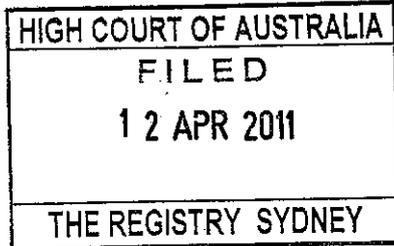


BETWEEN:

CUMERLONG HOLDINGS PTY LIMITED
(ACN 008 484 875)

Appellant

AND:



DALCROSS PROPERTIES PTY LIMITED
(ACN 083 792 054)

First Respondent

DALCROSS HOLDINGS PTY LIMITED
(ACN 083 791 931)

Second Respondent

AUSTRALASIAN CONFERENCE ASSOCIATION LIMITED
(ACN 000 003 930)

Third Respondent

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APPELLANT'S CHRONOLOGY

Part I

It is certified that this Chronology or the redacted version of this Chronology (as the case require) is in a form suitable for publication on the internet.

30 **Part II: Principle Events**

	Date	Description
1.	1 October 1971	<i>Ku-ring-gai Planning Scheme Ordinance</i> (KPSO) made pursuant to the now repealed <i>Local Government Act 1919</i> ; subject lands zoned Residential 2(b). Pursuant to the power in s.342G(2) of the LG Act, clause 68(2) of the KPSO suspended the operation of covenants, except in identified zones – relevantly, the Plaintiff's and Defendants' lands were in those identified zones, being Zone 2(b).
2.	1 September 1980	<i>Environmental Planning and Assessment Act 1979</i> came into force.

Filed on behalf of the Appellant by
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The provisions of Part XIIA of the *Local Government Act 1919* were repealed.

The KPSO, being in force immediately before the appointed day of 1 September 1980, continued to have full force and effect pursuant to clause 2 of Schedule 3 of the *Savings, Transitional and Other Provisions of the Miscellaneous Acts (Planning) Repeal and Amendment Act 1979*.

3. 9 March 1990
The KPSO was amended, by *Ku-ring-gai Local Environmental Plan No 74*, vide Government Gazette No 35 of 9 March 1990; this deleted the words “or 2(g)” in clause 68(2) and substituted the words “2(g) or 2(h)”, adding a further exempted zone. This has no bearing on the present issue.
4. 10 December 1993
Registration of instrument created pursuant to s.88B of the *Conveyancing Act 1919* which burdens Lots 102 and 103 in DP834629 (the Respondents’ land) and benefits, *inter alia*, Lot 1 in DP302605 (the Applicant’s land); the instrument restricted the Respondents’ land being used, *inter alia*, for the purpose of *hospital*.
5. 28 May 2004
KPSO amended by *Ku-ring-gai Local Environmental Plan No 194*, vide Government Gazette No 92 of 28 May 2004. Zoning of subject lands changed to Residential 2(d3) (Residential “D3”).
6. 27 August 2008
Ku-ring-gai Council granted development consent to the Second Respondent for demolition of the existing house and construction of an extension of the hospital on the Respondent’s land.
7. 29 July 2009
First judgment by Smart AJ in *Cumerlong Holdings v Dalcross Properties Pty Ltd* [2009] NSWSC 717.
8. 30 October 2009
Second judgment by Smart AJ in *Cumerlong Holdings Pty Ltd v Dalcross Properties Pty Ltd (No 2)* [2009] NSWSC 1157; finds that LEP 194 does not directly provide *that a regulatory instrument ... shall not apply* whilst it has that effect [25]; and that the operative provision suspending the covenant is clause 68(2) of the KPSO [29].
9. 2 September 2010
Judgment of NSW Court of Appeal (Tobias JA, McColl JA, Handley AJA).

Tobias JA (with whom McColl JA agreed) found

that s.28(2) was not engaged as LEP 194 did not contain a requisite *provision* to operate upon [30], [38]; and the fact of LEP in concert with clause 68 having the effect of causing the suspension of the covenant still did not engage s.28(3) [31].

Handley AJA concluded that as the combined operation of LEP 194 in clause 68(2) *provided* the result of suspending the covenant [80], it thereby engaged the operation of s.28(2).

Dated:

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Counsel for the Appellant
Peter McEwen

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Nick Eastman

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Scott Nash

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