

**ENFORCEABLE UNDERTAKING BY PCL CONSTRUCTORS  
PACIFIC RIM PTY LTD ACN 140 877 792 TO THE  
DEPARTMENT OF PLANNING AND ENVIRONMENT FOR THE  
PURPOSES OF SECTION 9.5 OF THE *ENVIRONMENTAL  
PLANNING AND ASSESSMENT ACT 1979* (NSW)**

**Lots 17 and 18 in Deposited Plan 753081, and any Crown land and road reserves  
within the project site also referred to as “West Wyalong Solar farm”**

## Enforceable Undertaking

To:

Secretary, Department of Planning and Environment 4 Parramatta Square, 12 Darcy Street,  
Parramatta NSW 2150

This enforceable undertaking (**Undertaking**) is given under section 9.5 of the *Environmental Planning and Assessment Act 1979* (NSW) (**EP&A Act**) by PCL Constructors Pacific Rim Pty Ltd (ACN 140 877 792) (**PCL**)

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### 1. Person Giving the Undertaking

This Undertaking is given to the Secretary, Department of Planning and Environment (**the Secretary**) by PCL for the purposes of s 9.5 of the EP & A Act.

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### 2. Background

- (a) On 28 November 2019 the Secretary for Planning and Public Spaces granted consent for the SSD 9504 Development Application (**the Consent**) submitted by Lightsource Development Services Australia Pty Ltd for the West Wyalong Solar Farm (**Development**).
- (b) A Heritage Management Plan (**HMP**) was completed for the Development on the 19 October 2020 by Artefact Heritage Services Pty Ltd. The HMP included information on the identification of areas of cultural significance within the Development area.
- (c) On 11 February 2021, an Engineering Procurement and Construction Contract (**the Contract**) was entered into, by a related body corporate of Lightsource Development Services Australia Pty Ltd, the West Wyalong Fund Pty Ltd and PCL (**the EPC Contractor**). The Contract confers responsibility for control and management of the Development to the EPC Contractor, this includes ensuring compliance with conditions of the Consent and management plans.
- (d) On 11 October 2021 the Department of Planning and Environment (**the Department**) issued PCL with a Show Cause Notice alleging that PCL committed an offence against section 4.2(1)(b) of the EP & A Act by carrying out a development not in accordance with the conditions of Consent.

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### 3. The Incident

1.1 Conditions 19 and 20 of the Consent for the Development, provide:

Condition 19.

The Applicant must ensure the development does not cause any direct or indirect impacts on the Aboriginal heritage items identified in Table 1 of Appendix 3 or located outside the approved development footprint.

Condition 20.

Prior to commencing construction, the Applicant must prepare a Heritage Management Plan for the development to the satisfaction of the Secretary....Following the Secretary’s approval, the Applicant must implement the Heritage Management Plan.

1.2 Table 1 of Appendix 3 of the Consent entitled ‘Aboriginal heritage items – avoid impacts’ listed the following sites that were to be avoided:

Item Name	AHIMS Number	Item type
<b>WWSF Bee Tree</b>	43-4-0058	Scarred tree
<b>WWSF AS01 Artefact Scatter</b>	43-4-0057	Artefact Scatter

1.3 The HMP provided that risks of impact to the sites listed in Table 1 could be avoided throughout the Development by employment of certain measures, including:

Prior to the commencement of construction an arborists report must be completed to advise the suitable size for an archaeological NO GO ZONE to be established around WWSF Bee Tree AHIMS ID 43-4- 0058 to ensure its long term viability in protecting it from unintended impacts to the tree or its root system.

These archaeological NO GO ZONES must be established before the commencement of works. Access to archaeological NO GO ZONES is to be restricted to Project staff who have received site specific heritage induction training, or persons under their direct supervision.

1.4 At approximately 12.30pm on 23 August 2021 the PCL representative overseeing the removal of vegetation pursuant to the Biodiversity Management Plan for the Development erroneously directed an operator to remove some trees. These trees were in proximity to a culturally modified Bee Tree, WWSF Bee Tree AHIMS ID 43-4-0058 (**the Bee Tree**). The excavator operator had commenced felling the trees.

