

Varied Enforceable Undertaking to the Natural Resources Access Regulator

PGH Bricks & Pavers Pty Limited ACN 168 794 821

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Parties to the Varied Enforceable Undertaking

Date 28 February 2024

Parties

Name: Natural Resources Access Regulator
Short form name: **NRAR**
Notice details: Locked Bag 5022, Parramatta NSW 2151
Email: lisa.stockley@nrar.nsw.gov.au
Attention: Grant Barnes, Chief Regulatory Officer

Name: PGH Bricks & Pavers Pty Limited ACN 168 794 821
Short form name: **PGH**
name: Notice details: Trinit 3, Level 5, 39 Delhi Road, North Ryde NSW 2113
Email: narancibia@csr.com.au
Attention: Nelma Arancibia

Background

- A This document outlines further variations to an enforceable undertaking from PGH originally accepted by NRAR on 3 June 2020 (**Original EU**) which was varied on 23 November 2020 and 30 March 2023.
- B NRAR, the State's water regulator, is responsible for compliance and enforcement of natural resources management legislation in New South Wales including the *Water Management Act 2000* (**WM Act**).
- C Section 336E of the WM Act enables the NRAR to accept enforceable undertakings from parties alleged to have breached the WM Act.
- D In 2015 PGH acquired the mothballed brick plant on and Lots 1-3 DP 1278780, and Lots 55-56 DP 3050 in the suburb of Badgerys Creek within the Liverpool Local Government Area (**Badgerys Creek Site**). The Badgerys Creek Site was established in accordance with a development consent granted on 30 September 1979 and modified by DA 764/2009 granted by Liverpool City Council, which commenced on 31 March 2009.
- E The Badgerys Creek Site covers an area of approximately 200 hectares and has previously been used for quarrying of local claystone for brick production, which ceased in March 2012.
- F The Badgerys Creek Site includes three disused quarry pits, known as Pits 1, 2 and 3, all of which previously stored intercepted rainfall runoff water, as shown on the site plan at **Annexure 2**.
- G In 2020 PGH entered into an agreement with Western Sydney Airport Corporation for the purposes of the Original EU for the supply to, and transfer of, stored water by WSA from the Badgerys Creek Site to be utilised by WSA offsite.
- H In 2022 the agreement between PGH and WSA was superseded by a written agreement between PGH and WSA's contractor AeroWest JV (ABN 95 840 566 147) (**AeroWest JV**).
- I Apart from an aquifer water access license held by Boral Bricks Pty Limited authorising the take of groundwater at the Badgerys Creek Site (aquifer access licence 24346), no surface water licences were held by any person or entity in relation to the Badgerys Creek Site. As such, PGH did not account for rainfall runoff captured in quarry pits at any stage prior to the Original EU being accepted.
- J NRAR alleged that PGH did not hold surface water access licences and further alleged that PGH is not exempt from a requirement for a surface water access licence at the Badgerys Creek Site. As such, NRAR alleged PGH took water in contravention of section 60A of the WM Act by capturing water in the quarry pits between 2015 and the date when the Original EU was executed on 3 June 2020.
- K PGH acknowledges NRAR's allegations in relation to the matter, including that the allegations concern a contravention of section 60A of the WM Act over an extended period, and undertakes to continue to carry out the commitments and preventative measures set out in this undertaking.
- L During October 2023, PGH consulted with NRAR in relation to a request to further vary the EU to accommodate the transfer of water stored in Pits 1-3 to different entities owing to the demand for water by AeroWest JV diminishing significantly over time, and there being other large projects in the vicinity, including state government projects, that could benefit from the stored water without relying on potable supplies likely to be under pressure over a

forecast drier 2023/24 summer and into 2024.

