

Appendix E

DEED OF LICENCE (DRAFT)

Boral Resources (NSW) Pty Limited (Licensor)
Cumberland Country Golf Club Ltd (Licensee)

Deed of Licence

Contents

1.	Definitions and interpretation	1
2.	Grant of licence	2
3.	Term.....	2
4.	Establishment of groundwater and stormwater collection system	2
5.	Water quantity	3
6.	Water quality	4
7.	Pump	4
8.	Services.....	4
9.	Fencing.....	5
10.	Maintenance of structures	5
11.	Conduct of building work.....	5
12.	Occupational health and safety	6
13.	No exterior signs	6
14.	Comply with notices	6
15.	Pipeline access to Golf Club.....	6
16.	Licensee approvals.....	6
17.	Easements	7
18.	Insurance	7
19.	Indemnity	7
20.	Release.....	8
21.	Transfer.....	8
22.	Default	9
23.	Costs	10
24.	Holding over	10
25.	Make good.....	10
26.	Security	10
27.	Termination by Licensor	11
28.	Novation	11
29.	Notices	11
30.	GST	11
	Schedule 1.....	12
	Schedule 2.....	12

Deed of Licence

Parties

Boral Resources (NSW) Pty Limited ACN 000 756 507
50 Bridge Street, Sydney ("Licensor")

Cumberland Country Golf Club Ltd ACN 000 046 766
a company duly incorporated of 248 Old Prospect Road, Greystanes ("Licensee")

Background

- A. The Licensee conducts the Golf Club.
- B. The Licensor is the registered proprietor of the Land.
- C. The Licensor proposes to develop the Land pursuant to a Community Title Development.
- D. The Licensor has been conducting on the Land a quarry and upon the completion of its quarry activities the Licensor is rehabilitating the Land as part of its Community Title Development.
- E. In order to meet the requirements of competent authorities with regard to the management of the Land the Licensor is to drain from part of the Land surface water and ground water and pipe such water to the Pump Station.
- F. The Licensee has requested the Licensor that it be permitted to access the surface water and ground water for its purposes.
- G. The Licensor has agreed that the Licensee will pump surface water and ground water from the Pump Station to irrigate the fairways and greens of the Golf Club and other uses.
- H. The parties have agreed to enter into this licence to record the terms and conditions of the agreement for the Licensee to pump surface water and ground water in accordance with this deed.

Agreed terms

1. Definitions and interpretation

- 1.1 (a) "**Community Association**" means the Community Association that shall be constituted on registration of the plan of subdivision for the Community Title Development.
- (b) "**Community Property**" means the land of the Community Association arising from the registration of the plan of subdivision for the Community Title Development and as more particularly shown in the attached plan of survey of Hard & Forester, surveyors, in which the Community Property is Lot 1.

- (c) **"Community Title Development"** means the proposed subdivision of the Land by the Licensor under the *Community Land Development Act 1989*.
- (d) **"Golf Club"** means the Cumberland Country Golf Club conducted by the Licensee on the Golf Club Titles.
- (e) **"Golf Club Titles"** means the land of which the Licensee is the registered proprietor and as specified in Schedule 1 to this deed.
- (f) **"ground water"** means any water, stream or reservoir under the Land.
- (g) **"GST"** means the rate of tax applicable from time to time arising from *A New Tax System (Goods and Services Tax) Act 1999* or from any Act in substitution therefor.
- (h) **"Land"** means the land of the Licensor identified in the certificates of title specified in Schedule 2 to this deed and which will be subdivided within the Community Title Development and thereafter means the lot for the Community Property.
- (i) **"Pump Station"** means the pump station including but not limited to any collection well, pumps, pipes and associated electrical and mechanical equipment to be installed by the Licensee at its expense on the Pump Site to pump water from the Pump Site to the Golf Club.
- (j) **"Pump Site"** is the approximate area shown as Pump Station Site on the attached plan of the Land being annexure "A".
- (k) **"surface water"** means any run-off water on the Land arising from any rainfall.

