

Memo -

Date created:	22 February 2021
Application Number:	DA-611/2018 (Your reference PPS-2018SSW027)
Author:	Boris Santana
To:	Planning Panel Secretariat

Comments:	<p>Council received a submission from the applicant on 19 February 2021 responding to the recommended conditions of consent. The applicant's submission suggested the amendment and deletion of certain recommended conditions. Refer to table overleaf for overview of subject conditions, applicant's suggestion, Council's response and details of any proposed changes.</p> <p>Please note that Attachment 1 – <i>Recommended Conditions of Consent</i> includes the changes detailed in the table overleaf, where accepted by Council.</p>
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Subject Condition		Applicant's response	Council response	Proposed condition
Deferred Commencement				
1	Amendments to the Voluntary Planning Agreement applicable to this site executed by Tanlane Pty Ltd and Liverpool City Council (dated 11 June 2008) shall be completed prior to the issue of any operative consent. The amendment shall ensure that Item 1e on annexure 1 of the existing Agreement is removed and replaced with the granting of an easement in perpetuity for public access to the open space or as alternatively agreed by Council. The amendment shall also ensure deletion of easement for bridge over entrance to the Marina.	<p>Amended Condition Requested.</p> <p>Given the lengthy process required to complete the execution of a VPA, it is requested that this condition is amended to require that the VPA is executed as described in the condition, but prior to the issuing of the construction certificate (ie, that it is not a deferred commencement condition but within the body of the consent).</p>	<p>The Remediation Action Plan prepared by the applicant specifies a cap and contain strategy for affected areas of the site. This remediation strategy would require the preparation of a Long-Term Environmental Management Plan for the site.</p> <p>Item 1e of the VPA identifies river foreshore land to dedicated to Council for recreation purposes. The applicant was advised that Council would not accept the transfer of this land if it had been remediated using a cap and contain strategy and that the land to be dedicated would need to be remediated through the removal and appropriate disposal of these soils.</p> <p>As the applicant insists on the cap and contain strategy, they have opted to amend the VPA. In particular, Item 1e will be amended so that rather than transferring land to Council, the applicant has to grant an easement in perpetuity for public access to the open space. This would ensure that the land is privately owned but open to the public as per its intended purpose.</p> <p>It was considered that such an amendment to the VPA would resolve Councils concern regarding the transfer of land remediated via a cap and containment strategy. As mentioned throughout the report, an amendment to the VPA has been made, the changes of which have been generally agreed to by Council officer. However, there is no guarantee for these changes as the VPA amendment is yet to be formally adopted.</p>	N/A – no change proposed to subject condition.

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			<p>Given the above, it is considered necessary for the deferred commencement condition to remain as this would ensure that an operative consent is only issued when the required changes to the VPA have been formally adopted.</p>	
2	<p>The applicant is to obtain in-principle approval for the installation of traffic control signals at the intersection of Brickmakers Drive and new Link Road from TfNSW. In order to obtain in principle approval, the applicant is required to submit the design of the proposed traffic control signals at the intersection of Brickmakers Drive and the new Link Road in accordance with the TfNSW and Council requirements. The Traffic Control Signal (TCS) plans shall be drawn by a suitably qualified person and endorsed by a suitably qualified practitioner.</p> <p>The road layout for the TCS and a revised SIDRA model is to be submitted to Council's Traffic and Transport Section for endorsement prior to detailed design. The road layout is to be made up of the following:</p> <ul style="list-style-type: none"> Two southbound lanes from Newbridge Road to the intersection with the new Link Road. The northbound to accommodate the right turn bay for the 95-percentile queue and two northbound lanes. The eastern approach is to accommodate a right-turn bay for the 95-percentile queue and a left-turn lane. <p>The submitted design shall be in accordance with Austroads Guide to Road Design in association with relevant TfNSW supplements (available on www.rms.nsw.gov.au). The certified copies of the signal design and civil design plans shall be</p>	<p>Amended Condition Requested.</p> <p>TfNSW has argued that signalisation is not required based on the current traffic volumes. The applicant has argued for the ability to install traffic signals to 'future-proof' the project. In the last few months TfNSW has provided in-principle support for signalisation on this basis. The exact timing of the need for traffic signals (ie when the traffic signal warrant will be met) is dependent on the progress of the development of other projects using the link road. If all five assessed developments (Moorebank Cove Residential, Moorebank Recycling Facility, Georges Cove Marina Commercial, Georges Cove Marina Residential and Benedict B6 Corridor Mixed-use Development) are developed, the signal warrant will be met in 2026 based on the total AM peak traffic movements (a total of 733 movements using the Link Road) - see letter 25 May 2020. Until this time, it is unlikely TfNSW would endorse the immediate installation of the traffic signals.</p> <p>It is requested that this condition is amended to reflect the outcomes of this process by requiring that the applicant to gain in-principal support in time for signalisation prior to 733 movements peak hour movements being reached on the link road.</p>	<p>The application was referred to Transport for NSW (TfNSW) for comments pursuant to Clause 104 of SEPP Infrastructure.</p> <p>TfNSW considers that by the time the development is constructed and operational, the growth of the background traffic will likely meet the signal warrant for the Brickmakers Drive and Link Road intersection. The deferred commencement condition was imposed by TfNSW on this basis.</p> <p>Council notes that the applicant has assessed the cumulative traffic impacts of all five developments (Moorebank Cove Residential, Moorebank Recycling Facility, Georges Cove Marina Commercial, Georges Cove Marina Residential and Benedict B6 Corridor Mixed-use Development) to Newbridge Road/Governor Macquarie Drive/Brickmakers Road Intersection.</p> <p>However, the assessment of traffic impacts of all five developments appears to be unrelated to the assessment of the requirements for a signalised intersection at the Brickmakers Drive/Link Road Intersection. At this stage, Council does not accept the changes to this condition.</p>	<p>N/A – no change proposed to subject condition.</p>

