

Memorandum (2)

Project:	Panel Reference 2017HCC012 – DA 521/2017 Forster Civic Precinct Development
To:	Hunter & Central Coast Joint Regional Planning Panel (the Panel)
Attention:	Bruce Moore & Steve Andrews, MidCoast Council (Council)
From:	Assessing Officer, Chris Speak, City Plan Strategy & Development (CPSD)
Date:	19 September 2017

RESPONSE TO QUERY FROM THE PANEL: PANEL REFERENCE 2017HCC012 – DA 521/2017 FORSTER CIVIC PRECINCT DEVELOPMENT

I make reference to the Panel's emails dated 14 September 2017 in which a number of matters were raised to be addressed in the consideration of DA 521/2017 prior to the Panel's meeting on Wednesday, 20 September 2017. For ease of reference, this memo addresses the Panel's points raised in the same order.

The Panel additionally requested that the concerns raised in the supplementary submission of Matthew Fraser, made on behalf of Merrick Spicer & Associates Taree, dated 12 September 2017, be addressed. CPSD has reviewed this submission and the associated documentation prepared by Location IQ, and commentary is provided herein.

Clarify whether Council sought any urban design advice, and what urban design assessment was undertaken?

Council has confirmed that it does not have a Design Review Panel and therefore the application has not been considered by such a panel. Council also noted that it does not rely on a specialist architect or designer to provide in-house comments and that an assessment against the design principles is to be undertaken by the assessing officer.

CPSD has undertaken a detailed review of the development against the 9 Design Principles of SEPP65 and the Apartment Design Guide. During the assessment process, requests for additional information were made in respect of design aspects relating to amenity impacts for future residents between the individual residential units.

Separation distances and unit design and layout were addressed by the architect, and the various letters of correspondence to this effect are attached (refer to Attachment 1). A summary of the correspondence is provided below:

Correspondence	Date	Content	Reference
Email CPSD to TVS 	12 July 2017	Visual / Acoustic privacy Solar access Ventilation Apartment layout Storage	Attachment 1
Email TVS to CPSD 	21 July 2017	Visual / Acoustic privacy Solar access Ventilation Apartment layout Storage	Attachment 1
Email	4 August 2017	Visual / Acoustic privacy	Attachment 1b

CPSD to TVS →		Apartment layout	
Email TVS to CPSD ←	14 August 2017	Visual / Acoustic privacy Apartment layout	Attachment 1b
Phonecall CPSD to TVS →	22 August 2017	Inadequate design response to ventilation and privacy	
Email TVS to CPSD ←	23 August 2017	Response to phone call Visual Privacy Ventilation mark-up	Attachment 2a; 2b
Email CPSD to TVS →	23 August 2017	Area of conflict B and C Ventilation and privacy	Attachment 2a; 2b
Email TVS to CPSD ←	24 August 2017	Amended design treatment	Attachment 2a; 2b
Email TVS to CPSD ←	24 August 2017	Ventilation	Attachment 2a; 2b
Email CPSD to TVS →	25 August 2017	Confirmation of revised detail calculations	Attachment 2a; 2b

The car parking breakdown table was not included in the report (p.45), could we have a copy please.

Table 1 - Car park breakdown

Land Use	Car Park Numbers (required by policy)	Number provided	Location	Stage
Library	44		Lower Basement Building A and B	Stage 1 – 176 and Stage 2 - 76
Community centre	20			
Visitor centre	10			
Restaurant	43			
Retail / supermarket	47			
Cinema	80			
Nightclub	82			
Gym	13			
Business Centre	3			
Total	342			
Adjusted Total	270	252		
Hotel	42	42	Basement of Building D, accessed from Lower Ground	Car park in stage 2 – hotel in stage 4
Residential Tower A (53 x	62	52 + 26 tandem = 78	Level 1 and 2 of podium under Building A	Stage 1

units – 124 beds)				
Residential Tower B (57 Units (143 beds) and 2 x penthouse)	71.5 + 2.8 = 75	74 + 40 tandem = 114	Level 1 and 2 of podium under Building B & C	Stage 2
Residential Tower C (29 units (68 beds) and 2 x penthouse)	34 + 2.8 = 37			
Total Residential	175	192		
Serviced Apartments	19	19	Level 1 and 2 of podium under Building B & C and on entry to ramp	Stage 2

A zoning plan showing the site and surrounding properties would be helpful.

