

## ENFORCEABLE UNDERTAKING

*Environment Protection Act 1970 (Vic)*

### Section 67D

The commitments in this undertaking are offered to the Environment Protection Authority (EPA) by:

*Hepburn Shire Council of corner Duke & Albert Streets, Daylesford, Victoria, 3460*

#### 1. DEFINITIONS

In addition to terms defined elsewhere in this undertaking, the following definitions are used:

- 1.1. **Act** means the *Environment Protection Act 1970 (Vic)*;
- 1.2. **Auditor** means an independent auditor appointed under section 53S of the Act;
- 1.3. **Council** means the Hepburn Shire Council;
- 1.4. **EPA** means the Environment Protection Authority;
- 1.5. **Industrial Waste** means solid inert waste including concrete, asphalt, timber and construction material;
- 1.6. **Premises** means part of Portion 7, 1670 Old Ballarat Road, Mount Beckworth, Victoria; and
- 1.7. **Undertaking** means this Enforceable Undertaking made pursuant to section 67D of the Act.

#### 2. BACKGROUND

##### 2.1 EPA's role

The EPA is a statutory body created by the Act, which has primary responsibility for the administration and enforcement of the Act. EPA's purpose is to protect, care for and improve our environment.

##### 2.2 Details of conduct / incident

- 2.2.1. On 14 October 2011, the EPA inspected the Premises in response to a report from the community. Stockpiles of Industrial Waste were observed at the Premises, including concrete, asphalt, timber and construction material.
- 2.2.2. The Industrial Waste identified at the Premises was generated by civil works carried out by the Council (or its predecessors), including road construction and maintenance of Council land. This Industrial Waste was deposited or burnt at the Premises without a works approval or licence as required by Part III of the Act.
- 2.2.3. On 4 November 2011, the EPA issued the Council with Clean Up Notice NO10112 requiring the Council to:
  - (a) Engage a consultant to assess the Premises and provide recommendations for the safe removal of industrial waste and prescribed industrial waste from the Premises and submit those reports to the EPA for approval; and
  - (b) Clean up the Premises and carry out remediation works in accordance with the approved reports and the Clean Up Notice.
- 2.2.4. Following a series Notices of Revocation and revised Clean Up Notices, on 3 February 2012, the independent consultant engaged by the Council, Edwards Environmental, provided a compliance report and clean up plan to the EPA.

- 2.2.5. On 21 December 2012, in response to the EPA's enforcement investigation, the Council provided the EPA with a report detailing the history and management of the Premises.
- 2.2.6. On 31 January 2013, the Council provided the EPA with a final report from Edwards Environmental in accordance with the Clean Up Notice.
- 2.2.7. On 13 February 2013, the EPA conducted an inspection of the Premises and confirmed that the Premises had been remediated and all requirements of the Clean Up Notice had been met.
- 2.2.8. The EPA acknowledges that the Council has cooperated in all respects with the EPA, in order resolve the issues at the Premises.

### 2.3 Alleged Contraventions

- 2.3.1. Between 1 January 2002 and 14 October 2011, the Council did deposit Industrial Waste at the Premises, thereby making the Premises a scheduled premises, without a works approval contrary to sections 19A(3) and 19(8) of the Act;
- 2.3.2. Between 1 July 2007 and 14 October 2011, the Council did deposit Industrial Waste at the Premises, being a site not licensed to accept industrial waste of that kind, contrary to section 27A(2)(a) of the Act; and
- 2.3.3. Between 1 July 2007 and 14 October 2011, the Council did discard by burning Industrial Waste at the Premises, being a site not licensed to accept industrial waste of that kind, contrary to section 27A(2)(a) of the Act.

## 3. **KEY OBJECTIVES OF THIS UNDERTAKING**

*This Undertaking is a binding agreement that aims to:*

- 3.1 Drive improvement in a company's environmental performance by:
  - 3.1.1 fixing the problem that led to the alleged breach; and
  - 3.1.2 innovating for improved environmental performance;
- 3.2 Deliver benefit to the local area/environment that was affected by the alleged breach; and
- 3.3 Assist in improving the environmental performance of the relevant industry more broadly.

