

**Our Korumburra Community Group
C/- 38 Warragul Rd
Korumburra VIC 3950**

30 September 2015

Dear EPA Inquiry Panel

**Re: Submission to Inquiry into the Environment Protection Authority (EPA) Victoria
Submission Reference Number: 151842352**

I write to you on behalf of community group Our Korumburra to submit our concerns to the Inquiry regarding the EPA's conduct and decision-making process in relation to:

- Burra Food's (Korumburra) non-compliance for the past 6 years with their EPA licence;
- the EPA's support (as the relevant authority) of Burra Food's application to amend the South Gippsland Planning Scheme under Amendment C99.

We found the EPA's conduct and decision-making processes to be

- **misleading by omission in their communication with affected residents and Council,**
- **negligent through inaction to respond to issues raised.**

The EPA's misleading conduct by omission is evidenced as follows:

1. The EPA when presenting at the public meetings (listed below) failed to mention that:
 - Burra Foods has been repeatedly non-compliant for the past 6 years with its EPA licence since 2010/11 in regard to reporting, odour, dust, noise, and discharge of waste to surface waters. The EPA failed to mention the factory's non-compliance despite the fact that the EPA detailed the conditions of Burra Foods EPA licence and amenity conditions as evidence of the EPA's support of an ESO under Amendment C99 as the relevant authority. (See Attachment 1 - Submission to the Planning Panel on behalf of the EPA Vic, points 22-26).
 - Public meeting, 3/7/14 attended by South Gippsland Shire Council (SGSC), community members, EPA and Burra Foods staff;
 - State Government Panel Hearing (4/12/14).
2. The EPA omitted to suggest to the community that we/they/SGSC could set up a Community Liaison Committee to assist us in resolving our issues and to increase understanding between all parties. It was our community that requested the EPA's support in forming a CLC (email April 2015).

The EPA's negligent conduct through inaction is evidenced as follows:

1. The EPA did not conduct testing and/or provide any results of testing to the community or SGSC regarding the factory's odour emissions or dust particle fallout. Neither did the EPA investigate discharge of waste water to Coalition Creek prior to supporting Burra Foods application to amend the Korumburra Structure plan and apply an ESO. This was despite multiple complaints to the EPA, which received 39 complaints in 2014 alone.
2. The EPA accepted the GHD report commissioned by Burra Foods without detailed analysis. This lack of analysis by the EPA is evidenced by the major errors found and highlighted by community members resulting in the GHD report of December 2013 being withdrawn and re-presented with changes November 2014.
3. The EPA, as the relevant authority, failed to conduct an independent site specific assessment to provide to the community and SGSC to consider when assessing Amendment C99. The EPA accepted the GHD report commissioned by Burra Foods in lieu of their own independent assessment (Attachment 2 - EPA submission to SGSC supporting C99). The issue with the EPA not conducting a site specific assessment can be illustrated by the following example:
 - The EPA's [REDACTED] visited the site for the first time 5/8/2015 due to

community pressure which resulted in a Pollution Abatement Notice being issued in September 2015. Yet the ESO calculation is based on odour modeling in the flawed GHD report of December 2013 (see Attachment 1, point 5).

4. In our formal complaint to the EPA 14/6/15 we asked the EPA to undertake an independent site inspection and to provide an objective analysis of the GHD report. We also asked for a rationale for the ESO when the site is already controlled by Burra Food's EPA licence however these requests were not responded to.
5. The EPA has been negligent in monitoring and controlling Burra Foods emissions past their boundary with the factory continuing to be non-compliant since 2010/11 with their EPA licence. Burra Foods EPA Annual Performance Statements in 2009/10, 2010/11, 2011/12 and 2013/14 and 2014/15 are all non-compliant (refer EPA website). In 2013 alone, Burra Foods was non-compliant in relation to: non-reporting, discharge of odour, noise and waste water discharge into Coalition Creek.
6. The EPA invited community members affected by the factory's emissions to a meeting held 12/2/15 which 18 community members attended. The meeting was run by 5 EPA officers and also attended by 4 SGSC staff. While the EPA assured us our concerns were being taken into account and they would report back to us we have to date, not heard anything back from this meeting.
7. The EPA neglected their role in protecting the community and establishing a policy on human health while the community was met with buckpassing between the EPA, local and state government. The following example illustrates this.

The odour emissions from Burra Foods at times smells like 'rotten egg' and 'tastes like a matchstick head' (as described by local residents) which are likely indicators of hydrogen sulphide gas. Repeated or prolonged exposures at even low concentrations may cause eye inflammation, headache, fatigue, irritability, insomnia, digestive disturbances and weight loss. It is also concerning that with continuous exposure a person loses the ability to smell the gas even though it is still present. Hydrogen sulphide is a common dairy odour emission when waste is not managed well (██████████, Air Quality Consultant). This information was not supplied by the EPA but found through our own research, research we undertook due to the lack of response from the EPA to our very real health concerns.

Indeed there have been times over the years that residents have moved out of their homes due to Burra Foods odour emissions and milk powder fall out. Burra Foods has paid for residents to stay in motels as people suffered blood noses and nausea (June 2010). Burra Foods paid for resident's roofs and cars to be cleaned and water tanks to be cleaned and refilled due to milk powder fallout (Dec 2010, Nov 2014). Of course there have been numerous incidents in between that were not quite so drastic but certainly made our own 'backyards' so unenjoyable and unhealthy due to noise and odour that friends and family have left during gatherings and events.

