



Report to General Manager

Attachments:

1. List of Standard Conditions

SUBJECT: Development Application Conditions of Consent Review

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EXECUTIVE SUMMARY:

On 12 November 2012 Council resolved that a review of conditions be undertaken, including a review by all Council's internal referral experts, Council's Legal Officer and external legal providers.

In response to Council's resolution, Planning and Development Services has undertaken a review of North Sydney Council's standard conditions against current legislative requirements, changes in industry best practice standards and relevant NSW Land & Environment Court decision.

The revised standard conditions have also been reviewed for legality, clarity and legislative requirements. The revised conditions have been formulated in accordance with the Newberry Principles so that they are fair, reasonable and will achieve their stated planning purpose.

The revised standard conditions will improve development outcomes, reduce unnecessary duplication and provide certainty in the issue of development consents by Council, the NSIPP and the JRPP.

It is recommended that the Council receive the draft conditions as a standard set of conditions to be applied to development approvals issued by Council, the North Sydney Independent Planning Panel (NSIPP) and Joint Regional Planning Panel (JRPP).

RECOMMENDATION:

1. **THAT** Council receive the attached standard conditions for imposition on development consents in accordance with relevant provisions of the Environmental Planning and Assessment Act 1979 and Regulations 2000.
2. **THAT** Council note the Preamble to the standard conditions.
3. **THAT** Council note that the standard conditions are reviewed and updated by Senior Planning Staff on an ongoing basis and as circumstances dictate.

Signed: _____

Endorsed by: _____
Manager Development Services

LINK TO DELIVERY PROGRAM

The relationship with the Delivery Program is as follows:

Direction: 2. Our Built Environment

Outcome: 2.2 Improve mix of land use and quality development through design excellence

BACKGROUND

At its meeting of 12 November 2012 Notice of Motion No. 55/12 was put forward by Councillor Reymond, Baker, Robertson and Marchandeanu at which Council resolved:

THAT Council call for an urgent review of Council's DA conditions of consent (standard, variable and any others used from time to time), such review to be undertaken by Council's Planning staff, Council's in-house lawyer and Council's external lawyer. The review should also take into account what is understood to be a set of standard conditions used by the Land and Environmental Court in certain matters from time to time, and following the review, a report should be submitted to Council.

In response to the Council resolution, Planning and Development Services has undertaken a comprehensive review of North Sydney Council's standard conditions against current legislative requirements, changes in industry best practice standards and relevant NSW Land and Environment Court decisions. The current review was carried out in addition to the ongoing review of conditions generally as the need arises. The last comprehensive review was undertaken by staff in 2009.

As part of the review process, Council's Senior Planning Staff have consulted with internal experts in the areas of building, compliance, environmental health, engineering, heritage and landscaping. The review has also been undertaken in consultation with Council's Legal Officer and external legal providers.

Council also engaged the services of Renzo Tonin & Associates, experts in acoustic and noise management, to provide advice on the standard conditions to be incorporated to mitigate noise nuisance in North Sydney.

The review of standard conditions has resulted in the draft standard conditions included in Attachment 1 to this report.

SUSTAINABILITY STATEMENT

Ongoing sustainability targets for development activity are set by NSW state government policy and by Draft North Sydney Development Control Plan 2013.

The review of conditions has included a consideration of the relevant sustainability targets set by Council's Development Control Plan, and those set by NSW state government policy.

These resulting conditions will assist Council in meeting its stated sustainability goals and obligations to consider sustainability through the development application process.

DETAIL

1. Management of Noise Impacts

In order to address concerns in relation to noise impacts associated with development in Council's mixed use and commercial areas adjoining residential development, planning staff have engaged the services of Renzo Tonin & Associates, as experts in acoustic and noise management, to provide advice on relevant conditions for noise management.

Revised conditions have been incorporated to specifically deal with contemporaneous noise effects caused by the co-location of mechanical plant and equipment on buildings in close proximity to residential receivers and other sensitive land uses.

The result of these recommended conditions will improve acoustic management for new developments and to provide the necessary mechanisms for Council's Building and Compliance Team to enforce noise mitigation conditions.

2. NSW Land & Environment Court Conditions

The review of condition had regard for the residential draft condition set available through the NSW Land & Environment Court website. The conditions published by the Court have been reviewed and any condition found to be relevant to development in the North Sydney LGA have been incorporated into the revised standard conditions.

3. Other Relevant Matters

3.1 Council's Powers To Impose Conditions & the Newbury Test

Council may impose conditions of consent for development applications under Section 80A(1) of the Act. In applying those conditions Council must have regard to the following principles found in *Newbury v Secretary of State for the Environment* [1981] AC 578 wherein conditions must:

- (a) Be for a planning purpose; and*
- (b) Fairly and reasonably relate to the development; and*
- (c) Be not so unreasonable that no consent authority would have imposed it.*

The revised conditions have been drafted in accordance with the *Newbury Principles* to ensure that conditions(s):

- (a) are clearly expressed and certain;
 - (b) are consistent with Council policy;
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- (c) are enforceable; and
- (d) when applied correctly are lawful.

The standard list of conditions has been reviewed for consistency with the above principles, and although not all conditions will apply in all cases, assessment officers may apply the conditions with the knowledge that they will achieve their stated purpose and can be enforced.

In dealing with development applications on merits, it will be necessary for Council to impose other site specific conditions, in addition to Council's standard conditions, where circumstances dictate.

Finally, it must be acknowledged that due to legislative change, policy development and experience, conditions will continue to evolve and the standard condition set must be regarded as a "living" document.

3.2 Prescribed Conditions

The Environmental Planning and Assessment Regulations 2000 specify certain prescribed conditions which must be applied to development consents for certain types of development. The revised standard list of conditions incorporates prescribed conditions as required by the Act and Regulations.

4. Conclusion

Council's Planning and Development Services Division has undertaken a comprehensive review of North Sydney Council's standard conditions against current legislative requirements, changes in industry best practice standards and relevant NSW Land and Environment Court decisions.

The revised standard conditions have been reviewed by Council's legal officer and external legal advisors and their recommendations have been incorporated into the attached condition set.

The revised standard conditions, when applied appropriately will improve consistency, unnecessary duplication and provide certainty in the issue of development consents by Council, the NSIPP and JRPP.

It is recommended that Council receive the standard condition set of conditions for imposition in development approvals issued by Council, the North Sydney Independent Planning Panel (NSIPP) and Joint Regional Planning Panel (JRPP).
