



Existing Consents / Approvals

➤ Appendix A



BORAL BRICKS (NSW) PTY LTD  
235 MARTIN RD  
BADGERYS CREEK NSW 2556

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**

**NOTICE OF DETERMINATION OF  
A DEVELOPMENT APPLICATION**

Being the applicant in respect of Development Application No. DA-764/2009 and pursuant to Section 81 (1) (a) of the Act, Notice is hereby given of the determination by Liverpool Council as Consent Authority of the above described Development Application relating to:

**OWNERS:** **BORAL BRICKS (NSW) PTY LTD**  
**235 MARTIN RD**  
**BADGERYS CREEK NSW 2556**

**LAND:** **225 MARTIN ROAD, BADGERYS CREEK NSW 2555, 225  
MARTIN ROAD, BADGERYS CREEK NSW 2555, 225  
MARTIN ROAD, BADGERYS CREEK NSW 2555**  
**PART LOT 1 DP 373863, PART LOT 1 DP 373863, LOT 1  
DP 1035249, LOT 2 DP 1035249, LOT 3 DP 1035249, LOT  
54 DP 3050, LOT 55 DP 3050, LOT 56 DP 3050, LOT 57 DP  
3050, LOT 58 DP 3050, LOT 59 DP 3050, PART LOT 1 DP  
373863, LOT 1 DP 981161, LOT 1 DP 981748**

**PROPOSED DEVELOPMENT:** **Alterations And Additions To Existing Brick Handling  
Building**

**DETERMINATION:** **Approved**

**CONSENT TO OPERATE FROM:** **31 March 2009**

**CONSENT TO LAPSE ON:** **31 March 2011**  
**(Unless physically commenced)**

**ATTACHMENTS:** **Conditions of Approval**

Before commencing the development please read the Development Consent carefully and make sure that you understand all the conditions that have been imposed. Please contact Liverpool City Council regarding any enquiry you may have in respect of the following conditions.

**CONDITIONS:**

The following conditions have been imposed to achieve the objectives of the relevant planning instruments and policies.

**A. THE DEVELOPMENT**

The following conditions have been imposed to achieve the objectives of the relevant planning instruments and policies:

**GENERAL**

1. Development must be carried out in accordance with Development Application received 16 February 2009 and architectural plans contained in the Statement of Environmental Effects (dated 13 February 2009), Sheets 1/6 to 6/6, dated 31 March 2009 marked DA 764/2009, except where modified by the following conditions.
2. The premises must not be occupied until such time as an "Occupation Certificate" has been issued by Council or a Private Certifier.
3. External finishes must be in accordance with the schedule submitted and approved with the development consent, and also be consistent with, and match the materials and finishes of the existing building.

**B. OPERATIONAL MATTERS**

**These conditions pertain to the use of the site and have been imposed to ensure that the development and its operations do not interfere with the amenity of the surrounding area.**

**SITE MANAGEMENT / HOURS OF OPERATION**

4. The hours of operation are to be in keeping with the current approved hours of operation.
5. Driveways and car parking spaces must not be used for manufacture, storage or display of goods, materials or equipment. The spaces must be made available at all times for vehicles associated with the development.
6. The use of the premises must not interfere with the amenity of adjacent areas.
7. The loading and/or unloading of all goods and materials used in conjunction with the development must take place only on the land subject of the development application.

8. Use and occupation of the premises must be carried out all times without nuisance and in particular so as not to breach the provisions of the Protection of the Environment Operations Act 1997. The operation and use of any machinery, plant and/or equipment within, on or in connection with the operation and use of the premises is to be carried out so as not cause:
  - (a) Transmission of vibration to any place of different occupancy; or
  - (b) An Offensive Noise, as defined in the protection of the Environment Operations Act 1997.

#### **WASTE STORAGE AND DISPOSAL - GENERAL**

9. The Waste Management Plan submitted to and approved by Council must be adhered to throughout all stages of development including the operation of the approved use. Supporting documentation/receipts are to be retained in order to verify the recycling and disposal of materials in accordance with the approved plan.

