

The below conditions remain under contention between the parties for DA/2023/707/1. Please refer to below for both Council and Applicant stance.

Condition 117:

Street Tree Protection	
<p>Before the issue of Subdivision Certificate, the person or entity having the benefit of this consent must prepare a written Street Tree Protection Strategy, on the measures proposed to protect street trees and associated irrigation systems from damage for a period of 5 years from the date of subdivision registration. The strategy should include measures to:</p> <ol style="list-style-type: none"> ensure all purchases, land owners and builders are informed of their obligations to protect and ensure no impact on existing landscape infrastructure within the frontage of the property; promote and educate on the benefits of street trees; provide physical protections to street trees and irrigation infrastructure; and inspect and replace/rectify damage as soon as it occurs. 	
<p><i>Condition reason: To provide clear measures for the protection of street trees.</i></p>	
Council Comment	Landcom Comment
<p>Council is seeking: -</p> <ul style="list-style-type: none"> that the applicant implements a formal approach to informing and educating future purchasers/builders on importance of street trees. A maintenance strategy similar to other strategies for Council Asset Protection – i.e Basin Strategy. <p>Noted in the past there has been issues with what is considered 'maintenance' and liability when it comes to third-party damage to trees.</p> <p>The protection of these trees also contributes to meeting the tree canopy coverage targets as required within the WGA DCP 2021. It is considered that the strategy is critical to tree survival. Note there is also a heavy reliance on trees within the road reserve for this canopy target to be reached.</p> <p>It is understood that the applicant may already have arrangements in place and therefore all that is required is for these arrangements to form part of a written strategy to be provided at Subdivision Certificate stage, and for the continued implementation of this strategy following.</p>	<ol style="list-style-type: none"> <i>This condition requires a street tree maintenance strategy (for street tree and the irrigation infrastructure) prior to the issue of subdivision certificate covering a period of 5 years from LRS registration</i> <i>We request deletion of this condition as they specify that the strategy needs to include measures that ensures that all purchasers, land owners and builders are informed of their obligation to protect the street trees and the irrigation infrastructure, educate them on benefits of street trees etc which we find hard to justify that they are appropriate planning conditions.</i> <i>Further, we do not believe it is reasonable to impose as a requirement prior to Council issuing a Subdivision Certificate, as it is not a condition that we should be required to satisfy in order to obtain the Sub-Cert.</i> <i>We have noted to Council previously that for the street trees, we at least have implemented strategies through our sales contract and how we have provided driveway crossings. Through our design guidelines it has also encouraged tree canopy. Regardless, we disagree with the imposition of a condition in a consent.</i> <i>We also note that we will be maintaining the street trees for 5 years, and as such, maintenance of trees are in our best interests, which should also negate the need for this condition which we see as being superfluous.</i> <i>As the street tree irrigation was requested by Council and Sydney Water, it is not believed to be reasonable to have the proponent implement a strategy to maintain the street tree irrigation for 5 years. This infrastructure will ultimately be Council's asset to maintain and we have agreed to install it which will be for Council's benefit towards their maintenance regime.</i> <i>We believe this condition goes beyond the scope of power to impose and is not appropriate.</i>

Condition 122:

Street Tree Irrigation Maintenance	
For a period of 5 years from the date of registration of any public roads, the person or entity having the benefit of this consent is liable for the maintenance and rectification of defects that become apparent in the Street Tree Irrigation system infrastructure.	
<i>Condition reason: To ensure support of Street Tree Canopy cover.</i>	
Council Comment	Landcom Comment
<p>The condition supports and is integral to the street tree maintenance (condition 140). Failure of the irrigation infrastructure will impact the health of street trees. Watering is a significant part of the maintenance schedule (for which the applicant is required to undertake for first 5 years), therefore these conditions are considered interdependent. A reduced maintenance period may therefore impact the viability of the street trees but will also have a significant financial impact on Council.</p>	<ul style="list-style-type: none"> a. <i>Street tree irrigation maintenance is ultimately Council's responsibility as it is part of the road reserve and is an asset that Council required the proponent to implement as an approach to water the street trees. It is noted that it is not the only way to water the street trees. We used water carts with Stage 1, which is the standard approach across subdivision development.</i> b. <i>We have agreed to install the infrastructure despite initial disagreements with Council given we did not believe that it was appropriate as there was an overreliance of a DCP control which only states 'directly connect trees to the recycled water network for irrigation' – this can be interpreted in different ways. We initially offered a standpipe option to implement connected to recycled water so that council could use to water the trees, which could speak to that DCP control. However, Council required it to be an automated drip irrigation system (using smart technology) connected to the recycled water network, with Council requiring it to be within all the road verges in the subdivision (which has not been something that has been done elsewhere). We also note Sydney Water's involvement despite the fact that they did not carry any concurrence / approval role in this DA.</i> c. <i>Whilst we accepted to install the infrastructure, Council have now imposed that the proponent is to maintain the infrastructure for 5 years (which means us being liable for any maintenance costs involved to maintain this infrastructure including the metering costs for the water), where under normal circumstances, it would be Council's responsibility given it is an asset they requested and will be responsible for, which will feed into their wider irrigation system (which is currently only within the open spaces).</i> d. <i>All Councils have an obligation to maintain the road infrastructure once it gets handed over.</i> e. <i>It is not up to the proponent to mitigate all of Council's maintenance burdens, given the ultimate responsibility of the roads including this infrastructure are with Council. As such the condition is not believed to be fair and reasonable.</i> f. <i>We've requested a 12 month maintenance period instead of 5 years and feel that this is appropriate given</i>

