



Land and Environment Court New South Wales

Case Name: Boral Resources (NSW) Pty Ltd v Camden Council (No 2)

Medium Neutral Citation: **[2019] NSWLEC 1070**

Hearing Date(s): 14 February 2019

Date of Orders: 26 February 2019

Date of Decision: 26 February 2019

Jurisdiction: Class 1

Before: Maston AC

Decision: See orders at [21] below

Catchwords: PROCEDURE: application to amend conditions of development consent pursuant to slip rule – orders amended

Legislation Cited: Civil Procedure Act 2005 s 56
Environmental Planning and Assessment Act 1979
Uniform Civil Procedure Rules 2005 rr 36.16(3B), 36.17

Cases Cited: Newmont Yandal Operations Pty Ltd v The J Aron Corporation [2007] NSWCA 195; (2007) 70 NSWLR 411 (C.A.)
Wollondilly Shire Council v Foxman Environmental Development Services Pty Ltd (No 7) [2013] NSWLEC 157

Category: Procedural and other rulings

Parties: Boral Resources (NSW) Pty Ltd (Applicant)
Camden Council (Respondent)

Representation: Counsel:
F Berglund (Applicant)

Solicitors:
MinterEllison (Applicant)

L Raffaele, Bartier Perry (Respondent)

File Number(s): 2017/256851

Publication Restriction: No

JUDGMENT

- 1 **COMMISSIONER:** Before the Court on 14 February 2019 was an application by way of Notice of Motion filed 18 December 2018 by the Applicant in which an order was sought with respect to my judgment in the substantive proceedings delivered on 5 December 2018 (*Boral Resources (NSW) Pty Ltd v Camden Council* [2018] NSWLEC 1623). The Applicant sought an order that the decision published on 5 December 2018 be varied to provide that the hours of operation listed at Condition 6(7) at Annexure A of the decision are 7am to 10pm Monday to Saturday and 8am to 10pm on Sundays and public holidays.

- 2 This referred to one of the conditions imposed on the grant of development consent for a mobile concrete batching plant to be erected on part of the land known as 60 Greendale Road, Bringelly within Lot 100 DP 1203966.

- 3 The Notice of Motion was supported by an affidavit sworn by Matthew Cole, a solicitor for the Applicant on 18 December 2018. Ms F Berglund of counsel appeared for the Applicant and Ms Raffaele, solicitor, appeared for Camden Council. There was no objection raised by Ms Raffaele to the affidavit of Mr Cole or to the application made by the Applicant.

- 4 During the hearing of the principal proceedings, several issues arose as to the particular draft conditions of consent including conditions with respect to the hours of operation of the business of the mobile concrete batching plant.

- 5 At the end of the last day of the hearing of the principal proceedings (23 August 2018), there was debate between Mr A Pickles SC for the Council and Mr C McEwen SC for the Applicant, as to several aspects of the conditions relating to noise generated by the operations to be carried out on the site and mitigation of noise. By the end of the argument on that day, there was no complete agreement between senior counsel as to these matters.

- 6 Mr Pickles SC stated: "my instructing solicitor will submit by e-Court, if that's convenient, rather than this marked up version of Exhibit K, a final version of

the Council's conditions of consent that reflect what is in Exhibit K, handwritten."

7 On 27 August 2018, Messrs Bartier Perry solicitors for the Council sent an email to the Court referring to the hearing on 22-23 August 2018, attaching "the Council's final conditions of consent" and confirming that only two conditions at that time remained in dispute. One of these was Condition 6(7) – the permitted hours of operation of the business.

8 The email concluded:

"In relation to [Condition 6(7)], the Applicant [presses proposed] alternate hours of operation. [The] alternate hours [of operation] and proposed changes to the conditions are detailed in the comments column of the attached document."

9 On 28 & 29 November 2018, I caused messages to be sent to the parties in which I requested "the Word copy of the conditions of consent (Exhibit K)".

10 On the hearing of the Notice of Motion, Ms Berglund noted that the comment in respect of Condition 6(7) stated that the Applicant pressed for hours of operation being Monday to Saturday 7am to 10pm and Sunday and public holidays 8am to 10pm. Ms Berglund then referred to Condition 28 – Noise Limits which was not in dispute. It states: "Noise generated at the premises must not exceed the noise limits in the following table at any of the receiver locations specified ..."

11 Ms Berglund noted that Condition 28 has a noise limit from 7am to 6pm and another noise limit from 6pm to 10pm respectively called the "day" and "evening" hours. She also noted Condition 27 referring to noise mitigation matters and to the fact that in my judgment I preferred the evidence of the acoustic engineer, Mr Cooper who found the hours of 7am to 10pm and work on Sunday acceptable when the proposed noise mitigation measures were put in place. She also referred to the decision of Pepper J in *Wollondilly Shire Council v Foxman Environmental Development Services Pty Ltd (No 7)* [2013] NSWLEC 157 (*Foxman*) and the cases at [22] and following referred to by

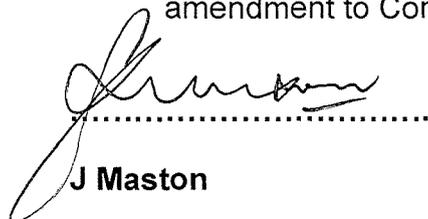
Pepper J in that litigation as a summary of the principles relevant to the rule 36.17 of the Uniform Civil Procedure Rules 2005 (UCPR) (the “slip rule”) and submitted that in the present case there had been an error arising from an accidental omission, that is, a mistake in which no real difference of opinion can exist and no further exercise of the Court’s discretion is required and does not involve making substantive alterations to determine points not argued, considered or decided at the hearing: see [23].

- 12 Reference was also made by Pepper J in *Foxman to Newmont Yandal Operations Pty Ltd v The J Aron Corporation* [2007] NSWCA 195; (2007) 70 NSWLR 411 (C.A.) to the effect of “the overriding purpose rule” in s 56 of the *Civil Procedure Act 2005* and its effect on the slip rule and that the rule may be applied to carry into effect the actual intention of the judge making the order to ensure it does not have a consequence which the judge clearly intended to avoid or ameliorate such as an unforeseen and unintended legal consequence. The relevant intention is the objective intention of the decision-maker at the time the orders were made.
- 13 I indicated that my subjective intention was to ensure when drafting the conditions of consent that there was a consistency with Conditions 6(28) and 6(7), which listed the maximum noise at particular hours on specified days of the week as determined by the acoustic experts at each of the receiver locations.
- 14 In the part of my judgment dealing with acoustic matters I stated that I would deal with permitted hours of operation later in the judgment.
- 15 The omission of a condition permitting development in the “evening” hours when elaborate provision was made in Condition 6(28) to deal with the amenity of the properties at the receiver locations in those hours was unintended.

- 16 It was not and could not have been the intention of the Court to omit to deal with the identification of the evening hours of operation of the development in Condition 6(7).
- 17 In my opinion, the error of omitting the list of the evening hours of operation is in this case a suitable one to be corrected by UCPR r 36.17.
- 18 Ms Berglund submitted that the slip rule clearly applied in this case and noted that there was no opposition from the Council to the rule being invoked. In addition, she noted that Division 4 Part 36.16(3B) of the UCPR gives the Court power to vary a judgment or order within 14 days after a motion for setting aside or varying it is filed as if the judgment or order had not been entered.
- 19 Ms Berglund noted that the present Notice of Motion was filed within 14 days of the judgment and that in those circumstances, the power under r 36.16(3B) is also available to the Court if necessary.
- 20 At the conclusion of the hearing of the application in the Notice of Motion, I indicated that I was satisfied that an order should be made in this case under UCPR r 36.17. I therefore directed the Applicant to deliver to the Court a draft order granting the relief sought in the Notice of Motion.

