

JRPP No.	2011SYW019
DA No.	DA 010.2010.00479.001
Proposed Development	Boundary Adjustment (Two Lots)
Applicant:	NSW Department of Education and Training
Council	Wollondilly Shire Council
Report By:	PANEL SECRETARIAT

Review Report and Recommendation

Referred to the Joint Regional Planning Panel pursuant to section 89(2)(b) of the Environmental Planning and Assessment Act 1979

1 March 2011

1. EXECUTIVE SUMMARY

The development application is for boundary adjustment to facilitate a land swap between Wollondilly Shire Council and the Department of Education and Training. Council's assessment report recommends approval subject to conditions.

A set of draft recommended conditions was circulated to the applicant for consideration on 23 September 2010. The applicant did not agree with several of the conditions including development standards be registered on title (Condition 5), provision of a sealed driveway (Condition 7), engineering & construction specifications (Condition 6), erosion and sediment control (Condition 8), inspections (Condition 9) and an advisory condition (Condition 11). The main reason for the objection to these conditions was the proposed subdivision is a paper subdivision and does not involve any construction works. The requirement for a constructed access would only be generated by future development, hence should be a condition for future development application.

A revised assessment report was received by the Panel Secretariat on 23 February 2011 with a set of revised draft conditions, which was forwarded to the applicant for comments on the same date. The revised conditions deleted the disputed Condition concerning development standards; renumbered the conditions and included two new conditions requiring the provision of a new pump out system and a condition concerning heritage matter. At the time of finalising this report, the applicant is yet to provide its comments on the revised conditions.

The Panel Secretariat has reviewed the comments from Council officer and the applicant on the first set of draft conditions and the revised conditions provided by Council.

It is a general planning requirement of any subdivision proposal that proper access should be provided to the subdivided lots. In this regard, the Panel Secretariat considers Council's recommended conditions for a sealed access to be provided for Lot 2 is reasonable. Given the need to construct the access road, the associated engineering, erosion control, inspection, heritage and advisory conditions are reasonable and appropriate.

Clause 45 of the Wollondilly LEP 1991 requires Council not to consent to development on unsewered land. It has not been demonstrated that Lot 102 has the capacity to accommodate an effluent disposal system on site and Council does not accept onsite

sewage management systems to straddle boundaries or operate on lots where they are not related. There is an existing building on Lot 102, which relies on the amenity buildings that are to be subdivided into a separate lot. Condition (No. 1(3)) requires the construction of a new pump out system or relocating an existing amenity building to Lot 102 to satisfy Clause 45.

Council advised that the State Environmental Planning Policy (Infrastructure) 2007 provides for the site to be used for various purposes without the need for Council approval. In the circumstances, the Panel Secretariat considers it is reasonable to ensure proper service is available to the existing building so that it can be used. It is noted that the condition states that the cost burden of works is to be carried by "the person(s) having the benefit of the consent". In other words, the cost of works should be a matter to be negotiated between Council and the applicant.

The Panel Secretariat recommends the Panel to adopt the assessment report's recommendation to approve the subdivision application subject to conditions as provided in Schedule 1. If the applicant maintains its objection to the conditions, the Panel should refer the application to the Minister for approval to impose the conditions.

2. SITE DESCRIPTION

The site consists of 2 lots, Lot 1 DP 420139 (26 Station Street) and Lot 1 DP795181 (28 Station Street). The former Menangle School and a few outbuildings including two toilet blocks and a dwelling are located within the site. According to the Statement of Environmental Effects "all of the buildings are in a state of disrepair. Access to the site is provided via an all weather driveway off Station Street."