CPSD understands that Council has provided the Panel with a zoning plan for the site and surrounding properties.

The new education and childcare SEPP appears to be relevant to the application, and needs to be addressed. Does the vegetation in non-rural areas SEPP apply as its zoned B4, and if so does it also need to be addressed?

SEPP (Educational Establishments and Child Care Facilities) 2017

Clause 22 of Part 3 stipulates that if the requirements of the *Education and Care Services National Regulations* relating to the amount of unencumbered indoor and outdoor space are not met in a DA, the concurrence of the regulatory authority will be required.

The Regulations require a child care premises to provide 3.25m² of unencumbered indoor space per child and 7m² of unencumbered outdoor space per child.

The child care centre proposes 294m² of internal floor area and an outdoor play area of approximately 100m² in area, and is intended to cater for up to 50 children.

Nevertheless, Subclause 1(1) of Schedule 5 of the SEPP provides that *'This Policy does not apply to or in respect of the determination of a development application made under Part 4 of the Act, but not finally determined before the commencement of this Policy.'* The DA was lodged on 15 May 2017, prior to the commencement of this SEPP on 1 September 2017. Accordingly, Clause 1(1) of Schedule 5 applies and this SEPP does not apply to the proposal.

Notwithstanding, Subclause 1(2) of Schedule 5 stipulates that:

Despite subclause (1), before determining a development application referred to in that subclause for development for the purpose of a centre-based child care facility, the consent authority must take into consideration the regulatory requirements and the National Quality Framework Assessment Checklist set out in Part 4 of the Child Care Planning Guideline, in relation to the proposed development.

As mentioned above, the application proposes a space for a child care centre catering for up to 50 children with no internal details. Fifty children was considered to be a 'worst-case' scenario for undertaking impact assessments relating to acoustic and traffic reports. It is acknowledged that a detailed layout would be specific to an individual operator which will be resolved at a later date having regard to the regulatory requirements and the National Quality Framework Assessment Checklist of the *Child Care Planning Guideline*. On this basis, it is noted that the limiting factor for complete compliance with the Guidelines would be outdoor open space, with the application having provided only 100m². Nevertheless, provisions are in place to enable the regulatory authority through a formal concurrence to approve a reduction in such an arrangement and therefore it is considered appropriate to include a condition of consent for detailed design where the provision of outdoor space can be resolved.

SEPP (Vegetation in Non-Rural Areas) 2017

The subject site is zoned B4 mixed Use and therefore this SEPP applies to the site.

The scheme does not trigger the Biodiversity Offsets Scheme as:

- a) the site is not within a mapped area (Figure 1) and;
- b) less than 0.25ha of the land will be cleared.

Therefore, the assessment provided under the Flora and Fauna section of the assessment report adequately considers the impacts.

Figure 1 - Extract from Biodiversity Value Map



Are there details for the internal layout and spaces for the child care centre? I can't find a plan showing it.

The development plans do not provide an internal layout of the child care centre. However, the SEE accompanying the DA notes that:

The proposed child care centre is located at the ground floor of Building D and provides a 294m² area for a childcare operator to set up a childcare centre catering for up to 50 children, and includes an outdoor play area for the use of the children. The facility would be accessed from an entry from West Street which is combined with an entry for the gymnasium.

The plans indicate that the outdoor play area is approximately 100m² in area.

In the context of this mixed-use development, CPSD is satisfied that the application provides a sufficient level of detail regarding the proposed child care centre and that full details for the design and layout can be resolved prior to the release of a Construction Certificate Stage 4, as per Condition 12 in the draft Conditions of Consent.

Is the 3pm winter shadow correct? (plan 5490.13) - it appears to be somewhat shorter than the 9am shadow. Could the accuracy of all shadow diagrams be confirmed, and if the 3pm one is wrong it needs to have some assessment.

