

**Undertaking given under Section 9.5 of the
Environmental Planning and Assessment Act
1979 (NSW) by Laing O'Rourke Australia
Construction Pty Ltd (ACN 112 099 000)**

Undertaking given under Section 9.5 of the *Environmental Planning and Assessment Act 1979 (NSW)* by Laing O'Rourke Australia Construction Pty Ltd (ACN 112 099 000)

1 Person giving the Undertaking

- 1.1 This undertaking is given to the Secretary of the Department of Planning and Environment (**Secretary**) by Laing O'Rourke Australia Construction Pty Ltd (ACN 112 099 000) (**LORAC**), for the purposes of section 9.5 of the *Environmental Planning and Assessment Act 1979 (NSW)* (**EPA Act**).

2 Background

Background to the Development

- 2.1 LORAC is an engineering and construction company headquartered at Level 4, 100 Arthur Street NORTH SYDNEY NSW. LORAC is part of the Laing O'Rourke corporate group (**Laing O'Rourke Group**).
- 2.2 On 25 May 2010, the Minister for Planning granted approval to Laing O'Rourke Mount Street Pty Ltd (**LORMS**) (also part of the Laing O'Rourke Group) under former Part 3A of the EPA Act for MP Project 08_0241 (the **Approval**) for the development at 86-96 &100 Mount Street, NORTH SYDNEY NSW (the **Premises**) for the following;
- (1) Demolition of existing buildings;
 - (2) Excavation for 6 levels of basement;
 - (3) Construction and use of a 36 storey commercial and retail building together with 6 levels of basement car parking; and
 - (4) Construction of a ground floor podium level to allow for pedestrian thorough-fare and on-site streetscape, footpath reconstruction and infrastructure works in Mount Street, Walker Street and Spring Street together with public art works.
- (collectively, the **Development**).
- 2.3 The approved hours for construction works are set out in Condition D1 of the Approval (as modified by MOD 5 on 13 January 2017). Condition D1 (as modified) is excerpted at **Annexure A** to this Undertaking. Relevantly, Condition D1 provides that building construction works are restricted to 7:00AM – 10:00PM Monday to Friday, 7:00AM – 5:00PM on Saturdays, with no works on Sundays or Public Holidays.
- 2.4 Since approximately December 2015, LORAC has been engaged by the owner of the Premises as the Principal Contractor for the Development. LORAC is responsible for carrying out Development at the Premises. LORMS no longer has any involvement in the Development.

The Alleged Contravention

- 2.5 On 13 February 2018, Rangers employed by Council between 6.20AM and 7.00AM allegedly observed the following activities being carried out at the Premises:
- (1) Operation of two tower cranes making multiple lifts;

- (2) Operation of a forklift truck moving a skip bin and materials;
- (3) Delivery and unloading of plant and equipment being 3 scissor lifts to the property;
- (4) Operation of an external elevator; and
- (5) Workmen undertaking building and construction work

(the **Alleged Conduct**).

2.6 The Alleged Conduct is considered by Council to have contravened the EPA Act as:

- (1) Section 4.2 provides that a person must not carry out development unless the development is carried out in accordance with a consent granted under the EPA Act;
- (2) Condition D1 of the Approval (as modified) restricted the hours during which the Development could be carried out; and
- (3) Section 9.51 provides that a person who contravenes section 4.2 is guilty of an offence

(**Alleged Contravention**).

2.7 LORAC has:

- (1) Acknowledged that the Alleged Conduct by employees and contractors of LORAC would amount to a contravention of sections 4.2 of the EPA Act; and
- (2) Offered this Undertaking to Council.

Response to Alleged Contravention

- 2.8 LORAC acknowledges that there is a potential for the community to experience noise and visual impacts as a result of development work undertaken outside the permitted hours of a consent.
- 2.9 Although neither Council nor LORAC are aware of any complaints from the community regarding the Alleged Conduct, LORAC acknowledges the potential community impacts from breaches of this nature. The Laing O'Rourke Group is committed to ensuring minimal environmental and community impact wherever the Laing O'Rourke Group has a presence.
- 2.10 LORAC, and the broader Laing O'Rourke Group including its senior managers, are concerned by the Alleged Contravention and are committed to ensuring compliance with both the Approval and the EPA Act. Since Council brought the Alleged Contravention to the Laing O'Rourke Group's attention, the Alleged Conduct has received the full attention of the management of LORAC and the broader Laing O'Rourke Group.
- 2.11 LORAC has now taken a number of steps to ensure, as far as reasonably practicable, ongoing compliance with the Approval. These measures include a concerted effort to ensure that employees and contractors are aware of both the terms of the Approval and the process of obtaining out-of-hours permits. LORAC has done this through a combination of site-wide alerts, as well as weekly and monthly meetings.
- 2.12 The Laing O'Rourke Group has a good compliance history, and has not been prosecuted for offences for over 25 years, despite constantly working on large scale developments with complex environment and planning requirements. The Laing O'Rourke Group regrets that the Alleged Conduct occurred.