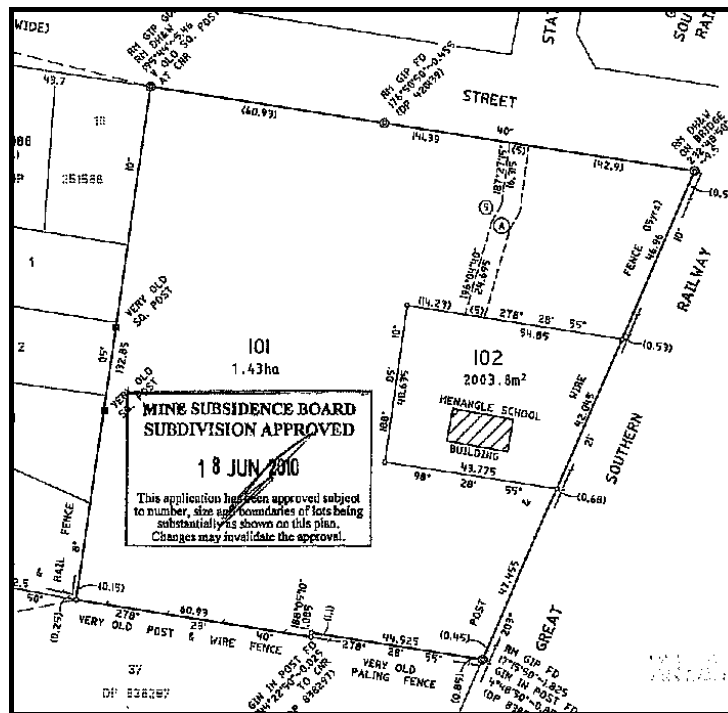
3. PROPOSAL

The proposal is to adjust the lot boundaries to enable a land swap between the Council and the Department of Education and Training. Figure 1 shows the current lot boundaries. Figure 2 show the new boundaries if the application is approved.

Figure 1 – Plan of Lot 1 DP420139 and Lot 1 DP795181



Figure 2: Proposed Lot 101 and 102



Source: Mine Subsidence Board Subdivision Approved Plan

4. BACKGROUND SUMMARY

The site is zoned 5(a) Special Uses under the Wollondilly Local Environmental Plan 1991 and is proposed to be zoned R2 Low Density Residential in the draft Wollondilly Local Environmental Plan 2009.

- 2003 DET submitted a DA to expand Douglas Park Primary School which involved the acquisition and closure of Dowle Street.
- June 2008 Council expressed interest in acquiring part, or the whole Menangle site for community purposes
- 16 June 2010 Mine Subsidence Board granted approval for subdivision
- 15 July 2010 DA was received by Wollondilly Shire Council
- 29 July 2010 Council notified adjoining land owners
- 23 September 2010 Council assessment report recommended approval subject to conditions
Applicant was consulted on conditions
- 25 November 2010 Lean & Hayward responded to draft conditions
- 17 February 2011 DA referred to the JRPP due to disagreement on conditions
- 23 February 2011 Updated assessment report and recommended conditions submitted to Panel Secretariat
Revised conditions referred to applicant for comment

5. ENVIRONMENTAL PLANNING INSTRUMENTS

The proposed development is generally consistent with:

- The Wollondilly Local Environmental Plan 1991
- The draft Wollondilly Local Environmental Plan 2009
- State Environmental Planning Policy No 55 – Remediation of Land
- Sydney Regional Environmental Plan No 20 – Hawkesbury Nepean River (No 2 – 1997)
- Development Control Plan No 41 – Menangle Village

6. CONSULTATION AND PUBLIC EXHIBITION

Adjoining and adjacent land owners were notified in accordance with Council's Notification and Advertising Development Control Plan. Two submissions were received. Both were made by the Menangle Community Association which objected to the application and considered the land should be returned to the community. The Association has developed a plan to renovate and use the buildings for community purposes. The assessment report supports the application as it would enable the proposed land swap so that the school building would be returned to Council.

7. CONSIDERATION OF SECTION 79C(1) OF THE EP&A ACT

Council's officer has undertaken an assessment of the application with regard to the provisions of the EP&A Act and all matters specified under section 79C(1). The assessment report recommends the DA be approved once the applicant provides written concurrence to the draft conditions of consent.

8. JRPP's STATUTORY ROLE

Section 89(1)(b) of the Environmental Planning and Assessment Act 1979 (EP&A Act) states that a consent authority must not impose a condition on its consent to a Crown development application, except with the approval of the applicant or the Minister.

Section 89(2)(b) of the Act provides that if a consent authority fails to determine a Crown DA within the prescribed time limit it may be referred by either the applicant or the consent authority to a JRPP.

In this case, Council assessment officer recommended a number of conditions of consent for the applicant's agreement. The applicant does not agree to 6 of the conditions.

In view of the disagreement, Council referred the application (DA) to the JRPP for determination.

