

Enforceable Undertaking

UNDERTAKING PROVIDED BY:

■■■■■■■■■■, ■■■■■■■■■■, ■■■■■■■■■■, ■■■■■■■■■■

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Reference Number: DOC24/806683-1

Case Reference Number: 202103364

Issue Date: 10 October 2024

Property: ■■■■■■■■■■, legally known as ■■■■ in
Deposited Plan ■■■■■ (the Land)

ENFORCEABLE UNDERTAKING UNDER SECTION 13.27 OF THE *BIODIVERSITY CONSERVATION ACT 2016 (NSW)*

1. PURPOSE

This undertaking is given to the Department of Climate Change, Energy, the Environment and Water (**Department**) pursuant to section 13.27 of the *Biodiversity Conservation Act 2016 (BC Act)*, in connection with the matter in relation to which the Environment Agency Head has a function under the BC Act.

2. PERSON (S) GIVING THE UNDERTAKING

Name: ■■■■■■■■■■, ■■■■■■■■■■, ■■■■■■■■■■,
■■■■■■■■■■ (the Landholder)

Address: ■■■■■■■■■■

3. DETAILS OF THE ALLEGED CONTRAVENTION

3.1 The Landholder is the registered proprietor of the Land.

3.2 It is alleged by the Department that between July 2021 and October 2021, ■■■■■
■■■■■■■■■ caused 4.89 hectares of native vegetation to be cleared (the **Clearing**)
on the Land in contravention of section 60N of *Local Land Services Act 2013 (LLS Act)*.

3.3 The Clearing was not authorised by any legislation, impacting on a variety of species including but not limited to Brush Box, Bloodwood, Turpentine, Tallowwood, Iron Bark, Black Butt, Sydney Blue Gum and grass species undertaken by means of a bulldozer.

4. ACKNOWLEDGMENT THAT THE DEPARTMENT HAS ALLEGED A CONTRAVENTION OF THE LLS ACT

4.1 The Department alleges that the Clearing carried out by the Landholder was contrary to section 60N of the LLS Act.

4.2 In response to the Department's investigation, the Landholder has:

- (a) acknowledged that it is alleged their conduct contravened section 60N of the LLS Act; and
- (b) offered this Undertaking to the Department.

5. DETAILS OF ENVIRONMENTAL DAMAGE THAT AROSE FROM ALLEGED CONTRAVENTION

- 5.1 The area of the Land that was cleared of native vegetation and the damage included the associated loss of biodiversity. Remnant vegetation was converted into intensive agricultural use, namely blueberry and banana farming.

6. COMMENCEMENT AND DURATION OF THIS UNDERTAKING

- 6.1 This undertaking comes into effect when both of the following have occurred:
- (a) this Undertaking is executed by the Landholder; and
 - (b) this Undertaking so executed is accepted by the Environment Agency Head of the Department (**Commencement Date**).
- 6.2 This Undertaking ceases to be in effect upon the first of the following events:
- (a) The current Landholder ceases to be the Registered Proprietor of the Land; or
 - (b) By 10 October 2049.

7. TERMS OF THE ENFORCEABLE UNDERTAKING

- 7.1 The Landholder undertakes, for the purposes of section 13.27 of the BC Act, in achieving a positive environmental outcome and improving biodiversity viability within the Land, that they will:
- (a) make reasonable efforts to manage the vegetation area identified by **Schedule 1** in a manner expected to promote vegetation integrity in that area, including by:
 - (i) controlling weed impacts in the area identified in **Schedule 1**, including by chemical spraying and mechanical weed removal, and
 - (ii) controlling pest impacts in the area identified by **Schedule 1**, including by reducing numbers of exotic predators;
 - (b) pay a sum of five thousand dollars (\$5,000.00) by bank cheque to the Department within three (3) months of the Commencement Date;
 - (c) not clear or authorise the clearing of native vegetation, or cause or permit any other person to clear native vegetation, in the area identified by **Schedule 1**, save for the purposes for which the clearing of native vegetation is permitted in **Schedule 2**;
 - (d) provide at own expense, a copy of any documents that are required by the Department;
 - (e) notify the Department within 30 days of entering a Contract of Sale of Land to sell the Land.

