

**Enforceable Undertaking given section 9.5 of the  
*Environmental Planning and Assessment Act 1979* (NSW) by:**

**MN Builders Pty Ltd**

**(ACN 165 156 178)**

## Undertaking given under section 9.5 of the *Environmental Planning and Assessment Act 1979* (NSW) by MN Builders Pty Ltd

### 1. Person giving the Undertaking

- 1.1 This is the undertaking (**Undertaking**) given by MN Builders Pty Ltd (ACN 165 156 178) (**MN Builders**) of Level 8, 91 Phillip Street, Parramatta to the Planning Secretary of the Department of Planning, Housing and Infrastructure (the **Department**) for the purpose of section 9.5 of the *Environmental Planning and Assessment Act 1979* (NSW) (**EP&A Act**).

### 2. Background

#### **MN Builders**

- 2.1 MN Builders, at all material times, was the principal contractor in respect of a development at 73 and 67 Mary Street, 50 and 52 Edith Street and 43 Roberts Street, St Peters (the **Precinct 75 development**).

#### **The Consent**

- 2.2 The Precinct 75 development has a development consent (MOD 2025/0010 approved by the Regional Planning Panel on 18 August 2025) to construct a mixed-use development of Precinct 75, which includes three new buildings (the **Consent**).
- 2.3 Condition 80 of the Consent relevantly states:

*"80. Implementation of Construction Traffic Management Plan and Green Travel*

*During demolition, excavation and constructions, the applicant must implement the Construction Traffic Management Plan and Green Travel Plan approved by Council pursuant [sic] to Conditions 39 and 51."*

- 2.4 On 22 August 2024, Inner West Council (**Council**) approved a Construction Traffic Management Plan dated 1 July 2024 (**CTMP**).
- 2.5 Condition 86 of the Consent relevantly states:

*"86. Construction Hours – Class 2-9*

*Unless otherwise approved by Council, excavation, demolition, or construction work must only be permitted during the following hours:*

- a) 7:00am to 6:00pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm);*
- b) 8:00am to 1:00pm on Saturdays with no demolition works occurring during this time; and*
- c) at no time on Sundays or public holidays.*

*Certain works may be undertaken outside these hours if specifically detailed in the approved Construction Noise and Vibration Management Plan prepared and approved pursuant to Condition 40.*

*In the case that a standing plant or special out of hours permit is obtained from Council for works in association with this development, the works which are the subject of the permit may be carried out outside these hours.*

*This condition does not apply in the event of a direction from police or other relevant authority for safety reasons, to prevent risk to life or environmental harm.*

*Activities generating noise levels greater than 75dB(A) such as rock breaking, rock hammering, sheet piling and pile driving must be limited to:*

- a) 8:00am to 12:00pm, Monday to Saturday; and
- b) 2:00pm to 5:00pm Monday to Friday.

*Unless otherwise approved in the Construction Noise and Vibration Management Plan prepared and approved pursuant to Condition 40."*

2.6 Condition 103 of the Consent relevantly states:

*"Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with written evidence from Council that the following works on the Road Reserve have been completed in accordance with the requirements of the approval under section 138 of the Roads Act 1993 including:*

- a) *Heavy duty vehicle crossing(s) at the vehicle access location(s);*
- b) *The redundant vehicular crossing to the site must be removed and replaced by kerb and gutter along all site frontages;*
- c) *Construction of new footpaths and kerb along all site frontages;*
- d) *The public domain works approved with the development;*
- e) *Repair of all damage including road pavements resulting from the works; and*
- f) *Other works subject to the Roads Act 1993 approval.*

*All works must be constructed in accordance with Council's standards and specifications and AUS-SPEC#2-"Roadworks Specifications".*

### 3. Incident relating to out of hours work

- 3.1 On 14 February 2026, Council inspected the Precinct 75 development and observed works being undertaken outside the construction hours permitted by condition 86 of the Consent (**out of hours work**).
- 3.2 No out of hours permit had been approved for 14 February 2026.
- 3.3 Council considered that MN Builders contravened section 4.2(1)(b) of the EP&A Act and commenced proceedings in Newtown Local Court, proceedings numbered 2026/00079000 (the **Prosecution Proceedings**).
- 3.4 MN Builders acknowledges that out of hours work is a contravention of section 4.2(1)(b) of the EP&A Act and constitutes a minor to moderate level of harm to the local community and so has offered to enter into this Enforceable Undertaking.

