Enforceable Undertaking

Environmental Protection Act 1994 (Qld)

Isaac Regional Council

The commitments in this undertaking are offered to the Administering Authority by the above person or entity.

ENFORCEABLE UNDERTAKING

Environmental Protection Act 1994

Section 507

1.0 The commitments in this undertaking are offered to the Chief Executive of the Department of Environment and Heritage Protection (Administering Authority) by:

1.1 ***Isaac Regional Council*** **Grosvenor Complex, Bachelor Parade, Moranbah, Queensland 4744 (Council).**

2.0 DEFINITIONS

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

Act means the *Environmental Protection Act 1994*.

Administering authority is the Chief Executive of the Department of Environment and Heritage Protection, also known as the department or EHP.

Appropriately qualified person(s) means a person or persons who has professional qualifications, training, skills or experience relevant to the nominated subject matter and can give authoritative assessment, advice and analysis of performance relative to the subject matter using the relevant protocols, standards, methods or literature.

Authorised person means a person who has been appointed as an authorised person under the Act and is generally an employee of the Department of Environment and Heritage Protection.

Council means the Isaac Regional Council ABN 39 274 142 600.

Dam means the treated effluent storage dam on Lot 11 CNS 115 owned and operated by Isaac Regional Council and known as Golf Course Dam (adjacent to the Dysart Golf Course) at Dysart Queensland.

Dysart STP means the sewage treatment plant operated by Isaac Regional Council for the town of Dysart in Queensland.

EA means the environmental authority EPPR00791913 (formerly NM0139) issued on 5 September 1999, containing the amendments issued on 25 February 2005 and transitioned under section 619 and 677 of the Act.

Proceedings means a legal or other action or proceeding.

RPEQ means a Registered Professional Engineer of Queensland.

Undertaking means this enforceable undertaking made pursuant to Chapter 10, Part 5 of the Act.

3.0 BACKGROUND

3.1 Council operates the Dysart STP under the EA. Council also maintains and operates the Dam which is approximately 300 metres by 100 metres in area and up to five (5) metres deep and contains treated effluent and silt. The Dam is not listed on the EA.

3.2 The Dam receives treated effluent from the Dysart STP which is then irrigated to nearby sports fields, a golf course and pony club. The Dam is located in the headwaters of Lotus Creek, which flows to Downs Creek approximately six kilometres downstream. Downs Creek flows to the Isaac River.

3.3 The Dam is a legacy item. It was built in the 1970s when the township of Dysart was first built by a mining company. Records demonstrate that the Dysart STP and dam tenures have been the responsibility of Council since 19 November 1977. No plans, specifications or construction and maintenance records exist in relation to the Dam. Only occasional maintenance was undertaken until 2016 when Council appointed consultants to undertake a review of all dams under Council's responsibility and instigated a formal maintenance programme.

4.0 ALLEGED CONTRAVENTIONS

4.1 It is alleged by EHP that between 6 February 2016 and 9 February 2016, at Dysart in the Magistrates Court District of Mackay in the State of Queensland:

(a) Council did unlawfully cause serious environmental harm, contrary to section 437(2) of the Act. The environmental harm caused by the release of the effluent (referred to under the heading "Circumstances of the alleged contravention" below) was widespread and/or resulted in costs of more than $50,000 being incurred in preventing or minimising the harm or rehabilitating the environment to its condition before the harm; and

(b) Council did unlawfully deposit a prescribed water contaminant in waters, contrary to section 440ZG of the Act. The deposit was caused by the failure to prevent the release of the contents of the Dam.

5.0 CIRCUMSTANCES OF THE ALLEGED CONTRAVENTION

5.1 In the three (3) days prior to 8 February 2017, the rainfall recorded at the nearest rain gauge to the Dam was 113 millimetres of rainfall. This rainfall damaged road infrastructure in the storm corridor and caused severe local flooding in the catchment above and below the Dam.

5.2 The inflow to the Dysart STP system increases significantly during rainfall events. Records show that there was a significant flow of effluent into the Dam prior to the incident. The total effluent which had flowed into the Dam prior to the incident was approximately 58 megalitres. The storage volume of the Dam at the spillway is unknown. The storage volume at the crest of the embankment is estimated at 66 megalitres.

5.3 At approximately 7.30pm on 8 February 2016, Council notified EHP that the Dam had failed. The failure had occurred at approximately 6.00pm on 8 February and had been reported to Council by a local farmer. The failure resulted in an eight metre wide by five metre high breach of the Dam's wall and a reported discharge of 30-40 megalitres of Class B effluent to flow at a high rate for 30 kilometres downstream into neighbouring properties and into the local downstream creek system. The whole of the inside of the Dam was exposed by the failure and it

created an eight (8) metre wide track in the natural stream course beyond the Dam wall due to the discharge. The release resulted in adverse effects (including potential adverse effects) to public amenity and safety and the environment.

