounding the Premises including sediments in Port Kembla outer harbour associated with the historical operations. This included the preparation of a Site Specific Risk Assessment to inform further investigations and clean-up actions on identified properties. The Site Specific Risk Assessment identified Contamination in soil, indoor dust and roof dust at the Relevant Properties from airborne emissions associated with historical operations at the Premises, and recommended further investigations to be carried out and the development of a Remedial Action Plan.

- 1.7 Legacy contamination at the Premises is being managed under a public positive covenant under the *Conveyancing Act 1919* (NSW). The covenant does not extend to the management of any off-site environmental and human health risks. The Premises continues to be regulated by the EPL for miscellaneous licensed discharge to waters (at any time).
- 1.8 The EPA acknowledges that PKC and PKCP (and their Related Bodies Corporate) have made significant financial and other contributions to manage the Contamination associated with the historical operations at the Premises on a voluntary basis.
- 1.9 PKC and PKCP want to continue to work with the EPA to address the Relevant Contamination.
- 1.10 As part of the divestment strategy of PKC and PKCP (and their Related Bodies Corporate) with respect to the Premises and to finalise the management of the Contamination at the Relevant Properties, PKC and PKCP have voluntarily applied to the EPA for an undertaking to carry out the Program in accordance with the terms of this undertaking.
- 1.11 The EPA may accept an undertaking in connection with a matter for which the EPA has a function under the CLM Act. This undertaking is in connection with the EPA's functions under section 8(3) of the CLM Act to take such reasonable steps as it considers necessary in relation to investigating or managing Contamination of land (including significantly contaminated land) or the threat of harm from any such Contamination.
- 1.12 This undertaking does not relate to any alleged breach by PKC and/or PKCP of environment protection legislation administered by the EPA and is not to be construed as an admission by PKC and/or PKCP of an alleged breach of environment protection legislation administered by the EPA.
- 1.13 The EPA acknowledges that, following the Final Completion Date, steps may be taken to wind up both PKC and PKCP.

2. DEFINITIONS

The meanings of the terms used in this undertaking are set out below:

Term	Meaning
Affected Party	has the meaning given at clause 6.1 of this undertaking.
Affected Obligations	has the meaning given at clause 6.1 of this undertaking.
Authority	means a government, semi-government, local government, statutory, public, ministerial, civil, administrative, fiscal or judicial body, commission, department, agency, tribunal or other authority or body or entity or a Minister of the Crown.
Bank Guarantee	means an irrevocable and unconditional undertaking: (a) by a bank, building society or credit union operating in Australia as "Authorised Deposit-taking Institutions" under the <i>Banking Act 1959</i> and supervised by the Australian Prudential Authority; and (b) on terms acceptable to the EPA, to pay the face value of that undertaking (being such amount as is required under this undertaking) on demand.
Business Day	means a day which is not a Saturday, a Sunday, a public holiday in New South Wales or 24, 27 or 31 December.
CLM Act	means the <i>Contaminated Land Management Act 1997</i> (NSW).
Contamination	has the same meaning given to that term in the CLM Act.

Term	Meaning
Engagement Action Plan	<p>means a plan that sets out the engagement and communication activities for the Program with:</p> <ul style="list-style-type: none"> (a) the Relevant Properties; (b) relevant Authorities; (c) the Site Auditor; and (d) the Port Kembla community. <p>This plan includes, but is not limited to, actions for seeking consent from owners and occupiers of the Relevant Properties to undertake the Offsite Investigation and Offsite Remediation.</p>
Environment	has the same meaning given to that term in the CLM Act.
EPA	means the Environment Protection Authority.
EPL	means Environment Protection Licence number 1753 issued under the POEO Act for the Premises.
Financial Assurance	<p>means one or more of the following forms of financial assurance:</p> <ul style="list-style-type: none"> (a) a Bank Guarantee; (b) a bond; or (c) another form of security that the EPA considers appropriate.
Final Completion Date	<p>means the date that:</p> <ul style="list-style-type: none"> (a) is the date that Step 15 of Schedule 1 to this undertaking is completed; and (b) the EPA releases the Financial Assurance in accordance with clause 4.21 of this undertaking, <p>whichever is later, and may be extended by the parties in accordance with clause 9.7 of this undertaking before Step 15 of Schedule 1 to this undertaking is completed.</p>
Further Offsite Investigation Report	has the meaning given at Step 5 of Schedule 1 to this undertaking.
Independent Assessment	means an independent assessment undertaken by a registered company auditor in accordance with the EPA's <i>Financial Assurance Policy</i> and the EPA's <i>Estimating financial assurances: Guideline on Independent Assessment of Costs</i> as in force from time to time.
Interim Audit Advice	means an interim advice provided by the Site Auditor in accordance with the EPA's <i>Contaminated Land Management: Guidelines for the NSW Site Auditor Scheme</i> , 3rd Edition.
Key Step	means a Step in Schedule 1 to this undertaking.
Offsite Investigation	means the investigations and related reporting associated with the Relevant Contamination at the Relevant Properties pursuant to the Program.

