

# Application for an enforceable undertaking

## Part 4, Health and Safety at Work Act 2015

<b>The commitments in this application are offered to WorkSafe New Zealand by</b>
Derek Robertson, Executive General Manager – Transport Services
<i>On behalf of:</i> Downer New Zealand Limited

This enforceable undertaking is given on the day and date that it is accepted and signed by WorkSafe. The undertaking and its enforceable terms will operate as a legally binding commitment on the part of the person from the date it is given.

WorkSafe respects your privacy and is committed to protecting personal information. The information provided in this document is for the purpose of an undertaking given to WorkSafe under Part 4 of the Health and Safety at Work Act 2015. This information will be managed within the requirements of both the Privacy Act 1993 and the Official Information Act 1982.

There is an expectation that WorkSafe will generally publish the undertaking in full on its website.

<b>TERM</b>	<b>DEFINITION</b>
<b>Contravention</b>	An action which offends against the <i>Health and Safety at Work Act 2015</i> and/or any Regulations made under it. It includes both health and safety contraventions. A contravention also includes an alleged contravention
<b>HSMS</b>	A Health and Safety Management System
<b>Person</b>	An individual who or a legal entity which has a duty under the <i>Health and Safety at Work Act 2015</i> and can give a written undertaking. The term includes individuals, each partner in a partnership, corporations, trustees of trusts, and crown organisations.
<b>Health and Safety legislation</b>	<i>Health and Safety at Work Act 2015</i> and associated regulations.
<b>Enforceable undertaking</b>	An enforcement pathway that allows a duty holder to voluntarily enter into a binding agreement with WorkSafe. The agreement outlines actions the duty holder will undertake to address the contravention. It is expected to deliver activities which benefit workers, the wider industry or sector and/or the community as well as acceptable amends to any victim(s).

## 1. General Information

1.1 Details of the person/persons/entity giving the undertaking		
<i>Name of person(s) making this undertaking:</i>		
Derek Robertson, Executive General Manager – Transport Services		
<i>Name of entity:</i>		
Downer New Zealand Limited ('Downer')		
<i>Type of legal entity:</i>		
Registered company		
<i>Nominated contact person:</i>		
Craig West.		
<i>Physical address:</i>		
Downer New Zealand Limited 130 Kerrs Road Wiri Auckland 2104		
<i>Postal address: (if different from physical address)</i>		
Downer New Zealand Limited Private Bag 93325 Otahuhu Auckland 1640		
<i>Work phone:</i>	+64 276 212 080	
<i>Mobile phone:</i>	[REDACTED]	
<i>Email:</i>	[REDACTED]@downer.co.nz	
<i>Industry:</i>	Transport services/infrastructure	
<i>Workers (enter numbers):</i>		
<i>Full-time:</i>	2100 FTEs	<i>Part time:</i> <i>Casual:</i> 463 FTEs
<i>Description of the products and services provided by the business or undertaking:</i>		
Downer provides services in engineering, construction and maintenance, transportation, technology and communications, and utilities services.		
This incident arose out of Transport Services. Downer's Transport Services division carries out network maintenance and civil construction services for over 25,000 km of roading network for the New Zealand Transport Agency and local authorities.		

This work includes, but is not limited to, pavement construction, surfacing, pavement repairs, mowing, grading, signs maintenance and renewals, road marking etc.

The works range from routine and cyclical works, to fixed sites.

Routine/cyclical works are generally mobile operations that include mowing, maintaining signs, grading roads, pavement repairs, and road marking.

Fixed sites are work sites that are static and can be defined as a discrete job (i.e. start and end points of the site are defined and the tasks are non-routine).

*Comments:*

At the time of the incident, Downer was undertaking work as a member of the Waikato District Alliance ('WDA'). The Alliance partners are Downer and Waikato District Council. The Alliance was formed to undertake a roading works maintenance programme over a period of 10 years. A number of supply partners were engaged to provide services to the WDA, including Directionz Limited ('Directionz'), HEB Construction Limited, Civic Contractors, and Power Weed Control Limited.

## 1.2 Detail of the contravention

Downer has been charged with one offence under sections 36(1)(b), 48(1) and 48(2)(c) of the Health and Safety at Work Act 2015 in relation to an incident on 12 May 2016 in Raglan.

WorkSafe New Zealand alleges that Downer, being a PCBU, failed to ensure so far as was reasonably practicable, the health and safety of a worker whose activities in carrying out work was influenced or directed by Downer, namely the employee of a sub-contractor (the 'Worker'), while he was carrying out work operating an angle grinder, and that failure exposed the Worker to a risk of death or serious injury arising from being struck by a shattering grinder disc.

It is alleged that Downer failed to ensure the health and safety of the Worker by failing to:

- i. Require the sub-contractor to provide a contract-specific health and safety plan or safe system of work for the work it was contracted to undertake;
- ii. Stipulate and communicate safety standards for grinder use to the sub-contractor.

## 1.3 Detail the events surrounding the contravention

The Worker who was injured is an employee of Directionz. Directionz is a supply partner to the WDA engaged by Downer as a specialist contractor to provide traffic and sign maintenance and minor construction services to the WDA.

In early April 2016 the WDA identified work that needed to be undertaken on the Wainui Bridge near Raglan, to replace a number of rotten timber posts that formed part of the railing of the bridge. The WDA arranged for Directionz to complete this work.

