Form 43 (version 1) UCPR 36.11

ORDER

COURT DETAILS

Land and Environment Court of New South Wales Court

Class

Level 4, 225 Macquarie Street, Sydney Registry

Case number 10454 of 2009

TITLE OF PROCEEDINGS

Applicant CSR HEBEL

GOSFORD CITY COUNCIL Respondent

DATE OF JUDGMENT/ORDER

16 September, 2009 Date made or given

23/9/2009 Date entered

TERMS OF ORDER

The Court notes that the parties or their representatives have reached agreement at or after a conciliation conference held pursuant to s 34 of the Land and Environment Court Act, 1979, presided over by Commissioner Tuor, as to the terms of a decision in the proceedings that would be acceptable to the parties (being a decision that the Court could have made in the proper exercise of its functions) as set out in the document annexed hereto.

NEW SOUTH WALES

By consent, the Court makes orders in accordance with the document annexed hereto.

SEAL AND SIGNATURE

Court seal

Signature

Capacity

Date

ACTING REGISTRAR

[Include the following section if the document is to be provided to the Registrar for sealing under UCPR 36.12.]

PERSON PROVIDING DOCUMENT FOR SEALING UNDER UCPR 36.12

Name GOSFORD CITY COUNCIL, Respondent

Legal representative P J Donnellan & Co

PJD.DG 2009117 Legal representative reference

Contact name and telephone Mr Patrick Donnellan Ph: 4324 3988

CONSENT ORDER

COURT DETAILS

Court Land and Environment Court of New South Wales

Registry Sydney

Case number 10454 of 2009

TITLE OF PROCEEDINGS

Plaintiff CSR HEBEL

Defendant GOSFORD CITY COUNCIL

PREPARATION DETAILS

Prepared for GOSFORD CITY COUNCIL Defendant

Legal representative P J Donnellan & Co

Legal representative reference PJD.DG 2009117

Contact name and telephone Patrick Donnellan Ph: 4324 3988

TERMS OF JUDGMENT/ORDER

The appeal is upheld.

 Development Consent is given to Development Application 34787 (Gosford City Council) subject to the Conditions of Consent annexed hereto and marked "A".

SIGNATURES

Plaintiff

CSR Hebel, the Plaintiff, consents.

Signature of legal representative

Signature of or on behalf of party

if not legally represented

Capacity Solicitor

Date of signature

Defendant

Gosford City Council, the Defendant, consents.

Signature of legal representative

Signature of or on behalf of party if not legally represented

Capacity Solicitor

Date of signature 15

Gannellan

SEAL AND SIGNATURE

Court seal

Signature

Capacity

Date made or given

Date entered



Draft Conditions DA34787

Land and Environment Court Case Number 10454 of 2009 - CSR Hebel ats Gosford City Council

1. PARAMETERS OF THIS CONSENT

1.1. Approved Plans and Supporting Documents

The development shall be implemented substantially in accordance with the plans and supporting documents listed below as submitted by the applicant and to which is affixed a Council stamp "Development Consent" unless modified by any following condition.

Architectural Plans by Brown Consulting (NSW) Pty Ltd

Drawing	Description	Issue	Date
DA01	Concept Site Masterplan Layout	04	5/6/2009
DA02	Bulk Earthworks Plan and Sheet Layout	04	5/6/2009
DA03	Bulk Earthworks Levels	04	5/6/2009
DA04	Bulk Earthworks Section 1-3	04	5/6/2009
DA05	Retaining Wall Elevation	04	5/6/2009
DA06-DA08	Road 1 – Plan and Long Section	04	5/6/2009
DA09-DA11	Road 1 - Cross Section	04	5/6/2009
DA12	Road 2 – Plan and Long Section	04	5/6/2009
DA13	Road 2 - Cross Sections	04	5/6/2009
DA14	Basin and Access Ramp	04	5/6/2009
DA15	Basin Sections and Weir Details	04	5/6/2009
DA16	Basin Inlet Detail Plan	04	5/6/2009
SK09	Fencing/Barrier Plan During Construction	01	1
SK10	Permanent Fencing Arrangement Post	01	
	Construction		and white

