

PROTECTION OF THE ENVIRONMENT OPERATIONS ACT 1997 (NSW)

UNDERTAKING TO THE ENVIRONMENT PROTECTION AUTHORITY GIVEN FOR THE PURPOSES OF SECTION 253A

BY MATO INVESTMENTS PTY LTD ACN 110 530 571

1. BACKGROUND

- 1.1 The Environment Protection Authority of New South Wales (**EPA**) is a statutory body created by the *Protection of the Environment Administration Act 1991 (NSW)* which has primary responsibility for the administration and enforcement of the *Protection of the Environment Operations Act 1997 (NSW)* (**POEO Act**).
- 1.2 Mato Investments Pty Ltd ACN 110 530 571 (**Mato Investments**) is a company engaged in the development of an ecotourism resort at "Kunanadgee", Lot 4 DP753732, Spring Drive, Corowa, New South Wales (**the site**). The site is located on the Murray River.
- 1.3 Mato Investments has removed a large number of snags and woody debris from the bed and banks of the Murray River, Big River Billabong and an unnamed creek which passes through the site. The snags are habitat of several threatened species of fish and an endangered ecological community listed under the *Fisheries Management Act 1994*. Mato Investments has also deposited clay materials on floodplain/wetland areas on the site to create new vehicle and personal access tracks.
- 1.4 As a result of the damage to the banks and the addition of clay for access tracks, silts and soils are likely to be mobilised and entrained in the waters of the Murray River in a rain or flow event. The EPA is concerned that the conduct of Mato Investments may involve a contravention of section 120(1) of the POEO Act (**the alleged breach**).
- 1.5 The EPA has undertaken a joint investigation with the NSW Department of Primary Industries (**DPI**) and the Corowa Shire Council into the alleged breach. The investigation has included attendance at the site and an interview with a director of Mato Investments in which full and frank admissions were made.
- 1.6 Mato Investments acknowledges the EPA's concerns and has now ceased the conduct referred to in paragraph 1.3.
- 1.7 Mato Investments has offered, and the EPA has accepted, the commitments in this enforceable undertaking.

2. UNDERTAKING

- 2.1 Mato Investments undertakes to the EPA for the purposes of section 253A of the POEO Act as follows:
- 2.2 Re-snagging Works and Soil Rehabilitation Works
 - (a) Mato Investments will fund DPI to reinstate woody debris (re-snagging) on the site (**the Re-snagging Works**), which will include the following components:
 - (i) Phase 1: re-snagging the Murray River between river chainage markers 2042 and 2046 (between sites D and F, Figure 1, below) to restore large woody habitat to levels recorded previously in 2004; and
 - (ii) Phase 2: re-snagging the unnamed creek and Big River Billabong.

- (b) Specifically, Mato Investments will fund DPI to:

Phase 1

- (i) Reinstatement not more than 125 snags into the River Murray between river chainage markers 2042 and 2046 to the equivalent of 9500 square metre planform area of woody habitat where practical, at the direction of an officer from DPI.

Phase 2

- (ii) Reinstatement not more than 282 snags into the unnamed creek, utilising snags from the 47 snag stockpiles adjacent to the unnamed creek, and the site in the centre of a paddock adjacent to the unnamed creek where snags are present above the apparent mean high water mark (the **main snag stockpile**) (between sites C and E, Figure 1) where practical, at the direction of an officer from DPI.
- (iii) Reinstatement not more than four snags from the main snag stockpile into the Big River Billabong at four sites identified by DPI where there is evidence of snag removal (between sites A and B, Figure 1) where practical, at the direction of an officer from DPI.

DPI will plan and implement the above activities in accordance with the protocols and procedures (risk management strategy, environmental assessment, stakeholder communications) adopted under DPI's "Resnagging and Riparian Restoration Project - Hume Dam to Yarrawonga". This methodology has been approved under Part 5 of the *Environmental Planning and Assessment Act 1979*.