9. THE DISPUTED CONDITIONS

The first set of draft conditions was sent to the application for concurrence on 23 September 2010. (See Attachment iii) The applicant via letter dated 25 November 2010 advised Council that it objected to 6 of the proposed conditions. (See Attachment iv)

In brief, the disputed conditions are:

- Condition 5 requires a Section 88B Instrument be provided on the land restricting residential development along the rail line to the noise levels in accordance with the "Development near Rail Corridors and Busy Roads – Interim Guideline".
- Condition 6 relates to engineering and construction specifications.

- Condition 7 requires the construction of a bitumen sealed driveway be provided within the proposed right-of-carriageway.
- Condition 8 relates to erosion and sediment controls
- Condition 9 concerns inspections.
- Condition 11 also relates to construction.

The Panel Secretariat received a revised assessment report with a set of revised conditions on 23 February 2011. (See Attachment v) The conditions were forwarded to the applicant for comment on the same day. At the time of finalising this report, advice from the applicant is yet to be received.

The revised conditions deleted the requirement of a Section 88B Instrument on land use restriction. However, it requires a Section 88B Instrument for the right-of-way to ensure it will not be terminated by future owners of Lot 101.

An additional condition has also been included requiring the construction of a pump out system or the relocation of one of the amenity blocks/construction of a new toilet facility on Lot 2.

10. POSITION OF EACH PARTY

The views of Council and the applicant are summarised as follows:

Council

Assessment staff

- The requirement to construct a bitumen sealed driveway is a standard practice for subdivision. Under the provisions of the State Environmental Planning Policy (infrastructure) 2007, there are a number of uses that could be undertaken without any Council approval. The assessment report also pointed out that “the conditions of consent does not solely burden DET ... the costs can be proportioned between all vested parties.”
- The other conditions are reasonable and appropriate when construction works are to be carried out.
- Under Clause 45 of the WLEP 1991, Council must not consent to the carrying out of the development on unsewered land unless the land has the capacity to accommodate effluent disposal. There is an existing pump out effluent disposal system that services the whole site. The proposed boundary adjustment would create a small lot for the school building that does not have an effluent disposal system. To rectify the situation, the assessment report recommends a condition be imposed to require either a new pump out system be constructed or the existing amenity facilities be relocated to Lot 102 or new toilet facilities be constructed to ensure the existing building will continue to have appropriate amenities for its future use.

Applicant – NSW Department of Education and Training

These are comments on the first set of draft conditions. Comments on the revised conditions are yet to be received at the time of finalising of this report.

- The applicant is of the view that the current DA is for subdivision of the land to facilitate the land swap between Council and the DET.
- Condition 5.3 would be appropriate for future application for residential development, but is not required at this time.

- The current application does not involve any engineering works, hence Conditions 6.1 and 6.2 are not relevant.
- Condition 7 is not required as the current DA is for a paper subdivision. “Any constructed access requirements would only be generated by any future proposed use of Lot 102 (by Council). Accordingly this should be considered and dealt as part of any separate and future development application for Lot 102 (by Council).”
- Conditions 8.1 to 8.4, 9.1 and 11 are not required as the current application does not involve any construction works.

10. DISCUSSION OF THE DISPUTED CONDITIONS

It is a general planning requirement of any subdivision proposal that proper access should be provided to the subdivided lots. In this regard, the Panel Secretariat considers Council’s recommended conditions for a sealed access to be provided for Lot 2 is reasonable.

Clause 45 of the Wollondilly LEP 1991 provides that “Council must not consent to the carrying out of development on unsewered land “unless the land can be demonstrated it has the capacity to accommodate an effluent disposal system on site. Also “Council does not accept onsite sewage management systems to straddle boundaries and/or operate on lots where they do not relate.” There was no wastewater report accompanied the development application to demonstrate the site can accommodate an effluent disposal system or connect to reticulated system. Thus a condition requiring a pump out system or relocation of the amenity block/construction of a new toilet must be included in any approval to satisfy Clause 45.

The existing building on site can be used for various purposes without Council approval as provided under the State Environmental Planning Policy (Infrastructure) 2007. The amenity blocks that service the building will be located outside Lot 102 following subdivision, thus rendering the building not capable to be used without a new pump out system or amenity facilities.

It is also noted that the recommended condition states that “the person(s) having the benefit of this consent shall undertake the works”. It is envisaged that the costs of relocation of the facilities should be the subject of negotiation between council and the applicant.