On 12 May 2016 the Worker and a colleague arrived at the Wainui Bridge to undertake the work requested by the WDA. The Worker found that the timber posts were bolted to the bridge structure and could not easily be removed as the bolts had rusted. He then decided to use an angle grinder to cut each of the bolts to free the timber posts (this was not known to WDA or to Downer). The Worker was wearing medium impact safety glasses while undertaking this work.

After successfully cutting through several of the bolts, the Worker decided to change the cutting disc on the angle grinder as it had become worn. After changing the disc, the Worker checked the

blade and then went to carry on cutting the next bolt. Almost immediately upon coming into contact with the bolt the cutting disc shattered. A piece of the cutting disc penetrated the Worker's safety glasses and entered his eye.

At the time of the incident, Downer had a Restricted Items Register which required workers to obtain a permit before operating angle grinders with cutting discs of up to 7" in diameter.

The angle grinder being used by the Worker had a cutting disc which was 5" in diameter. The Worker did not know about Downer's Restricted Items Register and therefore had not obtained a permit before using the angle grinder.

**1.4 Detail any enforcement notices issued that relate to the contravention as detailed in term 1.2**

<i>Date</i>	<i>Notice type</i>	<i>Notice Number</i>	<i>Contravention or prohibited activity</i>	<i>Action taken in response to notice</i>
None				

**1.5 Detail the rectifications to the workplace or work practices made as a result of the contravention (1.2), events (1.3) and the enforcement notices issued (1.4)**

**Changes to procedures concerning Downer's Restricted Items Register**

- All WDA subcontracts awarded after the incident had the Restricted Items Register added to the contract documentation as part of the special conditions of contract. In addition, other important health and safety documentation such as minimum personal protective clothing and equipment ('PPE') standards and Downer's 'Cardinal Rules' were also attached. **[Direct costs not identified]**
- WDA induction material was updated to ensure that all items on the Restricted Items Register were discussed and understood by the teams. WDA inducted 416 workers from more than 50 different organisations in the 2015-16 financial year. **[Direct costs not identified]**
- The process for issuing permits for items on the Restricted Items Register was improved and made more robust. This included elevating the responsibility for issuing permits to Area Manager level and requiring a complete analysis to be conducted on the availability and appropriateness of alternative methods prior to a permit being issued. The permit process was also changed to require discussions with workers around the relevant risks and requisite PPE, including the need for double eye protection when using angle grinders. **[Direct costs not identified]**

**Investigation into alternative cutting options**

- Downer embarked upon a series of trials to identify alternative methods of cutting that would avoid the need to use angle grinders. These included using oxy-acetylene cutting and a variety of blades on a reciprocating saw. Plasma cutters were also considered. A range of normally encountered materials were cut using the above-mentioned techniques and timed for effectiveness. The trials were video filmed and documented. These are now used as a means of educating workers on the alternative methods of cutting available. **[Identifiable costs of \$4,450 for equipment etc, with further costs not able to be quantified]**

**Communication to workers and others**

- Immediately following the incident, Downer communicated with its workers to raise awareness around the Restricted Items Register, to ensure that all staff and subcontractors working on the WDA were aware of the requirements. [Direct costs not identified]
- Awareness of the incident and the learnings were shared across Downer through presentations. The incident and the impact on the Worker was also widely discussed at toolbox meetings and team briefings. Information about alternative methods of cutting was also shared. [Direct costs not identified]
- Downer took steps to ensure other organisations such as Waikato District Council, HEB Construction Limited, Civic Contractors, and Power Weed Control Limited were also made aware of the incident and the risks associated with the use of angle grinders. [Direct costs not identified]

**Investment in additional health and safety resources**

- Since the incident, Downer has created (and filled) the role of Director of Operational Capability, Transport Services. This role was established to ensure there is a greater focus on improving operational awareness of health and safety issues when planning and implementing future work projects. [Annual cost is \$250,000 and this will be ongoing]

**1.6 Total amount of money spent on rectifications**

The estimated cost of rectifications undertaken by Downer following the incident (i.e. those costs capable of quantification) are as follows:

Rectification	Approximate cost
Investigation and trial of alternative cutting options	\$4,450
Establishment of new role – Director of Operational Capability, Transport Services	\$250,000
<b>Total</b>	<b>\$254,450+</b>

**1.7 Detail the injury sustained or illness suffered by victim(s) or other(s) as a consequence of the contravention or, (as applicable) the potential for fatal injury or future fatal illness**

The Worker lost an eye as a result of the incident.

**1.8 Detail any offer of amends or payments made to the victim(s) who sustained injury or suffered illness (the total monetary amount here is also to be included in the table at 3.12.3)**

*Describe the victim(s) relationship to you/the entity in question: (eg employee(s) / shareholder / director / family member / contractor, etc. If the relationship has more than one dimension, for example a family member who is also an employee and a director and/or shareholder of the business, or an employee who is a shareholder (etc) – then please describe this)*

The Worker is an employee of Directionz, one of the supply partners to the WDA.

*Detail offer of amends or payments:*

Downer engaged with the Worker to discuss how Downer could support the Worker and make amends for what occurred.

Downer offered to make a compensatory payment to the Worker in recognition of the physical and emotional difficulties experienced by the Worker as a result of the incident, and suggested a sum of \$25,000. The quantum of the payment assumed the Worker would also receive a compensatory payment from Directionz. The Worker agreed to accept this payment from Downer.