- (c) Mato Investments will fund the Soil Conservation Service to undertake the following works on the site (the **Soil Rehabilitation Works**):
- (i) repair and batter the areas disturbed by snag removal and replacement; spread alluvial topsoil over the batters and disturbed areas;
- (ii) rehabilitate the total length of the access tracks, including all track areas within the wetland, spreading the windrows at the sides of the tracks over the disturbed areas;
- (iii) remove and transport all clay material imported onto the site to a designated stock pile site off the floodplain;
- (iv) remove the timbers that form the retaining wall within the wetland;
- (v) assess the amount of alluvial topsoil that is required across all disturbed areas. If additional soil is required, excavate the amount needed from a less sensitive area (as determined by the Department of Environment and Climate Change (**DECC**)), and spread it over the affected areas with particular attention to the areas where imported clay materials are present; and
- (vi) supply perennial rye grass seed and spread it over all disturbed areas.

2.3 Mato Investments will be responsible for payments to:

- (a) DPI for their disbursements and services in relation to the Re-slagging Works, within 21 days of receiving each invoice from DPI, up to a cumulative maximum of no more than \$61,400 (exclusive of GST); and

- (b) the Soil Conservation Service for their disbursements and services in relation to the Soil Rehabilitation Works, within 21 days of receiving each invoice from the Soil Conservation Service, up to a cumulative maximum of no more than \$37,000 (inclusive of GST).

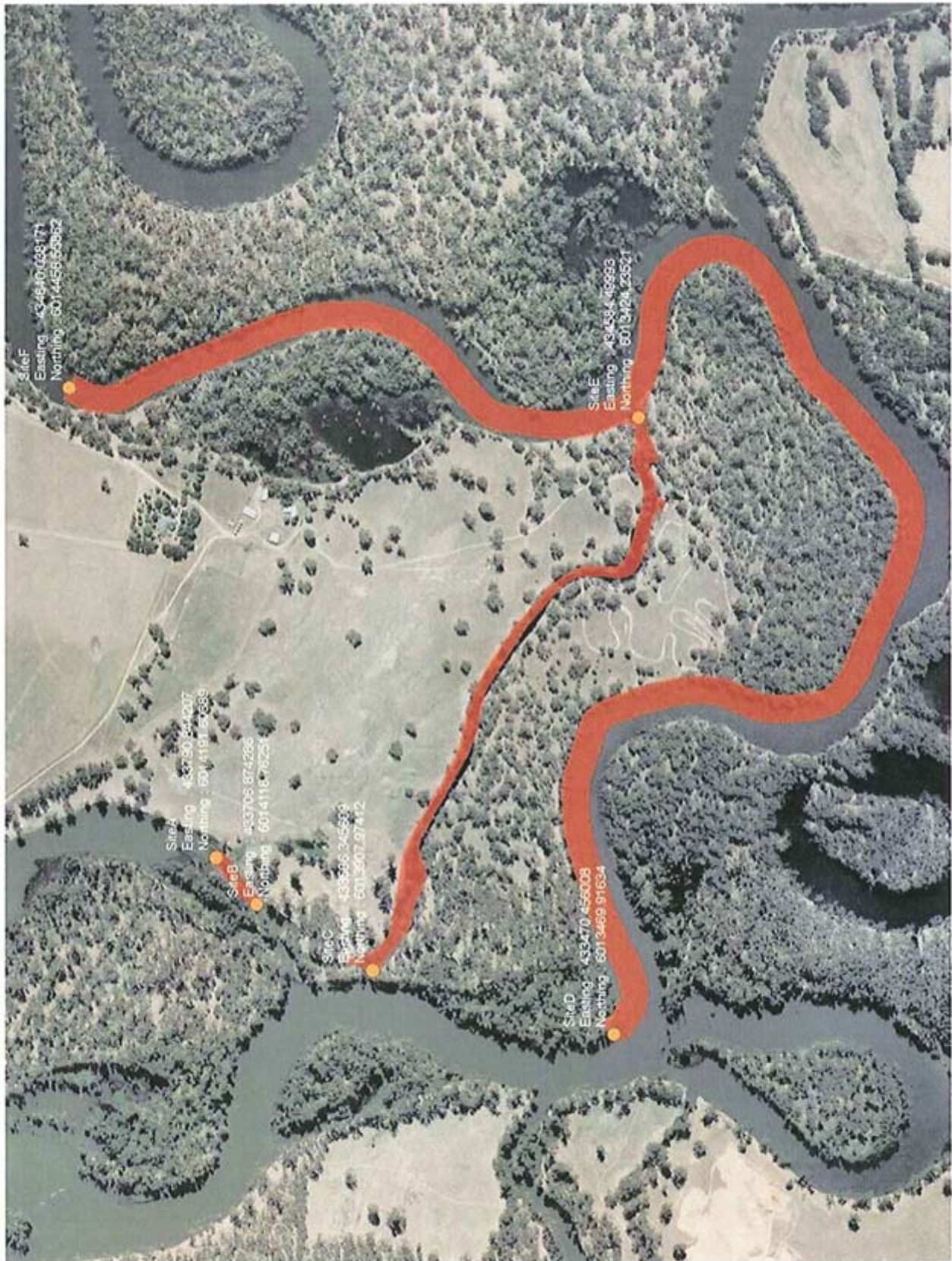
A guide to the anticipated cost and length of time required to complete the Re-snagging Works and Soil Rehabilitation Works is set out in Schedule 1.