1.2 In the interpretation of this Licence:

- (a) words importing the singular number include the plural and vice versa;
- (b) words importing a gender shall include each other gender;
- (c) a reference to a party to this Licence shall include all receivers, managers, liquidators, successors in title and assigns of that party;
- (d) headings and the ordering of clauses shall be disregarded.

2. Grant of licence

The Licensor grants to the Licensee a licence to occupy the Pump Site for the term and to pump water from the Pump Site on the terms and conditions of this deed.

3. Term

The term of this licence is 25 years commencing on _____ 2007.

4. Establishment of groundwater and stormwater collection system

4.1 The Licensor will at its expense:

- (a) design and construct a ground water collection system including pipes within the Land necessary to deliver ground water through a single pipe into the Pump Site;
 - (b) design and construct a permanent surface water storage basin (as shown on the plan being annexure "A") within the Land and a single pipe into the Pump Site;
 - (c) obtain and maintain an extraction licence for ground water from the Department of Natural Resources or any successor of this Department;
 - (d) obtain the consent of any competent authority necessary for the construction of the Pump Station and any necessary structures within the Pump Site and for the installation of a single pipe across the Land to a design provided by the Licensee.
- 4.2 The Licensor covenants to cause the work to be undertaken as specified in clause 4.1 promptly and in a proper and workmanlike manner.
- 4.3 The Licensee must use its best endeavours to assist the Licensor to obtain any necessary consents under clause 4.1(d).

5. Water quantity

- 5.1 The Licensor gives no warranty to the Licensee as to the quantity of water that will be available from time to time to be pumped from the Pump Site pursuant to this licence.
- 5.2 The Licensee acknowledges that during the construction of any work that may be undertaken on the Community Property and any lot in the Community Title Development that it may cause a temporary disruption to the supply of water to the Pump Site for which the Licensee acknowledges it will have no redress of whatever nature against the Licensor or any party that causes that disruption.
- 5.3 Subject to clause 5.4 if at any time the Licensee does not pump sufficient water from the Pump Site to prevent any overflow of water across the Land, the Licensee shall be responsible for any:
- (a) damage to the Land;
 - (b) damage to any improvements on the Land including any water detention basin; and
 - (c) reimbursing the Licensor for the costs of any fines or penalties incurred by the Licensor as a result of the failure of the Licensee to pump sufficient water from the Pump Site.
- 5.4 The Licensee is not required to pump surface water when rainfall exceeds [?] millimetres in any period of 24 hours.
- 5.5 The Licensor must provide the Licensee with the first right of access to all ground water and surface water.
- 5.6 The Licensee must not enter into any arrangements to sell, transfer or contract with other parties with regard to the surface water and ground water applicable to this licence without the prior consent of the Licensor which may as a condition of its consent

require to share any financial benefit received by the Licensee from any such sale transfer or contract.

6. Water quality

- 6.1 The Licensor gives no warranty to the Licensee as to the quality of the water available to be pumped from the Pump Site.
- 6.2 The Licensee agrees that it must pump all water available at the Pump Site regardless of the quality of that water.

7. Pump

- 7.1 The Licensee must at its expense design and install a pump with sufficient capacity to pump water from the Pump Site to the Golf Club in sufficient quantity to prevent any flooding on the Land. The design must be approved by the Licensor. The Licensee must furnish the final design to the Licensor by 30 November 2007. The Licensor will promptly consider the design and will not unreasonably withhold its consent.
- 7.2 In addition to the pump referred to in clause 7.1 the Licensee must maintain at all times with regard to the pump a redundancy capability including a back up pump and the capacity at any time to integrate an emergency pump.
- 7.3 The Licensee must maintain the Pump Station in good working order and condition.
- 7.4 The Licensee at its expense must construct such structures as may be required by any competent authority which includes the Community Association in relation to the Pump Station.
- 7.5 The Pump Station must incorporate an alarm which will be able to signal any failure of any equipment within the Pump Station. The Licensee must notify the Licensor within 24 hours of any such failure occurring.
- 7.6 The Pump Station must be commissioned and operative no later than 3 months after the Licensor gives the Licensee a notice of that requirement. This notice will not be given before the Licensor has approved of the Pump Station design. If the Licensee fails to comply with this clause it will constitute a failure to comply with an obligation under this licence entitling the Licensor to invoke clause 22 provided if the Licensee fails to comply with the timetable in this clause but does thereafter comply before the Licensor takes any action under clause 22 the Licensor after such compliance will not be entitled to take any action under clause 22 solely because of the failure of the Licensee to meet the timetable.

