

Regulatory Services Unit

Environmental Assessment



TO: Damian Jaeger

FROM: Robert Manev

DATE of ADVICE: 12 March 2024

DA NO: 2023/00419

PROPERTY: 121 Hunter St, Newcastle West

PROPOSAL Demolition of existing buildings & the erection of a mixed-use development consisting of retail premises, shop top housing and residential flat buildings with 195 dwellings and 314 parking spaces.

The content of this referral is intended to provide information for the Assessment Officer to consider in the determination of the application. The opinions and recommendations are based on information available and reviewed at the time. If further information is made available, opinions and recommendations may be varied. It is understood that any decision related to application or any request for further information/changes to the application, will be made after consideration of all legislation, relevant state and local policies, guidelines and procedures and all submissions received.

1. Recommendation

The application/ information has been reviewed. Environmental Services:

- ☐ recommends that additional information be requested to determine the impacts of noise.
- ☒ any recommended conditions should be reviewed and applied to the consent if granted.
- ☐ do not recommend at this time that consent be granted to the application.

2. Assessment Scope

The following information/ assessment(s) submitted with the application have been reviewed.

- ☒ Statement of Environmental Effects – Urbis, May 2023
- ☒ Detailed Site Investigation – Foundation Earth Sciences, April 2022
- ☒ Remedial Action Plan – Foundation Earth Sciences, April 2023
- ☒ Acoustic Assessment – Renzo Tonin & Associates, February 2024
- ☒ Acid Sulfate Soil Management Plan – Foundation Earth Sciences, October 2022
- ☒ Architectural Plans

3. Comments

Contamination

Environmental Health has reviewed the Detailed Site Investigation (DSI) assessment carried out by Foundation Earth Sciences dated April 2023 and notes 22 boreholes had been advanced across the sites. Samples were analysed for a selection of Heavy Metals, Total Petroleum Hydrocarbons, Benzene, Toluene, Ethylbenzene, Xylene, Polycyclic Aromatic Hydrocarbons, Organochlorine Pesticides, OPP, Polychlorinated Biphenyls & Asbestos.

The results of the soil sampling indicated an absence of gross contamination; however, asbestos was detected in two boreholes with the consultant concluding that remediation will be required to ensure site suitability.

The applicant submitted a Remediation Action Plan (RAP) prepared by Foundation Earth Sciences dated April 2023. The RAP proposes to address any potential contaminated soils on site by excavating the contaminated affected areas and disposing the material to a licenced facility that can lawfully accept this waste.

Following remediation works being carried out, the site will be validated, and the report submitted to Council and the Principal Certifying Authority. Environmental Health has no objection to this method will address the above by appropriate conditions of consent.

Acoustics

Environmental Health has reviewed the Acoustic Report prepared by Renzo Tonin & Associates dated February 2024 and notes the report addresses external noise from road traffic along with noise associated with the proposed food and drink and retail premises concluding, that based on the assumption modelled with controls in place, the proposed development satisfies the assessment criteria.

The Noise Assessment follows the conventional process of determining the criteria for the potentially affected receivers, characterising source noise levels, modelling the propagation of these source levels, determining compliance, and specifying controls as necessary. The reports incorporate a series of assumptions in its noise modelling to simulate a likely use scenario. These assumptions have been repeated within the set conditions.

External Noise - Glazing Requirements

The Acoustic Assessment demonstrated that provided the glazing and construction recommendations as set out in Section 4.2.1 are applied, compliance with internal noise level requirements from the NSW Department of Planning Development Near Rail Corridors and Busy Roads – Interim Guideline, State Environmental Planning Policy (Transport and Infrastructure) 2021 and AS 2107:2016 will be achieved. This will be addressed by an appropriate condition of consent.

