

# **Submission to the National Capital Authority on the development proposed for Block 16 Section 10 City**

## **Introduction**

This submission argues that the 356 unit residential development proposed by Geocon for Block 16 Section 10 City (70 Allara Street), a “designated area” under the [Australian Capital Territory \(Planning and Land Management\) Act 1988](#), fails to satisfy a number of the objectives, principles and codes of the National Capital Plan and that approval should therefore not be given for the works to proceed.

In what follows there is a particular focus on the severe negative impacts the proposed development would have on many of the residents of the adjoining apartment building known and referred to here as “the Forum” (66 Allara St). These impacts include considerable disruption and congestion during the estimated two-year construction period and, more importantly, the permanent loss for many Forum residents of several key aspects of amenity. More broadly, it is argued that the scale of the development and the traffic it will generate are such that negative impacts will extend to others who use the area for work or leisure.

More broadly still, it is argued that by not meeting the high standards envisaged by the National Capital Plan for “design excellence” and urbanism of the “highest standard” the proposed development would, if approved, establish a substandard precedent for this important part of the Constitution Avenue and Anzac Parade Precinct.

Throughout this submission, the critique of the proposed development is explicitly linked to the relevant requirements of the National Capital Plan (the Plan).

## **Overshadowing, outlook and privacy**

The Forum itself comprises 117 apartments in a single 5 storey building. The proposed development would house 356 apartments in three 9 storey buildings to the immediate west and south west of the Forum, all above a multilevel underground carpark accommodating 409 cars.

The distance between the Forum’s western boundary and the proposed buildings would be about 15 metres although this reduces to 13 metres at one point. The effect of this proximity would be that the proposed buildings loom over the west and south-west facing Forum apartments, blocking views to Black Mountain and the Brindabella hills and overshadowing several west-facing Forum apartments for much of the day.

Many of these apartments were purchased for their outlook and for their access to winter sun. With the certain loss of these benefits – which would involve the denial of a recognised right to light – residents’ quality of life will be degraded, and property values will fall.

Some owners have already indicated their intention to sell in order to avoid this loss of amenity, fully aware that they may have to accept a price significantly lower than what could be expected before Geocon made its intentions known. The first auction – of a unit facing west – that is a direct response to the development occurred in the first week of May.

Forum residents of south-west- and west-facing units would also all suffer significant loss of privacy as they would all be over-looked by up to 9 levels of new apartments. Very little attempt to mitigate this intrusion appears to have been made by the architects except for the inclusion of planting, whose screening effect for the Forum’s upper floor residents would not be felt for 20 to 30 years when the proposed trees are fully grown. Existing fully grown trees on the south-western and western sides of the Forum would provide some screening and privacy if they were to remain. However, the design drawings indicate that these trees are to be removed to enable construction of the underground car park.

The National Capital Plan (Chapter 4: Part Four (A) – Principles and Policies for Designated Areas) states that:

8. The urban design of the area is to achieve an integrated design of the highest quality by managing building height and bulk, and by encouraging building forms and layouts on consistent building alignments which enhance the structure of the Griffins’ plans.
9. New development should seek to respect the design and character of adjacent buildings in terms of scale, colour, materials, massing and frontage alignment.

(4.1.2 Detailed conditions of planning, design and development, paragraphs 8 and 9)

In addition, the Plan identifies the following as an objective specific to the Constitution Avenue and Anzac Parade Precinct in which both 66 Allara Street and 70 Allara Street are located.

7. Develop a built environment which demonstrates design excellence.

(4.8.3 Objectives for Constitution Avenue and Anzac Parade)

The Plan also sets the following specific design requirement:

- n. Design proposals should be site responsive taking maximum advantage of varying characteristics and features of each site, complementing adjoining development – both existing and proposed – and expressing physical and environmental features.

(4.8.5 Detailed Conditions of Planning Design and Development)

From the above it is clear that the Plan recognises that urban design of the “highest quality” involves careful management of height and bulk, a degree of contextual consistency and “site responsiveness” and “respect [for] the design and character of adjacent buildings” in terms of scale and massing, among other things.