Orders

- 21 I make orders in the form of the draft orders submitted by the Applicant on 14 February 2019 and initialled by me together with a complete copy of Annexure A to the principal judgment (Conditions of Consent) containing the amendment to Condition 6(7).



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J Maston

Acting Commissioner of the Court

ORDER

COURT DETAILS

Court Land and Environment Court New South Wales
Registry Sydney
Case number 2017/256851

TITLE OF PROCEEDINGS

Applicant **Boral Resources (NSW) Pty Ltd, Applicant**
Respondent **Camden Council, Respondent**

ORDERS

- 1 That the Applicant's motion of 18 December 2018 is upheld.
- 2 That the decision in this matter, published on 5 December 2018, is varied in accordance with rule 36.17 of the *Uniform Civil Procedure Rules 2005* to provide for an amended set of conditions consistent with those attached at **Annexure A** to this judgment and which amend condition 6(7) to read as follows:

'Hours of Operation – *The property is only to be open for business and used for the purpose approved within the following hours:*

Day	Hours of Operation
<i>Monday</i>	<i>7:00am to 10:00pm</i>
<i>Tuesday</i>	<i>7:00am to 10:00pm</i>
<i>Wednesday</i>	<i>7:00am to 10:00pm</i>
<i>Thursday</i>	<i>7:00am to 10:00pm</i>
<i>Friday</i>	<i>7:00am to 10:00pm</i>
<i>Saturday</i>	<i>7:00am to 10:00pm</i>
<i>Sundays and Public Holidays</i>	<i>8:00am to 10:00pm</i>
<i>No material deliveries are permitted after 6:00pm on any day.</i>	

Annexure A

Boral Resources (NSW) Pty Ltd v Camden Council

Conditions of Consent

1.0 - General Conditions of Consent

The following conditions of consent are general conditions applying to the development.

- (1) **Approved Plans and Documents** - Development shall be carried out in accordance with the following plans and documentation, and all recommendations made therein, except where amended by the conditions of this development consent:

Plan Reference/ Drawing No.	Name of Plan	Prepared by	Date
Drawing B003S Sheet C2B, Revision 4	Plant Elevations	Stoddard Engineering	2 August 2018
Drawing B003S Sheet C2A, Revision 3	General Arrangement Plan Architectural	Stoddard Engineering	30 July 2018
Drawing B003S Sheet C1, Revision 2	Title and Notes	Stoddard Engineering	9 April 2018
Drawing B003S Sheet C2, Revision 2	General Arrangement Plan	Stoddard Engineering	9 April 2018
Drawing B003S Sheet C2A, Revision 2	General Arrangement Plan Architectural	Stoddard Engineering	9 April 2018
Drawing B003S Sheet C3, Revision 2	Pavement Plan	Stoddard Engineering	9 April 2018
Drawing B003S Sheet C4, Revision 2	Grading and Stormwater Plan	Stoddard Engineering	9 April 2018
Drawing B003S Sheet C5, Revision 2	Sections W & X	Stoddard Engineering	9 April 2018
Drawing B003S Sheet C6, Revision 2	Sections Y & Z	Stoddard Engineering	9 April 2018
Drawing B003S Sheet C7, Revision 2	Sections A, B, C, D & E	Stoddard Engineering	9 April 2018
Drawing B003S Sheet C8, Revision 2	Stormwater Longitudinal Section	Stoddard Engineering	9 April 2018
Drawing B003S Sheet C9, Revision 2	BAL BAR Intersection	Stoddard Engineering	9 April 2018
Drawing B003S Sheet C10, Revision 2	Greendale Road Cross Sections	Stoddard Engineering	9 April 2018
Drawing B003S Sheet C11, Revision 2	Sediment Basin and Storage Pit Details	Stoddard Engineering	9 April 2018
Drawing B003S Sheet C12, Revision 2	Cut/Fill Plan	Stoddard Engineering	9 April 2018
Drawing B003S Sheet C12a, Revision 3	Cut/Fill Plan BAL BAR	Stoddard Engineering	23 July 2018
Drawing B003S Sheet C13,	Setout Plan	Stoddard Engineering	9 April 2018

Revision 2			
Drawing B003S Sheet C14, Revision 2	Stormwater Management Plan	Stoddard Engineering	9 April 2018
Drawing B003S Sheet C15, Revision 1	Signage Plan	Stoddard Engineering	30 July 2018
LA-000, Revision A	Cover Sheet	Paterson Design Studio	26 July 2018
LA-100, Revision A	Reference Plan	Paterson Design Studio	26 July 2018
LA-200, Revision A	Landscape elevations	Paterson Design Studio	26 July 2018
LA-300, Revision A	Planting Plan	Paterson Design Studio	26 July 2018
LA-301, Revision A	Planting Plan	Paterson Design Studio	26 July 2018
LA-302, Revision A	Planting Plan	Paterson Design Studio	26 July 2018
LA-303, Revision A	Planting Plan	Paterson Design Studio	26 July 2018
LA-400, Revision A	Planting Schedule	Paterson Design Studio	26 July 2018
LA-500, Revision A	Landscape Details	Paterson Design Studio	26 July 2018
MS-102112-100, Revision 6	General Arrangement	Modular Building Systems	
MS-102112-110, Revision 1	Elevations (1)	Modular Building Systems	3 February 2011
MS-102112-111, Revision 1	Elevations (2)	Modular Building Systems	3 February 2011

Document Title	Prepared by	Date
Environmental Impact Statement (Volume 1 and 2, including appendix A to O)	EMM	May 2016
Surface Water Assessment (Rev D)	Royal Haskoning DVH	8/3/2017
Revised Road Traffic Assessment	EMM	28/10/2016
Arboricultural Report	Tree Wise Men	31 July 2018
Clause 4.6 Variation	GLN Planning	2/8/2018

Acoustic Reports	Prepared by	Date
Noise and Vibration Assessment, Appendix E of the Environmental Impact Statement	EMM	9 May 2016
Supplementary Acoustic Report	EMM	8 February 2018
Supplementary Acoustic Report	EMM	16 March 2018
Supplementary Acoustic Review	EMM	11 July 2018

- (2) **Building Code of Australia** - All building work shall be carried out in accordance with the BCA. In this clause, a reference to the BCA is a reference to that Code as in force on the date the application for the relevant Construction Certificate is made.
- (3) **Engineering Specifications** - The entire development shall be designed and constructed in accordance with Council's Engineering Specifications and the relevant DCP.
- (4) **General Terms of Approval/Requirements of State Authorities** - The general terms of approval/requirements from state authorities shall be complied with prior to, during, and at the completion of the development.

