

## ORDER

### COURT DETAILS

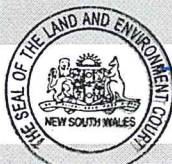
Court Land and Environment Court  
Class 4  
Case number 11/40745

### TITLE OF PROCEEDINGS

Applicant Minister for Planning and Infrastructure  
Respondent La Vie Developments Pty Ltd ACN 113 616 167

### DATE OF ORDER

Date made or given ~~3 May 2012~~ 4 MAY 2012  
Date entered 11 MAY 2012



### TERMS OF ORDER MADE BY THE COURT

1. In these Orders:

- (a) **Site** means Lot 200, 201 and 202 in DP 1156078.
- (b) **Base Survey** means the base survey prepared by a registered surveyor, showing finished levels (RLs to AHD) of all Stockpiled Material on the Site. This plan identifies the Rock Wall, the Acoustic Mound and the existing Stockpiled Material and is Drawing No A1-D208150 Plan 1 dated 4 April 2012 attached to these Orders and marked "A".
- (c) **Stockpiled Material** means any material over and beyond the Predetermined Survey.
- (d) **Predetermined Survey** means the survey prepared by Craven, Elliston & Hayes (Dapto) Pty Ltd dated 23 May 2008 and submitted with the Environmental Assessment for the Project Approval and Concept Approval dated June 2009 attached to these Orders and marked "E".
- (e) **Project Approval** means Project Approval No. 080156 given by the Minister of Planning and Infrastructure on 31 January 2010.
- (f) **Concept Plan Approval** means Concept Plan Approval No 080156 given by the Minister of Planning and Infrastructure on 31 January 2010.
- (g) **Acoustic Mound** means the stockpile of excavated material located adjacent to Goolagong Street, as shown on the Base Survey.
- (h) **Rock Wall** means the area located adjacent to Goolagong Street and on the western boundary of nos. 36 and 40 Goolagong Street, as shown on the Base Survey.
- (i) **Relocated Rock Wall and Acoustic Mound Plan** means the plan, prepared by a registered surveyor, showing the relocation of the Rock Wall and the Acoustic Mound



within the Site, including the footprint and finished levels (RLs to AHD) and is Drawing No A1-208150 Plan 2 dated 4 April 2012 attached to these Orders and marked "B".

- (j) **Inclement Weather** means the situation if the number of rain days where rainfall exceeds 10mm/day, exceeds the number that occur in a 90<sup>th</sup> percentile wet period.
- (k) **Initial Stockpile Reduction** means the initial 50% of excavated material to be removed off the Site, excluding the Rock Wall, Acoustic Mound and the approximate 9,780m<sup>3</sup> of excavated material removed under the undertaking (as varied from time to time) to the Court. The initial 50% of excavated material to be removed off the Site must include the excavated material in the South East Corner of the Site adjoining 36 and 40 Goolagong St so that the south-eastern corner of the site adjoining 36 and 40 Goolagong St is reduced in height and changed in shape so that it is of the height and shape shown on Drawing No. A1-D208150-Plan 3 dated 4 April 2012 attached to these Orders and marked "C".
- (l) **Residual Stockpile** means the material (finished levels (RLs to AHD)) remaining on the Site after the Initial Stockpile Reduction, as shown in the Residual Stockpile Plan.
- (m) **Residual Stockpile Plan** means the plan, prepared by a registered surveyor, showing details of the new location of the Residual Stockpile including the finished levels (RLs to AHD). The plan is to show stockpile which must commence no less than 2 metres from the boundary of 36 and 40 Goolagong Street, which is to be used for a drainage trench, at the South East Corner of the Site adjoining 36 and 40 Goolagong Street and is Drawing No A1-208510 Plan 3 dated 4 April 2012 attached to these Orders and marked "C".
- (n) **Removed Stockpile Plan** means the plan, prepared by a registered surveyor, showing the Site on completion of removal of the Residual Stockpile, including the finished levels (RLs to AHD) and the footprint of any excavated material on the Site and is Drawing No A1-D208150 – Plan 4 dated 4 April 2012 attached to these Orders and marked "D".
- (o) **Council** means Wollongong City Council.
- (p) **Major Removal Event** means the relocation of the Rock Wall and Acoustic Mound, the Initial Stockpile Reduction and the removal of the Residual Stockpile.
- (q) **SWMP** means a soil and water management plan prepared in accordance with the Blue Book and any additional requirements listed in these orders.
- (r) **SWMP Engineer** means a NPER registered engineer experienced in the preparation of SWMPs in accordance with best practice requirements and the Blue Book.
- (s) **Blue Book** means Landcom's publication *Managing Urban Stormwater – Soils and Construction*, Volume 1, 4th Edition, March 2004.
- (t) **EP&A Act** means the *Environmental Planning and Assessment Act* 1979.