5.4 Council appointed a RPEQ to attend the Dam site on the morning of 9 February 2016 and immediately followed his directions on the most appropriate means to rectify the Dam in the short term. Council also appointed a RPEQ to advise on the medium and long term remediation of the Dam. Implementation of these works were authorised by Council.

5.5 On 9 February 2016, EHP officers attended the Dam and downstream sites impacted by the discharge and received a briefing by Council officers. Council officers had already commenced implementing repair works to the Dam. Council has continued to communicate with EHP regarding its proposed strategies for repair of the Dam and other containment activities.

5.6 On 18 February 2016, an Authorised Person issued a direction notice under section 363B of the Act to Council to remedy the contravention of section 440ZG of the Act.

5.7 On 9 December 2016, the Administering authority issued an environmental protection order under section 358 of the Act to Council to secure compliance with the general environment duty under section 319 of the Act.

6.0 STATEMENT OF REGRET

6.1 Council genuinely regrets the occurrence described in the alleged contraventions. In response to the incident, Council immediately implemented repair works and is committed to completing the rehabilitation of the Dam and to developing risk mitigation measures to prevent a recurrence.

7.0 STATEMENT OF COMMITMENT

7.1 By completing the undertakings set out in this undertaking, Council is accepting that actions will be implemented to prevent the alleged contravention(s) from reoccurring. Council will commit the funding required to undertake the actions required by the undertaking in the required timeframes. Council will commit to reviewing staff skills, training and coaching in order to prevent the alleged contravention from reoccurring.

8.0 OBJECTIVES

8.1 The objectives of the undertaking are as follows:

a) Improve overall sewage management for the Dysart STP;
b) Ensure the dam size and stability is suitable for its proposed use;
c) Minimise the risks to the receiving environment and the community from the Dam;
d) Ensure council's EA is suitably conditioned to protect environmental values; and
e) Ensure sufficient funding for the implementation of the program of works.

9.0 UNDERTAKING

9.1 Council undertakes to the Administering Authority to:

(A). Spend $912,000 on the remediation and upgrade of the Dam.

(B). Within four (4) months of the date of this undertaking:

a) Develop and submit to EHP the terms of reference for an investigation into overall sewage management at Dysart. The terms of reference must include:

I. Analysis of the current and projected (for a 20 year planning timeframe) sewage loading to the Dysart STP in accordance with the Department of Energy and Water Supply's Planning Guidelines for Water Supply and Sewerage, April 2010 (including Chapter 6 amendments March 2014). The analysis of sewage loading must consider average dry weather flow, wet weather flow and an assessment of wet weather ingress and the likely causes of ingress;

II. Analysis of the capacity of the Dysart STP to treat the current and projected sewage loading, to a standard necessary to adequately protect relevant environmental values;

III. Identification of the relevant environmental values that will be impacted by the release of effluent to land;

IV. Analysis of the land area, irrigation system capacity and wet weather storage capacity required to ensure that effluent is irrigated to land in accordance with the EA (these should be calculated using a daily time step model, e.g. MEDLI or similar);

V. Analysis of how releases to land will be managed to protect the relevant environmental values identified above;

VI. The development of recommendations by an appropriately qualified person for the sewage collection system, the Dysart STP and the utilisation and disposal of effluent to protect environmental values identified above; and

VII. The development of recommendations for the use and size of the dam; and

b) Engage an independent and appropriately qualified person to conduct the investigation referred to in paragraph 9.1(B)(a) above.

(C). Within twelve (12) months of the date of this undertaking:

a) Submit the independent and appropriately qualified person's report to EHP containing the results of the investigation, including the matters identified in paragraph 9.1(B)(a)above;

b) Submit a program of works to EHP for the implementation of the recommendations of the investigation in paragraph 9.1(B)(a) above (including timeframes and specific actions); and

c) Review the EA in relation to the conditions for the Dysart STP.

(D). Within eighteen (18) months of the date of this undertaking:

a) Under the supervision of an RPEQ, implement the program of works submitted under paragraph 9.1(C)(b) (including any amendments received from EHP); and

b) Engage a third party auditor to complete an audit and prepare a compliance statement detailing compliance with this undertaking.

(E). Within thirteen (13) months of the date of this undertaking:

a) Submit to EHP a report and certification from an RPEQ that the restoration works completed on the Dam are fit for purpose; and

b) Submit to EHP a compliance statement from a third party auditor detailing compliance or any non-compliance with this undertaking.

(F). Ensure the ongoing effective management of potential risks to the environment and community as a consequence of the operation of the dam.

(G). Provide a quarterly report to EHP regarding the status of each undertaking's, commencing one month from the date of this undertaking and continuing quarterly until such time as EHP receives the compliance statement from the third party auditor as required by paragraph 9.1(E)(b).