**Note:** Any non-compliance with this requirement will result in penalties being issued.

10. Waste bins must be stored in designated garbage/ trade waste areas, which must be kept tidy at all times. Bins must not be stored or allowed to overflow in parking or landscaping areas or obstruct the exit/s of the building.
11. All waste materials generated as a result of the development are to be disposed at a facility licensed to receive such waste.

#### **C. PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE**

**The following conditions in this section of the consent must be complied with or addressed prior to the issue of any Construction Certificate relating to the approved development, whether by Council or an appropriately accredited certifier. In many cases the conditions require certain details to be included with or incorporated in the detailed plans and specifications which accompany the Construction Certificate:**

##### **BCA**

12. All aspects of construction shall comply with the applicable Performance Requirements of the Building Code of Australia. Compliance with the Performance Requirements can only be achieved by:
  - (a) Complying with the Deemed to Satisfy Provisions; or
  - (b) Formulating an Alternative Solution, which complies with the Performance Requirements or is shown to be at least equivalent to the Deemed to Satisfy Provision, or a combination of (a) and (b).

- (c) Should an "Alternative Solution" under the BCA be proposed, Council's building surveyor shall be involved in the preparation of the Fire Engineered Design Brief (FEDB).
- (d) Any alternative solution concerning fire safety shall be reviewed by the NSW Fire Brigade (Fire Safety Division). Their comments are to be forwarded

#### **DISABLED ACCESS**

- 13. Access, parking and facilities for persons with disabilities to be provided in accordance with the provisions of Building Code of Australia as amended and Australian Standard 1428.1.

#### **FIRE SAFETY MEASURES**

- 14. A schedule specifying all of the essential fire safety services, both existing and proposed, which are required for the building, shall be attached to the construction certificate and submitted to Council, in compliance with the provisions of the Environmental Planning and Assessment Act (Regulations) 2000.
- 15. The schedule must distinguish between the measures that are currently implemented in the building premises; and
  - (a) The measures that are to be proposed to be implemented in the building premises; and
  - (b) The minimum standard of performance for each measure.

#### **D. PRIOR TO ANY WORK COMMENCING ON THE SITE**

**The following conditions are to be complied with prior to any work commencing on the site.**

- 16. Detailed Civil engineering plans and specifications relating to the work shall be endorsed with a Construction Certificate, in accordance with Section 81A of the Act, and a copy registered with Council.
- 17. Any Construction Certificate that may be issued in association with this development consent must ensure that any certified plans and designs are generally consistent (in terms of site layout, site levels, building location, size, external configuration and appearance) with the approved Development Application plans.

#### **NOTIFICATION**

- 18. The applicant shall advise Council of the name, address and contact number of the Accredited Certifier, in accordance with Section 81A (4) of the Act.

19. The Accredited Certifier shall advise Council, of the date it is intended to commence the work which is the subject of the "Complying development" certificate by completing a "Notice of Commencement of BUILDING OR SUBDIVISION WORK" form available from Council's front counter. **A minimum period of two (2) working days, notification shall be given.**

#### **SITE FACILITIES**

20. The following facilities shall be installed on the site:

- (a) Adequate refuse disposal methods and builders storage facilities. Builders' wastes, materials or sheds are not to be placed on any property other than that which this approval relates to.

21. Access to the site is to be provided only via the all-weather driveway on the property and is not to be provided from any other site, or location. (Refer to Council's Sediment & Erosion Control Policy).

#### **SITE NOTICE BOARD**

22. A sign must be erected in a prominent position on the premises on which work is to be carried out. The sign must state:

- (a) Unauthorised entry to the premises is prohibited, and

- (b) The name of the builder or other person in control of the premises and a telephone number at which the builder or other person may be contacted outside working hours.

#### **E. DURING CONSTRUCTION/ WORKS**

**The following conditions are to be complied with whilst works occurring on the site:**

##### **HOURS OF OPERATION – CONSTRUCTION WORKS**

23. Construction/ civil work is only permitted on the site between the hours of 7am to 6pm Monday to Friday and, 8am to 1pm on Saturday. No work will be permitted on Sundays or Public Holidays, unless otherwise approved by Council.

24. Deliveries shall occur only between the hours of 7am and 7pm, Monday to Friday and, between 7am and 7pm on Saturday, and shall not occur at any time on Sundays or Public Holidays.