8. ACKNOWLEDGEMENTS

- 8.1 The Landholder acknowledges that:
- (a) The Department will make publicly available the Media Release identified at **Schedule 3**.
- 8.2 The Landholder agrees that subject to their name and residential address being redacted, this Undertaking may be:
- (a) published on the Department website;
 - (b) referenced in materials or documents prepared by or on behalf of the Department; and
 - (c) where appropriate published in newspapers or other publications.
- 8.3 The Department will, from time to time, inspect the Land to ensure compliance with the Undertaking and will take further compliance action where necessary. The Department will provide the Landholder with 7 days' notice prior to inspecting the Land.
- 8.4 This Undertaking in no way detracts from the rights and remedies available to any other person arising from the alleged conduct.

9. STATEMENT OF CAPACITY TO COMPLY WITH THE TERMS OF THE UNDERTAKING

- 9.1 The Landholder certifies that they have the financial ability to comply with the terms of this Undertaking.

10. COMMITMENT TO ENSURE THAT THE ALLEGED CONTRAVENTION WILL NOT REOCCUR

- 10.1 The Landholder commits to ensure that he seeks the advice and requisite permissions of the appropriate authorities such as the Department, the local Council or Local Land Services, prior to engaging in similar actions.
- 10.2 The Landholder commits to inform any authority of this Undertaking during the course of obtaining any permissions to see lawful pathways to conduct any activity or to develop the land identified within **Schedule 1** of this Undertaking.

11. OFFER OF UNDERTAKING

- 11.1 I offer this Undertaking and agree to be bound by the terms within it.

Signed: [Redacted]	Witness Name: [Redacted]
Name: [Redacted]	Witness Signature: [Redacted]
Date: 13-8-2024	Date: 13-8-2024
Signed: [Redacted]	Witness Name: [Redacted]
Name: [Redacted]	Witness Signature: [Redacted]
Date: 13-8-2024	Date: 13-8-2024
Signed: [Redacted]	Witness Name: [Redacted]

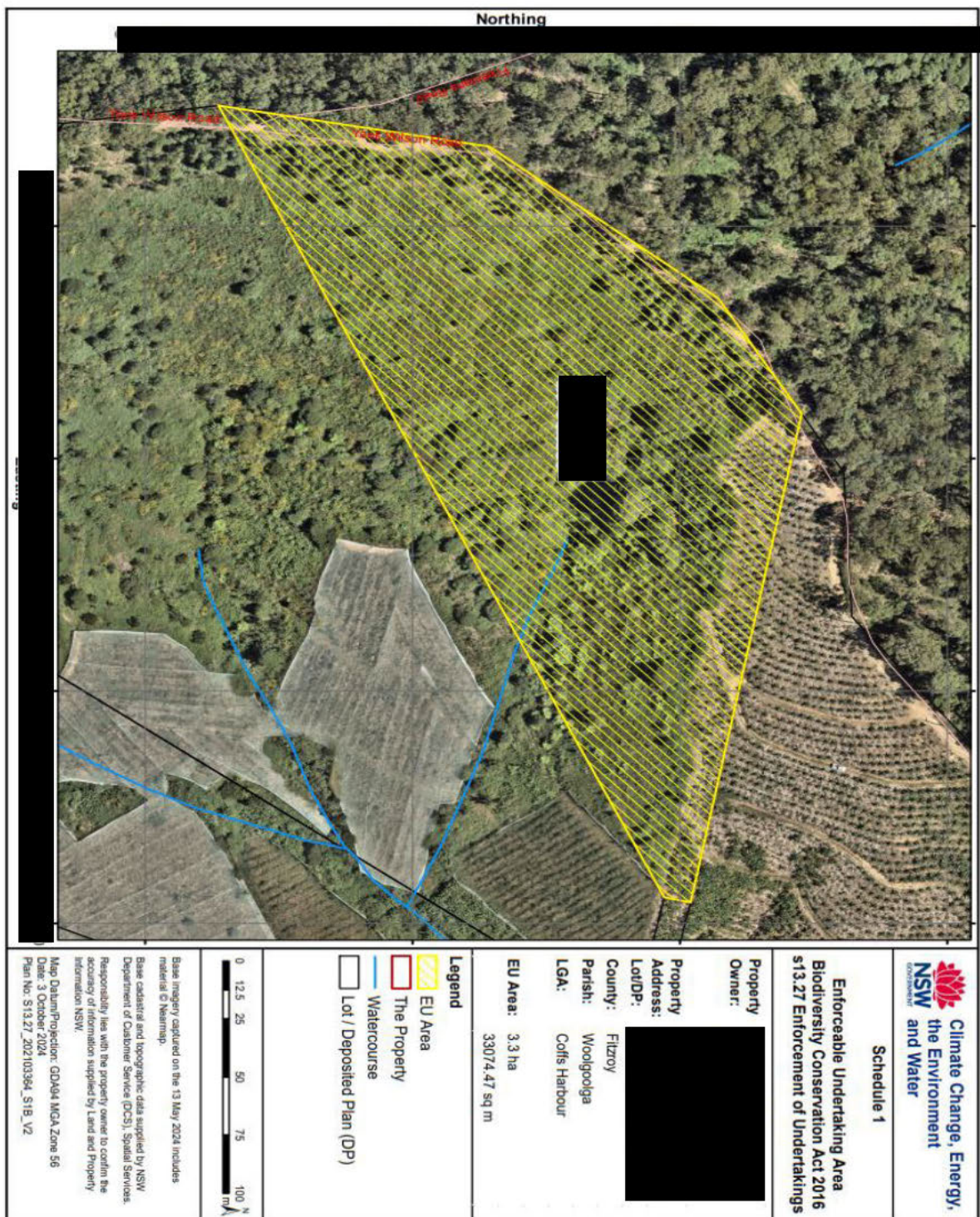
Name: Harinder Singh Husna	Witness Signature: [Redacted]
Date: 12/08/24	Date: 12/08/24
Signed: [Redacted]	Witness Name: [Redacted]
Name: [Redacted]	Witness Signature: [Redacted]
Date: 12/08/24	Date: 12/08/24

