

**MEMORANDUM
OF
UNDERSTANDING**

BETWEEN

**ENVIRONMENT PROTECTION
AUTHORITY VICTORIA**

AND

MUNICIPAL ASSOCIATION OF VICTORIA

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1) BACKGROUND

- a) The Environment Protection Authority Victoria (EPA) is a body corporate first established under the *Environment Protection Act 1970* (Vic), continuing in existence under the *Environment Protection Act 2017* (Vic) and as amended from 1 July 2021, and its objective is to protect human health and the environment by reducing the harmful effects of pollution and waste.
- b) The Municipal Association of Victoria (MAV) is established as a statutory body under the *Municipal Association Act 1907* (Vic) which vests MAV with the responsibility to promote the interests of local government and represent all Victorian councils, and is a Party to this MOU in its capacity representing Victorian local government.
- c) The EPA and the MAV (each referred to as 'Party' and collectively as 'Parties' in this MOU) wish to enter this MOU for the purposes outlined below under 'PURPOSE'.

2) PURPOSE

- a) The purpose of this MOU is:
 - i) to set out the shared commitment of the Parties relating to the roles and responsibilities of EPA and councils in areas of Shared Regulatory Responsibility, and MAV's supporting role;
 - ii) to acknowledge the important working relationship between the Parties and local government in the protection of human health, and the environment from pollution and waste;
 - iii) to provide an overarching framework to guide and support the role of EPA and local government in working more collaboratively and efficiently towards achieving better environment protection outcomes for the Victorian community;
 - iv) to support EPA's Charter of Consultations under the EP Act;
 - v) to support the commitments in the *Victorian State Local Government Agreement 2014*.
- b) The Parties acknowledge and agree that this MOU is not intended to:
 - i) create legal obligations between the Parties, other than clauses 11 (Privacy) and 12 (Confidential Information), but to support a positive working relationship between them;
 - ii) restrict engagement between the Parties on any matter outside the scope of this MOU;

- iii) restrict EPA from direct engagement with any local government authority on any matter outside the scope of the MOU (including local government functions under any other legislation).
- c) Excluded from the scope of this MOU is:
 - i) the role of local government as a duty holder under the EP legislation;
 - ii) the 'Officers for the Protection of the Local Environment (OPLE) Program' (this is subject to a separate MOU between EPA and the local governments participating in that program);
 - iii) local government's role as a planning authority (e.g., processes relating to EPA referrals to local government of development proposals and permission applications and local government referrals to EPA of planning permit applications).

3) PRINCIPLES

- a) The Parties acknowledge that a successful working relationship requires a spirit of cooperation and commitment based on the following principles:
 - i) Understanding and respect for each party's specific legislative mandates and responsibilities;
 - ii) Shared focus on achieving better environment protection and human health outcomes for the Victorian community;
 - iii) Open and timely communication and consultation;
 - iv) Understanding the resource capacities of each Party and local government.

4) MUTUAL AREAS OF INTEREST

- a) The mutual areas of interest to the parties include:
 - i) to clarify the role and responsibilities of EPA and local government in areas of Shared Regulatory Responsibility;
 - ii) early and effective engagement;
 - iii) guidance, training, and support in areas of Shared Regulatory Responsibility.

5) OBJECTIVES

- a) The objectives of this MOU are:
 - i) to clarify roles and responsibilities of:
 - (a) EPA and local government under the EP legislation in relation to areas of Shared Regulatory Responsibility;

- (b) MAV in its supporting role on behalf of local government;
- ii) the negotiation of matters relating to the key focus areas;
- iii) the effective cooperation of both Parties in the administration and implementation of their respective obligations under this MOU;
- iv) to clarify when early consultation and engagement with local government should be undertaken to ensure constructive engagement to identify and resolve issues in relation to compliance and enforcement in areas of Shared Regulatory Responsibility;
- v) to provide a platform to meet regularly to discuss the implementation and other matters relating to this MOU;
- vi) the efficient utilisation and application of EPA, MAV, and local government resources;
- vii) to provide a supporting governance structure for the MOU.