##### **GENERAL SITE WORKS**

25. The cost of any necessary adjustments to utility mains and services shall be borne by the applicant.

## F. PRIOR TO OCCUPATION OF THE BUILDING/ PREMISES

The following conditions are to be complied with prior to the occupation of the building:

### GENERAL

26. The premises must not be occupied until an occupation certificate is issued by the Principal Certifying Authority (PCA). Copies of all documents relied upon for the issue of the occupation certificate must be attached to the occupation certificate and registered with Council. These documents shall include surveyor reports and compliance certificate.

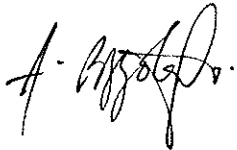
### ADVICE

*The following matters are included as advice relevant to this application:*

- (i) If you are dissatisfied with this notice of determination or the conditions contained within this notice of determination, Section 82A of the Environmental Planning and Assessment Act, 1979 gives you the right to request a review of the determination within 12 months after the date of the determination.*
- (ii) If you are dissatisfied with this decision, Section 97 of the Environmental Planning and Assessment Act, 1979 gives you the right to appeal to the Land and Environment Court within 12 months after the date on which you receive this notice.*
- (iii) In accordance with Section 95 of the Act, unless otherwise stated by a condition of this consent, this consent will lapse unless the development is commenced within two (2) years of the date of this notice. The applicant may apply to Council for an extension of one (1) year.*
- (iv) The conditions are imposed taking into account the matters for consideration in determining a Development Application under Section 79C of the Environmental Planning and Assessment Act, 1979.*
- (v) The obligation to comply with the Category 1 fire safety provisions may require building work to be carried out even though none is proposed or required by other conditions of this consent.*
- (vi) The approval of this application does not imply or infer compliance with the Disability Discrimination Act and that the developer should investigate their liability under the Act. For assistance, you are directed to parts 2, 3 and 3 of the Australian Standards 1428 – Design for access and Mobility (Part 1 is mandatory in the Building Code of Australia).*
- (vii) The obligation to comply with the Category 1 fire safety provisions may require building work to be carried out even though none is proposed or required by other conditions of this consent.*

- (i) *The applicant is required to consult with:*
- (a) *Sydney Water Corporation Limited;*
  - (b) *Integral Energy;*
  - (c) *Natural Gas Company; and*
  - (d) *A local telecommunications carrier.*

Yours sincerely

A handwritten signature in black ink, appearing to read 'A. Pizzolato', with a stylized flourish at the end.

**Anthony Pizzolato**  
Team Leader – Major Development, Statutory Planning

a.pizzolato@liverpool.nsw.gov.au

*Mayor Council*

THIS DEED made the 30<sup>th</sup> day of September 1976

BETWEEN PACIFIC BRICK PTY. LIMITED a company duly incorporated in the State of New South Wales and having its registered office at Gavey Street, Mayfield (hereinafter called "the company" which term shall include its successors and assigns) of the one part AND THE COUNCIL OF THE CITY OF LIVERPOOL (hereinafter called "the Council" which term shall include its successors and assigns) of the other part WHEREAS

1. Applications were made to the Council under Part XIA of the Local Government Act, 1919, as amended between 29th August, 1973 to date with the consent of the then owners for consent to the development of the land described in Schedules 1 and 2 (hereafter called "the land") for the purpose of establishing thereon a clay extraction and brick and clay products industry (hereinafter called "the development").

2. The Council has now considered these applications and an appeal has been lodged to the Local Government Appeals Tribunal.

3. Council has consented to the making of an award by the Tribunal approving the applications subject to the conditions set out in this Deed.

NOW THIS DEED WITNESSES that in consideration of the said approval and of the premises the Company hereby covenants with the Council:

2.

1. That in and about the development the Company will not excavate or cause or permit excavation works to take place within

- i) 40 metres from any public road;
- ii) 30 metres of Badgery's Creek;
- iii) 30 metres of any adjoining property to the said land.

2. That the Company will not erect on the said land or cause or permit to be erected any building including gate houses or check points within 20 metres of the boundary of the said land adjacent to Martin Road (hereinafter called "the building line") and that the parts of the said land lying between the building line and the said road shall not be used by the Company (nor shall the Company permit or cause the said parts to be used) for the parking of vehicles or for the stacking or storage of goods, materials or equipment.