Given the need to construct the access road and the pump out system/relocation of amenity block/construction of a new toilet, the associated engineering, erosion control, inspection, heritage and advisory conditions are reasonable and appropriate.

The Panel Secretariat recommends that the Panel adopts the conditions and seeks the applicant’s agreement on the conditions.

Options available to the Panel

The options available to the Panel in considering this application are:

1. Accept Council’s recommended Conditions as reasonable and determine to approve the application with conditions. If the applicant maintains its objection, the Panel should refer the application to the Minister for approval to impose the conditions as under Section 89(1)(b), the consent authority must not impose a condition on its consent to a Crown development application, except with the approval of the applicant or the Minister.

2. Accept the applicant's objection to the conditions and approve the subdivision with conditions in Schedule 1 modified accordingly.

11. RECOMMENDATION

It is recommended that the JRPP:

- (A) **consider** all relevant matters prescribed under the *Environmental Planning and Assessment Act 1979*, as contained in the findings and recommendations of this report.
- (B) **approve** the development application, subject to conditions set out in Schedule 1, pursuant to section 80(1)(a) and section 89 of the *Environmental Planning and Assessment Act 1979*, having considered all relevant matters in accordance with (A) above. If the applicant maintains its objection to the conditions, **refer** the development application to the Minister for approval to impose the conditions.

Prepared by:

Paula Poon
Panel Secretariat

12. ATTACHMENTS

- i) Schedule 1
- ii) Letter from Wollondilly Shire Council referring DA 010.2010.0000479.001 to the JRPP, dated 17 February 2011;
- iii) Wollondilly Council letter to DET dated 23 September 2010 re draft recommended conditions
- iv) Lean & Hayward Pty Ltd (on behalf of the NSW Department of Education and Training) response on the draft conditions dated 25 November 2010;
- v) Revised Assessment Report received on 23 February
- vi) Wollondilly Council File notes dated 23 February 2010 comments on applicant's contention on the draft conditions

SCHEDULE 1

1. COMPLIANCE

These conditions are imposed to ensure that the development is carried out in accordance with the conditions of consent and the approved plans to Council's satisfaction.

- (1) Development Consent is granted for a boundary adjustment between Lot 1 DP420139 and Lot 1 DP 795181, 26 and 28 Station Street, Menangle.
- (2) Development shall take place in accordance with the following plans

Plan	Drawing No.	Date	Author
Proposed Boundary Adjustment	Surveyor's Ref: 77339.01.L01A	21/12/2009	Unknown

and the supporting Statement of Environmental Effects prepared by Lean & Hayward Pty Ltd dated June 2010 submitted in respect of Development Application No. 010.2010.00000479.001, except where varied by the following conditions:

- (3) Prior to the release of any subdivision certificate, the person(s) having the benefit of this consent shall undertake the following works:
 - a) a new pump out system be constructed and located within the property boundaries of proposed Lot 102, and
 - b) that the connection point for the septic system/pump out well(s) be located on the front property boundary of Lot 102 (within the proposed right of carriageway area) and that an easement for services be created for the septic system infrastructure within the right of carriageway

(Reason: so that the waste collection service vehicle can effectively and efficiently service the effluent disposal system)

and
 - c) that either the existing amenity facilities be relocated from proposed Lot 101 to Lot 102 **or** new toilet facilities be constructed so there is surety to Council that the existing building has appropriate amenities for the future use of the land.

Prior to the release of any Construction Certificate, details shall be forwarded to the Principal Certifying Authority detailing the design of the amenity facilities should a new building be required and/or the capacity of the pump out wells and the like.

- (4) Prior to the release of any subdivision certificate, the person(s) having the benefit of the consent shall apply for an Occupation Certificate for the toilet facilities to be provided on proposed Lot 102 as required by Condition 1(3) of this development consent.
- (5) Unless permitted by another condition of this consent, there shall be no tree clearing unless the vegetation is:

- (a) Within the footprint of an approved building, access driveway or other structure; or
- (b) Within three (3) metres of the footprint of an approved building; or
- (c) preventing the achievement of the minimum asset protection zone requirements under the relevant planning for bushfire protection guidelines.

In this condition **Tree Clearing** has meaning as defined in Wollondilly Tree Preservation Order, 2008.

