
**UNDERTAKING GIVEN UNDER SECTION 9.5 OF THE
ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979
BY BLACK HEAD BOWLING CLUB LIMITED (ABN 18 001
038 616)**

1. PERSON GIVING THE UNDERTAKING

- 1.1. This Undertaking is given to the Secretary of the Department of Planning and Environment (**Secretary**) by the Black Head Bowling Club Ltd (ACN 001 038 606) (**BHBC**) for the purposes of section 9.5 of the *Environmental Planning and Assessment Act 1979* (NSW) (**the EPA Act**).

2. BACKGROUND

The Land and Planning Controls

- 2.1. BHBC is the operator of a bowling club located at Main Street, Hallidays Point NSW 2430 being Lots 1 and 2 DP 796957 (**the BHBC Land**).
- 2.2. The BHBC Land is Crown Land leased by the BHBC.
- 2.3. The BHBC Land adjoins land known as Lot 7300 DP 1138532 (**Lot 7300**) to the south, east and north.
- 2.4. Lot 7300 is Crown Land in respect of which the Mid-Coast Council (**Council**) is the Crown Land Manager.
- 2.5. Lot 7300 is zoned E2 Environmental Conservation under the *Greater Taree Local Environmental Plan 2010* (**GTLEP**).
- 2.6. The BHBC Land is zoned RE2 Private Recreation under the GTLEP.
- 2.7. The BHBC Land and Lot 7300 are identified as Bushfire Prone land under the GTLEP.
- 2.8. Lot 7300 is vegetated with native vegetation, the majority of which that is identified as Littoral Rainforest on the Coastal Wetlands and Littoral Rainforests Area Map under the *State Environmental Planning Policy (Coastal Management) 2018* (**Coastal SEPP**).
- 2.9. The BHBC land is, in part on its southern and eastern boundaries, identified as “littoral rainforest” and the remainder is identified as Proximity Area for Littoral Rainforest on the Coastal Wetlands and Littoral Rainforests Area Map under the Coastal SEPP.
- 2.10. Under clause 10 of the Coastal SEPP, the clearing of native vegetation on land identified as Littoral Rainforest requires development consent, as designated development, under the EPA Act.
- 2.11. Lot 7300 contains a public access pathway known as the “Rainforest Walk” to the coast.

Background to Alleged Offence

- 2.12. The Council’s records indicate that:
 - (a) the BHBC has made several enquiries to the Council and the Department of Planning, Industry and the Environment – Crown Lands in relation to the removal of vegetation on land adjoining the BHBC Land;

- (b) The Council has advised the BHBC that development consent is required from the Council prior to clearing vegetation adjoining the BHBC Land;
 - (c) the Council has not received an application from BHBC for development consent to clear vegetation on and adjoining the BHBC Land.
- 2.13. On 8 and 9 November 2019, land in the general vicinity of the BHBC Land was impacted by bushfires. A high intensity bushfire impacted land situated south-west of the Black Head village, approximately 1.2 kilometres away from the BHBC Land. The fire was brought under control on 12 and 13 November 2019 and the BHBC Land was not under direct threat.
- 2.14. On 12 November 2019 a Director the BHBC at the time contacted the local Rural Fire Service seeking authorisation to clear a 20 metre fire break on the boundaries of the BHBC Land and Lot 7300.
- 2.15. Later on 12 November 2019, a Director of the BHBC at the time contacted the local Member of Parliament in relation to the creation of a firebreak.

The Alleged Offence

- 2.16. On 13 November 2019 the Council received a telephone call from a resident of Black Head reporting that vegetation had been cleared adjoining the BHBC Land.
- 2.17. In response, Council officers attended the boundary between the BHBC Land and Lot 7300 and observed an area of approximately 600m², that had been recently cleared of vegetation, on and adjoining the south and east boundary of the BHBC Land and Lot 7300.
- 2.18. Council officers observed that the clearing had impacted on the public access walkway referred to as the "Rainforest Walk".
- 2.19. Officers also observed equipment including a small excavator, a bobcat, a tip truck with an industrial wood-chipper attached and approximately six (6) people packing up equipment.
- 2.20. On 5 December 2019, a Council officer carried out a more detailed inspection of the cleared area observed on 13 November 2019, gathering GPS data and mapping the extent and perimeter of clearing. The data recorded 15 cut tree stumps and numerous holes where it appeared to the officer that additional tree stumps had been removed by machinery such as an excavator.
- 2.21. The Officer used the data collected to map the location of the clearing on the Council's GIS system. The results indicated that a small area of cleared land was mapped as Littoral Rainforest and the remaining part of the cleared land was mapped as Proximity Area for Littoral Rainforest on the Coastal Wetlands and Littoral Rainforests Area Map under the Coastal SEPP.
- 2.22. The Council has reason to believe that the clearing was carried out by or on behalf of the BHBC by members of the BHBC with the assistance of other members of the community, at the request of the BHBC.

