

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

Auswide Civil Pty Limited (ACN 632 919 763)

1. Persons giving the Undertaking

- 1.1 This undertaking is given to the Department of Planning, Housing and Infrastructure (**Department**) by Auswide Civil Pty Limited (ABN 24 632 919 763) (**Auswide**) for the purposes of section 9.5 of the *Environmental Planning and Assessment Act 1979 (NSW)* (**EP&A Act**).

2. Background

- 2.1 Auswide is an earthworks excavation company also in the business of wet and dry hire of plant and equipment with its principal place of business located at Unit 23 5-7 Anella Avenue, Castle Hill NSW 2154. Martin Anthony Karam is the sole director and secretary of Auswide.
- 2.2 Between 2 February 2022 and 18 February 2022, Auswide facilitated, and itself undertook works at 50-68 David Road, Barden Ridge NSW (the **Premises**). At all relevant times, Auswide was not the registered proprietor of the Premises.
- 2.3 The works undertaken by Auswide at the Premises included the wet-hire of plant and equipment together with the carrying out of excavation and filling at the Premises. The works that Auswide helped facilitate and itself carried out at the Premises was "development" for the purpose of s 1.5 of the EP&A Act in that it involved "the carrying out of a work" that was "controlled by an environmental planning instrument", being earthworks.

Legislative framework

- 2.4 At the relevant time, cl 6.2 of the *Sutherland Shire Local Environmental Plan 2015 (LEP)* provided that development consent was required for earthworks unless "(a) the earthworks are exempt development under this Plan or another applicable environmental planning instrument, or (b) the earthworks are ancillary to development that is permitted without consent under this Plan or to development for which development consent has been given."
- 2.5 Clause 3.1 of the LEP provided that development specified in Schedule 2 that met the standards for the development contained in that schedule, and which complied with the requirements of Part 3, was exempt development for the purpose of the LEP. Schedule 2 of the LEP did not provide that excavation was exempt development.
- 2.6 Clause 2.29 of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (SEPP)* provided that earthworks could be carried out on land that was not carried out on a heritage item, a draft heritage item, on a flood control lot or in an environmentally sensitive area, provided the earthworks met the standards in cl 2.30 of the SEPP. Whilst the Premises was mapped as "Environmentally Sensitive Land" and Greenweb Core" in under the NSW Biodiversity Conservation framework, it was not within an "environmentally sensitive area" for the purpose of cl 1.5 of the SEPP.
- 2.7 Relevantly, cl 2.30 provided, amongst other things, that in order for earthworks to be considered exempt development, it could not involve cut or fill of more than 600mm below or above ground level (existing). The excavation works involved cut and fill in excess of 600mm, and accordingly, was not exempt development.
- 2.8 In the premises, development consent was required for the carrying out of the earthworks by dint of cl 6.2 of the LEP. There was no development consent for the excavation works that Auswide helped facilitate and carry out. Accordingly, contrary to s 4.2(1)(a) of the EP&A Act, Auswide carried out, and aided, abetted, counselled or procured the carrying out development which was permissible only with development consent under the provisions of an environmental planning instrument which applied to the land, without first obtaining such development consent.

Council's investigation

- 2.9 A brief outline of Council's investigation of the unauthorised earthworks follows.

- 2.10 Prior to Auswide's involvement with the subject premises, in September 2021, Council

received a complaint from a resident in Woronora Heights in relation to land clearing across the ridge within the vicinity of Barden Ridge. A further complaint was received in late December 2021 concerning land clearing. On 21 January 2022, Council's Investigating Officer, Belinda Barter, contacted the complainant.

- 2.11 On 24 January 2022, Ms Barter telephoned the registered proprietor of the Premises and recalls a conversation in which she was informed that trees were being removed at the premises to build two sheds and for clearing land for the purpose of establishing asset protection zones.
- 2.12 On 11 February 2022, Ms Barter observes the Premises from a distance and observed that trees had been cleared at the Premises.
- 2.13 On 14 February 2022, Ms Barter attends the Premises and takes a number of photographs.
- 2.14 On 15 February 2022, Ms Barter telephoned the registered proprietor of the Premises and to advise that Council had received a complaint concerning apparent tree removal and machinery deliveries at 2am.
- 2.15 On 16 February 2022 Ms Barter telephoned the registered proprietor of the Premises to advise that a cease works order would be issued for works other than the installation of environmental site management.
- 2.16 On 16 February 2022, the foreshadowed development control order was issued.
- 2.17 On 17 February 2022, Ms Barter attended the Premises and observed multiple machines operating and that land had been cleared at the Premises.
- 2.18 On 18 February 2022, Officer Hoff, Officer Stucky and Ms Barter attended the Premises as a result of a complaint that work was still being carried out at the premises. Ms Barter had a conversation with a person operating a machine, who identified himself as Martin Karam, being the director of Auswide. Mr Karam advised that Mr Karam had been battering down the site to install environmental site management measures for 2 days.
- 2.19 On 21 February 2022, Ms Barter attended the Premises and considered that the environmental site management works had not been completed. Ms Barter then had a conversation with a man from a company called "Spray Grass" who Ms Barter recalls advising that he was spraying a general purpose grass mixture over the Premises and that he was contracted by Auswide Civil.
- 2.20 On 22 February 2022, Ms Barter undertook a further inspection of the Premises.
- 2.21 On 23 February 2022, Ms Barter issued Auswide with a Notice to Provide Information and Records under the EP&A Act (**NPIR**).
- 2.22 On 7 April 2022, Auswide provided answers to the NPIR through its director, Martin Karam.
- 2.23 On 4 June 2022, Mr Karam provided further information in relation to NPIR.
- 2.24 In response to the Council's investigation, Auswide acknowledges its conduct contravened s 4.2(1)(a) of the EP&A Act, and offered this Undertaking to the Department.

