

**In the Land and
Environment Court
of New South Wales**

No. 10608 of 1999

**Bridgehead Properties
Pty Limited**

Applicant

Warringah Council

Respondent

Order

The Court orders that:

1. The appeal be upheld
2. Development consent is granted for the community title subdivision of lot 141 DP 614427 into twelve (12) lots plus an access road lot in Warringah Road, Frenchs Forest subject to the conditions in the Annexure hereto.
3. Exhibit A be retained.

Ordered: 23 December 1999



Conditions of development consent

43 - 447 Warringah Road, Frenchs Forest

Annexure

Bridgehead Properties Pty Limited

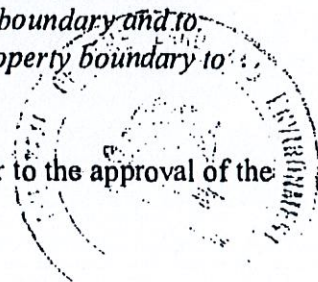
v

Warringah Council

1. This deferred commencement consent is granted under section 80(3) of the EPA Act 1979. Environmental Planning and Assessment Act, 1979 (amended) and shall not operate until Warringah Council has indicated in writing its satisfaction that:
 - a) Approval of Sydney Electricity has been obtained for the proposed works of drainage detention facilities, landscaping and for carparking/manoeuvring areas within the transmission line easement affecting the property;
 - b) The easements and lease No ___ to Sydney Electricity have been extinguished;
 - c) Deleted.
 - d) *A plan has been prepared by a registered surveyor showing the location of water, sewerage, gas, Telecom, electricity and stormwater drainage in relation to boundaries and/or relevant easements. The plan should be a copy of the final plan of subdivision on which the above items are clearly annotated. (C26) The plan should be accompanied by a letter from relevant servicing authorities stating that the location is suitable and provides for adequate maintenance access; and*
 - e) Deleted.
 - f) *A Construction Management Plan has been prepared that details:-*
 - i) *The volume of excavated material to be removed from the site or fill material imported to the site.*
 - ii) *The proposed number of truck movements, routes and tipping locations.*
 - iii) *Vehicle truck manoeuvring areas, type of machinery earthmoving equipment to be used on site and material storage soil stockpile locations.*
 - iv) *The proposed staging of works and relationship to existing and proposed stormwater drainage system and water quality control devices.*



2. Development being generally in accordance with plan numbered 3CY/1050.1 dated June 1999, titled Plan of Proposed Subdivision Lot 141 DP 614427 and any conditions of this consent. (C1) X
3. The Plan of Subdivision is to incorporate the silt and sediment facilities within Lot 1.
4. Construction of stormwater drainage lines/pits in Aquatic Drive in accordance with the concept plan prepared by Lovegrove Oxley consultants (Plan No. 3CY/1047.1 Sheets 1 - 6). The stormwater drainage line is to be a 375mm reinforced concrete pipe from pits A2 to A3, and a 750mm reinforced concrete pipe from pits A3 to A6. All installation and restoration works are to be in accordance with Council's Engineering specifications. X
5. The Community Management Statement is to incorporate under Part 5 By Laws Required by Public Authority By – Laws required by Warringah Council to be observed by the proprietor of each allotment:
 - (a) the removal of waste is to be the responsibility of each proprietor, – unless Council's Waste Contractors provide suitable arrangements;
 - (b) Parking of vehicles on the internal road is to be prohibited.
6. Construction of the internal road shall comply with Council's standard engineering specifications for road construction. Details to be submitted with the Construction Certificate to Council's satisfaction.
7. Creation of a Positive Covenant on the title of the allotments requiring the proprietor to maintain any water quality control and/or stormwater detention structures required by this Consent, in accordance with the standard requirements of Council. The Positive Covenant is to be prepared by the applicant using terms acceptable to, and which are available from Warringah Council.
8. Creation of the necessary easements to ensure pedestrian access is available from lot 1 to Warringah Road.
9. *Vehicular access to the site is to be from Aquatic Drive. It is to be provided by a heavy duty driveway crossing 13 metres wide comprising six (6) metre wide entry, 1 metre separation and six (6) metre wide splayed exit, in accordance with Warringah Council specification to approved levels. An application for street levels is to be made prior to issue of the Construction Certificate. (C89) The driveway is to maintain the 13 metre width at the property boundary and to gradually taper to a 10 metre width, 15 metres from the property boundary to allow safe transition.*
10. The payment of the following developer contributions prior to the approval of the construction certificate.



