



ATTACHMENT 1

No	Keywords	Response	DA Condition
1	Consent valid for less than FIVE years	Please amend to five years. The Land & Housing Corporation is not aware of any reason the consent should be valid for less than the five years permitted by S.95 of the Act. Given the uncertainty of the timing of funding, it is necessary to maintain this flexibility of commencement to help ensure the undertaking of this project.	5
2	Principal Certifying Authority (construction)	Not agreed. Pursuant to s6.28 (previous S.109R) of the Act, the Land & Housing Corporation, as a Crown authority, is authorised to certify its own building works as complying with the state's building laws (ie the Building Code of Australia) and is therefore not required to appoint a principal certifying authority.	7, 9, 16, 17, 24, 25, '30A', 32, 37, 39, 48, 49, 52, 53, 62, 71, 79, 80, 81 and '92' (the condition after condition 91, currently nominated as condition '46', but should be '92').
3	Principal Certifying Authority (demolition)	Not agreed. There are no provisions in the Act for the appointment of principal certifying authorities in respect of demolition.	As above
4	Construction Certificate (construction)	Not agreed. Pursuant to s6.28 (previous S.109R) of the Act, the Land & Housing Corporation, as a Crown authority, is authorised to certify its own building works as complying with the state's building laws (ie the Building Code of Australia) and is therefore exempt from the need to obtain a construction certificate or appoint a principal certifying authority. Note: This exemption does not apply to Crown subdivision works.	Notes: 1. Conditions 1, 7 and para. above 7, 15, 16, 17, 21, 24, 25, '30A', 31, 38, 39, 41, 75
5	Construction Certificate (demolition)	Not agreed. There are no provisions in the Act for the obtaining of construction certificates in respect of demolition because the Building Code of Australia does not regulate demolition.	As above
6	Occupation Certificate	Not agreed. Pursuant to s.6.9 (previous S.109M(2)(d)) of the Act, the Land & Housing Corporation, as a Crown authority, is not required to obtain occupation certificates. Deletion or amendment of this proposed condition is therefore requested.	69, 77, 78, 80, 81, 82, 83, 86, 87, 88, 89, and '93' (the 2 nd condition after condition 91, currently nominated as condition '47', but should be '93').
7	Inspections	Not agreed. Pursuant to s6.28 (previous S.109R) of the Act, the Land & Housing Corporation, as a Crown authority, can certify its own building works as complying with the state's building laws (ie the Building Code of Australia) and, therefore supervision and inspections carried out by Council or an Accredited Person are not required for Crown development. The Land & Housing Corporation will ensure compliance with the relevant standards of the Building Code of Australia.	9, 38, 52, 87
8	Compliance Certificates for works regulated by BCA (not Sydney Water)	Not agreed. The Land & Housing Corporation, as a Crown authority, is not required to obtain or submit Compliance Certificates as the provisions of the Act relating to these certificates are inconsistent with s6.28 (previous S.109R) of the Act. Deletion of this proposed condition is therefore requested.	77, 83
9	Building Code of Australia (BCA) - construction	Agreed, to the extent that the requirements of this condition do not exceed those of the Building Code of Australia. As the BCA constitutes the state's building laws, the Land & Housing Corporation does not accept the imposition of requirements to build other than in accordance with the BCA.	(Nb: can keep condition 51)