The Worker also indicated he would like to present on the incident and the dangers associated with angle grinders (see section 3.4 below). Downer has offered to organise for the Worker to co-present at five industry presentations with Downer. This includes paying for public speaking coaching, preparing the materials for the presentations, and covering the Worker's travel expenses.

Downer has also offered the Worker professional development courses which are available to Downer employees.

**1.9 Detail any consultation with the victim(s) as to their views on whether an enforceable undertaking would be an acceptable alternative to prosecution**

Downer has consulted with the Worker via Doug Carrasco, the WDA contract manager (Mr Carrasco is a Downer employee). The Worker is supportive of Downer entering into an Enforceable Undertaking with WorkSafe. As noted in section 1.8 above, the Worker is very keen to work with Downer to provide a series of presentations discussing the incident, the injury he sustained, and the dangers associated with angle grinders.

**1.10 Detail any consultation with unions/sector/industry as to their views on whether an enforceable undertaking would be an acceptable alternative to prosecution**

Downer has consulted with a selection of industry participants (including HEB Construction, Fulton Hogan, Broadspectrum, Hamilton City Council, and Waikato District Council), all of whom have been supportive of Downer agreeing an Enforceable Undertaking with WorkSafe and considered it to be an appropriate alternative to prosecution.

Downer has not consulted with any union or industry groups, as none have been identified as appropriate for this purpose.

**1.11 Detail the support provided or proposed by the person to the victim(s), other(s)**

Date	Description of support	Comments
12 May 2016	Doug Carrasco visited the Worker at the hospital very soon after the incident, prior to examination by an eye specialist.	
15 May 2016	Doug Carrasco visited the Worker at the hospital to discuss the incident and ask how Downer could support him and assist him with his recovery.	

June 2016	Doug Carrasco visited the Worker at home and took him out for a coffee and discussed his progress.	
July 2016	Downer offered to assist the Worker with computer training courses to give him more skills.	
July 2016	Doug Carrasco maintained telephone contact with the Worker throughout his recovery until after he started working again.	
1 September 2017	Doug Carrasco spoke with the Worker about the support Downer could provide to assist him in his desire to educate the industry about this incident and the associated trauma and impact the incident had on his family. Downer agreed to assist with his start-up presentation and videos.	
22 September 2017	Doug Carrasco met with the Worker to discuss ongoing support and in broad terms, Downer's EU proposal.	
October 2017	Doug Carrasco discussed Downer's proposed EU with the Worker, including the reparations proposed.	
October 2017	Doug Carrasco and Brooke Dahlberg met with the Worker to make arrangements for the video.	

#### **1.12 Detail any current HSMS implemented and maintained by the person**

*Describe how health and safety risks are managed, including types of procedures or policies or standards:*

Downer has an integrated management system, which includes our Health and Safety Management System (HSMS), and is currently accredited to ISO9001, ISO14001, and AS/NZS4801. Downer is also an accredited employer for the purposes of the ACC Partnership Program, and is meeting the tertiary requirements for the Safety Management component, and Injury Management components of the program.

##### **Health and safety management procedures**

In terms of development and implementation of this HSMS, policy and framework standards are authored and provided by Downer's Zero Harm team in conjunction with Downer Group based in Australia. These set both expectation and tone, as well as applying certain minimum levels of control for all Downer business units to achieve in the management of health and safety. Local procedures, standards and forms are then created by a dedicated Health, Safety, Sustainability, Environment, and Quality (HSSEQ) Systems and Assurance team. Operational Health, Safety, and Environment (HSE) teams then engage and influence the business to effectively implement the requirements locally within the business units.

The types of procedures created in New Zealand as required by Downer's Zero Harm Standards, include:

##### **1. Leadership**

Element 1 - Responsibility, Leadership, Accountability and Commitment  
Element 2 - Engagement, Consultation and Employee Support

##### **2. Risk and Control**

Element 3 - External Requirements  
Element 4 - Hazard and Risk Management  
Element 5 - Operational Control  
Element 6 - Process Safety, Engineering and Design

Element 7 - Supplier, Contractor and Materials Management

Element 8 - Environmental Sustainability

Element 9 - Incident Management

### 3. Planning and Improvement

Element 10 - Planning, Improvement and Resourcing

Element 11 - Change Management

Element 12 - Emergency Preparedness

Element 13 - Training, Competence and Awareness

### 4. Monitoring

Element 14 - Audit and Inspection

Element 15 - Management Review

Element 16 - Performance Evaluation

Element 17 - Health and Hygiene

### 5. Documents and Records

Element 18 - Document Control and Record Management

## Health and Safety Risk Management

Downer has recently reviewed and updated its HSE Risk Management Procedure and associated tools and permit processes, to ensure a greater focus on critical risks, and to build a greater degree of participation and involvement from those exposed to risks in the workplace. Various risk standards have been built on the back of extensive research, bowtie analysis, and assessment of critical controls, and workshops held with subject matter experts and representatives from around the business to develop content.

Risk standards include, but aren't limited to, the following examples:

- Vehicles and Driving
- Temporary Traffic Management
- Confined Spaces
- Ground Disturbance
- Isolation of Energy Sources
- Hot Work
- Working at Height
- Asbestos Management

On-site risks are managed through a coordinated and systematic process of developing Safe Work Method Statements (SWMS) for activities, ensuring relevant permits or authorisations are in place, and communicating risks to front-line teams through visual and handwritten/drawn Crew Briefing Plans. These provide a simple and visual reference for teams to plan out work, identify the risks on site, and ensure that the necessary controls are communicated to all involved in the work.

