

FILE NOTES



To:	Joint Regional Planning Panel	From:	Daniel Lukic Senior Development Assessment Officer
File:	010.2010.00000479.001	Date:	23 February 2011
Subject:	RESPONSE TO CONDITIONS OF CONSENT THAT HAVE NOT BEEN AGREED TO BY THE NSW DEPARTMENT OF EDUCATION AND TRAINING REGARDING DEVELOPMENT APPLICATION 010.2010.00000479.001		

Under the provisions of the Environmental Planning and Assessment Act 1979 (as amended), draft conditions of consent were referred to the applicant, Lean and Hayward Pty Ltd who act on behalf of the Department of Education and Training (DET), for comment in relation Development Application 010.2010.00000479.001 a boundary adjustment between Lot 1 DP420139 and Lot 1 DP 795181, 26 and 28 Station Street, Menangle.

Below are the conditions of consent that are in contention and the applicant's and Council's comments are attached for your information.

a) Contention 1:

5. 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:***

5.3 *A Section 88B Instrument shall be prepared which provides for the following Restrictions on the subject land:*

- *Due to the close proximity of the Southern Railway to the proposed development, future development/dwellings on the proposed Lots are to be designed in accordance with "Development near Rail Corridors and Busy Roads – Interim Guideline" or any subsequent replacement guideline as published by the NSW Department of Planning. The dwellings must demonstrate that appropriate measures will be taken to ensure that the following LA_{eq} levels are not exceeded:*
 1. *In any bedroom in the building: 35dB(A) at any time 10pm-7am*
 2. *Anywhere else in the building (other than a garage, kitchen, bathroom or hallway): 40dB(A) at anytime.*

An 88B Instrument shall contain an appropriate Restriction as to User in this regard and shall contain a provision that it may not be extinguished or altered except with the consent of Wollondilly Shire Council. Details of the Restriction as to User shall be indicated on the Subdivision Certificate.

Applicant's Response:

"The proposed condition is objected to as this Development Application is purely for the subdivision of land to facilitate the land swap between Council and the DET. This condition would be required subject to future Development Applications being made to Council for the further subdivision Lot 102 for residential purposes. It is not practicable at this time."

Council's Comments:

Future applications to Council for the development of both allotments would be required to address the relevant provisions of the State Environmental Planning Policy (Infrastructure) 2007 and the "Development near Rail Corridors and Busy Roads – Interim Guidelines".

Council agrees that this condition can be deleted from the draft consent.

b) Contention 2:

6. 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:-

- 6.1 *All works are to be designed and carried out in accordance with Wollondilly Shire Council's adopted Design and Construction Specification.*
- 6.2 *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.*

Applicant's Response:

"This proposed condition is objected to as the proposed development does not involve any engineering works. See comments below in relation to Condition 7."

Council's Comments:

Council disagrees that this condition be deleted from the consent. Conditions of consent would require the formal construction of the access driveway from Station Street to proposed Lot 102.

As such, it is recommended that the conditions remain.

c) Contention 3:

7. CARPARKING/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.***

- 7.1 *A bitumen sealed driveway shall be provided within the proposed right-of-carriageway from Station St 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.*

Applicant's Response:

"The condition is objected to as, at this time, a bitumen sealed driveway is not required for the right of carriageway from Station Street to Lot 102. The proposal is purely for the paper subdivision of the land. 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)."

Council's Comments:

Council disagrees that the condition be deleted from the consent. Access to proposed Lot 102 from Station Street should be formally constructed in accordance with Council's Construction Specifications. Not only is this a standard practice (the condition is not only because Council may benefit as a result of the approval of the application), but under the provisions of the State Environmental Planning Policy (Infrastructure) 2007, there are a number of uses that could be undertaken without any approval from Council. (Please refer to Council's assessment report for more information)

Therefore, the imposition of the conditions is justified and should remain in place.

It must be drawn to your attention that the conditions of consent does not solely burden DET for undertaking the works that are required as per the conditions throughout the consent, rather it would be the responsibility of those having the benefit of the consent. Thus, the costs can be proportioned between all vested parties.

d) Contention 4:

8. EROSION AND SEDIMENT CONTROL

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

- 8.1 *All disturbed areas are to be stabilised by turfing, mulching, paving or otherwise suitably stabilised within 30 days of completion.*
- 8.2 *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.*
- 8.3 *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.*
- 8.4 *Topsoil stripped from the construction site is to be stockpiled and protected from erosion until re-used during landscaping.*

Applicant's Response:

"The abovementioned condition is objected to as the proposal is purely for a paper subdivision and no construction works are proposed."

Council's Comments:

Council disagrees that these conditions be deleted. The conditions of consent would require the persons having the benefit of the consent to undertake works prior to the release of any subdivision certificate.

Therefore, the above conditions are required to be addressed prior to any site works commencing onsite.

e) Contention 5:

9. INSPECTIONS

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

9.1 *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.*

Applicant's Response:

"As has previously been mentioned, the proposed subdivision does not involve and construction works. As such, this condition is not required."

Council's Comments:

As mentioned above, site works are required and as such, the Principal Certifying Authority will need to inspect and certify the construction works prior to the release of any subdivision certificate.

f) Contention 6:

11. ADVICE

11.1 *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.*

11.2 *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.*

11.3 *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.*

11.4 *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.*

11.5 *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)*

Applicant's Response:

"Again, the proposed subdivision does not involve any construction works. Any future construction activities will be the subject of separate Development Applications. Therefore, this condition is not required as part of this consent."

Council's Comments:

Again, the conditions of consent would require that works be undertaken onsite and as such, the conditions must remain.

General

As the application is being presented before the Joint Regional Planning Panel for determination, Council has sought to review the conditions of consent. The amended conditions are included in Council's assessment report of the subject application.

If you have any further questions with regard to this matter, feel free to contact me.

Regards,

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