

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

Creation Homes (NSW) Pty Ltd

ACN: 155 797 443

Undertaking given under Section 9.5 of the *Environmental Planning and Assessment Act 1979 (NSW)* by Creation Homes (NSW) Pty Ltd

1. Persons giving the Undertaking

- 1.1 This undertaking is given to the Secretary of the Department of Planning and Environment (**Secretary**) by Creation Homes (NSW) Pty Ltd (ACN 155 797 443) (**Creation Homes**) for the purposes of section 9.5 of the *Environmental Planning and Assessment Act 1979 (NSW)* (**EP&A Act**):

2. Background

Background

- 2.1 Creation Homes is a national builder of residential homes.
- 2.2 On 31 August 2021, Willoughby City Council (**Council**) granted development consent DA-2021/27 for the demolition of existing buildings and construction of 8 townhouses at 16-18 Warners Avenue, Willoughby NSW (**Site**).
- 2.3 Shortly afterwards, Creation Homes entered into a construction contract with Warners Willoughby Pty Ltd (ABN 26 641 877 189) to carry out the approved development at the Site.
- 2.4 In December 2021, Creation Homes commenced works at the Site.
- 2.5 On 18 December 2023, Council filed three Court Attendance Notices against Creation Homes in the NSW Local Court in respect of alleged offences against:
- (1) Section 4.2(1)(b) of the Environmental Planning and Assessment Act 1979;
 - (2) Section 97 of the Protection of the Environment Operations Act 1997; and
 - (3) Section 120 of the Protection of the Environment Operations Act 1997.
- 2.6 On registration of this Undertaking, Council agrees to withdraw the three (3) prosecutions against Creation Homes.

The Planning Breach

- 2.7 Condition 28 of Development Consent DA-2021/27 provides as follows:

28. Provide Erosion and Sediment Control

Where work involves excavation or stockpiling of raw or loose materials, erosion and sediment control devices shall be provided wholly within the site whilst work is being carried out in order to prevent sediment and silt from site works (including demolition and/or excavation) being conveyed by stormwater into Council's stormwater system natural watercourses, bushland and neighbouring properties. In this regard, all stormwater discharge from the site shall meet the requirements of the Protection of Environment Operations Act 1997 and the Department of Environment, Climate Change and Water guidelines. The control devices are to be maintained in a serviceable condition AT ALL TIMES.

(Reason: Environmental protection)

- 2.8 Council alleges that:

- (1) On 15 May 2023 at 1:50pm, Creation Homes failed to provide adequate erosion and sediment control measures wholly within the Site to prevent sediment and silt being conveyed by stormwater into Council's stormwater system, natural watercourses, bushland and neighbouring properties.
- (2) As a result, Creation Homes carried out development not in accordance with condition 28 of Development Consent DA-2021/27 (**Planning Breach**).

2.9 The Planning Breach is considered by Council to have contravened the EP&A 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 the consent and environmental planning instrument.
- (2) Such conduct gives rise to an offence under section 9.51 of the EP&A Act.

Response to Alleged Offences

2.10 Creation Homes have:

- (1) acknowledged that the Planning Breach caused sediment and silt to be conveyed by stormwater into Council's stormwater system, natural watercourses, bushland and neighbouring properties;
- (2) acknowledged that the Planning Breach constitutes a contravention of section 4.2 of the EP&A Act; and
- (3) offered this Undertaking to Council.

2.11 Creation Homes acknowledges the community impacts that arise from breaches of the EP&A Act and conditions of consent.

2.12 Works were carried out on 18 May 2023 to ensure full compliance with condition 28.

3. Commencement of this Undertaking

3.1 This Undertaking comes into effect when both:

- (1) This Undertaking is executed by Creation Homes; and
- (2) This Undertaking so executed by Creation Homes is accepted by the Secretary or their delegate.

3.2 The Commencement Date of this Undertaking will be the date on which this Undertaking comes into effect in accordance with clause 3.1 above.

4. Undertaking

4.1 Creation Homes undertakes for the purposes of section 9.5 of the EP&A Act that it will carry out the steps specified below:

- (1) Creation Homes will make a financial contribution in the sum of **\$12,000** to Council to be deposited into a constrained reserve account to be used by Council for the implementation of the adopted Reserve Action Plan for Warners Park (**Financial Contribution 1**). Creation Homes will pay Financial Contribution 1 by depositing the amount into the following constrained reserve account:

Bank: CBA
Account Name: Willoughby City Council
BSB: 062-140
Account Number: 00000028

- (2) Creation Homes will make a financial contribution in the sum of **\$12,000** to Council to be deposited into a constrained reserve account to be used by Council for site remediation at Willowie Road, Castle Cove in order to enable the replanting of trees (**Financial Contribution 2**). Creation Homes will pay Financial Contribution 2 by depositing the amount into the following constrained reserve account:

Bank: CBA
Account Name: Willoughby City Council
BSB: 062-140
Account Number: 00000028

- (3) Financial Contribution 1 and Financial Contribution 2 will be paid to Council within 30 days of the Commencement Date.
- (4) Within 30 days after the Commencement Date and upon provision of a Direction from the Council, Creation Homes will pay Council a sum of **\$5,000** for its costs associated with investigating the Alleged Contraventions and entering into this Undertaking; and

(Further Sum).

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

Bank: CBA
Account Name: Willoughby City Council
BSB: 062-140
Account Number: 00000028

- (6) Within 30 days after the Commencement Date and upon provision of a Direction from the Department, Creation Homes 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)

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

Bank: Westpac
Account Name: DPIE Operating ACC No 2
BSB: 032-001
Account Number: 114428

- (8) Creation Homes will implement the following to satisfy Council that the undertakings have been complied with:


- (a) Email to the Council Manager of Regulatory Services (Mark.Taylor@Willoughby.nsw.gov.au and Simon.Grierson@Willoughby.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 (Mark.Taylor@Willoughby.nsw.gov.au and Simon.Grierson@Willoughby.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 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.

4.2 Creation Homes 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 Contraventions.

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

Executed by **Creation Homes (NSW) Pty Ltd** under section 127 of the *Corporations Act 2001* (Cth)



Signature of Director

LUKE CHRISTIAN HARTMAN

Name of director

06 MAY 2024.

Date

Signature of Director


Name of director

Date

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


Date: 2 May 2024

Hugh Phemister, Interim Chief Executive Officer, Willoughby City Council



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

20/06/2024
Date: _____

Secretary or their delegate: 

David Gainsford, Deputy Secretary, Development Assessment and Sustainability
