

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

**Edward Alfred Temple (ET)**

**Russell Howard Temple (RT)**

**Jane Louise Temple (JT)**

**Undertaking given under Section 9.5 of the *Environmental Planning and Assessment Act 1979 (NSW)* by Edward Alfred Temple, Russell Howard Temple, and Jane Louise Temple**

**1. Persons giving the Undertaking**

1.1 This undertaking is given to the Secretary of the Department of Planning and Environment (**Secretary**) by the following individuals for the purposes of section 9.5 of the *Environmental Planning and Assessment Act 1979 (NSW)* (**EP&A Act**):

- (1) Edward Alfred Temple (**ET**).
- (2) Russell Howard Temple (**RT**).
- (3) Jane Louise Temple (**JT**).

**2. Background**

**Background to the Development**

- 2.1 ET, RT, and JT are the owners of 3 Appleberry Close, Glenorie NSW, being land described as Lot 4 in DP 270870 (**the Premises**). The Premises have an area of approximately 1 hectare, and are wholly zoned RU2 - Rural Landscape under the *Hills Local Environmental Plan 2019*.
- 2.2 The primary dwelling on the Premises has an area of 184m<sup>2</sup>.
- 2.3 On 25 July 2017, the Hills Shire Council, as consent authority, granted development consent with conditions to DA No. 111/2018/HA for the construction of an attached secondary dwelling and shed structure (**the Approved Development**).
- 2.4 The Approved Development involved the following construction works at the Premises:
  - (1) a new secondary dwelling (60m<sup>2</sup>);
  - (2) covered parking for two vehicles, plus one space for visitors adjacent to the secondary dwelling; and
  - (3) a large metal shed including a washing up area.
- 2.5 A construction certificate (CC/403277) was obtained on 27 September 2017 from BuildCert consultants, in their capacity as a private certifier for the Development. The certificate was issued by Josh Crilley.
- 2.6 An occupation certificate was obtained on 31 August 2018 also from BuildCert consultants. The certificate was issued by Kaine Tarlington.
- 2.7 Council allege that the works as constructed at the Premises are not consistent with the Approved Development and do not otherwise have development consent. Namely, Council allege that:
  - (1) The approved carport has been enclosed causing the total floor area of the secondary dwelling to exceed 60m<sup>2</sup>.
  - (2) The internal configuration of the secondary dwelling and shed structure is different to what was approved. There is an expanded living/dining area, and

within the approved shed there is a new master bedroom and walk in robe, staircase, and mezzanine bedroom.

- (3) The timber deck on the northern and eastern sides of the secondary dwelling is larger in size compared to what was approved through the construction certificate CC/403277.
- (4) A portico has been constructed.
- (5) A double carport has been constructed on the southern side of the secondary dwelling.

**(the Unauthorised Works).**

### **The Alleged Contraventions**

2.8 Between 1 September 2018 and 16 January 2019:

- (1) ET carried out the Unauthorised Works at the Premises; and
- (2) RT and JT aided, abetted, counselled, or procured ET to carry out the Unauthorised Works at the Premises.

**(Conduct).**

2.9 The Conduct on the part of ET is considered by Council to have contravened the EP&A Act as:

- (1) Section 4.2(1)(a) provides that a person must not carry out development unless such a consent has been obtained under the EP&A Act and is in force.
- (2) The Unauthorised Works were carried out without development consent contrary to the provisions of section 4.2(1)(a) of the EP&A Act.
- (3) Section 4.3(a) provides that a person must not carry out development that is specified in an environmental planning instrument as being prohibited development.
- (4) The Unauthorised Works involved prohibited development contrary to the provisions of section 4.3(a) of the EP&A Act.
- (5) Such conduct gives rise to an offence under section 9.51 of the EP&A Act.

