

Referral Response - Environmental Health - Environmental Management

Application Number:	Rev23/0008
Referral Officer	Helen Bakker
Referral Unit	Environmental Health - Environmental Management
Date of referral	11 April 2024
Land to be developed (Address):	Lot 3003 DP 1184498 184 Lord Sheffield Circuit PENRITH NSW 2750
Proposed Development:	Review of Determination (Refusal) of DA22/0214 for Construction of Part 13 and Part 25 Storey Mixed Use Development, One Level of Basement Car Parking, Five Storey Podium with Above-Ground Parking, Retail and Commercial Tenancies and Two Residential Towers. Tower C has 74 Apartments and Tower D has 163 Apartments. Proposal includes an Offer for Community Infrastructure for Further Embellishment Works to Proposed Through-Site Link (Concurrent Review Application Rev23/0007 for DA22/0213).

Recommendation

Not supported, however conditions provided

Detailed assessment

I have reviewed the following documents:

- Architectural Drawings Revision C dated 06.03.2024 Issued for Development Application
- Draft Plan of Management – March 2024 - PCYC Thornton
- Document titled '184 Lord Sheffield Circuit Penrith:8.2Review – Response to CI Panel referral Comments (Dated 6 March 2024) prepared by Urbis and dated 19 March 2024
- Feasibility Concept Plan and Childcare Drawings review prepared by Mollard property group and dated 23 September 2021
- Document titled '184 Lord Sheffield Circuit, Penrith:8.2Review-request for information-Rev23/007' prepared by Urbis and dated 7 March 2024' with supporting updated Noise Impact Assessment, Child care Response and amended Architectural Plans
- Document titled 'Thornton Central Village Delivering Community Infrastructure DA1 & DA2 Supporting Submission Amendment: Version 2'
- Preliminary Material Handling Management Plan
- Noise Impact Assessment (Stage 1) (document ref: 20210908.1/1911A/R1/AS) prepared by Acoustic Logic and dated 19/11/2021
- Document titled 'Re: Proposed Site Embellishment to the lane way (Not for Bank Use) prepared by Construction Consultants and dated 5 March 2024

Noise

Please note, the Noise Impact Assessment (NIA) recorded in InfoStore ID=INFOHUBDM-54780069-336074, has the same title, revision number and preparation date as the previously reviewed version. However, amendment has been made to this more recently submitted NIA in that it removes reference to Stage 3 from Table 6. This is unusual practice for a report to be amended without an updated revision number and date provided.

With the exception of the amendment to Table 6, it appears the most recently submitted NIA (InfoStore ID=INFOHUBDM-54780069-336074) remains unchanged from the 19/11/2021 version.

Whilst the applicant has recently submitted various documents that provide comments and responses to

previously raised acoustic issues, assessment and response by an acoustic consultant has not been provided. The acoustic assessment submitted with this application does not address and assess all potential noise and vibration impacts. It is essential that a full and proper noise and vibration impact assessment be completed prior to the final design and construction of the structures. Such assessment will inform the more detailed design, construction and fit-out stages. It will also ensure that any necessary operational controls, such as restrictions to hours of use of communal areas, can be incorporated into the strata by-laws and management plan of the development.

It is the view of the Environment Team that at the very least, high-level assessment should be provided in a NIA at the DA stage, to guide both early and final design, and subsequently construction, and to demonstrate mixed uses are capable of co-existing and complying with applicable noise level criteria. However, the Environment Team has been requested to provide recommended conditions to facilitate approval of this application. Accordingly, recommended conditions are attached for consideration.

Noise and vibration issues that require further consideration and assessment include:

Whilst the Document titled '184 Lord Sheffield Circuit, Penrith:8.2Review-request for information-Rev23/007' prepared by Urbis and dated 7 March 2024' states on page 8 that 'it is concluded the closest and potentially most impacted residences have been assessed in the NIA', the NIA in listing sensitive receivers in section 2 and Figure 1, does not include in that list, residential units within the development itself. It is noted that Table 11 of the NIA does include residential receivers within the development site itself relating to the childcare centre assessment. An updated/amended NIA is required that clearly demonstrates the residential receivers within the development itself are included in the assessment of noise and vibration impacts associated with all noise and vibration generating aspects. In preparing the updated NIA, the acoustic consultant should include detail of the modelling data input and assumptions applied, for example, the location and distribution of noise sources and receivers applied in the modelling.

Commercial and retail tenancies

Section 7.2.3 of the NIA identifies potential noise impacts associated with retail, food and beverage and general commercial spaces and states these impacts are required to be assessed as part of development approval for these individual uses. It is my understanding that use of these tenancies may in the future be exempt from the need for development consent if those uses may proceed as complying development. In such cases, it will result in these potentially noise impactful tenancies, not being subject to the acoustic assessment recommended in the NIA. Given that DS has requested conditions be provided for this application, I have attached a recommend condition requiring submission of an updated NIA that does consider future potential or known tenancies and that provides recommendations to minimize potential noise and vibration impacts.