Despite the numerous reports of factory emissions (1-2 every fortnight) and community concern expressed regarding our health and requests for formal testing to the EPA (going back to June 2014):

- The EPA (on 12/8/14) referred us to the Department of Health;
- The Department of Health (was contacted via email 15/8/14 & 7/9/14) and referred us back to the EPA (1/9/14 & 10/9/14);
- Local government (contacted 10/11/14) said they would contact the EPA and then referred us back to the EPA 1(1/11/14).
- We even wrote to Sustainability Victoria (9/10/14) who referred us back to the EPA (30/10/14).
- The EPA (on 5/8/15) once again referred us back to the Department of Health and when we asked for a contact in the Department of Health, which they couldn't provide us with, the EPA Officers acknowledged that 'there was a gap' relating to 'health' which the 'Inquiry' would address.

So while all these other government departments referred community members to the EPA regarding our health concern, the EPA did not conduct any tests or provide our community with any meaningful information to our repeated questions on health, primarily regarding odour -

- *What are the constituents of the odour emissions*
- *What are the threshold levels of identified constituents*

We were told by the EPA:

- *distance is an issue as the EPA has to send someone with a calibrated nose (9/10/14);*

- *had no reason to believe that hydrogen sulphides are at unsafe levels but will be incorporating assessment of odour in next inspection (EPA email 13/10/14);*
- *The EPA does not proposed to conduct testing or install monitoring equipment at this stage (EPA 28/11/14);*
- *At a public meeting for affected residents (12/2/15), we were told 'not to worry' about it.*

It may be the case that our concerns are unfounded but where is the evidence to prove this.

It was not until we submitted a formal complaint to the EPA 21/5/15 that the EPA finally responded 8/7/15 with information and an agreement to undertake formal testing of odour in October 2015. This is 5 years after multiple complaints had been made about the factory and emissions.

In conclusion we do not understand how the EPA ignored our community's concerns for so long and supported an ESO under Amendment C99 when the:

- *'Recommended separation distances for Industrial Residual Air Emissions' (publication 1518 March 2013) aims to support decision making **regarding land use to prevent new or expanded industrial uses from impacting on existing sensitive residences**. The guideline *aims to support effective decision making regarding land uses to:**
- *Protect human health and wellbeing, local amenity and aesthetic enjoyment*
- *Protect existing industry from encroachment by sensitive land uses*
- *And prevent land adjacent to industry from being underutilized.*

The EPA's reply (8/7/15) to our formal complaint states

- *EPA regards the role of planning systems as critical in the future protection of sensitive uses (such as residential areas) from the impact of industry, and also to giving industry guidance on how to operate sustainably alongside sensitive uses.....the new planning controls such as ESOs can discourage further incompatible uses from being established or intensified side by side.*

Can you imagine how we feel as a community reading this – we ALREADY LIVE NEXT DOOR to the factory and WE WERE HERE BEFORE BURRA FOODS. WHERE IS OUR PROTECTION in allowing the bad planning for this factory to have recently expanded with plans for further major expansion? The buffer gives us NO PROTECTION and the factory is now so obvious, no prospective resident could fail to know the factory was there.

Where is the EPA's guidance to SGSC and our community on a factory that continues to be non-compliant and wants to expand with a second 32m drying tower and a cannery. The EPA stated in their submission to the Panel Hearing that the

- *EPA is aware that Burra Foods has expressed an intention to further expand operations in the next few years. This could include the installation of two new evaporators and driers as well as additional loading on the wastewater treatment plant (WWTP). Whilst the EPA does not have the details of specific plans by Burra Foods to expand, **depending on the works proposed, Burra Foods would most likely require an EPA works approval.** No application has yet been lodged with EPA for such an approval.*

This was not re-assuring for the community to hear such a vague requirement for EPA works approval or to hear that the EPA had not asked for more detail on the factory's expansion plans when their support of the ESO was based on Burra Foods Stage 1 and 2 expansion plans (see points 5 and 6 under Attachment 1).

The Burra Foods site plan (GHD report) included details of a second 32m drying tower on Warragul Road, new cannery line, double storey carpark on Station Street (removed in the second report), and road tankers to use Stuart Street (a residential dirt road), and the WWTP to increase it's processing capacity by 5 times which was reduced to double it's current capacity in the 2nd report. **The expansion of the WWTP capacity is very concerning as this is the main source of odour emissions.**

Dealing with the EPA has been more stressful than dealing with the emissions from Burra Foods and certainly detrimental to our community's health. The whole process has been frustrating, time-consuming and energy depleting. We feel that we have been doing the job of the EPA and local government to represent the community's interests and health concerns fairly and accurately.

To summarise a very complex situation (as evidenced Attachment 3), the stated purpose of Amendment C99 (advertised 24/6/14) is to control amenity around the Burra Foods dairy processing factory by introducing a buffer or ESO however:

- amenity is already controlled under the factory's EPA licence;
- the ESO clearly shifts the burden of factory emissions to existing residents;
- **residences were established well before the dairy processing factory re-opened in 1992 after closing as a butter factory in 1974;**
- the ESO will offer no legal prospect to affected residents of controlling emissions as they are already prohibited by the factory's EPA licence;
- it is bureaucratic red tape as **there is no buffer with** houses right up to the factory fence;
- it is retrospective planning to cover up poor planning that allowed the factory to expand so significantly in the middle of a residential area in 2010;
- it is an unnecessarily heavy handed planning control which will assist a non-compliant factory to implement major expansion plans;

If this case is investigated, and we are preparing a submission to the Victorian Ombudsman, the investigators will not fail to be impressed by community members who have grappled with the complexity of this case. Community members whose normal occupations include:

- mechanics, tourism officer, blacksmith, farmers, dairy factory workers, truck drivers, small business owners, surveyor, photographer, musician, landscaper, consultant, teachers, housewives, retirees.

Our community have researched, presented, written submissions, practiced their presentations, met regularly, played fairly, stayed honest and worked through a myriad of technical documents to present their case at council meetings and at the panel hearing.

