

Memorandum

TO: Southern Regional Planning Panel

FROM: Habitat Planning – Craig McPartland

CC: Albury City Council

DATE: 15 May 2025

RE: DA10.2023.40336.1 (PAN-352110) Draft conditions of consent review

PURPOSE

The purpose of this memo is to advise that we are in receipt of the *draft* conditions of consent of the subject Development Application (DA) for review and comment and provide feedback on relevant conditions for the Panels further consideration.

Below a list of conditions along with some commentary based on the submitted design considerations and discussions with Council during the assessment process. It is requested that the Panel review and consider alterations or deletion of the relevant conditions as set out below.

Conditions

PART 1 – Deferred Commencement Condition

Under Section 76(2)(a) of the EP&A Regulation, a deferred commencement consent must clearly distinguish between conditions that relate to matters about which the consent authority must be satisfied before the consent can operate (the relevant matters) and other conditions. The terms of conditions and reasons related to deferred commencement is set out below:

- (1) *This consent may not be activated until a satisfactory Acoustic Assessment has been completed and submitted to Council identifying detailed recommendations to mitigate noise impacts that may impact upon the mixed use development from the surrounding commercial locality.*

A report prepared by a qualified acoustic practitioner must include at a minimum :

- a. A report is required to detail and assess the noise criteria that impacts the Development can be effectively achieved through building design.*
- b. A report outlining the strategies and design features to be implemented by the Applicant to meet the noise criteria and demonstrate how these measures will ensure compliance.*
- c. A report of predicted and cumulative noise emissions from all plant and equipment associated with the development must be submitted. This includes, but is not limited to, car park ventilation, outdoor air fans, toilet/bathroom exhaust fans, air conditioning and heating units, swimming pool and spa filtration systems.*
- d. The report shall assess the noise impacts during operation and provide recommendations for noise mitigation measures. These measures must be incorporated into the design of the Development to achieve noise reduction levels for each type of plant and equipment.*

Comment

The application, through its amended design response and Section 37 application, along with extensive acoustic and environmental noise assessment, modelling and recommended attenuation measures, has demonstrated that the development can achieve the required internal noise criteria.

The recommendations to mitigate noise impacts upon the mixed-use development from the surrounding commercial locality are outlined in correspondence dated 2 May 2025 (Marshall Day Acoustics). Intricate details of the recommended features are subject to a detailed design and need not defer the commencement of the DA.

Note: It is also possible that attenuation measures proposed by the Shopping Centre on the offending fans will be undertaken prior to the completion of detailed design and this may enable revised noise assessment and variation to the façade treatment during the detailed design phase and provided with/prior to the CC application.

In any case, deferring the commencement of the consent is counter-intuitive and has the potential to delay design and construction.

(A7) Exterior finishes

The exterior materials used for the building works and any ancillary structures shall be a non-reflective material (e.g. non zinalume).

Comment

This is unachievable and it is requested the condition be deleted.

Whilst the application does not propose zinalume or highly reflective material externally, it is unreasonable to expect the development, where the north, east and west facades are predominantly glazed, will be non-reflective.

(A11) Street address

Prior to the issue of the Construction Certificate, the developer/owner shall obtain a street address for each apartment and commercial tenancy from Council. These numbers should be shown on the final subdivision plan (administration sheet) and clearly displayed on the buildings or property in the interest of public safety.

Comment

Request that this condition be amended to require it be satisfied prior to the issue of a subdivision certificate.

This will avoid the need to modify the consent or delays with the issuing of a Construction Certificate in the event that there are delays with the issuing of the numbers.

(A24) Plant, equipment or features on roof

No plant, equipment, services or architectural features other than those shown on the approved plans are permitted above the roof level of the building, without the written consent of Council.

Comment

Request that this condition be amended to the following effect:

All plant, equipment, services or architectural features proposed on the roof level of the building shall be suitably screened from view as indicated on the approved plans.

This allows for the provision of plant, equipment, services or architectural features that are subject to detailed design and are not indicated on the approved plans, and without the need for modification or additional approval(s). However it also satisfies the intent of the condition 'to protect public interest, the environment and existing amenity of the locality' by ensuring all plant and equipment will be suitably screened.

(B24) Noise Criteria Assessment and Building Design Compliance Report

A report from a qualified Acoustic Practitioner demonstrating compliance with the relevant noise criteria must be submitted to the Principal Certifying Authority before the issue of an Occupation Certificate.

The report is required to detail and assess the noise criteria that impacts the Development can be effectively achieved through building design.

The report will outline the strategies and design features to be implemented by the Applicant to meet the noise criteria and demonstrate how these measures will ensure compliance.

The report is to be prepared by a suitably qualified Acoustic Practitioner.

Comment

It's requested that this condition be deleted. The requirements of this condition have essentially been addressed and confirmed (prior to CC - deferred commencement condition). Post-construction and prior to OC the intent of this condition is more appropriately addressed by Condition E8 where we interpret this as requiring verification (e.g. by design statement or measurement) for OC.