2. ENGINEERING & CONSTRUCTION SPECIFICATIONS

These conditions have been imposed to ensure that developments within the Shire are of a standard which is both safe and acceptable to Council and members of the public:-

- (1) All works are to be designed and carried out in accordance with Wollondilly Shire Council's adopted Design and Construction Specification.
- (2) Engineering design plans for access, shall be submitted to the nominated Principal Certifying Authority. The plans must be approved prior to the issue of a Construction Certificate for any works associated with this development. All levels are to be reduced to Australian Height Datum. Road design parameters shall comply with the requirements of Council's Design Specifications.

3. LOADING/ACCESS

These conditions have been imposed to:

- (a) **Ensure that adequate provision is made for off street parking, appropriate to the volume and turnover of traffic generated by the development.**
- (1) A bitumen sealed driveway shall be provided within the proposed right-of-carriageway from Station Street to lot 102.

The carriageway shall have a minimum 4.0 metres formation and 3.0 metres seal. A detailed design of the driveway including associated stormwater drainage shall be shown on the engineering plans.

(Reason: to ensure that all vehicles have suitable, practical and all weather access from Station Street to proposed Lot 102).

4. EROSION AND SEDIMENT CONTROL

These conditions have been imposed to minimise the impact of the Development on the environment and on adjoining properties.

- (1) All disturbed areas are to be stabilised by turfing, mulching, paving or otherwise suitably stabilised within 30 days of completion.
- (2) Vehicle access is to be controlled so as to prevent tracking of sediment onto adjoining roadways, particularly during wet weather or when the site has been affected by wet weather.
- (3) Erosion and sediment control devices are to be installed prior to any construction activity on the site. These devices are to be maintained for the full period of construction and beyond this period where necessary.

- (4) Topsoil stripped from the construction site is to be stockpiled and protected from erosion until re-used during landscaping.

5. INSPECTIONS

These conditions have been imposed to ensure that construction works are undertaken to an approved standard.

- (1) Building works shall be inspected by the Principal Certifying Authority at critical stages of construction to ensure they comply with the Building Code of Australia and associated approvals. Where Wollondilly Shire Council is nominated as the Principal Certifying Authority these inspections shall include:
- Septic tank and/or holding well before backfilling and when joints are sealed.
 - Septic system disposal area before backfilling trenches.
 - Septic system disposal area after turfing.
 - Completion of the building work before occupation or use.
- (2) The engineering works shall be inspected by the Principal Certifying Authority at the following stages of construction to ensure they comply with Council's Construction Specification and associated approvals:
- Prior to commencement of any construction work on the site, after erosion and sediment control and traffic control measures are implemented.
 - At completion of preparation of pavement.
 - At sealing
 - At practical completion of works.

Note: It is the responsibility of the applicant or contractor to notify the Principal Certifying Authority when inspections are required. Failure to notify may lead to additional work being required prior to issue of inspection certificates. A minimum of 24 hours notice is required for inspections where Council is the Principal Certifying Authority.

6. DRAINAGE/STORMWATER

These conditions have been imposed to ensure drainage/stormwater is appropriately managed.

- (1) Stormwater runoff from and through the property is to be appropriately managed so as to control nuisance, damage and hazard during storm events.

7. FENCING

These conditions are imposed to ensure that any fencing has a minimal effect on the landscape/streetscape/environment of the locality:

- (1) All fencing is to be installed in accordance with the provisions of Council's Fencing Policy.
- (2) No fencing may be constructed on the subject land nor along its property boundaries unless such fencing is visually open rural fencing with a height no greater than 1.2 metres.

8. SERVICES

These conditions have been imposed to ensure that an adequate level of services are provided for the development:

- (1) Electricity supply is to be made available to all proposed lots in accordance with the requirements of Integral Energy.

In this regard, written confirmation from Integral Energy that suitable arrangements have been made shall be submitted to the Principal Certifying Authority prior to the release of the Subdivision Certificate.

- (2) Provision is to be made for the supply of telephone services to all proposed lots in accordance with the requirements of Telstra.

In this regard, written confirmation from Telstra Australia that arrangements have been made shall be submitted to the Principal Certifying Authority prior to the release of the Subdivision Certificate.

- (3) A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained.

Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au then refer to "Water Servicing Co-ordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

A copy of Sydney Water's Notice of Requirements must be submitted to the Principal Certifying Authority prior to the Construction Certificate being issued.

The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to the issue of any Subdivision Certificate for the development.