Communal Open Space

Section B of the table presented on page 4 of the Document titled '184 Lord Sheffield Circuit, Penrith:8.2Review-request for information-Rev23/007' prepared by Urbis and dated 7 March 2024' states 'the communal open space areas will be used for passive purposes that do not generate significant noise' and that 'activities in communal areas are typically managed by owners corporation including by-laws' with it being 'easier to regulate the activities in a communal space that is regulated by the owners corporation'. The document also details the design measures that have been applied to ensure communal open space areas are located a minimum of 3m from bedrooms within the development. The document proposes the outdoor communal areas be 'managed by the owners corporation (including imposing limits on acceptable activities, time restrictions etc) to achieve an appropriate amenity balance'. Whilst operational management controls are considered reasonable and feasible, the application indicates the provision of active play areas that are in close proximity to residential units within the development and noise generated from these areas has the potential to affect those receivers.

Also, the document titled 'Thornton Central Village Delivering Community Infrastructure DA1 & DA2 Supporting Submission Amendment: Version 2' indicatively shows musical play equipment and the document titled 'Re: Proposed Site Embellishment to the lane way (Not for Bank Use) prepared by Construction Consultants and dated 5 March 2024 refers to 'Interactive Musical Instrument'. The provision of musical play equipment has a high potential to emit noise that is highly likely to be annoying to the general population of receivers within the development and it is recommended that such equipment not be included within outdoor communal areas. A 3m buffer distance between such equipment and residential receivers is not anticipated to mitigate potential adverse noise impact to receivers. Accordingly, I have attached a recommended condition prohibiting installation of interactive musical instruments in outdoor communal open space areas.

Noise emissions from operation of loading docks, carpark and waste management areas

The Document titled '184 Lord Sheffield Circuit, Penrith:8.2Review-request for information-Rev23/007' prepared by Urbis and dated 7 March 2024' states 'all carparks, loading docks and waste management areas are enclosed within the buildings. The entrances are separated from any proposed dwelling and are also screened from them. Adverse noise impact is not indicated'. It also states that 'mitigation measures could be implemented, such as imposing time restrictions on certain movements and providing cushioning to structurally isolate impact zones. Comments to this effect can be added to the NIA'.

The following are just a few examples of design aspects that require further consideration by an acoustic consultant:

- power operated doorways from the carpark area are located directly adjacent to residential units C201 and C207
- carparking is located directly adjacent to residential units, for example unit D203
- a plant room is located directly across the corridor from unit C304

Acoustic assessment is required to determine construction requirements and ensure appropriate noise and vibration mitigation is incorporated into the design and construction of the building. I have attached recommended conditions that require submission of an amended Noise Impact Assessment to provide such assessment and requiring acoustic consultant certification that any required mitigation measures are installed and constructed, prior to issue of the Occupation Certificate.

Section 7.2.2 of the NIA states it is based upon loading docks not being operated between the night period of 10pm-7am. It states that operation of the loading dock during the night-time may require special constructed mitigation measures such as absorptive treatments, as well as operational controls. Again, detailed acoustic assessment is required of the proposed development, to ensure the design and construction of the structure facilitates, along with operational controls, the ability to comply with applicable noise criteria. This acoustic assessment is required prior to issue of a Construction Certificate, and I have attached a recommended condition accordingly.

Construction Noise and Vibration

The application, including the 'Preliminary Material Handling Management Plan' proposes construction work during hours Mondays to Fridays 7am to 6pm and Saturdays 7am to 6pm. I have attached a recommended condition addressing construction noise and vibration.

In conclusion, the following recommended conditions are provided, as requested.

Other environmental aspects such as the management of unexpected finds during construction, construction waste management and the like may be satisfactorily addressed through the imposition of conditions of consent. Please refer to attached recommended conditions addressing these aspects.