JobSTART forms are also used and signed at the beginning of every shift to ensure that everyone is aware of the particular risks and controls that will be present that day.

### 1.13 Detail the level of auditing undertaken on the HSMS, including compliance audits and audit frequency

Regular external audits are undertaken on Downer's HSMS by TELARC and ACC.

Regular internal audits are undertaken by Downer Group (in Australia). Downer Group undertakes various compliance audits against our HSMS framework and Critical Risk programmes.

Visible leadership and monitoring are a key part of Downer's commitment to Zero Harm.

On the WDA contract specifically, the total number of 'engagements' was 1,353, with 38% of those engagements being carried out on sub-contractors and 2% of the total engagements being carried

out with Directionz specifically (Directionz only had one full time employee on this contract, with additional resource being brought in if needed).

	Directionz	Subcontractors	All engagements with workers
Incidents reported	3	26	111
Near-Miss identified	9	74	224
ZH/Environmental audits completed	4	97	290
CoPTTM audits completed	3	190	361
Safety Behaviour Conversations undertaken	5	129	367
<b>TOTAL</b>	<b>24</b>	<b>516</b>	<b>1,353</b>
Percentage of engagements	2%	38%	

**1.14 Detail the consultation undertaken or proposed to be undertaken, in relation to this undertaking**

As discussed in sections 1.9 and 1.10 above, Downer has engaged with both the Worker and selected industry participants to seek their views on the appropriateness of Downer agreeing an Enforceable Undertaking with WorkSafe as an alternative to prosecution.

In addition, in preparing the content of this Enforceable Undertaking application, Downer has engaged with, and sought the views of, the following people:

- Members of Downer's internal management, including Downer's Chief Executive Officer, Executive General Manager of Zero Harm, Executive General Manger of Downer Transport Services, Chief Financial Officer, Chief Legal Counsel, General Manager of Network Maintenance & Civil Construction and the General Manager for Central North.
- Downer's Health and Safety Representatives.
- Members of the Downer Zero Harm team, including the General Manager HSSEQ Systems and Assurance.

## 2. General terms

The person acknowledges and commits to the general terms set forth in the sub-terms below.

### **2.1 Acknowledgement that WorkSafe alleges a contravention occurred as detailed in term 1.2**

Downer acknowledges that WorkSafe alleges Downer has contravened section 36(1)(b) of the Health and Safety at Work Act 2015. Downer has taken this incident and WorkSafe's allegations seriously. This is reflected in the investigation undertaken by Downer into the circumstances of the incident and the implementation of the remedial steps outlined in section 1.5 above to prevent recurrence of the incident.

### **2.2 Statement of regret that the contravention occurred**

Downer deeply regrets that this tragic incident occurred and the pain and suffering (both emotional and physical) suffered by the Worker involved. Downer is committed to ensuring that it requires contract specific health and safety plans from sub-contractors and that it checks these against Downer's health and safety expectations, as outlined in Downer's Zero Harm framework. In doing so, it will ensure the business learns from this incident and that appropriate improvements are implemented to help prevent an incident like this occurring again in future.

### **2.3 Statement of the reasons why, on balance, the person considers this undertaking is the most appropriate response to the contravention**

Downer considers it is better to direct its energy and resources towards prevention of future occurrences for itself and other businesses involved in infrastructure work, than for WorkSafe and Downer to expend time and effort on a Court process that effectively looks backwards, not forwards.

The enforceable undertaking given by Downer will have widespread implications for the business, will require a high degree of 'buy in', and will also have significant financial implications for Downer. More importantly from Downer's perspective, the enforceable undertaking will facilitate improvement in operational implementation of health and safety standards and will provide tangible and measurable benefits to the Worker, Downer's workers, the industry, and the wider community through:

- the provision of support and opportunities for the Worker to share his experience and contribute to improving health and safety performance standards
- investment in operational implementation of health and safety system improvements within Downer Transport Services that will directly benefit workers
- increasing knowledge and awareness within the industry about the health and safety risks associated with grinder use
- sharing important health and safety information and resources within the industry to facilitate improvement in health and safety practices
- the provision of support to education and emergency service providers to facilitate their ongoing contributions to improved health and safety outcomes in the community.

**2.4 Statement of commitment that the behaviour, activities and other factors which caused or led to the contravention has ceased and will not reoccur**

Downer commits that the behaviour, activities, and other factors which caused the alleged contravention have ceased, and Downer will, so far as is reasonably practicable, ensure that such circumstances will not reoccur.

The health and safety of all workers, including sub-contractors undertaking work for Downer, is the number one consideration in our business. Downer swiftly addressed the issues which arose in the incident and has taken (and will continue to take) steps to ensure such circumstances do not arise again.

**2.5 Acknowledgement of the policy published by WorkSafe for the acceptance of an undertaking**

Downer New Zealand Limited *has read and understood the Enforcement Undertaking Operational Policy.*

**2.6 Acknowledgement that this undertaking will be published and publicised in full**

Downer New Zealand Limited *acknowledges that the undertaking will, if accepted, be published on WorkSafe's website in full and referenced in WorkSafe material.*

**2.7 Statement of the person's ability to comply with the terms of this undertaking and meet the projected costs of the activities**

Downer New Zealand Limited

*has the financial ability to comply with the terms of this undertaking and have provided evidence by way of*

The ultimate parent company, Downer EDI Limited, is a publicly listed company in Australia with publicly available financial information.