All of this due diligence by the community to be met with:

- questions not answered clearly or in a timely fashion, if at all by the EPA;
- the EPA supporting the application of an ESO under Amendment C99 without adequate investigation and objective representation as the relevant authority to the community, SGSC and to the State government.

The sad outcome of the EPA's poor conduct and decision making, is that the whole town of Korumburra is affected by a factory that is planning major expansions, is non-compliant with it's EPA licence and it's Council building permit and is not 200m away from the main street.

With respect

Our Korumburra Community Group

Attachments:

Attachment 1: Submission to the Planning Panel on behalf of the EPA

Attachment 2: EPA submission to SGSC supporting C99

Attachment 3: Background to Amendment C99

Submission to the Planning Panel on behalf of the Environment Protection Authority Victoria

Amendment C99 to the South Gippsland Planning Scheme

Introduction

1. The Environment Protection Authority Victoria (EPA) was provided with a copy of South Gippsland Planning Scheme Amendment C99 (Amendment) by letter dated 24 June 2014 and invited to make a submission by the South Gippsland Shire Council (Council). The Amendment relates to the application of an Environmental Significance Overlay (ESO) around the Burra Foods Pty Ltd (Burra Foods) milk processing plant for means of amenity protection.
2. This submission outlines EPA's position in respect of the Amendment in addition to a subsequent proposal by Council at its meeting on 24 September 2014 to reduce the extent of the ESO in the Amendment.
3. EPA regulates Burra Foods under the *Environment Protection Act 1970* (the EP Act). This submission provides some information to explain Burra Foods' obligations under the EP Act and actions taken by EPA in respect of these obligations.
4. A few scenarios have been put forward by Council with regard to the extent of the proposed ESO. EPA offers the following comments:
5. With regard to the Amendment as exhibited, EPA supports the ESO of 345 meters as determined by odour modelling in the *Korumburra Milk Processing Plant Buffer Assessment* (GHD, December 2013) (GHD Report) based on Burra Foods' stage 2 expansion plans.
6. With regard to the subsequent proposal by Council to reduce the extent of the ESO in the Amendment:
 - EPA supports an ESO of 227 meters as determined by odour modelling in the expert witness statement of Mr Tim Pollock of GHD based on Burra Foods' stage 1 expansion plans.
 - EPA does not support an ESO of 300 meters as recommended by Mr Pollock and Council in its report of 24 September 2014. The 300 metres has been based on the threshold distance for 'manufacture of milk products' in Clause 52.10 – Uses with Adverse Amenity Potential. That is a generic default distance designed to protect residents from all potential threats to amenity, including odour, dust and noise. Burra Foods has not provided any acoustic evidence to demonstrate that 300 metres is necessary to provide protection from noise impacts and EPA's complaints data does not indicate that noise is a significant issue from the plant. EPA therefore submits that 227 metres is a more appropriate approximate distance (subject to wind directions and cadastral boundaries) on which the ESO boundaries should be based.

EPA response to proposed Amendment

7. EPA provided a response to the Council by letter dated 1 August 2014 (in error this letter was dated 1 August 2013).

8. In summary, EPA's position in relation to the Amendment as outlined in the response is:

- ***EPA requested to be made a 'determining referral authority', rather than a 'recommending referral authority', in the Schedule to Clause 66.04;***

EPA is uniquely placed to assess planning permit applications for new buildings, works or subdivisions for sensitive land uses within the ESO, due to its technical and environmental policy experience in this area. Given the objective of the ESO relates entirely to impacts from odour, dust, light and noise, EPA suggests it may be appropriate for its advice in relation to these impacts to direct the outcome of planning permit applications within the ESO.

- ***EPA requested the 'kind of application' to be referred to EPA under the Schedule to Clause 66.04 be amended to 'An application to construct a building, or construct or carry out works, or subdivide the land where the land is used for accommodation, a child care centre, education centre or outdoor recreation facility';***

In terms of applications to be referred to EPA, it is submitted that the currently proposed definition is too broad and would result in applications being referred to EPA that are not for 'sensitive land uses', which EPA publication 1518 *Recommended separation distances for industrial residual air emissions* (EPA guidelines) aims to protect.

EPA notes that a permit would not be required under the ESO to construct a building or carry out works in relation to an outdoor recreation facility. EPA therefore suggests that the 'kind of application' be amended to 'An application to construct a building, or construct or carry out works, or subdivide the land where the land is used for accommodation, a child care centre or an education centre'.

- ***EPA outlined the EPA guidelines and explained separation distances; and***

EPA recommends that separation distances be maintained between industrial land uses and sensitive land uses, such as residential premises, child care centres and primary schools. Whilst Burra Foods currently hold an EPA licence requiring that offensive odours, unacceptable noise and airborne particles are not emitted beyond the premises boundary, EPA acknowledges that even with good pollution control technology in place, unintended emissions may still occur.

The EPA guidelines recommend separation distances for industry and sensitive land uses. The distances are default minimums in the absence of site-specific assessments, which take into account the particular onsite operations and local environmental conditions.

The area proposed in the Amendment to be covered by the ESO has been determined by a site-specific assessment, the GHD Report.

- ***EPA reviewed the proposed buffer distance calculated by GHD.***

The EPA guidelines recommend a 100m buffer for facilities producing milk or dairy products. Burra Foods also has an onsite wastewater treatment plant which needs to be considered separately for the purposes of a buffer. The EPA guidelines specify a separation distance for sewage treatment plants, but not for milk wastewater treatment plants. Further detail about the EPA guidelines is provided below.

The GHD Report takes into account the size of the Burra Foods operations and also makes allowance for significant future expansion. EPA understands this to be a precautionary approach that assumes both that the expansion will be permitted and that it will take place.

