

Report on draft conditions of consent - 2017SSW042 - Campbelltown - 389/2017/DA-RA – Raith 22 September 2021

Discussion of Deferred commencement conditions

The Panel has asked Council and the applicant to consider whether the draft deferred commencement conditions would be more appropriately imposed as operational conditions.

By way of background, each of the draft deferred commencement conditions reflect matters that remained unresolved at the time that the application was reported to the Panel for determination. The Panel understandably required that the application be reported expediently for determination due to the significant amount of time that has lapsed since the lodgement of the DA, however as a result, several matters remain unresolved at this point and therefore must be resolved by way of conditions, should the Panel resolve to approve the application.

Council staff and the applicant are of the view that with the exception of draft deferred commencement condition 19, all of the draft deferred commencement conditions can be imposed as operational conditions to be satisfied prior to the issue of a construction certificate, and that there is no underlying need for a deferred commencement consent to be granted, should the Panel resolve to approve the application. Concurrent with the placement of this grouping of conditions in the “Prior to the issue of a construction certificate” section of the draft condition set, each condition would be required to be worded so that the endorsement of a particular Council officer is required, to prevent a certifier from deciding upon matters that are of core importance to the development as opposed to merely detail.

With regard to draft deferred commencement condition 19, the Panel’s concern with this draft condition is noted, given that it could imply that a decision as to whether or not to grant consent to the application is required to be made following the determination of the application already having been made. In this regard, Council staff requested that the applicant have their traffic consultant respond to the draft condition, having regard to the fact that Council’s traffic engineers requested the changes to the traffic report that the draft condition requires. The response from the applicant’s traffic engineer is contained within the attached response from the applicant, and in the opinion of Council, satisfies the intent of the draft condition such that its deletion would be appropriate.

The changes to the draft conditions referred to above are reflected in the amended draft conditions of consent.

Discussion of staging/sequencing of the proposed development

The Panel has asked Council and the applicant to clarify the proposed staging and sequencing arrangements in relation to the proposed development, noting that a staging plan alone merely identifies and names the various stages of the development and does not commit a developer to carry out the development in any particular sequence. In this regard, the applicant has confirmed that the staging plan submitted with the application is also an indication of their intended sequencing of the proposed development, and would have no objection to the imposition of a condition that has the effect of requiring the development to be undertaken in the sequence implied by the numerical order of the stages indicated on the staging plan. A condition to this effect has been included in the amended draft conditions of consent.

Discussion of applicant's requested modifications to operational conditions

Condition proposed to be changed	Applicant's requested condition change	Council staff comment on requested change
4. Timing of Conservation Works	Change required commencement of conservation works from within 3 months of DA determination to within 3 months of the issue of a Construction Certificate.	This change is considered reasonable and has been updated in the amended draft conditions of consent.
30. Dilapidation Report	Change the wording of the condition from obtaining a dilapidation report for "all assets and buildings on lands that adjoin the subject works" To "all Council assets adjoining the subject works and buildings at 17 Poplar Crescent, Bradbury that directly adjoin the subject works"	The applicant's particular wording is not supported as it would exclude numerous properties that should be the subject of a dilapidation report. However, the applicant does make the point that the condition could be interpreted to refer to properties across roads from the subject site. The condition has been updated in the amended draft conditions to refer to "all assets and buildings located on properties that share a property boundary with the development site".
31. Security Bond for Conservation Work	Deletion of the condition on the basis that draft condition 66 requires all conservation works to be	This change is considered reasonable and has been updated in the amended draft conditions of consent.

	completed prior to the issue of any occupation certificate or subdivision certificate.	
40. Remediation of Land	Removal of the requirement for a site auditor to be appointed, on the basis that a RAP has already been prepared, which requires a Site Validation Report to be prepared	<p>It is Council's standard practice to require site auditing for remediation of the kind required for this site.</p> <p>Clause 7(1) of SEPP 55 requires a consent authority (including a planning panel) to satisfy the following as a precondition of the grant of development consent:</p> <p><i>(a) it has considered whether the land is contaminated, and</i></p> <p><i>(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and</i></p> <p><i>(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.</i></p> <p>The third point (c) is the relevant consideration in assessing the applicant's request to amend the condition in question. The question is whether or not the review of remediation by a certifier as part of a CC/OC would be adequate to satisfy the obligation of the consent authority to be <i>satisfied that the land will be remediated</i>. In Council's opinion, it would not. A site auditor is required so that the remediation works are appropriately overseen and certified by an expert that is independent of the consultant who will be directly supervising the work. A certifier is not able to fill this role as certifiers are not required to have expertise in this field.</p>
67. Security Bond for Perpetual	Deletion of the condition on the basis that draft condition 68 requires a	Council does not agree to the applicant's proposed deletion of this condition. The condition seeks to ensure that clause

Maintenance of Heritage Item	<p>restriction to be registered on the title requiring perpetual maintenance of Raith House, so this would result in a doubling of costs.</p>	<p>5.10(10) of the Campbelltown LEP 2015 is upheld (protection of the heritage item in perpetuity).</p> <p>Firstly, the security bond would not double costs, because the owner's corporation would be funding maintenance of the site over the long term, not the developer. Secondly, the security bond would be fully refunded as annual maintenance is undertaken, so the bond should not be considered as a "cost".</p> <p>Whilst draft condition 68 does require a restriction to be registered on the site's title, requiring perpetual maintenance of Raith House, the security bond condition seeks to account for the following potential scenarios:</p> <ol style="list-style-type: none"> 1. Removal of the restriction on the title without Council's approval (either intentionally or via an administrative error). 2. Failure or inability of the developer/community title scheme to carry out the annual maintenance (or fund their proportional contribution towards maintenance), because of bankruptcy, disappearance, or dispute over proportional funding of maintenance. 3. Potential inability of Council to expediently take compliance action in the event of wilful refusal by the developer or community title scheme to carry out the required maintenance.
-------------------------------------	---	--

Discussion of references on DA plans to "preliminary not for construction"

The Panel has raised a concern with regard to the notation on the plans that indicate that the plans are "preliminary not for construction", on the basis that this notation creates uncertainty as to the set of plans that consent is being sought in respect of. The notation may imply that there is a future set of plans that will be different from the set of plans submitted with the application, that would be used during construction, and that these

plans would not be approved under any consent issued by the Panel. Accordingly, a condition has been included within the draft conditions of consent requiring the removal of these notations from the plans.

Luke Joseph
Campbelltown City Council