2.10 The Conduct on the part of RT and JT is considered by Council to have contravened the EP&A Act as:

- (1) Section 4.2(1)(a) provides that a person must not carry out development unless such a consent has been obtained under the EP&A Act and is in force.
- (2) The Unauthorised Works were carried out without development consent contrary to the provisions of section 4.2(1)(a) of the EP&A Act.
- (3) The aiding, abetting, counselling, or procuring of the Unauthorised Works gives rise to an offence pursuant to section 9.50(3A)(a) of the EP&A Act.

- (4) Section 4.3(a) provides that a person must not carry out development that is specified in an environmental planning instrument as being prohibited development.
  - (5) The Unauthorised Works involved prohibited development contrary to the provisions of section 4.3(a) of the EP&A Act.
  - (6) The aiding, abetting, counselling, or procuring of the Unauthorised Works gives rise to an offence under section 9.50(3A)(a) of the EP&A Act.
- 2.11 The Conduct is alleged to have amounted to offences under the EP&A Act as described above, and is referred to as the **Alleged Contraventions**.
- 2.12 ET, RT, and JT have:
- (1) acknowledged that the Conduct is likely to constitute contraventions of section 4.2 or section 4.3 of the EP&A Act or both; and
  - (2) offered this Undertaking to Council.

### **Response to Alleged Contraventions**

- 2.13 ET, RT, and JT acknowledge the community impacts which arise from breaches of the EP&A Act and Council's Local Environmental Plan.
- 2.14 Applications have been lodged with Council by ET, RT, and JT to attempt to regularise the Unauthorised Works. These applications are:
- (1) DA No. 1772/2019/LA lodged on 20 March 2019 which seeks to increase the footprint of the primary dwelling from 184m<sup>2</sup> to 715m<sup>2</sup> which by implication will increase the maximum permissible size of the secondary dwelling under clause 5.4(9) of the *Hills Local Environmental Plan 2019* from 60m<sup>2</sup> to 143m<sup>2</sup>. That application was amended in October 2020 to reduce the proposed area from 715m<sup>2</sup> to 550m<sup>2</sup>.
  - (2) Modification Application No. 111/2018/HA lodged on 7 August 2019 seeks retrospective approval for the building works to the secondary dwelling and a change of use (parking space converted to secondary dwelling floor space).

### **3. Commencement of this Undertaking**

- 3.1 This Undertaking comes into effect when both:
- (1) This Undertaking is executed by ET, RT, and JT; and
  - (2) This Undertaking so executed by ET, RT, and JT is executed by the Secretary or his delegate
- (the **Commencement Date**).

### **4. Undertaking**

- 4.1 ET, RT, and JT undertakes for the purposes of section 9.5 of the EP&A Act that they will carry out the steps specified below:
- (1) ET, RT and JT will each make a financial contribution in the sum of \$5,000 (together comprising a single payment of \$15,000) to Council to be deposited into

a constrained reserve account to be used by Council for the planned footpath upgrade works at Glenorie on Post Office Road, between Parkview Avenue and Pertaringa Way (Post Office Road, Glenorie (Bicycle & Walking) Project Code 410395) (**Financial Contribution**). The Financial Contribution will be deposited into the following constrained reserve account:

Bank: National Australia Bank  
Account Name: The Hills Shire Council  
BSB: 082 155  
Account Number: 509 201 761

- (2) The Financial Contribution will be paid to Council within 30 days of the Commencement Date.
- (3) Within 30 days after the Commencement Date and upon provision of a Direction from the Council, ET, RT and JT will pay Council:
  - (a) a sum of \$1,500 for its costs associated with investigating and monitoring the Alleged Contraventions and entering into this Undertaking; and
  - (b) a further sum of \$15,000 for its legal costs in prosecuting the Alleged Contraventions.

**(Further Sums)**.

- (4) The Further Sums will be deposited into the following General Business account of Council:

Bank: National Australia Bank  
Account Name: The Hills Shire Council  
BSB: 082 155  
Account Number: 509 201 761

- (5) Within 30 days after the Commencement Date and upon provision of a Direction from the Department, ET, RT, and JT will pay the Department of Planning, Industry and Environment the sum of \$1,000 for its legal costs associated with accepting this Undertaking.