3. That the Company will not erect or cause or permit to be erected on the said land any hoardings or major advertising without the prior approval in writing of the Council except that the Company shall be permitted to erect a sign depicting the name of the Company and nature of its business and as well set aside a product demonstration area adjacent to the main Administration Office and inside the Visual/audio barriers already erected on the said land.

4. That the Company covenants and agrees that it will:

a) Cause the development to be screen-tree planted so as to provide visual relief to the surrounding properties. The type of trees to be selected and the density of planting shall be carried out by the Company.

In this regard the Company shall confer with the State Forestry Commission and the Head Gardiner of Liverpool City Council in order to decide on the most suitable manner in which the tree screen should be laid out, this to be to the satisfaction of the City Engineer.

b) Redesign and reconstruct Martin Road from Elizabeth Drive to the access to the said land to the Council's satisfaction so that the minimum grade is one percentum and the pavement width is 9.5 metres wide and the seal 7.5 metres wide. The surface course seal is to be constructed in asphaltic concrete or other alternative acceptable to the Council. The pavement depth is to be as determined by a recognised soil testing

consultant to satisfy Council's industrial standard. *Fit existing access to provide property fronting Martin Road to be reconstructed to existing standard to suit redesign of Martin Road to Council's satisfaction.*

c) Design and construct the intersection of Elizabeth Drive and Martin Road so that there are acceleration and deceleration lanes in Elizabeth Drive. The design of the intersection is to be approved by the Department of Main Roads of New South Wales and the

standard of construction is to be to the Department of

*Handwritten initials and marks, including a circled '10' and a checkmark.*

*Handwritten initials and marks, including a large 'K' and a checkmark.*

Main Roads requirements.

- d) Reconstruct all culverts in Martin Road to the satisfaction of Council and for a 1 in 5 years design frequency and to a minimum length of 14 metres.
- e) Construct a cleared unsealed footpath on one side of Martin Road from Elizabeth Drive to the said land to the reasonable satisfaction of the Council's Engineer.
- f) Cause all vehicles to enter and leave the said land via Martin Road to Elizabeth Drive.
- g) Increase the radii of the compound curve in Martin Road so that vehicles may negotiate these curves at 60 KmPH.
- h) Pay to the Council within 14 days the sum of \$1,308 in respect of the resumption expenses incurred in respect of (g) above.
- i) (i) Pay to the Council an annual maintenance contribution. This contribution shall be based on the sum of \$5,000 varied and compounded annually in accordance with the variation factor set out in paragraph (ii) hereof, over a period of thirty year from 1 July 1977 and:
- a) On 1 July 1977 the Company shall pay a contribution of \$5,000 to the Council.
- b) Thereafter up to and on 1 July 1991 the company will pay 100% of the contribution as varied annually.

*K J P C*

c) On 1 July 1992 and up to and on 1 July 2006 the company will pay 50% of the contribution as varied annually.

(ii) The variation factor will be determined by obtaining an estimate of the cost of supplying and laying 50 mm. asphaltic concrete in two layers over the length of Martin Road. The base layer is to comprise of 25 mm. of 20 mm. aggregate. The surface layer is to comprise of 25 mm. of 10 mm. aggregate. The asphaltic concrete is to conform to the appropriate Department of Main Roads Specification M.R. Form No.61 (Metric) (Revised July, 1974) and titled "Specification for Supply and Laying Asphaltic Concrete." Quotes in writing are to be obtained from three mutually acceptable firms on the 1st July in each year. The average of the three quotes shall be the new rate. The difference between the previous rate and the new rate as a percentage will be the percentage by which the annual maintenance contribution in (i) above shall be varied. The previous rate effective from 1 July 1977 shall be the average of three quotes obtained from three mutually acceptable firms on that

6.

date. IF the parties cannot agree on three mutually acceptable firms, the arbitrator recited in Clause 11, shall select three firms.

The quotes shall be obtained having regard to the following :-

(i) Both base and surface courses are to be machine laid.

(ii) The area is to be 9.5 m. wide x 1800 m. long.

(iii) The traffic conditions are to be "light".