The general terms of approval/requirements are:

1. General Terms of Approval from Office of Environment and Heritage dated 13 July 2016 listed in Attachment C.
 2. To the extent that they are not inconsistent with these Conditions, conditions from the NSW Environment Protection Authority letter dated 30 June 2017 listed in Attachment D.
 3. Conditions from Endeavour Energy date 28 July 2016 listed in Attachment E.
 4. Conditions from the NSW Rural Fire Service dated 1 July 2016 listed in Attachment F.
- (5) **Modified Documents and Plans** - The development shall be modified as follows:
 - a) Amend the landscape plan to include the following tree species: *Acacia decurrens* (Black Wattle), *A. parramattensis* (Parramatta Wattle), *A. implexa* (Hickory Wattle);
 - b) Amend the landscape plan so 46 new trees (species provided in a) above) are provided along the street frontage of the development area to replace trees approved to be removed; and
 - c) Amend the approved plans to incorporate barium impregnated vinyl curtains at the entry and exit of the slump stand enclosure.
 - (6) **Separate Approval for Signs** – A separate development application for any proposed signs other than those approved by this consent shall be provided to, and approved by, the Consent Authority prior to the erection or display of those signs (unless the erection or display of those signs is exempt or complying development pursuant to State Environmental Planning Policy (Exempt and Complying Development Codes) 2008).
 - (7) **Tree Removal** - The trees as shown in the approved landscape plan are approved for removal. Replacement trees shall be planted at a ratio of 1:1 in accordance with the landscape plan.

This work should only be carried out by a fully insured and qualified Arborist. Suitable qualifications for an Arborist are to be a minimum standard of Australian Qualification Framework (AQF) Level 3 in Arboriculture for the actual carrying out of tree works and AQF Level 5 in Arboriculture for Hazard, Tree Health and Risk Assessments and Reports.

Where possible all green waste generated from the approved tree work is to be recycled into mulch or composted at a designated facility. All reasonable measures must be taken to protect the remaining vegetation on the site from damage during the approved tree works.

The issuing of this Consent is conditioned upon the planting and maintenance of suitable replacement trees as a means to achieve a "No Nett Loss" approach to vegetation management. The plantings are to be installed on the subject property within six (6) months of the removal/s authorised by this consent.

- (8) **Protect Existing Vegetation and Natural Landscape Features** - Approval must be sought from Council prior to the removal, pruning, impact upon or any disturbance of the existing vegetation and natural landscape features, other than any existing vegetation and/or natural landscape feature authorised for removal, pruning, impact upon or disturbance by this Consent.

The following procedures shall be strictly observed:

- a) no additional works or access/parking routes, transecting the protected vegetation shall be undertaken without Council approval; and
- b) pedestrian and vehicular access within and through the protected vegetation shall be restricted to Council approved access routes.

The protection of existing trees and other landscape features, other than any existing trees and natural landscape features authorised for removal, pruning, impact upon or disturbance by this Consent, must be carried out as specified in the Australian Standard AS 4970-2009 Protection of Trees on Development Sites.

All initial procedures for the protection of existing trees and landscape features, as detailed in AS 4970-2009, must be installed prior to the commencement of any earthworks, demolition, excavation or construction works on the Development site.

The works and procedures involved with the protection of existing trees and other landscape features are to be carried out by suitable qualified and experienced persons or organisations. This work should only be carried out by a fully insured and qualified Arborist.

Suitable qualifications for an Arborist are to be a minimum standard of Australian Qualification Framework (AQF) Level 3 in Arboriculture for the actual carrying out of tree works and AQF Level 5 in Arboriculture for Hazard, Tree Health and Risk Assessments and Reports.

- (9) **Outdoor Lighting** - All lighting shall comply with Australian Standard AS1158 and AS4282.
- (10) **Noxious Weeds Management** – The applicant must fully and continuously suppress and destroy by appropriate means, any noxious or environmentally invasive weed infestations that occur during or after works. New infestations must be reported to Council.

Pursuant to the *Noxious Weeds Act 1993*, the applicant must at all times ensure that any machinery, vehicles or other equipment entering or leaving the site are clean and free from any noxious weed material.

- (11) **Sight Distance** - Sight distance at the vehicle access must be provided in accordance with the Australian Standards 2890.1 and 2890.2 for cars and trucks respectively, and be based on the surveyed 85th percentile vehicle speed of Greendale Road.
- (12) **Auxiliary Turning Treatments** - The Basic Left Turn (BAL) and Basic Right Turn (BAR) treatments at the vehicle access must be provided in accordance with Austroads for a 26 metre B-Double truck, and be based on the surveyed 85th percentile vehicle speed of Greendale Road.
- (13) **Access Driveway** - The access driveway must be in accordance with Australian Standards 2890.1 and 2890.2, and accommodate entry and exit turning movements of all vehicles up to and including a 26 metre B-Double truck.
- (14) **Parking Design and Provision** – A minimum of 24 car parking spaces (including one accessible car parking space) and 15 agitator truck parking spaces are to be provided on-site. The design, layout, signage, line marking, lighting and physical controls of all off-street parking facilities must comply with the relevant requirements of Australian Standards 2890.1, 2890.2 and 2890.6.
- (15) **Aboriginal / European Heritage** – The proposed development must comply with the following requirements during construction and as part of ongoing use:
 - a) Compliance with the recommendations 7.1.3 to 7.1.10 of the *Aboriginal Cultural Heritage Assessment: Bringelly Concrete Batching Plant*, by EMM dated 24 May 2016; and
 - b) Compliance with the Section 8 Mitigation Measures of the *Statement of Heritage Impact: Bringelly Concrete Batching Plant*, by EMM dated 9 May 2016.
- (16) **Finished Colours** – The entire development including the acoustic fencing must comprise neutral / earthy tones that are sympathetic to the rural character.

2.0 – Prior to Issue of a Construction Certificate

The following conditions of consent shall be complied with prior to the issue of a Construction Certificate.

- (1) **Acoustic Report** - The development shall be constructed in accordance with the acoustic reports specified in Condition 1.0(1) of Part 1 of this consent. Details demonstrating compliance shall be provided to the Certifying Authority with the Construction Certificate application.
- (2) **Water Quality Monitoring Plan** - A water quality monitoring plan shall be provided to the Certifying Authority.

The WQMP shall include monitoring (this extends to water quality sampling and laboratory analysis) for all completed water quality treatment systems that provide water quality treatment to service the development both during the construction and

post development stages. Only relevant water quality treatment systems that drain the development should be included in the WQMP.

The WQMP shall include:

- a) quarterly water sampling;
- b) reference to an approved sampling methodology;
- c) location plan of sampling;
- d) frequency of reporting of results to the Consent Authority; and
- e) nomination of suitable water quality criteria (i.e., concentration values for pollutants expressed in mg/l) for the purpose of determining compliance.

- (3) **Civil Engineering Plans** - Civil engineering plans indicating drainage, roads, accessways, earthworks, pavement design, details of line-marking, traffic management, water quality and quantity facilities including stormwater detention and disposal, shall be prepared in accordance with the approved plans and Council's Engineering Design and Construction Specifications. Details demonstrating compliance shall be provided to the Certifying Authority with the Construction Certificate application.

Note. Under the *Roads Act 1993*, only the Roads Authority can approve commencement of works within an existing road reserve.

- (4) **Dilapidation Report – Council Property** - A Dilapidation Report prepared by a suitably qualified person, including a photographic survey of existing public roads, kerbs, footpaths, drainage structures, street trees and any other existing public infrastructure within the immediate area of the subject site. Details demonstrating compliance shall be provided to the Certifying Authority prior to issue of a Construction Certificate.
- (5) **Construction Traffic Management Plan** - A Construction Traffic Management Plan (CTMP) shall be prepared by an RMS accredited person, and submitted to and approved by Council. The CTMP is to be prepared in accordance with Council's Engineering Specifications, Australian Standard 1742.3 and the RMS Traffic Control at Work Sites Manual. Details demonstrating compliance shall be provided to the Certifying Authority with the Construction Certificate application.
- (6) **Stormwater Detention and Water Quality** - An on-site detention system and water quality system shall be provided for the site and designed in accordance with Council's Engineering Specifications.