Supporting Documentation

Document	Title	Date
Brown	Comprehensive Water Cycle Management Plan	June 2009
Consulting		
Whelans Insites	Species Impact Statement	September 2008
Brown	Traffic Impact Assessment	October 2007
Consulting		
Ingham Planning	Statement of Environmental Effects	December 2007
Ingham Planning	Development Assessment Report	August 2008
Whelans Insites	Conservation Areas Management Plan	September 2009
Networks	Assessment of Existing Fill	September 2007
Geotechnics P/L		-

NEW SOUTH WALE

1.2. Building Code of Australia

All building works must be carried out in accordance with the Building Code of Australia.

2. PRIOR TO ISSUE OF THE CONSTRUCTION CERTIFICATE

2.1. Modification of details of the development (s80A(1)(g) of the Act)

The approved plans must be amended. The Construction Certificate plans and specification, required to be submitted to the Certifying Authority pursuant to Clause 139 of the Regulation, must detail:

- a) The landscape setback along the Wisemans Ferry Road frontage of Lot 22 shall be a minimum of 7.5m width.
- b) Deletion of Proposed Future Factory (Stage 2) and proposed Future Warehouse (Stage 3).
- 2.2. The payment of \$3,135.00 outstanding DA fees.
- 2.3. No activity is to be carried out on site until a Construction Certificate has been issued than:
 - a Site investigation for the preparation of the construction, and/or
 - b Implementation of environmental protection measures, such as erosion control etc that are required by this consent.

NEW SOUTH WALES

2.4. A construction certificate for the work is to be issued and the person having the benefit of the development consent must appoint a principal certifying authority prior to the commencement of any works.

The principal certifying authority (if not the Council) is to notify Council of their appointment and notify the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the work no later than 2 days before the building work commences.

2.5. All work required to be carried out within a public road reserve must be separately approved by Council, under Section 138 of the Roads Act 1993.

Engineering plans for the required work within a public road must be prepared and designed by a suitably qualified professional, in accordance with Council's "Civil Construction Specification", "GCC Design Specification for Survey, Road and Drainage Works" and "Policy 'D6.46 Erosion Sedimentation Control".

The required works to be designed are as follows:

- a. Tapered Heavy-duty vehicle crossings to accommodate the swept turning path of the largest design vehicle accessing the development in accordance with AS2890.2:2002: Commercial Vehicle Facilities and constructed with 200mm thick concrete reinforced with 1 layer of S72 steel fabric top and bottom.
- b. All redundant dish crossings and/or damaged kerb and gutter are to be removed and replaced with new kerb and gutter.
- c. Roadside furniture and safety devices including fencing, signage, guide posts, chevrons, directional arrows and guard rail in accordance with RTA and Australian Standards.
- d. Piping of the open drain in the frontage of the site.

The engineering plans must be approved by Council prior to the issuing of a Construction Certificate required under this consent.

2.6. A dilapidation report must be submitted to Council prior to issue of a Construction Certificate and/or approval of engineering plans under the Roads Act. The report must document and provide photographs that clearly depict any existing damage to the road, kerb, gutter,

footpath, driveways, street trees, street signs or any other Council assets in the vicinity of the development.