3. Commencement of this Undertaking

- 3.1 This Undertaking comes into effect when both:

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

(the **Commencement Date**).

- 3.2 Auswide acknowledges that its conduct contravened s 4.2(1)(a) of the EP&A Act.

Undertaking given under Section 9.5 of the Environmental Planning and Assessment Act 1979 (NSW) by Auswide Investments Pty Limited (ABN 24 632 919 763)
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3.3 Auswide acknowledges the community impacts which arise from breaches of the EP&A Act, including harm to the regulatory scheme which establishes an orderly method for the obtaining of planning approvals prior to carrying out development. Development carried out without consent does not undergo prior impacts assessment which would allow for avoidance or mitigation of those impacts. Unauthorised excavation creates potential for additional impacts relating to vibration, groundwater, traffic, and waste, which never underwent prior impacts.

3.4 Auswide is committed to ensuring compliance with the EP&A Act

4. Undertaking

4.1 In circumstances where Auswide is not the registered proprietor of the Premises, it is considered that the carrying of remedial works to ameliorate any environmental or community impacts occasioned by Auswide's involvement at the Premises is not appropriate.

4.2 Rather, Auswide undertakes for the purposes of section 9.5 of the EP&A Act to carry out the steps specified below:

- (1) Auswide will make a financial contribution to Council in the amount of \$40,000 to Council's Green Street planting budget (**Financial Contribution**). The Financial Contribution will be deposited into the following nominated account:

Redacted

- (2) Auswide will also pay Council a further sum of \$15,000.00 for its legal costs in prosecuting Auswide for the offence under s 4.2(1)(a) of the EP&A Act in NSW Local Court Proceedings No. 2023/00269867.

(Further Sums)

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

Redacted

- (4) The Financial Contribution and Further Sums (totaling \$55,000.00) are to be paid to Council by way of the following installments:

- a) \$6,000.00 within 30 days of the Commencement Date;
- b) \$2,750.00 within 60 days of the Commencement Date;
- c) \$2,750.00 within 90 days of the Commencement Date;
- d) \$2,750.00 within 120 days of the Commencement Date;
- e) \$2,750.00 within 150 days of the Commencement Date;
- f) \$2,750.00 within 180 days of the Commencement Date;
- g) \$2,750.00 within 210 days of the Commencement Date;
- h) \$2,750.00 within 240 days of the Commencement Date;
- i) \$2,750.00 within 270 days of the Commencement Date;
- j) \$2,750.00 within 300 days of the Commencement Date;
- k) \$2,750.00 within 330 days of the Commencement Date;
- l) \$2,750.00 within 360 days of the Commencement Date;

- m) \$2, 750.00 within 390 days of the Commencement Date;
- n) \$2, 750.00 within 420 days of the Commencement Date;
- o) \$2, 750.00 within 450 days of the Commencement Date;
- p) \$2, 750.00 within 480 days of the Commencement Date;

- q) \$2, 750.00 within 510 days of the Commencement Date;
- r) \$2, 750.00 within 540 days of the Commencement Date;
- s) \$2,250.00 within 570 days of the Commencement Date;

4.3 Within 30 days of the Commencement Date and upon provision of a Direction from the Department, Auswide will pay the Department of Planning, Housing and Infrastructure the sum of \$1,000.00 for its costs associated with accepting this Undertaking.

(Departmental Costs)

- (1) 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

- (2) Email to the Director - Compliance and Investigations of the Department of Planning, Housing and Infrastructure at compliance@planning.nsw.gov.au enclosing a copy of the bank statement or transaction receipt which confirms that the payment described in paragraph 4.3(1) has been made, within 7 days of making that payment.

5. Acknowledgements

5.1 Auswide acknowledges:

- (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 Prosecutor will make this Undertaking publicly available including but not limited to publishing it on Council's website and including it in news media statements, press releases and in Council publications,
- (3) the Department will, from time to time, make public reference to this Undertaking including in news media statements and in department's publications
- (4) this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct, and

6. Acknowledgements

6.1 Council acknowledges:

- (1) That while the Undertaking is complied with it will not prosecute Auswide for the Alleged Contraventions; and
- (2) It will withdraw proceedings 2023/00269867 within 7 days of the Commencement Date or the payment of the first \$6,000.00 of the Financial Contribution (whichever is later) , with no order as to costs.

Executed as an Undertaking

Executed by Auswide Civil Pty Limited (ABN 24 632 919 763) pursuant to section 127(1) of the *Corporations Act 2021* by

Signature of director  Martin Anthony karam (Apr 30, 2025 18:46 GMT+10)

Name of director Martin Anthony karam

Date Apr 30, 2025

Council has negotiated the undertaking with Auswide Civil Pty Ltd in relation to Council's functions under the EP&A Act and recommends that the Secretary accepts the Undertaking



Signature of Chief Executive Officer, Sutherland Shire Council

Accepted by the Planning Secretary of the Department Planning, Housing and Infrastructure pursuant to section 9.5 of the *Environmental Planning and Assessment Act 1979* on:

Date 15 July 2025

and signed on behalf of the Department:



Planning Secretary or delegate