A detailed on-site detention and water quality report reflecting the Construction Certificate plans shall be provided to the Certifying Authority with the Construction Certificate application.

- (7) **Soil, Erosion, Sediment and Water Management** - An erosion and sediment control plan shall be prepared in accordance with Council's Engineering Specifications. Details demonstrating compliance shall be provided to the Certifying Authority with the Construction Certificate application.

- (8) **Pollutants** - Discharge of pollutants is strictly forbidden. Measures to prevent the pollution of waters, air and land shall be incorporated into the development to comply with the requirements of the *Protection of the Environment Operations Act 1997*.

Where there is potential for pollutant discharge, a report by a suitably qualified expert shall be provided to the PCA detailing the pollution mitigation measures incorporated into the building design so that any discharges comply with the requirements of the *Protection of the Environment Operations Act 1997*.

- (9) **Smoke Free Premises** - The construction and fit out of the premises shall comply with the *Smoke-Free Environment Act 2000* and *Smoke-Free Environment Regulation 2000*. Details demonstrating compliance shall be provided to the Certifying Authority.
- (10) **Accessibility** - Prior to the issuing of a Construction Certificate for the proposed amenities building, detailed plans are to be provided to the appointed Accredited Certifier to assess the Construction Certificate, that demonstrates & details compliance with Part D3 of the National Construction Code – Building Code of Australia and Australian Standard – AS 1428.1 – 2009 Design for Access and Mobility.
- (11) **Salinity Management for Construction Materials** – The selection of construction materials must be able to withstand a mildly aggressive environment to concrete and steel.
- (12) **Construction and Operational Waste Management Plans** – Construction and operational waste management plans for the development must be consistent with the “Bringelly Waste Management Plan”, Prepared by Boral.

The collection contractor and subsequent disposal facility must be identified.

- (13) **Air Quality Management Plan** – An air quality management plan must be submitted to and approved by Council, incorporating:
- a) Proactive and reactive management strategies for minimising particulate emissions;
 - b) Key performance indicator(s) for emission controls;
 - c) Monitoring method(s) including location, frequency and duration;
 - d) Response mechanisms;
 - e) Responsibilities for demonstrating and reporting achievement of key performance indicator(s);
 - f) Record keeping; and
 - g) Compliance reporting.

The air quality management plan must also include a monitoring plan, providing details of the following:

- a) Measurement of deposited dust;
- b) Tank water quality;
- c) Identification of the closest available source of meteorological observations;
- d) Requirements to provide ongoing results to Council;
- e) Requirement to produce a report summarising the initial year’s worth of results; and

- f) Council's ability to continue, vary or discontinue monitoring requirements on the basis of the results presented in the Monitoring Results Report.
- (14) **Dust Mitigation Plan** - A dust mitigation plan must be submitted to and approved by Council, including a description of all dust mitigation equipment, and providing detail of all dust mitigation measures that are to be adopted to minimise or prevent the emission of dust from the premises. These mitigation measures must include:
- a) all conveyor belts and transfer points must be fully enclosed, and must be designed and operated to minimise or prevent dust emission, including where necessary being fitted with misting water sprays to suppress dust emissions;
 - b) belt scrapers must be installed to effectively remove material from the underside of each belt;
 - c) all material stockpile and storage must be shrouded on three sides to minimise or prevent dust emissions. This includes fitting hoppers (wherever possible) and all bunkers with sprinklers to reduce the possibility of wind eroding dust from stockpile surfaces and keeping sand and aggregate damp;
 - d) the use of water sprays during the unloading of aggregate and sand, over storage area stockpiles and over material storage area stockpiles to reduce wind erosion;
 - e) the loading of silos pneumatically with cement and flyash;
 - f) trucks entering and leaving the premises that are carrying load must be covered at all times, except during loading and unloading;
 - g) road surfaces are to be paved and kept clean/regularly swept, and barriers are to be erected to prevent vehicles entering unsealed roads;
 - h) controlling wind erosion from all relevant sources, including unconsolidated surfaces;
 - i) controlling cement dust from all sources so that it cannot be blown or washed beyond the premises;
 - j) spillages from all sources must be removed immediately;
 - k) enclosing overhead storage bins and the cement weigh hopper;
 - l) the cement weigh hopper must be fully enclosed and fitted with appropriate fabric filters or dust collectors;
 - m) the cement storage silos must be fitted with appropriately sized fabric filters or dust collectors with automatic rapping or reverse pulse air to ensure that dust is not emitted during filling operations;
 - n) all inspection covers and plates must be securely fixed;
 - o) enclosing the loading bay.

3.0 - Prior to Commencement of Works

The following conditions of consent shall be complied with prior to any works commencing on the development site.

- (1) **Construction Waste Management Plan** - A construction waste management plan must be prepared for all construction work on the site. The plan must incorporate the concept of recycling and reuse where practicable and be kept on site for compliance until the completion of all construction works.
- (2) **Public Liability Insurance** - The owner or contractor shall take out a Public Liability Insurance Policy with a minimum cover of \$20 million in relation to the occupation of, and works within, public property (i.e. kerbs, gutters, footpaths, walkways, reserves, etc.) for the full duration of the proposed works. Evidence of this Policy shall be provided to Council and the Certifying Authority.
- (3) **Notice of PCA Appointment** - Notice shall be given to Council at least two (2) days prior to subdivision and/or building works commencing in accordance with Clause 103 of the EP&A Regulation 2000. The notice shall include:
 - a) a description of the work to be carried out;
 - b) the address of the land on which the work is to be carried out;
 - c) the registered number and date of issue of the relevant development consent;
 - d) the name and address of the PCA, and of the person by whom the PCA was appointed;
 - e) if the PCA is an accredited certifier, his, her or its accreditation number, and a statement signed by the accredited certifier consenting to being appointed as PCA; and
 - f) a telephone number on which the PCA may be contacted for business purposes.
- (4) **Notice Commencement of Work** - Notice shall be given to Council at least two (2) days prior to subdivision and/or building works commencing in accordance with Clause 104 of the EP&A Regulation 2000. The notice shall include:
 - a) the name and address of the person by whom the notice is being given;
 - b) a description of the work to be carried out;
 - c) the address of the land on which the work is to be carried out;
 - d) the registered number and date of issue of the relevant development consent and construction certificate;
 - e) a statement signed by or on behalf of the PCA to the effect that all conditions of the consent that are required to be satisfied prior to the work commencing have been satisfied; and
 - f) the date on which the work is intended to commence.

- (5) **Construction Certificate Required** - In accordance with the provisions of Section 81A of the *EP&A Act 1979*, construction or subdivision works approved by this consent shall not commence until the following has been satisfied:
- a) a Construction Certificate has been issued by a Certifying Authority;
 - b) a Principal Certifying Authority (PCA) has been appointed by the person having benefit of the development consent in accordance with Section 109E of the *EP&A Act 1979*;
 - c) if Council is not the PCA, Council is notified of the appointed PCA at least two (2) days before building work commences;
 - d) the person having benefit of the development consent notifies Council of the intention to commence building work at least two (2) days before building work commences; and
 - e) the PCA is notified in writing of the name and contractor licence number of the owner/builder intending to carry out the approved works.

- (6) **Sign of PCA and Contact Details** - A sign shall be erected in a prominent position on the site stating the following:
- a) that unauthorised entry to the work site is prohibited;
 - b) the name of the principal contractor (or person in charge of the site) and a telephone number on which that person can be contacted at any time for business purposes and outside working hours; and
 - c) the name, address and telephone number of the PCA.