*In the event of impending receivership, liquidation or sale of the entity Downer New Zealand Limited*

*will advise WorkSafe of the relevant circumstances and its capacity to comply with the outstanding terms of this undertaking.*

**2.8 Statement outlining any relationship between the person and any corporations, officers, employees, contractors, proposed beneficiaries of donations or scholarship or other recipient of financial benefit contained in this undertaking**

Downer acknowledges that it has current relationships with the following entities or people who are beneficiaries in this undertaking:

- Civil Contractors New Zealand – Downer is a current member.
- Current workers of Downer.
- The Worker.

Aside from those relationships Downer is not aware of any other current relationships with any of the beneficiaries outlined in this undertaking.

## **2.9 Statement regarding Intellectual Property**

Downer New Zealand Limited

*grants WorkSafe a perpetual, non-exclusive, worldwide and royalty-free licence to use, for any purpose, all Intellectual Property Rights in relation to any material developed as a result of this undertaking. This licence includes the right to use, copy, modify and distribute the materials.*

## **2.10 Acknowledgement that the person may be required to provide a statutory declaration**

Downer New Zealand Limited

*acknowledges that it may be necessary for WorkSafe to obtain a statutory declaration outlining details of any prior convictions (safety related) outside of New Zealand and that it will provide such declaration if required by WorkSafe*

## **2.11 Statement of commitment from the person to participate constructively in all compliance monitoring activities for this undertaking**

- 1. It is acknowledged that responsibility for demonstrating compliance with this undertaking rests with the person.*
- 2. Evidence to demonstrate compliance with the terms will be provided to WorkSafe by the due date for each term.*
- 3. The evidence provided to demonstrate compliance with this undertaking will be retained by the person until advised by WorkSafe, that this undertaking has been completely discharged.*
- 4. It is acknowledged that any failure to meet the due date for an enforceable term will result in the matter being escalated and may lead to enforcement action.*
- 5. It is acknowledged that WorkSafe may undertake other compliance monitoring activities to verify the evidence and compliance with an enforceable term, and cooperation will be provided to WorkSafe.*
- 6. It is acknowledged that WorkSafe may initiate additional compliance monitoring activities, such as inspections, as considered necessary at WorkSafe's expense.*
- 7. It is acknowledged that details of all seminars, workshops and training conducted by a non-registered training provider must be notified to WorkSafe, by email, at least one week prior. Notification should include time, date, location and the trainer/facilitator.*

### 3. Enforceable terms

The person acknowledges all activities set forth in the enforceable terms below must be auditable and include a date for completion and an estimated cost for each activity.

The person commits to performing the activities below diligently, competently and by the respective completion date.

#### **3.1 A commitment by the person to perform activities that will ensure the ongoing effective management of risks to health and safety in the future conduct of its business or undertaking**

*Detail the management strategies to be employed that will satisfy and demonstrate to officer/s of the person that this commitment is being met:*

Continuous improvement in setting and implementing workplace health and safety practices and expectations is an important aspect of Downer's business. Central to this is a focus on identifying, assessing, and effectively managing critical risks in work activities to ensure the health and safety of Downer workers and others. Downer is committed to ensuring the business takes all reasonably practicable steps to effectively manage risks to health and safety in its future work activities.

In addition to the other initiatives outlined in this undertaking, Downer intends to realise its commitment to continuous health and safety improvement and the management of critical risks by undertaking the following activities:

- ensuring established risk management procedures are used consistently for all physical works activities undertaken by Downer, and that these processes are monitored for ongoing effectiveness
- providing ongoing training and information to workers about how they can keep themselves and their workmates safe at work
- ongoing and regular engagement and consultation with workers about health and safety issues in the workplace

Downer has, and will continue to, dedicate significant financial and personnel resources to these activities.

Downer's commitment to continuous health and safety improvement requires 'buy in' from all levels of the business. Most importantly, this means our business leaders need to be actively engaged in health and safety and 'walk the talk' in leading health and safety from the top. Senior leaders in the business are expected to regularly conduct Critical Risk Observations (CROs) and Critical Risk Verifications (CRVs). This ensures that the risk mitigation strategies being employed on site are aligned with our overall approach to managing risks. Presence of senior leaders on site also reinforces the importance that Downer puts towards safety in the field.

#### **3.2 A commitment by the person to disseminate information about this undertaking to workers, and other relevant parties**

*(this may include to work health and safety representatives and in the organisation's annual report, if applicable)*

Downer commits to disseminating information about this undertaking to workers and other relevant parties.

*Dissemination will be achieved by doing the following:*

Downer will share information about this undertaking by:

- Publishing a copy of the undertaking on Downer's intranet site, which is accessible by all Downer employees.