(iii) The first contribution to be paid on 1st July 1977 and thereafter annually up to 1st July 2006 such payments to be made on 1st July of each succeeding year after 1st July 1977.

(iv) The said contributions shall be used by the Council solely for the carrying out of maintenance and reconstruction work on Martin Road. Such work and construction shall be carried out by Council whenever necessary from available funds from time to time including but not limited to contributions paid by the company up to that time.

*[Handwritten signature]*

7.

(v) Notwithstanding anything in this Clause hereinbefore contained if the land shaded red on the plan annexure "B" hereto is rezoned or reserved for industrial purposes no further payment shall thereafter fall due.

j) Construct levy banks so that the proposed excavation areas will be flood free for 1 in 100 year flood frequency.

k) Erect appropriate road warning signs as directed by Council.

l) Meet any proper requirements under the Health and/or Building regulations and regulations prescribed by the Council under the Local Government Act or Ordinance made under the said Act.

m) Limit the hours of operation of haulage vehicles from the site at all times to between 7.00 a.m. and 7.00 p.m. Mondays to Saturdays and between 9.00 a.m. and 3.00 p.m. on Sundays and all public holidays, provided that the Council may vary these hours if a noise nuisance is caused to the adjacent properties and if there is a dispute in relation to any such variation the Arbitrator in this decision shall be the State Pollution Control Commission its successors and assigns or its or their nominee.

n) Not deliver bricks from the said land until such time as Martin Road and associated works have been completed to the Council's reasonable satisfaction.

o) Submit to the Council a plan showing the extent of the 100 year flood frequency on the said land.

5. That the Company will in respect of the development provide for at least one car parking space for each two employees of the Company ordinarily employed on the said land; such car parking spaces are not to be placed between the alignment to Martin Road and the Building line and shall also provide a reasonable allocation, other than between the said alignment and Building line of parking space for the vehicles of visitors to the said land and other vehicles used in connection with the development and suitable driveway facilities for the said vehicle parking spaces AND will construct the said driveways and vehicle parking spaces to the reasonable satisfaction of Council's Engineer.

6. That the Company will in respect of all areas on the said land which are excavated but not filled cause all such excavated areas to be enclosed by a manproof chain wire safety fence.

7. That the Company will:-

a) Cause no nuisance to the occupants of the surrounding area by the operation of the factory and plant movement.

b) Cause no nuisance to the occupants of the surrounding area by blasting.

c) Cause no nuisance to the occupants of the surrounding area by the emission of fumes or other emissions from the factory processes or from dust however caused.

d) Provide sedimentation ponds for the settling of water accumulating in the excavated areas of the said land prior to discharge to the natural water course and so locate them as to collect natural runoff from the perimeter of the excavated area and will obtain the Council's approval for the size and siting of the said ponds; provided that the Council may waive the provision of sedimentation ponds at any time, subject to any appropriate conditions it may deem necessary to ensure that the final discharge entering any natural watercourse has a non-filterable residue of less than 50 mg per litre or to ensure compliance with any other standards laid down under the provisions of the Clean Waters Act 1970 as amended.

8. That the Company will not cause or permit any ringbarking, cutting down, topping, lopping, removing, injuring or wilful destruction of any tree other than trees directly in the way of the proposed excavations and buildings except with the written consent of the Council.

9. That the Company will in respect of any excavations as aforesaid provide a minimum slope of batter from the top of excavation of one unit length to two units vertical to the floor of any of the excavations.

*[Handwritten initials and signature]*



on each 1st July thereafter until and including 1st July 2005 by way of bond against breach by the Company as aforesaid.

It is also agreed that if agreement cannot be reached between the Council and the Company whether a breach has occurred the then Chief Planner of the Planning and Environment Commission of New South Wales or the Chief Planner of its successor shall arbitrate on the matter and the Bank Guarantee will not be called up except with written approval of the arbitrator.

12. That the Company may carry out the development for a period of 30 years from 27th September 1976. Notwithstanding any other provision of this Deed the Company shall not cause or permit the removal from the said land of any soil or other raw materials other than bricks or other manufactured clay products without the consent of the Council on the recommendation of the City Health Surveyor.

