

COUNCIL RESPONSE TO APPLICANTS SUBMISISON 15/9/2023

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

The further details from the applicants were received late Friday evening (15 September 2023) in response to the Supplementary report and, as such, brief responses are provided below.

It is further advised that CN has taken great efforts to facilitate returning this application to the HCCRPP in a timely manner including organising a further review by CN's Urban Design Review Panel. It is noted that several of the applicants' issues relate to timing and outcomes associated with returning the applications quickly to the HCCRPP which could otherwise have been addressed where the reports for the applications had been further delayed for say another 4-8 weeks (which was not the avenue taken by CN in this instance). Similarly, other aspects are not within CN's control to provide advice on such as the views of the HCCRPP on matters during their consideration of the developments.

It is further advised that the applicants have taken the opportunity of the supplementary report to raised concerns with a large number of conditions, the majority of which were contained within the original report and no submissions raised in response during the original determination process.

Unless noted otherwise, the comments are applicable to both DAs (DA2022-01316 & DA2022-01317) excepting the flood refuge which is only relevant to DA2022-01316.

Issue	CN Comments
<i>CN ADG Review details</i>	<p>The review details were undertaken via an external consultant and there was some difficulties and delay obtaining the further 'raw' review details. These were provided to the applicants as soon as possible.</p> <p>The Supplementary report clearly indicates CN's final assessment of the ADG matters inclusive of solar access elements.</p>
<p>Requirements for Traffic Control Signals</p> <p><i>CN have retained Condition 97 (Stage 1) which states "In accordance with the Transport for New South Wales letter dated 25 January 2023 the developer making provision at the King and National Park Street traffic control signals for red arrow protection for pedestrians, such to be completed prior to issue of any occupation certificate."</i></p> <p><i>The Applicant has repeatedly</i></p>	<p>CN's Supplementary Report details the assessment of nexus for this condition which the applicant has been able to review. The applicant holds a different view in this instance regarding the nexus and argues that it is unreasonable in this instance because it was not imposed on other earlier applications.</p> <p>It is confirmed that the development at 1 National Park Street was approved as a result of a s34 Conciliation Conference in the Land and Environment Court on 17 August 2020 (DA2019/00711 was lodged 25 June 2019), this was not determined in recent months. Similarly, 723 Hunter Street (DA2018/00510) was originally approved by</p>

<p><i>asked CN to identify the nexus between the development and the requirement for a traffic signal upgrade. This nexus has not been demonstrated by CN.</i></p> <p><i>Without CN clearly explaining the nexus of the condition to the development, the condition is unreasonable. There are several similar scale residential developments approved or constructed within the vicinity of the intersection in the past 5 years and no similar obligation has been conditioned, including 1 National Park approved across the road only a few months ago.</i></p> <p><i>The burden on the Applicant to rectify an existing and known pedestrian safety risk at a major 6 lane CBD intersection is unreasonable in the circumstances given no nexus is able to be demonstrated linking its existence to the proposed development. This condition should be deleted, or any works that benefit others should be offset from s 7.11 contributions.</i></p>	<p>the then JRPP on 13 November 2018 (lodged 24 May 2018).</p> <p>The need for traffic upgrade works, such as the condition imposed, will typically arise at a point in time and where there is sufficient nexus. As detailed in CN's report, it is considered that the proposal is of sufficient size and scale to meet the nexus requirements and, at this time, these works are required.</p> <p>Finally, it is confirmed that neither of CN's s7.11 and s7.12 contributions plans cover traffic upgrade works such as the works required under the proposed condition 45. These contributions plans cover only limited traffic works including footpaths, cycle ways and bus stops. In this respect, no reduction in contributions under s7.11 would be applicable as the required works cannot be considered as 'works in kind' under an adopted contributions plan.</p>
<p><i>Flood Refugee - Shelter in Place</i></p> <p><i>The Record of Deferral noted that the Planning Panel determined that the application should be deferred for "Arrangement for shelter in place."</i></p> <p><i>CN's Assessing Officer provided notice on Tuesday 12 September 2023 that CN Engineers have concerns with the 'amenity' provided by the proposed flood refuge. Specifically, the lack of weather protection in the nominated location.</i></p> <p><i>There was little opportunity to work through this concern of CN and a design change condition has been imposed; this condition will add GFA, result in a poor outcome and need to be reviewed by the UDRP.</i></p> <p><i>The flood refuge has been considered by the Applicant's civil engineer, who has confirmed that refuge without design change will comply with the CN's DCP (which does not require weather protection) and the Draft Shelter in Place guidelines (which also do not require weather protection).</i></p> <p><i>Urbis have reviewed recent CN approvals to understand if 'amenity' was considered in respect to flood refuge areas. Specifically, 1 National Park Street was not required in the LEC determination and subsequent</i></p>	<p>CN's reports have addressed this issue in context of the site.</p> <p>It is advised that the site is noted to be within a high-risk area (L4). Flood refuge (SIP) is proposed to be at Level 5 Communal Area. These areas can be accessed via the stairs or car park ramp.</p> <p>L4 is defined under the NDCP 2012 Section 4.01 Flood Management as: -</p> <p><i>Short duration flash flooding with no warning time and enclosing waters during the PMF not suitable for wading or heavy vehicles i.e.. hydraulic threshold exceeds H2. On site refuge is necessary and if hydraulic threshold exceeds H3, heavy frame construction or suitable structural reinforcement required.</i></p> <p>The NDCP 2012 Section 4.01 Flood Management provides the following details for flood refuges: -</p>