<ul style="list-style-type: none"> <li>• Preparing a one page alert summarising the undertaking and referring to the availability of the full undertaking on the intranet. The alert will be emailed to all employees with a Downer email address.</li> <li>• Preparing a toolbox talk to be completed by all project sites explaining the circumstances of the incident and the terms of the undertaking.</li> <li>• Briefing Downer's Health and Safety Representatives and Health and Safety Committee members about the undertaking so that they can be a contact point for other workers.</li> <li>• Briefing all managers in the Downer Transport Services division in relation to this enforceable undertaking, in order that managers can have appropriate discussions with Downer's contractors and clients about the undertaking.</li> </ul>
<p><i>Dissemination will occur:</i></p> <p>Within 60 days of the date of this undertaking.</p>

3.3 Activities to be undertaken to promote the objectives of the health and safety legislation that will deliver benefits for workers and/or work and/or the workplace		
ACTIVITIES <i>Outline the activity and the expected outcomes</i>	COST (\$)	TIMEFRAME
<p><b>1. Make Downer's contractor prequalification and management procedure more robust</b></p> <p><b>Background:</b> Downer is already reviewing and redesigning its current contractor prequalification and management process (reference to contractors includes sub-contractors) to ensure a robust and consistent process is in place to appropriately pre-qualify and engage contractors to undertake work for Downer.</p> <p><b>Scope:</b> The project will include a review of procedures that will reinforce the expectation on Downer project managers to ensure that the health and safety expectations of Downer are communicated to the contractor and to require the contractor to provide a contract specific health and safety plan or safe system of work for the work intended to be undertaken.</p> <p>Key goals of this review are to ensure that:</p> <ul style="list-style-type: none"> <li>• Greater clarity is provided to prospective contractors about Downer's health and safety expectations, and operational business units are prompted to ensure that contractors provide their contract specific safety management plans, and review these to ensure conformance with Downer health and safety expectations.</li> </ul> <p><b>Delivery:</b> The delivery of an improved contractor management process will:</p> <ul style="list-style-type: none"> <li>• Provide a clear definition of a subcontractor versus a supplier.</li> </ul>	<p>\$108,000 comprising \$25,000 for dedicated internal resources, analysts, developers and testers (this does not include staff costs for the steering committee or management roles in relation to the project) and \$83,000 for external resources, including consultants, specialists and IT configuration costs.</p> <p>This cost relates to this specific aspect of the Contractor Management process and does not include the wider project costs. Also, it does not include ongoing maintenance costs (including reviews and updates), licensing fees for the software or</p>	<p>Within 12 months of the date of this undertaking</p>

<ul style="list-style-type: none"> <li>• Ensure Downer meets its health and safety obligations with respect to subcontractor and supply chain management including induction, monitoring, reviewing and rating.</li> <li>• Ensure processes are appropriate to the contract type, size, and risk associated with the contract being entered into.</li> <li>• Allow contractors to have access to Downer health and safety information (inductions, alerts, critical risks, PPE information, injury management processes, health and safety and environment policies and principles etc.)</li> <li>• Provide a training programme for Downer project managers to deliver robust subcontractor management.</li> </ul> <p><i>Stage one: Workshops with Downer contract managers.</i> Downer will revise the current Contractor Management Process to address issues with the current engagement process in relation to sharing Downer health and safety expectations and seeking from contractors their health and safety plans and/or methodology for review prior to allocating work.</p> <p><i>Stage two: Review.</i> Downer will undertake to review the Contractor Management Process after 6 months against the expectation of informing the contractors about Downer's health and safety expectations and evidence that they have requested and received the contractor's proposed health and safety plan and assessed this against Downer health and safety expectations.</p>	<p>extensive internal staff costs (Zero Harm, managers and senior staff), which will be ongoing.</p>	
<p><b>2. Training in new prequalification procedure</b></p> <p><b>Scope:</b> Downer Transport Services will provide training to its contract managers and procurement specialists in the newly developed prequalification procedure.</p> <p><b>Delivery:</b> Downer Transport Services will run two training workshops (one in the North Island and one in the South Island) with relevant staff to ensure they understand their obligation to share Downer's health and safety expectations and to review the contractor's proposed health and safety plan against Downer's health and safety expectations before the work is awarded.</p>	<p>Direct costs not able to be quantified</p>	<p>Within 2 months of the development of the new prequalification procedure</p>
<p><b>3. Group audit of prequalification procedure</b></p> <p><b>Scope:</b> Downer will request Downer Group Audit (in Australia) to undertake two audits of the performance of the prequalification procedure over a period of 12 months, at which time the need for, and frequency of, further audits will be reviewed.</p> <p><b>Outcome:</b> The audits will provide Downer with external verification that the prequalification procedure is working effectively and as intended, and will identify</p>	<p>\$7,000 including Downer Group staff costs, accommodation, and travel.</p>	<p>First audit within 6 months from the date of this undertaking and a further audit 6 months later.</p>