13. That in respect of that part of the said land hatched black which is marked on the plan which is annexure "A" hereto:

a) Subject to Clause 16 at the expiration of 10 years from 27th September, 1976 (or earlier if the Company agrees) the Council shall have the right to refill the said part of the said land for which the Council shall not be charged any fees. This area shall have a cubic capacity of approximately 1 million cubic metres.

b) The type of fill that may be used shall be solid waste (including garbage) and shall not include liquid or industrial wastes. The Council shall not sublet the

filling rights to any other Council, Government instrument-  
ality or other persons or bodies corporate without the prior  
approval in writing from the Company.

c) The Council shall have the right to dispose  
of any water accumulated within the said <sup>part of the said land</sup> ~~excavation quarry~~  
upon or over the said land in areas to be designated by the  
Company provided that such water is of a standard acceptable  
for irrigation purposes.

d) (i) All filling operations by the Council  
shall be done at such times and in such a manner as not  
to interfere with the Company's use of the said land  
and the work being carried out on the said land from time  
to time by the Company.

(ii) The Council shall use an access and  
egress gate and roadway to and from the area hatched black  
on annexure "A" hereto apart from the gates and roadways for  
the time being in use by the Company. The location of such  
alternate roadway and gate shall be as shown on the plan  
annexure "A" hereto and such roadway shall be a minimum  
of forty (40) feet wide and the Council shall be responsible  
for the construction and maintenance of the roadway and gate.  
The Company shall be entitled to use the said roadway and  
gate at all times.

(iii) All filling operations shall be carried  
out by the Council in a proper and workmanlike manner having  
regard to the nature of the filling and the said part of  
the said area being filled and in particular (without  
limiting the generality of the foregoing) all filling

operations shall have proper regard to compaction so that any settlement of the area filled is minimal and the Council shall observe all appropriate health and safety regulations appropriate to the type and nature of the filling and the system of work relating to the filling.

The Company reserves the right to withdraw the right of use of the said part of the said area for disposal during any period wherein any pollution or nuisance is caused by such use provided that any disagreement with the Council shall be subject to arbitration by the State Pollution Control Commission or its successors *or its or their agent*

*Handwritten initials and scribbles*

(iv) The Company shall not be liable or responsible as between itself and the Council under any health and building laws regarding disposal of garbage or rubbish by the Council nor shall the Company be liable as between itself and the Council for any damages, costs, or other sums of money arising from any accident or injury (whether to person or property or both) occasioned to any workman, officer, servants or other employee or agent or invitee of the Council or its workmen, officers, other employees or agent while such person is on the <sup>said land</sup> property for any of the purposes of the Council under this Deed as well as in respect of the aforesaid filling operations.

*Handwritten initials and scribbles*

(v) Soil overburden or other suitable filling material that is available on, in or from that part of the said land hatched in black on annexure "A" hereto in excess of the requirements of the Company for the developme

*Handwritten initials and scribbles*

shall be made available by the Company free of charge to the Council for the purpose of providing a layer of material over the material being dumped into <sup>that part of the said land</sup> the quarry by the Council or for any other Council purpose.

*[Handwritten initials]*

14. Subject to clause 16 hereof should the Company at any time during the operation of this Deed sell, transfer lease mortgage or otherwise alienate the said land or any part thereof to any person, corporation or body then unless that person, corporation or body reasonably satisfies the Council that it does not intend to use or cause or permit to be used the said land or part of the said land for the purpose or purposes of the development the Company will first procure at its own expense that the purchaser, transferee, lessee, mortgagee or other alienee as the case may be will enter into a Deed with the Council containing the same provisions in respect of such areas mutatis mutandis as are hereinbefore contained PROVIDED ALWAYS that a mortgagee of the Company so covenanting will not be obliged to observe or perform the obligations of the covenantor hereunder or under the Deed entered into by the mortgagee hereunder unless and until the power of sale of the mortgagee under his mortgage shall have become exercisable and the mortgagee shall have taken action in respect thereof whether to sell pursuant to the power to sell therein contained, to lease pursuant to the power of lease therein contained or to appoint a receiver under the terms implied by the Conveyancing Act, 1919, as

*[Handwritten initials]*

amended or otherwise.