The GHD Report also considers the prevailing meteorology of the area. On this basis, it extends the separation distance to the east and west, which reduces the separation distance to the south and south-west. This is consistent with the wind and stability presented in the GHD Report. Ultimately, EPA considers the analysis presented in the GHD Report for the scope of the application of the ESO to be justifiable. On this basis, EPA supports the application of the ESO.

EPA guidelines

9. The separation distances in the EPA guidelines are recommendations based on previous experience of the impacts of residual air emissions from different types of industrial activities. The recommended distances apply only to residual air emissions for dust and odour. That is, they are not designed to be an alternative to source control or for management of emissions under normal and foreseen circumstances. The EPA guidelines also assume that the industry is compliant with relevant legislation, regulations and policies.
10. EPA's advice is that the 100 metre distance listed in the EPA guidelines for milk processing facilities relates to the potential for unintended releases from the milk drying plant and is therefore applicable to this facility.
11. The Burra Foods site also has an on-site wastewater treatment plant. There is no specific distance given in the EPA guidelines for such a plant. The GHD Report utilised the EPA guidelines for sewage treatment plants (design greater than 500 litres per day, which is the maximum capacity after a proposed plant expansion) to derive a recommended distance of 345 metres. This was determined using the formula provided in the EPA guidelines, by using the average organic loading at the Burra Foods plant to calculate an equivalent population. This technique was also recently used by EPA in determining the appropriate buffer distance for a milk processing plant owned by Fonterra at North Dennington in Amendment C90 to the Warrnambool Planning Scheme. The Planning Panel comprised of Chair Rodger Eade and Member David Whitney in its report dated 22 May 2014 (C90 Panel Report) accepted EPA's technique in determining this buffer.
12. Separation distances do not provide a guarantee that impacts will not occur. They are a tool to manage the potential risk and impact. The distances in the EPA guidelines are recommended minimums and can be varied as appropriate to take into account site specific operations and conditions.
13. The imposition of separation distances through an ESO would not change the obligation of Burra Foods to comply with its licence and the requirements of the EP Act. It also would not alter the role of EPA in monitoring compliance with these requirements and taking action to address instances of non-compliance. EPA recognises that there will always be a chance of emissions in contravention of EPA licences and obligations in the EP Act.

Air modelling in the GHD Report

14. As noted above, the GHD Report recommended a separation distance of 345 metres for the wastewater treatment plant. This was to account for stage 2 of Burra Foods' proposed upgrade, which would include expanding the waste water treatment plant to approximately 5 times the size of the current plant – an estimated 2612 kg of chemical oxygen demand (COD) per day, as opposed to the current 450-600 kg of COD per day.
15. Rather than simply applying this distance as a circle, GHD proposed "squeezing" the circle to account for the fact that some wind directions are more common and perhaps more conducive to carrying odours (and spray drift and noise) in certain directions. The Amendment as exhibited therefore shows the extent of the ESO to be applied as elongated to the west, east and north-east, and foreshortened to the south, based on the GHD Report. EPA understands this approach seeks to target the proposed ESO to areas where it is needed and exclude areas where it is not needed.

16. The modelling conducted, as set out in the GHD Report, used acceptable methods and on-site meteorological data.

Recommended reduction to separation distance in exhibited Amendment

17. Mr Pollock's witness statement on behalf of Burra Foods revised the recommended separation distance for the wastewater treatment system from the 345 metres in the GHD Report to 227 metres. The revised figure accounts for stage 1 of Burra Foods' proposed upgrade, rather than stage 2. Stage 1 would include expanding the wastewater treatment plant to approximately 1.5 times the size of the current plant (rather than approximately 5 times for stage 2). The revised distance is based on an estimate of 900 kg of COD per day.
18. On page 17 of his report, Mr Pollock correctly notes that the EPA guidelines refer only to odour and dust emissions and not to noise. EPA has separate statutory policies and guidelines that apply to noise from particular sources and in particular areas. In relation to noise from Burra Foods, EPA publication 1411 *Noise from Industry in Regional Victoria* (October 2011) (NIRV) applies. Mr Pollock does not refer to NIRV, but instead suggests that a 300 metre separation distance should be adopted based on the threshold distance for 'manufacturing of milk products' in Clause 52.10 "to protect the existing residents from any off-site noise impact" (page 18).
19. EPA disagrees with this approach for the following reasons:
- EPA's complaints data (further detail on which is set out in this submission below) strongly suggests that odour impacts are the most significant amenity concern for residents surrounding the Burra Foods plant, with dust fallout being the community's second highest concern. Only one of 39 complaints to the EPA this year regarding Burra Foods related to noise. EPA therefore queries the logic of extending the extent of the ESO by approximately 25 percent for the purposes of noise protection only.
 - The table to Clause 52.10 sets out threshold distances for uses with adverse amenity potential. Planning permit applications for new industrial uses that do not meet the threshold distances are referred to EPA as a determining referral authority under Clause 66.02-7. When EPA receives these referrals, it analyses the particular proposal's environmental and amenity risks, including by having regard to expert reports on air quality and noise submitted with applications. For the purposes of this Amendment, EPA has reviewed the GHD Report and Mr Pollock's expert evidence with respect to air quality and is satisfied that their recommendations are well-substantiated. There has been no equivalent acoustic report to suggest that a larger buffer is required to protect the community from noise impacts than the buffer required in respect of air quality impacts. EPA therefore submits it is more appropriate to rely on site-specific analysis on the primary amenity concern (odour), than reverting to a generic threshold distance for at most a secondary amenity concern (noise).
20. EPA notes that on 24 September 2014, Council adopted a recommendation to request the Panel to consider reducing the proposed ESO to reflect an approximately 300 metre separation distance, "squeezed" as before to account for meteorological conditions. The Council report (on pages 35-36) explains that this reduction is recommended as a result of applying the recommendation in the C90 Panel Report that a 300 metre buffer was appropriate for the Fonterra factory's waste water treatment facility. There is no reference in the report to this recommendation reflecting Burra Foods' stage 1 rather than stage 2 expansion plans, the reason for Mr Pollock's suggestion that the extent of the ESO be reduced.