Term	Meaning
Offsite Investigation Report	has the meaning given at Step 5 of Schedule 1 to this undertaking.
Offsite Remediation	means the remediation and related reporting associated with the Relevant Contamination at the Relevant Properties pursuant to the Program.
Outstanding Scope	means the outstanding scope of the Offsite Investigation and/or the Offsite Remediation (as applicable) for the inaccessible Relevant Properties, as set out in the Remediation Validation Report pursuant to Step 12 of Schedule 1 to this undertaking.
PKC	means Port Kembla Copper Pty Ltd (ACN 076 258 976).
PKC/PKCP's Associates	includes PKC's Related Bodies Corporate, PKCP's Related Bodies Corporate and any person or party acting on behalf of PKC, PKCP, PKC's Related Bodies Corporate or PKCP's Related Bodies Corporate as an officer, employee, agent, consultant, contractor, licensee or invitee of PKC, PKCP, PKC's Related Bodies Corporate or PKCP's Related Bodies Corporate, including PKC's Consultant.
PKC's Consultant	means Senversa Pty Ltd (ACN 132 231 380) or another suitably qualified environmental consultant.
PKCP	means PKC Properties Pty Ltd (ACN 602 368 472).
POEO Act	means the <i>Protection of the Environment Operations Act 1997</i> (NSW).
Premises	means Lot 21 in DP546139 and Lot 127 in DP257531, known as the former copper smelter and refinery at Military Road, Port Kembla, NSW.
Program	means the program to be carried out in accordance with undertakings in clause 4 and Schedule 1 of this undertaking.
Remedial Action Plan	means a Remedial Action Plan prepared in accordance with the EPA's <i>Consultants reporting on contaminated land: Contaminated land guidelines</i> .
Related Bodies Corporate	has the same meaning as given in sections 9 and 50 of the <i>Corporations Act 2001</i> (Cth).
Relevant Contamination	means the presence of Contamination in soil, indoor dust and roof dust from airborne emissions associated with historical operations at the Premises.

Term	Meaning
Relevant Property	<p>means a property that is, or may be, affected by the Relevant Contamination that meets any one or more of the following:</p> <ul style="list-style-type: none"> (a) the property is within the inferred areas shown in Figure 4 and Figure 6 of the Site Specific Risk Assessment; (b) the property is identified by PKC's Consultant based on EPA soil sampling information provided by the EPA or an owner or occupier of the property and agreed to by the Site Auditor; (c) the property is identified by PKC's Consultant based on the outcomes of the Offsite Investigation and agreed to by the Site Auditor. <p>Relevant Properties has a corresponding meaning.</p>
Remediation Validation Report	has the meaning given at Step 12 of Schedule 1 to this undertaking.
Sale Completion Date	means the date of completion for the sale of the Premises.
Sampling and Analysis Quality Plan	means a Sampling and Analysis Quality Plan prepared in accordance with the EPA's <i>Consultants reporting on contaminated land: Contaminated land guidelines</i> .
SAS	means a "site audit statement" as defined under the CLM Act.
SAR	means a "site audit report" as defined under the CLM Act.
Site Auditor	means Dr Lange Jorstad of Geosyntec Consultants or another independent EPA-accredited site auditor.
Site Specific Risk Assessment	means the Site Specific Risk Assessment dated 23 December 2022 prepared by Senversa Pty Ltd.
Unforeseen Event	<p>means any event beyond the reasonable control of PKC, PKCP or PKC/PKCP's Associates, including but not limited to:</p> <ul style="list-style-type: none"> (a) earthquake, tsunami, flood, landslide, tropical cyclone, natural disaster, fire or explosion; (b) pandemic or epidemic; (c) war, revolution, outbreak of hostilities, riot, civil disturbance, acts of terrorism, sabotage or any other unlawful act against public order or authority (whether war is declared or not); (d) strikes, lock-outs, or industrial action of any kind; (e) a restraint by any government or authority; (f) the act of any government or authority (including refusal or revocation of a consent, licence or other authorisation) other than acts of the EPA in connection with this undertaking; and (g) an imminent threat of any event described at (a) to (f) of this definition above.

3. INTERPRETATION

3.1 In this undertaking:

- (a) Headings and bold type are for convenience only and do not affect the interpretation of

this undertaking.

- (b) The singular includes the plural, and the plural includes the singular.
- (c) Words of any gender includes all genders.
- (d) Other parts of speech and grammatical forms of a word or phrase defined in this undertaking have a corresponding meaning.
- (e) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Authority as well as an individual.
- (f) A reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this undertaking and a reference to this undertaking includes any schedule, attachment and exhibit.
- (g) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.
- (h) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document.
- (i) A reference to a party to a document includes that party's successors and permitted assignees.
- (j) A promise or undertaking on the part of two or more persons binds them jointly and severally.
- (k) A reference to an agreement other than this undertaking includes any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing.
- (l) No provision of this undertaking will be construed adversely to a party because that party was responsible for the preparation of this undertaking or that provision.
- (m) A reference to a body, other than a party to this undertaking (including an institute, association or Authority), whether statutory or not:
 - (1) which ceases to exist; or
 - (2) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions.
- (n) Specifying anything in this undertaking after the words 'include' or 'for example' or similar expressions does not limit what else is included.
- (o) Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

4. UNDERTAKINGS

- 4.1 This document, including Schedule 1 to this document, is the written undertaking that PKC and PKCP have given, and that the EPA has accepted, under section 96A of the CLM Act.

Sale of the Premises

- 4.2 PKC and PKCP undertake jointly and severally to take all reasonable steps to:
- (a) complete the sale of the Premises after the execution of this undertaking;
 - (b) keep the EPA informed of the progress of the sale of the Premises; and
 - (c) notify the EPA of the Sale Completion Date in advance.

The Program

- 4.3 PKC and PKCP undertake jointly and severally to:
- (a) prepare an Engagement Action Plan for the Program and provide a copy of that Plan to the EPA in accordance with the Key Step and related timeframe at Step 1 of Schedule 1 to this undertaking;
 - (b) prepare a Sampling and Analysis Quality Plan for the Program and provide a copy of

that Plan to the EPA in accordance with the Key Step and related timeframe at Step 2 of Schedule 1 to this undertaking;

- (c) implement the Engagement Action Plan and the Sampling and Analysis Quality Plan for the Program if not rejected by the EPA under clause 5.1(b) of this undertaking; and
- (d) every six (6) months from the date of the execution of this undertaking until the Final Completion Date, provide the EPA with a written update on the engagement activities and completed actions under the Program.

4.4 PKC and PKCP undertake jointly and severally to:

- (a) carry out the Offsite Investigation in accordance with each Key Step and related timeframe at Steps 3 to 6 of Schedule 1 to this undertaking, but may commence the Offsite Investigation before the Sale Completion Date;
- (b) carry out the Offsite Remediation in accordance with each Key Step and related timeframe at Steps 7 to 15 of Schedule 1 to this undertaking, but may commence the Offsite Remediation before the Offsite Investigation is completed; and
- (c) notify the EPA if PKC or PKCP consider that a change to the Key Steps in Schedule 1 to this undertaking is required based on expert advice from PKC's Consultant or the Site Auditor or both.

4.5 The EPA may provide assistance in relation to the engagement activities carried out by PKC and/or PKCP set out in the Engagement Action Plan and any other activities in connection with the Program at the EPA's sole discretion. This may include (but is not limited to):

- (a) communicating with the owners and occupiers of the Relevant Properties or the wider community about the Program; and
- (b) reviewing proposed communications about the Program.

Financial Assurance

4.6 In order to secure the performance of this undertaking, PKC and PKCP undertake jointly and severally to provide the Financial Assurance under clause 4.7 of this undertaking to the EPA within 15 Business Days from the Sale Completion Date or such earlier date as agreed to between the parties.

4.7 The Financial Assurance must:

- (a) be unconditional and irrevocable;
- (b) be governed by the law of New South Wales;
- (c) be an original (and not a copy);
- (d) name the 'Environment Protection Authority ABN 43 692 285 758' as the only relevant beneficiary;
- (e) be payable at the branch of an issuer in Sydney;
- (f) be payable on demand made by the EPA in accordance with this undertaking;
- (g) be signed by PKC and PKCP and include PKC and PKCP's ABN or ACN;
- (h) not have an expiry date;
- (i) be in the form as set out in the table below, being in one of the three forms set out in the definition of "Financial Assurance" in clause 2 of this undertaking; and

Financial Assurance form

Bank Guarantee

- (j) subject to clause 4.9 of this undertaking, be in Australian dollars and the minimum amount as set out in the table below.