8. Services

- 8.1 The Licensee must pay the cost of all services including but not limited to water and electricity incurred in operating the Pump Station.
- 8.2 The Licensee must pay all costs incurred in bringing to the Pump Site all services including but not limited to electricity connection and meter.
- 8.3 The Licensee must enter into directly with the service provider for the supply and use of services with regard to the Pump Site.

9. Fencing

- 9.1 The Licensee must at its expense erect a security fence around the Pump Site being 2.1 metres high, 50 x 3.15 millimetre diameter chain wire with 3 strands of galvanised tension wire including 3 strands of barbed wire or to such other reasonable specifications of the Licensor.
- 9.2 The Licensee must at all times maintain in good order and repair any such fence.
- 9.3 There must be a gate in the fence which must be kept locked. A key to the lock must at all times be made available to the Licensor.

10. Maintenance of structures

- 10.1 The Licensee must at its expense keep in a sound state of repair and clean and tidy the Pump Site, Pump Station and all other improvements on the Pump Site.
- 10.2 If any part of the Pump Site has at any time graffiti placed on it the Licensee must remove any such graffiti within 10 business days of its appearance.

11. Conduct of building work

- 11.1 In the conduct of any building work pursuant to this licence the Licensee must comply with such conditions as may be imposed by the Licensor including that the Licensee:
- (a) submit professional drawn plans and specifications prepared by a chartered practising engineer with appropriate professional indemnity insurance cover;
 - (b) obtain and keep insurances as reasonably required by the Licensor including any cover by a contractor during any period of construction;
 - (c) give the Licensor copies of all approvals prior to commencing any work;
 - (d) give the Licensor drawings of all work undertaken within a reasonable time after completion;
 - (e) give the Licensor a building certificate after completion; and
 - (f) pay all costs associated with the work including payments to authorities.
- 11.2 In doing any works the Licensee must:
- (a) comply with all laws and the requirements of authorities including any imposed as conditions of consent in relation to consents obtained pursuant to clause 4.1(d);
 - (b) complete the works:
 - (1) in a proper and workmanlike manner;
 - (2) in accordance with approved plans and approvals;
 - (3) in accordance with the reasonable requirements and directions of the Licensor or any contractor or agent appointed by the Licensor;
 - (c) not cause any material interference with the use of the Land;

(d) not contaminate the Land.

12. Occupational health and safety

- 12.1 The Licensee must at its own cost comply with all occupational health and safety legislation affecting the Pump Site and the rights and obligations of the Licensee under this licence.
- 12.2 During the time that the Land or any part is under the control of any contractors engaged by the Licensor to undertake works on the Land the Licensee must comply with all occupational health and safety requirements of the contractor or of the Licensor whilst the Licensee exercises any of its rights pursuant to this licence.

13. No exterior signs

The Licensee must not erect signage or other structures or place anything else on the Pump Site without the prior written consent of the Licensor provided that the Licensor must consent to any sign that is required to satisfy the requirements of any legislation or any condition imposed by a competent authority.

14. Comply with notices

- 14.1 The Licensee must comply with any valid notice served by the Licensor or any consent or other authority for the repair of the Pump Site or in relation to any breach under this licence.
- 14.2 If the Licensee fails to comply with a notice served by the Licensor or any consent or other authority the Licensor may enter and carry out such work and recover all costs incurred as a debt from the Licensee.