4.56 modification (which was assessed by the Planning Panel) to provide 'high amenity' flood refuge. It is unclear why 711 Hunter Street is being held to a higher 'amenity' standard, when the flood risk is comparable.

This condition should be amended to be appropriately aligned with the CN DCP, Draft Shelter in Place guidelines and current practice (i.e., as per 1 National Park). An amendment to the condition has been suggested in the attached matrix.

On-site refuge

3. On-site refuge is to be provided for all development where the life hazard category is L4 unless the proposed development is less than 40m from the perimeter of the PMF extent and the higher ground is accessible.

Note: Refuge can be in the form of on-site refuge or convenient access to flood free ground. In general, it is not acceptable to rely on refuge provided by or on other development sites. In all cases where on site refuge is provided, it is to be both intrinsically accessible to all people on the site and an integrated part of the development (eg a second storey with stair access). The route to the refuge is to be fail safe, plainly evident and self-directing. In most cases, life hazard categories are nominated on the flood information certificate for the relevant property.

Standards for on-site refuge

4. Where on-site refuge is required for a development, it should comply with the following minimum standards:
- (a) The minimum on-site refuge level is the level of the PMF. On-site refuges are designed to cater for the number of people reasonably expected on the development site and are provided with emergency lighting.
 - (b) On-site refuges are of a construction type able to withstand the effects of flooding. Design certification by a practising structural engineer that the building is able to withstand the hydraulic loading due to flooding (at the PMF).

Note: In most cases, the potential risk to life hazards categories are given on the flood information certificate for the relevant property.

CN had further confirmed on the 12 September that 'weather protection' for the flood refuge was the main concern raised by the HCCRPP and that the term 'amenity' was incorrectly raised in this instance. It was confirmed in discussions and emails that the HCCRPP had raised as part of the determination meeting discussions concerns with the design of the flood refuge in terms of weather protection.

In this respect, the draft condition 45 - *Podium common room all weather protection/Flood refuge* was recommended to address these concerns with the proposed flood refuge (noting that position of the flood refuge within the design was proposed by the applicant and has been assessed by CN on this basis).

It is understood that CN has historically and in previous instances, allowed the use of car parking areas where there is sufficient shelter and facilities (i.e. that the area would offer sufficient depth to allow people to shelter from wind/rain in a storm event and have access to facilities e.g. toilets).

Notwithstanding the above, recent Flood Enquiry and focus on Shelter In Place (SIP) guidelines and industry discussions have led to the understanding that a SIP shall generally consider designs which ensures that the expected people can be safe from extreme wet weather associated events and effects such as lightning strikes, plus health effects of being exposed to heavy rain and cold for a period of time.

In modern terms, the principles of a shelter in place is not only focused on provision of a safe location but personal safety and general wellbeing during the period of a flash flood event.

With this in mind and to ensure concerns from the Panel can be appropriately addressed, a revised Condition 45 is proposed as follows:

45. Podium common room all weather protection/Flood refuge

Prior to the issue of any Construction Certificate, the flood refuge being the podium level communal room area must be designed to ensure all weather protection is provided. The design must ensure that anyone seeking flood refuge in the