\$1,474.00 to S94 Part D – Open space – Frenchs Forest large park (AC 280018) ✓
\$2,068.00 to S94 Part E – Warringah Mall Public library (AC 28019) ✗
\$11,022.00 to S94 Part F – Child Care Centres (AC 28020) ✗
\$2,354.00 to S94 Part I – Roads and Traffic Management (AC 28023)
\$7,799 to S94 Part G – Community Centres – Warringah area (AC 28021) ✗

These amounts have been calculated using the Warringah Section 94 Contributions Plan. They are current at the time of issue of this Consent. They will be adjusted at the time of payment according to the quarterly CPI (Sydney - All Groups Index). An updated schedule of Council's contribution rate is issued each quarter and is available at Council's office. Please ensure that you provide details of this Consent when paying contributions so that they can be easily recalculated. (C7)

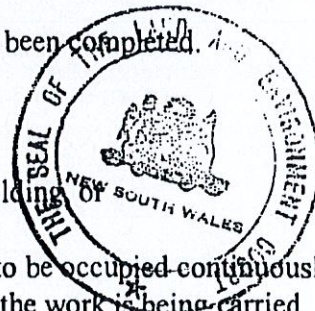
11. At least 2 days prior to work commencing on site Council must be informed, by the submission of Form 7 of the Environmental Planning and Assessment Regulation 1998 of the name and details of the Principal Certifying Authority and the date construction work is proposed to commence. (C168)

12. Compliance with Building Code of Australia

- 1) All building work must be carried out in accordance with the provisions of the Building Code of Australia.
- 2) This clause does not apply to the extent to which an exemption is in force under Clause 80H or 80I, subject to the terms of any condition or requirement referred to in Clause 80H (6) or 80I (4). (C375)

13. Signs to be erected on Building and Demolition Sites. (C382)

- 1) A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
 - a) stating that unauthorised entry to the work site is prohibited, and
 - b) showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours.
- 2) Any such sign is to be removed when the work has been completed.
- 3) This clause does not apply to:
 - a) building work carried out inside an existing building
 - b) building work carried out on premises that are to be occupied continuously (both during and outside working hours) while the work is being carried out.



14. Provision of interallotment drainage, and creation of easements to drain water, where necessary, to allow satisfactory drainage of all lots. Design and construction shall be in accordance with the standard specifications of Warringah Council. (C65)
15. Deleted.
16. Adequate provision shall be made to permit the flow of surface runoff and floodwaters from upstream properties throughout the subject site. (C73)
17. Construction and maintenance in perpetuity of stormwater pollution control system within the site, which shall intercept harmful substances discharging to the public drainage system in accordance with Warringah Council's standard requirements. (C80)
18. The provision of a stormwater quality treatment facility within the site designed in accordance with Council's specifications for "Design of Water Quality Treatment Basins". (C81) X
19. The on-site detention system and associated drainage works are to be constructed in accordance with the drainage concept plan submitted by Lovegrove Oxley Consultants (Plan No. 3CY/1047.1, Sheets 1 - 6). Completion of works - a Compliance certificate and a Work as Executed plan are to be submitted to the principal certifying authority prior to occupation. (C510)
20. The grass verge to be graded for its full width to a crossfall of 3% rising from the top of kerb. (C82)
21. Construction of concrete footpath 1.2 metres wide to Warringah Council's standard specifications for engineering works on an approved alignment within the grass verge in Aquatic Drive. (C83)
22. The footpath is to be protected from surface water by the construction of a grated drain across the driveway within the boundary connected to the drainage system. (C102) X
23. Payment to Warringah Council of a \$10,000 bond as security against damage to Council's roads caused by the transport and disposal of materials and equipment to and from the site to Account No.009 TF037. This amount to be paid prior to the issue of the Construction Certificate and to be verified by the accredited certifier. (C108)