10.0 WHY THE UNDERTAKING IS A MORE APPROPRIATE RESPONSE THAN A COURT PROCEEDING

10.1 Council promptly notified EHP about the incident and has since acted professionally and cooperatively with EHP in its response to the incident.

10.2 The incident was caused (in part) by heavy rainfall, as described above, in the three days prior to the incident. This rainfall damaged road infrastructure in the storm corridor and caused severe local flooding. Council did not foresee this level of rainfall.

10.3 Since the incident, Council has commenced the implementation of a significant program of works to provide appropriate short and long term improvements to the performance and operations of its various effluent storage dams. This program of works extends beyond the Dam the subject of the incident and includes similar dams under Council control.

10.4 The program of works at the Dam includes construction of a spillway, dam wall piezometer data capture, dam wall remediation works, investigation into overall sewage treatment management and the treated effluent storage dam, and a staged program of works to implement the investigation findings.

10.5 There are significant public interest considerations that weigh against a decision to prosecute. Council has a limited permanent population and hence a limited rate base. The Council faces onerous responsibilities and risks in managing infrastructure transferred from mining operators to its asset base, including the Dysart dam and other effluent storage dams. Whilst Council expects legislation administered by EHP to be applied equally to the private and public sector, in the case of Council it is the ratepayer that ultimately bears the cost of any penalty or costs imposed by the court in a court proceeding.

10.6 Any penalty or costs imposed by the court in a court proceeding can be more effectively used in progressing the program of works for the rehabilitation of the Dam and improving the overall sewage management at Dysart

10.7 Implementation of the program of works will deliver benefits for local industry and businesses through their involvement in the delivery of the infrastructure improvement projects.

10.8 Implementation of the program of works will also deliver benefits for the local community, by improving the quality and availability of recycled water for local business and community organisations for beneficial re-use. This will create improved amenity for the people of Dysart.

11.0 ABILITY TO COMPLY WITH THE UNDERTAKING AND MEET THE PROJECTED COSTS

11.1 Council has the financial ability to comply with the undertaking. In the event of insolvency or external administration of Council it will notify the Administering Authority of the specific circumstances and its capacity to comply with the undertaking.

12.0 ACKNOWLEDGEMENTS

12.1 Council acknowledges that EHP:

a) May make this undertaking public;
b) May issue a media release on execution of this undertaking referring to its terms and to the concerns of the EHP which led to its execution;
c) May refer publically to this undertaking; and
d) Will publish this undertaking on its website.

12.2 Council acknowledges that it has read and understood the EHP Guideline: Enforceable Undertakings under the *Environmental Protection Act 1994* (dated 21 July 2016).

12.3 Council acknowledges that the Administering Authority's acceptance of this undertaking does not affect EHPs power to investigate a contravention, issue warnings, issue penalty infringement notices, issue statutory notices and/or bring proceedings against Council in relation to any other and/or subsequent contravention or alleged contravention of the Act that is not the subject of an undertaking.

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

12.5 As proceedings for the alleged contraventions have commenced, Council acknowledges that the Administering Authority's acceptance of this undertaking means that EHP will take all reasonable steps to have those court proceedings discontinued as soon as practicable.

12.6 Council acknowledges that failure to comply with any of the terms of this undertaking may result in EHP continuing and bringing further prosecution proceedings against Council and seeking other orders against Council in accordance with the Act.

12.7 Council acknowledges that this undertaking takes effect when the Administering Authority gives the Council notice of the decision to accept the undertaking.

12.8 Council acknowledges that this undertaking may only be withdrawn, varied, amended or suspended in accordance with the process in the Act.

13.0 CONTACT DETAILS

13.1 Any written notification to the Administering Authority pursuant to this undertaking is to be provided to:

Compliance Delivery Manager
cwes_mackay@ehp.qld.gov.au
Level 1, 22-30 Wood Street
Mackay, QLD 4740
Telephone: (07) 4999 6883

13.2 Any written notification to the council pursuant to this undertaking it to be provided to:

Gary Stevenson
Gary.Stevenson@isaac.qld.gov.au
Chief Executive Officer, Isaac Regional Council
Grosvenor Complex, Bachelor Parade
Moranbah QLD 4744
Telephone: (07) 4846 3525

14.0 EXECUTION

This undertaking is executed by:

Executed on behalf of Isaac Regional Council:

- pursuant to *Local Government Act 2009* section 236;
- by a Council delegate, who certifies his authority to sign;
- in the presence of a witness:

.....	.....
Delegate	Witness
.....	.....
Gary Stevenson Chief Executive Officer	GREGORY SEARLE Full name [*Print*]

Accepted by the Administering Authority
Pursuant to section 507 of the
Environmental Protection Act 1994

.....
Dean Ellwood
Deputy Director-General, Department of
Environment and Heritage Protection

Date: 13/9/2017