The consultant demonstrated that comparable plant did not exceed the noise goals for the subject site (Section 5.2.3). However, the ESU will recommend a condition of consent that the acoustic consultant carry out a detailed assessment once the mechanical plant has been selected so that any potential acoustic treatments can be incorporated into the design of the building to ensure compliance with the internal noise levels (of 35dB in sleeping areas and 40dB in living areas) will comply with AS/NZS2107-2016 and the NSW EPA – Noise Policy for Industry.

Food and Drink/ Retail premises

The acoustic assessment also addressed future licenced food and drink along with other retail premises to be located at the subject site. The usage, fit-out layouts and capacities have not been finalised at this stage and as such, the modelling used within the assessment has been based on guidance from the Association of Australasian Acoustical Consultants (AAAC) Licenced Premises Noise Assessment Technical Guideline V2, table 1, adopting similar patron density and moderate amount of noise absorption.

The assessment models source noise propagation against offsite receivers along with residents within the development to ensure acoustic amenity is maintained.

The applicant has assessed all tenancies as future licenced premises against the noise criteria from the Independent Liquor and Gaming Authority (ILGA). This allows the L10 noise levels to exceed the external background noise by 5dB across all octave bands (31.5Hz to 8Khz) external to a residence prior to midnight, whilst imposing inaudibility after midnight.

The assessment theoretically demonstrates in principle, that assumptions adopted with respect to noise emission calculations are expected comply with the project noise goals for the site. These assumptions are based on prescribed sound pressure levels associated with amplified entertainment, raised speech of patrons along with capacities based on AAAC guideline. The consultant has listed several recommendations set out in Section 5.2.2 of the February 2024 assessment that would address any noise exceedances satisfying the project noise goals for future uses.

While it is acknowledged that the acoustic assessment theoretically models the operation of all tenancies against the ILGA criteria, there is potential that several tenancies may not be licensed and as such would warrant further modelling such as sleep disturbance for operations between 10:00pm to 12:00am. As the applicant has not identified which premises will be retail and which will be licensed, Environmental Health will recommend a condition of consent whereby any premises not seeking to be licensed, is to be restricted to 10pm.

Outdoor Seating

Section 5.2.1.4 of the Renzo Tonin assessment concludes that usage of outdoor areas for dining is permissible until 10pm on Hunter St provided that the management controls are adopted. These controls include limiting patron numbers to 20 per tenancy along with restricting operation to 6pm for any premises that does not have an awning covering the outdoor area.

It is unknown at this stage which tenancy is likely to be used as a food drink premises, given the uncertainty, Environmental Health recommends restricting all outdoor seating associated with any food and drink premises until 6pm unless a separate application to vary the hours of operation or trading has been submitted to and approved by Newcastle City Council.

Loading dock

The Renzo Tonin assessment modelled the use of the loading docks located on the Loading Level in Building 3E and Basement 1 of Building 4S concluding usage between 7am and 10pm is unlikely to result in significant adverse acoustic impacts provided the recommendation are applied. These will be addressed by appropriate conditions of consent.

Acid Sulfate Soils

Environmental Health has reviewed the Acid Sulphate Soil Assessment prepared by Foundation Earth Sciences dated April 2023 and notes that based on the findings from the geotechnical investigation, Acid

Sulphate Soils (ASS) have not been identified at depth and as such will not need to be managed during construction.