- 2.23. The alleged activities described in clauses 2.15 to 2.22 inclusive are the **Alleged Conduct**.
- 2.24. The Alleged Conduct is considered by Council to have contravened the EPA Act as:
- (a) Section 4.2(1)(a) provides that a person must not carry out development unless a consent has been obtained and is in force;
 - (b) Section 9.51 provides that a person who contravenes section 4.2 is guilty of an offence.
- 2.25. The Council has identified the need for resources to prepare and implement a Plan of Management in respect of Lot 7300, which may include:
- (a) Remediation of the area impacted by the Alleged Conduct, including maintenance;
 - (b) Improvements to the entry to the "Rainforest Walk", including informative signage, maps and a drinking water station;
 - (c) Upgrades to, and maintenance of, the existing "Rainforest Walk" to improve safety and protect the environment
 - (d) A vegetation management plan for vegetation which directly impacts upon BHBC assets.
- 2.26. The BHBC has acknowledged that the Alleged Conduct may amount to a contravention of the EPA Act and has offered this Undertaking to Council.

3. **COMMENCEMENT OF UNDERTAKING**

- 3.1. This Undertaking comes into effect when:
- (a) this Undertaking is executed by the BHBC; and
 - (b) this Undertaking so executed by the BHBC is executed by the Secretary or his delegate.

(the Commencement Date)

4. **UNDERTAKING**

- 4.1. The BHBC undertakes for the purposes of section 9.5 of the EPA Act that it will do the following:
- (a) Pay the Council a total of \$25,000 (excluding GST) over five (5) years in five (5) instalments, in the following amounts and at the following times:
 - (i) by 1 February 2021, \$5,000 (excluding GST);
 - (ii) for four (4) years thereafter, on or before the anniversary of the Commencement Date, \$5,000 (excluding GST);

to be deposited into a restricted works account to be used by Council to prepare and implement a Plan of Management in respect of Lot 7300. The account will remain separate from the Council's General Revenue, it will be reconciled on a yearly basis and signed off by the Council's Responsible Accounting Officer.

- (b) BHBC will ensure that no further clearing is carried out by the BHBC on the BHBC Land or Lot 7300 unless pursuant to a development consent granted by the Council.


5. **ACKNOWLEDGEMENTS**

5.1. The BHBC acknowledges that:

- (a) The Secretary will make this Undertaking publicly available including by publishing its website.
- (b) Council may make the Undertaking publicly available, including by publishing on its website;
- (c) Council and the Secretary may, from time to time, make public reference to his Undertaking including in news media statements and in Council publications.
- (d) 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 PURSUANT TO SECTION 9.5 OF THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979 (NSW)

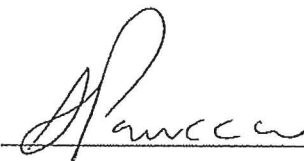
EXECUTED for and on behalf of
BLACK HEAD BOWLING CLUB LIMITED (ABN18 001 038 606) in accordance with Section 127(1) of the *Corporations Act 2001*:


.....
Signature of Director
BRAD GRANT
.....
Name of Director

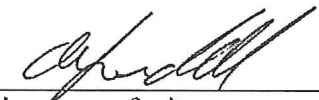

.....
Signature of Director/Secretary
SHANE GLORITS
.....
Name of Director/Secretary*

Council has negotiated the undertaking with the BHBC in relation to Council's functions under the EPA& Act and recommends the Secretary accept the Undertaking

MID-COAST COUNCIL by its authorised delegate pursuant to section 377 of the *Local Government Act 1993*

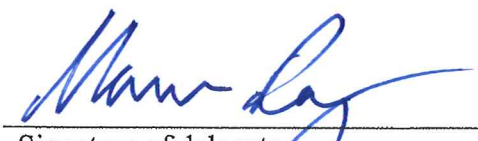

.....
General Manager

I certify that I am an eligible witness and that the delegate signed in my presence


.....
Signature of witness
Adam Fardell
.....
Name of witness
83 Magpie Place Dyers Crossing
.....
Address of witness

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

Date: 30/06/2020


.....
Signature of delegate
MARCUS GRAY
.....
Name of delegate
GROUP DEPUTY SECRETARY
.....
Position of delegate