- M During November 2023, PGH provided NRAR with sufficient information relating to the management and transfer of stored water, including compliance with approval requirements of other state government agencies such as the Environment Protection Authority and Department of Planning and Environment.
- N PGH's transfer of stored water at no charge to AeroWest JV will continue in accordance with the Original EU as varied. This further variation addresses the transfer of stored water to additional entities, subject to (a) NRAR's written agreement of each new entity, and (b) PGH obtaining any necessary approvals required in respect of the supply of water to each new entity.
- O Subject to PGH's compliance with this variation, NRAR has accepted that new entities are able to receive stored water transferred from the Badgerys Creek Site without requiring future variations of this EU.

Varied Undertakings

1.1 Varied Undertakings

Under section 336E of the WM Act, PGH has offered and NRAR has accepted the following further varied undertakings to the Original EU, which was varied on 23 November 2020 and 30 March 2023.

1.2 Surface Water Management and Monitoring

PGH acknowledges:

- (a) that the allegations of non-compliance relate to surface water at the Badgerys Creek Site only, and that the allegations do not extend to (or include) alleged non-compliance relating to groundwater take or use;
- (b) any other water take not contemplated by Clause 1.2 must be licenced under the *Water Management Act 2000*; and
- (c) timeframes within Clause 1.2 may be varied with the written agreement of NRAR.

PGH undertakes to:

- (d) until the date the removal of water from the Badgerys Creek Site is complete, and PGH can commence rehabilitation, continue to maintain measures implemented at the Badgerys Creek Site to prevent, to the maximum extent which is practically possible using reasonable and feasible engineering methods, surface water in the form of rainfall runoff entering Pits 1 to 3 during the term of this varied enforceable undertaking
- (e) ensure adequate monitoring equipment, including water flow meters that comply with the metering equipment standards set out in Part 10 Division 3 of the *Water Management (General) Regulation 2018*, is installed and maintained (or otherwise available to PGH) to measure the daily volume of water transferred out of Pit 1, and any other pit, prior to any water being transferred offsite.
- (f) record, or be provided, in an electronic format, the daily volumes of water so transferred in accordance with Clause (e);

- (g) provide a copy of water monitoring data collected under Clause (f) to NRAR:
 - (i) in accordance with **Annexure 1** until the date that the transfer of water ceases (comprising a total transfer from the Badgerys Creek Site of a water volume not greater than 1200 megalitres (**ML**) being the combined volume of water agreed to be stored in Pits 1-3 as of 26 March 2020 unless licenses are obtained in accordance with 1.2(h) to exceed this volume); and
 - (ii) within 7 business days if requested in writing by the NRAR (from time to time)
- (h) obtain all necessary water access licences to account for the transfer or removal of surface water from the Badgerys Creek Site in excess of 1200 ML, being the combined volume of water agreed to be stored in Pits 1-3 as at 26 March 2020, should this occur.

1.3 Supply of water to external premises

PGH undertakes to:

- (a) only supply water stored in Pit 1 on the Badgerys Creek Site without charge to:
 - i. AeroWest JV in accordance with the Original EU as varied and PGH's written agreement with that entity (as may be varied from time to time); or
 - ii. another party with the prior written agreement of NRAR (which must not be unreasonably withheld or delayed)
- (b) not to supply the water stored on the Badgerys Creek Site in Pit 1 or any other pit to any other person or entity other than as identified at Clause 1.3(a).
- (c) ensure all necessary approvals required under law are obtained in respect of the supply of water stored in Pit 1 to AeroWest JV or another party.

1.4 Reporting compliance

- (a) PGH must provide written reports to NRAR in accordance with the terms and timings outlined in **Annexure 1**, unless agreed otherwise between the parties in writing.