	<p>we will be installing this infrastructure for Councils benefit in their maintenance regime.</p> <p>g. As with all the relevant conditions, we query where the 5 years comes from – as it does not appear to be implemented in any Council planning policies etc. 5 years for street tree or asset related maintenance (with the exception of raingardens) is not usually observed in consent conditions elsewhere as it goes above and beyond what we believe is fair and reasonable.</p>
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Condition 123:

Street Tree Maintenance	
<p>For a period of 5 years from the date of registration of the subdivision, the person or entity having the benefit of this consent is liable for the inspection and maintenance of any street tree or landscaping element within public land. Inspection and Maintenance must include:</p> <ol style="list-style-type: none"> a. Regular watering to ensure establishment of the plant or tree; b. Replacement of any diseased, dead or significantly damaged plant or tree; c. Pruning of street trees to ensure establishment of a suitable tree canopy involving crown lifting for line of sight and clearance for garbage collection and formative pruning to promote good branch structure. 	
<p><i>Condition reason: To ensure street trees are suitable for the road reserve.</i></p>	
Council Comment	Landcom Comment
<p>It is understood that the applicant seeks to remove point a. from the condition.</p> <p>This is not supported as the Applicant is required to undertaken regular watering for tree establishment, this in an important aspect of the maintenance schedule. Watering may be done via the street tree irrigation network (supported by condition 139).</p> <p>It is noted that Applicant has elected to place the majority of burden for tree canopy cover within the road reserve. This places an unreasonable maintenance burden on Council to achieve the 40% canopy cover. This burden must be borne by the applicant to fulfil its obligations with respect to meeting the tree canopy controls in the DCP and for the applicant to benefit from the increased lot density and usability.</p> <p>A reduced maintenance period / requirement for Council to provide water irrigation within this period, may therefore impact the viability of the street trees but will also have a significant financial impact on Council.</p>	<ol style="list-style-type: none"> a. <i>This condition is in contention as it is linked with condition 122.</i> b. <i>Whilst Landcom can replace the street trees where required for 5 years, the watering is linked with the drip irrigation.</i>

Condition 124:

Street Tree Protection
<p>For a period of 5 years from the date of registration of any public roads or land, the person or entity having the benefit of this consent must implement the Street Tree Protection Strategy, as approved by Council. The protection measures outlined in the strategy must be implemented and managed for the 5 year period.</p>

<i>Condition reason: to ensure the obligations for tree canopy cover within the subdivision can be achieved through street tree establishment.</i>	
Council Comment	Landcom Comment
<p>Refer to previous comments from Council.</p> <p>The strategy is an attempt to ensure maximum viability for the street trees in the critical first 5 years through mainly an education strategy. This is not considered onerous as Council merely requires the applicant to take reasonable steps to inform all purchasers, land owners and builders of their obligations to protect street trees and the associated irrigation infrastructure. Written evidence of the strategy is required.</p>	<p><i>Linked with condition 1- we do not feel this is reasonable for Council to require us to implement and manage this strategy for a period of 5 years as part of consent conditions for this development. How is condition enforceable as the strategy requires us to inform all relevant of their obligations to protect street trees and infrastructure and promote and educate on benefit of trees</i></p>