

SUPPLEMENTARY REPORT

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL



PANEL REFERENCE & DA NUMBER	PPSHCC-296 MA2022/00433
LGA	City of Newcastle (CN)
PROPOSED DEVELOPMENT	Section 4.55(2) modification to amend condition no. 76 of DA2019/01150 to allow the use of the outdoor terrace (associated with the Rooftop Bar) between 10:00pm and 12:00 midnight, Monday to Saturday.
STREET ADDRESS	185 Hunter Street, Newcastle
APPLICANT	URBIS PTY LTD
OWNER	EAST END STAGE 1 PTY LTD
DATE OF MODIFICATION LODGEMENT	1 December 2022
DATE OF DETERMINATION MEETING	19 August 2024
APPLICATION TYPE	Modification Application under Section 4.55(2)
REGIONALLY SIGNIFICANT CRITERIA	<p>Section 275 of the <i>Environmental Planning and Assessment Regulation 2021</i> states that a council must not determine an application to modify a development consent under the Act, Section 4.55(2), on behalf of a regional planning panel, if the application is of a kind specified in the <i>Instruction on Functions Exercisable by Council on Behalf of Sydney District or Regional Planning Panels— Applications to Modify Development Consents</i> published on the NSW Planning Portal on 30 June 2020.</p> <p>Council is not able to determine an application under Section 4.55(2) of the Act, to modify a development consent granted by a Regional Panel, if the application proposes an amendment to a condition of consent that was amended by the Panel.</p>
RECOMMENDATION	Approval, subject to conditions of consent and a 12-month trial period for the use of the outdoor terrace associated with the Rooftop Bar between 10:00pm and 12:00 midnight Monday to Saturday.

Background

This supplementary report provides further information in response to matters raised during the determination meeting held on 19 August 2024 and provides associated amended conditions of consent.

The Panel has considered the report prepared on this matter. Following a review of the assessment report and the issues raised by the submitters, several matters were identified which require further clarification prior to determination.

These matters relate to:

- (i) Inconsistencies in the assessment report, in particular *Section 1.2 - The Locality*, on pages 3 and 4.
- (ii) Further clarification regarding the Applicant's acoustic assessment and comments made by submitters.
- (iii) Further clarification regarding the total patron capacity of the premises and whether smoking is permitted on the outdoor terrace.
- (iv) Additional and / or amended conditions in relation to the following matters raised by HCCRPP:
 - Continuation of the trial period;
 - Acoustic monitoring;
 - Complaints register;
 - Plan of Management (POM); and
 - Operable awning.

The Panel requires further analysis of these matters raised above to undertake further consideration and to determine the matter.

The supplementary assessment should be read in conjunction with the original assessment report.

A version of the amended conditions is provided at **Attachment A**.

Response to matters raised by the HCCRPP

i) Inconsistencies in the assessment report

The description contained under *Section 1.2 - The Locality* is amended to include reference to the following surrounding properties and buildings:

Buildings located opposite the subject site, along on the northern side of Hunter Street Mall include:

- A 6-storey building comprising ground floor retail and 5 levels of residential apartments above. The site is identified as 200-212 Hunter Street and is commonly known as "Silk House"; and
- A 4-storey building comprising ground floor retail / commercial and 3 levels of residential apartments above. The site is identified as 220 Hunter Street and is commonly known as the "Former Commonwealth Bank".

Buildings to the east of the subject site include:

- A 10-storey residential apartment building located adjacent to the site. This building is commonly known as "Washington House"
- A 11-storey building with ground floor retail and 10 levels of residential apartments above. This building is commonly known as "Fabric House".

South of the site:

- A 11-storey building with ground floor retail and 10 levels of residential apartments above. This building is referred to as "Perkins & King".

It is confirmed the above properties have been considered in the assessment of the application, particularly in relation to noise impacts and residential amenity.