15. Pipeline access to Golf Club

- 15.1 The Licensor will permit the Licensee to install pipes on the Land in the approximate position identified in the Community Property plan attached.
- 15.2 Pipes within the Land must be installed by the Licensee in a proper and workmanlike manner and be properly maintained.
- 15.3 If any leak should occur in the pipe within the Land the Licensee must promptly rectify any such leak and make good any disturbance to the Land arising from accessing the pipes for such purposes.
- 15.4 The Licensee warrants that it has secured legal access for a pipeline from the boundary of the Land to the boundary of the Golf Club and that such legal access shall be maintained for the term of this Licence.

16. Licensee approvals

- 16.1 The Licensee must at its expense obtain the consent of any competent authority necessary for the construction and operation of the Pump Station and any necessary structures within the Pump Site and for the installation of pipes across the Land and from the Land to the Golf Club.

- 16.2 The Licensee must obtain the consent of the Licensor for all work specified in clause 17.1 and in respect of which the Licensor will not unreasonably withhold its consent.
- 16.3 The Licensee must obtain and produce to the Licensor any licence necessary from any relevant authority to pump water from the Pump Site to the Golf Club and must maintain such licences at its expense throughout the term of this Licence.

17. Easements

- 17.1 If the Licensee requires any easement for pipeline or services in relation to pipes or lines pursuant to this licence which run from the Pump Site to the boundary of the Land the Licensor will grant such an easement to the Licensee on such reasonable terms and conditions as may be required by the Licensor and subject to the Licensor being reimbursed by the Licensee all costs incurred by it in the granting of any such easement.
- 17.2 The Licensee acknowledges that in relation to any other easement that may be required to pump the water from the boundary of the Land to the Golf Club that it will be the responsibility of the Licensee to obtain such easements.

18. Insurance

- 18.1 The Licensee must maintain policies of insurance for:
- (a) public risk covering injury to person or property on or near the Pump Site for an amount not less than \$10,000,000.00 (or such other amount as the Licensor from time to time reasonably requires) arising out of any one single accident or event;
 - (b) damage to and loss of the Pump and any improvements on the Pump Site; and
 - (c) workers compensation.
- 18.2 All insurance policies must:
- (a) be produced to the Licensor for inspection before the first day of the term and within 2 business days of demand provided that demand cannot be made more often than once each year;
 - (b) note the interests of the Licensor;
 - (c) be placed with an insurer reasonably approved by the Licensor; and
 - (d) provide that the policy will not be amended or cancelled without 14 days' prior written notice from the insurer to the Licensor.

19. Indemnity

- 19.1 The Licensee indemnifies the Licensor against any action, demand, cost, liability or loss due to any damage, loss, injury or death caused or contributed to by:
- (a) the act, omission or negligence of the Licensee;
 - (b) the use or occupation of the Pump Site by the Licensee;

- (c) a breach of this licence by the Licensee; or
- (d) the quality or quantity of water pumped in accordance with the provisions of this licence

except to the extent that it is caused by the negligence of the Licensor.

19.2 If the Licensee breaches any covenant under this licence and the Licensor suffers any loss as a result the Licensee indemnifies the Licensor from all loss arising from or incidental to the breach by the Licensee except where the breach arises from a 1 in 100 year rainfall.

19.3 If the Licensee fails to perform any obligation required of it under this licence the Licensor may in its absolute discretion rectify that failure and in this event the Licensee indemnifies the Licensor for all costs and expenses of whatever nature incurred by the Licensor and agrees that such costs may be recovered as a debt owing by the Licensee to the Licensor.

20. Release

The Licensee occupies and uses the Pump Site and its other entitlements under this licence at its own risk and releases the Licensor from any action, demand, cost, liability or loss due to any damage, loss, injury or death occurring in the Pump Site or elsewhere except to the extent that it is caused by the negligence of the Licensor.

21. Transfer

21.1 If the Licensee ceases to be the registered proprietor of the Golf Club Titles it must secure from the successor or successors in title of the Golf Club Titles an assignment of the rights and obligations of the Licensee under this licence to that successor in title.