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<p>submitted to TfNSW and Council's Manager of Development Assessment for review and approval. Documents should be submitted to Development.Sydney@rms.gov.au.</p>	<p>Further, roadworks are regularly completed that do not fully comply with the Ausroads Guidelines for a range of reasons including physical constraints such as embankments. Rather than specifying that these guidelines are met, it is requested that the condition only states that the design meets all TfNSW requirements providing the applicant, TfNSW and the Council an opportunity to agree to an intersection that best meets the specific needs of the site.</p> <p>It is therefore requested that the condition is not a deferred commencement condition but within the body of the consent (potentially under the 'Access, Car Parking and Manoeuvring – General' heading) and that it is amended to read:</p> <p>2. The applicant is to obtain in-principle approval for the installation of traffic control signals at the intersection of Brickmakers Drive and new Link Road <u>prior to 733 peak hour movements occurring on the new Link Road</u>. In order to obtain in principle approval, the applicant is required to submit the design of the proposed traffic control signals at the intersection of Brickmakers Drive and the new Link Road in accordance with the TfNSW requirements. The Traffic Control Signal (TCS) plans shall be drawn by a suitably qualified person and endorsed by a suitably qualified practitioner.</p> <p>The submitted design shall be in accordance with Austroads Guide to Road Design in association with</p>		

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		relevant TfNSW supplements (available on www.rms.nsw.gov.au). The certified copies of the signal design and civil design plans shall be submitted to TfNSW for review and approval. Documents should be submitted to Development.Sydney@rms.gov.au .		
General Conditions				
17.	Site development work in the form of excavation, underpinning or shoring works must not take place, until such time as a CC has been issued.	<p>Amended Condition Request</p> <p>It is agreed that a Detailed Site Investigation (DSI) will be prepared. However, earthworks are required to conduct the DSI. It is requested that Condition 17 be amended to allow the DSI to occur and for a CC to be issued:</p> <p>17. <u>With the exception of the earthworks required to enable a detailed site investigation to be prepared</u> (refer to <u>Condition XX</u>), site development work in the form of <u>other</u> excavation, underpinning or shoring works must not take place, until such time as a CC has been issued.</p>	Council does not accept the suggested wording by the applicant.	N/A – no change proposed to subject condition.
29.	<p>All retaining walls shall be of masonry construction and must be wholly within the property boundary, including footings and agricultural drainage lines. Construction of retaining walls or associated drainage works along common boundaries shall not compromise the structural integrity of any existing structures.</p> <p>Where a retaining wall exceeds 600mm in height, the wall shall be designed by a practicing structural engineer and a construction certificate</p>	<p>Amended Condition Request</p> <p>Boulders will be used in retaining walls as indicated in the application. It is therefore requested that Condition 29 be amended as follows:</p> <p>29. All retaining walls shall be of masonry <u>or large sandstone boulder</u> construction and must be wholly within the property boundary, including footings and agricultural</p>	Council does not object to the requested changes.	The condition has been modified as per the applicant's request.

