

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

**Menai Civil Contractors Pty Ltd  
(ACN 102 522 618)**

## **Undertaking given under Section 9.5 of the *Environmental Planning and Assessment Act 1979* (NSW) by Menai Civil Contractors Pty Ltd**

### **1. Person giving the Undertaking**

- 1.1. This is the undertaking ('**Undertaking**') given by Menai Civil Contractors Pty Ltd (ACN 102 522 618) of Level 1, 135 Queen Street, Campbelltown NSW 2560 ('**Menai**') to the Planning Secretary of the Department of Planning and Environment ('**Planning Secretary**') for the purposes of s 9.5 of the *Environmental Planning and Assessment Act 1979* (NSW) ('**EP&A Act**').

### **2. Background**

#### **Menai**

- 2.1. Menai, at all material times, was a site contractor in respect of a development at 750 Princes Highway, Tempe ('**the Property**').

#### **The Consent**

- 2.2. The Property has a Development Consent (DA2017/00185 – approved by Inner West Council on 27 June 2019) for the development of a 2-level hardware and buildings supply store ('**the Consent**').

Condition 29 of the Consent relevantly states that:

*Where it is proposed to occupy or carry out works on public roads or Council controlled lands, the person acting on this consent shall obtain all applicable Permits from Council in accordance with Section 68 (Approvals) of the Local Government Act 1993 and/or Section 138 of the Roads Act 1993. Permits are required for the following activities:*

- a) *Work zone (designated parking for construction vehicles). Note that a minimum of 2 months should be allowed for the processing of a Work Zone application.*
- b) *A concrete pump across the roadway/footpath*
- c) *Mobile crane or any standing plant*
- d) *Skip bins*
- e) *Scaffolding/Hoardings (fencing on public land)*
- f) *Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.*
- g) *Awning or street verandah over footpath*
- h) *Partial or full road closure*
- i) *Installation or replacement of private stormwater drain, utility service or water*

*Contact Council's Road Access team to ensure the correct Permit applications are made for the various activities.*

*Applications for such Permits shall be submitted and approved by Council prior to the commencement of the works associated with such activity.*

Reason: To confirm the terms of approval.

### **The Permit**

- 2.3. On 25 August 2023, Menai obtained and had the benefit of a Roadworks Permit (ENR2/2023/0111 – issued by Inner West Council on 25 August 2023) which permitted the construction of a slip lane and upgrade of Smith Street (a local street which intersects with the Princes Highway near the Property) (**'the Permit'**).
- 2.4. The Permit only allowed roadworks during the period 10 July 2023 to 31 March 2024 and only during the hours of 7.00am to 5.00pm Monday to Friday and 8.00am to 1.00pm on Saturday.
- 2.5. Condition 12 of the Permit also required that pedestrian access not be impeded, with an unobstructed footpath or at least 1.5m to be maintained at all times.

### **Incidents**

- 2.6. On four (4) different occasions, Inner West Council (**'the Council'**) identified that Menai was conducting unauthorised road works on Smith Street, Tempe without the required permits as part of the Consent.
- 2.7. On 21 January 2024, the Council received a complaint from residents of out of hours road works occurring at 10:05 pm on Smith Street, Tempe. Menai claimed it had applicable permits to conduct work on Smith Street. Upon review of Council records, such permits were not found as part of the Consent.
- 2.8. On 1 February 2024, the Council received another complaint from residents in Smith Street that one lane of Smith Street had been partially closed along with the pedestrian footpath. The closure of the road and pedestrian footpath was contrary to the requirements of condition 12 of the Permit. Menai again claimed it had applicable permits to conduct work on Smith Street. Upon review of Council records, such permits were not found as part of the Consent.
- 2.9. On 4 February 2024 at 11:45 pm, the Council again identified that Menai had closed Smith Street and was undertaking road works. Menai did not hold a permit for the closure of the road and works.
- 2.10. During the evening of 26 March 2024 at approximately 10:40 pm, the Council received several complaints from residents in Smith Street with respect to unauthorised road works being carried out by Menai.

The Council identified roadworks being carried out in and around the Council footpath and roadway of Smith Street with the roadway partially closed with plant and equipment.