	<p>communal room is not exposed and is safe from weather conditions such as prolonged rainfall and lightning effects.</p> <p>Weather protection design of the flood refuge communal room area via the provision of "bi-fold" doors or similar must be designed to a high architectural quality. Written approval for any amendments to the design for the flood refuge is to be obtained from the City of Newcastle's Urban Design Review Panel (UDRP).</p> <p>Condition Reason: To ensure that the flood refuge achieves suitable level of weather protection during storm events and is fit for purpose.</p>
<p>Hours of operation and restriction of live music</p> <p><i>CN has identified the basis of the limitation for operational hours for the commercial tenancies is a lack of sleep disturbance assessment provided (Noise Policy for Industry 2017).</i></p> <p><i>The Noise Policy for Industry 2017 without ambiguity, specifically excludes; noise 'from amplified music/patrons in both licenced and non-licensed venues' and is therefore not applicable to the operation of venues (See applicants' submission)</i></p> <p><i>The Policy goes on to advise more relevant and applicable noise criteria have been established for these uses. The Applicant confirms no other Council in NSW has attempted to enforce the prohibitive and unrelated sleep disturbance controls on the Applicant previously. Given there is no specific EPA guidelines for all venues, the guideline for licenced venues (Liquor and Gaming noise emission guidelines) prepared specifically for patron noise and amplified sound is the accepted practice to assess acoustic impacts for both licenced and non-licensed venues in NSW. The acoustic modelling was prepared on this basis.</i></p> <p><i>The limitation to 10pm is considered unreasonable given the justification provided by CN under the false pre-tense of an unrelated EPA assessment criteria and would severely limit the Applicant from achieving a successful retail ground plane experience.</i></p>	<p>The Noise Policy for Industry 2017 (NPfI) applies to all development except noise <i>'from amplified music/patrons in both licenced and non-licensed venues'</i>.</p> <p>The Liquor and Gaming noise emission guidelines applies noise <i>'from amplified music/patrons in both licenced and non-licensed venues'</i>.</p> <p>The applicant's submission argues that the commercial tenancies are <i>"..specifically excluded; noise 'from amplified music/patrons in both licenced and non-licensed venues' and is therefore not applicable to the operation of venues"</i> (emphasis added).</p> <p>Notwithstanding this, only one tenancy was proposed as a 'venue' (i.e. the three level tenancy T1 on the corner of Hunter and National Park Streets). The remaining tenancies were nominated as speculative food and drink or business premises. It is considered that the Noise Policy for Industry 2017, and associated sleep disturbance criteria, is the appropriate assessment requirements for these remaining tenancies. It is considered to be appropriate to limit these tenancies to 7am to 10pm at this time.</p> <p>An acoustic assessment was only modelled for the T1 tenancy, the assessment incorporates a series of assumptions in its noise modelling to simulate a likely in principle scenario based on BCA requirements. No actual operator is proposed as part of the application. No further modelling was provided for the remaining tenancies.</p> <p>Liquor and Gaming noise emission guidelines provides for a different assessment regime to the NPfI, with this criterion being more detailed and comprehensive in its overall requirements.</p> <p>If the remaining tenancies had been proposal as 'venues' CN would have undertaken a detailed assessment on this basis including requiring submission comprehensive acoustic report.</p>

<p><i>Given the recommendations in the acoustic report (pertaining to relevant/applicable guidelines) and significant proposed conditions provided by Council, it is considered an approval until midnight represents a positive contribution to Newcastle West, and a non-existent / acceptable risk to the community in achieving its activation goals.</i></p> <p><i>The conditions relating to hours of operation should be amended, considering CN have all available information to approve operation until midnight. An amendment to the condition has been suggested in the attached matrix.</i></p> <p><i>Further, post the first determination meeting in July an additional condition seeking to restrict entertainment and live music from the tenancies has been proposed – at all times, not just past 10pm.</i></p> <p><i>No justification or communication with the Applicant occurred in seeking to impose this condition update.</i></p> <p><i>The condition relating to live music should be deleted.</i></p>	<p>No sleep disturbance assessment was put forward by the acoustic consultant. The environmental team remain concerned that higher maximum noise levels may be experienced due to the level of variability associated with the assessment of the volume patrons proposed with raised voice near receivers. As such, the environmental team does not propose to amend the recommended condition of consent restricting the hours of operation of the any future licensed premises to 7:00am to 10:00pm Monday to Sunday.</p> <p>The environmental team also notes that no Plan of Management was submitted with the application for the operation of the T1 tenancy.</p> <p>The environmental team confirm that no assessment under the noise criteria from the Independent Liquor and Gaming Authority (ILGA) had been carried out for the operation of the food and drinks tenancies within Stage 1 or Stage 2 (referred to as T2 - T5 and T6-T9 respectively in the Acoustic Assessment prepared by Acoustic Logic dated 19 May 2023) . As such, the ESU recommends restricting live performances to T1 (as defined by the Acoustic Assessment prepared by Acoustic Logic dated 19 May 2023) until such time as this type of entertainment can be demonstrated to comply with the requirements of the ILGA criterion.</p> <p>The following condition is proposed in this respect:</p> <ul style="list-style-type: none"> • Live musical entertainment being restricted to T1 as defined by the F&B Tenancy Acoustic Assessment prepared by Acoustic Logic dated 19 May 2023 until such time as a separate application and acoustic assessment prepared by a qualified acoustic consultant is submitted and approved by Council.
<p>Clause 4.6 Variation – Building Separation</p>	<p>The applicant has submitted an amended Cl4.6 variation in terms of Building Separation, for completeness and to meet the provisions of cl4.6(4) this has been further assessed having regard to the minor amendments. It is considered that the amendments are largely 'house keeping' to correct typos within the submitted Cl4.6 and do not involve any material changes that impact CN's assessments within the respect CN reports.</p> <p>The correction to the planning circular reference addresses the issue noted by CN's supplementary report and has no effect.</p>