The proposed development fails to meet these standards and so falls far short of the “design excellence” expected of the Precinct. The height and bulk of the proposed buildings and their overbearing proximity to the Forum appear to be driven by a profit maximisation motive that’s indifferent to the surrounding context rather than a desire to achieve an “integrated design” of the “highest quality”. The proposed development imposes rather than integrates. While it will doubtless bring benefits to people who buy into the new buildings – vistas to the west and south, sunlight penetration - it is precisely those benefits that will come to a permanent end for many existing residents of the Forum. Some gain what others lose in what appears to be a zero-sum approach to development.

This is not the careful balancing of benefits that characterises “design excellence” and urbanism of the “highest quality”.

### **Traffic congestion**

The traffic management aspects of the proposed development are woefully inadequate to meet to the proposal’s additional traffic load.

As traffic access from London Circuit has not been permitted for the proposed construction, all traffic to and from the development would be required to use the existing narrow lane that currently serves the needs of the Forum, a public car park and the ACT works depot to the south. At 356 apartments and 409 parking spaces, the development would bring about a fourfold increase of the load. This means four times the number of cars entering and leaving the lane each day, and four times the number of service vehicles, including early morning garbage trucks and removal and delivery trucks, as well as pedestrian and cycle traffic.

Despite this fourfold increase Geocon proposes no change to existing traffic infrastructure. The narrow lane will be in constant use throughout the day, resulting in severely diminished quiet enjoyment of their homes for residents in Forum units facing south. The traffic on the lane will be at its busiest during the morning peak hours when four streams of traffic will converge – one outgoing stream from the Forum, another outgoing stream from the proposed development, a third outgoing stream of trucks, vans and mowers from the ACT works depot and a fourth incoming stream from Allara St to the side carpark. Evening peak hours will see the same but in reverse. Frequent gridlock will be the inevitable result from the moment the development is occupied.

According to Geocon's drawings, twenty-ton garbage trucks serving the new apartments will need to perform 3-point turns no more than 15 metres from the bedrooms of southwest-facing ground-floor Forum apartments.

Another very concerning aspect of the Geocon proposal is that the exhaust system for the multilevel carpark discharges into the enclosed "public" space between the new buildings and the Forum. Carbon dioxide and other exhaust gases and particulate matter, which tends to settle out onto surfaces (including internal surfaces), can be expected to concentrate in this confined "public" space to the likely detriment to the wellbeing and health of residents especially those living west-facing Forum flats on the lower floors.

These issues were raised in the consultations, but the concerns were brushed aside. No satisfactory solution is apparent in the latest plans.

Forum units overlooking Allara St will also be affected.

Allara St, which sees considerable pedestrian and cycle traffic from the Commonwealth Park footbridge, has recently been burdened with additional motor traffic from the Parkes Way egress ramp, a sharp increase in cycle traffic and the sudden arrival of electric scooter traffic. This burden will increase again by traffic associated with the Geocon development, with a consequent impact on peaceful occupation, pedestrian amenity and property value. Indeed, it is reasonable to expect that the streetscape, which is currently a frequently used pedestrian-friendly connection between the city and the lake, will become noisy, polluted and possibly dangerous for users.

At the very least, the proposal flouts the ACT's standing policy of pedestrians first, then cyclists, then cars and sits very uneasily with ACT/NCA plans to consolidate the link between the city and the park as a pedestrian zone.

Specifically, the proposal fails to meet the requirement of the Plan that design proposals "protect the amenity of adjoining residential areas" (4.8.5.h.). In fact, rather than protect

amenity, the effect of the proposal would be to destroy amenity for Forum residents with Allara Street frontages, and for pedestrians and cyclists. The Plan includes a requirement that proposals:

- k. Create a public domain that forms a linked sequence of spaces that are accessible, safe, comfortable, and pedestrian scaled, that promotes walking and use of public transport and minimises reliance on cars.

(4.8.5 Detailed conditions of planning, design and development)

The Geocon proposal does include contained external spaces that could be said to “form a linked sequence of spaces that are accessible, safe, comfortable and pedestrian scaled” but these are barely adequate gestures – in reality they would amount to an entry point choked by excessive traffic and an overshadowed blind alley on the North-South axis – whose meagre benefits, like the other benefits of this proposal, are bought at the cost of disbenefits for Forum residents.