PROVIDED FURTHER AND IT IS HEREBY FURTHER AGREED AND

DECLARED THAT:-

a) Upon the Company selling or transferring the said part of the said land and procuring from the purchaser or transferee the execution of a Deed in favour of the Council pursuant to this clause; or

b) Upon a mortgagee of such part of the said land or any part of it transferring his mortgage or selling or transferring such part of the said <sup>land</sup> ~~property~~ and procuring from it any such purchaser or transferee a Deed as aforesaid or upon such a mortgagee discharging his mortgage or releasing such part of the said land therefrom; or

c) Upon a lessee selling or transferring the unexpired residue of the term of his lease and procuring from the purchaser or transferee the execution of a Deed as aforesaid or in the case of a lessee surrendering the term of his lease or upon the expiration of the term;

THEN the liabilities and obligations of the Company (in the case of paragraph (a) hereof) of such mortgagee (in the case of paragraph (b) hereof) and of such lessee (in the case of paragraph (c) hereof) under these presents or as the case may be under the Deed for the time being binding the Company, mortgagee or lessee to covenants on the terms hereof shall thereupon cease and determine but not so as to affect any rights or remedies of the parties in respect.

of any antecedent breach of this Deed or any Deed as in  
hereinbefore mentioned:

AND the Council for itself, its successors and assigns  
hereby covenants with the Company that the Council hereby  
indemnifies and saves harmless the Company from and against  
all claims, demands, costs, damages, judgments, orders,  
proceedings made, ordered or taken against the Company  
in respect of any accident or injury to person or property  
happening to any workman, officer, servant or other  
employee, agent or any invitee of the Council or its workmen,  
officers, servants or other employees, or agent while on the  
property or to the Company, its officers, workmen, servants,  
other employees, agents or invitees as a direct result  
of the Council's activities on or presence on the <sup>said land</sup> ~~property~~  
pursuant to this Deed.

*Handwritten initials and scribbles*

d) In the event of the Company alienating  
in any manner as aforesaid any part of the said land between  
that part of the said land hatched black on annexure "A"  
hereto and Badgerys Creek ~~by the most direct practical~~  
~~line~~ the Company shall first grant to the Council an easement  
to drain water pursuant to Part III of Schedule IVA of the  
Conveyancing Act 1919 as Amended three (3) metres wide *by the*  
*most direct practicable line*  
provided that such water is of a standard acceptable for  
irrigation purposes.

*Handwritten initials and scribbles*

*Handwritten initials and scribbles*

*Handwritten initials and scribbles*

15. Notwithstanding anything hereinbefore contained it is hereby agreed and declared that in respect of those parts of the said land comprised in the area hatched black on the plan annexure "A" hereto and the internal access roadway the Council shall be at liberty to lodge a caveat against the certificate or certificates of title in which those parts are comprised from time to time claiming an estate or interest in such land as covenantee pursuant to these presents and in the event of any dispute or disagreement relating to the right of the Council to lodge such caveat this Deed may be set up by the Council in bar or estoppel to any claim by the Company that the Council does not have sufficient estate or interest in the said parts of the said land to lodge such caveat.

16. Notwithstanding anything elsewhere provided in this Deed neither the Company or any person or body mentioned in clause 14 hereof shall be under any obligation to provide disposal capacity in excess of the capacity generated by operation of the development.

IN WITNESS WHEREOF the parties hereto have hereunder set their hands and affixed their seals on the day and the year first hereinbefore written.

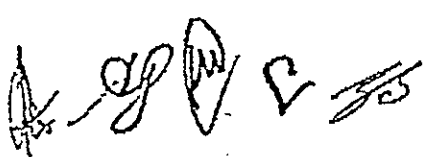
THE FIRST SCHEDULE

ALL THOSE pieces or parcels of land situate in the County of Cumberland Parish of Bringelly and City of Liverpool being:-

- (i) The land contained in the plan annexed to Instrument of Transfer No. F.377200. containing approximately 64.75 hectares and being the whole of the land comprised in Certificate of Title Volume 6382 Folio 157; and
- (ii) Lots 54, 55, 56, 57, 58 and 59 in Deposit Plan 3050 containing approximately 69.4 hectares and being the whole of the land comprised in Certificate of Title Volume 1176 Folio 143.

