

Memo -

Date created:	14 October 2020
Application Number:	DA-18/2020 (Your reference PPSSWC-70)
Author:	Liverpool City Council (LCC)
To:	Planning Panel Secretariat

Comments:	<p>Upon finalisation of Attachment 3 – <i>Recommended Conditions of Consent</i>, Council received a submission from the applicant on 30 September 2020 responding to the recommended conditions of consent. The applicant’s submission suggested the amendment/deletion of certain recommended conditions (namely, Conditions 5, 11, 18, 20, 23, 25, 90, 95, 97, 105, 117, 118, 122 to 130, and 131).</p> <p>Council submitted a response on 12 October 2020 to the above submission provided by the applicant. In an email dated 12 October 2020, the applicant accepted Council’s response to their requested amendments/deletions except for Conditions 11 and 90. A phone discussion undertaken on 13 October 2020 clarified that Council would not accept amendments to Conditions 11 and 90. As a result, the applicant sent an email on 13 October 2020 confirming that they are satisfied with Council’s response dated 12 October 2020.</p> <p>A table has been prepared overleaf that provides an overview of the subject conditions, applicant’s requested changes to conditions, LCCs’ response and details of any proposed changes. Please note that the table also provides details on an additional condition for revised landscape plan with provision of additional mature trees to be planted, as per the Panel’s request. Attached to this Memo is a revised Attachment 3 – <i>Recommended Conditions of Consent</i> which includes the changes detailed in the table overleaf.</p>
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Subject Condition		Applicant's response (30 September 2020)	Councils' response (12 October 2020)	Proposed condition
5.	<p>NSW TfNSW</p> <p>All conditions issued by the Transport for NSW (TfNSW) shall be complied with prior, during, and at the completion of construction, as required in accordance with their correspondence dated 14 June 2018. A copy of the correspondence is attached to this decision notice</p>	<p>Could you please provide the conditions from Transport for NSW for our review</p>	<p>Noted and provided. Also made as an attachment to the conditions of consent</p>	<p>N/A – no change proposed to subject condition.</p>
11.	<p>Section 7.11 Payment</p> <p>As a consequence of this development, Council has identified an increased demand for public amenities and public services. The following payment is imposed in accordance with Liverpool Contributions Plan 2018 Established Areas as amended.</p> <p>The total contribution is \$544,034 and will be adjusted at the time of payment in accordance with the contributions plan. 50% of the total amount is \$272,017 and is to be paid prior to the release of any CC (amount to be adjusted at the time of payment in accordance with the contribution plan).</p> <p>A breakdown of the contributions payable is provided in the attached payment form. The Contributions Plan may be inspected online at www.liverpool.nsw.gov.au</p> <p>Payment must be accompanied by the attached form.</p> <p>Note 1: In response to the Covid-19 Pandemic, Council is providing for deferred payment options, for applications lodged or approved between 16 April 2020 and 31 December 2020. A deferral of 50% of the total contribution amount to be paid prior to any Occupation Certificate.</p>	<p>This is a very significant cost and given that the project is a combined social/affordable housing project that will be owned and by managed by BlueCHP, our understanding is that s7.11 contributions should not be applied.</p> <p>(A subsequent email was sent from applicant on 13 October requesting that Condition 11 be re-worded from "<i>prior to the release of any CC</i>" to "<i>prior to the release of any OC</i>" as this will significantly assist BlueCHP in regards to maintaining available funds much needed for other affordable housing projects, as well reducing interest charges.)</p>	<p>Liverpool Contributions Plan 2008 – Established Areas is the applicable Contributions Plan for the proposed development. Perusal of the Contributions Plan has failed to reveal any provision that excludes the payment of contributions for this development. Accordingly, removal or modification to the condition is not agreed to by the Council.</p> <p>(A phone conversation was held with applicant on 13/10/20 regarding their email of 13 October. Council advised that it would not amend the condition as it was noted that deferred payments have already been allowed by Council's response to Covid – 19.)</p>	<p>N/A – no change proposed to subject condition.</p>