4. Conditions

- DEM-B004 (demolition Standard)
 - DEM-A007 (hazardous Substances Plan required)
 - DEM-B005 (demolition Requirements)
 - DEM-B018 (construction Noise)
 - DEM-B020 (prevent Pollution Sign)
 - DEM-B021 (removing excavated material)
 - DEM-B022 (fill quality)
 - DEM-B023 (fill – recourse recovery exemption)
 - DEM-A013 (sediment control)
 - DEM-A014 (all weather access)
 - DEM-B025 (dust control)
 - BLD-A080 (Food Business - Fitout)
 - BLD-A085 (Food Business - Mechanical Ventilation)
 - BLD-C002 (Site Signage)
 - BLD-C009 (Erosion and Sediment Control Measures)
 - BLD-C021 (Limits on Construction/Demolition Noise)
 - BLD-C023 (Pollution Prevention Signage)
 - BLD-C028 (Controlling Dust)
 - BLD-D037 (Food Business - Notification)
 - BLD-E015 (restriction Noise)
 - BLD-E020 (restriction Air Impurity)
 - E020 (POEO Act Offence)
 - E021 (EP&A Act Offence)
 - BLD-D033 (acoustics) >Renzo Tonin & Associates< >21 February 2024<
 - BLD-E015 (restriction Noise)
 - BLD-E020 (restriction Air Impurity)
 - BLD-E034 (Trade Waste)
 - E020 (POEO Act Offence)
 - E021 (EP & A Act Offence)
 - REM-B001 (RAP) >Foundation Earth Sciences< >18 April 2024<
 - REM-C001 (Validation Report)
- During occupation and ongoing use, the hours of operation or trading of any food and drink premises operating as a licensed venue under the Liquor Act 2007 are to be not more than:

DAY	START	FINISH
Monday	7:00am	12:00am
Tuesday	7:00am	12:00am
Wednesday	7:00am	12:00am
Thursday	7:00am	12:00am
Friday	7:00am	12:00am
Saturday	7:00am	12:00am
Sunday	7:00am	12:00am

unless a separate application to vary the hours of operation or trading has been submitted to and approved by Newcastle City Council.

- During occupation and ongoing use, the hours of operation or trading of any retail premises (other than any food and drink premises operating as a licensed venue under the Liquor Act 2007) are to be not more than:

DAY	START	FINISH
Monday	7:00am	10:00pm
Tuesday	7:00am	10:00pm
Wednesday	7:00am	10:00pm
Thursday	7:00am	10:00pm
Friday	7:00am	10:00pm
Saturday	7:00am	10:00pm
Sunday	7:00am	10:00pm

unless a separate application to vary the hours of operation or trading has been submitted to and approved by Newcastle City Council.

- Prior to the issue of an Occupation Certificate for any food and drink premises operating as a licensed venue under the Liquor Act 2007 an appropriately qualified consultant is to install and set out the ongoing operating requirements of a noise limiting device to meet the noise levels specified in the Renzo Tonin and Associates Acoustic Assessment dated 21 February 2024. Written final certification confirming all treatments have been implemented in accordance with the requirements of the above report is to be submitted to the principal certifier and Newcastle City Council.
- Any amplified entertainment associated with the operation or trading of any retail premises (other than any food and drink premises operating as a licensed venue under the Liquor Act 2007) is to be restricted to 7:00am to 6:00pm Monday to Sunday unless a separate application to vary the hours of operation or trading has been submitted to and approved by Newcastle City Council.
- The use of all outdoor areas is to be restricted to 7:00am to 6:00pm Monday to Sunday unless a separate application to vary the hours of operation or trading has been submitted to and approved by Newcastle City Council.
- Outdoor dining is not permissible on Newcomen Street unless a separate application to vary the trading has been submitted to and approved by Newcastle City Council.
- No music or amplified sounds other than emergency PA announcements are to be played in the outdoor areas.
- Engage an appropriately qualified acoustic consultant to monitor and assess the noise emissions from any food and drink premises operating as a licensed venue under the Liquor Act 2007 and produce a report confirming the recommended acoustic treatments have been implemented and meet the project noise goals for the facility in accordance with the requirements of Acoustic Assessment prepared by Renzo Tonin dated 21 February 2024. The report is to be prepared and submitted within 6 months of the commencement of operation of the facility.
- All doors and windows associated with any food and drink premises operating as a licensed venue under the Liquor Act 2007 are to be closed from 10:00pm to 12:00am Monday to Sunday, expect to allow for ingress or egress of patrons.
- The acoustic performance of all mechanical plant and equipment associated with the building being assessed by an appropriately qualified acoustic consultant prior to the issue of any required Construction Certificate. Appropriate acoustic treatment as recommended by the acoustic consultant being designed prior to the issue of a Construction Certificate. Written certification from an appropriately qualified acoustic consultant being submitted to the Principal Certifying Authority

prior to issue of an Occupation Certificate confirming that noise from all mechanical plant and equipment achieves the required acoustic attenuation to comply with the conditions of consent and the requirements of the Protection of the Environment Operations Act 1997.