16. The modelling conducted, as set out in the GHD Report, used acceptable methods and on-site meteorological data.

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21. EPA queries whether the Council's approach as reflected in the report is an appropriate method for determining the extent of the ESO. As the report acknowledges, the recommendations in the C90 Panel Report reflect the particular operations of the Fonterra plant, the local conditions and the site history, among other considerations. The C90 Panel also had the benefit of expert evidence including air modelling. The Panel in this Amendment also has site-specific air modelling to consider and EPA suggests this would be a more appropriate basis on which to determine the extent of the ESO than applying recommendations intended for a different site.

Burra Foods licence

22. Burra Foods holds EPA licence 46572 to operate the milk processing facility. Most recently, Burra Foods have upgraded their operations under EPA Works Approval, installing a new milk dryer and upgrading their wastewater treatment plant.
23. The current EPA licence for the Burra Foods premises specifies numerous wastewater discharge parameters and amenity conditions, such as:
- Offensive odours must not be discharged beyond the boundaries of the premises.
 - Unacceptable noise (including vibration) must not be emitted beyond the boundaries of the premises.
24. There is also a requirement that nuisance airborne particles must not be discharged beyond the boundary of the premises.
25. It is EPA's responsibility to monitor Burra Foods' compliance with its licence and other legal requirements under the EP Act. EPA can take action to enforce the EP Act and licence conditions and recent action taken by the EPA is outlined in a later part of this submission.
26. EPA is aware that Burra Foods has expressed an intention to further expand operations in the next few years. This could include the installation of two new evaporators and driers as well as additional loading on the wastewater treatment plant. Whilst the EPA does not have details of specific plans by Burra Foods to expand, depending on the works proposed, Burra Foods would most likely require an EPA Works Approval. No application has yet been lodged with EPA for such an approval.

Complaints

27. EPA has received complaints from the community of odour emanating from the Burra Foods site, fallout of milk powder from the drier stacks and concerns regarding wastewater discharge. Only one complaint over the past year was received regarding noise.
28. A total of 39 complaints to date have been received during 2014. The majority were due to odour, with 26 complaints from 7 different residents. Fallout was the next issue with 9 complaints from 5 different residents. Wastewater discharge was a concern with 3 complaints for 2 residents, with only 1 regarding noise.
29. Complaints in 2013 and 2012 were significantly lower, with 10 and 9 complaints received respectively. Again, the majority being due to odour. This is not necessarily an indication that residents were not being impacted.

In the last couple of months

Compliance and enforcement

30. EPA's approach to investigations of pollution reports is outlined in EPA publication 1388 *EPA Victoria Compliance and Enforcement Policy*. It defines the principles under which EPA's compliance and enforcement activities are undertaken and outlines a risk based approach to our response. The first goal of enforcement is to stop non-compliance and prevent further harm. Where appropriate to the scale and degree of non-compliance, EPA supports sanctioning to complement its compliance and enforcement activities.
31. With regards to odour issues, EPA has identified the wastewater treatment plant as the primary source of odour. A Minor Works Pollution Abatement Notice was issued in November 2014, with a final compliance date of 6 February 2015 requiring Burra Foods to "immediately maintain any plant, equipment or structure used in the treatment and storage of wastewater so that odorous untreated air does not vent directly to the atmosphere". The notice also requires that by 30 January 2015, Burra Foods must "modify or install controls to capture and treat odour produced in the wastewater treatment system so that odorous untreated air does not vent directly to the atmosphere".
32. Further issues regarding fallout were identified as being due to a failure of bag house filter sock seals. Burra Foods undertook immediate corrective actions in relation to this failure. EPA issued a Minor Works Pollution Abatement Notice in November 2014 requiring full sock replacement. The notice was revoked in November 2014 following completion of required works.
33. Wastewater discharge was also investigated by EPA. A Pollution Abatement Notice was issued in November 2014 and required installation of additional wastewater treatment infrastructure to treat all wastewater streams at Burra Foods. Full compliance is due on 9 January 2015. A Minor Works Pollution Abatement Notice was also served in November 2014 requiring "Cleaning In Place" investigations, monitoring and reporting, with a final compliance due date of 19 December 2014.

Conclusion

34. EPA supports the imposition of an ESO, having regard to the statutory planning tools currently available to protect the amenity of areas surrounding industrial sites and noting ESOs are used in many planning schemes for this purpose.
35. With respect to the appropriate extent of the ESO:
 - EPA supports an ESO of approximately 345 meters (subject to wind directions and cadastral boundaries) as determined by odour modelling in the GHD Report based on Burra Foods' stage 2 expansion plans.
 - EPA supports an ESO of approximately 227 meters (subject to wind directions and cadastral boundaries) as determined by odour modelling in the expert witness statement of Mr Tim Pollock of GHD based on Burra Foods' stage 1 expansion plans.
 - EPA does not support an ESO of 300 meters as recommended by Mr Pollock and Council in its report of 24 September 2014 to account specifically for noise impacts, as odour and dust impacts are of higher concern in relation to the Burra Foods operations and neither Clause 52.10 nor the C90 Panel Report present an appropriate basis on which to justify this extension.
36. EPA also requests that the proposed amendments to Schedule 66.04 be further amended to describe the 'kind of application' to be referred to EPA under the ESO as:

An application to construct a building, or construct or carry out works, or subdivide land where the land is used for accommodation, a child care centre or an education centre

(suggested new wording underlined>

.....
[REDACTED]
Manager – Gippsland
Environment Protection Authority Victoria

4 December 2014

1 August 2013

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Private Bag 4
LEONGATHA VIC 3953

Dear [REDACTED]

SOUTH GIPPSLAND PLANNING SCHEME AMENDMENT – C99

Thank you for your referral regarding the above planning scheme amendment.