## Conclusion

In its formulation of principles for Objective One (Urban design and heritage) the Plan recognises that:

- a. The National Capital role requires that planning and development, in Canberra Central in particular [ ... ] should reflect contemporary thinking in urban design practice;
- b. Planning controls should seek to ensure that development in all forms [ ... ] complements and enriches its surroundings.

2.4.1 Objective one – Urban design and heritage, paras a. and b.

It has been argued here that the proposal under consideration does not complement or enrich its surroundings in a range of critical respects that are recognized as important by the Plan. The inevitable and necessary conclusion is that the proposal does not reflect contemporary thinking in urban design practice, or, to use other terms employed by the Plan, “design excellence” of the “highest quality.”

It is noted that the Plan gives the Authority the following discretion:

10. Individual development proposals will be assessed on their merits in respect to sunlight penetration, amenity, pedestrian and vehicle access. No buildings taller than RL617 will be permitted in the Designated Area, but the general building height will be 3-4 storeys except where the National Capital Authority determines otherwise.

(4.1.2 Detailed conditions of planning, design and development, paragraph 10)

In the Authority's own words, a "designated area" is land that has – or should have – a "unique and memorable character" and that plays an important part in giving "the Capital a garden city image of national and international significance."

The Authority should exercise its discretion by denying Geocon work approval for Block 16, or, at the least, by imposing requirements that move it towards the high but achievable aspirations for "designated land". The Geocon proposal would have a density of one and a half times that of the Forum, which is itself a dense development. There is no justification for this in a city such as Canberra, and even less in a designated area that is supposed to embody "garden city" ideals. At the very least a substantial reduction in the number of floors in the proposed buildings, particularly those with a London Circuit frontage could alleviate some of the negative impacts outlined above.

Alternatively, the Authority could suspend its decision pending the development, in collaboration with ACT planners, developers and the community, of a local strategic plan. In large part, the problems generated by the Geocon development are driven by the fact that blocks are often released for development one by one. This results in an episodic and ad hoc approach to urban development that is diametrically opposed to the kind of integrated cityscape that was envisaged by the Griffins and that supposedly underpins the National Capital Plan's intentions for designated areas.

A local strategic plan would take into account contextual factors such as the oak-lined link between the city and Commonwealth Park and the lake that is provided by the pedestrian-friendly Allara St and the precedent of medium density residential development established by the Forum itself. But it should also encompass the enormous potential for innovative but sympathetic mixed development – housing, educational and sporting facilities such as an aquatic centre – on the site currently occupied by the Civic Pool and parking lots.

Most importantly, a local strategic plan would enable win-win solutions to emerge, rather than the kind of zero-sum solution such as the one currently under consideration. Developers would gain not only financially but reputationally as active contributors to realization of the Plan's aspiration for urbanism of the "highest quality"; existing residents would benefit from the positive evolution of their current environment without having to pay the heavy price that would be extracted by the Geocon proposal in terms of loss of sunlight, privacy and general amenity and traffic congestion; and the broader community would benefit from the creation of an urban environment that adds to rather than detracts from Canberra's international reputation as one of the great capital cities of the modern era.

## Supplementary submission

### Traffic congestion

The following photos show morning peak hour traffic from the Parkes Way off-ramp backing up in Allara St all the way from Constitution Avenue down to the Forum apartments (on the left in the first photo and on the right in the second).



As can be seen in the second photo, the backup blocks the laneway proposed to be used as resident and service access for the 356 units that will comprise the proposed 70 Allara Street development.

Backup down to the laneway occurs at the end of morning peak hours when there is particularly heavy eastbound traffic along Parkes Way and/or minor congestion in Constitution Avenue and connecting streets. Under current conditions, this is usually once or twice a week.

The proponent's Traffic Impact Assessment (TIA) estimates that the proposal will generate an additional load of 145 morning peak hour trips of which 116 are outgoing and 29 are incoming.<sup>1</sup> The 116 **outgoing** cars will inevitably increase the frequency and severity of Allara Street backups, especially when local conditions on Constitution Avenue and Parkes Way are such that the backup stretches all the way down to the side laneway. When that occurs, cars leaving the Geocon development will queue back down the laneway possibly as far as the property boundary (50 metres or 6 car lengths), causing gridlock outside the Forum apartments where morning peak departures of cars from the Forum and utes and 7 metre trucks from the ACT work depot meet at the same point. The TIA fails to consider these potential impacts even though a few days of careful observation would have raised concerns.