The sign shall be maintained while the work is being carried out, and shall be removed upon the completion of works.

- (7) **Site is to be Secured** - The site shall be secured and fenced to the satisfaction of the PCA. All hoarding, fencing or awnings (associated with securing the site during construction) is to be removed upon the completion of works.
- (8) **Sydney Water Approval** - The approved development plans shall be approved by Sydney Water.
- (9) **Soil Erosion and Sediment Control** - Soil erosion and sediment controls must be implemented prior to works commencing on the site in accordance with 'Managing Urban Stormwater – Soils and Construction ('the blue book') and any Sediment and Erosion plans approved with this development consent.

Soil erosion and sediment control measures shall be maintained during construction works and shall only be removed upon completion of the project when all landscaping and disturbed surfaces have been stabilised (for example, with site turfing, paving or re-vegetation).

- (10) **Performance Bond** - Prior to commencement of works a performance bond of \$10,000.00 must be lodged with Camden Council in accordance with Camden Council's Engineering Construction Specifications.

Note – An administration fee is payable upon the lodgement of a bond with Council.

- (11) **Environmental Management Plan** – An Environmental Management Plan (EMP) prepared in accordance with Council's Engineering Design Specification shall be provided to the Certifying Authority.

The EMP shall address the manner in which site operations are to be conducted and monitored to ensure that adjoining land uses and the natural environment is not unacceptably impacted upon by the proposal. The EMP shall include but not be necessarily limited to the following measures:

- a) measures to control noise emissions from the site in accordance with the interim Construction Noise Guideline issued by the EPA (formerly the DECC) dated July 2009 and the recommendations in the Acoustic Reports specified in Condition 1.0 of Part 1 of this consent;
- b) measures to suppress dust emissions;
- c) soil and sediment control measures;
- d) any other recognised environmental impact; and
- e) community consultation.

4.0 - During Works

The following conditions of consent shall be complied with during the construction phase of the development.

- (1) **Acoustic Perimeter Bund Walls**– The modified acoustic bund walls shall be constructed prior to any construction of any buildings, hardstand areas, and any other structures commencing on the remainder of the site. The bunds shall be constructed in accordance with the drawings prepared by Stoddard Engineering as specified in Condition 1.0 of Part 1 of this consent.

- (2) **Removal of Waste Materials** - Where there is a need to remove any identified materials from the site that contain fill/rubbish/asbestos, the waste material shall be assessed and classified in accordance with the NSW EPA Waste Classification Guidelines (2008) (refer to:

www.environment.nsw.gov.au/waste/envguidlns/index.htm)

Once assessed, the materials shall be disposed of to a licensed waste facility suitable for that particular classification of waste. Copies of tipping dockets shall be retained and supplied to Council upon request.

- (3) **Additional Approvals Required** - Where any works are proposed in the public road reservation, the following applications shall be made to Council, as applicable:

- a) For installation or replacement of private stormwater drainage lines or utility services, including water supply, sewerage, gas, electricity, etc. an application

shall be made for a Road Opening Permit and an approval under Section 138 of the *Roads Act 1993*;

- b) For construction / reconstruction of Council infrastructure, including vehicular crossings, footpath, kerb and gutter, stormwater drainage, an application shall be made for a Roadworks Permit under Section 138 of the *Roads Act 1993*.

Note: Private stormwater drainage is the pipeline(s) that provide the direct connection between the development site and Council's stormwater drainage system, or street kerb and gutter.

- (4) **Construction Hours** - All work (including delivery of materials) shall be restricted to the hours of 7.00am to 6.00pm Monday to Friday and 8:00am to 1:00pm on Saturday. Work is not to be carried out on Sundays or Public Holidays.
- (5) **Compliance with BCA** - All building work shall be carried out in accordance with the requirements of the BCA.
- (6) **Retaining Walls** - The following restrictions apply to any retaining wall erected within the allotment boundaries:
 - a) retaining walls shall be constructed a minimum of 300mm from any property boundary to ensure all associated drainage and backfill remain wholly within the subject property;
 - b) adequate provisions shall be made for surface and subsurface drainage of retaining walls and all water collected shall be diverted to, and connected to, a stormwater disposal system within the property boundaries;
 - c) retaining walls shall not be erected within drainage easements; and
 - d) retaining walls shall not be erected in any other easement present on the land without the approval of the relevant authority benefited.
- (7) **Site Management Plan** - The following practices are to be implemented during construction:
 - a) stockpiles of topsoil, sand, aggregate, spoil or other material shall be kept clear of any drainage path, easement, natural watercourse, kerb or road surface and shall have measures in place to prevent the movement of such material off site;
 - b) builder's operations such as brick cutting, washing tools, concreting and bricklaying shall be confined to the building allotment. All pollutants from these activities shall be contained on site and disposed of in an appropriate manner;
 - c) waste shall not be burnt or buried on site, nor shall wind-blown rubbish be allowed to leave the site. All waste shall be disposed of at an approved waste disposal facility;
 - d) a waste control container shall be located on the site;
 - e) all building materials, plant, equipment and waste control containers shall be placed on the building site. Building materials, plant and equipment (including

water closets), shall not to be placed on public property (footpaths, roadways, public reserves, etc.);

- f) toilet facilities shall be provided at, or in the vicinity of, the work site at the rate of 1 toilet for every 20 persons or part thereof employed at the site. Each toilet shall:
- i) be a standard flushing toilet connected to a public sewer; or
 - ii) have an on-site effluent disposal system approved under the *Local Government Act 1993*; or
 - iii) be a temporary chemical closet approved under the *Local Government Act 1993*.

(8) **Offensive Noise, Dust, Odour and Vibration** - All work shall not give rise to offensive noise, dust, odour or vibration as defined in the *Protection of the Environment Operations Act 1997*.

(9) **Noise mitigation and Management Measures** – The noise mitigation measures contained within “Section 8 – Management and Mitigation” of the report “Noise and Vibration Assessment: Bringelly Concrete Batching Plant, prepared by EMM, dated 9 May 2016” and “Section 3.7 – Construction noise” of the report “Supplementary acoustic report: Concrete batching plant – 60 Greendale Road, Bringelly”, prepared by EMM, dated 8 February 2018 must be implemented on the site and complied with at all times.

Noise levels emitted during demolition and construction works shall comply with the Interim Construction Noise Guideline issued by the NSW EPA (formerly DECC) dated July 2009.

The proponent should ensure that all feasible and reasonable construction noise mitigation and management measures are implemented, particularly in relation to 31 Greendale Road (RI).

(10) **Fill Material** – The preparation of a validation report and sampling location plan in respect of any fill material imported to the subject site must be provided to and approved by the Principal Certifying Authority.

The validation report and associated sampling location plan must:

- a) be prepared by a person with experience in the geotechnical aspects of earthworks;
- b) be endorsed by a practising engineer with Specific Area of Practice in Subdivisional Geotechnics;
- c) be prepared in accordance with;

Virgin Excavated Natural Material (VENM):

- i) the Department of Land and Water Conservation publication "Site investigation for Urban Salinity"; and

- ii) the Department of Environment and Conservation - Contaminated Sites Guidelines "Guidelines for the NSW Site Auditor Scheme (Second Edition) - Soil Investigation Levels for Urban Development Sites in NSW".
- d) confirm that the fill material;
- i) provides no unacceptable risk to human health and the environment;
 - ii) is free of contaminants;
 - iii) has had salinity characteristics identified in the report, specifically the aggressiveness of salts to concrete and steel (refer Department of Land and Water Conservation publication "Site investigation for Urban Salinity");
 - iv) is suitable for its intended purpose and land use; and
 - v) has been lawfully obtained.