1.5 The PCL representative moved on to identify the next stand of trees to be removed. At this time the PCL representative’s GPS has recalibrated and they realised that the previous location, where felling of trees had commenced, was incorrect and included trees that were not to be felled. The PCL representative contacted the Construction Manager to confirm the tree locations and returned to stop the excavator operator. The operations stopped.

1.6 When the Construction Manager attended the location, he was shown by the PCL representative the trees that had been felled and it was identified that the Bee Tree was one of the trees that had been felled.

### ***The Immediate response to the Incident***

- 1.7 After the incident occurred PCL implemented the procedure outlined in the HMP for unexpected finds. The Construction Manager called the Construction Project Manager to inform him of the incident that had occurred. The Construction Project Manager contacted the West Wyalong Fund Pty Ltd, otherwise known as the Principal, to inform them of the incident. In accordance with the protocol agreed between PCL and the Principal, the Principal then contacted the Department and Heritage NSW to report the incident.
- 1.8 PCL undertook an investigation of the incident to ensure the incident would not occur again and in accordance with the unexpected finds procedure in the HMP, the area was barricaded with an exclusion zone (temporary fencing/signage).
- 1.9 On 30 August 2021 a site meeting and inspection was conducted with the West Wyalong Aboriginal Land Council, a Heritage Consultant from Artefact Heritage, an Arborist and personnel from both PCL and the Principal. After that site meeting, a rehabilitation management plan was developed and implemented for the Bee Tree.
- 1.10 The Bee Tree was hoisted back into place and earth replaced around its roots. The tree was the subject of ongoing assessment and care. The tree was monitored by an Arborist. The cultural scar on the tree was not damaged.
- 1.11 The Bee Tree was monitored weekly by an arborist, unfortunately on 27 January 2022 the arborist declared the Bee Tree was dead.
- 1.12 On the 4 February 2022, the Principal notified the West Wyalong Aboriginal Land Council, heritage consultant and the Department that the Bee Tree was dead.

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#### **4. Commencement of this Undertaking**

This Undertaking comes into effect when:

- (a) this Undertaking is executed by PCL, and
- (b) this Undertaking so executed is accepted by the Secretary or delegate.

**(Commencement Date).**

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#### **5. Undertaking**

PCL hereby undertakes as follows and will in respect of the Bee Tree:

##### ***Remedial actions***

As the Bee Tree is no longer alive the heritage remediation actions to be undertaken by PCL, at PCL's own cost, as recommended by West Wyalong Aboriginal Land Council (**WWALC**) and heritage consultant are the following:

- (a) preserve the cultural scar of the Bee Tree by having a cultural heritage salvage specialist remove the portion of the Bee Tree that contains the cultural scar at PCL's own cost;
- (b) treat the removed portion of the Bee Tree that contains the cultural scar as directed by WWALC and the cultural heritage salvage specialist to ensure the preservation of the cultural scar at PCL's own cost;
- (c) once the portion of the Bee Tree that contains the cultural scar has been appropriately treated, transport the portion of the Bee Tree that contains the cultural scar as directed by WWALC and the cultural heritage salvage specialist to the WWLAC memorial as directed by WWLAC at PCL's own cost;
- (d) undertake upgrade works of the memorial area as directed by WWALC, which includes the following at PCL's own cost:
  - (i) Clearing, grubbing and placement of pavement to the WWLAC memorial area. This work will be procured by the WWLAC and funded by PCL;
- (e) fence the location of Bee Tree that still contains artefact scatter (WWSF AS01 AHIMS ID 43-4-0057) at PCL's own cost;
- (f) implement further training of PCL on-Site staff in consultation with the WWALC at PCL's own cost; and
- (g) review all PCL policies and procedures in relation to the protection of items of cultural heritage at PCL's own cost.

Each of the above steps in (a) to (g) must be completed by PCL within 12 months from the Commencement Date, unless agreed upon by DPIE and PCL.