## 4. **UNDERTAKINGS**

Under section 67D of the Act, the Council has offered, and EPA has agreed to accept as an alternative to taking prosecution proceedings for the offences alleged in this Undertaking, the following undertakings:

- 4.1 The Council will make improvements to how it deals with green waste generated at its work sites and transfer stations. These changes will include separating valuable timber from green waste (an opportunity identified in Council's Waste Strategy 2014), achieving beneficial reuse of green waste (e.g. compost and mulch) and the increased sale of reusable products. The Council will then develop and implement a green waste strategy that involves better practice in the re-use, recycling and recovery of valuable materials from green waste, including in accordance with Sustainability Victoria's 2009 publication entitled "Guide to Best Practice at Resource Recovery Centres".

- 4.2 The Council will undertake a community education program to educate the community about the appropriate disposal of wastes within the municipality, the types of wastes accepted at Council's transfer stations and how the Council deals with the wastes in collects at its transfer stations.
- 4.3 The Council will conduct an internal review of all policies and procedures relating to disposal of industrial waste and develop and document revised policies and procedures so that they meet all environmental requirements. This will specifically include the instructions to work sites for delivery of waste to Council's transfer stations.
- 4.4 The Council will raise employee awareness of environmental responsibilities by undertaking periodic in-house training on environmental management. This training will include the results of the internal review in clause 4.1 and highlight the deficiencies in the policies and procedures that were identified and the amendments made.
- 4.5 The Council will provide all current and future contractors with information and training on policies and procedures that relate to environmental management. The Council will keep records of contractor induction information and ensure that all current and future contractors are fully inducted in environmental management policies and procedures.
- 4.6 The Council will present at a Mayor's/CEO forum and detail the breach of the Act and how the Undertaking will contribute to improved environmental performance of the Council and deliver benefits to the local community. Council will also share its revised environmental management policies and procedures with the forum members. Council will notify the EPA of the date and time of the Forum so that a representative of the EPA may attend the Forum. Such notification will be provided to the EPA at least 2 weeks in advance of the date of the Forum.
- 4.7 The Council will present a workshop session at a Forum of the Grampians Central West Regional Waste Management Group (comprising 12 regional councils) to detail its breach of the Act and how the Undertaking will contribute to improved environmental performance of the Council and deliver benefits to the local community. Council will also share its revised environmental management policies and procedures with the forum members. Council will notify the EPA of the date and time of the Forum so that a representative of the EPA may attend the Forum. Such notification will be provided to the EPA at least 2 weeks in advance of the date of the Forum.
- 4.8 The Council will fund the installation of solar panels (7kW) at The Warehouse – Clunes (**Warehouse**) and will display the energy generation and consumption statistics of the Warehouse through an existing energy monitoring system. The purpose of the undertaking is to enhance the energy efficiency at this community facility and to provide educational opportunities for the community on the benefits of alternate energy sources. The Clunes township is the closest population centre to Mount Beckworth. The Warehouse is a multi-purpose community and interpretative centre, combining the community run museum, meeting rooms, visitor information centre and library facility.
- 4.9 The Council will fund and manage the installation of interpretative signage at the existing Cenotaph in Clunes and on Mount Beckworth that communicates the on-going commemoration of the Clunes community's contribution to Australia's military campaigns and in particular the role of the Mount Beckworth "Lone Pine" in war time communication. The Mount Beckworth "Lone Pine" is a single surviving pine tree planted at the summit of Mount Beckworth in 1918 to commemorate the end of World War I. The Cenotaph was funded by community members and erected in 2007, and has since been the meeting place for Remembrance and Anzac Day services.