necessary improvements that can be actioned to ensure the ongoing effectiveness of the prequalification procedure.		
<p><b>4. Contractor management training course</b></p> <p><b>Scope:</b> Downer Transport Services will arrange for selected contract and project managers to attend a one day training course on contractor management.</p> <p><b>Outcome:</b> The course is intended to enhance attendees' knowledge of Downer's contractor management requirements and equip them with practical skills that will assist in the effective management of and engagement with contractors involved in Downer projects.</p>	Direct costs not able to be quantified (internal staff costs have not been included).	Within 9 months of the date of this undertaking
<p><b>5. Development of a Contractor Induction pack</b></p> <p><b>Scope:</b> Downer Transport Services will develop a 'Contractor Induction' pack which will be provided to and discussed with workers during inductions. The Contractor Induction pack will include key health and safety information to help workers keep safe on site, including:</p> <ul style="list-style-type: none"> <li>• Downer's Restricted and Banned Items Registers</li> <li>• Downer's Cardinal Rules</li> <li>• Downer's minimum PPE requirements</li> </ul> <p><b>Outcome:</b> The provision of Contractor Induction packs is intended to provide workers with key health and safety information that they can easily reference during their work activities.</p>	<p>Production of materials: \$3,000 for 2000 copies.</p> <p>The staff time designing, editing, printing, collating or issuing the Contractor Induction packs is not able to be quantified.</p>	Within 6 months of the date of this undertaking
<p><b>6. Downer Transport Services representation on Downer's Sub-Contractor Management Project</b></p> <p>Influencing and having a Downer Transport Services representative on Downer's Sub-Contractor Management Project to ensure the Sub-Contractors' pre-qualification methodology and systems are assessed.</p>	Direct costs not capable of quantification	A representative has been appointed and it is anticipated the project will be completed within 9 months of the date of this undertaking
<p><b>7. Sharing learnings and alternative cutting methods</b></p> <p>Downer will share the learnings from this incident, including Downer's research into alternative cutting methods, with all Downer employees via a CEO video and will put a message about the incident and this enforceable undertaking on the Downer intranet for all employees to access.</p>	\$3,000 production costs	Within 6 months of the date of this undertaking
<i>Total estimated cost of benefits for workers/others</i>	\$121,000	

**3.4 Activities to be undertaken to promote the objectives of the health and safety legislation that will deliver benefits for the wider industry or sector**

<b>ACTIVITIES</b> <i>Outline the activity and the expected outcomes</i>	<b>COST</b> <b>(\$)</b>	<b>TIMEFRAME</b>
<p><b>1. Present Downer's findings on alternative cutting methods to selected industry associations</b></p> <p><b>Scope:</b> Downer will prepare and provide workshops to selected industry associations to share its learnings from the trials it has undertaken into alternative cutting methods which do not require the use of an angle grinder to assist contractors doing similar work. The proposed industry associations are:</p> <ul style="list-style-type: none"> <li>(a) CEO Forum</li> <li>(b) New Zealand Transport Agency's Health and Safety Forum</li> <li>(c) Civil Contractors New Zealand</li> <li>(d) Industry Advisory Group</li> <li>(e) Waikato District Council</li> <li>(f) Hamilton City Council</li> </ul> <p><b>Outcome:</b> The workshops are intended to raise awareness of the risk of angle grinder use and provide information about appropriate alternative cutting methods that avoid angle grinder use altogether. Providing this information to industry associations will facilitate the subsequent dissemination of this information to association members.</p>	<p>Travel \$1,500</p> <p>Staff costs \$2,500 (being \$1,000 in relation to (a) and \$100 per hour x 3 hours x 5 presentations for (b)-(f)).</p>	<p>Within 6 months of the date of this undertaking</p>
<p><b>2. Present seminar series in conjunction with the injured Worker</b></p> <p><b>Scope:</b> Downer will, in conjunction with the Worker, prepare and provide five presentations (at selected locations throughout New Zealand) to relevant industry participants. The presentations will be an opportunity for the Worker to share his experience of the incident and his recovery and to highlight the risks associated with angle grinders.</p> <p><b>Outcome:</b> The presentations are intended to raise awareness of the dangers of angle grinder use by demonstrating the real life impact of what can happen when something goes wrong.</p>	<p>Travel and accommodation \$2,500 (being \$500 per session x 5 sessions)</p> <p>Presentation materials including video and developing content \$3,000</p> <p>Public speaking coaching \$1,500</p> <p>Staff time \$1,600 (2x \$100 per hour x 8 hours)</p>	<p>Within 9 months of the date of this undertaking</p>
<p><b>3. Commission educational training video</b></p> <p><b>Scope:</b> Downer will build on the trials of alternative cutting options and develop an educational video demonstrating the various alternative cutting options that do not require grinder use. The video will also include a summary of the incident from the Worker himself and highlight the risks associated</p>	<p>Video production costs \$5,500</p>	<p>Within 9 months of the date of this undertaking</p>

<p>with grinder use. Downer will make the video available free of charge to industry participants to use for internal training purposes.</p> <p><b>Outcome:</b> The video is intended to raise awareness of effective alternative cutting methods that can be adopted by industry members in order to avoid the higher risk option of using an angle grinder.</p>		
<i>Total estimated cost of benefits for industry</i>	\$18,100	

<b>3.5 Activities to be undertaken to promote the objectives of the health and safety legislation that will deliver benefits for community</b>		
<b>ACTIVITIES</b>	<b>COST (\$)</b>	<b>TIMEFRAME</b>
<p><b>1. Angle grinder safety information for small businesses and individuals</b></p> <p><b>Scope:</b> Downer will engage with WorkSafe New Zealand, NZ Construction Safety Council, and key retailers of angle grinders in New Zealand (Bunnings, Mitre 10, NZ Safety Blackwoods, PlaceMakers, and Carters) to develop and disseminate a safety warning to raise awareness about the risks associated with the use of angle grinders.</p> <p><b>Outcome:</b> The safety warning will be developed with the intention that it be used by plant hire companies and key retailers that supply angle grinders to the small business, sole trader, and home handyman market.</p>	\$3,000	Within 6 months of the date of this undertaking
<p><b>2. Improving clarity around recommended personal protective equipment for angle grinder use</b></p> <p><b>Scope:</b> Downer will engage with the New Zealand importers of cutting discs and angle grinders and request they update the recommended PPE for angle grinder use (appearing as symbols on the relevant products) from safety glasses to face shields or double eye protection (e.g. safety glasses and face shields).</p> <p><b>Outcome:</b> Downer hopes that as a result of engagement with the New Zealand importers of cutting discs and angle grinders greater clarity can be achieved around recommended levels of PPE that should be used when people are operating angle grinders.</p>	\$600	Within 3 months of date of this undertaking