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18.	<p>S138 Roads Act – Minor Works in the public road</p> <p>Prior to the issue of a Construction Certificate, a Section 138 Roads Act application/s, including payment of fees, shall be lodged with Liverpool City Council, as the Roads Authority for any works required in a public road. These works may include but are not limited to:</p> <ol style="list-style-type: none"> 1. Vehicular crossings (including kerb reinstatement of redundant vehicular crossings), 2. Road opening for utilities and stormwater (including stormwater connection to Council infrastructure), or 3. Road occupancy or road closures. <p>All works shall be carried out in accordance with the Roads Act approval, the development consent including the stamped approved plans, and Liverpool City Council's specifications.</p> <p>Note: Approvals may also be required from the Roads and Maritime Service (RMS) for classified roads.</p>	<p>Since the new Council drainage is proposed on the eastern side of Hillier Road, during construction certificate documentation we would probably seek Council advice on the intended finished levels to suit kerb and gutter alignment (since they don't currently exist). We also don't expect the necessity to reconstruct vehicular crossings where they don't exist.</p>	<p>This condition is still relevant as it relates to a 138 approval for any works that will occur within the road reserve. In this instance, there will be road work in the form of new vehicular crossings as well as kerb reinstatement of redundant vehicular crossings, road openings for stormwater and there may be potential road occupancy as part of construction activity. Council does not support removal or modification of this condition.</p>	<p>N/A – no change proposed to subject condition.</p>
20	<p>S138 Roads Act – roadworks requiring approval of civil drawings</p> <p>Prior to the issue of a Construction Certificate for building or subdivision works the Certifying Authority shall ensure that a S138 Roads Act application, including the payment of application and inspection fees, has been lodged with Liverpool City Council (being the Roads Authority under the Roads Act), for provision of the following within the site frontage:</p> <ol style="list-style-type: none"> (a) Demolish all existing driveway laybacks and reinstate kerb and gutter (b) Removal of existing and construction of concrete kerb and gutter (c) 1.5m wide concrete footpath paving (d) Half road pavement construction (El Alamein Avenue and Hillier Road) 	<p>Condition 20(d): This requires half road pavement construction in El Alamein Avenue and Hillier Road, though Anderson Avenue is not mentioned. The development does not require any stormwater works necessitating half-road pavement construction in El Alamein and Anderson Avenues, but new Council drainage would cross Hillier Road. Can you please advise of the justification for requiring half road construction within all of those adjoining roads (noting that full road construction is completed within El Alamein Road)? This condition should be deleted.</p>	<p>It is noted that the existing condition of the road pavement within El Alamein and Hillier Road is not adequate in its current form. Furthermore, the proposal is likely result in additional traffic movements (including heavy truck movements) during construction and operation which is likely to exacerbate the existing road condition. Council does not support the removal or modification of this condition.</p>	<p>N/A – no change proposed to subject condition.</p>

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23	On-Site Detention shall be provided generally in accordance with the concept plan/s lodged for development approval, prepared by Erbas as per the following:.	On-site detention is to be generally in accordance with the submitted plans. Drainage in a bin area (with potential rubbish) should usually be directed to sewer via a suitable arrestor if the bin area is roofed. However, if the bin area is exposed to the sky, it should normally be directed to the stormwater system. Can Council confirm this requirement? We could perhaps suspend sewer drainage pipes in the detention tank below if the bin area is roofed, but if it's exposed to the sky, Sydney Water don't want stormwater drained to sewer.		Council agrees to modify the above condition so as to replace "Any drainage within the bin collection area is not to be connected to the stormwater system" with "The civil concept plans shall be revised so ensure consistency with the approved architectural plans".	On-Site Detention shall be provided generally in accordance with the concept plan/s lodged for development approval, prepared by Erbas as per the following
	Job No./Drawing No.	Title	Revision/ Issue	Date	
	SYD19282-CW000	Civil Drainage Works Cover Sheet, Legend & Drawing Schedule	P4	28.08.20	
	SYD19282-CW101	Civil Drainage Works Soil and Water Management Plan	P3	22.04.20	
	SYD19282-CW102	Basement Level-02 Plan	P4	22.04.20	
	SYD19282-CW103	West Basement Level-01 Plan	P4	22.04.20	
	SYD19282-CW104	East Basement Level-01 Plan	P5	08.09.20	
	SYD19282-CW105	West Ground Floor Level-00 Plan	P4	28.08.20	
	SYD19282-CW106	East Ground Floor Level-00 Plan	P5	08.09.20	
	SYD19282-CW107	Stormwater Connection Plan 1	P5	08.09.20	
	SYD19282-CW108	Stormwater Connection Plan 2	P2	08.09.20	
	SYD19282-CW109	Stormwater Connection Plan 3	P2	08.09.20	
	SYD19282-CW201	Detail Sheet 1	P5	08.09.20	
SYD19282-CW202	Detail Sheet 2	P5	08.09.20		
					<p>INSERT TABLE</p> <p>Minimum height clearance below the OSD tank is to be achieved and comply with AS2890.1 and 6.</p> <p>The civil concept plans shall be revised so ensure consistency with the approved architectural plans.</p> <p>The proposed development and stormwater drainage system shall be designed to ensure that stormwater runoff from upstream properties is conveyed through the site without adverse impact on the development or adjoining properties.</p> <p>Engineering plans and supporting calculations for the on-site detention system are to be prepared</p>

