

22 February 2021

Mr Charles and Mrs Josephine Santospirito
C/O The Dunes Torquay
1075 Horseshoe Bend Road
TORQUAY VIC 3217

HAND DELIVERY

Dear Mr and Mrs Santospirito,

**Notice of Contravention-Section 151 Water Act
Direction-Section 80 Water Act
1075 Horseshoe Bend Road – Irrigation Dam (“Dam”)**

In providing a clear path to resolve the issues which contributed to the dam safety incident on the 2 October 2020, it has been determined the attached direction and notice be issued in respect of the Dam located on the southern edge of the property at 1075 Horseshoe Bend Road, Torquay.

We enclose by way of service on you both as the land owners:

- A new direction, issued under section 80 of the Water Act 1989 (“**Water Act**”) to provide:- updated and clear operating requirements, clear expectations of the timing and content of the peer reviewed report required, and also requiring compliance with the Notice of Contravention; and
- A Notice of Contravention under section 151 of the Water Act indicating that the Dam has operated without the necessary regulatory approval, and setting out the steps you must take to rectify that contravention.

A key requirement of the Notice of Contravention is that you must decide whether you wish to, either:

apply to continue to operate the dam, or

decommission and remove the Dam.

Our understanding is that you are likely to wish to continue to operate the Dam in which case you must apply for a works licence under s67 of the Water Act. Such an application must be made by the date in the Notice of Contravention, that is 9 April 2021.

If a licence is granted this will assist in having the necessary works on the Dam commence within the six-month timeframe specified in the draft revised reports provided on your behalf to SRW, on 1 February 2021.

I note that as part of the application process it is likely an independent Panel, under Section 66 of the Water Act, will be appointed to consider and report on the application. Such a Panel will likely to be made up of 2 or more members and include an independent chair and independent dam safety expert. Such a Panel, after consideration, would report back to the decision maker on the application.

This Panel will provide for a transparent process to ensure procedural fairness to yourself and any parties who have an interest in the application and future operation of the dam.

I emphasise the Notice of Contravention and the Ministerial Direction attached are statutory notices and directions that you must comply with.

In addition to identifying existing breaches of the Water Act, a failure to comply with the any of the requirements of the notice or directions specified will constitute a breach of the Water Act which may be the subject of further compliance action, including prosecution.

If you have any questions regarding these matters please contact Mr Hugh Christie, Manager Groundwater and Rivers on either hughch@srw.com.au or 0488 215 527.

Yours sincerely,



CAMERON FITZGERALD
Managing Director

GIPPSLAND AND SOUTHERN RURAL WATER CORPORATION

NOTICE OF CONTRAVENTION UNDER SECTION 151 OF THE WATER ACT 1989

TO: Charles Santospirito
Josephine Santospirito
C/O The Dunes Torquay
1075 Horseshoe Bend Road
TORQUAY VIC 3217

PREMISES: 1075 Horseshoe Bend Road
TORQUAY VIC 3217

DATE OF THIS NOTICE: 22 / 2 / 2021

Gippsland and Southern Rural Water Corporation (“Corporation”) of 88 Johnson Street, Maffra, Vic 3860, gives you, notice pursuant to section 151(1)(a) of the Water Act 1989 (“Act”) that you, as the operator of the works/or owner of the above Premises have:

- 1 Operated a private dam within the meaning of section 67 (1A) of the Act therefore contravening section 75A(3) of the Act for carrying out a regulated activity without being authorised to do so.
- 2 Failed to comply with directions issued under section 80 of the Act concerning a private dam, dated 6 October 2020 by the Managing Director of the Corporation as delegate of the Minister for Water (the “October Direction”). The failure to comply with the October Direction being an Offence under section 80AA of the Act. In particular, the failure to comply was the failure to demonstrate:

“...how future operation of this dam will no longer be a hazard to public safety, property and the environment. This must take the form of a comprehensive report prepared by an engineer who is suitably qualified with dam safety experience and approved by SRW.” (such report to be completed to the satisfaction of SRW by 30 November 2020)

Note: A failure to do what this notice requires is a contravention of the Act.