6) UNDERTAKINGS

- a) The Parties agree:
 - i) to give effect to the terms of this MOU;
 - ii) to maintain a Primary Contact Person to ensure the effective operation of this MOU;
 - iii) to meet regularly to discuss policy, strategy, and operational issues relevant to this MOU, with such meetings to be attended by the Primary Contact Person or the Primary Contact Person's delegate and relevant staff.

7) KEY FOCUS AREAS

- a) The Parties agree to the following as key focus areas of this MOU:
 - i) Support for local government implementation in areas of Shared Regulatory Responsibility;
 - ii) Engagement and consultation;
 - (a) improving processes and ways of working together;
 - (b) commitment to consult, including but not limited to:
 - (i) Orders for obligations of managers of land and infrastructure;
 - (ii) state of knowledge guidance relevant to areas of Shared Regulatory Responsibility;

(iii) any guidance material and toolkits for local government;

iii) Performance of the regulatory framework applicable to EPA and local government.

8) DISPUTES

- a) Where a dispute arises between the Parties in relation to any matter in this MOU, the Primary Contact Person for each Party will meet and endeavour to resolve the matter within 20 working days.
- b) The Parties will continue to perform their obligations under the MOU despite the existence of a dispute unless it is no longer reasonably practical to do so.

9) TERM

- a) This MOU shall operate for a period of 36 months from the date of signing by the Parties, unless suspended, or terminated in writing in accordance with this MOU.

10) REVIEW

- a) This MOU is a 'living document' and will be reviewed periodically by the Parties to ensure its ongoing effectiveness.

11) PRIVACY

- a) Each of the Parties acknowledges and agrees to the following:
 - i) the parties are bound by the Victorian *Privacy and Data Protection Act 2014* (PDPA) with respect to any act done or practice engaged in by it under or in connection with this MOU (including, but not limited to, any information shared under this MOU);
 - ii) not to use, disclose, store, transfer or handle Personal Information collected in connection with this MOU except in accordance with the PDPA;
 - iii) to co-operate with any reasonable request of the other Party relating to the protection of Personal Information or the investigation of a complaint about the handling of Personal Information, and

to co-operate to ensure it does not cause the other Party to breach any PDPA or any other law;
 - iv) any Personal Information disclosed by one Party to the other Party in connection with this MOU:
 - (a) has been collected in accordance with the PDPA; and
 - (b) that the disclosure of the information to, and its use and disclosure by, the Party to which it is disclosed, is authorised by the individual to whom the Personal Information relates or by law.

- b) If a Party is required by law to disclose any Personal Information which it received from the other Party under this MOU, the disclosing Party must notify the other Party prior to the release of the Personal Information that the disclosure of the information is required by law.
- c) If a Party becomes aware of any act or practice which does or which may have the potential to constitute a breach of clause 11 of this MOU, that Party must advise the other Party of the breach or potential breach as soon as practicable.

12) CONFIDENTIAL INFORMATION

- a) The Parties agree that they shall only use and reproduce Confidential Information they receive for the purposes contemplated by this MOU or as otherwise expressly permitted by the Party providing the Confidential Information.
- b) The Parties must not disclose or otherwise make available Confidential Information other than:
 - i) to its personnel who have a need to know the Confidential Information to give effect to the purposes of this MOU or as permitted in writing by the Party which provided the Confidential Information;
 - ii) publicly known other than because of a breach by either Party of the confidentiality obligations set out in this MOU;
 - iii) already known to the receiving Party;
 - iv) authorised in writing by the Parties to be disclosed to each other;
 - v) permitted under legislation or required by law to be disclosed by either of the Parties to a third Party without restriction;
- c) The Parties must use, hold, and transmit Confidential Information in accordance with the Privacy Principles in Schedule 1 of the PDPA.
- d) The Parties will take all reasonable measures to secure the Confidential Information within their respective control and always protect such Confidential Information from access, use, misuse, damage, or destruction by any person not authorised by this MOU to have access to it.
- e) Upon the expiry or termination of this MOU, the Parties must each, to the extent that is reasonably practicable and unless otherwise permitted by law, cease using the Confidential Information of the disclosing Party and return to the disclosing Party or destroy at the cost of the receiving Party (as directed by the disclosing Party) all the disclosing Party's Confidential Information.