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	<p>Minimum height clearance below the OSD tank is to be achieved and comply with AS2890.1 and 6.</p> <p>Any drainage within the bin collection area is not to be connected to the stormwater system.</p> <p>The proposed development and stormwater drainage system shall be designed to ensure that stormwater runoff from upstream properties is conveyed through the site without adverse impact on the development or adjoining properties.</p> <p>Engineering plans and supporting calculations for the on-site detention system are to be prepared by a suitably qualified person and shall accompany the application for a Construction Certificate.</p> <p>Prior to the issue of a Construction Certificate the Certifying Authority shall ensure that the on-site detention system has been designed in accordance with Liverpool City Council's Design Guidelines and Liverpool City Council's On-Site Stormwater Detention policy and Technical Specification</p>			<p>by a suitably qualified person and shall accompany the application for a Construction Certificate.</p> <p>Prior to the issue of a Construction Certificate the Certifying Authority shall ensure that the on-site detention system has been designed in accordance with Liverpool City Council's Design Guidelines and Liverpool City Council's On-Site Stormwater Detention policy and Technical Specification</p>
25.	<p>No Loading on Easements</p> <p>Prior to the issue of a Construction Certificate the Certifying Authority shall ensure that the foundations of proposed structures adjoining the drainage and/ or services easement have been designed clear of the zone of influence.</p>	There are no easements on this site.	Council agrees to delete this condition.	Condition deleted
90.	<p>Street Lighting</p> <p>Street lighting is to be provided for all new and existing streets within the proposed subdivision to Liverpool City Council's standards. The developer shall submit a Public Lighting Design Brief to Council for approval for the provision of street lighting on all new public roads dedicated to Council. A street lighting design plan must be prepared by an accredited service provider for approval prior to construction. All street lighting must comply with the electricity service provider Street Lighting Policy and illumination requirements and Council's Street Lighting policy.</p> <p>All cost associated with the installation of street lighting shall be borne by the developer.</p>	The requirement for having to put in street lighting with the existing road reserve is onerous, particularly as street utility infrastructure in Anderson Avenue is on the southern (i.e. opposite) side of that street. I note that the second paragraph requires a public Lighting Design Brief requires be submitted to Council for approval for street lighting on all new public roads dedicated to Council. No new roads are being	The development results in an intensification of the site and introduces a greater population to the area. Therefore, a transition in density of development is not incommensurate with the installation of and upgrades to utilities such as street lighting which aims to provide a safe environment for residents of the locality. Council does not agree to the removal of this condition as it ensures adequate lighting to the development and the public domain.	N/A – no change proposed to subject condition.