Financial Assurance amount

\$18,116,943.00

- 4.8 PKC and PKCP undertake jointly and severally to obtain and provide an Independent Assessment of the remainder of the Program to the EPA prior to any variation to the minimum amount set out in the table at clause 4.7(j) of this undertaking in accordance with clause 4.9 of this undertaking.
- 4.9 Based on the remainder of the Program and any Independent Assessment provided to the EPA in accordance with clause 4.8 of this undertaking, the parties (acting reasonably) may agree (subject to clause 9.7 of this undertaking) to vary the minimum amount set out in the table at clause 4.7(j) of this undertaking prior to the Financial Assurance being provided to the EPA in accordance with clause 4.6 of this undertaking.
- 4.10 PKC and PKCP undertake jointly and severally to obtain and provide an Independent Assessment of the remainder of the Program and its proposed replacement Financial Assurance to the EPA in accordance with Step 9 of Schedule 1 to this undertaking.
- 4.11 Based on the Independent Assessment provided to the EPA in accordance with clause 4.10 of this undertaking, the parties (acting reasonably) will agree (subject to clause 9.7 of this undertaking) to vary the Financial Assurance that is held by the EPA in accordance with this undertaking to ensure that the Financial Assurance amount is adequate to secure performance for the remainder of the Program and PKC and PKCP's obligations under this undertaking.
- 4.12 PKC and PKCP undertake jointly and severally to provide the replacement Financial Assurance to the EPA within 10 Business Days of any variation under clause 4.11 of this undertaking. The replacement Financial Assurance must:
- (a) comply with clauses 4.7(a) to 4.7(i) of this undertaking; and
 - (b) be of an amount as agreed by the parties in accordance with clause 4.11 of this undertaking.
- 4.13 Subject to clauses 4.14 to 4.16 of this undertaking, the EPA will promptly return the Financial Assurance that is held by the EPA in accordance with this undertaking to either PKC or PKCP upon receipt of the replacement Financial Assurance under clause 4.12 of this undertaking.
- 4.14 Subject to clause 4.15 of this undertaking, the EPA may:
- (a) call upon the Financial Assurance provided under clauses 4.6 or 4.12 of this undertaking (as applicable at the time of the call by the EPA) where PKC or PKCP has failed to carry out the Program or comply with this undertaking; and
 - (b) retain and apply such monies towards the compliance with this undertaking and any costs and expenses incurred by the EPA in rectifying any default by PKC or PKCP under this undertaking.
- 4.15 Prior to calling upon the Financial Assurance provided under clauses 4.6 or 4.12 of this undertaking (as applicable at the time of the call by the EPA), the EPA must give PKC and PKCP not less than 10 Business Days written notice of its intention to call upon the Financial Assurance and if PKC or PKCP remedies the breach or non-compliance to the EPA's satisfaction within that period the EPA will not call upon the Financial Assurance.
- 4.16 If the EPA applies all or part of such monies towards compliance with any aspect of the Program or any costs and expenses incurred by the EPA in rectifying any default by PKC and PKCP under this undertaking, then PKC and PKCP undertake jointly and severally to provide the EPA with a replacement Financial Assurance within 20 Business Days from the date the EPA notifies PKC and PKCP in writing of the full amount claimed to ensure that, at all times, the EPA is in possession of Financial Assurance for a face value equivalent to the Financial Assurance required to be provided in accordance with clauses 4.6 or 4.12 of this undertaking (as applicable at the time of the call by the EPA).

Funds for Outstanding Scope

- 4.17 PKC and PKCP undertake jointly and severally to provide the Independent Assessment for the Outstanding Scope and its proposed Financial Assurance to the EPA in accordance with Step 14 of Schedule 1 to this undertaking.
- 4.18 Based on the Independent Assessment provided to the EPA in accordance with clause 4.17 of this undertaking, the parties (acting reasonably) will agree in accordance with clause 9.7 of this undertaking:

- (a) to vary the Financial Assurance that is held by the EPA in accordance with this undertaking to:
 - (1) ensure that the Financial Assurance amount is adequate to secure performance for the Outstanding Scope under this undertaking; and
 - (2) permit the EPA, if it wishes to assume responsibility for the Outstanding Scope, to call on the release of the funds to the EPA; and
 - (b) subject to clause 4.18(a)(2) of this undertaking, the identity of the party or parties who may call on and receive all or part of the Financial Assurance that is not used for the purpose of carrying out the Outstanding Scope after a period of two (2) years after the Final Completion Date.
- 4.19 PKC and PKCP undertake jointly and severally to provide the replacement Financial Assurance to the EPA within 10 Business Days of any variation under clause 4.18 of this undertaking. If the replacement Financial Assurance is not cash, the replacement Financial Assurance must:
- (a) comply with clauses 4.7(a) to 4.7(g) of this undertaking; and
 - (b) be of a type and amount, and have an expiry date, as agreed by the parties in accordance with clause 4.18 of this undertaking.
- 4.20 PKC and PKCP accept that, once the EPA has received the replacement Financial Assurance under clause 4.19 of this undertaking:
- (a) the EPA may (at its discretion) carry out, or arrange a third party to carry out, the Outstanding Scope for a period of two (2) years after the Final Completion Date;
 - (b) the EPA may call upon and use the funds from the Financial Assurance for the purpose of carrying out the Outstanding Scope without notice to PKC and PKCP; and
 - (c) clauses 4.14 to 4.16 of this undertaking do not apply to the call and use of funds under this clause 4.20.
- 4.21 Subject to clauses 4.14 to 4.16 of this undertaking, the EPA will promptly return the Financial Assurance that is held by the EPA in accordance with this undertaking to either PKC or PKCP upon receipt of the replacement Financial Assurance under clause 4.19 of this undertaking.

Failure to satisfy requirements

- 4.22 If at any time the Financial Assurance provided to the EPA in accordance with clauses 4.6 or 4.12 of this undertaking fails to satisfy any one or more of the requirements in clauses 4.7 or 4.12(a) - 4.12(b) of this undertaking (as applicable), PKC and PKCP undertake jointly and severally to:
- (a) promptly notify the EPA of that circumstance; and
 - (b) within 20 Business Days of notification under clause 4.22(a) of this undertaking provide the replacement Financial Assurance for a face value equivalent to the Financial Assurance required to be provided in accordance with clauses 4.6 or 4.12 of this undertaking (as applicable),

and the EPA will promptly return the Financial Assurance that is held by the EPA in accordance with this undertaking to either PKC or PKCP upon receipt of the replacement Financial Assurance.

Costs of this undertaking

- 4.23 PKC and PKCP undertake jointly and severally to:
- (a) pay to the EPA a total of \$44,268.83 for the legal costs incurred in the preparation of this undertaking within 20 Business Days of the Chief Executive Officer of the EPA executing this undertaking;
 - (b) pay the EPA's reasonable costs of monitoring future compliance with this undertaking within 20 Business Days of receiving an invoice from the EPA; and
 - (c) notify the EPA in writing within three (3) Business Days of making any payment under clauses 4.23(a) or 4.23(b) of this undertaking.

5. REVIEW OF PROGRAM DOCUMENTS

- 5.1 Where PKC or PKCP provides a report, plan or other document to the EPA pursuant to a Key Step in Schedule 1 to this undertaking (**Program Document**), the EPA may (but is not required to):
- (a) review and comment on the Program Document; and
 - (b) within 20 Business Days (or such other period agreed between the parties in writing) of providing the Program Document to the EPA, reject the Program Document and state the reason(s) for the rejection.

For the avoidance of doubt, a failure by the EPA to review or reject a Program Document under clause 5.1(b) of this undertaking does not constitute an approval of that Program Document by the EPA.

- 5.2 If the EPA rejects a Program Document under clause 5.1(b) of this undertaking, PKC and PKCP must:
- (a) not carry out work pursuant to the Program Document;
 - (b) amend the Program Document;
 - (c) ensure the amended Program Document is reviewed and approved by the Site Auditor; and
 - (d) re-submit the amended Program Document, as reviewed and approved by the Site Auditor, to the EPA within 20 Business Days (or such other period agreed between the parties in writing) after issue of that rejection and clauses 5.1 and 5.2 of this undertaking will apply to that Program Document.
- 5.3 If the EPA does not reject a Program Document within the time period referred to in clause 5.1(b) of this undertaking, PKC and PKCP may commence the relevant next Key Step in Schedule 1 to this undertaking.
- 5.4 Neither the EPA nor its employees assume or owe any duty of care or other responsibility to PKC, PKCP or PKC/PKCP's Associates to review, or in reviewing, a Program Document or amended Program Document, including for any error, omission or non-compliance with this undertaking.
- 5.5 No review of, comment upon, or rejection of, or failure to review or comment or reject a Program Document will:
- (a) constitute an Unforeseen Event;
 - (b) relieve PKC or PKCP from, or alter its obligations under, this undertaking;
 - (c) constitute approval or acceptance by the EPA of PKC or PKCP's performance or compliance with this undertaking; or
 - (d) limit or otherwise affect the EPA's rights against PKC or PKCP under this undertaking or otherwise according to any law.

6. UNFORESEEN EVENTS

- 6.1 If PKC, PKCP or PKC/PKCP's Associates (**Affected Party**) is of the opinion that an Unforeseen Event has occurred that prevents, hinders or delays the performance of some or all of their obligations under this undertaking (**Affected Obligations**), the Affected Party must give the EPA written notice as soon as reasonably practicable after it becomes aware of:
- (a) any Unforeseen Event. The notice must contain full particulars of the Unforeseen Event, including:
 - (1) the date of first occurrence and location (if applicable);
 - (2) the cause or event giving rise to it;
 - (3) details of the Affected Obligations;
 - (4) details of the action that the Affected Party has taken and proposes to take to avoid or minimise the consequences of the Unforeseen Event; and
 - (5) to the extent possible, an estimate of the time during which the Affected Party

will be unable to carry out the Affected Obligations due to the Unforeseen Event; and

(b) the relevant Unforeseen Event ceasing.

6.2 The Affected Party must:

(a) promptly after the occurrence of an Unforeseen Event, take and continue to take proper and reasonable steps to cure, avoid or minimise the consequences of the Unforeseen Event; and

(b) after giving a written notice under clause 6.1(a) of this undertaking, continue to promptly provide the EPA with all relevant information relating to the Unforeseen Event.

6.3 If the Affected Party has complied with clauses 6.1 and 6.2 of this undertaking then, to the extent that:

(a) the Unforeseen Event prevents the Affected Party from performing the Affected Obligations; and

(b) the Affected Party has taken and is continuing to take all proper and reasonable steps to minimise the duration of the Unforeseen Event and to avoid or minimise the consequences of the Unforeseen Event,

the Affected Party's obligation to perform the Affected Obligations will be suspended, but only until the Unforeseen Event and its effect ceases to prevent performance of the Affected Obligations.

6.4 The Affected Party's failure to perform the Affected Obligations that are suspended in accordance with clause 6.3 of this undertaking will not constitute a breach of this undertaking.

6.5 If the Affected Party has notified the EPA in accordance with clause 6.1(a) of this undertaking, then the parties (acting reasonably) may agree in writing to amend the timing of any obligations under this undertaking in accordance with clause 9.7 of this undertaking.

7. PUBLICATION

7.1 PKC and PKCP acknowledge that this undertaking will be publicly available, and the EPA may:

(a) place a copy of the executed undertaking on the EPA's website;

(b) issue a media release on execution of this undertaking, referring to its terms;

(c) from time to time publicly refer to this undertaking; and

(d) disclose or otherwise make available information relating to this undertaking, including:

(1) to comply with the law, including the *Government Information (Public Access) Act 2009* (NSW);

(2) to satisfy the requirements of parliamentary accountability;

(3) to the NSW Ombudsman or NSW Auditor-General for the purpose of satisfying its statutory duties; or

(4) in annual reports of the EPA.

7.2 Any reference made by the EPA in any public document (including, for example, a media release or public statement) to this undertaking will include a statement with words to the effect of the following: "*The undertaking does not relate to any alleged breach of environment protection legislation by Port Kembla Copper Pty Ltd and PKC Properties Pty Ltd.*"

8. INSOLVENCY EVENTS

8.1 PKC and PKCP undertake jointly and severally to notify the EPA in writing within five (5) Business Days, of any one of the following:

(a) notice is given of a meeting of creditors with a view to PKC or PKCP entering into a deed of company arrangement;

(b) a liquidator or provisional liquidator is appointed in respect of PKC or PKCP;

(c) PKC or PKCP entering a deed of company arrangement with creditors;

- (d) a controller, restructuring practitioner, administrator, receiver, receiver and manager, provisional liquidator or liquidator (as defined in section 9 of the *Corporations Act 2001* (Cth)) is appointed to PKC or PKCP.
- 8.2 PKC and PKCP undertake jointly and severally that it will not apply for deregistration under the *Corporations Act 2001* (Cth) without the prior written consent of the EPA unless:
- (a) within 20 Business Days after the Final Completion Date, the EPA has notified PKC and PKCP in writing that the obligations of PKC and PKCP under this undertaking are complete; or
 - (b) this undertaking is withdrawn with the consent of the EPA in accordance with section 96A of the CLM Act.

9. ACKNOWLEDGEMENTS

- 9.1 PKC and PKCP acknowledge that the EPA's acceptance of this undertaking does not affect the EPA's power to investigate a contravention arising from future conduct or to pursue a criminal prosecution, or to lay charges or exercise other civil or regulatory powers under the CLM Act and other legislation administered by the EPA.
- 9.2 PKC and PKCP acknowledge that the EPA will take into account this undertaking in future regulatory matters under the CLM Act and other legislation administered by the EPA.
- 9.3 PKC and PKCP acknowledge 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 CLM Act or other legislation administered by the EPA.
- 9.4 PKC and PKCP acknowledge that this undertaking has no operative force until formally accepted by the Chief Executive Officer of the EPA.
- 9.5 PKC and PKCP acknowledge that this undertaking may only be varied with the EPA's written agreement and in accordance with the CLM Act.
- 9.6 PKC and PKCP must not assign, change, novate, or otherwise deal with its obligations or interests under this undertaking without the prior written consent of the EPA (acting reasonably). For the purposes of this undertaking, any change of control in the shareholding of PKC or PKCP will be deemed to be an assignment by PKC or PKCP respectively.
- 9.7 Any change to this undertaking, or assignment of this undertaking (including for reasons due to PKC or PKCP's change of control in its shareholding), or novation of PKC or PKCP's obligations or interests under this undertaking to another entity, that the parties to this undertaking have agreed to must take the form of a deed of variation. This will be prepared by the EPA following receipt of a request to do so by PKC or PKCP to the EPA. The agreed change, including assignment or novation (as relevant), will not take effect until the date that the deed of variation has been duly executed by the last signing party.
- 9.8 PKC and PKCP acknowledge that this undertaking, as varied from time to time, will remain in force until completed or this undertaking is withdrawn with the consent of the EPA in accordance with section 96A of the CLM Act.
- 9.9 PKC and PKCP acknowledge that any communication referring to projects or activities delivered pursuant to this undertaking must be clearly linked to this undertaking.

