

**Undertaking given under Section 9.5 of the
Environmental Planning and Assessment Act
1979 (NSW) by Paynter Dixon Constructions
Pty Ltd (ACN 097 120 315)**

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1. Person giving the Undertaking

- 1.1 This undertaking is given to the Secretary of the Department of Planning and Environment (**Secretary**) by Paynter Dixon Constructions Pty Ltd (ACN 097 120 315) (**PDC**) 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 PDC is a construction company headquartered at Level 2, 2 Richardson Place, North Ryde NSW.
- 2.2 On 8 June 2016, the Sydney East Regional Joint Regional Planning Panel, as the consent authority, granted approval to Coles Group Property Developments Pty Ltd for 2015SYE117 - North Sydney - Development Application No. 327/15 (the **Approval**) for development at 101-111 Willoughby Road, Crows Nest and a portion of Zig Zag Lane, Crows Nest (the **Premises**) for the following:
- (1) Construction of a 4-6 storey mixed use building, including supermarket, public plaza and public carpark
- (collectively, the **Development**).
- 2.3 The approved hours for construction works are set out in Condition E11 of the Approval. Condition E11 is excerpted at **Annexure A** to this Undertaking. Relevantly, Condition E11 provides that building construction works are restricted to within the hours of 7.00am to 5.00pm Monday to Friday, 8.00am to 1.00pm on Saturdays, and no work on Sundays and Public Holidays.
- 2.4 The requirements for obtaining special permits for the Development are set out in Condition E13 of the Approval. Condition E13 is excerpted at **Annexure B** to this Undertaking. Relevantly, Condition E13 provides that unless otherwise specifically approved in writing by North Sydney Council (**Council**), all works, processes, storage of materials, loading and unloading associated with the development must occur entirely on the property.
- 2.5 Since approximately August 2016, PDC has been engaged by the owner of the Premises as the Principal Contractor for the Development. PDC is responsible for carrying out Development at the Premises and engaging subcontractors to undertake works in accordance with the Approval.

The Alleged Contravention

- 2.6 On 25 June 2018, Ranger/s employed by Council between 5.40pm and 6.30pm allegedly observed the following activities being carried out at the Premises:
- (1) Carrying out building construction work, namely pouring of concrete, after 5:00pm and without first obtaining an Out of Hours Works Permit.
- (2) Standing 2 skip bins on Atchison Street, without a permit.

- (3) Standing and operating a concrete pump on the corner of Willoughby Road and Albany Street, without a permit.
- 2.7 On 18 July 2018, Ranger/s employed by Council between 7.10am and 7.50am allegedly observed the following activity being carried out at the Premises:
- (1) Traffic cones placed along Atchison Street, so as to close the kerbside lane and restrict parking, without a permit.
- 2.8 On 19 July 2018, Ranger/s employed by Council between 9.55am and 10.21am allegedly observed the following activities being carried out at the Premises:
- (1) Operating a concrete pump to conduct a concrete pour on Willoughby Road.
 - (2) Standing a truck holding steel for delivery in Atchison Street, without a permit.
- 2.9 On 21 August 2018, Ranger/s employed by Council between 7.03am and 8.49am allegedly observed the following activities being carried out at the Premises:
- (1) Operating a mobile crane on the corner of Willoughby Road and Albany Street, without a permit.
 - (2) Standing 2 skip bins on Atchison Street, without a permit.
 - (3) Standing a truck delivering skip bins and coning off the area along Atchison Street, without a permit.
 - (4) Closing the street footpaths along Willoughby Road and Atchison Street, without a permit.
- 2.10 The alleged activities described in items 2.6 to 2.9 inclusive, are the **Alleged Conduct**.
- 2.11 The Alleged Conduct is considered by Council to have contravened the *Environmental Planning and Assessment Act 1987* (NSW) (**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 E11 of the Approval restricted the hours during which the Development could be carried out;
 - (3) Condition E13 restricted the areas in which activities may be carried out without obtaining the approval of Council in writing; and
 - (4) Section 9.51 provides that a person who contravenes section 4.2 is guilty of an offence
- (Alleged Contravention).**
- 2.12 PDC has:
- (1) Acknowledged that the Alleged Conduct by employees and contractors of PDC may amount to a contravention of sections 4.2 of the EPA Act; and
 - (2) Offered this Undertaking to Council.