12. Department of Climate Change, Energy, the Environment and Water acceptance of undertaking

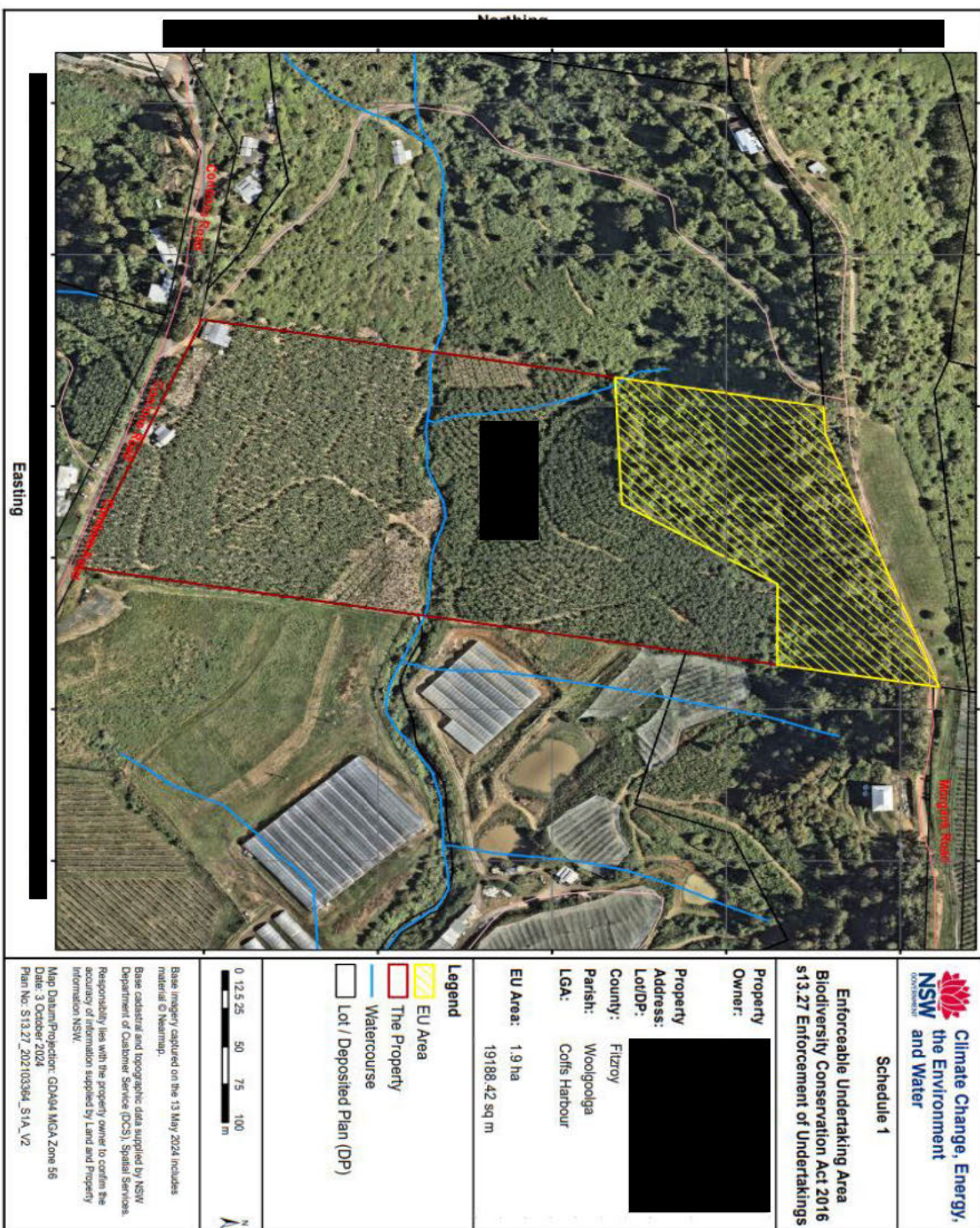
12.1 I accept this Undertaking as an Enforceable Undertaking pursuant to section 13.27 of the *Biodiversity Conservation Act 2016* (NSW).