- 2.7. A security deposit of \$10,000.00 must be paid into Council's trust fund prior to the issue of a Construction Certificate. The payment of the security deposit is required to cover the cost of repairing damage to Council's assets that may be caused as a result of the development. The security deposit will be refunded upon the completion of the project if no damage was caused to Council's assets as a result of the development.
- 2.8. Satisfactory arrangements must be made for the provision of water and sewer services to the land. A copy of the Certificate of Compliance under Section 307 of the Water Management Act 2000, must be obtained from the Water Authority (Council) prior to the issue of a Construction Certificate. Contributions may be applicable to the Section 307 Certificate.
- 2.9. Design of the following engineering works within private property:
 - a. Driveways/ramps and car parking areas must be designed according to the requirements of the current Australian Standard AS2890 for the geometric designs, and industry Standards for pavement designs.
 - b. A stormwater detention system must be designed in accordance with Council's DCP165 Water Cycle Management and Council's 'GCC Design Specification for Survey, Road and Drainage Works'. The stormwater detention system shall limit post development flows from the proposed development to less than or equal to predevelopment flows for all storms up to and including the 1%AEP storm event. A runoff routing method is to be used. An on-site stormwater detention report including an operation and maintenance plan shall accompany the design. On-site stormwater detention is not permitted within private courtyards, drainage easements, and/or secondary flowpaths.
 - c. Nutrient/pollution control measures must be designed in accordance with Council's DCP165 Water Cycle Management. A nutrient/pollution control report including an operation and maintenance plan shall accompany the design.

The design of these details and any associated reports shall be included in the construction certificate.

- 2.10. Piping of all stormwater from impervious areas within the site via an on-site stormwater detention structure to Council's drainage system.
- 2.11 Proposed retaining walls, greater than 600mm in height, are to be designed by a practising Structural/Civil Engineer. The plans for the proposed retaining walls shall form part of the Construction Certificate.
- 2.12 The area along the southern boundary indicated on the site plan as the 'conservation area' shall be preserved for a movement corridor and habitat for threatened species.

A public positive covenant pursuant to Section 88E (3) of the *Conveyancing Act 1919* shall be created for those lands identified as the CONSERVATION AREAS on Figure 3 of the CAMP (Insites September 2009). The retention of this area shall be formalised as follows:

(1) These areas will be placed under a 'Restriction on Use' pursuant to Sections 88B and 'Public Positive Covenant' 88E of the Conveyancing Act 1919. These instruments shall require the land to be managed under the approved CAMP for the conservation of all identified threatened species. The public positive covenant shall be created to require the implementation of the CAMP by the owner of the land that is subject to the CAMP.

The public positive covenant shall permit Council or its nominee to enter and inspect the site and carry out any works required under the CAMP, at the owners cost if the owner

fails to implement and maintain the site in accordance with the CAMP as may be amended and approved by Council.

A 'Restriction As To User' on the land subject to the CAMP shall be created for the restriction of the following activities within the CONSERVATION AREAS':

- Land clearing and construction;
- Storage and dumping of equipment / materials;
- Vehicular movement of machinery; and
- All activities prohibited under the Somersby Industrial Park Plan of Management (June, 2005).

The public positive covenant and restriction as to user shall be prepared by Council's Solicitor at the cost of the registered proprietor in consultation with the registered proprietor.

The public positive covenant and restriction as to user shall identify that portion of Lot 22 that is subject of the CAMP.

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The authority empowered to release, vary or modify the restriction is Council.

The CAMP may be amended in accordance with Section 6 of the CAMP.

- 2.13. Stormwater structures and erosion and sediment control structures (including drains, basins, pipes, culverts, pits, headwalls, haybales, silt fencing etc) shall not be located or constructed within the CONSERVATION AREAS or the Management Zone Piles 1(e) Piles Creek Riparian (Somersby Industrial Park Plan of Management, 2005).
- 2.14. Stormwater generated from the development site must be managed so as to attenuate postdevelopment flows to pre-development flows for a full range of design rainfall events. The principles of Water-Sensitive Urban Design may be applied in order to achieve this goal.

3. PRIOR TO COMMENCEMENT OF ANY WORKS

- 3.1. A copy of the stamped approved plans must be kept on site for the duration of site works and be made available upon request to either the Principal Certifying Authority or an officer of the Council.
- 3.2. Site works are not to commence until the sediment control measures have been installed in accordance with the approved plans and inspected by the Principal Certifying Authority.
- 3.3. A sign is required to be erected in a prominent position on any work site on which building or demolition work is being carried out. The sign shall indicate:
 - a) The name, address and telephone number of the principal certifying authority for the work; and
 - b) The name of the principal contractor and a telephone number at which that person may be contacted outside of working hours; and
 - c) That unauthorised entry to the work site is prohibited.