By consent the Court orders that:

#### A. Rock Wall

1. The Respondent is to relocate the Rock Wall to the area so marked on the Relocated Rock Wall and Acoustic Mound Plan on or before 4/11/2012 being **six months** from the date of this Order.



2. Within at least 14 days prior to commencement of removal of the Rock Wall, the Respondent shall submit to the Applicant for approval:

- (a) a methodology for the removal of the Rock Wall, prepared by a geotechnical engineer;
- (b) a schedule of the staging or timetable for the removal of the Rock Wall; and
- (c) the SWMP referred to in Order 24 of these orders.

In determining the 6 month period referred to in order 1 the period of assessment by the Applicant of the above is not included in the 6 month time period.

3. The Respondent is not to commence removal of the Rock Wall unless and until approval is obtained from the Applicant under order 2 above.
4. Removal of the Rock Wall is to be carried out in accordance with the approval obtained under order 2 above and the Relocated Rock Wall and Acoustic Mound Plan.
5. Within 21 days of completion of removal of the Rock Wall, the Respondent is to provide certification to the Applicant, from a Registered Surveyor, that the footprint, volume and RLs of the relocated Rock Wall are in accordance with the Relocated Rock Wall and Acoustic Mound Plan.

#### **B. Acoustic Mound**

6. The Respondent is to relocate the Acoustic Mound to the area so marked on the Relocated Rock Wall and Acoustic Mound Plan, on or before 4/11/2012 being **six months** from the date of this Order.
7. Within at least 14 days prior to commencement of removal of the Acoustic Mound, the Respondent shall submit to the Applicant for approval:
  - (a) a methodology for the removal of the Acoustic Mound prepared by a geotechnical engineer; and
  - (b) a schedule of the staging or timetable for the removal of the Acoustic Mound; and
  - (c) the SWMP referred to in Order 24 of these orders.

In determining the 6 month period referred to in order 6 the period of assessment by the Applicant of the above is not included in the 6 month time period.

8. The Respondent is not to commence removal of the Acoustic Mound unless and until approval is obtained from the Applicant under order 7 above.
9. Removal of the Acoustic Mound is to be carried out in accordance with the approval obtained under order 7 above and the Relocated Rock Wall and Acoustic Mound Plan.
10. Within 21 days of completion of removal of the Acoustic Mound, the Respondent is to provide certification to the Applicant, from a Registered Surveyor, that the footprint, volume and RLs of material relocated from the Acoustic Mound is in accordance with the Relocated Rock Wall and Acoustic Mound Plan.





### C. Initial Stockpile Reduction

11. The Respondent is to carry out the Initial Stockpile Reduction on or before **4/2/2013** being **nine months** from the date of this Order.
12. Within at least 14 days prior to commencement of the Initial Stockpile Reduction, the Respondent shall submit to the Applicant for approval:
  - (a) a methodology for the Initial Stockpile Reduction prepared by a geotechnical engineer;
  - (b) a schedule of the staging or timetable for the Initial Stockpile Reduction; and
  - (c) the SWMP referred to in Order 24 of these orders.