### ***Reporting***

- (h) PCL must provide a monthly update of the progress in complying with the obligations under this Undertaking to the Secretary within 7 days of the end of each month until such time as the Secretary agrees in writing that PCL has met its obligations (excluding reporting obligations under sub clause (i)) under this Undertaking.
- (i) In addition to the monthly update, an audit report is to be submitted once PCL believes they have met their obligations under the Undertaking, which must:
  - (i) be conducted by a suitably qualified, experienced and independent cultural heritage expert which has been mutually agreed to by PCL, the Department and WWLAC;
  - (ii) assess the works undertaken by PCL and whether they comply with the requirements of this Undertaking;
  - (iii) recommend any measures or actions to improve the cultural heritage performance of the works to be carried out under this Undertaking provided that such measures or actions cannot require PCL to undertake works of a materially greater scope than those works required by this Undertaking, including timeframes for recommendation implementation; and

- (iv) produce a report on the outcomes of the Audit, which must be submitted to the Secretary by within 14 days of completion of the audit (Audit Report).
- (j) Within 3 months of the submission of the Audit Report, PCL must submit a Response to any recommendations made within that report.
- (k) PCL must comply with any reasonable requirement of the Secretary that results from a review of the Audit Report, which may include, but is not limited to implementing the Audit Recommendations.
- (l) In the event that an action specified in this Undertaking cannot be achieved in the timeframe indicated, PCL undertakes to notify the Secretary of the delay, or anticipated delay, and the reason for such delay as soon as reasonably practicable. Notification of any such delay or potential delay does not in any way affect PCL's responsibilities under this Undertaking.

In addition to the monthly update, an audit report is to be submitted by PCL within 6 months following completion of the Remedial Actions in (a) to (g) above.

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## 6. Acknowledgments

PCL acknowledges that:

- (a) the Secretary and/or the Department will make this Undertaking publicly available including by publishing it on the Department's public register of section 9.5 undertakings on its website.
- (b) the Secretary and/or the Department will, from time to time, make public reference to this Undertaking including in news media statements and in Department's publications.
- (c) this Undertaking in no way derogates from the rights and remedies or liabilities available to or affecting any other person arising from or associated with the subject matter of this Undertaking.
- (d) The events that led to the destruction of the Bee Tree and the harm caused to the Bee Tree may constitute offences under numerous legislative provisions including:
  - The *Environmental Planning and Assessment Act 1979*;
  - The *National Parks and Wildlife Act 1974*.

In the preparation of this Undertaking there has been consultation with the Department of Energy, Industry and Compliance as well as Department of Biodiversity, Conservation such that it is the intention that in the exercise of their discretions as to whether there ought to be separate proceedings commenced by other Government agencies in respect of those events or that harm, this Undertaking is intended to be a relevant consideration against taking such proceedings or action.

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7. Execution page


Executed as an Enforceable Undertaking

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Executed by **PCL Constructors Pacific Rim Pty**  
**Ltd ACN 140 877 792** in accordance with )  
s 127(1) and )  
s 127(3) of the *Corporations Act 2001*: )

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.....  
Signature of Director  
**GOPINATH GOVINDRAJ**  
.....  
Print full name


  
.....  
Signature of Director/Company Secretary  
**Ryan O'Connell**  
.....  
Print full name

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

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Date **3.06.2022**

and signed on behalf of the Department:

  
  
**Ben Harrison**  
.....  
Print full name  
.....  
Secretary or his Delegate



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## 8. Annexure 1 Development Consent

Enforceable Undertakings Documents

Password: jjAjMp2H

<https://pcl.egnyte.com/fl/pjndQmBxj8>





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**9. Annexure 2 Heritage Management Plan**

Enforceable Undertakings Documents

Password: jjAjMp2H

<https://pcl.egnyte.com/fl/pjndQmBxj8>



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**10. Annexure 3 Arborist Report**

Enforceable Undertakings Documents

Password: jjAjMp2H

<https://pcl.egnyte.com/fl/pjndQmBxj8>



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**11. Annexure 4 Show Cause Notice**

Enforceable Undertakings Documents

Password: jjAjMp2H

<https://pcl.egnyte.com/fl/pjndQmBxj8>



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12. Annexure 5 LALC Memorial Paving Area