Executed on

PKC

For and on behalf of
Port Kembla Copper Pty Ltd ACN 076 258 976
in accordance with section 127 of the *Corporations Act 2001* (Cth) by

sign here ▶ Masa Saito
Company Secretary/Director

sign here ▶ Kiyohito Mitsumura
Director

print name MASANORI SAITO

print name KIYOHITO MITSUMURA

PKCP

For and on behalf of
PKC Properties Pty Ltd ACN 602 368 472
in accordance with section 127 of the *Corporations Act 2001* (Cth) by

sign here ▶ Masa Saito
Company Secretary/Director

sign here ▶ Kiyohito Mitsumura
Director

print name MASANORI SAITO

print name KIYOHITO MITSUMURA

Accepted by the Environment Protection Authority pursuant to section 96A of the *Contaminated Land Management Act 1997* (NSW):



Tony Chappel
Chief Executive Officer
Environment Protection Authority

Date: 28/02/2025

Schedule 1

The Program

Step	Description	Timeframe
1	Provide an Engagement Action Plan to the EPA in accordance with clause 4.3(a) of this undertaking.	Within 20 Business Days of the Sale Completion Date or earlier if agreed between the parties in writing.
2	Provide a Sampling and Analysis Quality Plan for investigation of the Relevant Properties, as reviewed and approved by the Site Auditor, to the EPA in accordance with clause 4.3(b) of this undertaking.	Within 20 Business Days of the Sale Completion Date or earlier if agreed between the parties in writing.
3	Seek consent for access from each owner and/or occupier (as required) of the Relevant Properties to carry out the Offsite Investigation and Offsite Remediation (if required).	Commence within 20 Business Days of the Sale Completion Date or earlier if agreed between the parties in writing.
	<p><i>For the purpose of allowing the preparation of the Offsite Investigation Report (refer to Step 5 below), access will be sought three (3) times in the first six (6) months of the Program.</i></p> <p><i>Consent for access to inaccessible Relevant Properties will be sought quarterly thereafter, or at such intervals as agreed between the parties in writing, until the Remediation Validation Report is provided to the EPA (refer to Step 12 below) – with Further Offsite Investigation Reports (refer to Step 5 below) prepared (as required) for these properties.</i></p> <p><i>If consent for access to carry out the Offsite Investigation is granted at Step 3 above, the following steps in this schedule will apply.</i></p>	
4	Carry out the Offsite Investigation at the accessible Relevant Properties.	Commence within 20 Business Days (or such other period agreed between the parties in writing) of the documents set out at Steps 1 and 2 above not being rejected by the EPA under clause 5.1(b) of this undertaking, subject to consent for access.

Step	Description	Timeframe
5	<p>Provide an investigation report (or reports) on the Offsite Investigation at the accessible Relevant Properties (Offsite Investigation Report), as reviewed and approved by the Site Auditor, to the EPA for review in accordance with clause 5 of this undertaking.</p> <p>The Offsite Investigation Report will:</p> <ul style="list-style-type: none"> (a) be for properties which provided consent for access (within the first six (6) months of it first being sought); and (b) identify which of the Relevant Properties did not provide consent for access or withdrew their consent, and the reasons provided (within the first six (6) months of it first being sought). <p>Further individual Offsite Investigation Reports (Further Offsite Investigation Reports) will be prepared (if required) for any Relevant Properties that may subsequently provide access (i.e., six (6) months after it first being sought). Any Further Offsite Investigation Reports will be reviewed and approved by the Site Auditor and then provided to the EPA for review in accordance with clause 5 of this undertaking.</p>	<p>Within 60 Business Days of completion of the investigations at the accessible Relevant Properties.</p>
6	<p>Issue to each owner and/or occupier (as applicable) of the accessible Relevant Properties:</p> <ul style="list-style-type: none"> (a) the Offsite Investigation outcomes in a letter as reviewed and approved by the Site Auditor; and (b) a request for confirmation of receipt and acceptance of the findings in the letter. 	<p>Within 20 Business Days of the Offsite Investigation Report(s) not being rejected by the EPA under clause 5.1(b) of this undertaking (refer to Step 5 above).</p>
	<p><i>If the Offsite Investigation reveals that remediation is required at the accessible Relevant Properties, the following steps will apply.</i></p>	
7	<p>Provide a Remedial Action Plan for the accessible Relevant Properties, as reviewed and approved by the Site Auditor, to the EPA for its review in accordance with clause 5 of this undertaking.</p> <p>Updates to the RAP may be required (and will be reviewed and approved by the Site Auditor and then provided to the EPA in accordance with clause 5 of this undertaking) if any Further Offsite Investigation Reports are prepared (refer to Steps 3 to 5 above).</p>	<p>Within 80 Business Days of the Offsite Investigation Report not being rejected by the EPA under clause 5.1(b) of this undertaking (refer to Step 5 above).</p>