In determining the 9 month period referred to in order 11 the period of assessment by the Applicant of the above is not included in the 9 month time period
13. The Respondent is not to commence the Initial Stockpile Reduction unless and until approval is obtained from the Applicant under order 12 above.
14. The Initial Stockpile Reduction is to be carried out in accordance with the approval obtained under order 12 above and the Residual Stockpile Plan.
15. Within 21 days of completion of Initial Stockpile Reduction, the Respondent is to provide certification to the Applicant, from a Registered Surveyor, that the footprint, volume and RLs of the reduced stockpile are in accordance with the Residual Stockpile Plan.

### D. Removal of Reduced Stockpile

16. The Respondent is to remove the Residual Stockpile from the Site on or before:
  - (a) 4/5/2017 being **5 years** from the date of this Order, or
  - (b) before the issue of an occupation certificate for Stage 5 of the Concept Plan Approval (MP08\_0156),

whichever is sooner.
17. By 4/5/2013, being 12 months from the date of this Order, the Respondent is to submit to the Applicant for approval:
  - (a) a methodology for the removal of the Residual Stockpile prepared by a geotechnical engineer;
  - (b) a schedule of the staging or timetable for the removal of the Residual Stockpile, including estimated milestone dates for the commencement of 25%, 50%, 75% and 100% removal is to be submitted to the Applicant. This may include works associated with future development consents issued for Stages 2-3 of the Concept Plan; and
  - (c) the SWMP referred to in Order 24 of these orders.

In determining the period referred to in order 17 the period of assessment by the Applicant of the above is not included in the 12 month time period.
18. The Respondent is not to commence removal of the Residual Stockpile unless and until approval is obtained from the Applicant under order 17 above.



19. Removal of the Residual Stockpile is to be carried out in accordance with the approval obtained under order 17 above and the Removed Stockpile Plan.
20. Within 21 days of completion of the Removal of the Residual Stockpile, the Respondent is to provide certification to the Applicant, from a Registered Surveyor, that the footprint, volume and RLs of the reduced stockpile are in accordance with the Removed Stockpile Plan.

#### **E. Soil and Water Management Requirements**

21. All soil and water on the Site is to be managed in accordance with the Blue Book.
22. By 1 June 2012, being four weeks from the date of this Order, the Respondent is to prepare and maintain a drainage system to prevent surface and sub-surface water draining directly to Nos. 36 and 40 Goolagong Street during the duration of the works associated with these Orders. The sub-surface drainage flows are to be intercepted to a depth of at least 0.5m below the surface of the ground at the boundary of No. 36 and 40 Goolagong Street. The drainage system is to be certified by the SWMP Engineer and a copy is to be provided to the Applicant within 7 days of certification.
23. Prior to the connection and/or discharge of stormwater to Council's stormwater drainage system, written approval must be obtained from Council's Stormwater Drainage Engineer and a copy provided to the Applicant.
24. The Respondent is to prepare a SWMP for each Major Removal Event and provide to the Applicant and Council. The Respondent at all times should comply with each of the SWMPs. These SWMPs are to include for, amongst other matters:
  - (a) sediment basins to be designed for no less than the 85th percentile 5 day rainfall;
  - (b) no discharge of water stored in the sediment basins is to occur without water quality testing, (except after revegetation of exposed surfaces as provided for in Clause 32 (e) below). It is anticipated that flocculation will be required prior to any off site discharge;
  - (c) ongoing maintenance and monitoring requirements including the period after completion of each Major Removal Event;
  - (d) dust suppression; and
  - (e) re-establishment of the drainage catchment areas within the Site which existed prior to 2010 so that there is no significant alteration to the hydrology of the receiving catchments beyond the Site, compared with conditions prior to 2010
25. Each SWMP is to specify daily inspections and records to be maintained by the site manager. The inspections and records will be selected to ensure that all Site activities relevant to the proper management of soil and water are undertaken and recorded. The records will include amongst other matters:
  - (a) relevant weather measurements including rainfall, temperature and wind;
  - (b) the level of water in basins;
  - (c) the release from or use of water from basins;
  - (d) any activities relating to the flocculation of water in the basins;
  - (e) approximate quantity and location of relocated earth;
  - (f) condition of all site SWMP controls; and