The sign is to be removed when the work has been completed.

3.4. Public access to the construction site is to be prevented, when building work is not in progress or the site is unoccupied.

These prevention measures must be in accordance with the NSW WorkCover publication titled, 'Site Security and Public Access onto Housing Construction Sites' and installed prior to the commencement of any demolition, excavation or building works and be maintained throughout construction. The use of barbed wire and/or electric fencing is not to form part of the protective fencing to construction sites.

- 3.5. Prior to the issue of the Construction Certificate, temporary fencing and/or protective barriers will be erected in accordance with the plan annexed to this consent marked "A".
- 3.6. Prior to the issue of the Occupation Certificate, a security fence will be erected in accordance with the plan annexed to this consent marked "B". A lockable access gate shall be provided for maintenance purposes in the south western corner of the site. At intervals of no less than thirty (30) metres the fence shall be sign posted to identify the conservation value of the land and discourage access.

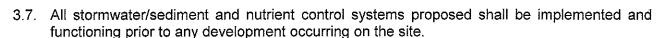
The sign shall read as follows:

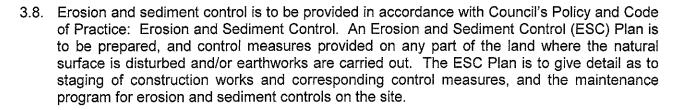
'WARNING - NO UNAUTHORISED ENTRY

The vegetation beyond this fence contains threatened species.

Any disturbance (damage, pollution or rubbish dumping) may result in a fine up to \$220,000 and/or 2 years imprisonment.

Section 118 of the National Parks & Wildlife Act 1974"





Note: Failure to implement or maintain appropriate erosion and sediment control measures is a breach of the *Protection of the Environment Operations (POEO) Act 1997.* Such a breach is liable for a \$750 on-the-spot fine for an individual, or a \$1500 on-the-spot fine for a corporation.

- 3.9. A Dust Management Plan shall be prepared and submitted to the Principal Certifying Authority. The Dust Management Plan shall include measures to be employed during works to prevent and mitigate windblown and traffic generated dust.
- 3.10. Trucks assessing the site shall not track sediment onto public roads. Facilities shall be installed at the entry / exit points to the site to prevent vehicles tracking sediment and other pollutants onto any sealed roads. Such facilities may include shaker ramps and wash down bays.

4. DURING WORKS

4.1. Erosion and Siltation control measures must be undertaken and maintained in respect to any part of the land where the natural surface is disturbed or earthworks are carried out. The controls shall comply with Council's Code of Practice of Erosion and Sedimentation Control.