Sampling of VENM for salinity of fill volumes:

- e) less than 6000m³ - 3 sampling locations;
- f) greater than 6000m³ - 3 sampling locations with 1 extra location for each additional 2000m³ or part thereof.

For e) and f) a minimum of 1 sample from each sampling location must be provided for assessment.

Sampling of VENM for Contamination and Salinity should be undertaken in accordance with the following table:

Classification of Fill Material	No of Samples Per Volume	Volume of Fill (m ³)
Virgin Excavated Natural Material	1 (see Note 1)	1000 or part thereof

Note 1: Where the volume of each fill classification is less than that required above, a minimum of 2 separate samples from different locations must be taken.

- (11) **Erosion and Sedimentation Control** - Soil erosion and sedimentation controls are required to be installed and maintained for the duration of the works. The controls must be undertaken in accordance with version 4 of the Soils and Construction – Managing Urban Stormwater manual (Blue Book).

- (12) **Location of Stockpiles** - Stockpiles of soil shall not be located on / near any drainage lines or easements, natural watercourses or water bodies, footpath or roadway without first providing suitable protective measures adequate to protect these water bodies. All stockpiles of contaminated materials shall be suitably covered to prevent dust and odour nuisance.
- (13) **Disposal of Stormwater** - Water seeping into any site excavations is not to be pumped into the stormwater system unless it complies with relevant EPA and ANZECC standards for water quality discharge.
- (14) **Unexpected Finds Contingency (General)** - Should any suspect materials (identified by unusual staining, odour, discolouration or inclusions such as building rubble, asbestos, ash material, etc.) be encountered during any stage of works (including earthworks, site preparation or construction works, etc.), such works shall cease immediately until a qualified environmental specialist has been contacted and conducted a thorough assessment.

In the event that contamination is identified as a result of this assessment and if remediation is required, all works shall cease in the vicinity of the contamination and Council shall be notified immediately.

Where remediation work is required, the applicant will be required to obtain consent for the remediation works.

- (15) **Construction Traffic Management Plan Implementation** - All construction traffic management procedures and systems identified in the approved Construction Traffic Management Plan shall be introduced and maintained during construction of the development to ensure safety and to minimise the effect on adjoining pedestrian and traffic systems.
- (16) **Soil, Erosion, Sediment and Water Management – Implementation** - All requirements of the erosion and sediment control plan and/or soil and water management plan shall be maintained at all times during the works and any measures required by the plan shall not be removed until the site has been stabilised.
- (17) **Tree Hollows** - Tree hollows and/or active nests within trees approved for removal must be replaced to provide fauna with short-term habitat requirements during vegetation clearance and bushland restoration works.

Each individual tree hollow and/or active nest must be replaced at a minimum 1:1 ratio with nest boxes that will provide suitable short-term habitat requirements. Any hollow-bearing and/or active nest trees removed from the development site are to be inspected prior to removal. Measures must be taken to ensure that fauna inhabiting tree hollows, active nests or other habitat (i.e. logs, leaf litter) are appropriately treated and relocated before development activities commence, in line with the *National Parks and Wildlife Act 1974*.

A qualified ecologist is required to be present throughout vegetation clearing activities to relocate fauna, or take fauna into care where appropriate (i.e. juvenile or nocturnal fauna).

- (18) **Environmental and/or Declared Noxious Weeds** - If Environmental and/or Declared Noxious Weeds are found within the site, weed management must occur in

accordance with best practice weed management procedures, state legislation (*Noxious Weeds Act 1993, National Weeds Strategy 2007*) and the Camden Council Development Control Plan 2011.

- (19) **Vegetation Fencing** - Fencing to be installed around Existing Native Vegetation and other Cumberland Plain Woodland to ensure its protection during construction.
- (20) **Use of Felled Trees** - The trunks and larger branches of felled trees within the development area are to be placed on the ground of the adjoining Existing Native Vegetation (ENV) to enhance habitat of the ENV.

5.0 - Prior to Issue of an Occupation Certificate

The following conditions of consent shall be complied with prior to the issue of an Occupation Certificate.

- (1) **Occupation Certificate Required** - An Occupation Certificate shall be obtained prior to any use or occupation of the development.
- (2) **Waste Management Plan** - The PCA shall ensure that all works have been completed in accordance with the approved waste management plan referred to in this development consent.
- (3) **Waste Disposal** - The building owner shall ensure that there is a contract with a licensed contractor for the removal of all waste. No garbage is to be placed on public land (e.g. footpaths, roadways, plazas, reserves etc.) at any time.
- (4) **Compliance Certificate** - Once the installation of the mechanical ventilation system is completed, a Certificate of Compliance prepared by a suitably qualified mechanical engineer with details of tests carried out shall be provided to the PCA. Verification shall be provided that the air handling system as installed has been tested and complies with the approved plans and specifications, including ventilation requirements and fire precautions.
- (5) **Fire Safety Certificates** - A Fire Safety Certificate shall be provided to the PCA in accordance with the requirements of the EP&A Regulation 2000.
- (6) **Services** - Certificates and/or relevant documents shall be obtained from the following service providers and provided to the PCA:
 - a) Energy supplier – Evidence demonstrating that satisfactory arrangements have been made with the energy supplier to service the proposed development;
 - b) Telecommunications – Evidence demonstrating that satisfactory arrangements have been made with a telecommunications carrier to service the proposed development; and
 - c) Water supplier – Evidence demonstrating that satisfactory arrangements have been made with a water supply provider to service the proposed development.
- (7) **Compliance with Acoustic Requirements** - Documentary evidence shall be provided to the PCA confirming the acoustic mounds have been constructed in accordance with the approved drawings listed in Condition 1.0 of Part 1 of this

consent and that all the recommendations in the Acoustic Reports listed in Condition 1.0 in Part 1 of this consent have been complied with.

- (8) **Building Height** - A registered surveyor shall certify that the maximum height of the 3 silos is consistent with the height referenced in the approved plans and this consent. The certification/verification shall be provided to the satisfaction of the PCA.
- (9) **Driveway Crossing Construction** – The driveway crossing shall be constructed in accordance with this consent and the Driveway Crossing Approval (PRA) prior to use or occupation of the development.
- (10) **Completion of Landscape Works** - All landscape works, including the removal of noxious weed species, are to be undertaken in accordance with the approved landscape plan and conditions of this Development Consent.
- (11) **Inspection for On-Site Sewerage Management** - An 'Approval to Operate' under Section 68 of the *Local Government Act 1993* shall be obtained from Council.
- (12) **Section 88B Instrument** - The applicant shall prepare a Section 88B Instrument for approval by the PCA which incorporates the following easements, positive covenants and restrictions to user where necessary:
 - a) Positive covenant over the on-site detention and water quality facility for the maintenance, repair and insurance of such a facility.
- (13) **Water Quality Facility** - A water quality facility must be constructed for the site in accordance with the approved plans and Council's Engineering Specifications.

6.0 – Ongoing Use

The following conditions of consent are operational conditions applying to the development.

