

**Undertaking given under Section 9.5 of the  
Environmental Planning and Assessment Act  
1979 (NSW) by Richard Crookes Constructions  
Pty Limited (ACN 001 375 266)**

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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 Richard Crookes Construction Pty Limited (ACN 001 375 266) (**RCC**) 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 RCC is a construction company headquartered at Level 3, 4 Broadcast Way Artarmon NSW 2064.
- 2.2 On 11 February 2016, the Sydney East Regional Joint Regional Planning Panel, as the consent authority, granted development consent to Yuhu Group (Australia) Pty Limited for 2015SYE095 – North Sydney – Development Application No. 256/15 (the **Approval**) for development at 221 Miller Street, North Sydney (the **Premises**) for the following:
- (1) Demolition of the existing building and construction of a 22 storey mixed use development including retail at ground level, 100 serviced apartments, 169 resident apartments, and basement parking.
- (collectively, the **Development**).
- 2.3 The approved hours for construction works are set out in Condition E15 of the Approval. Condition E15 is excerpted at **Annexure A** to this Undertaking. Relevantly, Condition E15 provides that building construction works are restricted to within the hours of 7.00 am to 6.00 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 7.00 am to 5.00 pm Monday to Friday only.
- 2.4 The requirements for obtaining out of hours work permits for the Development are set out in Condition E16 of the Approval. Condition E16 is excerpted at **Annexure B** to this Undertaking. Relevantly, Condition E16 provides that where it is necessary for emergency works to occur outside those hours allowed by the conditions, an application may be made to North Sydney Council's (**Council**) Customer Services Centre for a permit to carry out emergency works outside of the approved hours.
- 2.5 Since approximately 16 November 2016, RCC has been engaged by the owner of the Premises as the Principal Contractor for the Development. RCC 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 26 April 2018, between 7.20pm and 10.00pm the following activities were allegedly carried out at the Premises:
- (1) Carrying out building construction work after 6:00pm and without first obtaining an Out of Hours Works Permit (**Alleged Conduct**).

- 2.7 The Alleged Conduct is considered by North Sydney Council (**Council**) to have contravened the EPA Act as:
- (1) Section 4.2(1)(b) 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 E15 of the Approval restricted the hours during which the Development could be carried out;
  - (3) Section 9.52 provides the maximum monetary penalty if a person is guilty of a Tier 1 offence; and
  - (4) Section 9.52 provides the maximum monetary penalty if a person is guilty of a Tier 2 offence

**(Alleged Contravention).**

- 2.8 RCC has:
- (1) Acknowledged that the Alleged Conduct by employees and contractors of RCC may amount to a contravention of section 4.2 of the EPA Act; and
  - (2) Offered this Undertaking to Council.

**Response to Alleged Contravention**

- 2.9 RCC 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.
- 2.10 RCC acknowledges the potential community impacts from breaches of the Approval. RCC is committed to ensuring minimal environmental and community impact wherever RCC has a presence.
- 2.11 RCC, 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 RCC's attention, the Alleged Conduct has received the full attention of the management of RCC.
- 2.12 RCC 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. RCC has done this through a combination of site-wide alerts, as well as weekly and monthly meetings.
- 2.13 RCC 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.

**3. Commencement of this Undertaking**

- 3.1 This Undertaking comes into effect when both:
- (1) This Undertaking is executed by RCC; and

- (2) This Undertaking so executed by RCC is executed by the Secretary or his delegate

(the **Commencement Date**).

#### **4. Undertaking**

4.1 RCC 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, RCC will deliver 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 RCC ceases to be the Principal Contractor for the Development (whichever comes first);
  - (b) be delivered:
    - (i) at each of the monthly employees' meetings; and
    - (ii) at each of the weekly contractors' meetings;
  - (c) include the following content:
    - (i) the terms of the Approval, including approved hours for different works and the requirement for out of hours works permits;
    - (ii) the importance of complying with the terms of the Approval;
    - (iii) the processes for reporting any compliance issues to RCC 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, RCC will make a financial contribution in the sum of \$20,000 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.
- The financial contribution totalling \$20,000 will be paid to Council 30 days after the Commencement Date.
- (3) Within 30 days after the Commencement Date, RCC will pay Council:
- (a) a sum of \$1,500 for its costs associated with investigating and monitoring the Alleged Contravention and entering into this Undertaking;
  - (b) a further sum of \$28,000 for its legal costs.
- (4) Within 30 days after the Commencement Date, RCC will pay the Department of Planning and Environment the sum of \$1,000 for its legal costs associated with accepting this Undertaking.

- (5) RCC 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 E16 of the Approval.
- (6) RCC 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](mailto: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](mailto: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](mailto: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](mailto: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 RCC 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 under section 9.5 of the Environmental Planning and Assessment Act 1979 (NSW)**


Executed by  
**Richard Crookes  
Constructions Pty  
Limited (ACN 001  
375 266)** under  
s.127(1) of the  
*Corporations Act  
2001*

  
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sign

  
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office (director or secretary)

  
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full name

  
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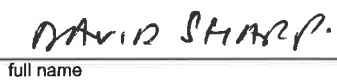
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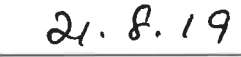
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full name

  
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date

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

Date: 27/8/19

David Sachs, Solicitor for North Sydney Council:

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

Date: 20/9/19.

~~Secretary of their delegate:~~ Anissa Levy, A/secretary:

  
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## **Annexure A - Condition E15**

### **Construction Hours**

- E15. Building construction and works must be restricted to within the hours of 7.00 am to 6.00 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 7.00 am to 5.00 pm Monday to Friday only. For the purposes of this condition:

“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.

“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.

“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 E16

### Out of Hours Work Permits

E16. Where it is necessary for emergency works to occur outside those hours allowed by these conditions, an application may be made to Council's Customer Services Centre for a permit to carry out emergency works outside of the approved hours. If a permit is issued the development must be carried out in accordance with any requirements of the permit. A permit shall only be approved if public safety or convenience is at risk. Any further variation shall require the lodgement and favourable determination of a modification application pursuant to Section 96 of the Environmental Planning and Assessment Act 1979.

#### Notes:

- 1) Failure to obtain a permit for work outside of the approved hours will result in on the spot fines being issued, or Council pursuing any action required (including legal proceedings) to have the out of hours work cease, without prior warning.
- 2) Further information on permits can be obtained from the Council website at [www.northsydney.nsw.gov.au](http://www.northsydney.nsw.gov.au).
- 3) It is recommended that applications for permits be lodged as early as possible to allow sufficient time for determination by Council and avoid disruption or delay due to conflicting priorities.
- 4) Permit Emergency for such occurrence shall be limited to two occasions per calendar month

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