24. All materials excavated from the site shall be disposed of to a site suitable for the receipt of such materials. Prior to issue of the Construction Certificate the accredited certifier to verify that appropriate arrangements have been put in place to ensure that such materials are disposed of in an environmentally suitable location and manner. (C109)
25. All construction and restoration work on Council's road and footpath area are to be carried out strictly in accordance with the approved drawings and Council's Standard Specifications. (C110)
26. The developer/applicant is to obtain a Road Opening Permit and pay all appropriate charges prior to commencement of any work on Council property.
27. The developer/applicant shall be responsible for all public utilities and services in the area of his work, and as such shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments, as those Authorities may deem necessary. (C113)
28. The developer/applicant must lodge with Council, prior to the issue of the final compliance or subdivision certificate, a Security Deposit/Bank Guarantee of \$10,000 to ensure compliance with the approved engineering plans and Council's standard specifications. The deposit/guarantee will only be refunded on completion of the Maintenance Period, if the work has been completed in accordance with the approved plans, conditions, and to the satisfaction of the principal consent authority. Requests for refund must be made in writing to the Council.
29. A Maintenance Period of six (6) months shall apply to the work, after it has been completed and approved in writing by Council. In that period the applicant shall be liable for any part of the work which fails to perform in the manner outlined in Council's specifications for engineering works, or as would be reasonably be expected under the design conditions. (C114)
30. A Consultant Engineer's Certificate is to be supplied to the Principal Certifying Authority on completion of the following stages of works and/or as and when requested by the Principal Certifying Authority.
 - a) Silt and sediment control facilities
 - b) Laying of stormwater pipes and construction of pits for interallotment drainage
 - c) Sub-grade trimmed and compacted
 - d) Base-course laid and compacted



- e) Kerb and gutter construction

(** To be tested by a recognised N.A.T.A. approved laboratory)

The Engineer's Certificate is to contain the following declarations:

- I. This certificate is supplied in relation to

- II. have been responsible for the supervision of all the work nominated in (I) above.

- III. I have carried out all tests and inspections necessary to declare that the work nominated in (I) above, has been carried out in accordance with the approved plans and specifications, and the conditions of the development consent.

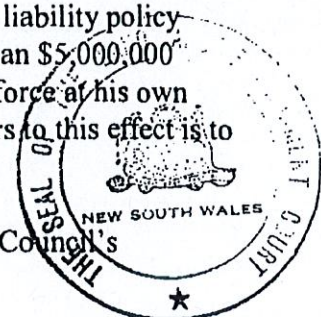
- IV. I have kept a signed record of all inspections and tests undertaken during the works, and can supply the Principal Certifying Authority with a copy of such records and test results, if and when required.

NOTE: Any inspections or tests carried out by the Principal Certifying Authority do not relieve the Consultant Engineer from his responsibility in respect of the above requirement. The final certificate, on completion of all works, must be submitted prior to the completion of the Maintenance Period, and must be accompanied by Works-As-Executed drawings. (C115)

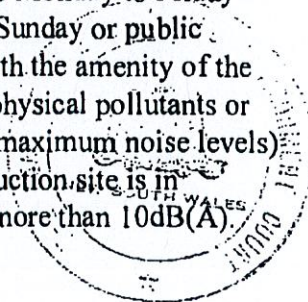
31. Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others, to the satisfaction of the Principal Certifying Authority, and in accordance with Council's Standard specifications for engineering works. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the currency of the works. (C117)
32. The developer/applicant is to indemnify the Council against any liability which may arise out of or in consequence of carrying out the work and against all claims, demands, proceedings, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

In this regard, the developer/applicant shall take out a public liability policy during the currency of all the works, in the sum of not less than \$5,000,000 endorsed with Council as principal, and keep such policy in force at his own expense. A certificate from the developer/applicant's insurers to this effect is to be lodged with Council before any work is commenced.