21.2 With regard to any assignment by the Licensee to a successor in title of the Golf Club Titles it must be subject to the consent of the Licensor which will not unreasonably withhold its consent. In this regard the Licensor may withhold its consent if:

- (a) the request for consent is not in writing;
- (b) the Licensee does not provide to the Licensor such information as the Licensor reasonably requires about the financial standing of the proposed transferee;
- (c) the Licensee is in default under this licence;
- (d) the proposed transferee does not provide to the Licensee such guarantees and indemnities which the Licensor reasonably requires.

21.3 If the shares in the Licensee are transferred so that in the reasonable opinion of the Licensor it thereafter will not be under the control of the members of the Golf Club it shall constitute a transfer which will require the consent of the Licensor in accordance with clause 21.2.

21.4 The Licensee is not permitted to enter into any sub-licence without the prior written consent of the Licensor which may be withheld in its absolute discretion.

22. Default

- 22.1 If the Licensee breaches any obligation under this licence with respect to any failure to pump surface water or ground water and fails to rectify that breach within 24 hours after receipt of a notice from the Licensor then the Licensor may do any one or more of the following:
- (a) terminate this licence;
 - (b) by notice to the Licensee convert the term into a monthly licence;
 - (c) take any action it considers necessary or desirable in order to give effect to its rights under this licence;
 - (d) elect to treat the conduct or failure to perform as a repudiation of the licence by the Licensee; and
 - (e) recover from the Licensee an amount equal to the damages, costs or loss it sustains as a result of the default including all legal costs and disbursements.
- 22.2 For any breach or breaches not covered by clause 22.1, if a party to this licence breaches any obligation imposed on it under this licence and fails to rectify that breach within a reasonable time as may be specified in a notice from the other party, then the party issuing the notice may do any one or more of the following:
- (a) terminate this licence;
 - (b) by notice to the other party convert the term into a monthly licence;
 - (c) take any action it considers necessary or desirable in order to give effect to its rights under this licence;
 - (d) elect to treat the conduct or failure to perform as a repudiation of the licence by the other party; and
 - (e) recover from the other party an amount equal to the damages, costs or loss it sustains as a result of the default including all legal costs and disbursements.
- 22.3 If during any period of notice given under clause 22.2 the party that has received the notice serves on the other a request for a mediation, the rights under clause 22.2 for the breach for which the notice was given shall be suspended until the parties have conducted a mediation pursuant to clause 22.4.
- 22.4 If a request is made for a mediation the parties agree to settle the dispute by mediation administered by the Australian Commercial Dispute Centre ("ACDC") or if that organisation has ceased to exist, by a mediator nominated by the President of the Law Society of New South Wales "President"). The parties must first attempt to agree on the identity of the mediator from a list of professional mediators supplied by ACDC but failing agreement the mediator shall be a person nominated by ACDC or the President as the case may be. Each party must agree to abide by the rules of the mediator and to pay the costs of the mediation in equal shares except their own costs for which they must be responsible. If the mediation is not concluded within 8 weeks from the date of the request by a party for a mediation, a party shall not thereafter be required to defer the enforcement of any of its rights under clause 22.2.
- 22.5 The arrangements to seek to resolve a dispute by mediation will not be required to be followed if either party seeks injunctive relief.

23. Costs

- 23.1 Each party must pay its own costs with regard to the preparation and entering into of this licence.
- 23.2 The Licensee must pay all costs incurred by the Licensor arising from any default by the Licensee under this licence or in considering or acting upon a request from the Licensee.
- 23.3 The Licensee must pay any stamp duty applicable to this licence.

24. Holding over

- 24.1 Notwithstanding the term of 15 years this licence will continue upon the expiry of the term unless prior to its expiry either the Licensor or the Licensee has given to the other notice of not less than 6 months requiring the licence to terminate upon the expiry of the term.
- 24.2 If any notice under clause 24.1 is not given so as to terminate this licence upon the expiry of 15 years from its commencement the licence may only be terminated by either party giving notice of 6 months to the other expiring at any time after the expiry of the said 15 years.