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	must be obtained prior to commencement of works on the retaining wall.	<p>drainage lines. Construction of retaining walls or associated drainage works along common boundaries shall not compromise the structural integrity of any existing structures.</p> <p>Where a retaining wall exceeds 600mm in height, the wall shall be designed by a practicing structural engineer and a construction certificate must be obtained prior to commencement of works on the retaining wall.</p>		
38 & 39.	<p>38. The eastern and western sides of the Maritime building shall be maintained open between 4.6m and 7.3m Australian Height Datum to allow free and unobstructed flow of floodwater at all times.</p> <p>39. The eastern and western sides of the Marina Club building shall be maintained open between 4.6m and 6.1m Australian Height Datum to allow free and unobstructed flow of floodwater at all times.</p>	<p>Amended Condition Request</p> <p>Flooding</p> <p>The wording in Condition 38 does not match the information provided in the Cardno flood modelling which allowed for vertical facia with friction allowances up to RL 5.6m AHD. With the proposed floor levels in the Maritime Building at RL 4.6 and RL 7.3, you cannot have an opening up to the proposed floor level at RL 7.3. Similarly, with the Marina Club, you cannot have an opening up to the proposed floor level at RL 6.1. There should be no required openings, just a limit to the façade to accord with Cardno modelling up to RL 5.6 which is the 100 yr ARI flood level.</p> <p>It is requested that '7.3 m' be replaced by '5.6 m' in Condition 38 and ' 6.1 m' be replaced by '5.6 m' in Condition 39 as follows:</p> <p>38. The eastern and western sides of the Maritime building shall be maintained open between 4.6m and <u>5.6m</u> Australian Height Datum</p>	Council raises no objection to the proposed development.	The condition has been modified as per the applicant's request.

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		<p>to allow free and unobstructed flow of floodwater at all times.</p> <p>39. The eastern and western sides of the Marina Club building shall be maintained open between 4.6m and <u>5.6m</u> Australian Height Datum to allow free and unobstructed flow of floodwater at all times.</p>		
E. Prior to issue of Occupation Certificate				
139.	The traffic control signals at Brickmakers Drive and the New Link Road shall be operational for the development.	<p>Deleted Condition Request</p> <p>For the reasons discussed above it is requested that Condition 139 is deleted.</p>	For the reasons discussed above it is considered that the condition remains.	N/A – no change proposed to subject condition.
F. General Conditions				
200.	<p>Noise associated with the use of the Private Marina Clubhouse, restaurant/function centre, including mechanical plant and equipment, shall not give rise to any one or more of the following:</p> <p>(a) The use of the premises including the cumulative operation of any mechanical plant, equipment, public address system or other amplified sound equipment shall not give rise to the emission of 'offensive noise' as defined by the Protection of the Environment Operations Act 1997.</p> <p>(b) The operation of any mechanical plant, equipment, public address system or other amplified sound equipment installed on the premises shall not cause:</p> <p>i. The emission of noise as measured over a 15 minute period (LA_{eq} (15 minute)) that exceeds the LA₉₀ (15 minute) background noise level by more than 5 dB(A) when measured at the most affected residential boundary. Modifying factor corrections must be applied for</p>	<p>Amended Condition Request</p> <p>Condition 200 does not recognise the outcomes between Council, EPA, Mirvac and EMM regarding noise levels at the future residences that will overlook the marina as documented in the attached letter. It is requested that the words "with the exception of the residences in the Moorebank East Residential Development that share a boundary with the marina" are added to Condition 200(b)i.</p> <p>200. Noise associated with the use of the Private Marina Clubhouse, restaurant/function centre, including mechanical plant and equipment, shall not give rise to any one or more of the following:</p> <p>(a) ...</p> <p>(b) The operation of any mechanical plant, equipment, public address system or other amplified sound equipment installed</p>	<p>It is Council understanding that noise impacts associated with the marina building upon receivers at R10 would be mitigated by acoustic measures incorporated into the design and construction of the premises and management interventions.</p> <p>The noise impacts that cannot be mitigated are those emanating from boat movements directly south of the receivers at R10 and not the use of private marina clubhouse and restaurant/function centre.</p> <p>In the submitted acoustic report the applicant has indicated that noise from the clubhouse and restaurant/function centre can be mitigated/managed.</p>	N/A – no change proposed to subject condition.