The amount of Common Law Liability insurance shall be to Council's satisfaction. (C119)

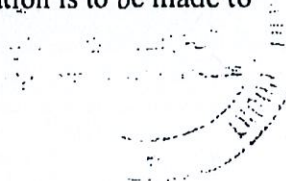


33. Footpath and roadway being kept free of obstruction by building materials and plant. All concrete trucks, pumps and/or agitators being kept wholly within the building site. No concrete or slurry being discharged onto Council's street surfaces. (C321)
34. A standard safety construction fence shall be provided during subdivision works to Council's satisfaction. (C341)
35. Deleted.
36. The provision of separate electricity, gas, Telecom, sewer and water services to each lot. The certifier to verify that these services are able to be provided prior to the issue of the Construction Certificate. (C27)
37. The payment of \$10,000 to account Reg 009 - *TF 036 prior to issue of a construction certificate as security to ensure that:
- a) all silt and sediment control measures are installed and maintained;
 - b) there is no transmission of material, soil etc off the site and onto the public road and/or drainage systems; and
 - c) maintenance of all facilities in accordance with Council's Specification for Erosion Control and Sediment Control. (C42)
38. Provision of temporary toilet facilities in accordance with C1.36 of the Regulations during demolition operations. (C521)
39. The land is subject to a Tree Preservation Order and no trees other than those expressly granted permission as a result of this development consent, may be removed without the prior consent of Council. (C38)
40. Adequate on-site provision to be made for construction staff carparking. Prior to issue of the Construction Certificate, the certifier to verify that these carparking spaces are provided to dimensions in accordance with RTA guidelines. (C15)
41. During construction:
- a) Adequate protection measures are to be employed to retain excavated areas during the construction process.
 - b) The hours of construction on the site being restricted to Monday to Friday 7am to 5pm, Saturday 7.00am to 1.00pm, no work on Sunday or public holidays, where the construction or work, interferes with the amenity of the neighbourhood by the emission of noise, chemical or physical pollutants or otherwise. In respect of noise, the L10 level (average maximum noise levels) measured over a period of 15 minutes when the construction site is in operation must not exceed background noise level by more than 10dB(A). (C37)



42. All works on the site shall be undertaken to prevent erosion and transport of soil and sediment off the site and onto adjoining properties. Measures shall be taken in accordance with the requirements of Warringah Council's Specification for Erosion and Sediment Control shall be submitted to the council / or certifier prior to issue of the Construction Certificate. (C41) *
43. Provision shall be made throughout the period of construction to prevent transmission of soil to the public road and drainage system by vehicles leaving the site. (C44) *
44. The location of all services to proposed each proposed lot within an Easement for Services. (C28)
45. All electrical and telephone mains in new subdivisions are to be place underground. You are therefore requested to contact the appropriate utility authorities to ensure that the policy is adhered to in this subdivision. The adjustment of public utilities and services as necessary are to be effected at the full cost to the applicant. (C43)
46. Provision of easements to drain water over the interallotment and council drainage lines within the site. (C48)
47. Dedication as a public road of suitable sites for electricity sub-stations, if required by the relevant electricity supply authority. (C55)
48. Where any conditions of this Consent require dedication, consolidation, easement or covenant, the number allocated by the Land Titles Office to the documents and/or plans referred to shall be advised in writing to Warringah Council, together with a letter of intent to proceed with the Positive Covenant, prior to Occupation. A certified copy of the documents shall be provided to Warringah Council after final approval and the Land Titles Office has effected registration. (C57)
49. Construction of kerb and gutter to approved line and levels in Aquatic Drive adjoining the site, together with footpath formation, necessary drainage, construction and sealing of road pavement between existing pavement and lip of gutter to the standard specifications of Warringah Council. (C63)
50. The council approved plans are to be stamped by Sydney Water and notice of requirement letter obtained and both submitted to the Principal Certifying Authority (PCA) prior to issue of the Construction Certificate.