- (1) (Deleted)
- (2) **Offensive Noise** - The use and occupation of the premises including all plant and equipment shall not give rise to any offensive noise within the meaning of the *Protection of the Environment Operations Act 1997*.
- (3) **Manoeuvring of Vehicles** - All vehicles shall enter and exit the site in a forward direction.
- (4) **Maximum Vehicle Size** - The maximum vehicle permitted to access the site is a general access vehicle (up to 19m in length), until such time that a B-Double vehicle access route is approved to the new site entrance, in which case B-Double vehicles will be permitted to access the site.
- (5) **Number of Vehicle Movements** – The total peak output is not to exceed 1,250 tonnes/day.

The maximum hourly truck movements are:

- a) up to 12 truck loads of concrete leaving the per hour;
- b) up to 2 truck loads of aggregates entering the site per hour from 7 am to 6 pm; and

- c) up to 1 truck loads of cement powder entering the site per hour from 7 am to 6 pm.

The following restrictions applies to trucks entering and leaving the site:

- d) on average 86 truck loads of concrete leaving the site per day;
- e) on average 20 truck loads of aggregates entering the site per day; and
- f) on average 7 truck loads of cement powder entering the site per day.

- (6) **Removal of Graffiti** - The owner/manager of the site is responsible for the removal of all graffiti from the building and fences within 48 hours of its application.

- (7) **Hours of Operation** - The property is only to be open for business and used for the purpose approved within the following hours:

Day	Hours of Operation
Monday	7:00am to 10:00pm
Tuesday	7:00am to 10:00pm
Wednesday	7:00am to 10:00pm
Thursday	7:00am to 10:00pm
Friday	7:00am to 10:00pm
Saturday	7:00am to 10:00pm
Sundays and Public Holidays	8:00am to 10:00pm
No material deliveries are permitted after 6:00pm on any day.	

- (8) **Loading to Occur on Site** - All loading and unloading operations are to be carried out wholly within the building/site.

The loading dock (if provided) shall be used for loading and unloading operations in connection with the approved use.

- (9) **Approved Signage Maintenance** - The approved sign shall be maintained in a presentable and satisfactory state of repair.

The level of illumination and/or lighting intensity used to illuminate the sign shall comply with Australian Standards 1158 and 4282.

- (10) **Driveways to be Maintained** - All access crossings and driveways shall be maintained in good order for the life of the development.

- (11) **Parking Areas to be Kept Clear** - At all times, the loading, car parking spaces, driveways and footpaths shall be kept clear of goods and shall not be used for storage purposes.

- (12) **Discharge into Waterways** - No wastewater, chemicals or other substances shall be permitted to discharge to the waterway that runs through the site or Council's stormwater system. Only clean, unpolluted water is permitted to discharge. All liquids (such as oils lubricants, hydraulic fluids, fuel, paints, detergents and any other chemicals) shall be stored in a covered and suitably bunded area.

- (13) **Liquid Spills** - Sufficient supplies of appropriate absorbent materials and other spill prevention and clean-up materials shall be kept on site to recover any liquid spillage. Liquid spills shall be cleaned up using dry methods, by placing absorbent material on the spill and sweeping or shovelling the material into a secure bin. Materials used to clean up shall be disposed of to an appropriately licensed waste facility.
- (14) **Amenity** - The business shall be conducted and customers controlled at all times so that no interference occurs to the amenity of the area, the footpath, adjoining occupations and residential or business premises.
- (15) **Pollution Control** - The use and operation of the premises shall not give rise to the discharge (by air, water or land) of any pollutant which may degrade the environment or be prejudicial to its inhabitants, in accordance with the requirements of the *Protection of the Environment Operations Act 1997*.

The use shall operate in accordance with the following:

- a) all pollution control devices (Including drainage systems, sumps and traps) shall be regularly maintained;
 - b) the repair, servicing and maintenance of all vehicles shall take place in a bunded work bay drained holding tank or like device so that any liquid wastes produced from such repair, servicing and maintenance can either be:
 - i) retained for recycling; or
 - ii) disposed of in accordance with the requirements of Sydney Water.
- (16) **Maintenance of Landscaping** - Landscaping shall be maintained in accordance with the approved landscape plan.
 - (17) **Landscaping Maintenance Establishment Period** - Commencing from the date of practical completion, the applicant will have the responsibility to establish and maintain all hard and soft landscaping elements associated with this consent.

The 12 month maintenance and establishment period includes the applicant's responsibility for the establishment, care and repair of all landscaping elements.

The date of practical completion is taken to mean completion of all civil works, soil preparation and treatment and initial weed control, and completion of all planting, turf installation, street tree installation and mulching.

At the completion of the 12 month landscaping maintenance and establishment period, all hard and soft landscaping elements (including any nature strip and road verge areas, street trees, street tree protective guards and bollards, etc.) shall be in an undamaged, safe and functional condition and all plantings have signs of healthy and vigorous growth.

At the completion of the maintenance and establishment period, the landscaping works shall comply with the approved landscape plans.

- (18) **Environmental and/or Declared Noxious Weeds** – The applicant must fully and continuously suppress and destroy, by appropriate means, any noxious or environmentally invasive weed infestations that occur. New infestations must be

reported to Council. Pursuant to the *Noxious Weeds Act 1993*, the applicant must at all times ensure that any machinery, vehicles or other equipment entering or leaving the site are clean and free from any noxious weed material.

- (19) **Waste Water Treatment Devices** - All wastewater treatment devices (including drainage systems, sumps, traps and pumps) shall be regularly maintained in good working order to ensure that they remain effective. A maintenance schedule shall be developed and incorporated into a Plan of Management (PoM) and kept on-site at all times for staff to comply with. All liquid and solid wastes collected from the treatment device shall be disposed of in accordance with relevant environmental protection and waste control legislation.
- (20) **Air Quality Emission Control Factors** – The development site as a minimum must provide the following: monthly sweeping of paved roads / surfaces, water sprays operating in unloading and storage areas, cement supplement silo loading, hopper loading additives and mixer activities, CBP material transfer points. These provision must be consistent with “*Section 6.3 – Emission reduction Factors*” of the report titled “*Air Quality Impact Assessment: Proposed Bringelly Concrete Batching Plant, Prepared by Ramboll Environ, Dated April 2016.*”

In addition, the Applicant must, at all times, comply with the:

- a) air quality management report and monitoring plan; and
- b) dust mitigation plan

as approved in accordance with conditions 13 and 14 of Part 2 of this consent. Where any non-compliances with these reports are identified the operator or the person benefitted by this consent must take immediate steps to rectify the non-compliance.

- (21) **Air Quality Verification Report** – Three months after the commissioning of the premises, an Air Quality Verification Report must be submitted to and approved by Council to confirm the findings of the Air Quality Impact Assessment included in the Environmental Impact Statement (EIS). A copy of the report must also be provided to the NSW Environment Protection Agency.

The assessment must:

- a) be prepared by a suitably qualified consultant
- b) be undertaken in accordance with the EPA Approved Methods for the Modelling and Assessment of Air Pollutants in NSW
- c) consider actual peak daily production rates

If the Air Quality Verification Report identifies any emissions in excess of those reported in the Applicant’s EIS, the Applicant must detail additional measures to be implemented to achieve the EIS levels, clearly indicate who will implement these measures, when these measures will be implemented, and how the effectiveness of these measures could be measured and reported.