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10	Demolition – Workcover & Environmental Protection Authority (EPA) guidelines	Agreed. However it is noted that the powers of the Workcover Authority and the Office of Environment & Heritage are exercised by those bodies, and thus Council has no powers in this regard.	(Nb: can keep conditions 6, 85c)
11	Removal, handling or transporting of asbestos	Not Agreed. Removal, handling and transporting of asbestos is regulated by the Work Health and Safety Act 2011, administered by the Workcover Authority and by which the Land & Housing Corporation is bound, regardless of conditions of consent.	9
12	Disposal of asbestos	Not Agreed. Disposal of asbestos is regulated by the Protection of the Environment (Operations) Act 1997, administered by the Office of Environment & Heritage and by which the Land & Housing Corporation is bound, regardless of conditions of consent.	9
13	Protection of Environment Operations Act, 1997	Agreed, although it is noted that regardless of conditions of consent, the Land & Housing Corporation is bound by the provisions of the Protection of the Environment (Operations) Act 1997.	(Nb: can keep condition 30 b e))
14	Noise/Dust	Not agreed. Regardless of conditions of consent, noise/dust is regulated by the Protection of the Environment (Operations) Act 1997, by which the Land & Housing Corporation is bound.	65
15	S.68 & 69 Local Government Act 1993 – approvals regarding construction and/or activities in the road reserve	Not agreed. Pursuant to S.69 of the Local Government Act 1993, S.68 does not require the Crown to obtain the approval of a Council to do anything that is incidental to the erection or demolition of a building.	38
16	Further approval from Council	This amendment removes the need to obtain the further approval of Council and thereby recognises the Land & Housing Corporation's position as a Crown authority, in accordance with Department of Planning (formerly Planning NSW) Circular D6 – Crown Development Applications and Conditions of Consent.	3 d), 24 c), 25, '30A', 31, 33, 38, 45, 55, 74, 75, 86
17	Home Building Act Use except when condition is same wording as Cl.98B of Regs (see also below)	Not agreed. Pursuant to Section 103E of the Home Building Act 1989, the Land & Housing Corporation is exempt from Part 6 (Insurance) of that Act. Not agreed, as this requirement of the Home Building Act does not apply to the Land & Housing Corporation. Deletion of this proposed condition is therefore requested.	47 48
18	Notice of commencement: building works	Not agreed. Pursuant to Section 81A(6) of the Act, the Land & Housing Corporation, as a Crown authority, is not required to notify Council of commencement of building works.	39 d., 48, 52 d.
19	Notice of commencement: demolition	Not agreed. The requirement to notify Council pursuant to S.6.6 of the Act of the commencement of works only applies to erection of buildings and subdivision works, not demolition. In any event this section does not apply to the Crown, by virtue of S.6.6(5) of the Act.	9
20	Notice of commencement: subdivision works	Not agreed. Pursuant to Section 81A(6) of the Act, the Land & Housing Corporation, as a Crown Authority, is not required to notify Council of commencement of subdivision works.	39 d.
21	Site hoardings	Not agreed. Provision of protective hoardings is a requirement of the Work, Health and Safety Act 2011, by which the Land & Housing Corporation is bound regardless of conditions of consent.	45
22	Toilet Site amenities	Not agreed. Provision of on-site toilet facilities is a requirement of the Work Health and Safety Act 2011, by which the Land & Housing Corporation is bound regardless of conditions of consent.	43





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23	Security/maintenance bonds/bank guarantees	A bond issued for non-compliance is not considered to be appropriate for a Crown authority. The Land & Housing Corporation only agrees to payment of security bonds in relation to works carried out on Council property or 'public work' in accordance with Section 4.17(6) of the Act.	22
24	Erosion control plans	Agreed, subject to the condition being reworded as follows: "An erosion control plan prepared by a qualified engineer or registered survey or in accordance with the 'Blue Book <i>Managing Urban Stormwater: Soils and Construction</i> (4th edition, Landcom, 2004)' is to be prepared." This is recognised throughout NSW as being the industry standard for water and soil management on construction sites and is recognised as such by the Office of Environment & Heritage.	20
25	Stormwater and Drainage Plans or landscaping Plans	Not agreed. It is understood that the stormwater and drainage plan/ landscaping plan has been assessed as part of the subject development application and, as such, separate approval is not required. Therefore, deletion of this proposed condition is requested.	24 b), 37 Is condition 63 necessary?
26	Section 7.11 (s94) payment (non Seniors Living SEPP)	Agreed, in accordance with Planning Circular No. D6 dated 21.09.1995 and subject to the replacement of 'Construction Commencing' with 'occupation of the development'. Contributions are not warranted until residents occupy the development and create the demand for services/facilities.	24
27	Removal of trees	It is understood that the removal of existing trees located within the proposed building footprint and driveway area has been assessed as part of the subject development application and, as such, separate approval to remove these trees is not required.	6
		Page 5/6 (Condition 6) – Tree removal On-Site – 'Tree T2' is not mentioned in the list for removal ? Although clearly shown on Architectural Plans and in Arborist report as street tree for removal	6
		Page 24 (Condition 85) – Only 4 trees mentioned under tree removal. Tree 2 need to be removed due to the proposed driveway location (as clearly shown in Arborist report and Arch. Plan) but not mentioned in council condition	85
28	Approval for works in the road reserve (under S.138 Roads Act)	Not agreed. Clause 5 of Schedule 2 of the savings, transitional and other provisions of the Roads Act 1993 provides that a Public Authority, such as the Land & Housing Corporation, does not require consent from a Road Authority to exercise its functions in respect of an unclassified road that is not a Crown road. Deletion of this proposed condition is therefore requested. Suggested wording to replace this condition is as follows: "All proposed works within the public road and footway shall be designed and constructed to Council's standards and specifications and a copy of the details plans submitted to Council prior to work commencing. The applicant/developer shall arrange for necessary inspections by Council whilst the work is in progress or after completion of the works". As a Road Opening, Occupancy Licence or Work Zone Permit is an approval issued under S.138 of the Roads Act it is requested that this advisory note be deleted .	25, 38