The amendment proposes to apply an Environmental Significance Overlay (ESO) to the Burra Foods site in Korumburra and surrounding land.

In summary, EPA supports the application of the ESO, but requests that the associated amendment to the Schedule to Clause 66.04 to the South Gippsland Planning Scheme (**Scheme**):

1. designate EPA as a 'determining referral authority' rather than a 'recommending referral authority' under the ESO; and
2. describe the 'kind of application' to be referred to EPA under the ESO as:

An application to construct a building, or construct or carry out works, or subdivide land where the land is used for accommodation, a child care centre, education centre or outdoor recreation facility.

Using ESOs to minimise residential encroachment on industrial facilities

EPA supports the intention of the proposed overlay, as set out in Clause 2.0 'Environmental objective to be achieved' in Schedule 8 to the ESO (**ESO8**).

★ EPA has identified residential encroachment on critical industrial facilities as one of its current focus areas. This issue can lead to health and amenity impacts on residents through odour, dust and noise emissions and can also threaten industry viability. These dual concerns are appropriately reflected in the proposed ESO8.

EPA further acknowledges that ESOs are used in many planning schemes to minimise encroachment on significant industrial facilities with adverse amenity potential, such as wastewater treatment plants, power stations and ports. Having regard to the statutory planning tools currently available to protect areas surrounding industrial sites, EPA is satisfied that the use of the ESO for this purpose is appropriate.

Determining the land to which ESO8 will apply

Burra Foods Pty Ltd currently holds EPA Licence 46572 (**Licence**) 'for discharges of treated process water and condensate to Coalition Creek via the existing wetlands'. The Licence contains the following three amenity conditions:

- o Offensive odours must not be discharged beyond the boundaries of the premises.
- o Unacceptable noise (including vibration) must not be emitted beyond the boundaries of the premises.
- o Nuisance airborne particles must not be discharged beyond the boundaries of the premises.

EPA has received complaints from the community of odour emanating from the Burra Foods site. EPA is assisting Burra Foods Pty Ltd to develop a strategy to ensure compliance with its Licence and minimise its impact beyond its boundary.

That said, it must be recognised that even with good pollution control technology in place and best practices adopted, there may still be unintended emissions from industrial facilities due to, for instance, equipment failures, accidents and abnormal weather conditions. For this reason, EPA recommends separation distances be maintained between industrial land uses and sensitive land uses, such as residential premises, child care centres and primary schools.

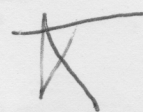
EPA's Publication 1518 *Recommended separation distances for industrial residual air emissions* (**Guidelines**) recommends separation distances between specific types of industries and sensitive land uses on the basis of odour emissions and dust. The Guidelines must be considered pursuant to Clause 13.04-2 of the Scheme.

The Guidelines specify a separation distance of 100 metres for facilities producing milk or dairy products. Consideration must also be given to the onsite wastewater treatment plant (**WWTP**). The Guidelines specify a separation distance for sewage treatment plants, but not for milk WWTPs.

The distances in the Guidelines are default minimums in the absence of a detailed, site-specific assessment taking into account the particular onsite operations and local environmental conditions. The area proposed to be covered by ESO8 has been determined on the basis of a site-specific assessment, the *Korumburra Milk Processing Plant Buffer Assessment* (GHD, December 2013) (**GHD Report**).

EPA has reviewed the GHD Report and is satisfied that it adequately addresses the issues of meteorology and dispersion modelling. EPA notes that the odour modelling has been conducted using AUSPLUME, which was replaced as EPA's regulatory model by AERMOD on 1 January 2014. However, since the work was conducted before the change, this is acceptable.

TAPM?



The GHD Report takes into account the size of the Burra Foods operations and also makes allowance for significance future expansion. This is a precautionary approach and assumes both that expansion will be permitted and will take place.

The GHD Report also considers the prevailing meteorology of the area. On the basis of this, it extends the separation distance to the east and west and reduces the separation distance to the south and south west. This is consistent with the wind and stability roses presented in the GHD Report.

Ultimately, EPA considers the analysis presented in the GHD Report for the scope of application of the ESO to be justifiable.

Type of referral authority

The Schedule to Clause 66.04 on exhibition designates EPA as a 'recommending referral authority' for referrals pursuant to ESO8.

EPA considers that it would more appropriately be designated a 'determining referral authority'. The purpose of ESO8 is to minimise the amenity impacts of Burra Foods on surrounding land and ensure the ongoing viability of its operations. EPA is uniquely placed to assess planning permit applications for new buildings, works or subdivisions for sensitive land uses due to its technical and environmental protection policy experience in this area. It is therefore appropriate for EPA's decisions to direct the outcome of such applications.

Scope of referral trigger

The Schedule to Clause 66.04 on exhibition describes the kind of application to be referred to EPA as:

An application to construct a building, or construct or carry out works, or subdivide land.

EPA is concerned that this description is too broad. It would result in applications being referred to EPA to construct buildings or carry out works for an office, place of assembly or retail purpose. Those are not 'sensitive land uses' which the Guidelines seek to protect.

EPA considers that the scope of the referral trigger should be amended to reflect the sensitive land uses protected by the Guidelines. Specifically, EPA requests that the description be amended as follows:

An application to construct a building, or construct or carry out works, or subdivide land where the land is used for accommodation, a child care centre, education centre or outdoor recreation facility.