- 2.4 Mato Investments will pay DECC for the legal costs and disbursements incurred in the course of the investigation of the alleged breach and the preparation of this undertaking, in the amount of \$7000 (exclusive of GST), payable within 21 days of the date of execution of this undertaking.
- 2.5 Mato Investments will not publicly refer to the Re-snagging Works or the Soil Rehabilitation Works without also publicly acknowledging that these works are being or were undertaken as a result of an enforceable undertaking for an alleged breach of the POEO Act.
- 2.6 The EPA will acknowledge in writing the completion of Mato Investments' commitments in this undertaking if the EPA is satisfied that:
 - (a) the Re-snagging Works and Soil Rehabilitation Works are complete; and
 - (b) all payments have been made in accordance with clauses 2.3 and 2.4 of this undertaking.

3. ACKNOWLEDGEMENTS

- 3.1 Mato Investments acknowledges that the EPA:
 - (a) may make this undertaking public;
 - (b) may from time to time publicly refer to this undertaking; and
 - (c) will place a copy of the executed undertaking on the public register.
- 3.2 Mato Investments acknowledges that the EPA's acceptance of this undertaking does not affect the EPA's power to investigate a contravention arising from future conduct or pursue a criminal prosecution, or to lay charges or exercise other civil or regulatory powers under the POEO Act.
- 3.3 Mato Investments 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 POEO Act.
- 3.4 Mato Investments acknowledges that this undertaking has no operative force until accepted by the EPA.
- 3.5 Mato Investments acknowledges that this undertaking may only be varied in accordance with the POEO Act.
- 3.6 Mato Investments acknowledges that clauses 2.2, 2.3 and 2.4 in this undertaking, as varied from time to time, will remain in force until the EPA acknowledges the completion of the commitments in those clauses or until the undertaking is withdrawn in accordance with the POEO Act.

Figure 1: The site, "Kunanadgee".



Schedule 1 to Enforceable Undertaking

ANTICIPATED TIME FRAMES AND COSTS

A. Re-snagging Works

It is anticipated that Phase 1 of the Re-snagging Works will be completed first and then Phase 2 will be undertaken after Phase 1 is completed. It is anticipated that Phases 1 and 2 will be undertaken by 31 August 2008 where practical (dependent on weather and flow conditions at the site) to avoid disturbance to Murray Cod during their breeding season from September to November.