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		<p>dedicated so I'd question the application of this condition. We therefore believe that the condition is not applicable and should therefore be deleted.</p> <p>(A subsequent email was sent to Council on 13 October requesting that Council re-consider the imposition of Condition 90. The applicant re-iterates their previous arguments that the condition is not applicable. This onerous requirement will have a considerable impact on BlueCHP being able to provide additional affordable housing projects.)</p>	<p>(A phone conversation was held with applicant on 13/10/20 regarding their email of 13 October. Council advised that it would not amend the condition. The applicant was advised that the provision of street lights, will depend on the required audit that may entail augmentation without installation of a large number of new street lamps.)</p>	
95	<p>Outstanding Development Contribution</p> <p>Prior to the issue of any occupation certificate all outstanding section 7.11 contributions must be paid as required by Condition 11. Evidence is to be provided to the satisfaction of the relevant certifying authority that all outstanding contributions have been paid to Council.</p>	<p>Refer to comments regarding condition 11 above.</p>	<p>As per above comments in relation to Condition 11 above.</p>	<p>N/A – no change proposed to subject condition.</p>
97	<p>Affordable Rental Housing</p> <p>A restriction shall be registered, before the date of issue of the Occupation Certificate (Interim or Final), against the title of the property on which the development is to be carried out, pursuant to Section 88E of the Conveyancing Act 1919, in the following terms: Terms of the Restriction on Use</p> <p>The restriction applies for ten (10) years from the date of issue of the Occupation Certificate pursuant to Notice of determination of Development Application No. 18/2020 issued by Liverpool City Council.</p> <p>The restrictions are:</p>	<p>One condition refers to 34 apartments and the other condition 39 and 132.</p>	<p>Corret. Condition 132 refers to 39 apartments. Condition 132 is to be amended to be consistent with Condition 97.</p>	<p>N/A – no change proposed to subject condition.</p>

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	(a) A minimum of 34 apartments (50% of the gross floor area of the development), in this case being apartments U01, U02, U03, U04, U05, U06, U07, U08, U09, U10, U11, U12, U13, U14, U15, U16, U17, U18, U19, U20, U21, U22, U28, U29, U30, U31, U32, U33, U34, U35, U44, U45, U46, U57 will be used for the purposes of affordable housing as defined in State Environmental Planning Policy (Affordable Rental Housing) 2009;			
105	Traffic Signage must be placed at the driveway entrance advising that parking is for 'resident vehicles only'.	Should this condition refer to resident and visitor parking, rather than just residents?	Council agrees to the modification of this condition as per the applicant's recommendation.	Signage must be placed at the driveway entrance advising that parking is for 'resident and visitor vehicles only'.
117	Footpaths Construction of 1.5m wide by 100mm thick (with one layer of SL72 reinforcing mesh) concrete path paving on one side of all residential access roads and both sides of all collector and distributor roads. Path paving will not be required in minor cul-de-sac with less than fifteen lots.	This is not applicable and should be deleted, as there are existing footpaths along Anderson and Hillier Road.	Council notes that the existing paving on Anderson Avenue and Hillier Road are less than 1.5m in width and El Alamein has no existing footpaths. The increased width of paving is required to facilitate two pedestrian movement whilst also allowing for wheelchairs, prams etc. As indicated in a previous response, the proposed development marks a transition to higher density development, particularly a population of whom relies on public transport services in proximity for commuting. Council therefore does not support the removal or modification to the condition	N/A – no change proposed to subject condition.
118	Dilapidation Report Any rectification works required by Council regarding the condition of Council infrastructure shall be undertaken, at full cost to the developer.	Amend condition to read "any rectification works required by Council regarding the condition of Council infrastructure not identified in the dilapidation report shall be undertaken, at full cost to the developer	Council does not agree to the modification of this condition.	N/A – no change proposed to subject condition.

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122	<p>Completion of Subdivision Works Prior to the issue of a Subdivision Certificate, the Principal Certifying Authority shall ensure that all subdivision works required by this consent have been satisfactorily completed or that suitable arrangements have been made with Liverpool City Council for any outstanding works.</p>	<p>These need to be deleted as we are not undertaking subdivision works. Further, these are actually contrary to condition 119 were Council has requested to consolidate the lots.</p>	<p>Council does not agree to the removal of these conditions as stratum subdivision is proposed.</p>	<p>N/A – no change proposed to subject conditions</p>
123	<p>Stormwater Compliance Prior to the issue of an Subdivision Certificate the Principal Certifying Authority shall ensure that the On-site detention system/s, Stormwater pre-treatment system/s and Basement Carpark pump-out system:</p> <ul style="list-style-type: none"> • Have been satisfactorily completed in accordance with the approved Construction Certificate and the requirements of this consent. • Have met the design intent with regard to any construction variations to the approved design. • Any remedial works required to been undertaken have been satisfactorily completed. <p>Details of the approved and constructed system/s shall be provided as part of the Works-As-Executed drawings.</p>			
124	<p>Restriction as to User and Positive Covenant Prior to the issue of a Subdivision Certificate a restriction as to user and positive covenant relating to the On-site detention system/s, Stormwater pre-treatment system/s and Basement carpark pump-out system: Shall be registered on the title of the property. The restriction as to user and positive covenant shall be in Liverpool City Council's standard wording as detailed in Liverpool City Council's Design and Construction Guidelines and Construction Specification for Civil Works.</p> <p>Rectification of Damage Prior to the issue of a Subdivision Certificate, any damage to Council infrastructure not identified in the dilapidation report, as a result of the development shall be rectified at no cost to Liverpool City Council.</p>			