4.10 The Council will comply with each undertaking as follows:

Undertaking	Completion Date	Evidence to confirm compliance
4.1	30 June 2016	Council to provide to the EPA, documented green waste management procedures and summary report of material recoveries and sales for period 1 July 2015 - 31 Dec 2015 from Council's Transfer Stations.  Council to provide to the EPA, a copy of the new green waste strategy and implementation plan.
4.2	30 June 2016	Council to provide to the EPA, a copy of the community education program plan and education materials.
4.3	30 June 2015	Council to provide to the EPA, copies of revised/developed policies and procedures relating to disposal of industrial and green wastes.
4.4	30 September 2015	Council to provide to the EPA, copies of relevant training materials and staff attendance sheets.
4.5	30 September 2015	Council to provide to the EPA, copies of relevant training materials and contractor induction records.
4.6	30 September 2015	Council to provide to the EPA, copy of Powerpoint presentation, any other materials and attendance sheets.
4.7	30 September 2015	Council to provide to the EPA, copy of Powerpoint presentation, any other materials and attendance sheets.
4.8	31 July 2015	Council to provide to the EPA, Tax Invoice for supply and installation of solar panels and media release.
4.9	31 July 2015	Council to provide to the EPA, evidence of wording and placement of signage at both the Cenotaph and Mt Beckworth and installation.

4.11 The Council undertakes that it will, within 14 business days, unless otherwise agreed to by EPA, supply all documents and information reasonably requested by EPA from time to time for the purpose of assessing the Council's compliance with the terms of this Undertaking. For the avoidance of doubt, the Council is not required to provide to EPA documents or information that is the subject of legal professional privilege.

4.12 The Council undertakes to provide a quarterly report to a nominated officer of the EPA regarding status of each undertaking, commencing on 30 June 2015 and continuing quarterly until such time as the EPA receives the documents required by clause 4.11.

- 4.13 The Council undertakes to engage, at its own cost, an Auditor to:
- 4.13.1 review the Council's compliance with the terms of the Undertaking; and
  - 4.13.2 write a 'final assessment report' outlining each undertaking and providing the Auditor's professional assessment of the Council's compliance with each undertaking.
- 4.14 The Council undertakes that, upon its satisfaction that it has implemented all undertakings referred to in clauses 4.1 – 4.9 (inclusive), and no later than 30 September 2016, it will provide to EPA:
- 4.14.1 the final assessment report referred to in 4.13 above;
  - 4.14.2 a detailed costing of expenditure incurred in compliance with the Undertaking; and
  - 4.14.3 a certification from its CEO that the Council has fully completed all undertakings.
- 4.15 The Council undertakes that any reference the Council makes to the actions contained within this Undertaking, whether in implementation of commitments or otherwise, shall also make reference to the Undertaking.
- 4.16 The Council undertakes that it will pay the costs of its compliance with this Undertaking. The Council has estimated the cost of compliance with this Undertaking to be up to approximately \$62,000.00. Of this:
- 4.16.1 \$7,000.00 is for undertakings that will drive improvement in the Council's environmental performance by fixing the problem that led to the alleged breach;
  - 4.16.2 \$25,000.00 is for undertakings that will drive improvement in the Council's environmental performance by innovating for improved environmental performance;
  - 4.16.3 \$28,000.00 is for undertakings that will deliver benefit to the local area/environment that was affected by the alleged breach; and
  - 4.16.4 \$2,000.00 is for undertakings that will assist in improving the environmental performance of the relevant industry more broadly.