(g) other matters specified in the SWMP

26. After the certification takes place in paragraph 32(e), the SWMP Engineer may vary the frequency of the daily inspections and records to be maintained by the site manager for the relevant sub catchment, provided the SWMP Engineer provides to the Applicant certification that:

- (a) the amended frequency achieves the objectives of the SWMP; and
- (b) the amended frequency will be at least monthly and within 24 hours following 25 mm rainfall within one day.

27. The records listed in paragraph 25 are to be of suitable scope and contain sufficient detail to demonstrate that the management of the soil and water activities is being undertaken in accordance with the relevant SWMP and the Blue Book. The Respondent is to provide copies of these records to the Applicant on Monday of each week by email to John Sparkes, Compliance Manager, Department of Planning and Infrastructure, [john.sparkes@planning.nsw.gov.au](mailto:john.sparkes@planning.nsw.gov.au), unless otherwise informed by the Applicant.

28. To minimise potential pollution problems caused by works associated with these Orders, each component of the works associated with these Orders including each Major Removal Event is to be carried out so as it minimise the period of time that areas of the Site are exposed to the elements prior to revegetation.

29. This will be facilitated by the preparation of staged drainage construction plans for each Major Removal Event. The number of stages will be determined by the nature of the earthworks involved and the likely duration of construction activity and shall not be less than the number of stages shown below:

- (a) Duration of operation < 2 weeks – minimum of 1 stage
- (b) Duration of operation 2-4 weeks – minimum of 2 stages
- (c) Duration of operation 4-8 weeks – minimum of 3 stages
- (d) Duration of operation 8-16 weeks – minimum of 4 stages
- (e) Duration of operation > 16 weeks – minimum of 5 stages



30. The SWMPs shall include provision for irrigation (including use of off-site water where required) to ensure the rapid establishment and maintenance of vegetation used to stabilise exposed surfaces.

31. Survey of site ground levels is to be undertaken by a registered surveyor at the commencement and completion of each Major Removal Event and at intervals during construction not exceeding six months. The survey is to be submitted for the approval of the Director-General of the Department of Planning and Infrastructure.

32. The following activities will be undertaken for each Major Removal Event:

- (a) prepare staged drainage construction plans and SWMPs;
- (b) certification by the SWMP Engineer that these construction plans and SWMPs conform with the objectives listed herein;
- (c) carry out construction;





- (d) within two weeks of completion of the earth moving operations in relation to the Major Removal Event, certification by the SWMP Engineer that the construction has been undertaken in accordance with the construction plans and SWMPs; and
- (e) certification by SWMP Engineer once vegetation has become sufficiently established for water stored in basins to be discharged off-site without flocculation.

33. A SWMP Engineer is to be employed by the Respondent for the duration of the works associated with these Orders. The Respondent must provide the contact details of the current SWMP Engineer to the Applicant.

34. At any time, if the Applicant has reasonable concerns about soil and water on the Site, for example, due to unusual weather or some unexpected Site activities:

- (a) At the request of the Applicant, within 24 hours, the SWMP Engineer shall inspect the Site and review the soil and water management controls;
- (b) The SWMP Engineer shall give immediate on-site directions to the site manager at conclusion of the inspection, if required; and
- (c) Within 48 hours of attending the Site, the SWMP Engineer shall provide a written report relevant to the management of soil and water on the Site.