Signed:	[Redacted]
Name:	[Redacted]
Position:	Executive Director Regional Delivery Department of Climate Change, Energy, the Environment and Water
Date:	10/10/2024

Schedule 1



Schedule 1



Schedule 2

Purposes for which clearing of native vegetation is permitted

1. Imminent risk

Clearing of native vegetation that is reasonably necessary to remove or reduce an imminent risk of serious personal injury or damage to property.

2. Environmental protection works

Clearing native vegetation for the purpose of environmental protection works.

Environmental protection works means works associated with the rehabilitation of land towards its natural state or any work to protect land from environmental degradation, and includes re-vegetation or bush regeneration works, wetland protection works, erosion protection works, dune restoration works and the like, but does not include coastal protection works (within the meaning of the *Coastal Protection Act 1979*).

3. Electricity transmission infrastructure

The clearing of native vegetation for the maintenance of public utilities associated with the transmission of electricity.

The maintenance of those public utilities includes the following activities, but only when those activities are being undertaken by or at the written direction of the body in which the public utility concerned is vested or that has the responsibility for that public utility's safe operation:

- (a) maintaining the necessary safety clearances under power lines (conductors and structures) and around communication sites associated with the supply of electricity,
- (b) minimising fuel loads under power lines to minimise the chance of smoke from a fire resulting in a line trip,
- (c) maintaining existing access roads and tracks.

The maintenance of those public utilities does not include any of the following activities—

- (a) construction of new access roads or tracks,
- (b) removal of low growing groundcover,
- (c) maintaining safety clearances from power lines that exceed either of the following—
 - (i) the maximum distance set out in the following table—

Nominal operating voltage of power line	Maximum clearing distance
Not more than 11 kV	20 metres
Above 11 kV up to and including 33 kV	25 metres
Above 33 kV up to and including 66 kV	30 metres
Above 66 kV up to and including 132 kV	45 metres
Above 132 kV up to and including 330 kV	60 metres

Above 330 kV	70 metres
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- (ii) the minimum distance that will ensure reliability of supply under all loading and environmental conditions and minimise the risk of arcing.

4. Permanent boundary fence

The clearing of native vegetation for the construction or maintenance of boundary fencing, with a maximum distance of clearing for the purposes of a boundary fence not exceeding 6 metres.

5. Permanent internal or temporary fence

The clearing of native vegetation for the construction or maintenance of fencing (other than boundary fencing) to improve the management of the land, with a maximum distance of clearing for the purposes of a fence not exceeding 6 metres and only for fencing that is reasonably required to be constructed on the land.

6. Farm access track

The clearing of native vegetation for the construction or maintenance of farm tracks, with a total width of clearing not exceeding 6 metres and only if:

- (a) the track is reasonably required to access sites within or on the other side of the land, and
- (b) the route of the track minimises the clearing that is required to be undertaken on the land.

7. Sustainable grazing

Clearing of native vegetation during the course of sustainable grazing.

Sustainable grazing is grazing by livestock, and the management of grasslands used for grazing, that is not likely to result in the substantial long-term decline in the structure and composition of native vegetation. Management of grasslands includes (without limitation) the over-sowing or fertilisation of grasslands. Sustainable grazing does not include clearing of trees or shrubs in order to facilitate grazing.