(D25) Basement Parking

- *Parking spaces to be numbered and assigned to specific apartments with recognition that carpark has blind aisle.*
- *One disability parking space to be located adjacent to lift- a reduction in the number of visitor spaces is supported to enable provision of disabled parking space*
- *Designated visitor spaces (4) to be located closest to entrance ramp*

Comment

It is requested that this condition be amended to delete the second and third dot points.

Second dot point – disability parking space

A 'disability parking space' is not required in a residential carpark setting and the proponents desire not to include one in the basement has been expressed multiple times during the assessment process. The Consent requirement for a 'disability parking space' therefore is contrary to the proposal and does not align with any statutory or non-statutory requirement.

The development has been designed with an allocation of two (2) privately owned car parking spaces for each apartment. This provides all individual apartments with the opportunity to enable a compliant access space allocation if desired. Additionally, all spaces are oversized and may be retro fitted as desired by future occupants.

No apartments or the continuous paths of travel and circulation spaces from the basement to the apartments on any level have specifically been designed to meet full compliance with AS1428 and the requirement to include 'disability parking space' in the basement could potentially be at odds with elements of the building design.

Through discussions with Council officers during the assessment process, the proposal was confirmed to include three (3) more accessible and compliant 'disability parking spaces' at grade, notably exceeding the minimum one (1) space required.

Third dot point – Designated visitor spaces

There have been multiple discussions with Council officers where it has been confirmed that there is no intent to provide visitor parking in this instance. The residential component of the development includes the entire basement carpark with secure private access i.e. no public access. There is no customer or visitor parking because all parking spaces in the basement are allocated to the apartments. The development was designed to provide two car spaces for each apartment which exceeds the minimum parking requirements and provides a theoretical surplus of spaces, which under the control of the respective apartment's occupiers, may be used by visitors.

A separate designated provision of visitor parking will create a undesirable reduction in allocated parking provision for the apartments and potentially creates underutilised spaces that, anecdotally creates compliance grievances for the body corporate and occupiers alike where visitor spaces in like development have been used by owners/tenants (not visitors) and where in some instances used for storage of ancillary vehicles such as trailers, boats and other for storage non-vehicular purposes.

The development has never intended to provide visitor spaces in the basement, rather visitor spaces have been provided on grade. This position was expressed to Council multiple times and where it was understood by the application that this position was agreed.

(E8) Certification of acoustic measures

Prior to the issue of an Occupation Certificate, a suitably qualified person must provide details demonstrating compliance to the Principal Certifier that the acoustic design mitigation measures have been installed in accordance with the Acoustic Assessment Report, approved under this consent.

Comment

The applicant generally supports this condition. It is submitted that this condition is more appropriate than the requirements of condition B24. It is therefore requested that condition E8 be retained in lieu of the deletion of condition B24.

(E11) Environmental – Sound proofing of plant and equipment

All external plant and equipment must be acoustically treated or placed in soundproof housing to reduce noise to a level satisfactory to Council.

Comment

Request for this condition to be deleted.

Condition B23 requires the proponent to provide a report that includes recommendations for noise mitigation measures on all plant and equipment associated with the development. It is also a requirement of condition B23 that: [these] measures *must* be incorporated into the design of the Development to achieve noise reduction levels for each type of plant and equipment.

Condition 23 essentially requires the development to implement noise mitigation measures recommended by a qualified Acoustic Practitioner following a predicted and cumulative noise emissions assessment. However, Condition E11 requires 'acoustically treated or placed in soundproof housing to reduce noise to a level satisfactory to Council'.

It is submitted that the implementation of the recommendations provided by a suitably qualified Acoustic Practitioner following an assessment of predicated and cumulative noise emissions, as

required by B23 will provide more certainty in the build and accuracy in protecting the public interest, the environment and existing amenity of the locality than the requirements set out in Condition E11.

(F10) Deliveries and service vehicles

During ongoing use of the commercial premises, all delivery and service vehicles generated by the development,

a) *are undertaken only during the following hours:*

Monday to Friday: from 9am to 5pm.

Saturday, Sunday, and Public Holidays: not permitted.

b) *must be loaded and unloaded within the confines of the allotment boundary and only occur in designated loading and unloading areas on the property*

c) *must not obstruct vehicle access within Arnolds Lane*

d) *do not occur on the street*

e) *do not obstruct other operations*

f) *minimise disruption to public spaces*

g) *maintain a clear service vehicle dock, car parking spaces and access driveways at all times;*
and

h) *all vehicles must enter and leave in a forward direction.*

Condition reason: To ensure deliveries to the premises are carried out safely and protect the amenity of the local area. (CU1-014 modified)

Comment

It is requested that this condition be amended to align with the hours of operation and service vehicle deliveries permitted by Condition F8.