Step	Description	Timeframe
8	<p>Provide to the EPA a Section B SAS and SAR prepared by the Site Auditor verifying that the Offsite Investigation has adequately determined the nature and extent of contamination at the accessible Relevant Properties and that the RAP is likely to mitigate potential risks posed by the Relevant Contamination at the accessible Relevant Properties.</p> <p>The Section B SAS and SAR will also identify Relevant Properties where access was not able to be obtained for the Offsite Investigation.</p> <p>The standard SAS form is to be used with a hand amendment to the B4 field on page 4 to provide that a purpose of the site audit is to determine compliance with a proposal under an enforceable undertaking accepted by the EPA under section 96A of the CLM Act.</p> <p>If any Further Offsite Investigation Reports are required (and associated updates to the RAP also required), these will be provided to the Site Auditor for review and approval through Interim Audit Advice.</p>	<p>Within 80 Business Days of the Offsite Investigation Report not being rejected by the EPA under clause 5.1(b) of this undertaking (refer to Step 5 above).</p>
9	<p>Provide the Independent Assessment and its proposed replacement Financial Assurance to the EPA for the remainder of the Program, including any inaccessible Relevant Properties that have not been subject to the Offsite Investigation or the Offsite Remediation.</p>	<p>Between 14 and 18 months from the Sale Completion Date or earlier if agreed between the parties in writing.</p>
10	<p>If access for the purposes of carrying out the Offsite Remediation has not been granted by consent at Step 3 above, seek consent for access from each owner and/or occupier to carry out the Offsite Remediation at the Relevant Properties.</p> <p><i>Consent for access to inaccessible Relevant Properties will be sought quarterly, or at such intervals as agreed between the parties in writing, until the Remediation Validation Report is provided to the EPA (refer to Step 12 below).</i></p>	<p>Within 20 Business Days of the documents set out at Steps 7 and 8 above not being rejected by the EPA under clause 5.1(b) of this undertaking.</p>
	<p><i>If consent for access to carry out the Offsite Remediation is granted at Steps 3 or 10 above, the following Steps 12 to 15 in this schedule will apply.</i></p>	
11	<p>Carry out the Offsite Remediation at the accessible Relevant Properties in accordance with the RAP.</p>	<p>Within 20 Business Days of the documents set out at Steps 7 and 8 above not being rejected by the EPA under clause 5.1(b) of this undertaking.</p>

Step	Description	Timeframe
12	<p>Following the completion of the Offsite Remediation at the accessible Relevant Properties, provide a remediation validation report for the accessible Relevant Properties (Remediation Validation Report), as reviewed and approved by the Site Auditor, to the EPA for its review in accordance with clause 5 of this undertaking.</p> <p>The Remediation Validation Report will include a summary of (amongst other matters):</p> <ul style="list-style-type: none"> (a) the Relevant Properties at the commencement of the Program; (b) the accessible Relevant Properties that have been subject to the Offsite Investigation and, if required, the Offsite Remediation; (c) the accessible Relevant Properties that have been identified as being affected by Relevant Contamination under the Offsite Investigation and were inaccessible during the Offsite Remediation; (d) the inaccessible Relevant Properties that have not been subject to the Offsite Investigation or the Offsite Remediation; and (e) for the Relevant Properties identified under (c) and (d) of this Step 12 above, the known or likely Outstanding Scope of the Offsite Investigation and/or the Offsite Remediation (as applicable) required for each Relevant Property. 	<p>Within 60 Business Days of completion of the Offsite Remediation at the accessible Relevant Properties.</p>
13	<p>Provide to the EPA a Section B SAS and SAR prepared by the Site Auditor verifying that the Offsite Remediation has effectively mitigated risk to human health at the accessible Relevant Properties posed by the Relevant Contamination. The Relevant Properties which were inaccessible during the program will also be documented in the SAS and SAR.</p> <p>The standard SAS form is to be used with a hand amendment to the B4 field on page 4 to provide that a purpose of the site audit is to determine compliance with a proposal under an enforceable undertaking accepted by the EPA under section 96A of the CLM Act.</p>	<p>Within 20 Business Days of the Remediation Validation Report(s) not being rejected by the EPA under clause 5.1(b) of this undertaking (refer to Step 12 above).</p>
14	<p>Provide an Independent Assessment for the Outstanding Scope and its proposed Financial Assurance to the EPA.</p>	<p>Within 20 Business Days of the Section B SAS and SAR not being rejected by the EPA under clause 5.1(b) of this undertaking (refer to Step 13 above).</p>

Step	Description	Timeframe
15	<p>Issue to each owner and/or occupier (as applicable) of the accessible Relevant Properties:</p> <ul style="list-style-type: none"> (a) the Offsite Remediation outcomes in a letter as reviewed and approved by the Site Auditor; and (b) a request for confirmation of receipt and acceptance of the findings in the letter. 	<p>Within 20 Business Days of documents set out at Steps 13 and 14 above not being rejected by the EPA under clause 5.1(b) of this undertaking.</p>