The TIA does include an analysis of the queueing potential of the **incoming** 29 cars and concludes somewhat blithely that "no queueing will spill out onto Allara Street causing safety concerns"<sup>2</sup> and that what queueing does occur will be "acceptable"<sup>3</sup>. But this formula-driven and context-indifferent analysis fails to take account of the fact that the 29 incoming cars during the morning peak hour will compete for space on the laneway with incoming drivers seeking a spot on the side carpark (60 places), ACT works cars and trucks arriving at the depot, and the (admittedly small number of) cars entering the Forum carpark. Nor does it consider the added complication of city bound cyclists descending the Parkes Way footbridge and crossing the laneway often at high speed. On the days when the Allara Street backup does extend down as far as the laneway, that competition among incoming cars (and cyclists and pedestrians) will happen at the same time and on the same small patch of asphalt as the gridlock of outgoing cars.

The Purdon Planning Report would have us believe that the patch of asphalt is an element in a linked series of "pedestrian plazas" that connect Allara Street and London Circuit and "provide a smooth transition between public and private space on the ground floor level"<sup>4</sup>.

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<sup>1</sup> TIA, p14.

<sup>2</sup> TIA, p1v.

<sup>3</sup> TIA, p11.

<sup>4</sup> Purdon Planning Report, p8.

Presumably the assertion is meant to address paragraph 4.8.5 clause I of the code which encourages creation of “a public domain that forms a linked sequence of spaces that are accessible, safe, comfortable, and pedestrian scaled, that promotes walking ... and minimises reliance on cars.” To the extent that vehicular gridlock might promote walking, the assertion is true. But, in fact, the assertion is marketing spin that covers over the real probability of loss of public amenity and inconvenience, congestion, noise, accidents and impeded access for emergency vehicles.

The TIA is deficient in other ways. Its analyses are based on current conditions. For example, it examines traffic data for 5 nearby intersections, models the impact of the new traffic load and concludes that the new traffic load would not be excessive. The problem with this is that “current conditions” have already begun to change, will be quite different in two years’ time when the Geocon complex, if approved, will be ready for occupation, and will continue to change after that.

The following large-scale projects in the local area have been announced or at least mooted. They can all be expected to cause traffic flow disruption, either temporarily or for good, with knock-on effects on Constitution Avenue and Allara Street.

- The raising of London Circuit, scheduled to commence in 2022.
- The construction of the light rail bridge across Lake Burley Griffin, and the repair of the Commonwealth Avenue bridge.
- Developments on land freed up by the removal of cloverleafs, and the release of carparks for other uses.
- Probable development of the land on which the ACT works depot is currently sited.
- The much mooted and often deferred but inevitable redevelopment of the enormous piece of land on which the Civic Pool is currently located.

In the earlier submission (above) it was argued that the proposed development’s likely contributions to congestion and loss of pedestrian and resident amenity are such that the high standards set by the National Capital Plan for designated land will not be met. That argument stills stands.

The argument here is threefold:

- While a traffic impact assessment for a particular project cannot be expected to provide a detailed picture of current and future traffic conditions, it can be expected not to gloss over problems obvious to the careful observer, particularly those that would be generated in the immediate vicinity of the project. Assessments of proposals to develop land that has been “designated” because it has “national and international significance” require detailed, reliable, high quality traffic assessments.

- The complexity of the current and expected future traffic conditions makes compellingly clear that a local strategic plan is needed as an essential tool to guide all future developments at the western end of the Constitution Avenue and Anzac Parade Precinct.
- Such a plan would release approval decision-making from the incrementalism that results from current release practices and would thereby enable the National Capital Authority to better meet its obligations to the Canberra and the nation to cultivate “design excellence”<sup>5</sup> and urbanism of the “highest quality.”<sup>6</sup>

### **Whose amenity counts?**

The photo below was taken in a west-facing apartment on the third level of the Forum. The photo was taken at 3:58 pm on 16 June 2022, five days before the winter solstice. The photographer is facing east towards the apartment entrance. As the photo clearly shows, the afternoon sun – which begins to illuminate the apartment’s floor at about midday – progressively lights up and warms more and more of the apartment until the lower parts of the innermost walls and kitchen are directly illuminated. In short, this apartment receives four hours of direct sunlight in winter.