1.5 Acknowledgements

- (a) PGH makes the following acknowledgments:
 - (i) the NRAR will make this varied undertaking public by placing a copy of the executed varied undertaking on the NRAR public register;
 - (ii) this varied undertaking does not affect NRAR's power to investigate a contravention arising from future conduct or to pursue a criminal prosecution in respect of future conduct, or to lay charges or exercise other civil or regulatory powers under the NRAR Act or WM Act;
 - (iii) this undertaking does not affect the rights or remedies available to any other person or entity, nor does it affect any statutory obligation under the WM Act;
 - (iv) no expenditure commitments made by PGH in this undertaking may be claimed as tax deductions;
 - (v) this varied undertaking has no operative force until formally accepted by NRAR and written notice of the decision (including reasons for the

decision) are provided to PGH in accordance with section 336F of the WM Act;

- (vi) this varied undertaking may only be withdrawn or varied with the written consent of the NRAR in accordance with the WM Act;
- (vii) this varied undertaking, as it may be further varied from time to time, will remain in force until completed or withdrawn in accordance with the WM Act; and
- (viii) the NRAR may take this varied undertaking into account in regulatory matters under the WM Act.

1.6 Limits of action

- (a) NRAR acknowledges that the alleged non-compliance relates to surface water at the Badgerys Creek Site only, and that the allegations do not extend to (or include) alleged non-compliance with groundwater take or use;
- (b) NRAR and PGH have mutually agreed that, in light of PGH having entered into this undertaking and the commitments contained herein, the NRAR will take no further enforcement action in relation to the allegations outlined above; and
- (c) PGH acknowledges that NRAR is not barred from future enforcement or other actions arising as a result of any future contraventions or incidents, including with respect to the enforcement of this undertaking.

Signing Page

Executed as a Varied Undertaking

Company

Executed by **PGH Bricks & Pavers Pty Limited ACN 168 794 821**, pursuant to section 127(1) of the *Corporations Act 2001* by authority of its directors

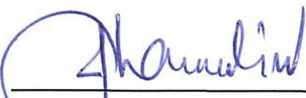
Signature of director:



Name of director: **(print)**

Sara-Ann Lom

Date: **Select date**



Signature of director/company secretary
[delete as appropriate or delete this section if this is a sole director company]:

Jillian Irene Hardiman

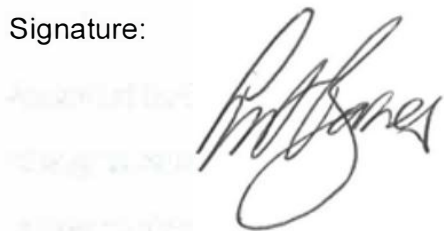
Name of ~~director~~/company secretary:

Enter director's or company secretary's given name and family name here

Date: **Select date** 28 February 2024

For the Minister for Lands and Water

Signature:



Accepted by the Minister or his/her delegate pursuant to section 336E of the WM Act:

Delegate name: **Grant Barnes**

Delegate title: **Chief Regulatory officer**

Natural Resources Access Regulator
(By delegation)

Date: 5 March 2024

Annexure 1 – PGH Reporting Obligations

PGH Reporting Commitment	Due dates for reports
<p>1 PGH will provide NRAR a written report confirming (using reasonable and feasible engineering methods to prevent surface water entering into Pits 1-3 in accordance with Clause 1.2(d)) that surface water in the form of rainfall runoff has ceased entering into Pits 1-3 at the disused quarry pits at the Badgerys Creek Site</p>	<p>30 March 2024 30 September 2024 30 March 2025 30 September 2025 30 March 2026 30 September 2026</p>
<p>2 PGH will provide a copy of water monitoring data collected under Clause 1.2(g) to NRAR every six months until 23 December 2026</p>	<p>30 January 2024 30 July 2024 30 January 2024 30 July 2025 30 January 2026 30 July 2026 30 January 2027</p>
<p>3 PGH will provide NRAR with an annual written report on its compliance with the undertakings in clauses 1.2, 1.3 and 1.4 of this varied enforceable undertaking every 12 months until 23 November 2026, unless otherwise agreed in writing by NRAR</p>	<p>30 November 2024 30 November 2025 30 November 2026</p>
<p>4 In its annual report, PGH will include a report confirming that groundwater inflow into the disused quarry pits at the Badgerys Creek Site is negligible, or that groundwater is otherwise being taken in compliance with a valid and current aquifer access licence</p>	<p>30 November 2024 30 November 2025 30 November 2026</p>

Annexure 2 – Site Plan