REMEDYING THE CONTRAVENTION (WHAT YOU MUST DO)

In order to remedy the contraventions:

- 1 You must:

EITHER

- 1.1 **if you wish to continue to operate the dam**, make an application for a licence to construct or carry out works relating to the dam on the Premises, such

works to make good identified deficiencies in the dams construction and operation. Such application must be made:

1.1.1 under section 67 of the Act and in accordance with regulation and the requirements of the Corporation;

1.1.2 on or before Friday, 9 April 2021; and

1.1.3 if the section 67 licence is granted the works permitted by the licence must be completed within the terms of the licence.

OR

1.2 **if you wish to cease to operate the dam**, make an application to carry out works to demolish to dam on the Premises. Such application must be made:

1.2.1 under section 67 of the Act and in accordance with regulation and the requirements of the Corporation;

1.2.2 on or before Friday, 9 April 2021; and

1.2.3 if the licence is granted the works permitted by the licence must be completed within the terms of the licence.

2 In addition to the requirements set out at paragraph 1, you must comply with further directions made pursuant to section 80 of the Act issued and dated on the same date, and served with, this Notice of Contravention.

FAILURE TO COMPLY WITH NOTICE

If this Notice of Contravention is not complied with, within the time specified in this Notice, Corporation may take action, including in accordance with Section 151(3) of the Act. Namely it may:

1 carry out any works and take any other action it decides is necessary to remedy the contraventions identified above and recover its reasonable costs in doing so from the person / company to whom this Notice of Contravention is addressed;

2 commence court proceedings to recover the costs of the Corporation rectifying the contravention;

3 prosecute (that is, criminal proceedings) in respect of the contraventions under the Act.

PENALTIES

1 A person or company served with a Notice of Contravention must make sure that the Notice is complied with within the time specified in the Notice or any longer time allowed by Corporation, otherwise a penalty may be imposed of up to 20 penalty units¹.

¹ A penalty unit is currently \$165.22 cents.

- 2 The penalties for contravention of Section 75A(3) are up to 240 penalty units (a person) or 1200 penalty units (a body corporate).
- 3 The penalties for contravention of Section 80AA are up to 120 penalty units (a person) or 600 penalty units (for a body corporate).
- 4 For every day after this Notice is served that the offence continues an extra daily penalty of 5 penalty units may apply.

Signed on behalf of the Corporation

Delegate
Gippsland and Southern Rural Water
Corporation

GIPPSLAND AND SOUTHERN RURAL WATER CORPORATION

**DIRECTION CONCERNING DAMS
SECTION 80 OF THE WATER ACT 1989**

**DIRECTION TO
THE OWNER/S:** Charles Angelo Santospirito
Josephine Rita Santospirito
C/O The Dunes Torquay
1075 Horseshoe Bend Road
TORQUAY VIC 3217

PREMISES: 1075 Horseshoe Bend Road
TORQUAY VIC 3217

DATE OF THIS NOTICE: 22 / 2 / 2021

Pursuant to a delegation from the Minister for Water the Managing Director of Gippsland and Southern Rural Water Corporation (“Corporation”) of 88 Johnson Street, Maffra, Vic 3860, gives this direction to the owners of the Premises noted above, pursuant to section 80 of the Water Act 1989 (“Act”).

Note: A failure to comply with this Direction is a contravention of the Act and may result in further notices, direction and/or prosecution.