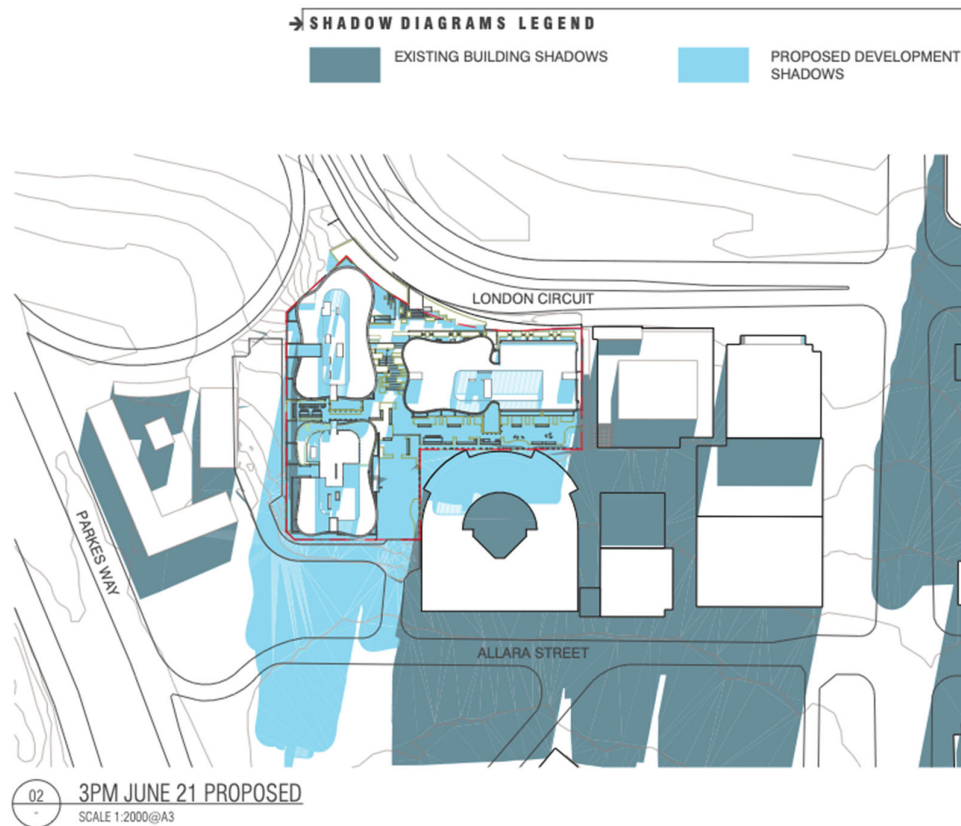


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<sup>5</sup> National Capital Plan, 4.8.3, clause 7.

<sup>6</sup> National Capital Plan, 4.1.2, clause 8.

There are five other apartments on the third level that enjoy similar access to the sun's warmth and light in midwinter, and another six on the second level that enjoy the same amenity. Below that are nine duplex apartments whose occupants also enjoy direct western sun. Not surprisingly the owners/residents all value this aspect of their lives at the Forum. For some it is the most important part of their apartment's amenity.



The above drawing shows the proponent's shadow analysis for 3pm on 21 June. The third-level apartment mentioned above is at the centre of the western, semi-circular facade of the Forum apartment building.

The analysis indicates that, if the proposal is approved, the third-level apartment's period of access to direct mid-winter sunlight would be progressively reduced so that by 2pm<sup>7</sup> there would be no direct sunlight at all. The analysis also supports an inference that at no stage will the winter sun penetrate to the back of the apartment. The loss of this aspect of amenity will be even more severe in the second-level apartments, and almost total in the

<sup>7</sup> The shadow diagram shows the western third of the Forum's roof being overshadowed at 3pm. The third-floor apartment in question is 2 floors (approx. 5m) down from the roof, from which it is reasonable to infer that there would be no direct sunlight on the 3<sup>rd</sup> level apartment's windows from around 2pm onwards.

duplexes. (It is difficult to be more precise about the impacts because the proponent's shadow analysis is disappointingly superficial, especially so given that it is intended to support an application for a development on designated land. A few vertical sections through the proposed buildings and the Forum showing sun angles at various times and at different horizontal angles could have been generated by the proponent's CAD system with little effort and minimal cost and included in the Works Approval drawings.)