	<p>An assessment of the amended Cl4.6 variation request confirms that the proposed amendments are very minor and of no consequence and, as such, CN's assessment under the original and supplementary reports remain and it is recommended that the proposed Cl4.6 variation be supported.</p>
<p><i>Clause 4.6 Variation Request - Floor Space Ratio</i></p>	<p>The applicant has submitted an amended Cl4.6 variation for FSR, for completeness and to meet the provisions of cl4.6(4) this has been further assessed having regard to the minor amendments. It is considered that the amendments are largely 'house keeping' to correct typos within the submitted Cl4.6 and do not involve any material changes that impact CN's assessments within the respect CN reports.</p> <p>The applicant still has slightly higher percentage variations to FSR than CN's calculations but these differences are very small in context of the overall total development and otherwise are considered to be acceptable and meet the provisions of clause 4.6 as detailed within CN's original and supplementary reports (differences between 0.15% to 0.25% or 32 m² -maximum over the entire two applications proposed total 14015 m²).</p> <p>The correction to the planning circular reference addresses the issue noted by CN's supplementary report and has no effect.</p> <p>An assessment of the amended Cl4.6 variation request confirms that the proposed amendments are very minor and of no consequence and, as such, CN's assessment under the original and supplementary reports remain and it is recommended that the proposed Cl4.6 variation be supported.</p>

STAGE 1

Conditions	CN Comments
<p>Condition 21 - Food Premises Standard</p> <p><i>Before the issue of a construction certificate for fitout of a food premises, details are to be provided demonstrating that the design and construction of the proposed development is to be in accordance with the relevant requirements of Australian Standard 4674:2004 - Design, Construction and Fit-Out of Food Premises. Full details are to be included in the documentation for the construction certificate application.</i></p> <p><i>Condition reason: to require details of food premises design and fit-out.</i></p>	<p>The applicant proposed changes are noted and could be adopted.</p> <p>It is noted that this is a standard condition and it is considered that the amendments do not add much clarity considering the structure of the original condition. Notwithstanding this, the condition could be amended.</p>
<p>Condition 30 CPTED Requirements</p>	<p>Applicants amended not accepted. This does not align with the UDRP's recommendations 31 May 2023.</p>
<p>Condition 45 - Podium common room all weather protection/flood refuge</p>	<p>The applicants proposed amendments are not accepted.</p> <p>A revised condition CN is proposed below:</p> <p>45. Podium common room all weather protection/Flood refuge</p> <p>Prior to the issue of any Construction Certificate, the flood refuge being the podium level communal room area must be designed to ensure all weather protection is provided. The design must ensure that anyone seeking flood refuge in the communal room is not exposed and is safe from weather conditions such as prolonged rainfall and lightning effects.</p> <p>Weather protection design of the flood refuge communal room area via the provision of "bi-fold" doors or similar must be designed to a high architectural quality. Written approval for any amendments to the design for the flood refuge is to be obtained from the City of Newcastle's Urban Design Review Panel (UDRP).</p> <p>Condition Reason: To ensure that the flood refuge achieves suitable level of weather protection during storm events and is fit for purpose.</p>
<p>Condition 46 - Proposed car parking screening (lighting)</p>	<p>The applicants' amendments, as proposed, are not accepted but a revised condition below is provided to address the concerns raised:</p>