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	<p>tonal, impulsive, low frequency or intermittent noise in accordance with the NSW Environment Protection Authority's 'Noise Policy for Industry' (2017);</p> <p>ii. An internal noise level in any adjoining occupancy that exceeds the recommended design sound levels specified in Australian/New Zealand Standard AS/NZS 2107:2016 Acoustics – Recommended design sound levels and reverberation times for building interiors;</p> <p>iii. 'offensive noise' as defined by the Protection of the Environment Operations Act 1997; and</p> <p>iv. Transmission of vibration to any place of different occupancy greater than specified in AS 2670.</p>	<p>on the premises shall not cause:</p> <p>i. The emission of noise as measured over a 15 minute period (LAeq (15 minute)) that exceeds the LA90 (15 minute) background noise level by more than 5 dB(A) when measured at the most affected residential boundary, <u>with the exception of the residences in the Moorebank East Residential Development that share a boundary with the marina.</u> Modifying factor corrections must be applied for tonal, impulsive, low frequency or intermittent noise in accordance with the NSW Environment Protection Authority's 'Noise Policy for Industry' (2017);</p> <p>ii. ...</p> <p>iii. ...</p>		
226.	<p>The LA10* noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz–8kHz inclusive) by more than 5 dB between 7:00am and 12:00 midnight at the boundary of any affected residence.</p>	<p>Amended Condition Request</p> <p>As for Condition 200, it is requested that the words "with the exception of the residences in the Moorebank East Residential Development that share a</p>	<p>In their GTAs, the EPA noted that "the proposed Marina Development includes two occupancies that could generate music and patron noise, namely the private marina club house and the restaurant / function centre. Music and</p>	<p>N/A – no change proposed to subject condition.</p>

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	<p>The LA10* noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz–8kHz inclusive) between 12:00 midnight and 7:00am at the boundary of any affected residence.</p> <p>Notwithstanding compliance with the above, the noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 12:00 midnight and 7:00am.</p> <p>* For the purpose of this condition, the LA10 can be taken as the average maximum deflection of the noise emission from the licensed premises.</p> <p>NOTE: Where this condition is inconsistent with the requirements imposed by Liquor & Gaming NSW, the more stringent condition shall prevail.</p>	<p>boundary with the marina" are added to Condition 226.</p> <p>226. The LA10* noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz–8kHz inclusive) by more than 5 dB between 7:00am and 12:00 midnight at the boundary of any affected residence, <u>with the exception of the residences in the Moorebank East Residential Development that share a boundary with the marina.</u></p> <p>....</p>	<p>patron noise should be regulated via the planning approval, and potentially conditions in liquor licenses issued by the NSW Liquor and Gaming under the Liquor Act. It is essential that these buildings be designed, constructed and operated in a manner that enables the specified noise limits to be fully achieved.</p> <p>In addition, it is recommended that the planning approval includes suitable hours of operation restrictions on both the private marina club house and the restaurant / function centre, and noise limits based on the criteria normally applied by NSW Liquor and Gaming in liquor licences."</p> <p>As such, Council does not accept the changes to these conditions as the licensed premises are expected to comply with the applicable noise criteria criteria.</p>	
230	<p>Within twelve (12) months of the commencement of operations, and every twelve (12) months thereafter unless Liverpool City Council directs otherwise, the operator shall at its own expense commission an independent Environmental Audit of the project. This audit must:</p> <ul style="list-style-type: none"> (a) Be carried out by a suitably qualified, experienced and independent audit team; (b) Be consistent with guidelines and standards relating to principles of environmental auditing including but not limited to ISO 19011:2018 – <i>Guidelines for Auditing Management Systems</i> / AS/NZS 	<p>Amended Condition Request</p> <p>Each environmental audit to address Condition 230 will require that the auditor is satisfied that all conditions of the lengthy consent, all management plans, the EPL and a wide range of other documents have been addressed. If conducted properly, each audit would cost in excess of \$30,000. It is reasonable that an initial audit is conducted with 12 months of the start of operations. However, ongoing annual audits are not warranted. It is requested that audits are required every 5 years as follows:</p>	<p>Council raises no objection to environmental auditing requirement being revised to 'within twelve (12) months of the commencement of operations, and every three (3) years thereafter'.</p>	<p>Condition amended by Council as per its suggested wording.</p>

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<p>ISO 19011:2019- <i>Guidelines for auditing management systems</i>;</p> <p>(c) Include consultation with Liverpool City Council and the Appropriate Regulatory Authority;</p> <p>(d) Assess whether the project is complying with the approved Environmental Management Plan, conditions of both this consent and any licence issued by any other Authority;</p> <p>(e) Assess whether the project is being carried out in accordance with industry best practice; and</p> <p>(f) Recommend measures or actions to improve the environmental performance of the project.</p> <p>Within three months of commissioning this audit, the proponent shall submit a copy of the audit to Liverpool City Council and relevant authorities, with a response to any recommendations contained within the audit report. The operator shall comply with any reasonable requests of Council in respect to the implementation of any measures arising from the audit, within such time as Council may agree.</p>	<p>4. Within twelve (12) months of the commencement of operations, and <u>every five (5) years</u> thereafter unless Liverpool City Council directs otherwise, the operator shall at its own expense commission an independent Environmental Audit of the project. This audit must:</p>		