No	Keywords	Response	DA Condition
29	Ongoing use or operation of site by others eg loading and unloading of vehicles OR vehicles entering and leaving property	Not agreed. The Land & Housing Corporation as the developer cannot be held responsible at law for the future actions of unknown parties. Conditions of consent can only be imposed in relation to details of design and land use, not operational details. Whilst the Corporation concurs with Council's aims in this regard, the courts have ruled that conditions relating to future operational details cannot be imposed on an applicant. Deletion of this proposed condition is therefore requested.	n/a or not imposed
30	Ongoing maintenance of site	Agreed, as this wording means the LAHC is only responsible while it owns the property.	3 d., 85 f., 87
	Bin carting	Not agreed. The proposed mechanical cart will introduce ongoing maintenance requirements for LAHC. The grade of the path from the waste storage area to the property boundary is no more than 1:20 and it is therefore suggested that a mechanical cart is not necessary. This condition should be deleted.	3 g)
	Automatic watering	Not agreed. The proposed automatic watering system will introduce ongoing maintenance requirements for LAHC. This condition should be deleted.	13
31	Irrigation system	Not agreed. The Corporation does not provide automatic irrigation systems, as watering of common garden areas is undertaken manually by a landscape maintenance contractor who is engaged upon occupation of the development.	13
32	Land Titles Office (now Land and Property Information)	Agreed, subject to the deletion of the words 'Land Titles Office' and replace with 'Land and Property Information' to reflect the NSW Government's administrative changes.	89
33	Right of appeal and/or request for review	Ss.8.2 to 8.5 (former 82A)/ 8.7-8.10 (formerly 97) of the Act do/does not apply to the Crown, by virtue of the operation of S.4.33 (formerly 89) of the Act. Deletion of this note/these notes is therefore requested.	3
Prescribed (ie mandatory) conditions – clauses 98, 98A & 98B: (note most draft consents have pieces of the mandatory conditions, not the full conditions as set out in the Regs)			
	Response for construction DAs	Not agreed. Pursuant to Section 98A(5) of the Regulations, the Land & Housing Corporation, as a Crown authority, is not required to erect a sign. Furthermore, regardless of this condition, the Corporation is able by virtue of S.6.28 (formerly 109R) of the Act to certify its own building works as complying with the BCA and is therefore not required to appoint a principal certifying authority.	9
34	BASIX	Agreed subject to the condition being reworded to/replaced with: 'Pursuant to clause 97A(2) of the Environmental Planning & Assessment Regulation 2000, all commitments listed in the BASIX Certificate No. X for the development are to be fulfilled at the milestones listed.'	3, 24(b)
35	Reference to Council specifications	Agreed, to the extent to which the requirements of this proposed condition do not conflict with the development application/ hydraulic design which forms part of the development application. The Corporation is not aware of any shortcomings in Council's view of the proposed X design/this plan. Agreed, subject to the deletion of any reference to Council approval and/or comment. The Land & Housing Corporation is not aware of any shortcomings in Council's view of the proposed stormwater design submitted as part of the development application which will require further comments from Council.	note
36	Replace EPA with dept of envt and climate change (DECC).	Replace 'EPA/DECC' with 'OEHL' to reflect state government administrative changes. Agreed, subject to the replacement of 'Environmental Protection Authority' (also known as Dept of Environment and Conservation) with 'Office of Environment & Heritage' as the Environment Protection Authority has been replaced by the OEHL to reflect updated administrative changes.	69





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37	Hydraulics – where plans have not been submitted or are inadequate but council is still willing to issue consent	<p>Agreed. Whilst normal policy of the Corporation is to not accept conditions with the potential to render a development consent inoperative, the Corporation acknowledges that in this instance adequate hydraulic plans should have been submitted as part of the development application in order to form part of the suite of approved plans. Consequently, additional hydraulic data is provided, accompanying this letter, and the Corporation now awaits Council's advice that the hydraulic design is acceptable, or advice as to any changes or additional data required.</p> <p>NOTE: This is for cases where the hydraulics have not been submitted with the DA or were not extensive enough to allow a council to assess them, but the council is nonetheless willing to issue consent. Whilst such a condition raises the risk of making the consent inoperative, for liability reasons, it is vital that councils are party to the hydraulic design by approving it.</p>	33
38	Repairs to existing damage to Council's footpath	Agreed, as the extent of repairs is limited to 'during development works'.	75 d)
39	Long Service Levy	Agreed. The building industry long service levy will be paid by the Land & Housing Corporation building contractor.	23
40	'All necessary stormwater drainage works'	Agreed, subject to the re-wording of 'all necessary stormwater drainage works' to 'stormwater from the site to connect to Council's stormwater system' to clarify the intention of the condition of ensuring appropriate connection of stormwater conduits from the site to Council's stormwater system. In addition, clause 5 of Schedule 2 of the Savings, Transitional and Other Provisions of the Roads Act 1993 provides that a public authority such as the Land & Housing Corporation does not require consent from a road authority to exercise its functions in respect of an unclassified road that is not a Crown road.	37
73.	Public Liability Insurance and notification to Council of commencement of engineering works	<p>Agreed, subject to this condition being relocated to the section of this consent entitled "GENERAL" and amended as follows:</p> <p><i>"At least five (5) full working days written notice must be given to Council for the commencement of engineering works. Such notice must be accompanied by evidence of the contractors Public Liability and Workers Compensation Insurances. For Public Liability Insurance this should be a minimum amount of \$10,000,000."</i></p>	38