35. The report referred to in paragraph 34(c) will:

- (a) identify any inconsistencies with the construction plans, SWMPs and best practice;
- (b) recommend immediate rectification measures to ensure compliance with the requirements of the Blue Book. This will include a timeframe for implementation of the measures; and
- (c) be provided to the Applicant and Council by the Respondent.

36. The undertaking to the Court, as amended from time to time, must continue until such time as it is no longer required because the relevant SWMP to the Site renders it irrelevant.

#### **F. General Requirements**

37. The Respondent is to not carry out, cause, suffer or permit the placement of any further excavated material on the Site unless and until an express consent / approval under the EP&A Act has been obtained for the placement of such material in an identified area on the Site.

38. The excavated material which presently exists in the area known as stage 1 in the Project Approval may only be stockpiled in the area marked "stockpile for stage 1 fill" on plan attached to these Orders and marked "F". No excavated material other than stockpile won from the stage 1 development area as marked on the plan shall be stored in the stockpile for stage 1 fill area.

39. Apart from the process of removal of the excavated material from the Site, the Respondent is not to move or relocate the material on the Site without approval or consent.

40. The Respondent is to not carry out, cause, suffer or permit the crushing of excavated material on the Site unless and until an express consent / approval has been obtained under the EP&A Act.

41. At all times during the period in which excavated material remains on the Site the respondent shall ensure:

- a) that the works the subject of its undertaking to the Court as amended from time to time, are maintained in accordance with the terms of that undertaking;
- b) the excavated material is to be spray grassed with quick growing perennial grasses. Any area of disturbed fill is to be spray grassed within 14 days of the disturbance of such fill. The vegetation is to be maintained. Measures to prevent dust emissions must be implemented immediately following the disturbance of any fill and include but are not limited to minimising areas of exposed soil and the use of water carts to suppress dust emissions from exposed areas; and
- c) the excavated material is maintained in such a manner that prevents the pollution of waters within the meaning of Section 120 of the *Protection of the Environment Operations Act 1997*.

42. For the purposes of these Orders:

- (a) All work on the Site, and in the vicinity of the Site, (including but not limited to loading and unloading of machinery and goods, transferring of tools, movement of machinery, and excavation and placement of fill) associated with fulfilling these orders, must only be carried out between the hours of:
  - i. 7.00 am and 6.00 pm Mondays to Fridays
  - ii. 8.00 am and 1.00 pm Saturdays.

No work must be carried out on Sundays or public holidays.



- (b) Work associated with these Orders may be undertaken outside these construction hours where:
  - i. the delivery of materials or machinery is required outside these hours by the Police or other authorities;
  - ii. it is required in an emergency to avoid the loss of life, damage to property and / or to prevent environmental harm;
  - iii. the work is approved in writing by the Director-General or his nominee prior to the work commencing.
- (c) Work associated with these Orders must comply with the Australian Standard 2436-1981 'Guide to Noise Control on Construction, Maintenance and Demolition Sites' and the Office of Environment and Heritage's Interim Construction Noise Guideline.
- (d) The Respondent must ensure noise and vibration emissions from the works does not result in damage to nearby premises and the relevant provisions of the *Protection of the Environment Operations Act 1997* are satisfied at all times.
- (e) Works associated with these Orders must be conducted in such a manner that prevents the pollution of waters within the meaning of Section 120 of the *Protection of the Environment Operations Act 1997*, including but not limited to the prevention of sediment pollution from the Site and the prevention of tracking of material onto the roadway by vehicles leaving the Site.



43. Works associated with these Orders must be conducted in such a manner that prevents the emission of dust from the premises and that the relevant provisions of the *Protection of the Environment Operations Act 1997* are satisfied at all times. Measures to prevent dust emissions must include but are not limited to minimising areas of exposed soil and the use of water carts to suppress dust emissions from exposed areas.