It was observed that several workers were concrete cutting and jack hammering. An excavator was used to break open the Council footpath and roadway with numerous

trucks parked on Smith Street. Menai again claimed it had applicable permits to conduct work on Smith Street. Menai did not hold a permit for the closure of the road and works.

- 2.11. At all material times, Menai was acting contrary to the Consent and the Permit in respect of the four (4) different occasions ('**unauthorised road work**').
- 2.12. The Council has responsibilities regarding the administration and enforcement of the EP&A Act and its associated Regulations and responsibilities for the Local Government Area.

### **Unlawful development**

- 2.13. An investigation by the Council revealed that Menai contravened s 4.2(1)(b) of the EP&A Act through the carrying out of the development otherwise than in accordance with the Consent.
- 2.14. The Council issued four (4) penalty infringement notices ('**PINs**') for the breaches of s 4.2(1)(b) of the EP&A Act as set out below:
  - (1) PIN 3262087520 – Road closure and footpath works without Council approval on 21 January 2024 in the amount of \$6,000.00, issued as a Court Attendance Notice (**CAN**) on 9 September 2024;
  - (2) PIN 3262087703 – Public road space occupied without Council approval on 1 February 2024 in the amount of \$6,000.00, issued as a CAN on 9 September 2024;
  - (3) PIN 3262088116 – Road closures without Council approval on 4 February 2024 in the amount of \$6,000.00, issued as a CAN on 9 September 2024; and
  - (4) PIN 3262270981 – Late night works without Council approval on 26 March 2024 in the amount of \$6,000.00, issued as a CAN on 5 July 2024.
- 2.15. Menai subsequently Court elected the four (4) PINs which are currently before Newtown Local Court, proceedings numbered 2024/00254398 ('**the Prosecution Proceedings**').

### **3. Admission**

- 3.1. Menai now admits that its conduct by undertaking the unauthorised road work contravened s 4.2(1)(b) of the EP&A Act as set out in clauses 2.6 – 2.11 above.
- 3.2. Menai accepts that the unauthorised road work adversely impacted the residential amenity in and around Smith Street, Tempe.
- 3.3. Menai has offered to enter an Enforceable Undertaking.

#### 4. Commencement of this Undertaking

4.1. This Undertaking comes into effect when both:

- (1) this Undertaking is executed by Menai; and
- (2) this Undertaking so executed by Menai is accepted by the Planning Secretary of the Department or delegate.

(**'the Commencement Date'**).

#### 5. Terms of the Undertaking

5.1. For the purposes of s 9.5 of the EP&A Act, Menai undertakes to do the following:

- (1) for all future projects commenced either on or from the date of the Undertaking, arrange and facilitate project pre-commencement workshops, not later than 7 days before the commencement of construction works, with all nominated project stakeholders prior to the commencement of any construction work, in particular, any relevant Local Government Authority and the relevant representative of Menai's client. The workshop will detail:
  - a) a detailed review and consideration of all relevant approval and consent conditions;
  - b) clarification on interpretation of all relevant approvals and consent conditions and the development of a tabular matrix which sets out all required approvals and consents required for Menai to perform its work, and attributes responsibility to stakeholders who are responsible for obtaining all or some of those approvals (**Responsibility Matrix**) which will form part of the relevant project team's documentation and incorporated within the relevant project's Construction Management Plan;
  - c) development of a schedule of required clarifications or queries which will be provided by Menai to the project's client representative. The client representative will confirm with either the relevant Local Government Authority or the client's engaged legal representative (as the case may be) to ensure that Menai and its relevant stakeholders have a clear understanding of the requirements and limitations of all relevant approvals and consent conditions.
- (2) During the carrying out of construction work on a project to which clause 5.1(1) applies, comply with the Responsibility Matrix.
- (3) Within 20 business days of commencement of construction work on a project to which clause 5.1(1) applies, Menai will conduct an audit of its compliance with the Responsibility Matrix and all relevant approvals. Such audit will:

- a) confirm compliance with any Responsibility Matrix and approvals relevant to the project;
- b) identify additional consents or approvals needed to allow Menai to complete construction work for the Project;
- c) review conduct of Menai's personnel and subcontractors to confirm compliance with all relevant approvals;
- d) identify any failures to comply with the Responsibility Matrix and any relevant approval; and
- e) include a corrective action plan to remedy any non-compliances with any relevant approvals.