25. Make good

- 25.1 Upon the termination of this licence the Licensee must not remove from the Pump Site unless directed to do so by the Licensor the Pump Station, fence, pipes or other improvements within the Pump Site but if directed to do so must remove all such items or any that may be nominated by the Licensor at the expense of the Licensee on termination of the licence.
- 25.2 Upon undertaking any work required by the Licensor under clause 26.1, the Licensee must remediate the Pump Site and provide a site audit report to the reasonable satisfaction of the Licensor.

26. Security

- 26.1 As security for the performance of its obligations under this licence the Licensee charges its interest in the Golf Club Titles and grants to the Licensor a caveatable interest in relation to the Golf Club Titles.
- 26.2 In relation to any caveat filed on the title to the Golf Club Titles by the Licensor it will not restrict any activity by the Licensee in its ordinary course of business but may require from any mortgagee written evidence in such form as is required by the Licensor that the mortgagee will if it takes possession of the land relating to the Golf Club Titles observe and perform the obligations of the Licensee under this licence.
- 26.3 The Licensee must obtain from Westpac Banking Corporation as mortgagee of part of the Golf Club Titles its consent to this licence and its acknowledgment that if it takes possession of the land relating to the Golf Club Titles that it will observe and perform the obligations of the Licensee under this licence.

27. Termination by Licensor

If the Licensor is delayed or prevented from performing in relation to its covenants under this licence including those in clause 4 or if the supply of water to the Pump Site is interrupted by reason of any natural event or an act or omission of any authority the consent of which is required to enable the Licensor to perform its covenants the Licensor must use reasonable endeavours to:

- (a) obtain such consents; or
- (b) perform its covenants after any natural event has occurred

but if a necessary consent cannot be obtained or renewed or the natural event makes the performance by the Licensor of its covenants in the reasonable opinion of the Licensor impractical or not possible, the Licensor may by written notice to the Licensee terminate this licence.

28. Novation

The Licensor discloses to the Licensee that it intends to register the Community Title Development in relation to the Land and that upon registration of that development that the Pump Site will be located on Community Property. When this occurs the Licensor will cause the Community Association to sign such documents as are required to assume the liability of the Licensor under this licence and to release the Licensor. The Licensee acknowledges that the Community Association may require a new licence agreement to be entered into on the terms and conditions of this licence for a term being the balance of the term under this licence and in this event the Licensee shall sign such licence and sign a form of release of the Licensor.

29. Notices

- 29.1 Notices may be signed by any manager of a party or by a lawyer of a party.
- 29.2 Notices are to be served at the registered office of a party unless from time to time a party gives a written notification to the other of a different address for service of notices and in this event the address notified shall be an alternate address for that party for service of notices.
- 29.3 Each party must advise the other of a facsimile number by which notices under this licence may be served.

30. GST

If a party must pay anything to the other party under this contract it must in addition pay the GST applicable for the payment if it is a taxable supply for which the party receiving the payment will furnish a tax invoice.

Executed as a deed on

2007

Schedule 1

Golf Club Titles

Land contained in:

Auto Consol 11985-78
Folio identifier 1/201991
Folio identifier 20/243734
Folio identifier 46/242898
Folio identifier 2/545201

Schedule 2

Land of the Licensor as defined in clause 1.1(h) applicable at the date of this licence

Land contained in folio identifiers

507/1042806	15/1031817
143/1061621	13/1059564
2/1038293	12/1059564
140/1061621	12/1037650
12/1031817	8/235064
13/1031817	308/1035614
14/1031817	

EXECUTED by Boral Resources (NSW) Pty Limited ACN 000 756 507 in accordance with section 127 of the *Corporations Act 2001*:

Signature:

Signature:

Name:
PLEASE PRINT

Name:
PLEASE PRINT

Director

Director/Secretary *

* Delete as appropriate

EXECUTED by Cumberland Country Golf Club Ltd ACN 000 046 766 in accordance with section 127 of the *Corporations Act 2001*:

Signature:

Signature:

Name:
PLEASE PRINT

Name:
PLEASE PRINT

Director

Director/Secretary *

* Delete as appropriate