8. Collection of firewood

- (1) Clearing native vegetation on land for the purpose of obtaining firewood for use by the landholder on that land or on other land of the landholder.
- (2) Clearing may only be carried out under this clause if the firewood could not be obtained from any other clearing authorised by this Schedule
- (3) The native vegetation must not comprise:
 - (a) a threatened species or part of a threatened ecological community or the habitat of a threatened species under the *Biodiversity Conservation Act 2016*, or
 - (b) the habitat of threatened species, populations or ecological communities of fish under the *Fisheries Management Act 1994*.

This subclause does not apply to habitat that the Owner does not know is habitat of the relevant kind.

(4) Clearing must not be carried out within the following buffer distances from a water body:

Water body type	Distance within which clearing is not permitted
Unmapped and 1 st order streams	10m
2 nd order stream	20m
3 rd order stream	30m
4 th and 5 th order stream	40m
6 th order stream	50m
Local wetland	20m
Important wetland	50m
Estuarine area	50m

In all cases, buffer distance is to be measured, in the case of a stream – from the top bank of the stream; and in the case of a wetland or estuarine area – from the edge of the wetland or estuarine area.

For the purposes of this Agreement, a stream is an incised watercourse that exhibits the features of a defined channel with bed and banks.

9. Planted native vegetation

- (1) The clearing of native vegetation that has been planted.
- (2) This clause does not authorise clearing:
 - (a) if the native vegetation was planted with the assistance of public funds granted for any purpose other than for forestry purposes, or
 - (b) within a buffer distance from a water body as set out in clause 10 of this Schedule.

10. Water supply and gas supply infrastructure

Clearing native vegetation for the maintenance of public utilities associated with water supply infrastructure and gas supply infrastructure.

The clearing is authorised if carried out by or on behalf of the owner of the infrastructure or by or on behalf of the owner of the land.

11. Telecommunications infrastructure

Clearing native vegetation for the maintenance of telecommunications infrastructure.

The clearing is authorised if carried out by or on behalf of the owner of the infrastructure or by or on behalf of the landholder.

Schedule 3



Department of Climate Change, Energy, the Environment and Water

Unlawful native vegetation clearing results in Enforceable Undertaking achieves good outcome for farmer and nature

A blueberry farmer in Coffs Harbour has entered into an enforceable undertaking with the Department of Climate Change, Energy, the Environment and Water (DCCEEW) following the unlawful clearing of more than 4 hectares of native vegetation on their property.

DCCEEW Compliance and Regulation Team Leader [REDACTED], said the undertaking commits the landholder to a conservation agreement for their property, which will protect remnant vegetation from clearing for a minimum of 25 years.

"Native vegetation is vital for the health of our environment and communities. It provides habitat for native animals, protects the quality of soils and water and supports agricultural productivity," said [REDACTED].

"It's an offence to clear native vegetation on regulated rural land, unless the appropriate approvals have been granted under the Local Land Services Act (LLS Act)," said [REDACTED].

The LLS Act and the Land Management Code provide landholders with a range of options for undertaking lawful clearing to manage land while responding to environmental risks.

"Had the landholder sought and been granted these approvals, clearing could have been targeted to achieve the landholder's primary production goals while minimising impacts on native vegetation, and regulatory action could have been avoided," said [REDACTED].

Under the conservation agreement, the landholder is required to manage and protect biodiversity on the designated land through the control of weeds and introduced pest animal species. The landholder was fined \$5,000 and required to pay \$5,000 to Coffs Harbour Landcare.

"We are pleased with the outcome of this regulatory action. Not only is the landholder now aware of the rules that exist around the clearing of native vegetation, the enforceable undertaking has also enabled DCCEEW to achieve a positive environmental outcome and community benefit in the local area.

"The long-term conservation of this remnant vegetation will deliver a range of benefits to local wildlife, providing habitat refuge and perching sites, as well as a bountiful source of food, for native mammals and birds.

"We strongly encourage all landholders to contact Local Land Services (LLS) for advice prior to commencing any land management activities.

"LLS is there to help you understand your land management options and support you to manage your land to ensure more productive farming methods and systems while also protecting the natural environment," said [REDACTED].

Further information can be found on the Local Land Services website at www.lls.nsw.gov.au

An enforceable undertaking is a voluntary and binding agreement to deliver tangible benefits for the environment and community.

Enforceable undertakings are one of a number of tools the DCCEEW can use to achieve environmental compliance and is enforceable by the Land and Environment Court.