BACKGROUND

- 1 It has been established that prior to and in October 2020 water flowed from the private dam on the Premises under and to various adjoining properties.
- 2 Pursuant to a previous direction under section 80 of the Act, dated 6 October 2020 (the “October Direction”) the owner was directed to undertake various steps and provide two reports. The October Direction was directed, firstly, to require urgent safety measures (including operational requirements), and secondly, to require a comprehensive report (to be provided to the Corporation by 30 November 2020) demonstrating how future operation of the dam may occur such that it would no longer be a hazard to public safety, property and the environment.
- 3 The comprehensive report required by 30 November 2020 was not prepared to a standard acceptable to the Corporation and was not provided by 30 November 2020 and has still not been provided.
- 4 There are observed defects on and in the embankment to the dam such as cracking, trees and vegetation growth.
- 5 There remains inadequate control over the Full Supply Level (“FSL”) including no existing spillway with the risk of overfilling and potential overtopping.
- 6 The suggested dam safety surveillance and emergency management plan provided following the October Direction remains a draft only.
- 7 A Notice of Contravention has been issued under section 151 of the Act which amongst other matters requires the owner to decide to either:

- 7.1 make an application for a licence to carry out works on the private dam, under section 67 of the Act; or
- 7.2 cease the operation of the dam and decommission it, this also requires an application under section 67 of the Act.

WHAT MUST BE DONE UNDER THIS DIRECTION

- 8 It has been determined that the dam is or is likely to be or become, hazardous to public safety, property and environment due to its location, nature of construction and historic operation.
- 9 You are directed as follows:
 - 9.1 any continued operation of the dam must be at an FSL which is no higher than EL 12 metres as noted in the datum on the site plan in the report of Australian Geotechnical Testing numbered AGTE17463, December 2017 (“AGT Report”);
 - 9.2 no inflow to the dam is permitted other than from the Black Rock Treatment Plant or the drainage sump to the west of the dam;
 - 9.3 a daily visual inspection of the dam and dam wall must take place, including taking written and/or electronic records of:
 - 9.3.1 details of when, what, how and who carried out, in relation to the inspection itself; and
 - 9.3.2 any changes to the dam wall, including any ponding, seepage, cracking or other changes; andany changes must be immediately reported to the Corporation;
 - 9.4 the record of visual inspections as required under clause 9.3 must be provided on a daily basis through electronic reporting, as required by the Corporation until otherwise directed by the Corporation;
 - 9.5 to maintain the banks of the dam in a manner which allows for easy visual inspection, including regular mowing of the slopes of the banks and keeping the swale drain cleared to facilitate observation of any cracking or seepage;
 - 9.6 to notify the Corporation of any likely or actual incident related to the dam or other dam infrastructure that impacts, or has the potential to impact, neighbouring or nearby properties, immediately upon becoming aware of such incident or potential incident;
 - 9.7 you must procure the completion of a comprehensive report (“Report”) and that Report:
 - 9.7.1 must include a peer review by an independent expert in dam safety, that expert to be approved by the Corporation;
 - 9.7.2 must be provided to the Corporation on or before 26 March 2021;

- 9.7.3 must be in a form and contain detail and recommendations to the satisfaction of the Corporation;
 - 9.7.4 must include a Dam Safety Review;
 - 9.7.5 must include a Dam Break Analysis;
 - 9.7.6 must include a finalised Dam Safety Emergency Plan;
 - 9.7.7 must include an appropriate assessment of failure modes and dam break analysis of both the current operating level and future proposed operating levels;
 - 9.7.8 must include full and complete details of each and every proposed action or work designed to achieve a situation where the dam can be operated without hazard; and
 - 9.7.9 should be in a form so as to support an application for a works licence under section 67 of the Act.
- 10 You must undertake the actions specified in the Notice of Contravention dated and served by the Corporation on you on the same date as this Direction, in particular you must in respect of the dam on the premises either:
- 10.1 make an application for a licence to carry out works on the private dam, under section 67 of the Act; or
 - 10.2 cease the operation of the dam and decommission it, this also requires an application under section 67 of the Act.

DIRECTION ISSUED

As delegate for the Minister for Water by:



Cameron FitzGerald
Managing Director

PENALTIES

A failure to comply with this Direction is an offence under the Act and may be the subject of further action or prosecution.

APPLICATION FOR REVIEW

A person whose interests are affected by this Direction may apply to the Victorian Civil and Administrative Tribunal for review within twenty-eight (28) days of the date of this Direction.