**(Departmental Costs)**

- (6) The Departmental Costs will be deposited into the following account:

Bank: Westpac Banking Corporation  
Account Name: Planning and Environment  
BSB: 032-001  
Account Number: 114428

- (7) Unless otherwise approved or authorised through a development consent or complying development certificate, or permitted under a building information certificate, ET, RT and JT will not reside in or use, or permit others to reside in or use, the following areas of the secondary dwelling after 14 days from the Commencement Date:

- (a) the kitchen;

- (b) the bathroom adjacent to the kitchen;
- (c) the laundry adjacent to the bathroom;
- (d) the bedroom opposite the staircase (but not including the approved bathroom / wash area); and
- (e) the mezzanine in the shed structure

(together the **Restricted Area**).

- (8) ET, RT, and JT will within 14 days from the Commencement Date cause the access point into each part of the Restricted Area to be boarded up with fixed plywood panels or similar means at least 2.4m high from the floor level in accordance with the plan at Annexure A and such that each part of the Restricted Area cannot be functionally used.
- (9) ET, RT and JT will maintain the measures installed pursuant to clause 4.1(8) above, until such time as the requirement for the boarding up of the Restricted Area is removed, or the Restricted Area is made compliant with the EP&A Act, or a development consent is granted for new development which requires the removal of the boarding up of the Restricted Area.
- (10) ET, RT and JT will implement the following to satisfy Council that the undertakings have been complied with:
  - (a) Email to the Council Manager of Regulatory Services [cwoods@thehills.nsw.gov.au](mailto:cwoods@thehills.nsw.gov.au) enclosing a copy of the bank statement or transaction receipt that confirms the payment described in paragraph 4.1(1) has been made, within 7 days of making that payment;
  - (b) Email to the Council Manager of Regulatory Services at [cwoods@thehills.nsw.gov.au](mailto:cwoods@thehills.nsw.gov.au) enclosing a copy of the bank statement or transaction receipt that confirms the payment described in paragraph 4.1(3) has been made, within 7 days of making that payment;
  - (c) Email to the Director - Compliance and Investigations of the Department of Planning, Industry and Environment at [compliance@planning.nsw.gov.au](mailto:compliance@planning.nsw.gov.au) enclosing a copy of the bank statement or transaction receipt which confirms that the payment described in paragraph 4.1(5) has been made, within 7 days of making that payment.
  - (d) RT and JT will permit Council's enforcement officer to inspect the secondary dwelling 21 days after the Commencement Date, and once every 3 months thereafter, following at least 7 days' written notice being provided and subject to the inspection taking place during business hours.

4.2 ET, RT, and JT acknowledge 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 Contraventions.

## **5. Demolition and removal of Unauthorised Works**

5.1 ET, RT, and JT will demolish and remove from the Premises, any Unauthorised Works or parts thereof which:

- (1) are not exempt development;
- (2) do not have a development consent or a complying development certificate approving those works; or
- (3) are not the subject of a building information certificate,

at the two (2) year anniversary of the Commencement Date.

5.2 ET, RT, and JT undertake to carry out the works in clause 5.1 by the two (2) year anniversary of the Commencement Date, unless the Council determines, at its absolute discretion, that an appropriate and reasonable circumstance that has been brought to its attention warrants an extension of no more than 12 months for compliance with this clause by the Defendants subject to clause 5.4 below.

5.3 ET, RT and JT will permit Council's enforcement officer to inspect the secondary dwelling within 7 days of the completion of the works in clause 5.1, following 3 days' written notice being provided and subject to the inspection taking place during business hours to confirm the above has been complied with.

5.4 ET, RT, and JT acknowledge that if the Council grants the extension specified in clause 5.2, then ET, RT, and JT must write to the Secretary of the Department at least 30 days before the end of the timeframe in clause 5.1 seeking confirmation of the 12 months extension to the timeframe in clause 5.2, with a copy of that correspondence also provided to the Council.

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

Executed by **Edward Alfred Temple**

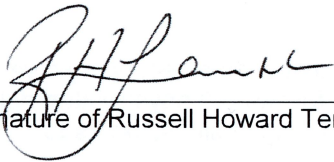


\_\_\_\_\_  
Signature of Edward Alfred Temple:

27 September 2021

\_\_\_\_\_  
Date

Executed by **Russell Howard Temple**

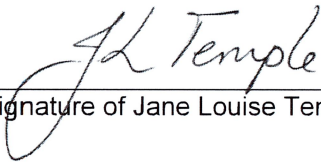


\_\_\_\_\_  
Signature of Russell Howard Temple:

27 September 2021

\_\_\_\_\_  
Date

Executed by **Jane Louise Temple**



\_\_\_\_\_  
Signature of Jane Louise Temple:

27 September 2021

\_\_\_\_\_  
Date

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

Date: 27/09/2021

General Manager, Hills Shire Council






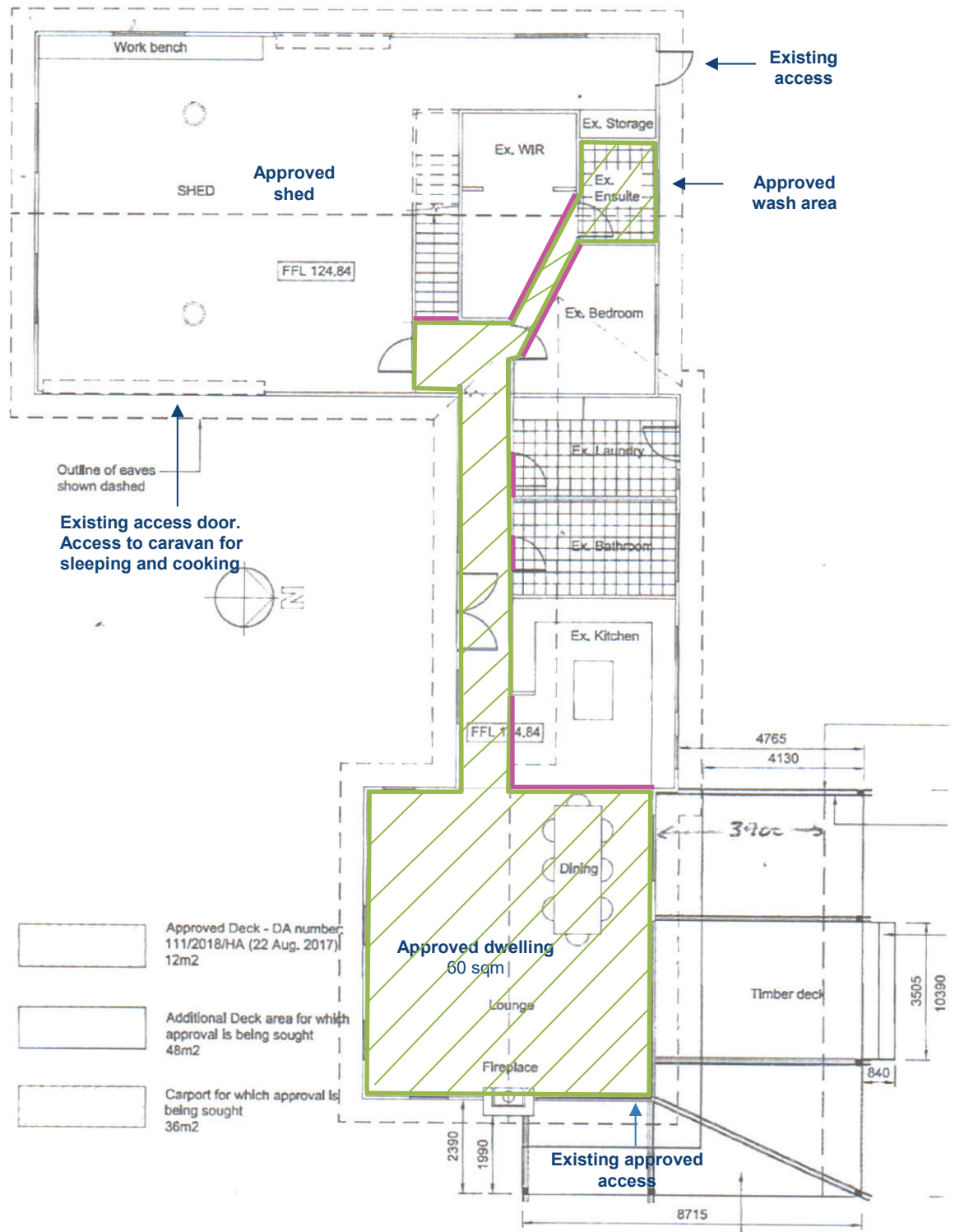
Accepted by the Secretary of the Department pursuant to section 9.5 of the *Environmental Planning and Assessment Act 1979* (NSW) on:

Date: 29.9.2021

Secretary or their delegate:

  
\_\_\_\_\_

# Annexure A



## Legend

	Position of plywood panels (or similar) to board up the Restricted Area - see clause 4.1(8))
	Habitable area excluding the Restricted Area

## Annexure B

This annexure forms a part of the Enforceable Undertaking offered to the Secretary of the Department of Planning and Environment (**Secretary**) under section 9.5 of the *Environmental Planning and Assessment Act 1979* by Edward Alfred Temple (**ET**), Russell Howard Temple (**RT**) and Jane Louise Temple (**JT**) in relation to proceedings commenced by The Hills Shire Council (**Council**).

The Council, ET, RT, and JT refer to clause 2.7(2) of the Enforceable Undertaking (**EU**) which provides as follows:

2.7 Council allege that the works as constructed at the Premises are not consistent with the Approved Development and do not otherwise have development consent. Namely, Council allege that:

...  
(2) The internal configuration of the secondary dwelling and shed structure is different to what was approved. There is an expanded living/dining area, and within the approved shed there is a new master bedroom and walk in robe, staircase, and mezzanine bedroom.  
...

**(the Unauthorised Works).**

For clarity, the Council, ET, RT and JT acknowledge and agree that the Unauthorised Works referred to in clause 2.7(2) of the EU, are the same areas referred to as the Restricted Area in clause 4.1(7) which are described as:

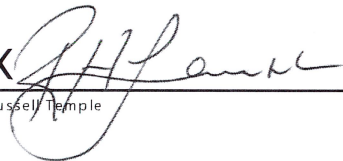
- the kitchen;
- the bathroom adjacent to the kitchen;
- the laundry adjacent to the bathroom;
- the bedroom opposite the staircase (but not including the approved bathroom / wash area); and
- the mezzanine in the shed structure.

The Council, ET, RT and JT acknowledge that the Restricted Area forms part of the Unauthorised Works (as that term is defined in in clause 2.7 of the EU).

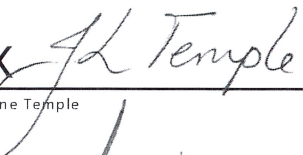
The Council, ET, RT and JT acknowledge that access to the Restricted Area is required to be boarded up in accordance with clause 4.1(8) of the EU and the plan at Annexure A of the EU.


The Council, ET, RT and JT acknowledge that the Unauthorised Works (including the Restricted Area) are required to be removed in accordance with the EU, unless they are permitted to remain in accordance with clause 5.1 of the EU.

SIGNED

X   
\_\_\_\_\_  
Russell Temple

X   
\_\_\_\_\_  
The Hills Shire Council

X   
\_\_\_\_\_  
Jane Temple

X   
\_\_\_\_\_  
Edward Temple