- (22) The Applicant must not cause or permit the emission of offensive odour beyond the boundary of the premises. Offensive odour is defined as an odour:
- a) That, by reason of its strength, nature, duration, character or quality, or the time at which it is emitted, or any other circumstances:

- i) Is harmful to (or is likely to be harmful to) a person who is outside the premises from which it is emitted, or
 - ii) Interferes unreasonable with (or is likely to interfere unreasonably with) the comfort or repose of a person who is outside the premises from which it is emitted.
- (23) No diesel generator is permitted, unless approval in writing is obtained from the NSW Environment Protection Authority. In obtaining written approval, the Applicant must:
- a) Evaluate compliance with prescribed discharge concentrations contained in the *Protection of the Environment Operations (Clear Air) Regulation 2010*; and
 - b) Adequately assess the potential impacts from any diesel generator.
- (24) **Independent Air Quality Audit** – In the event that Council, upon review and acting reasonably, finds the Air Quality Verification Report submitted to it inadequate, it may request an Independent Air Quality Audit be commissioned and paid for by the Applicant. The independent air quality audit shall be prepared by a qualified and experienced air quality consultant approved by Council.

If the Air Quality Audit Report identifies any emissions in excess of those reported in the Applicant's EIS, the Applicant must detail additional measures to be implemented to achieve the EIS levels, clearly indicate who will implement these measures, when these measures will be implemented, and how the effectiveness of these measures could be measured and reported.

- (25) **Pre-mixed Concrete Permitted** - Only pre-mixed concrete can be produced by this development.
- (26) **Production Capacity** – Concrete production is restricted to a maximum 125,000 tonnes of concrete per annum.
- (27) **Noise Mitigation 31 Greendale Road and 29 Greendale Road Bringelly** - Upon receiving a written request from the land owner of Lot 1 in DP 252040 (31 Greendale Road, Bringelly) and Lot 10 Section E in DP2650 (29 Greendale Road Bringelly), the Applicant must prepare a suitable noise mitigation solution in respect of mitigating road traffic noise in accordance with the following:
- The upgrading of glazing for any external windows of any habitable room from which traffic on Greendale Road is visible;
 - The installation of mechanical ventilation to any room with upgraded glazing complying with Australian Standard 1668;
 - Within 6 months of receiving a written request from the landowner, the applicant must install the agreed noise mitigation to the satisfaction of the landowner; and
 - Pay the reasonable costs in association with the installation of the agreed noise mitigation measures.
 - Details of the upgraded glazing and mechanical ventilation shall be provided to Council for approval prior to installation.

- (28) **Noise Limits**– Noise generated at the premises must not exceed the noise limits in the following table at any of the receiver locations specified:

Table 1 Noise Limits LAeq,(15min)

ID	Address	Noise Limit LAeq,(15min)	
		Day 7am-6pm	Evening 6pm-10pm
R1	31 Greendale Road	45	41
R2	33 Greendale Road	35	35
R3	35 Greendale Road	42	40
R4	5 Tyson Road	35	35
R5	37 Greendale Road	40	38
R6	39 Greendale Road	40	36
R7	170 Greendale Road	40	36
R8	196A Greendale Road	35	34
R9	196 Greendale Road	37	35
R10	29 Greendale Road	41	38

The above noise limits in Table 1 apply under all meteorological conditions except for the following:

- a) Wind speeds greater than 3 metres/second at 10 metres above ground level.
- b) Stability category F temperature inversion conditions and wind speeds greater than 2 metres/second at 10 metres above ground level; or
- c) Stability category G temperature inversion conditions.

For the purposes of this condition:

- a) Data recorded via an onsite meteorological station (if installed) or the closest Bureau of Meteorology station is to be used to determine meteorological conditions; and,
- b) Temperature inversion conditions (stability category) are to be determined by the sigma method referred to in Fact Sheet D of the "Noise Policy for Industry" published by the EPA dated October 2017 (NPfI).

These noise limits shall apply at the most affected point:

- a) on a residential property boundary, where any dwelling is situated 30 metres or less from the property boundary closest to the premises; or
- b) within 30 metres of a dwelling façade, but not closer than 3m, where any dwelling on the residential property is situated more than 30 metres from the property boundary closest to the premises.

All noise measurements shall comply with the guidelines contained in the NPfI.

The correction for modifying factors in Fact Sheet C of the NPfl shall be applied to the LAeq,(15min) noise level contribution from the premises measured at any of the receiver locations specified in Table 1.

- (29) **Noise Verification Report** - Three months after the commissioning of the premises the proponent must submit a Noise Verification Report to Council confirming compliance with the Noise Limits in Table 1 of Condition 28 of Part 6 of this consent..

The assessment must:

- i. incorporate intermediate assessment locations if necessary
- ii. assess compliance with the Noise Limits in Table 1 of Condition 28 of Part 6 of this consent.
- iii. be attended noise monitoring undertaken in accordance with Condition 28 of Part 6 of this consent.
- iv. occur during each day during approved operating hours for a minimum of 1.5 hours
- v. occur for three consecutive days
- vi. be undertaken in accordance with the EPA Noise Policy for Industry dated October 2017
- vii. be prepared by a qualified and experienced acoustic engineer

If the noise monitoring identifies any non-compliance with the Noise Limits in Table 1, the proponent must detail what additional measures will be implemented to ensure compliance, clearly indicating who would implement these measures, when these measures would be implemented, and how the effectiveness of these measures would be measured and reported.

In this condition, a "qualified and experienced acoustic engineer" is an appropriately experienced acoustic engineer having qualifications eligible for membership grade of both The Institution of Engineers Australia and the Australian Acoustical Society. Alternatively, an appropriately experienced acoustic engineer employed by a firm being a member of the Association of Australasian Acoustic Consultants.

- (30) **Independent Noise Audit** – In the event that Council, upon review and acting reasonably, finds the Noise Verification Report submitted to it inadequate, it may request an Independent Noise Audit be commissioned and paid for by the proponent. The independent noise audit shall be prepared by a qualified and experienced acoustic engineer approved by Council.

If the Noise Audit Report identifies any non-compliance with the Noise Limits in Table 1 of Part 6 of this consent, the proponent must detail what additional measures will be implemented to ensure compliance, clearly indicating who would implement these measures, when these measures would be implemented, and how the effectiveness of these measures would be measured and reported.

In this condition, a "qualified and experienced acoustic engineer" is an appropriately experienced acoustic engineer having qualifications eligible for membership grade of both The Institution of Engineers Australia and the Australian Acoustical Society. Alternatively, an appropriately experienced acoustic engineer employed by a firm being a member of the Association of Australasian Acoustic Consultants.

- (31) **Telephone Complaints Line** - The proponent must maintain and advertise a phone number and email address for the purpose of receiving and responding to any complaints from members of the public in relation to activities conducted at the premises. The proponent must notify the public of the complaints line details and the fact that it is a complaints line so that the impacted community knows how to make a complaint.

The proponent must also keep a legible record of all complaints made in relation to pollution arising from any activity at the premises. The record must include details of the following:

- the date and time of the complaint
- the method by which the complaint was made
- any personal details of the complainant which were provided by the complainant or, if no such details were provided, a note to that effect
- the nature of the complaint
- the action taken by the proponent in relation to the complaint, including any follow-up contact with the complainant
- if no action was taken by the proponent, the reasons why no action was taken.

The record of a complaint must be kept for at least four years after the complaint was made. The record must be produced to Council who asks to see them.

- (32) The barium loaded vinyl curtains affixed to the entry and exit of the slump bay structure shall remain fully closed whilst ever slumping is occurring.

END OF CONDITIONS

These conditions have been corrected in accordance with the slip rule and replace the conditions in Annexure A to the judgment in *Boral Resources (NSW) Pty Ltd v Camden Council* [2018] NSWLEC 1623 published with the original decision.