

BCRG Update 10/2011 - VicRoads-Francis St update, EPA-enforceable undertakings

31/05/11

Hi all,

the following emails have been sent in response to recent questions.

1) VicRoads - Francis St works. This information was sent from Marko Nastic, VicRoads to Malcolm Ramsay from Hobsons Bay City Council who forwarded it to BCRG to help answer community concerns about dust control in Francis St.

'VicRoads have re-assessed the current critical issues within the Metro North West Region and have prioritized works in order to address the outstanding issues.

With the funding available, VicRoads has committed \$180,000 to undertake major construction works along Francis St between Millers Rd and the Railways.

The works include the following:

- Seal 2.5m of the unsealed sections of the shoulder with asphalt
- Re-sheet the unsealed shoulder areas back of 2.5m from roadway edge
- Cross fall the shoulder areas away from the road way in order to allow water run off to flow accordingly

This will decrease dust, remove all hazards such as pot holes and edge drop offs and aesthetically look in a presentable condition

Works are committed for June 2011.'

2) Enforceable Undertakings

The following question was first raised at the November BCRG meeting and was put via email to the EPA prior to the last forum. This is the response from the EPA.

Question: Can EPA apply enforceable undertakings to government bodies (e.g. VicRoads; Local Councils) if such bodies do not enforce and/or comply with air quality standards & legislation within their own area of responsibility and to the full extent of their authority?

For example - the responsibility of a government landowner in ensuring its tenants comply with legislation; local councils taking action on nuisance noise, and constructing proper road shouldering to address long standing dust issues.

Response (this is the amalgamation of two emails from Richard Marks from the EPA):

'Enforceable Undertakings are entered into as an alternative to prosecution through the court system. In these circumstances EPA has evidence and is in a position to take legal action against an individual or company who has breached the Environment Protection Act. EPA has received advice that we have no legal powers to issue a notice on roads. As such we have no basis to take legal action against VicRoads in either a prosecution or enforceable

undertaking.

The Environment Protection Act 1970 (our primary legislation) binds the Crown in right of Victoria. This means that it can be applied to government bodies (State and Local). The ability to bind Federal government requires an interpretation of the Victorian Constitution but is perhaps less relevant. The key question for us in Brooklyn becomes whether the Act provides the tools that allow EPA to hold them to account as we can only compel a body using tools provided under the Act such as pollution abatement notices. This is where things become more complicated as the situation in Brooklyn was never envisaged when the Act was crafted.

Without details on the specific issues of concern it is difficult to provide a clear answer to the question. As illustration, we cannot issue a notice to a Council requiring it to seal a dusty public road, because the road is not considered a premises under the specific definition in the Act. We can issue a notice to a Council should they be in control of an activity that is causing environmental issues eg dusty works site causing dust impact beyond the boundary of the premises. We have previously taken action including notices and prosecutions against government bodies such as councils and water authorities.'

cheers

Andrea Mason

Executive Officer

Brooklyn Community Reference Group

Ph: 0427 338 482

Email: eo.bcr@gmail.com

PS BCRG Community Forum meeting dates for 2011: August 18, November 24

You received this email because you are on the BCRG e-list. As such you receive meeting invitations, agendas and minutes, as well as general information in relation to dust, odour and noise issues in the Brooklyn area. Please let me know if you no longer wish to be on the database.

Please consider the environment before printing this email or its attachments.