- 4.2. Should any Aboriginal objects or artefacts be uncovered during works on the site, all works shall cease. The Department of Environment and Climate Change shall be contacted immediately an any directions or requirements complied with.
- 4.3. Building materials must not be stored nor construction work carried out on the road reserve unless associated with a separate approval under the *Roads Act 1993*.
- 4.4. The works within the road reserve that required approval under the Roads Act shall be constructed in accordance with Council's 'Civil Construction Specification', 'GCC Design Specification for Survey, Road and Drainage Works' and Policy 'D6.46 Erosion Sedimentation Control'.
- 4.5. The engineering works within private property that formed part of the Construction Certificate shall be constructed in accordance with Council's 'Civil Construction Specification' Begin Design Specification for Survey, Road and Drainage Works' and Policy 'D6.46 Broston Sedimentation Control'.
- 4.6. Filling or debris must not be placed within any watercourse or drain.
- 4.7. All lots filled more than 500mm are to achieve a minimum of 95% standard compaction in accordance with Australian Standard 1289 under a practising Geotechnical engineer's supervision & certification.
- 4.8. Plant species used for landscaping must be restricted to locally native species appropriate to the locality and/or those introduced species that do not have known potential to become environmental weeds.
- 4.9. Stockpile of soil and other material shall be located away from sensitive environmental receptors (including creeks, watercourses and management zones), and if not to be used immediately, must be covered with an appropriate control such as geotextile fabric.
- 4.10. No development or works will be permitted in the area designated as Management Zone 1(e) Piles Creek Riparian and Habitat Protection Zone as indicated in the Somersby Industrial Park Plan of Management (June, 2005).
- 4.11. Underscrubbing of the development area should be carried out by a 4x4 tractor with a slashing deck. This will minimise the establishment of degradation processes and leave a layer of mulch to aid in soil retention in the event of adverse weather. At this time felling of non-habitat trees can take place however a matrix of trees must be maintained to allow fauna movement into the vegetated refuge area.
- 4.12. The works and exposed soils shall not generate excessive dust or cause nuisance to adjoining properties. Measures shall be taken to prevent and mitigate windblown or traffic generated dust. Dust levels shall be monitored during works.
- 4.13. No fill or debris is to be placed in a position where it can pollute or damage native vegetation, drainage lines or a watercourse.
- 4.14. Appropriate measures must be applied to prevent windblown or traffic generated dust.
- 4.15. Fill material shall only comprise uncontaminated clean fill certified by an EPA accredited auditor. Evidence of the certification is to be provided to Council prior to the issue of the Occupation Certificate.
- 4.16. Any exposed soil surface areas must be grassed/landscaped to minimise soil erosion.

5. PRIOR TO ISSUE OF THE OCCUPATION CERTIFICATE

- 5.1. Application for an Occupation Certificate must be submitted to and approved by the Principal Certifying Authority prior to occupation of the building.
- 5.2. The premises or site not being occupied or used until an occupation certificate has been issued.
- 5.3. Lots 1 and 22 must be consolidated into a single allotment under one Certificate of Title prior to the issue of an Occupation Certificate.
- 5.4. Works within the road reserve that required approval under the Roads Act are to be completed in accordance with Council's 'Civil Construction Specification', 'GCC Design Specification for Survey, Road and Drainage Works' and Policy 'D6.46 Erosion Sedimentation Control', and documentary evidence for the acceptance of such works obtained from the Roads Authority prior to the issue of an Occupation Certificate.
 - Note 1: A maintenance bond shall be paid on completion of the works in accordance with Section 1.07 Maintenance of the 'Civil Construction Specification'.
- 5.5. Any damage not shown in the dilapidation report submitted to Council before site works had commenced, will be assumed to have been caused as a result of the site works undertaken and must be rectified at the applicant's expense, prior to release of the Occupation Certificate.
- 5.6. The internal engineering works within private property that formed part of the Construction Certificate shall be completed in accordance with Council's 'Civil Construction Specification', 'GCC Design Specification for Survey, Road and Drainage Works' and Policy 'D6.46 Erosion Sedimentation Control', prior to the issue of an Occupation Certificate.
- 5.7. A Section 88E instrument under the Conveyancing Act 1919 must establish the following positive covenants; with the Council having the benefit of these covenants and having sole authority to release and modify. The covenant must be prepared by Council's Solicitor at the owner's cost prior to the issue of a Subdivision Certificate.
 - 1 To ensure on any lot containing an onsite stormwater detention system that:
 - The facility will remain in place and fully operational.
 - The facility is maintained so that it operates in a safe and efficient manufer
 - Council staff are permitted to inspect and repair the facility at the owner's cos
 - Council is indemnified against all claims of compensation caused by the facility
 - 2 To ensure on any lot containing a nutrient/pollution control facility that:
 - The facility will remain in place and fully operational.
 - The facility is maintained so that it operates in a safe and efficient manner.
 - Council staff are permitted to inspect and repair the facility at the owner's cost.

