

# Enforceable Undertaking – Final Draft – 30 September 2025

Section 9.5 of the *Environmental Planning and Assessment Act 1979*

## 1. Defined terms

1.1 In this Undertaking, unless otherwise separately defined:

- (a) **BC Act** means *Biodiversity Conservation Act 2016* (NSW).
- (b) **Council** means the Central Coast Council established under the *Local Government Act 1993* (NSW).
- (c) **Council's Bank Account** means:
  - Institution: Commonwealth Bank of Australia
  - Account Name: Central Coast Council
  - BSB: 062544
  - Account Number: 10853460
- (d) **Conversation Area** means the land shown by hatching on Plan of Proposed Conservation Area annexed to this Undertaking.
- (e) **Department** means Department of Planning, Housing, and Infrastructure.
- (f) **Department's Bank Account** means:
  - Institution: Westpac
  - Account Name: DPIE Operating CC No 2
  - BSB: 032-001
  - Account Number: 114425
- (g) **EPA Act** means the *Environmental Planning and Assessment Act 1979* (NSW).
- (h) **Department's Delegate** means any delegate appointed by the Department
- (i) **Planning Secretary** has the same meaning as in the EPA Act.

## 2. Persons giving the Undertaking

2.1 This Undertaking is given to the Secretary under section 9.5 of the *Environmental Planning and Assessment Act 1979* (**EPA Act**) by following persons:

Dirt Art Pty Ltd

ACN: 164 835 054

18 Driftwood Drive, Opossum Bay TAS 7023

Authorised Representative:

Simon David French

18 Driftwood Drive, Opossum Bay TAS 7023

### 3. Background

- 3.1 Dirt Art Pty Ltd is an incorporated entity involved in the design, construction, and maintenance of recreational mountain bike parks and tracks.
- 3.2 The conduct that this Undertaking relates to is that Dirt Art Pty Ltd aided, abetted, procured, or counselled the carrying out of development without consent in contravention of section 4.2(1)(a) of the EPA Act comprising:
- (a) Earthworks and/or the clearing of trees and/or vegetation for a total distance of 20182 metres (20.182 kilometres) to create trails to be used as part of a proposed mountain bike park identified as CCC1, CCC2, CCC3a, CCC3b, CCC4a, CCC4b, CCC5, CCC6, CCC8, CCC10, CCC11, CCC13 and CCC14 on the map at **Annexure B (the Works)**.
- 3.3 The land on which the Works took place is known generally as 69 Cooks Road, Calga, and specifically the Works took place on Lot 108 in Deposited Plan 755221, Lot 86 in Deposited Plan 755221, Lot 85 in Deposited Plan 755221, Lot 21 in Deposited Plan 755221, and Lot 23 in Deposited Plan 755221.
- 3.4 Council became aware of the Works on 22 November 2022. After conducting an investigation it is apparent that the conduct the subject of this Undertaking took place over 2022 to the end of 2023 and contravenes section 4.2(1)(a) of the EPA Act as it was a purpose of development that required development consent under either the *Gosford Local Environmental Plan 2014* or the *Central Coast Local Environmental Plan 2022* (the Works having being carried out over a timeframe when each instrument applied in 2022) and development consent was not obtained.
- 3.5 In response to Council's investigation, Dirt Art Pty Ltd:
- (a) Acknowledges the concerns of the Council that the Development would have required development consent under section 4.2(1)(a) of the EPA Act;
  - (b) Acknowledges that the carrying out of the Development without development consent would constitute a breach of the EPA Act;
  - (c) Note the Development has been completed and no further works without development consent will be carried out;
  - (d) Acknowledges the community impacts which arise from breaches of the EPA Act including the harm to the regulatory scheme which establishes an orderly method for the obtaining of planning approvals prior to carrying out development; and
  - (e) Offers this undertaking in response to the concerns.
  - (f) Acknowledges that it will inspect and confirm that any development consent in the future is valid and in accordance with the works to be undertaken.
  - (g) Acknowledges that it will not carry out development without ensuring valid development consent in the future.

### 4. Commencement of this Undertaking

- 4.1 This Undertaking comes into effect when:
- (a) This Undertaking is executed by Dirt Art Pty Ltd; and
  - (b) This Undertaking so executed is accepted by the Planning Secretary or the Department's Delegate (**Commencement Date**).