**(Project Audit)**

- (4) Any action plan arising from a Project Audit is to be commenced within 30 days of the conclusion of a Project Audit.
- (5) to pay the sum of \$60,000.00 to the Council. The sum is to be applied solely for street tree embellishment and kerb, gutter and footpath upgrades to Smith Street, Tempe for the benefit of residents and the community. The sum is to be paid in the following three (3) payments:
  - a) \$20,000.00 within 30 days of the Commencement Date;
  - b) \$20,000.00 within 60 days of the Commencement Date; and
  - c) \$20,000.00 within 90 days of the Commencement Date.

This payment is to be made to the following account:

- Institution: Commonwealth Bank
- Account Name: Inner West Council
- BSB: 062227
- Account Number: 10231800

- (6) to, within 28 days of the Commencement Date, pay to the Council the amount of \$5,000.00 to cover the Council's investigation and legal costs associated with this matter. This payment is to be made to the following account:
  - Institution: Commonwealth Bank
  - Account Name: Inner West Council
  - BSB: 062227
  - Account Number: 10231800
- (7) to, within 28 days of the Commencement Date, pay to the Department the amount of \$1,000.00 to cover the Department's costs associated with reviewing and considering this Undertaking. This payment is to be made to

the following account:

- Institution: Westpac Bank
- Account Name: DPIE Operational ACC No. 2
- BSB: 032-001
- Account Number: 114428

5.2. To implement the following to satisfy Council that the undertakings in clauses 5.1(1) – (3) have been complied with:

- (1) email to Council's General Counsel at 'matthew.pearce@innerwest.nsw.gov.au' a copy of Menai's compliance practices and procedures referred to in clause 5.1(1) on a company document within seven (7) days of the date of this Undertaking.
- (2) provide to the Council's General Counsel copies of the bank statements or transaction receipts which confirm that the payments in clause 5.1(2) and 5.1(3) have been made, within seven (7) days of making each of those payments.
- (3) email to the Director – Compliance of the Department of Planning, Housing and Infrastructure at 'compliance@planning.nsw.gov.au' enclosing a copy of the bank statement or transaction receipt that confirms that the payment in clause 5.1(4) has been made, within seven (7) days of making that payment.

5.3. Within 7 days of the Commencement Date, the Council will cause to be withdrawn the Prosecution Proceedings.

5.4. On and from the Commencement Date, the Council agrees that it will take no further action against Menai in relation to the unauthorised road work, the PINs or the Prosecution Proceedings, save for any enforcement of this Undertaking.

5.5. Menai agrees that the terms in clause 5 are enforceable.

## **6. Acknowledgements**

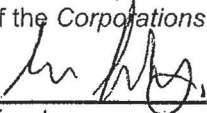
6.1. Menai acknowledges that:

- (1) the Department will make this Undertaking publicly available including by publishing it on the Department's public register of section 9.5 undertakings on its website.
- (2) the Department will, from time to time, make public reference to this Undertaking including in news media statements and in Department's publications, and
- (3) 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 under section 9.5 of the  
Environmental Planning and Assessment Act 1979**

Executed by **Menai Civil Contractors Pty Ltd** ACN 102 522 618 in accordance with s127(1)  
of the *Corporations Act 2001*:

Signature

  
Lee Farney

Name

31/3/25

Date

Signature of Witness

  
Glen Schembri

Name

31/3/25

Date

Council has negotiated the Enforceable Undertaking with Menai Civil Contractors Pty Ltd in  
relation to Council's functions under the *EP&A Act* and recommends that the Planning  
Secretary accept the Enforceable Undertaking.

  
Signature


Simon Gausse

Name

31.3.25

Date

Signature of Witness


  
Nicolette Righi

Name

31/3/25

Date

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

  
Signature



David Gainsford  
Deputy Secretary,  
Development Assessment and Sustainability

\_\_\_\_\_  
Name

06/05/2025

\_\_\_\_\_  
Date

*AL*

\_\_\_\_\_  
Signature of Witness

Adrien Lalchere

\_\_\_\_\_  
Name

06/05/2025

\_\_\_\_\_  
Date