NEW SOUTH WA

- Council is indemnified against all claims of compensation caused by the facility.
- 5.8. The entry/exit driveway width and internal road configuration is to be designed and constructed in accordance with AS 2890.2:2002:"Commercial Vehicle Facilities" so as to accommodate the swept turning path of the largest design vehicle accessing the development.
- 5.9. Appropriate site works are to be constructed across the street frontages so as to comply with the minimum sight distance requirements and minimum sight lines for pedestrian safety set out in the RTA publication "Guide to Traffic Generating Development" (1993) and AS/NZS 2890.1:2004 Part 1: "Off-Street Car Parking".

6. ONGOING OPERATION

- 6.1. All external lights shall be operated and maintained in accordance with the Australian Standard AS4282 Control of the Obtrusive Effects of Outdoor Lighting so as not to cause a nuisance or adverse impact on the amenity of residents of the surrounding area or to motorists on nearby roads.
- 6.2. All loading and unloading of goods are to be conducted wholly within the site. Loading facilities, internal docks or goods handling areas are to be maintained free of obstruction for the sole use of delivery vehicles.
- 6.3. Maintenance of the on-site stormwater detention facility in accordance with the operation & maintenance plan.
- 6.4. Maintenance of the nutrient/pollution control facilities in accordance with the operation & maintenance plan.
- 6.5. All gases, odours, fumes, steam, moisture and particulate matter generated by the use of the premises must comply with the requirements of the Protection of the Environment Operations Act 1997.
- 6.6. The property has a common boundary with the Sydney-Newcastle Freeway. Direct access across this common boundary is restricted and thus denied.
- 6.7. On site Vehicular turning facilities are to be provided to enable all vehicles to exit the site in a forward direction.
- 6.8. Internal accesses and all parking facilities are to be designed and constructed in accordance with Gosford City Council's DCP No 111:Carparking and AS/NZS 2890.1:2004 Part 1:"Off-Street Car Parking".

7. ADVICE

- 7.1. The public authorities may have separate requirements and should be consulted in the following aspects:
 - a Australia Post for the positioning and dimensions of mail boxes in new commercial and residential developments;
 - b Jemena Asset Management for any change or alteration to the gas line infrastructure;
 - c *Energy Australia* for any change or alteration to electricity infrastructure or encroachment within transmission line easements;
 - d *Telstra*, *Optus* or other telecommunication carriers for access to their telecommunications infrastructure.
 - e Gosford City Council in respect to the location of water, sewerage and drainage services.
- 7.2. All work carried out under this Consent should be done in accordance with WorkCover requirements including the Occupational Health and Safety Act 2000 No 40 and subordinate regulations, codes of practice and guidelines that control and regulate the development industry.
- 7.3. It is an offence under the National Parks and Wildlife Act 1974 to knowingly disturb an Aboriginal object or artifact without consent.
- 7.4. A fee for the approval of engineering plans under the Roads Act 1993 applies. The amount of this fee can be obtained by contacting Council's Customer Services on (02) 4325 8222.

- 7.5. The inspection fee for works associated with approvals under the Roads Act is calculated in accordance with Council's current fees and charges policy.
- 7.6. The proposed development should be designed such that any road traffic noise increase induced by traffic generation from the proposed development along surrounding roads is managed in accordance with the EPA criteria for "new land use developments with potential to create additional traffic on arterial/collector/local roads" (The Environmental Criteria for Road Traffic Noise, May 1999).

9.8 PENALTIES

Failure to comply with this development consent and any condition of this consent may be a *criminal offence*. Failure to comply with other environmental laws may also be a *criminal offence*.

Where there is any breach Council may without any further warning:

- Issue Penalty Infringement Notices (On-the-spot fines);
- Issue notices and orders;
- Prosecute any person breaching this consent, and/or
- Seek injunctions/orders before the courts to retain and remedy any breach.

Warnings as to Potential Maximum Penalties

Maximum Penalties under NSW Environmental Laws include fines up to \$1.1 Million and/or custodial sentences for serious offences.