The anticipated costs to Mato Investments for the Re-snagging Works are set out below. DPI will bear any cost of activities showing no cost in the table below.

Activity	Description	Cost (ex GST)
1. On site works management (duration 20 days)	Coordination and implementation of activities in compliance with enforceable undertaking and associated works plan (see 2).	\$10,000
2. Development of Review of Environmental Factors and Works Plan.	Review of Environmental Factors and Works plan to address enforceable undertaking requirements.	\$0
3. Works execution, plant (duration 12 days)	278 units @ 25 units per day = 12 days Plant hire \$500 per day for loader \$2500 per day for long reach excavator \$700 per day labour and fuel Chainsaw/processing of material \$250 per day.	\$47,400
4. Works execution, plan (ie. risk management, asset management)	190 PIT tags, installation recording, data maintenance.	\$2000
5. Haulage costs, sourcing of woody habitat where applicable and required	Processing of material and heavy haulage.	\$0
6. Site remediation	Repair to roads and access tracks, where practical. Riparian management and rehabilitation. Post-works monitoring and response.	\$2000
TOTAL		\$61,400 (ex GST)

B. Soil Rehabilitation Works

It is anticipated that the Soil Conservation Service will undertake the Soil Rehabilitation Works after the Re-snagging Works are complete.

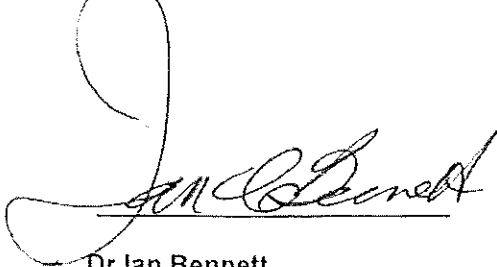
It is anticipated that the maximum cost of implementing the Soil Rehabilitation Works will be \$37,000 (inclusive of GST). Estimated costs are set out in the table below.

It is expected that the Soil Rehabilitation Works will take around 10 working days to complete, subject to favourable working conditions.

Activity	Cost (incl GST)
Supervision and labour including transport to site, for proposed construction time of 10 working days (subject to favourable working conditions)	\$9,000
Erosion works on the banks and associated snag activities as described in clause 2.2(c)(i) of this undertaking	\$12,000
Erosion works on access tracks as described in clause 2.2(c)(ii)-(v) of this undertaking	\$15,000
Supply of materials including seed and fertiliser	\$1,000
TOTAL	\$37,000 (incl GST)

EXECUTED on 26 June 2008

BY MATO INVESTMENTS PTY LTD



Dr Ian Bennett
Director
Mato Investments Pty Ltd



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Director
Mato Investments Pty Ltd

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ACCEPTED BY THE ENVIRONMENT PROTECTION AUTHORITY OF NEW SOUTH WALES
PURSUANT TO SECTION 253A OF THE POEO ACT BY ITS DULY AUTHORISED DELEGATE:

EPA Delegate's name and title (Block letters)

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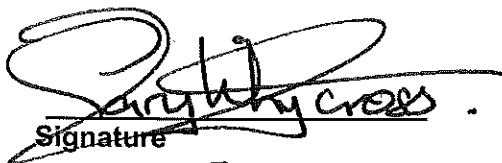
Signature

Dated 27/06/2008 *C*

Director
Mato Investments Pty Ltd

ACCEPTED BY THE ENVIRONMENT PROTECTION AUTHORITY OF NEW SOUTH WALES
PURSUANT TO SECTION 253A OF THE POEO ACT BY ITS DULY AUTHORISED DELEGATE:

GARY WHITCROSS DEPUTY DIRECTOR GENERAL ENVIRONMENT
EPA Delegate's name and title (Block letters) PROTECTION AND REGULATION.


Signature

Dated 11 July 2008.