A section 73 Compliance Certificate under the Sydney Water Act 1994 is to be submitted to the PCA prior to occupation of the development or issue of Subdivision Certificate. Sydney Water may require works to be constructed and/or developer charges to be paid and accordingly an application is to be made to Sydney Water (C58)

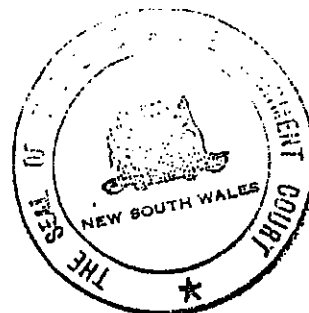


51. With the application for the Subdivision Certificate stage the applicant is required to submit a completed subdivision certificate form, a final plan of subdivision and nine copies, prepared in accordance with the requirements of the Conveyancing Act. All plans of survey are to show connections to at least two Survey Co-Ordination Permanent Marks. (C59)
52. All utilities/services and street lighting to be installed prior to the release of linen plan of subdivision. (C60)
53. Construction of approved kerb laybacks in accordance with the details shown on Warringah Council Plan A4-2276. (C90)
54. Reinstatement of redundant crossings and laybacks prior to issue of the final Compliance Certificate. (C91)
55. The public footways and roadways adjacent to the site shall be maintained at all times during the course of the work in a safe condition. (C88)
56. The submission to Council or the private certifier of four (4) copies of Civil Engineering plans for the design of roadworks and stormwater drainage works required in Aquatic Drive including long and cross sections, details of proposed structures and specifications.

Such design shall be:

- a) Prepared and submitted on A1 size sheets,
- b) Undertaken by a Consulting Civil Engineer (or by such other person as may be approved by Council),
- c) Approved and stamped by Council or the private certifier prior issue of the construction certificate,
- d) Subject to the prescribed Engineering Development Fees paid to Council prior to the release of the Construction Certificate (to be paid into Account 12912),
- e) Upon completion of the works, the applicant is to provide to Council 2 copies of "work as executed plans". The plans are to show relevant dimensions and finished levels and are to be certified by a surveyor. Also the applicant is to provide to Council in an approved format details of all public infrastructure created as part of the works,
- f) All Civil Engineering works are to be fully supervised by the consultant responsible for their design, or by such person as may be approved by Council, and on completion certified to be in accordance with the approved plans, conditions of construction and Council's standard specification for engineering works,