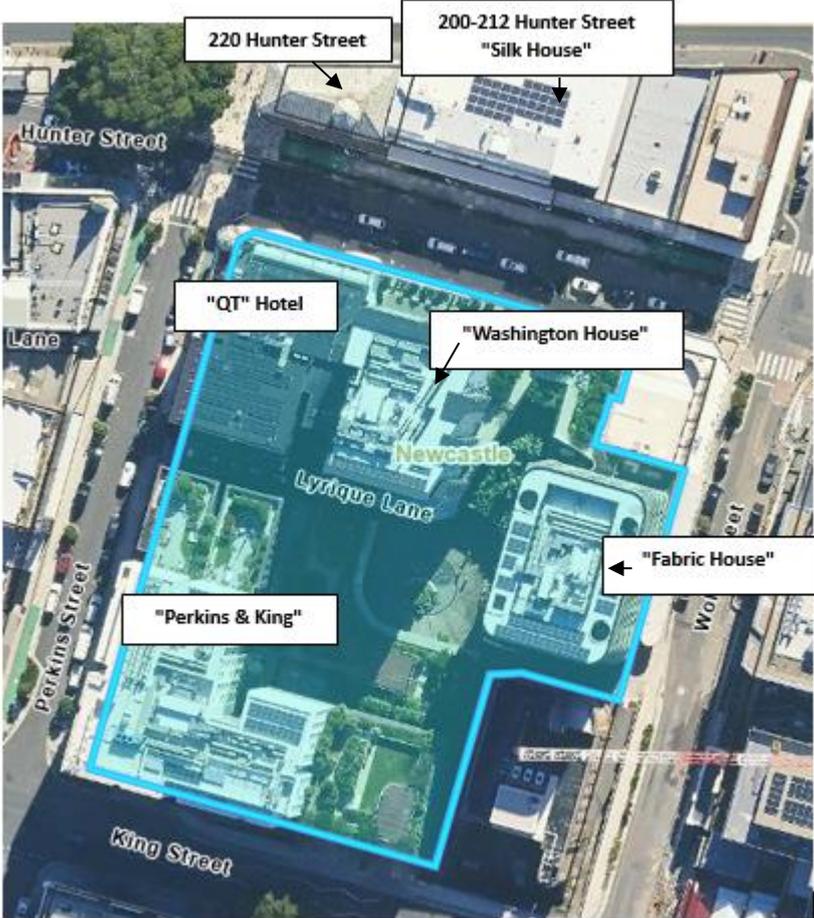


Figure 1: Site and surrounds

ii) Clarification regarding the Applicant's acoustic assessment and comments made by submitters.

A summary of the relevant issues and concerns raised by the submitters is provided in the table below.

Issues raised	Comments
<p>No noise data (including sleep disturbance criteria) has been provided.</p>	<p>The sleep disturbance criteria is referenced in Section 5.2 and Table 3 of the updated acoustic report, prepared by Acoustic Logic (Revision 1), dated 16/01/2024.</p> <p>Predicted noise levels at surrounding residential receivers are referenced and discussed in Section 6.4 and Table 9.</p>

	<p>The acoustic consultant's assessment concludes the predicted maximum façade noise levels comply with the relevant criteria.</p>
<p>The Applicant's acoustic assessment is deficient and cannot be relied upon.</p> <p>Noise data has not been updated in accordance with LA10 requirements.</p>	<p>Liquor & Gaming (L&G) LA10 criteria is referenced in Section 5.1 of the updated acoustic report prepared by Acoustic Logic (Revision 1, dated 16/01/2024).</p> <p>The noise emission criteria between 10:00pm and 12:00 midnight is provided in Section 5.3 and Table 4.</p> <p>The predicted operational noise emissions and results are provided in Section 6.3 and Table 8.</p> <p>The acoustic consultant's assessment concludes the maximum predicted noise levels for all nearby development complies with the relevant acoustic criteria between 10:00pm and 12:00 midnight.</p>
<p>The acoustic assessment does not contain any echo data.</p>	<p>The acoustic consultant confirms the sound modelling has taken into consideration geometrical divergence, atmospheric absorption, ground effect, reflection from surfaces and screening by obstacles.</p> <p>Section 7 of the updated acoustic report, prepared by Acoustic Logic (Revision 1), dated 16/01/2024 describes the absorptive material to be installed on the underside of the solid awning which is recommended to limit reflection / reverberation of sound from solid surfaces.</p>
<p>Insufficient evidence and minimal measures to address the current noise problems experienced from the rooftop bar before 10:00pm.</p> <p>No noise transmitter was located at the nearest residence. The location where the noise monitoring took place is unclear.</p>	<p>As the application relates to extended hours of use for the outdoor terrace, an assessment of current operations is not part of the scope of this assessment.</p> <p>However, there are additional measures proposed as part of this application which should assist with existing noise impacts such as those referenced in Section 7 of the acoustic assessment.</p> <p>Measures include a new solid barrier on the eastern end of the outdoor area, construction of an awning, with absorptive material underneath, installation of a noise limiting device and internal music not exceeding 75 dB(A) Leq.</p>
<p>L10 noise criteria is typically used to assess noise from licensed venues”.</p>	<p>The Liquor & Gaming (L&G) criteria comes from a standard set of conditions which L&G has typically \ historically applied to licensed premises following</p>