## 5. Undertaking

- 5.1 Dirt Art Pty Ltd undertakes for the purposes of section 9.5 of the EPA Act that it will together with the related entity Elevation Parks Group Pty Ltd:
- (a) Immediately:
    - (i) not carry out, or permit to be carried out, any act which may harm the ecological and conservation values of the Conservation Area; and
    - (ii) must not carry out any development within the meaning of section 1.4 of the EPA Act in the Conservation Area.
  - (b) Within 7 days of the execution of the Undertaking by a delegate of the Planning Secretary of the Department of Planning, Housing and Infrastructure pursuant section 9.5 of the EPA Act, the Council will discontinue the proceedings relating to the persons giving the Undertaking, currently before the Land and Environment Court as proceedings no. 2024/00405878 and 2024/00405877.
  - (c) Within thirty (30) days of the Commencement Date, agrees to pay the Council, in Council's Bank Account, (\$26,000.00) as a contribution to its costs incurred.
  - (d) Within thirty (30) days of compliance with cl 5.1(b) will email to the Council's solicitor (Cecilia Rose - [crose@wilshirewebb.com.au](mailto:crose@wilshirewebb.com.au)) enclosing a copy of the bank statement or transaction receipt which confirms the payment.
  - (e) Within thirty (30) days of the Commencement Date, agrees to pay the Department, in the Department's Bank Account, (\$1,000.00) for the legal fees associated with accepting this Undertaking.
  - (f) Within thirty (30) days of compliance with cl 5.1(e), will email to the Director, Compliance and Investigations at the Department ([compliance@planning.nsw.gov.au](mailto:compliance@planning.nsw.gov.au)) enclosing a copy of the bank statement or transaction receipt which confirms the payment.
  - (g) Within twelve (12) months of the Commencement Date make a charitable contribution in the amount of \$40,000.00 (inclusive of any GST) to:
    - The Time Blair Run for Kids Foundation
    - BSB 633 000
    - AC 150402287
    - BENDIGO BANKAn email will be provided to Council's Unit Manager, Environmental Compliance Services evidencing payment of the donation.
  - (h) The Tim Blair Run for Kids Foundation raises funds and awareness for children with cancer through various running and fitness challenges. The funds will be disbursed across a range of projects relating to this cause.
  - (i) Simon David French has been in contact with Tim Blair to discuss the donation and its use/purpose. Tim Blair will provide Simon French and Council's Manager, Environmental Compliance Services with a report noting how the foundation have utilised the funds.
  - (j) The contact details of the Tim Blair Run for Kids Foundation are as follows:
    - Entity: Tim Blair Run for Kids Foundation

## 6. Extension of period of compliance

- 6.1 The Council's Chief Executive Officer may extend the period for compliance in clause 5.1(e) and 5.1(d) upon a request being made in writing by Dirt Art Pty Ltd if an extension is required.
- 6.2 The Council's Chief Executive Officer may extend the period for compliance in 5.1(d) upon a request being made in writing by Dirt Art Pty Ltd if the Planning Secretary or the Minister's Delegate is satisfied that Dirt Art Pty Ltd has demonstrated that it has used its best endeavours to comply with clause 5.1 above.

## 7. Acknowledgements

- 7.1 Dirt Art Pty Ltd acknowledges that:
- (a) 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.
  - (b) The Department will, from time to time, make public reference to this Undertaking including in news media statements and in department's publications.
  - (c) This Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.
  - (d) Dirt Art Pty Ltd is jointly and severally liable for payment of the amounts set out in clause 5.1(b), (d) and (f) together with the related entity Elevation Parks Group Pty Ltd. It is agreed the amounts to be paid in clauses 5.1(b), (d) and (f) reflect the total amounts to be paid as between the related entities Dirt Art Pty Ltd and Elevation Parks Group Pty Ltd to the Council, the Department and Tim Blair Run for Kids Foundation.
  - (e) Elevation Parks Group Pty Ltd has also entered a separate Undertaking. For the avoidance of any doubt, the figures set out in clauses 5.1(b), (d) and (f) in each Undertaking reflect the total sum to be paid by both Elevation Parks Group Pty Ltd and Dirt Art Pty Ltd. The figures in clauses 5.1(b), (d) and (f) are not to be combined.

## 8. Executed as an undertaking by authorised officer/s pursuant to section 127 of the Corporations Act 2001

### Dirt Art Pty Ltd

|                                                                                                |
|------------------------------------------------------------------------------------------------|
| Signature:  |
| Name of authorised representative - Director: Simon David French                               |
| Date: 1 <sup>st</sup> October 2025                                                             |

### Council

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|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The Council has negotiated the Undertaking with Dirt Art Pty Ltd in relation to the Council's functions under the EP&A Act and recommends that the Secretary accept the Undertaking |
| Signature:                                                                                                                                                                          |
| Name of authorised representative: Marissa Racomelara                                                                                                                               |

|                                          |
|------------------------------------------|
| Position: Acting Chief Executive Officer |
| Date: 2/10/2025                          |

**Department**

|                                                                                                                                              |
|----------------------------------------------------------------------------------------------------------------------------------------------|
| Accepted by the delegate of the Planning Secretary of the Department of Planning, Housing, and Infrastructure pursuant s 9.5 of the EP&A Act |
| Signature:                                                  |
| Name of authorised representative: David Gainsford                                                                                           |
| Position: Deputy Secretary, Development Assessment and Sustainability                                                                        |
| Date: 02/10/2025                                                                                                                             |