Response to Alleged Contravention

- 2.13 PDC 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 and areas of a consent.
- 2.14 PDC acknowledges that the standing of vehicles, plant and equipment on public roads may be dangerous and may unduly interfere with the proper use of public roads by other vehicles and pedestrians.
- 2.15 PDC acknowledges the potential community impacts from breaches of the Approval. PDC is committed to ensuring minimal environmental and community impact wherever PDC has a presence.
- 2.16 PDC, 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 PDC's attention, the Alleged Conduct has received the full attention of the management of PDC.
- 2.17 PDC 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. PDC has done this through a combination of site-wide alerts, as well as weekly and monthly meetings.
- 2.18 PDC has a good compliance history, and has not been prosecuted for offences against the EPA Act, despite constantly working on large scale developments with complex environment and planning requirements. PDC regrets the Alleged Conduct occurred.

3. Commencement of this Undertaking

3.1 This Undertaking comes into effect when both:

- (1) This Undertaking is executed by PDC; and
- (2) This Undertaking so executed by PDC is executed by the Secretary or his delegate

(the **Commencement Date**).

4. Undertaking

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

- (1) Within 14 days after the Commencement Date, PDC will deliver information briefings and refresher talks to all staff and contractors involved with the Development. These briefings and refresher talks will:
 - (a) be delivered until either construction associated with the Development is completed, or PDC ceases to be the Principal Contractor for the Development (whichever comes first);
 - (b) be delivered:

(i) ~~forthwith, in the case of information briefings to all staff and contractors; and~~

- (ii) at each of the monthly contractor meetings in the case of refresher talks to contractors; and
 - (iii) at each weekly employees meeting in the case of refresher talks to PDC staff;
- (c) include the following content:
 - (i) a detailed description and explanation of the terms of the Approval, including approved hours for different works and the requirement for special permits;
 - (ii) the importance of complying with the terms of the Approval;
 - (iii) the processes for reporting any compliance issues to PDC 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, PDC will, within 30 days of the Commencement Date make a financial contribution in the sum of \$120,000 to Council to be deposited into a constrained reserve account to be used by Council in the implementation of the St Leonards Park Master Plan that was adopted on 26 March 2018.
- (3) Within 30 days after the Commencement Date, PDC will pay Council:
 - (a) a sum of \$2,500 for its costs associated with investigating and monitoring the Alleged Contravention and entering into this Undertaking; and
 - (b) a further sum of \$25,000 for its legal costs.
- (4) Within 30 days after the Commencement Date, PDC will pay the Department of Planning and Environment the sum of \$1,000 for its legal costs associated with accepting this Undertaking.
- (5) PDC will ensure that no building construction work is carried out at the Premises by its employees or any of its contractors other than within the hours of work prescribed by the Approval unless approval is first granted by Council in accordance with Condition E11 of the Approval.
- (6) PDC will ensure that none of its employees or any of its contractors stands or operates any vehicle, plant or equipment, or otherwise carries out any building and construction work associated with the Development outside the Premises unless approval is first granted by Council in accordance with the terms of the Approval, including Condition E13.
- (7) PDC will implement the following to satisfy Council that the undertakings have been complied with:
 - (a) Email to Craig Winn at craig.winn@northsydney.nsw.gov.au a copy of the refresher talk described in 4.1(1);
 - (b) Email to Craig Winn at craig.winn@northsydney.nsw.gov.au a copy of the **bank statement or transaction receipt that confirms the payments** described in 4.1(2) were made;

- (c) Email to Craig Winn at craig.winn@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 c/- Craig Winn at craig.winn@northsydney.nsw.gov.au a copy of the bank statement or transaction receipt which confirms that the payment described in 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. Acknowledgments