The Purdon Planning Report asserts that this overshadowing is "reasonable considering the siting of the adjacent building."<sup>8</sup> The meaning of that explanation is obscure. Is the "adjacent building" the Forum apartment block? If so, the Forum building is being blamed for its own overshadowing for being too close to the proposed development! Or is the adjacent building the DFAT building? If so, the explanation would seem to be that, since the DFAT building is responsible for some overshadowing of the NNW face of the Forum, it is acceptable for the proposed development to do the same but on a far grander scale. In fact, Purdon's explanation is obscure because it is struggling to find a "reasonable" explanation of the overshadowing. The reality is that there is no "reasonable" way to justify the overshadowing of the Forum by the proposed building.

Records of the National Capital Design Panel meetings at which the Geocon proposal was considered<sup>9</sup> show that access to sunlight was an issue in discussions, as were several other aspects of amenity. On one occasion, the Panel's advice (Advice 8.1.2) was as follows:

[The Panel] questions the adequacy of access to light and natural ventilation where bedrooms are located beyond deep balconies, which are then compounded with borrowed light arrangements to other habitable spaces.<sup>10</sup>

Advice 8.1.4 was that the Panel:

Requests demonstration of adequate solar penetration to living rooms to be provided.<sup>11</sup>

It is understandable that most of the Panel's advice concerning overshadowing and access to sunlight focusses on design deficiencies that would impact on residents of the proposed building. Advice 8.1.2 and Advice 8.1.4 were right to point out that the lack of solar access for some residents of the proposed apartments should be addressed by the architect. Perhaps a connection was seen between sunlight and well-being. It is therefore difficult to understand why there is no advice concerning how overshadowing or deprivation of access

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<sup>8</sup> Purdon Planning Report, p11.

<sup>9</sup> The records were obtained through an FOI request.

<sup>10</sup> National Capital Design Review Panel, Advice 8.1.2.

<sup>11</sup> National Capital Design Review Panel, Advice 8.1.4.

to sunlight caused by the proponent's buildings would impact on Forum residents. This oversight, which may have become a habitual albeit inadvertent feature of the Panel's consideration of developments, is clearly inequitable.

There is no warrant in the National Capital Plan for such a partial interpretation of this essential aspect of amenity. The Plan embodies values that are universal, not exclusive in their application.

It is noted that, for many Forum apartments, a right to light and air is able to be claimed as an easement at common law. The right has been confirmed by the High Court of Australia.<sup>12</sup> The only Australian State or Territory to have legislated to modify or restrict this common law right is Western Australia.<sup>13</sup> Further, a prescriptive easement will be presumed by the courts if enjoyment of the easement has been for a long and uninterrupted period.<sup>14</sup> The Forum building is twenty years old and many of its apartments, including some on the west-facing side of the building have been owned continuously during that period. We intend to register an application for a grant of solar access easement over the land at 66 Allara Street with the ACT Registrar of Titles.

In a letter to Ms Sally Barnes, the CEO of the City Renewal Authority, Mr Malcom Snow, notes with concern that the west-facing Forum apartments would "experience significant overshadowing" from Building 3.<sup>15</sup> He recommends that the NCA require "the upper two levels on building 3's eastern side be stepped back." The sentiment is strongly supported; however, any stepping back or other modification of the massing of the proposed buildings should be informed by thorough modelling of the overshadowing of Forum apartments and by considerations of – in Mr Snow's words – "equity for both existing and future residents."

Note: All of Mr Snow's other recommendations are supported.

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<sup>12</sup> High Court of Australia: *The Commonwealth v Registrar of Titles (Victoria)* 1918.

<sup>13</sup> A. J. Bradbook, "The Development of an Easement of Solar Access", *UNSW Law Review*, 1982, vol.5.

<sup>14</sup> High Court of Australia: *The Commonwealth v Registrar of Titles (Victoria)* 1918.

<sup>15</sup> Malcolm Snow to Sally Barnes, 20 June 2022, p2.