## 5. *ACKNOWLEDGMENTS*

- 5.1 The Council acknowledges that EPA:
- 5.1.1 may issue a media release referring to the Undertaking and to the alleged contraventions which led to its execution;
  - 5.1.2 may publicly refer to this Undertaking; and
  - 5.1.3 will make this Undertaking available for public inspection on a register of undertakings, in accordance with section 67G of the Act and that this Undertaking will remain on the register upon completion of all undertakings contained within.
- 5.2 Further, the Council acknowledges that:
- 5.2.1 as provided in section 67D(4) of the Act, EPA's acceptance of this Undertaking means that proceedings may not be brought by EPA against the Council for the offences constituted by the contraventions alleged in clause 2.3 of this Undertaking, subject to termination of the Undertaking for breach;

- 5.2.2 as provided in section 67D(5) of the Act, if the Council withdraws this Undertaking before it has been fulfilled, proceedings may be brought for the offences constituted by the contravention alleged in clause 2.3 of this Undertaking;
- 5.2.3 EPA's acceptance of this Undertaking does not affect EPA's power to bring proceedings against the Council, to issue penalty infringement notices or instigate any other enforcement action against the Council in relation to any contravention or alleged contravention of the Act that is not the subject of this Undertaking, whether or not the contravention or alleged contravention involves a provision of the Act that is referred to in clause 2.3 of this Undertaking; and
- 5.2.4 this undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this Undertaking or arising from subsequent conduct.
- 5.3 The Council acknowledges that EPA had reason to be concerned as to the alleged facts and has offered an Undertaking in the terms set out above.
- 5.4 The Council acknowledges that this Undertaking has no operative force until accepted and signed by EPA, and the Council and EPA acknowledge that the date of the Undertaking is the date on which it is accepted and signed by EPA.

## **6. STATEMENT OF REGRET**

The Council regrets that the Mount Beckworth community and local environment may have been adversely affected by the Council's actions during the period from 2001 to October 2011 when it deposited Industrial Waste at the Premises, which was not licenced to accept such waste.

## **7. ASSURANCE ABOUT FUTURE BEHAVIOUR**

By completing the undertakings set out in clauses 4.1 - 4.9 inclusive, the Council is committed to ceasing the alleged conduct referred to in clause 2.3 that led to this Undertaking, and not recommencing that conduct.

## **8. EFFECT OF NON-COMPLIANCE**

The Council acknowledges that failure to comply with any of the terms of this Undertaking may result in EPA seeking to enforce the Undertaking in the Magistrates' Court.

## **9. TERMINATION OF ENFORCEABLE UNDERTAKING FOR BREACH**

- 9.1 If the Council fails to carry out any of the requirements or obligations agreed to in this Undertaking, EPA may issue a written notice identifying the breach and requesting that the Council take action to remedy the breach by a specified date.
- 9.2 If the notice is not complied with, EPA may terminate the Undertaking by written notice to the Council. Upon termination, EPA may bring proceedings for the offence/s constituted by the contravention or alleged contravention in respect of which the Undertaking was given.

**10. CESSATION OF THE ENFORCEABLE UNDERTAKING**

Upon EPA's receipt of the Council's the documentation required by clause 4.13, EPA will review the Council's final assessment report (required by clause 4.14.1). If fully satisfied that the terms of the Undertaking have been complied with, EPA will provide written notification to the Council that the Undertaking is no longer in force.

**11. ENFORCEABLE UNDERTAKING CONTACT DETAILS**

11.1 Any written notification to EPA pursuant to this Undertaking is to be provided to:

Manager, North West Region  
Environment Protection Authority  
165-171 Hargreaves Street  
Bendigo, Victoria, 3550

11.2 Any written notification to the Council pursuant to this Undertaking is to be provided to:

General Manager Infrastructure  
Hepburn Shire Council  
PO Box 21  
Daylesford, Victoria, 3460

**12. EXECUTION CLAUSES**

The Undertaking is executed by:

Executed by **HEPBURN SHIRE COUNCIL**,  
pursuant to an Instrument of Delegation dated  
21 May 2013:

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Aaron van Egmond  
Chief Executive Officer

**Accepted by the Environment Protection Authority under section 67D of the Environment Protection Act 1970 by its CEO and Deputy Chairman:**

Nial James Finegan  
CEO and Deputy Chairman  
of the Environment Protection Authority

Date: 12.6.2015