	<p>Proposed car parking screening (Lighting)</p> <p>The proposed screening to the car parking areas being designed so that it ensures screening of the car park such that there are no unreasonable impacts from lighting or headlight glare within the subject site and surrounding areas, that the screening and associated lighting is designed to provide a 'warm glow' to the proposed development, while maintaining an architecturally attractive and compatible element within the overall design of the proposal.</p> <p>Prior to the issue of any Construction Certificate, written approval for the design of the car park screening is to be obtained from the City of Newcastle's Urban Design Review Panel (UDRP).</p> <p>Note: The required details are to be submitted to the City of Newcastle who will arrange consideration of the further design development by the UDRP.</p> <p>Condition Reason: To minimise amenity impacts on the subject site and surrounding areas and ensure a high standard architectural outcome that maintains design excellence.</p>
Condition 78 - Staging of Infrastructure	<p>Applicants' deletion is not agreed.</p> <p>While the two conditions are identical they are located within different sections of the consent operating i) prior to issue of construction certificate and ii) prior to issue of occupation certificate.</p>
Condition 79 - Provision of Public Art	<p>Applicants' deletion is not agreed.</p> <p>While the two conditions are identical they are located within different sections of the consent operating i) prior to issue of construction certificate and ii) prior to issue of occupation certificate.</p>
Condition 80 - Dwelling Storage	<p>Applicants' deletion is not agreed.</p>
Condition 82 CPTED Requirements	<p>Applicants' deletion is not agreed.</p> <p>The majority of these aspects could be introduced outside of needing as construction certificate. CN want the certifier to ensure the restricted changes are not made prior to the issue of the occupation certificate.</p>
Condition 86 Interim Park (Stage 2)	<p>Applicants' amendments are not agreed.</p> <p>This issue was previously raised by the applicants with the HCCRPP directly and not accepted. The imposed timing is considered to be reasonable. Additionally, as the</p>

	<p>applicants have submitted two separate DAs, the timing of the proposed works by the applicants would not align with the public interest - CN could not reasonably pursue the individual apartment owners in Stage 1/Hunter Street tower for any failure to construct the 'pocket park' if the developer otherwise exits the project after the first DA.</p>
Condition 97 - Requirements for Traffic Control Signals	<p>As detailed above, CN does not propose to amend this condition. It is noted that this had already been addressed in the previous assessment, the applicant raised their concerns and the HCCRPP provided initial thoughts on the matter.</p>
Condition 111 - Hours of Operation	<p>As detailed above, CN does not propose to amend this condition. It is noted that this was condition 109 previously and had already been addressed in the previous assessment, the applicant raised their concerns and the HCCRPP provided initial thoughts on the matter.</p>
Additional Condition	<p>Having regard to the above assessment, CN proposes to recommend the following condition to confirm and clarify the terms of the environmental assessment in terms of hours of operation and acoustics: -</p> <ul style="list-style-type: none"> • Live musical entertainment being restricted to T1 as defined by the F&B Tenancy Acoustic Assessment prepared by Acoustic Logic dated 19 May 2023 until such time as a separate application and acoustic assessment prepared by a qualified acoustic consultant is submitted and approved by Council.

STAGE 2

Conditions	CN Comments
<p>Condition 21 - Food Premises Standard</p> <p><i>Before the issue of a construction certificate for fitout of a food premises, details are to be provided demonstrating that the design and construction of the proposed development is to be in accordance with the relevant requirements of Australian Standard 4674:2004 - Design, Construction and Fit-Out of Food Premises. Full details are to be included in the documentation for the construction certificate application.</i></p> <p><i>Condition reason: to require details of food premises design and fit-out.</i></p>	<p>The applicant proposed changes are noted and could be adopted.</p> <p>It is noted that this is a standard condition and it is considered that the amendments do not add much clarity considering the structure of the original condition. Notwithstanding this, the condition could be amended.</p>
Condition 30 CPTED Requirements	Applicants amended not accepted. This does not align with the UDRP's recommendations 31 May 2023.
Condition 76 - Staging of Infrastructure	<p>Applicants' deletion is not agreed.</p> <p>While the two conditions are identical they are located within different sections of the consent operating i) prior to issue of construction certificate and ii) prior to issue of occupation certificate.</p>
Condition 78 - Provision of Public Art	<p>Applicants' deletion is not agreed.</p> <p>While the two conditions are identical they are located within different sections of the consent operating i) prior to issue of construction certificate and ii) prior to issue of occupation certificate.</p>
Condition 80 - Dwelling Storage	Applicants' deletion is not agreed.
Condition 81 CPTED Requirements	<p>Applicants' deletion is not agreed.</p> <p>The majority of these aspects could be introduced outside of needing as construction certificate. CN want the certifier to ensure the restricted changes are not made prior to the issue of the occupation certificate.</p>
Condition 85 Interim Park ('Stage 2')	Agreed - this condition can be deleted
Condition 123 - Limitation on live musical entertainment	As detailed above, CN does not propose to delete this condition. It is confirmed that during the finalising of the supplementary report it was determined that this condition was missed in error while drafting of conditions.