5.1 PDC acknowledges that:

- (1) The Secretary will make this Undertaking publicly available, including by publishing it on its website;
- (2) Council may make the 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 Enforceable Undertaking pursuant to section 9.5 of the *Environmental Planning and Assessment Act 1979* (NSW)

Executed by
**Paynter Dixon
Constructions Pty
Ltd (ACN 097 120
315) under s.127(1)
of the *Corporations
Act 2001***



sign

DIRECTOR

office (director or secretary)

JAMES BOYD

full name

21 AUGUST 2019

date



sign

DIRECTOR

office (director or secretary)

WILLIAM MORGAN

full name

21 AUGUST 2019

date

Council has negotiated the undertaking with PDC in relation to Council's functions under the EP&A Act and recommends that the Secretary accept the Undertaking.

Date: 23/8/19

David Sachs, Solicitor for North Sydney Council:



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

Date: 03/10/2019

Secretary of their delegate: ~~Amisha Jeyaraj, A/Secretary~~ Marcus Ray, Group Deputy Secretary,
Delegate of the Secretary.



Annexure A - Condition E11

Construction Hours

E11. Building construction and works must be restricted to within the hours of 7.00 am to 5.00 pm Monday to Friday and on Saturday to within the hours of 8.00 am to 1.00 pm inclusive, with no work on Sundays and Public Holidays.

Demolition and excavation works must be restricted to within the hours of 8.00 am to 5.00 pm Monday to Friday only. For the purposes of this condition:

- i. "Building construction" means any physical activity on the site involved in the erection of a structure, cladding, external finish, formwork, fixture, fitting of service installation and the unloading of plant, machinery, materials or the like.
- ii. "Demolition works" means any physical activity to tear down or break up a structure (or part thereof) or surface, or the like, and includes the loading of demolition waste and the unloading of plant or machinery.
- iii. "Excavation work" means the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders, or the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site and includes the unloading of plant or machinery associated with excavation work.

All builders, excavators must display, on-site, their twenty-four (24) hour contact telephone number, which is to be clearly visible and legible from any public place adjoining the site.

(Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community)

Annexure B - Condition E13

Special Permits

- E13. Unless otherwise specifically approved in writing by Council, all works, processes, storage of materials, loading and unloading associated with the development must occur entirely on the property.

The developer, owner or builder may apply for specific permits available from Council's Customer Service Centre for the undermentioned activities on Council's property. In the event that a permit is granted by Council for the carrying out of works, processes, storage of materials, loading and unloading associated with the development on Council's property, the development must be carried out in accordance with the requirements of the permit. A minimum of forty-eight (48) hours notice is required for any permit: -

1) **On-street mobile plant**

Eg. cranes, concrete pumps, cherry-pickers, etc. - restrictions apply to the hours of operation, the area of operation, etc. Separate permits are required for each occasion and each piece of equipment. It is the developer's, owner's and builder's responsibilities to take whatever steps are necessary to ensure that the use of any equipment does not violate adjoining property owner's rights.

(Reason: Proper management of public land)

2) **Hoardings**

Permits are required to erect Class A and Class B hoardings. If an 'A' Class hoarding is to alienate a section of Council's property, that section will require a permit for the occupation of Council's property.

(Reason: Proper management of public land)

3) **Storage of building materials and building waste containers (skips) on Council's property**

Permits to utilise Council property for the storage of building materials and building waste containers (skips) are required for each location. Failure to obtain the relevant permits will result in the building materials or building waste containers (skips) being impounded by Council with no additional notice being given. Storage of building materials and waste containers on open space reserves and parks is prohibited.

(Reason: Proper management of public land)

4) **Kerbside restrictions, construction zones**

Attention is drawn to the existing kerbside restrictions adjacent to the development. Should alteration of existing kerbside restrictions be required, or the provision of a construction zone, the appropriate application must be made and the fee paid to Council. Alternatives to such restrictions may require referral to Council's Traffic Committee and may take considerable time to be resolved. An earlier application is suggested to avoid delays in construction programs.

(Reason: Proper management of public land)