- Prior to the issue of a Construction Certificate, the proponent preparing and submitting to the PCA and Council a Construction Environmental Management Plan (CEMP) for construction/demolition works on the site, such to be kept on site and made available to authorised Council officers upon request. The CEMP is to include but not be limited to:
 - a) A site management strategy, identifying and addressing issues such as environmental health and safety, site security, and traffic management.
 - b) A water management strategy, detailing erosion and sediment control, management of soil stockpiles, control and management of surface water, groundwater. Procedures should also be included to ensure that all roads adjacent to the site are kept free and clear from mud and sediment.
 - c) A dust management strategy, detailing procedures to minimise dust generation, with reference to control techniques and operational limits under adverse meteorological conditions.
 - d) A noise and vibration management program, detailing measures to minimise the impact of the development on local amenity. Provision for noise and vibration monitoring during works should be incorporated into the program.
 - e) A soil management strategy, detailing measures to be implemented to manage the identification and control and disposal of any acid sulphate soils or soil contamination identified during site works.
 - f) A waste minimisation strategy, which aims to avoid production of waste and maximise reuse, recycling or reprocessing of potential waste material.
 - g) A community relations plan, which aims to inform local residents and other local stakeholders of the proposed nature and timeframes for demolition and construction activities together with contact details for site management.
- Goods deliveries and waste collection from the premises is to be limited to 7:00am to 10:00pm Monday to Sunday.
- The use of the loading docks is to be restricted to 7:00am to 10:00pm Monday to Sunday.
- The roller doors associated with the loading docks are to be closed when in use.
- The use of all swimming pools is to be restricted to 7:00am to 10:00pm unless a separate application to vary the hours of operation or trading has been submitted to and approved by Newcastle City Council.
- The use of any gymnasium is to be restricted to 7:00am to 10:00pm unless a separate application to vary the hours of operation or trading has been submitted to and approved by Newcastle City Council.
- Noise from amplified music, patrons and staff along with all gym equipment at the indoor facility shall not be audible in any habitable room in any residential premises between the hours of 10:00pm and 7:00am from Monday to Sunday.
- The occupier of the premises where a swimming pool or spa pool is situated must notify the relevant local government authority, under the Public Health Act 2010 and Public Health Regulation 2022.

Notification is to be provided to Council by going to www.newcastle.nsw.gov.au and downloading a copy of the Public Swimming Pool and Spa Pool Notification form or contact Council's Regulatory Services on (02) 4974 2000. The completed registration form is to be sent to regulation@ncc.nsw.gov.au.

- The use of the swimming pool and spa pool is to be in accordance with the requirements of the:
 - Public Health Act 2010 - (Division 3 Control of public swimming pools and spa pools); and the
 - Public Health Regulation 2022 - (Part 3 Public swimming pools and spa pools).
- The occupier of the premises where skin penetration procedures are carried out must notify the relevant local government authority, under the Public Health Act 2010 and Public Health Regulation 2012. Notification is to be provided to Council by going to www.newcastle.nsw.gov.au and downloading a copy of the Skin Penetration Business registration form or contact Council's Regulatory Services on (02) 4974 2525. The completed registration form is to be sent to regulation@ncc.nsw.gov.au before commencement of operation of the business at the premises.
- Fit out and use of the premises is to be in accordance with the requirements of the:
 - Public Health Act 2010 - (Division 4 Control of skin penetration procedures); and the
 - Public Health Regulation 2022 - (Part 4 Control of skin penetration procedures).
- Under no circumstances is onsite remediation treatment to be carried out.