- (4) Wastewater generated by the development shall be disposed of via an onsite sewage management system. This system will be subject to an Approval to Install and an Approval to Operate under Section 68 of the Local Government Act, 1993.

The system shall be designed, installed and operated in accordance with the endorsed wastewater management plan submitted in respect of this development application. No Occupation Certificate shall be issued in respect of this development prior to the Principal Certifying Authority being satisfied that this system has been installed.

9. HERITAGE

These conditions have been imposed to ensure that development is carried out in a manner sensitive to the heritage values in the locality.

- (1) Should any historical relics be unexpectedly discovered in any areas of the site not subject to an excavation permit, then all excavation or disturbance to the area is to stop

immediately and the Heritage Council of NSW should be informed in accordance with Section 146 of the Heritage Act 1977.

- (2) Should any Aboriginal relics be unexpectedly discovered in any areas of the site not subject to an excavation permit, then all excavation or disturbance to the area is to stop immediately and the National Parks and Wildlife Service (NPWS) should be informed in accordance with Section 91 of the National Parks and Wildlife Act, 1974.

10. SUBDIVISION PLANS

These conditions have been imposed to ensure development is undertaken in the appropriate manner.

- (a) To outline the minimum development standards and provide design guidelines for the subdivision of land in the Shire.**
- (b) To outline Council's requirements on work standards for the construction of land subdivision:**
 - (1) A letter from a Registered Surveyor shall be submitted to Council certifying that no services of Public Utility or waste water disposal presently connected to existing buildings straddle proposed boundaries after subdivision.
 - (2) Submission to Council of the Linen Plan of Subdivision together with nine (9) copies suitable for certification by the General Manager and lodgement at the Lands Titles Office. A fee for the release of the Subdivision Certificate applies.
 - (3) The development shall be completed in accordance with the relevant plans and conditions of consent prior to the release of the Subdivision Certificate.
 - (4) Existing easements, natural watercourses and dams are to be marked on the Linen Plan of Subdivision.
 - (5) Submission of a Section 88B Instrument creating the relevant Right-Of-Way and easement for services over Lot 101 in favour of Lot 102 and a Restriction As To User preventing any present or subsequent proprietor of Lot 102 from seeking to extinguish, remove, modify or restrict the enjoyment of the Right-Of-Way and easement for services without the prior written consent of Council being obtained.

11. PRESCRIBED CONDITIONS UNDER THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (AS AMENDED)

These conditions are imposed as they are mandatory under the Act.

- (1) **SIGNS TO BE ERECTED ON BUILDING, SUBDIVISION AND DEMOLITION SITES**
 - (1) In accordance with Section 80A (11) of the Environmental Planning and Assessment Act, 1979 a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (a) Showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (b) Showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and

- (c) Stating that unauthorized entry to the work site is prohibited.
- (2) Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (3) This clause does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.

ADVICE

- a) At all times work is being undertaken with the public road, adequate precautions shall be taken to warn, instruct and guide road users safely around the work site with a minimum of disruption.
- b) During the course of construction, care must be taken to prevent damage to any public utility or other service and the applicant will be held responsible for any damage caused by him or his agents, either directly or indirectly. Any mains, services, poles, surface fittings etc., that require alteration shall be altered at the applicant's expense and to the satisfaction of Council and the authority concerned.
- c) A defects liability period of twelve (12) months will apply from the date of issue of the Certificate of Practical Completion by Council. A 10% maintenance bond, or a minimum of \$1,000, whichever is greater, is to be lodged in accordance with Council's Construction Specification for all work that is to become the property of Council.
- d) The developer and any contractor or sub-contractor used to carry out any work authorised by or out of this approval on Council owned or controlled land, is to carry the following insurance, copies of which are to be produced to Council upon request:
 - Motor vehicle insurance (comprehensive or property damage) for all self propelled plant, as well as valid registration or RTA permit (Including CTP insurance). Primary producer's registration is not valid registration for use on Public Road construction work.
 - Workers Compensation Insurance.
 - Ten Million Dollar Public Liability Insurance.
- e) The following service providers should be contacted before commencement of construction to establish their requirements:
 - Telstra (telephone)
 - Integral Energy (electricity)
 - AGL (gas)
 - Sydney Water (water & sewer)

NOTE: This consent does not permit the commencement of construction unless a Construction Certificate has been issued. For details about obtaining a Construction Certificate contact Council's Development Services Section.