44. The Respondent must distribute a notification letter 1 week before the commencement of each Major Removal Event which advises:

- (a) when the work is commencing;
- (b) the duration of work;
- (c) the contact number of the site manager for complaints and enquiries.



45. The notification letter must be sent to:

- (a) the residents of 42, 44, 46, 71, 73, 75 and 77 Penrose Drive, Penrose;
- (b) the residents of 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 48, 50, 52, 53, 54, 56 Goolagong Street, Penrose;
- (c) the residents of 1, 3, 5, 7, 9, 10, 11, 12, 14 Turnbull Crescent, Penrose;
- (d) the residents of 111, 132, 134, 136, 206 Avondale Road, Penrose;
- (e) the residents of 3, 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26 Fromholz Crescent,, Penrose;
- (f) Council; and
- (g) the Department of Planning and Infrastructure.

46. The parties have taken into consideration any inclement weather in the agreement of the time periods referred to in these Orders. However, the Respondent has liberty to restore on 48 hours' notice to seek an extension of a time period in the event that Inclement Weather has prevented the carrying out of the work the subject of these Orders if the application is:

- (a) made at least 21 days prior to the application being heard;
- (b) made no later than 21 days prior to the end of the relevant milestone in the orders; and
- (c) supported by expert evidence.

47. If a dispute between any of the parties arises in connection with these orders then the party must give to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. The dispute can be referred to an independent expert in the relevant field, as agreed between the parties. The parties agree to abide by the determination of the independent expert. The cost of the dispute resolution must be shared equally between the parties. The operation of this clause does not prevent the applicant from commencing proceedings for the enforcement of these Orders or from prosecuting the respondent from any breach thereof. The dispute resolution process referred to in this order 47 does not include any dispute in relation to any potential extension of any time periods referred to in these Orders due to Inclement Weather or the necessity to provide any information and/or plans the subject of these Orders.

48. The Respondent agrees that it will, upon request by the Director General under Condition A7 of the Project Approval, update the Construction Management Strategy for Stage 1 Specialist & Surgicentre ('CMS') dated May 2010 and the Precinct Development Management Plan ('PDMP') dated May 2010 addressing the requirements of Condition B1 of the Project Approval and B3 of the Concept Plan Approval approved on 11 October 2010, to ensure that the CMS and PDMP are consistent with these Orders and the works the subject of its undertaking to the Court, as amended from time to time.

49.

- (a) Any work shown on the Base Survey or any other plan attached to these Orders is not, by such representation on such survey, to be taken to represent an approval to carry out any such works, including existing drainage works such as Basin C.
- (b) The Removed Stockpile Plan is not intended to depict any future approved buildings and/or structures, but only the removed stockpiles referred to in the Base Survey Plan, excluding the stockpiles for Stage 1 as referred to and marked on the plan in paragraph 38.

50. Each party is to bear their own costs of the proceedings.

51. The proceedings are otherwise dismissed.


#### SEAL AND SIGNATURE

Court seal

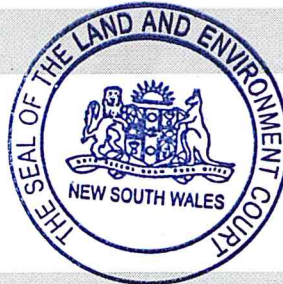
Signature

Capacity

Date

  
Leonie Walton  
Acting Registrar

11 MAY 2012



#### NOTICE

Subject to limited exceptions, no variation of a judgment or order can occur except on application made within 14 days after entry of the judgment or order.

#### PERSON PROVIDING DOCUMENT FOR SEALING UNDER UCPR 36.12

Name	<b>Minister for Planning and Infrastructure, Applicant</b>
Legal representative	Christine Hanson Department of Planning and Infrastructure Level 3, 23-33 Bridge Street SYDNEY NSW 2000
Legal representative reference	11/11666
Contact name and telephone	Louise McAndrew, 02 9228 6326