### 4. Incidents relating to Roberts Street

- 4.1 Between 13 November 2025 and 29 January 2026, Council inspected the Precinct 75 development and observed that Boral concrete trucks entering and exiting the site via Roberts Street entry, contrary to the CTMP, on seven different occasions (**Roberts Street incidents**).
- 4.2 Council considered that MN Builders contravened condition 80 of the Consent which would be a contravention of section 4.2(1)(b) of the EP&A Act.
- 4.3 MN Builders acknowledges that the use of Roberts Street and Roberts Lane by construction traffic is a contravention of condition 80 of the Consent and constitutes a minor to moderate

level of harm to the environment and local community and so has offered to enter into this Enforceable Undertaking.

## **5. Commencement of this Undertaking**

5.1 This Undertaking comes into effect when both:

- (a) this undertaking is executed by MN Builders; and
- (b) this Undertaking so executed is accepted by the Planning Secretary of the Department of Planning, Housing and Infrastructure.

(the Commencement Date)

## **6. Terms of the Undertaking**

6.1 For the purposes of section 9.5 of the EP&A Act, MN Builders undertakes to do the following:

- (a) For the Precinct 75 development which is ongoing:

### *Dedicated toolbox talk relating to conditions of the Consent*

- (i) Prepare a detailed toolbox talk that:
  - (A) identifies relevant operational conditions of Consent that need to be complied with by any person working on the Precinct 75 development;
  - (B) identifies the approved routes that construction vehicles are to use to enter and exit the Precinct 75 development;
  - (C) provides examples of how the local community can be impacted if conditions of the Consent are not complied with; and
  - (D) explains the consequences and potential penalties for non-compliance with conditions of the Consent.
- (ii) Email Council's General Counsel at '[matthew.pearce@innerwest.nsw.gov.au](mailto:matthew.pearce@innerwest.nsw.gov.au)' within two weeks of the Commencement Date a copy of the detailed toolbox talk for the purpose of obtaining Council's approval.
- (iii) Deliver the toolbox talk to every person who is physically working on the development within two weeks of the toolbox talk being approved by the Council.
- (iv) Record attendance at the toolbox talk.

### *Audit*

- (v) Prepare an audit checklist that lists operational conditions of the Consent that can be audited and provide that list to Council for its approval.
- (vi) Email Council's General Counsel at '[matthew.pearce@innerwest.nsw.gov.au](mailto:matthew.pearce@innerwest.nsw.gov.au)' within two weeks of the Commencement Date a copy of the audit checklist for the purpose of obtaining Council's approval.
- (vii) Once approved by Council, use the audit checklist to conduct an audit of its compliance with the Consent on one random day every two calendar months until the Precinct 75 development physical work is completed. Where non-compliances are observed, a corrective action plan will be prepared and implemented within two weeks to remedy any non-compliance.

- (b) To carry out repairs to Roberts Street and Roberts Lane that are approved by the Council via the following pathway:
- (i) MN Builders and Council are to carry out a joint inspection of Roberts Road and Roberts Lane and agree to a scope of repairs to the roadway including but not limited to road and footpath/gutter surface within two weeks of the Commencement Date.
  - (ii) Email Council's General Counsel at 'matthew.pearce@innerwest.nsw.gov.au' within two weeks of the Commencement Date a PDF document that contains marked up photographs showing:
    - (A) areas of the road and footpath/gutter surface within Roberts Street and Roberts Lane to be repaired by MN Builders (**Roberts Street and Lane repair works**); and
    - (B) areas of the road within Roberts Street and Roberts Lane to be asphalt re-sheeted/milled and filled after the Roberts Street and Lane repair works are carried out and prior to the issue of an Occupation Certificate.
  - (iii) Lodge a section 138 application under the *Roads Act 1993* (NSW) within two weeks after receiving approval from Council of the Roberts Street and Lane repair works.
  - (iv) Carry out the Roberts Street and Lane repair works within six weeks of receiving a section 138 approval under the *Roads Act 1993* (NSW).
  - (v) MN Builders are to provide to Council an engineer's report within two weeks of completion of the Roberts Street and Lane repair works that such repair works have been undertaken in a satisfactory manner and in accordance with Austroads Guide to pavement Technology, Part 2: Pavement Structural design (2017) and RMS Supplement RMS 11.050 Version 3.0 - August 2018 (the Austroads Standard).
  - (vi) Prior to issue of an Occupation Certificate and in accordance with the Public Works condition 103 of the Consent, MN Builders will, after the Roberts Street and Lane repairs are completed to the Austroads Standard, undertake asphalt re-sheeting/mill and fill to the areas of Roberts Road and Roberts Lane shown in the PDF document referred to in clause 6.1(b)(ii)(B) in accordance with relevant Australian Standards.
- (c) To pay the sum of \$100,000 to the Council. The sum is to be applied solely for the street tree embellishment and kerb, gutter and footpath upgrades to the local road network surrounding the Precinct 75 development for the benefit of the residents and the community. The sum is to be paid within 150 days of the Commencement Date.