<p>The submitted acoustic assessment contains inadequate testing to establish whether L10 was exceeded. Specifically, L10 requires monitoring to be undertaken at the boundary of the nearest residence.</p> <p>No monitoring has taken place at the nearest residence.</p>	<p>complaints.</p> <p>If the conditions are applied and further complaints are received, the licensee may be required by L&G to then engage an acoustic consultant to carry out noise monitoring to assess compliance against the license conditions.</p> <p>However, when the L&G criteria is used for a proposed development (i.e. not operational), the applicant would only be expected to carry out modelling to determine if, based on all the assumptions in the model, they can comply with these criteria.</p> <p>The assessment is carried out on the basis of modelled results only.</p>
<p>The acoustic assessment's modelling is unacceptable for L10 measurements, as Council must know what the sounds measurements are "at the boundary of the nearest residence".</p>	<p>The measurement of actual sound emissions is not expected. The acoustic assessment's modelling and calculations is a standard and accepted practice.</p>
<p>Acoustic consultant has only undertaken monitoring from one location and "modelled" the sound impacts.</p>	<p>The acoustic consultant's approach is a standard and acceptable practice, as the actual proposed use has not commenced.</p> <p>The measurements undertaken for the acoustic report are to establish the existing background noise environment and are used to set the criteria against which the application is assessed.</p>
<p>The Acoustic Assessment has not dealt with other noise and disturbances that are created by the Rooftop Bar.</p> <p>Monitoring data shows the L10 is substantially over 5dB over the L90, therefore the acoustic assessment demonstrates that L10 is already currently exceeded and offensive noise is already being emitted from the Rooftop Bar.</p>	<p>The noise monitoring data measures background noise for the period during which it is proposing to operate (i.e. 10:00pm - 12:00 midnight).</p> <p>The noise data has not been gathered to assess the existing noise impact of the operation of the premises.</p> <p>For any noise measurement with a variable noise source, the L10 will always be higher than the L90. L10 is the noise level exceeded for 10% of the time during the sample period. L90 is the noise level exceeded for 90% of the time period.</p>
<p>Offensive noise will continue to be allowed to project unimpeded out the front of the bar (northern aspect) and echoing off the facing building, and out of the western end of the balcony, which remains fully open.</p>	<p>The acoustic consultant's assessment concludes the proposed noise measures referenced in Section 7 of the acoustic report provide effective attenuation by eliminating the most significant noise transmission paths to the closest residential receiver "R1", namely the roof and the eastern boundary.</p>

	<p>Noise projecting to the north and its reflections are anticipated to have an insignificant contribution to the noise levels at "R1" given the distance attenuation.</p> <p>The acoustic assessment concludes that noise emissions to all nearby development will be compliant with the noise emission guidelines provided the consultant's recommendations in Section 7 of the report are adopted.</p>
Building R5 in the acoustic assessment is not identified correctly as it is 2 buildings, as opposed to 1 building.	<p>Section 2 of the updated acoustic report, prepared by Acoustic Logic (Revision 1), dated 16/01/2024 identifies "R5" as 200 Hunter Street.</p> <p>The Facade Noise Map on p. 30, "R5" shows that modelled results have been produced for both buildings in question.</p>
No monitoring device was ever installed at Silk House, nor has there been any request by the Applicant to do so.	As discussed above, this is not required.
As shown on pages 30 & 31, the residential apartment building at rear (known as "Fabric House") is 56m from the rooftop bar and appears to have a higher noise level than "Silk House".	<p>These two pages present results for two different input scenarios:</p> <p>On p.30, "R5" (including "Silk House") shows patrons with 'normal voice' results.</p> <p>On p.31, "R3" is shown with 'raised voice' results.</p> <p>The order of impact from worst to least is R1, R5, R3, R4, R2 as shown in Section 6.4 and Table 9 of the updated acoustic report, prepared by Acoustic Logic (Revision 1), dated 16/01/2024.</p>
As shown on pages 31 & 32, "Silk House" does not appear in relation to noise & shout assessment.	The maximum level for R5 represents the highest level from the modelling, as shown in Section 6.4 and Table 9 of the updated acoustic report, prepared by Acoustic Logic (Revision 1), dated 16/01/2024.