<p><b>3. Scholarships to support tertiary study in workplace health and safety</b></p> <p>Downer will work with Massey University to establish a scholarship valued at \$15,000 to support a student completing a Bachelor of Health Science (Occupational Health and Safety). As part of the scholarship, Downer will also offer the student a place on the Downer summer intern programme that will bring them into Downer's business, working in the Zero Harm team and give them valuable workplace experience.</p>	\$15,000	Within 6 months of the date of this undertaking
<p><b>4. Donation to Waikato Westpac Rescue Helicopter</b></p> <p>Downer recognises that many businesses in New Zealand undertake work in remote and isolated areas, and when an emergency occurs in these areas it is often difficult to get immediate help. Downer will donate \$5,000 to the Westpac Rescue Helicopter to support its work in providing emergency response services.</p>	\$5,000	Within 1 month of the date of this undertaking
<p><i>Total estimated cost of benefits for the community</i></p>		\$23,600

**3.6 Agreement to pay WorkSafe's recoverable costs**

Downer New Zealand Limited

*agrees to pay WorkSafe's costs associated with this undertaking, as itemised below, and it is acknowledged that payment is due 30 days after receipt of the WorkSafe invoice:*

COSTS	MINIMUM SPEND
Administrative	
Legal	\$1,848.00
Compliance Monitoring	
Publication (if any)	
<b>Total recoverable costs</b>	<b>\$1,848.00</b>

**3.7 Acknowledgement regarding any promotion of the person in relation to this undertaking**

Downer New Zealand Limited

*agrees that it will not undertake any activities that may promote or benefit the person without explicitly linking that activity/benefit to this undertaking*

**3.8 Where WorkSafe considers appropriate in the circumstances, developing a commitment to (establish and maintain OR maintain) an HSMS**

**3.8.1 Downer New Zealand Limited**

*acknowledges there is a formal documented HSMS acceptable to WorkSafe that satisfies the principles of AS/NZS 4804:2001 Occupational health and safety management systems – General guidelines on principles, systems and supporting techniques*

**3.8.2 Downer New Zealand Limited**

*commits to ensuring that the HSMS remains compliant with AS/NZS 4804:2001 Occupational health and safety management systems – General guidelines on principles, systems and supporting techniques*

**3.9 Minimum spend**

**3.9.1** Downer New Zealand Limited *commits to a minimum spend of \$189,548 for this undertaking.*

**3.9.2** Downer New Zealand Limited *agrees to spend any residual amount arising from an original term not being completed or being less costly than estimated in this undertaking. Agreement on how to spend this residual amount will be sought from WorkSafe*

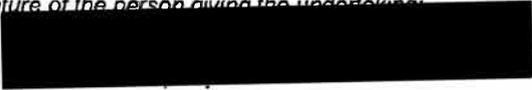
**3.9.3** Downer New Zealand Limited *acknowledges the minimum spend comprises of the:*

<b>TOTAL COST</b>	<b>MINIMUM SPEND</b>
Financial amends paid to victims (if applicable)	\$25,000*
Benefits to workers/others	\$121,000
Benefits to industry	\$18,100
Benefits to community	\$23,600
WorkSafe's recoverable costs	\$1,848
<b>Estimated cost of the undertaking</b>	<b>\$189,548 (GST excl)</b>

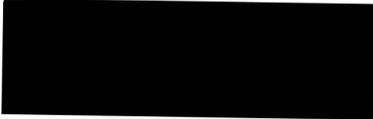
*\* Plus the benefits in paragraph 1.8*

#### 4. Execution

This undertaking is given by the person on the date it is accepted by WorkSafe as set forth in section 5 below.

<b>Director or authorised representative of a company</b>
<i>Undertaking given by (name of director or authorised representative)</i> Derek Robertson
<i>In my own right and in my capacity as (eg Director, Managing Director, Chief Executive, etc)</i> Executive General Manager Transport Services
<i>Of (company name)</i> Downer New Zealand Limited
<i>On the (day) 7<sup>th</sup> day of (month) DECEMBER, 2017 (year)</i>
<i>Signature of the person giving the undertaking:</i> 
<i>Undertaking given before me:</i> <i>Witness name: MELISA BEIGHT SOLICITOR</i>
<i>Witness address: AUCKLAND</i>
<i>Witness signature:</i> 

## 5. Acceptance

<i>This undertaking is accepted by WorkSafe.</i>	
On the (day) <u>11</u> day of (month) <u>12</u> , <u>2017</u> (year)	
Signature of person accepting the undertaking: 	
Name of WorkSafe representative (General Manager, WorkSafe <del>(or delegate)</del> ) <u>Brett Murray</u>	
Undertaking given before me: Witness name: <u>Cordell Weir</u>	
Witness address: <u>WorkSafe NZ 86 Customhouse Quay - WGTN</u>	
Witness signature:	