THE SECOND SCHEDULE

ALL THAT piece or parcel of land situate in the County of Cumberland, Parish of Bringelly and City of Liverpool being:-  
Part Lot 1, in Deposited Plan 981748  
and being the whole of the land comprised in Certificate of Title Volume 12466 Folio 2.

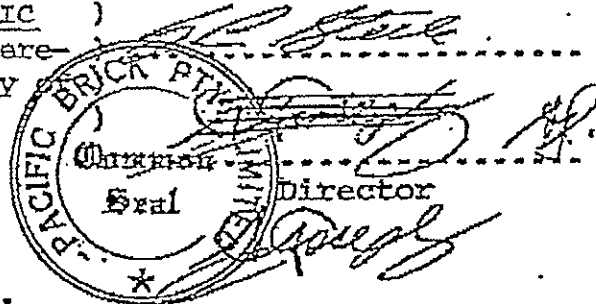


Signed sealed and delivered )  
for and on behalf of )  
Pacific Brick Pty. Limited )  
in the presence of:- )

*[Handwritten Signature]*  
.....  
A.W. JOSEPH Director

*[Handwritten Signature]*  
.....  
A. MOORE Secretary

THE COMMON SEAL of PACIFIC  
BRICK PTY. LIMITED was here- )  
unto affixed by authority of )  
the Directors in the )  
presence of:- )



*[Handwritten Signature]*  
.....  
Secretary

Signed sealed and delivered )  
by Reginald Thomas Findley )  
for and on behalf of the )  
Council of the City of )  
Liverpool pursuant to a )  
resolution of the Council )  
passed on 27 September 1975 )  
and in the presence of:- )

*[Handwritten Signature]*  
.....  
*[Handwritten Signature]*  
Liverpool

*[Handwritten Signature]*  
.....

**Date: 7 September 2006**

Boral Bricks Pty. Ltd.  
235 Martin Road  
BADGERYS CREEK NSW 2171

**Att:** Michael Gow

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979**

**NOTICE OF DETERMINATION OF APPLICATION FOR MODIFICATION OF DEVELOPMENT  
CONSENT**

Being the applicant in respect of the Application to Modify the Development Consent issued on 1 December 1976 (in respect of Development Application No.1024/1976) and pursuant to Section 96 of the Act, Notice is hereby given of the determination by the Consent Authority of the aforesaid application relating to:

**LAND:** No.225 Martin Road (Lots 54 – 59 D.P. 3050, Part Lot 1, D.P. 981161, Part Lot 1 D.P. 981748, Part Portion 29, Part Portion 34 Lot 1 D.P. 373863) Badgerys Creek

**PROPOSED DEVELOPMENT:** Brickworks and material extraction

**DETERMINATION:** CONSENT GRANTED SUBJECT TO CONDITIONS DESCRIBED BELOW

**DATE OF DETERMINATION:** 7 September 2006

**Before commencing the development please read the Modification of Development Consent carefully and make sure that you understand all the conditions that have been imposed. Please contact Anthony Pizzolato regarding any enquiry you may have in respect of the following conditions.**

*The modification application has been determined by granting of consent and the development application DA 1024/1976 determined on 1 December 1976, has been modified as follows:*

**A. *Modifications of condition(s) of the original consent DA 1024/1976 determined 1 December 1976 as follows:***

Condition No.12 of the original development consent is modified to read as follows:

- 12 That the company may carry out the development for a period of 34 years from 27<sup>th</sup> September 1976.

**All other conditions of Development Consent No. DA 1024/1976 remain applicable and valid and shall not be varied without prior consent of Council.**

Notes:

- (1) If you are dissatisfied with this notice of determination or the conditions contained within this notice, Section 82A of the Environmental Planning and Assessment Act, 1979 gives you the right to request a review of the determination within one (1) year after the date of this determination.
- (2) If you are dissatisfied with this decision, Section 96(6) of the Environmental Planning and Assessment Act, 1979 gives you the right to appeal to the land and Environment Court.
- (3) The conditions are imposed taking into account the matters for consideration in determining a development Application under Section 79C of the Environmental Planning and Assessment Act, 1979.

Yours faithfully

Anthony Pizzolato  
**SENIOR DEVELOPMENT PLANNER**