- iii) Further clarification regarding the total patron capacity of the premises and whether smoking is permitted on the outdoor terrace:

Condition 68 of DA2019/01150 specifies "*The maximum capacity of the Roof Terrace Bar (internal and external) shall be limited to 100 patrons (inclusive of any guests).*" This includes both the indoor and outdoor sections of the premises.

There is no proposed change to the maximum patron capacity (i.e. 100 patrons) of the premises. In accordance with the recommendations of the updated acoustic report, prepared by Acoustic Logic, the maximum number of persons permitted to occupy the outdoor terrace is to be restricted to a total of 30 persons.

Furthermore, the operator does not permit smoking on the premises, or on the outdoor terrace.

iv) Additional and / or amended conditions in relation to matters raised by HCCRPP.

- **New Condition 68A:**

The use of the outdoor terrace (associated with the Rooftop Bar) is to be restricted to 30 patrons between 10:00pm to 12:00am, Monday to Saturday.

- **New Condition 68D:**

The awning on the outdoor terrace is to be retained in the fully extended position during the period between 10:00pm - 12:00 midnight to provide additional noise attenuation.

- **New Condition 68E:**

A sign must be displayed in a prominent position near the outdoor area stating the maximum number of persons that are permitted to occupy the outdoor area.

- **New Condition 76(e):**

If an application to make the trial hours permanent is lodged within the 12-month trial period, the trial hours will continue to apply until such time as the application is finally determined.

- **Amend Condition 79:**

An appropriately qualified acoustic consultant different to that who produced the acoustic assessment for DA2019/01150, shall be engaged *and paid for* by the Applicant to undertake independent monitoring and assessment of the noise emissions during periods of extended trade of the outdoor terrace, within 3-months of this determination and every three months thereafter until the end of the trial period (i.e. quarterly). The assessment shall include conducting measurements from the nearby residential receivers. A report is to be prepared and submitted to Council within 14-days of the monitoring and must include recommendations should the assessment identify an exceedance of the noise levels predicted under this consent.

- i) Should the development not be operating at capacity during the assessment period(s), the measured noise levels are to be adjusted for the maximum approved number of patrons (using energy-based summation).
- ii) The date of the audit shall not be communicated to any person associated with the premises.
Council to be notified of the date of any audit.
- iii) The acoustic audit shall confirm that the requirements in Acoustic Logic Rooftop Bar Noise Assessment dated 16 January 2024 are being complied with at the nearest noise sensitive receiver location/s. This may include the boundary, balcony, window or elevated window and any other location as directed by Council.

Note: Should such recommendations involve any alterations to the building, approval from Council may be required through the submission of a s.4.55 modification application.

- **Amend Condition 80:**

The Plan of Management is to be amended in accordance with the conditions of this consent, including the following:

- a) All acoustic and management measures proposed to be implemented to minimise potential noise impacts from the premises, including the relevant recommendations of the Acoustic Report, prepared by Acoustic Logic (Revision 1), dated 16/01/2024.
- b) Ensure the manner in which the business of the premises is conducted and/ or the behaviour of persons entering and leaving the premises does not cause undue disturbance to the amenity of the neighbourhood. In this regard, the management shall be responsible for the control of noise and litter generated by persons and/or premises operations.
- c) Record in a Register, the full details of any disturbance complaint/s made by a person to management or staff in respect to the manner in which the business of the premises is conducted and/or the behaviour of persons entering or leaving the premises. Such recording will include time, date, nature of the complaint/s, complainant's details (if provided) and all actions undertaken by management/ staff to resolve such complaints.
- d) The final Plan of Management, as outlined as a condition of this consent, incorporating security management and responsible service of alcohol being implemented at all times and updated in response to complaints lodged through consultation with NSW Liquor and Gaming, NSW Police and / or Council.
- e) A copy of the Plan of Management is to be kept on the premises and made available for inspection on the request of Liquor and Gaming, Police, Council and / or any members of the public.

Note: Any further amendments or proposed variation to the approved Plan of Management require approval from Council through the submission of a s.4.55 modification application.

- **New Condition 81:**

A complaints register must be maintained and stored on site. All noise complaints are to be registered to identify what course of remedial action has been taken. This register is to be publicly accessible at all times to NSW Liquor and Gaming, NSW Police, Council and / or any members of the public.

Conclusion

The above supplementary report, in combination with the revisions to the draft conditions address addresses the concerns and issues arising from the Panel's determination meeting, dated 19 August 2024.

It is recommended that the application be supported on the combined basis of the 'Council Assessment Report' and this Supplementary Report subject to the revised draft conditions of consent.

Attachment A – Draft Conditions of Consent (amended)