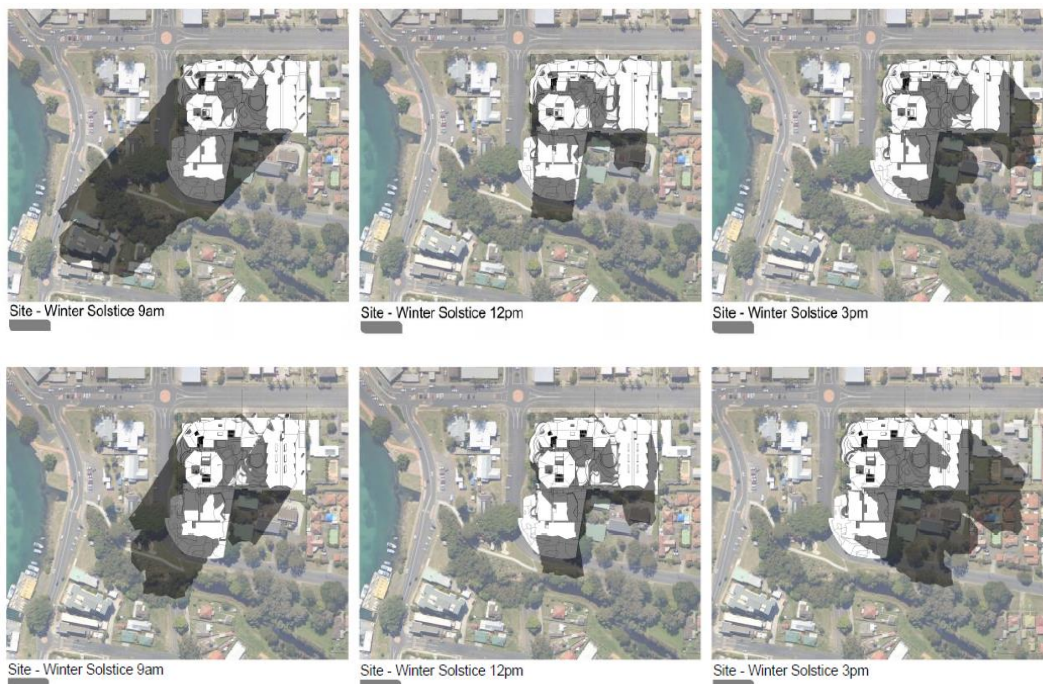
TVS Architects reviewed the shadow diagrams in light of this request and noted that the software utilised for this detail included daylight saving. The shadows are therefore one hour earlier. The architect has resolved this by providing an updated shadow diagram.

CPSD has undertaken a review of this revised shadow diagram and notes that the 9am shadow has less impact than originally considered, while the 3pm shadow is slightly extended and reorientated.

Given the shift of the shadow relative to the orientation of the site, the assessment provided in the report maintains an adequate conclusion, being that the shadow diagrams indicate an acceptable impact.

Importantly, by way of an update, the dwellings to the south west are now demonstrated to not be affected. Whilst it was previously reported that the 3pm shadow will not cast over the solar panels of the neighbouring holiday park, the amendment to the diagram now indicates that the panels will be affected at 3pm. Nevertheless, acknowledging the original shadow diagram, the solar panel will continue to receive sunlight from 9am to 2pm.

The figures below demonstrate the changes in the diagrams.



It is noteworthy that the architect has updated the solar access calculations for the SEPP 65 assessment. These indicate a more positive outcome.

Could council confirm no approvals are required under the National Parks & Wildlife Act for works near the middens or elsewhere on the site.

Information submitted with the application identified evidence of a disturbed Aboriginal midden located in the south-western corner of the site. The application was amended to not affect this area.

The potential impact on the midden relevant to the *National Parks & Wildlife Act 1974* (NPWA) was raised with the applicant. The applicant's Aboriginal Heritage consultant confirmed that the proposed development will have no impact on the midden.

As the applicant does not propose to disturb the midden, an integrated approval is not required from the Office of Environment & Heritage under s.91 of the EP&A Act, having regard to s.90 of the NPWA. Nevertheless, Condition 68 has been included in the draft Conditions of Consent requiring the protection of Aboriginal objects and places in accordance with the NPWA.

It's not clear whether the development is in fact integrated. They have asked for an approval under s.91 of the Water Management Act, but does the WaterNSW response address this?