The payment is to be made to the following account:

- (A) Institution: Commonwealth Bank
  - (B) Account Name: Inner West Council
  - (C) BSB: 062227
  - (D) Account number: 10231800
- (d) To pay the sum of \$5,000 to Council to cover the Council's investigation and legal costs associated with this matter. This payment is to be made within 45 days of the Commencement Date to the following account:

- (i) Institution: Commonwealth Bank
  - (ii) Account Name: Inner West Council
  - (iii) BSB: 062227
  - (iv) Account number: 10231800
- (e) To pay the Department the amount of \$1,000 to cover the Department's costs associated with reviewing and considering this Undertaking. This payment is to be made within 45 days of the Commencement Date to the following account:
- (i) Institution: Westpac Bank
  - (ii) Account Name: DPIE Operational ACC No. 2
  - (iii) BSB: 032-001
  - (iv) Account number: 114428
- (f) To implement the following steps to satisfy Council that the undertakings in clause have been complied with:
- (i) Email Council's General Counsel at '[matthew.pearce@innerwest.nsw.gov.au](mailto:matthew.pearce@innerwest.nsw.gov.au)' written confirmation that the detailed toolbox talk referred to in clause 6.1(a)(iii) has been delivered to every person who is physically working on the development within two weeks of the toolbox talk being approved by the Council.
  - (ii) Email Council's General Counsel at '[matthew.pearce@innerwest.nsw.gov.au](mailto:matthew.pearce@innerwest.nsw.gov.au)' a copy of the completed audit checklist including any corrective action plan and an update on the progress of any corrective action plan referred to in clause 6.1(a)(vii) within two weeks of the audit being carried out each month.
  - (iii) Email Council's General Counsel at '[matthew.pearce@innerwest.nsw.gov.au](mailto:matthew.pearce@innerwest.nsw.gov.au)' a PDF document showing the before and after Roberts Street repair work to confirm the work has been completed within two weeks of the work being carried out including an engineer's report referred to in clause 6.1(b)(v).
  - (iv) Email Council's General Counsel at '[matthew.pearce@innerwest.nsw.gov.au](mailto:matthew.pearce@innerwest.nsw.gov.au)' a copy of the transaction receipts which confirms that the payment in clause 6.1(c) and 6.1(d) have been made, within seven days of making each of those payments.
  - (v) Email the Director - Compliance of the Department of Planning, Housing and Infrastructure at '[compliance@planning.nsw.gov.au](mailto:compliance@planning.nsw.gov.au)' a copy of the transaction receipt that confirms that the payment in clause 6.1(e) has been made, within seven days of making that payment.
- 6.2 Within 7 days of the Commencement Date, Council will cause the Prosecution Proceedings to be withdrawn.
- 6.3 On and from the Commencement Date, Council agrees that it will take no further action against MN Builders in relation to the out of hours work, the Prosecution Proceedings, or the

Roberts Street incidents, save for any enforcement of this Undertaking and the withdrawal of the Prosecution Proceedings.

## **7. Acknowledgements**

7.1 MN Builders acknowledges that:

- (a) 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 Department will, from time to time, make public reference to this Undertaking including in news media statements and in Department's publications; and
- (c) this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

**Executed as an Enforceable Undertaking under section 9.5 of the Environmental Planning and Assessment Act 1979**

Signed by **MN Builders Pty Ltd**  
under s.127(1) of the  
*Corporations Act*  
2001



sign  
the signatory states that he or she is the sole director and sole secretary of the company

Date

full name ANDY WAHAS  
31/08/2026

Council has negotiated the Enforceable Undertaking with MN Builders Pty Ltd in relation to Council's functions under the EP&A Act and recommends that the Planning Secretary accepts the Enforceable Undertaking.

Signed by **Council**  
under the EP&A Act



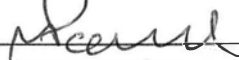
sign

full name Peter Gainsford

Date

Witness

September 2026



sign

full name M. PEARCE

Date

1 September 2026

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

Signed by the  
**Planning Secretary**  
pursuant to section  
9.5 of the EP&A Act



sign

Kiersten Fishburn

full name

Date

Witness

14 September 2026



sign

Sarah Goddard

full name

Date

14 September 2026