

Response to Applicant's Proposed Changes to Draft Conditions

DA0117/2017 | 266 Longueville Road Lane Cove

On 9 July 2018, the applicant provided a detailed response to the draft conditions of consent in the form of a list of each proposed condition with any proposed changes and reasons for same. Many of the changes are simple formatting, clarification, or replacing any references to the "applicant" with the "developer".

Some of the proposed changes are not acceptable to the Council and the Independent Assessor. The following table lists the responses to each condition. This should be read in conjunction with the attached revised draft conditions dated 11 July 2018.

Conditions requested to be amended	Amended Requested by applicant	Comments
3, 5, 6, 7, 11, 14, 19, 21, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 44, 45, 49, 52, 55, 60, 72, 73, 74, 75, 76, 77, 80, 81, 82, 85, 87, 88, 92, 93, 99, 101, 102., 104, 108, 112, 116, 118, 120, 122, 123, 124, 125, 127, 134, 136, 137, 138, 139, 140, 142, 144	These conditions contain minor errors in formatting, refer to outdated Regulations, or require the "applicant" not the "developer" to carry out certain actions.	The proposed changes are agreed and amendments have been made to the attached draft list of conditions.
25, 43, 57, 89, 90, 110, 111, 113, 114, 141	These conditions should be deleted as they are repetitions of other conditions located in different parts of the list of conditions.	Agreed. Conditions deleted as requested.
Deferred Commencement Condition 1	The applicant submits that this condition, requiring a stage 2 contamination report prior to the consent becoming operational, should be an operational condition.	A deferred commencement condition is usual practice in circumstances where a stage 2 investigation has not been submitted with the DA. It is considered that there is sufficient information available for the consent authority to be satisfied in relation to Clause 7(b) of SEPP 55. However, for abundant caution it is recommended that the application be determined by way of deferred commencement consent, which requires the submission of a Stage 2 Investigation Report prior to the consent becoming operational.

Deferred Commencement Condition 2	The applicant submits that this change cannot be made by way of deferred commencement condition and the application should be determined based on the submitted plans.	Moving the building 1 metre to the north is considered essential to provide adequate deep soil landscape buffers to the property adjoining to the south. This will improve the amenity for the adjoining residents considerably. This condition is considered essential to the overall proposal which seeks significant departures from the building height standard.
2	The applicant does not wish to provide a right of carriageway in favour of adjoining land.	As discussed in detail in the assessment report the adjoining property has benefited from a long-standing arrangement with the Council dating back to the 1960s, when the land was public open space. As a consequence of this development, the Council will no longer be in control of the land. Therefore, it is considered necessary to provide legal access to the adjoining land by creating a right of carriageway on the title.
10	The applicant requests that payment of S94 contributions should be paid prior to occupation certificate (not prior to Construction Certificate) and the amount should not be indexed.	<p>Paragraph 2.2 of the Lane Cove S94 Plan requires payment of contributions to occur prior to release of building plans.</p> <p>Paragraph 6.2 of the S94 Plan provides the appropriate formula by which contribution payments are to be indexed using CPI.</p> <p>The payment timing and index formula is common to all Section 94 Plans in NSW. The plan is a statutory document which must be properly considered and applied.</p> <p>The applicant's request is not agreed.</p>
13	The applicant requests construction work hours to be extended.	The Council has given careful consideration to the amenity impacts on surrounding residents. Due to the close proximity of a number of dwellings, the construction hours proposed are considered necessary for the protection of amenity.
48	The applicant submits that the aged care beds should not be included in the 10% of affordable places.	<p>Council sought advice from its solicitors, which confirmed that the aged care beds do not constitute "dwellings"</p> <p>The condition has been amended to remove the aged care beds from affordable places.</p>

51	The applicant submits that there is no power to require the affordable places to be dedicated to the Council.	Council sought advice from its solicitors, which confirmed that Council cannot impose this requirement. The condition has been amended in compliance with the Seniors SEPP provisions.
63	The applicant requests that limited waste collection hours should only apply during construction of the development.	Due to the close proximity to the driveway and collection area of a number of dwellings adjoining to the south, this condition is considered reasonable to protect the amenity of those residents.
68	The applicants submits that this is advice only and should not be included as a condition.	Agreed. The condition has been moved to the end of the list of conditions under the heading "Advice"
69	The applicant is concerned that the condition may be interpreted as requiring certain works to occur prior to the issue of a construction certificate.	The condition only requires the appointment of a project arborist prior to construction certificate. The other requirements essentially form the outline of the work required by the arborist during the project. Accordingly, no change is proposed.
78	The applicant requests an addition to the effect that alternative sizes, species and locations of trees may be required in consultation with Council.	The condition is specific in terms of sizes, species and locations to ensure an acceptable landscape outcome. The proposed additional words may effectively negate the condition requirements. Accordingly, no change is proposed. If circumstances do change it is open to the applicant to submit an application to modify the condition at a later time.
94, 95, 96, 97, 98	The applicant suggests that a ROW is not required for the public footway along the northern boundary as the matter is covered in the lease between the operator and Council.	Once the land is leased to the operator, Council will have limited control over the land. The footway is identified as a necessary accessway for the public. This is a relevant planning matter which should have the appropriate right of access registered on the title. Accordingly, no change is proposed.
103	The applicant submits that the proposed 2.5m width for the pathway along the northern boundary is excessive and should be reduced from 2.5m to 1.2m.	The Council has adopted the 2.5m standard for all new developments across the LGA to allow for pedestrians and bicycles to pass with safety. Accordingly, no change is proposed.
119	The applicant request that this condition include additional words to define which public	Agreed with slightly different wording.

	areas must be maintained during construction.	
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