The applicant identified on the Application Form that the proposal is 'nominated integrated' development under s.91 of the *Water Management Act*. Accordingly, the application was referred to the Office of Water as nominated integrated development.

DPI Water confirmed that the subject site is not waterfront land and therefore a controlled activity approval is not required for the development under s.91 of the *Water Management Act* (refer to Attachment 3).

Notwithstanding, Water NSW confirmed that the application is 'integrated development' pursuant to s.91 of the EP&A Act as a 'water supply work approval' (a type of 'water management work approval' under s.90 of the *Water Management Act*) is required for dewatering during the construction phase. Water NSW's General Terms of Approval have been included as Condition 45 in the draft Conditions of Consent (refer to Attachment 4).

The ecological assessment is not included in the documents. Could council confirm the assessment addresses the requirements of the Threatened Species and EPBC Acts ie was a 7 part test or the like required or carried out?

In considering s.5A of the EP&A Act (now repealed), Council's Senior Ecologist confirmed that the development is not considered likely to significantly impact threatened biodiversity and therefore a Species Impact Statement is not required.

Council's Senior Ecologist also confirmed that the proposal does not significantly affect matters of national environmental significance and referral to the Commonwealth Government is not required pursuant to the EPBC Act.

Is there a condition for site testing as recommended on page 18?

Condition 22 of the draft Conditions of Consent pertains to groundwater quality testing for contaminants prior to the issuing of a Construction Certificate for Stage 1 of the development. A condition pertaining to general site testing in accordance with SEPP 55 requirements has not been included as a draft Condition of Consent as it was considered that adequate site history and knowledge was available for the site.

Is Council satisfied the units meet, or can meet BCA fire egress requirements?

Noting that the referral response from Council's Building Team only provided recommended conditions of consent, CPSD has sought comment from Council regarding BCA fire egress requirements.

Council responded by email on 15 September 2017, as follows:

Council's Building Surveyors would not normally carry out a BCA assessment on this scale of development given the limited construction details provided and the potential time implications and cost that are not covered by the DA fees. It is my understanding that compliance with the BCA is not a matter for assessment under Section 79C and is carried out and forming the backbone of a CC. Nevertheless a condition 5 of consent is imposed requiring compliance with the BCA.

There are also some matters that would be helpful to have at the briefing next Wednesday:

- ***details of changes that were made to address SEPP 65 building separation requirements***
- ***a plan showing the complying units for solar and natural ventilation under SEPP 65, and details of the alternative solution for ventilation***

Refer to Attachments 1 and 2.

Supplementary submission of Matthew Fraser

The original submission from Matthew Fraser was received during the exhibition period. The submission acknowledged that the original application did not submit floor layout plans for the cinema and that the size of the allocated floor space would be substantial. It was submitted that the substantial size of the allocated floor space would represent a commercial threat to the existing cinema complex nearby, and additionally, that the proposed cinema would be unviable in the long term, thereby creating a disservice to the community.

The key aspects raised in Mr Fraser's original submission were discussed in the original assessment report presented to the Panel.

Mr Fraser submitted a supplementary submission which is further considered below. In this submission, three distinct matters were raised:

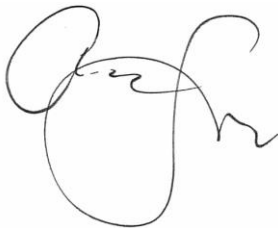
- The size of the complex and number of seats proposed would indicate a much larger facility, potentially supporting 5 – 6 screens.
- A supporting report from Location IQ concluded that a 5-6 screen complex may not be sustainable and would result in the closure of the existing cinema complex at Tuncurry.
- The application must be supported by a floor plan of the cinema in accordance with the Regulations.

Comment: The original application clearly detailed a proposed 800 seat, 3 screen cinema complex within the written documentation. A plan of the layout of the cinema within the allocated space was subsequently provided by the applicant demonstrating this layout.

The plan was provided to Council who provided this to CPSD to enable further assessment. The cinema, including the layout as proposed, was considered in the assessment report.

If there is anything in this document that requires further clarification, please do not hesitate to call the undersigned on 02 4925 3286 to discuss.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Chris Speek', with a large loop at the end.

Chris Speek
Associate Director | Newcastle