Please contact our Planning Assessment Officer, [REDACTED] on [REDACTED]
[REDACTED] if you require further information or advice.

Yours Sincerely

[REDACTED]

Attachment 3: Background to Amendment C99

- Burra Foods has applied to Council to amend the planning scheme
- The Panel Hearing and subsequent report (18/12/15) recommends C99 be adopted subject to modifications reducing the overlay boundary to 227m.
- Council approved the amendment 5:4 25/2/15.

Issues

- The houses were established prior to Burra Foods taking over the old butter factory in 1991/2 (The butter factory was closed in 1974 for 17years).
- **There appears to be inadequate/unclear justification by council and state government to approve amendment.**
- **The EPA already controls amenity issues through the factory's EPA licence which makes a buffer and ESO unnecessary.**
- **The panel hearing report does not consider major evidence submitted by the community in regard to the EPA licencing conditions.**
- **Community pressure on the EPA in regard to the factory's non-compliance with it's licence over the past 5 years has resulted in major improvements at the factory over the last 6months.**
- GHD report was accepted by EPA and local and state government without any independent analysis and proved by community to be flawed requiring GHD to make amendments and resubmit report.
- The Council Report 24/9/14 states that ***if the amendment is likely to have a direct impact on land values and land sales, it is incumbent on council to ensure the new control or restriction is justified.*** How is this justified if amenity issues are already controlled by the EPA.

Planning Issues:

Amendment C99 contradicts:

- SGPS 21.04 to: *Promote higher density residential development and retirement living on land within inner township residential areas that can be provided with convenient pedestrian access to the Town Centre*
- SGPS 21.04 to: *Consider the potential adverse amenity impacts of the milk manufacturing operations in the Station Street Industrial Area on rezoning proposals that allow, or intensify the establishment of sensitive land uses in the immediate area surrounding the manufacturing operations.*
- SGPS 21.11-1 Objective 4.1 to: *encourage well-designed, sustainable industrial development that enhances the visual amenity of the neighbourhood* especially when you consider that part of the proposed expansion is a 32.5m drying stack on Warragul Road and a cannery. (GHD report p. 7).
- Burra Foods recent factory expansions do not comply with the SGPS 21.11-1 strategy 4.1 *to ensure new development is designed and constructed to be responsive to **environmental standards, is safe and functional in it's layout and improves the appearances and amenity of industrial areas**, as evidenced by repeated non-compliance of its EPA licence.*
- Korumburra Planning Framework: Objective 4: *promote the development of new residential estates... provide pedestrian access and cyclist connectivity to the town centre and protect the environmental values of the land, especially the waterways.*
- KPF: Objective 5: *promote higher density residential development and retirement living on land within the inner township... that can b e provided with convenient access to the town centre.*
- KPF: Objective 6: *focus industrial development within established industrial areas....development of the former sale-yards must have a close regard to the amenity interface with the adjoining show-grounds and residential areas.*

ESO8

- Burra Foods is approximately 200m from the main street of Korumburra, and less than 700m from hospital, nursing home, kindergarten, caravan park, tennis courts, bowling greens and sporting ground. These are all existing facilities which are identified by the EPA as being 'sensitive', and should not be located near a factory with odour, dust and noise emissions.
- There many examples of dairy processing plants in or close to regional towns without an ESO:
 - Murray Goulburn in Leongatha - no buffer or overlay;

- Poowong abattoir - 500m buffer - no ESO or DDO, just the policy map;
- Poowong dairy factory - 300m buffer, no overlays (closed Nov 2014);
- The Panel Hearing in Warrnambool (Report April 2014) in relation to Fonterra dairy factory recommended a 300m buffer and as detailed by [REDACTED] email (17/7/14), *the approach taken with Poowong (Dairy) is roughly commensurate with what is occurring in Warrnambool.*
- The ESO places excessive red tape on existing and new home/landowners and on Council as *an application must include building design, layout and landscaping details demonstrating how the building will minimize the impact of noise, odour and light pollution on the proposed sensitive land use* (ESO8 page 2 section 4.0) and a permit is required for residences increasing the internal floor area by 50% (section 3.0);
- The ESO results in a negative impact on residential growth of the town under the GHD report recommendation that *any land within these buffers is not rezoned to urban residential as it would increase the possibility of further odour and noise complaints* (p. 19).

The Buffer:

The original buffer proposed was 450m includes 65 properties, water catchment dam, BP service station, bowls club, part of the sales yard, trailer business, sports/drill hall precinct was reduced to 227m and includes 25 properties.

The main objective of the amendment is to allow Burra Foods to continue to operate and expand (council report 24/9/14 p. 25). The expansion includes a 32.5m spray drying tower, cannery, 2 level carpark and larger WWTP.

- The WWTP, (the main source of odour) was noted to increase to over 5 times it's current capacity with waste output increasing from an equivalent population (ep) of 7,800 to an ep of 40,455. (p.18 GHD report Nov 2013). This resulted in a recommended 345m buffer.
- This was corrected in a subsequent report (Dec 14) to an ep of 11,700 resulting in a 227m buffer for odour.
- The Dec 2014 GHD report also recommends a 300m buffer for noise and 100m for spray drying towers.

Residents are understandably concerned that the current issues of excessive light, dust emissions, noise, truck traffic and associated health issues may be exacerbated by expansion.