3 Commencement of this Undertaking

3.1 This Undertaking comes into effect when both:

- (1) This Undertaking is executed by LORAC; and
- (2) This Undertaking so executed by LORAC is executed by the Secretary or her delegate.

(the Commencement Date).

4 Undertaking

4.1 LORAC undertakes for the purposes of section 9.5 of the EPA Act that it will carry out the steps specified below:

- (1) Within 30 days after the Commencement Date, LORAC will deliver monthly refresher talks to staff and contractors involved with the Development. These refresher talks will:
 - (a) be delivered until either construction associated with the Development is completed, or LORAC ceases to be the Principal Contractor for the Development (whichever comes first);
 - (b) be delivered:
 - (i) at each of the monthly contractor meetings; and
 - (ii) once a month at the weekly employees meeting;
 - (c) include the following content:
 - (i) the terms of the Approval, including approved hours for different works;
 - (ii) the importance of complying with the terms of the Approval;
 - (iii) the process for reporting any compliance issues to Laing O'Rourke management; and
 - (iv) the process for raising with consent authorities any modifications or additional permits required.
- (2) To ameliorate any environmental or community impacts associated with the Alleged Contravention, LORAC will make a financial contribution to the Wendy Whiteley Secret Garden Trust (the Trust). The Trust carries out activities to maintain and improve the Wendy Whiteley Garden, located at Lot 1 DP 1220077, which is publically accessible for the enjoyment and use of the community, including gatherings and passive recreation activities.

The contribution will be:

- (a) in the sum of \$30,000; and
- (b) paid to the Trust on the later of the following dates:
 - (i) 30 days after the Trust has been registered as a Charity; or
 - (ii) 30 days after the Commencement Date.

- (3) Within 30 days after the Commencement Date, LORAC will reimburse Council a sum of \$1,500 for its costs associated with investigating and monitoring the Alleged Contravention and entering into this Undertaking;
- (4) Within 30 days after the Commencement Date, LORAC will reimburse the Department of Planning and Environment a sum of \$1,000 for its legal costs associated with accepting this Undertaking;
- (5) LORAC will implement the following steps to satisfy Council that the undertakings have been complied with:
 - (a) Email to Brad Calleia at council@northsydney.nsw.gov.au a copy of the refresher talk described in 4.1(1);
 - (b) Email to Brad Calleia at council@northsydney.nsw.gov.au a copy of the bank statement or transaction receipt which confirms that the payment described in 4.1(2) was made;
 - (c) Email to Brad Calleia at council@northsydney.nsw.gov.au a copy of the bank statement or transaction receipt which confirms that the payment described in 4.1(3) was made;
 - (d) Email to the Director – Compliance and Investigations at compliance@planning.nsw.gov.au a copy of the bank statement or transaction receipt which confirms that the payment described in 4.1(2)4.1(4) was made;
 - (e) Retain, and provide to Council if requested, copies of records confirming that the refresher talks described in 4.1(1) were delivered each month and the attendees at that talk.



5 Acknowledgements

5.1 LORAC acknowledges that:

- (1) The Secretary will make this Undertaking publicly available, including by publishing it on its website;
- (2) Council may make this Undertaking publicly available, including by publishing it on its website;
- (3) Council or the Secretary may, from time to time, make public reference to this Undertaking, including in any media statements and in Council's publications; and
- (4) This Undertaking in no way derogates from the rights and remedies available to any third parties arising from the Alleged Contravention.

Executed as an Undertaking

Executed by **Laing O'Rourke Australia Construction Pty Ltd** (ACN 112 099 000) pursuant to section 127(1) of the *Corporations Act 2001* by:

		
Signature of Director		Signature of Director / Company Secretary
Simon Terence Chatwin		Paul Teasdale
Name of Director (print)		Name of Director / Company Secretary (print)
Date 03/08/18		Date 3/8/18

Accepted by the Secretary of the Department pursuant to section 9.5 of the *Environmental Planning and Assessment Act 1979* (NSW) on

Date: 16/8/18

Secretary or their delegate: