

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

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Person giving the Undertaking

1. This undertaking is given to the Secretary of the Department of Planning and Environment (**Secretary**) by Paul Scott Mansfield for the purposes of section 9.5 of the *Environmental Planning and Assessment Act 1979* (NSW) (**EP&A Act**).

Background

2. Paul Scott Mansfield is the owner of Lot 101 DP 754444, being the land known as 743 Ocean Drive, Bonny Hills (**Land**).
3. On 25 May 2017, Port Macquarie-Hastings Council (**Council**) granted development consent (DA 2016/700) for an Eco Tourist Facility on the Land (**Approval**).
4. Council has negotiated this undertaking with Mr Mansfield in connection with its functions under the EP&A Act and has recommended that the Secretary accept the undertaking.

The Alleged Contraventions

5. The Council has alleged that Mr Mansfield contravened the EP&A Act. There are two allegations set out below.

Allegation 1

6. Council alleges that during the period between 1 November 2013 and 30 November 2015, Mr Mansfield carried out Development on the Land which an environmental planning instrument provided was prohibited development.

Allegation 2

7. Council alleges that during the period between 1 November 2013 and 30 November 2015, Mr Mansfield carried out Development on the Land without development consent, which an environmental planning instrument provided may not be carried out except with development consent.
8. The **Development** referred to in allegations 1 and 2 comprises:
 - (a) Earthworks including excavation and filling of the site and retaining walls;
 - (b) The construction of a facility that appeared to be a recreation hall, with toilets and showers and an internal kitchen;
 - (c) A barbecue and paved area adjoining the recreation hall;
 - (d) A teenagers retreat built in a shipping container;
 - (e) A laundry built in a shipping container;
 - (f) A covered walkway that lead from the recreation hall to a bunkhouse;
 - (g) A bunkhouse that included 7 units, each with ensuites;

- (h) Concrete piers and plumbing next to the bunkhouse, which appeared to be ready to receive cabins for installation;
 - (i) A concrete slab which is the future site for a shed to be built;
 - (j) A large car park area;
 - (k) A shipping container used for storage;
 - (l) A shipping container which housed electricity generators;
 - (m) Two large water tanks;
 - (n) Two septic tanks and absorption trench.
9. Together, allegations 1 and 2 are the **Conduct**.
10. The Conduct is considered by Council to have contravened the EP&A Act (as it was at the time of the offence charged), as:
- (a) In relation to Allegation 1, section 76B(a) of the EP&A Act provides that a person must not carry out development if an environmental planning instrument provides that specified development is prohibited on land to which the provision applies.
 - (b) In relation to Allegation 2, section 76A(1) of the EP&A Act provides that a person must not carry out development on land unless a consent has been obtained and is in force, if an environmental planning instrument provides that specified development may not be carried out on land to which the provision applies except with development consent.

(The Contravention).

11. Mr Mansfield:
- (a) acknowledges that his Conduct, amounts to the Contravention;
 - (b) apologises for carrying out the works undertaken before seeking development consent as required under the EP&A Act; and
 - (c) has offered this Undertaking to Council.

Response to Alleged Contravention

12. Mr Mansfield acknowledges that there is a potential for the community and the environment to be detrimentally impacted as a result of development that is undertaken without the appropriate approvals and not in accordance with a development consent.
13. Mr Mansfield is committed to ensuring minimal detrimental impacts on the community and environment on and around the Land.
14. Mr Mansfield unreservedly acknowledges the importance of compliance with planning and environmental laws. To that end, Mr Mansfield is committed to ensuring compliance with the EP&A Act and the Approval.
15. Following the Council commencing its investigation into the Contraventions, Mr Mansfield sought and obtained the necessary development consents and building certificates to allow the lawful operation of an Eco Tourist Facility on the Land.

16. Mr Mansfield has not previously been prosecuted for offences against the EP&A Act.

Commencement of this Undertaking

17. This Undertaking comes into effect when both:

- (a) This Undertaking is executed by Mr Mansfield; and
- (b) This Undertaking, so executed by Mr Mansfield, is executed by the Secretary or their delegate.

(the **Commencement Date**).

Undertaking

18. Mr Mansfield undertakes for the purposes of section 9.5 of the EP&A Act that he will carry out the steps specified below:

- (a) Within 30 days after the Commencement Date, Mr Mansfield will pay Council:
 - (i) a sum of \$150,000 for its legal costs associated with the Land and Environment Court proceedings, and
 - (ii) a sum of \$26,000 for its legal costs associated with the High Court of Australia proceedings.
- (b) Mr Mansfield will make a financial contribution in the sum of \$60,000 to the Council, to be applied by the Council towards the remediation of contaminated land on the foreshore of Lake Cathie.

(the **Beneficiary**).

This financial contribution will be paid to the Beneficiary 30 days after the Commencement Date.

- (c) Within 30 days after the Commencement Date, Mr Mansfield will pay the Department of Planning and Environment the sum of \$1,000 for its legal costs associated with accepting this Undertaking.
- (d) Mr Mansfield will implement the following to satisfy Council that the undertakings have been complied with:
 - (i) Email to the General Manager at Craig.Swift-McNair@pmhc.nsw.gov.au a copy of the bank statement or transaction receipt that confirms the payments described in paragraph 17(a) were made;
 - (ii) Email to the General Manager at Craig.Swift-McNair@pmhc.nsw.gov.au a copy of the bank statement or transaction receipt which confirms that the payment described in paragraph 17(b) was made;
 - (iii) Email to the Director - Compliance and Investigations at compliance@planning.nsw.gov.au a copy of the bank statement or transaction receipt which confirms that the payment described in paragraph 17(c) was made.

Acknowledgments

19. Mr Mansfield acknowledges that:
- (a) The Secretary will make this Undertaking publicly available, including by publishing it on its website;
 - (b) Council may make the Undertaking publicly available, including by publishing it on its website;
 - (c) 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
 - (d) 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 **Paul Scott Mansfield**:

P. M. S. Mansfield

Signature of Paul Scott Mansfield

19 - Aug - 2019

Date

Endorsement from Council that it recommends the Secretary accept the Enforceable Undertaking pursuant to section 9.5(5) of the *Environmental Planning and Assessment Act 1979* (NSW)

Date: *28/08/2019*

Executed on behalf of the Council:

[Handwritten signature]

General Manager (by Delegation)

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

Date: *10/10/2019*

Secretary or their delegate: *MARCUS RAY*

Marcus Ray