- The Environmental Guidelines for the Dairy Processing Industry (EPA publication June 1997, p.11) states that *If there is to be substantial development on existing sites with inadequate buffer zones, the site developers usually must show that the introduced technology will allow for a variation of the recommended buffer distance.*
- It is highly likely that the buffer and ESO will result in de-valued property prices on homes and businesses by approximately 20% (as per local Real Estate advice and indicated by recent sales on Warragul Rd near the factory completely falling through).
- Not appropriate to apply a buffer for a PROPOSED factory expansion when there is already inadequate separation from EXISTING residences.
- Retrospective application to Council for a buffer zone that should have been considered prior to it's most recent major expansion in 2010.
- *While buffers are a means of reducing the effects of odour and dust, they are not an alternative to industrial operators controlling that odour and dust at its source* (EPA Fact Sheet C99 community Information Session July 2014)
- There is no independent analysis of the GHD report which was accepted by local and state government and the EPA.

EPA and health/environment concerns

- EPA's 'Recommended separation distances for Industrial Residual Air Emissions' (publication number 1518 March 2013) *aims to support effective decision making regarding land uses to:*
 - *Protect human health and wellbeing, local amenity and aesthetic enjoyment*
 - *Protect existing industry from encroachment by sensitive land uses*

- And prevent land adjacent to industry from being underutilized.
- The above guideline aims to support decision making regarding land use to **prevent new or expanded industrial uses from impacting on existing sensitive residences.**
- Burra Foods has been **repeatedly non-compliant with its EPA licence.** It's EPA Annual Performance Statements in 2009/10, 2010/11, 2011/12 and 2013/14 and 2014/15 are non-compliant (EPA website). In 2013 alone, Burra Foods was non-compliant in relation to: non-reporting, discharge of odour, noise and waste water discharge into Coalition Creek.
 - **Odour – non compliant in 09/10, 10/11, 11/12, 12/13, 13/14, 14/15**
 - Discharge of waste to surface waters non compliant: 11/12, 12/13, 13/14
 - Dust: non compliant: 10/11, 12/13 and 14/15
 - Noise non-complaint in 2009/10
- The odour emission at times smells like 'rotten egg' and 'tastes like a matchstick head' (as described by local residents) which are likely indicators of hydrogen sulphide gas. Repeated or prolonged exposures at even low concentrations may cause eye inflammation, headache, fatigue, irritability, insomnia, digestive disturbances and weight loss. It is also concerning that with continuous exposure a person loses the ability to smell the gas even though it is still present.
- Hydrogen Sulphide is a common dairy odour emission when waste is not managed well ([REDACTED], Air Quality Consultant).
- The odour constituent emissions and levels from Burra Foods are unconfirmed. To date, neither council or the EPA have done any measuring on odour constituents, thresholds. We have an email from [REDACTED] EPA (12/8/14) stating that:
 - *addressing multiple non-compliance issue with the site is a regional priority for the EPA.*
 - *Five remedial notices from 2001 to 2013 and an Official warning was issued.*
 - *To contact the Dept Health re concerns over hydrogen sulphide.*
 - *regardless of whether samples are collected by a Council health officer or witnessed by a JP, the EPA is legally unable to use the samples as evidence.*
 - *the proposed overlay is not related to planned expansions or upgrades to the facility. The overlay is based on current operations.*
 - *any future expansions of the facility will be subject to a works approval by the EPA*
- EPA Compliance review states (Executive summary para 2) *EPA has been the subject of considerable criticism arising from two reviews into matters involving compliance and enforcement activity. ...The ombudsman found a culture which did not facilitate enforcement. In my view this culture and the resulting effect on the EPA's systems, procedures and training also underlay the findings made by the auditor general. Common to these reviews and my observations during the review was a confusion in EPA as to the organisation's purpose and a neglect of its role as the regulator and its responsibility for enforcement of the law.*
 - The Review goes onto state (Exec Summary under Chapter 5) *The EPA's handling of pollution reports and a lack of feedback was a strong feature in community consultation.*
 - Exec Summary under Chapter 7 – *significant concerns that there has been a lack of consistency and predictability regarding EPA's approach to compliance and enforcement. The lack of a defined policy position on the role of human health in EPA's regulatory activity underpins the recommendation that EPA publish a policy articulating the place of human health in environmental protection and its relative importance.*
 - Under Chapter 18 – *Gaps in jurisdiction and a perception of 'buckpassing' between the EPA and local government was a particular concern in the community consultations.*

Relevant reports/research

- The GHD report is the only reference document Council has referred to. There is a general inconsistency in the risk assessment used by GHD and the site's ability to comply with its EPA licence. The Panel Report (p.31) notes that 'the panel agrees with submitters that it would be better to have actual measurements to support the theoretical model but notes....that it would most likely support a larger rather than a smaller buffer'.
- There are many documents and reports that could be used as reference documents to provide information so that Council, Councillors and community could make a more informed decision such as:

- EPA assessment and recommendation on buffer distance for Burra Foods.
- Current planning regulations/schemes/buffers/overlays for similar situations in the Shire for Poowong, Leongatha dairy processing factories.
- Burra Foods Annual Performance Statements (EPA website), June 2010, 2011, 2012, 2013.
- *Environmental Guidelines for the Dairy Processing Industry*, EPA, June 1997.
- *Recommended Separation Distances for Industrial Residual Air Emissions*, EPA, publication 1518, March 2013.
- *Panel Report, Warrnambool Planning Scheme, Amendment C90, North Dennington Structure Plan and Development Contributions Plan*, 22 May 2014.
- *EPA Compliance and Enforcement Review, A Review of EPA Victoria's Approach February 2011*

Other considerations:

- Devaluation of properties has been estimated at 20% equating to approximately \$50,000 for an average house worth \$250,000 x 25 is a cost of \$1.25M.
- What is the cost of residents and businesses moving out.
- What is the cost of community's health and wellbeing.
- At 227m the buffer no longer does what was originally intended (to reduce residential growth in section K at the rear of the factory) and to notify new residents of the factory.