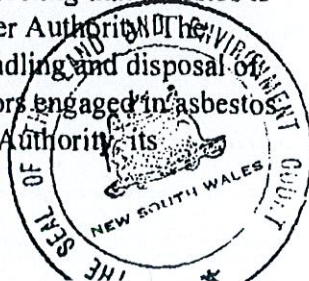
- g) A maintenance period of six (6) months shall apply to the work, after it has been completed and approved in writing by Council or the Principal Certifying Authority. In that period the applicant shall be liable for any part of the work which fails to perform in the manner outlined in Council's specifications, or as would reasonably be expected under the design conditions.
 - h) Council will require a Security Deposit/Bank Guarantee of not more than \$10,000 prior to issue of the final compliance certificate or subdivision certificate to ensure rectification of any defects during the maintenance period. (C93)
57. Prior to finalising detailed designs of the proposed development, the applicant should check all existing public service utilities adjacent to the site and ensure that where necessary appropriate arrangements are made for the relocation and/or adjustment of any services at the applicant's expense. (C96)
58. A declaration by a registered surveyor shall be provided to evidence that all construction has been effected within the appropriate allotment and easement boundaries. This shall be in the form of a copy of the final subdivision or easement plan, with the distances from the boundaries to the edges of these structures endorsed in red thereon and signed by the surveyor. (C97)
59. The requirements of condition(s) ending in code(s) C68 and C93 shall be designed and supervised during the works by an Engineer with qualifications and expertise recognised by the Institute of Engineers Australia as being adequate for the purpose. The Engineer shall certify prior to occupation or release of Linen Plan of Subdivision that the works have been completed strictly in accordance with the approved design and to appropriate standards of workmanship. (C98)
60. With respect to conditions(s) ending in code(s) C68 and C93, design details, computations and/or support documentation shall be submitted with the Construction Certificate and to satisfy the above conditions prior to the issue of the Construction Certificate. (C99)
61. Street numbers are to be displayed on the building or property in accordance with Warringah Council's standard requirements. The certifier to ensure that allocation of these numbers is obtained from Warringah Council prior to issue of the Construction Certificate. (C100)
62. Council's Development Engineer is to be given 24 hours notice when the works reach the following stages
- a) Subgrade level/basecourse level
 - b) Pouring of kerb and gutter
 - c) Sealing road pavement
 - d) Prior to backfilling of pipelines



- e) Prior to pouring of stormwater gully pits

NOTE: Any inspections carried out by Council do not imply Council approval or acceptance of the work, and do not relieve the developer/applicant from the requirement to provide an engineer's certification as conditioned above. Council approval or acceptance of any stage of the work must be obtained in writing, and will only be issued after completion of the work to the satisfaction of Council and receipt of the required certification. (C127)

63. Plant and demolition materials shall not be placed or stored within the public road reserve and shall be stored within the boundaries of the site during demolition works. Failure to comply with this condition may result in Council taking action to remove the offending items from the public reserve, and all costs incurred by Council will be deducted from any deposit moneys held in relation to the subject property. (C522)
64. All demolition work shall be carried out in a safe and responsible manner, with minimal harm to the surrounding natural environment under the supervision of a licensed contractor, and within the boundaries of the private property. (C524)
65. All demolitions are to be carried out in accordance with the guidelines contained in the Australian Standard AS2601-1991 - "The Demolition of Structures". (C525)
66. Access to the demolition site shall be protected with the use of suitable fences or hoardings being to the satisfaction of Council and located on the private property. (C526)
67. Demolition shall be limited to the extent of the footprint of the existing buildings on the site as shown on the approved drawings. (C527)
68. Hours of demolition being limited to Monday to Friday 7.00am - 5.00pm, Saturday 7.00am - 1.00pm if inaudible on residential premises, otherwise 8.00am - 1.00pm. No demolition work to take place on Sundays or Public Holidays. (C528)
69. Dust control measures shall be undertaken on all demolition sites so as to avoid a nuisance to adjoining properties and harm to the environment. (C529)
70. A person taking down, demolishing or causing to be taken down or demolished any building or part thereof shall, upon identifying or suspecting that asbestos is present in the building, immediately notify the Work Cover Authority. The Authority is the controlling body for the safe removal, handling and disposal of asbestos. The Authority supervises and monitors contractors engaged in asbestos removal. The requirements and standards imposed by the Authority, its consultants or contractors shall be complied with. (C530)



71. The lighting of fires for building or rubbish and demolition materials is prohibited. (C533)
72. For the protection of the health and safety of workers, adjoining property owners, the public and the environment, any person renovating or demolishing any building built before the 1970's should be aware that any surfaces may be coated with lead based paint. Lead dust is a hazardous substance. The requirements of the Environmental Protection Authority are to be followed in this regard. (C535).
73. Where lots 2-13 inclusive have a frontage to the access road (lot 1) a four (4) metres wide landscaped strip shall be provided after allowing for vehicular access across the frontage.