13) GOVERNANCE

- a) **Contact persons**

i) The Primary Contact Person will act as a point of contact for any aspect of the MOU.

ii) The Primary Contact Person for each Party are:

(a) EPA: Jo Missen, Director, Regulatory Standards

(b) MAV: Troy Edwards, Director, Policy & Advocacy

b) Meetings

i) Contact persons must meet regularly during the term of the MOU to discuss the implementation and other matters relating to this MOU.

14) DEFINITIONS

a) 'Confidential Information' means:

i) any information of, about, or in any way related to the EPA, the State of Victoria or their Ministers including:

(a) any information designated as confidential by the EPA; and

(b) any information which MAV knows or ought reasonably to know is confidential;

ii) any information of, about, or in any way related to the MAV, an employee of MAV, projects or organisations that receive funding from the MAV, or councils, including:

(a) any information designated or treated by the MAV as confidential;

(b) any information which the EPA knows or ought reasonably to know is confidential.

but does not include information in the public domain (unless in the public domain due to a breach of confidentiality by any person).

b) 'EPA' means Environment Protection Authority Victoria.

c) 'EP Act' means the *Environment Protection Act 1970 (Vic)*, *Environment Protection Act 2017 (Vic)* as amended by the *Environment Protection Amendment Act 2018 (Vic)* and as may be further amended from time to time.

d) 'EP legislation' means the EP Act and the Regulations made under it.

e) 'MAV' means the Municipal Association of Victoria established as a statutory body under the *Municipal Association Act 1907*.

f) 'Regulations' means the Regulations made under the EP Act.

g) 'Shared Regulatory Responsibility' means the following areas under the EP

legislation:

- i) litter;
- ii) waste (illegal dumping);
- iii) noise;
- iv) on-site wastewater management systems with a capacity up to 5000 litres on any day.

15) TERMINATION

- a) This MOU may be terminated by either Party at any time by providing 30 days' notice in writing to the other Party, or immediately where both Parties agree in writing to its termination.

16) AMENDMENT, VARIATION OR MODIFICATION

- a) This MOU may be amended in writing if signed by both Parties.
- b) A register of amendments is to be kept and maintained by each Party, which will include the nature of any amendment and the date it was made to the MOU.
- c) An amendment or variation to the MOU takes effect on the date it is signed by the Parties or on a date as agreed by the Parties in writing.

17) GENERAL

- a) With the exception of clauses 11 (Privacy) and 12 (Confidential Information), this MOU is not intended to create a legally binding relationship between the Parties.
- b) For the purpose of clauses 11 and 12, this MOU is governed by and is to be construed in accordance with the laws of Victoria.
- c) Notwithstanding the expiry or early termination of this MOU clauses 11 and 12 shall continue to bind the Parties.
- d) Neither Party may enter into any agreement or incur any liabilities on behalf of the other Party without that other Party's prior written consent and may not represent to any person that it has any authority to do so.
- e) Each Party will bear its own costs and expenses in relation to the negotiation, preparation, execution, delivery, and completion of this MOU.
- f) This MOU may be executed in any number of counterparts.

Signed by Lee Miezis
Chief Executive officer
a duly authorised officer for and on behalf of the
ENVIRONMENT PROTECTION AUTHORITY VICTORIA
In the presence of:

Signature of witness

STACEY SHNIPEK

Name of witness(print)

Date: 27 MAY 2021

Signed by
Chief Executive officer
a duly authorised officer for and on behalf of the
MUNICIPAL ASSOCIATION OF VICTORIA
In the presence of:

Signature of witness

Kwin Nguyen

Name of witness(print)

Date: 22 June 2021