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	Any rectification works within Anderson and El Alamein Avenues, and Hillier Road will require a Roads Act application. The application is to be submitted and approved by Liverpool City Council prior to such works commencing.			
125	<p>Linen Plans and 88B Instruments</p> <p>In order to enable a Subdivision Certificate to be issued for submission to the LPI Service, the applicant is required to lodge a separate application along with one (1) original and ten (10) copies of the proposed plan of subdivision and one (1) original and two (2) copies of the proposed 88b instrument (where proposed)</p>			
126	The applicant shall pay the standard fee for purpose of subdivision certificate administration of plan checking and release			
127	The final plan of subdivision must be supported by an 88B Instrument, approved by Council. The 88B instrument shall properly reflect the requirements of the conditions of development consent, the plans forming part of the consent, and Council's standards, codes and policy's. Part 2 of the 88B instrument shall contain a provision that any easements, right of ways or covenants shall not be extinguished or altered without the written consent of Council.			
128	Where common drainage lines or other drainage lines are required, a drainage easement shall be created in accordance with Council's minimum widths as scheduled in Council's Design Specification for Subdivisions (as amended).			
129	Correct notation concerning easements is required. The prepared 88B Instrument should be forwarded initially to Council. The land value of the easement and costs associated with checking the instrument are to be borne by the applicant. Part 2 of the 88B Instrument shall contain a provision that the easement may not be extinguished or altered without the written consent of Council.			
130	<p>Service Providers</p> <p>The following documentation is to be provided prior to the release of the subdivision certificate:</p> <p>a) Written evidence of suitable arrangements with Sydney Water (Section 73 Compliance Certificate) for the supply of water and sewerage services to the development is to be submitted to the PCA prior to the issue of a Subdivision Certificate.</p>			

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	<p>Council will not issue a Subdivision Certificate unless the method of sewerage disposal is by gravity reticulation mains to either Sydney Water branch and trunk sewers or Sydney Water point of treatment. Council will not accept any temporary facilities to service the site, including pump-out wet-wells.</p> <p>b) Notification of arrangement for the development from Endeavour Energy shall be submitted to Council.</p> <p>c) Written certification from the relevant service providers that the telecommunications infrastructure is installed in accordance with:</p> <p>i. The requirements of the Telecommunications Act 1997;</p> <p>ii. For a fibre ready facility, the NBN Co's standard specifications current at the time of installation; and</p> <p>iii. For a line that is to connect a lot to telecommunications infrastructure external to the premises, the line shall be located underground.</p> <p>Unless otherwise stipulated by telecommunications legislation at the time of construction, the development must be provided with all necessary pits and pipes, and conduits to accommodate the future connections of optic fibre technology telecommunications.</p>			
131	<p>Dilapidation Report</p> <p>Any rectification works required by Council regarding the condition of Council infrastructure shall be undertaken, at full cost to the developer.</p>			
<p>Note: Landscape and Civil Concept Plans do not match. Council gave the applicant the option to amend the plans or accept conditions to amend the plans prior to CC. In a phone conversation with the applicant, conditions of consent was acceptable. In addition, in response to the SWCPP comments of 12 October meeting, additional tree planting requirements were recommended and now incorporated in these conditions</p>				
New 3	<p>Prior to the issue of a Construction Certificate, amended plans and details reflecting the required amendments (as detailed below), shall be submitted to and approved by Liverpool Council's Manager of Development Assessment. Required amendments as follows:</p> <p>(a) Landscape Plan and Drainage Plans to match approved Architectural Plans. Specifically, delete the bin storage area immediately south of the basement ramp and the vacated space added to the overall landscaped area.</p> <p>(b) Landscape Plan to provide more tree planting (8m mature height) along Anderson Avenue frontage to sufficiently softened the building bulk. Similarly to the rear setback area, increased mature</p>			

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tree planting of species that allow solar penetration to the COS and balcony areas in winter.			