Regards

Helen Bakker
Environmental Health Officer

General

- 1 **Prior to issue of a Construction Certificate**, an updated Noise Impact Assessment (NIA) reflective of the proposed development, is required to be submitted to Penrith City Council for approval. The updated NIA is to be prepared by a suitably qualified acoustic consultant and is to:
 - make reference to, and consider, the 'Noise Impact Assessment (Stage 1) (document ref: 20210908.1/1911A/R1/AS)' prepared by Acoustic Logic and dated 19/11/2021
 - make reference to and be representative of the final proposed design and construction of the development
 - assess the cumulative noise and vibration impacts from the completed Thornton Central Village (both Stages 1 and 2)
 - confirm glazing and all other construction elements required to ensure internal noise levels within the development are achieved in accordance with the criteria established in the NIA dated 19/11/2021
 - clearly demonstrate residential receivers within the development itself have been considered and assessed as nearby sensitive noise receivers, in addition to R1, R2, R3 and C1 as detailed in the NIA dated 19/11/2021
 - provide a noise and vibration impact assessment of the proposed PCYC tenancy (or other indoor recreational facility). The purpose of this assessment is to ensure the building structure is capable of achieving noise and vibration criteria and to guide a more detailed Noise and Vibration Impact Assessment prepared specifically for the PCYC/indoor recreational facility that will be the subject of a future separate development application
 - provide a noise and vibration impact assessment of the loading docks, and waste collection facilities
 - provide an assessment of noise and vibration generated from the operation of carpark areas upon residential units, where the carpark areas have potential to cause noise and vibration impacts, including but not limited to, those carpark areas immediately adjacent to residential units
 - provide a noise assessment of the proposed childcare centre. The purpose of this assessment is to ensure the building structure is capable of achieving noise level criteria and to guide a more detailed Noise Impact Assessment prepared specifically for the childcare centre that will be the subject of a future separate development application
 - provide recommendations (construction and/or operational) to minimise noise and vibration impacts from future potential and known retail and commercial tenancies, including but not limited to the supermarket
 - provide recommendations (construction and operational) to minimise noise impacts from outdoor communal spaces to residential receivers
 - include detail of the modelling data input and assumptions applied, for example, the location and distribution of noise sources and receivers applied in the modelling.

The updated NIA is to be approved by Council **prior to issue of a Construction Certificate**.

The recommendations provided in the Council approved updated NIA shall be implemented and incorporated into the design, construction and operation of the development and shall be shown on plans accompanying the Construction Certificate application.

{Note: For the purpose of this condition a suitably qualified acoustic consultant means a consultant who possesses the qualifications to render them eligible for membership of the Australian Acoustics Society, Institution of Engineers Australia or the Association of Australian Acoustic Consultants at the grade of member}

- 2 Interactive musical instruments are not permitted to be installed in the outdoor communal areas.

Environmental Matters

- 3 Mud and soil from vehicular movements to and from the site during the construction phase, must not be deposited on the road.

4 All construction works that involve the use of heavy vehicles, heavy machinery and other equipment likely to cause offence to adjoining properties, are restricted to the following hours in accordance with the NSW Department of Environment and Climate Change's "Interim Construction Noise Guideline" 2009:

- Mondays to Fridays, 7am to 6pm
- Saturdays, 7am to 1pm (if inaudible on neighbouring residential premises), otherwise 8am to 1pm
- No work is permitted on Sundays and Public Holidays.

In the event that the work relates to activities inside the building and does not involve external walls or the roof, and does not involve the interim use of equipment that emits offensive noise, then the works are not restricted to the hours stated above. The provisions of the Protection of the Environment Operations Act, 1997 in regulating offensive noise also apply to all works.

5 No fill material shall be imported to the site unless expressly approved as part of this consent, and not until such time as a certificate demonstrating that the material is suitable has been submitted to, considered and approved by Council. This certificate may be in the form of a validation certificate, waste classification, or appropriate resource recovery order/exemption. A copy of a report forming the basis for the validation is also to be provided. The certification shall:

- be prepared by an appropriately qualified person with consideration of all relevant guidelines, standards, planning instruments and legislation (e.g. EPA, NEPM, ANZECC, NH&MRC),
- clearly state the legal property description of the fill material source site and the total amount of fill tested,
- provide details of the volume of fill material to be used in the filling operations,
- provide a classification of the fill material to be imported to the site in accordance with the NSW Environment Protection Authority's "Waste Classification Guidelines" 2014, and
- (based on the fill classification) determine whether the fill material is suitable for its intended purpose and land use and whether the fill material will or will not pose an unacceptable risk to human health or the environment

If the Principal Certifying Authority or Penrith City Council is not satisfied that suitable fill materials have been used on the site, further site investigations or remediation work may be requested. In these circumstances the works shall be carried out prior to any further approved works.

{Note: An appropriately qualified person is defined as "a person who, in the opinion of Council, has a demonstrated experience, or access to experience in hydrology, environmental chemistry, soil science, ecotoxicology, sampling and analytical procedures, risk evaluation and remediation technologies. In addition, the person will be required to have appropriate professional indemnity and public risk insurance."}.

6 All construction waste materials stored on-site are to be contained within a designated area such as a waste bay or bin to ensure that no waste materials are allowed to enter the stormwater system or neighbouring properties. The designated waste storage areas are to be fully enclosed when the site is unattended.

7 Waste materials associated with construction of the development are to be classified and disposed of at a lawful waste facility, or, if suitable, re-used / recycled. Such works are to be undertaken in accordance with the approved Waste Management Plan, where applicable.

Where the disposal location or waste materials have not been identified in an approved waste management plan, details shall be provided to the Certifier prior to those works commencing.

All receipts and supporting documentation must be retained in order to verify lawful disposal of materials and are to be made available to Penrith City Council on request.

8 Construction works shall be carried out in accordance with the NSW Department of Environment and Climate Change's "Interim Construction Noise Guideline" 2009.

- 9 **Prior to the issue of the Construction Certificate**, a Construction Environmental Management Plan (CEMP) is to be prepared by a suitably experienced / qualified person and submitted to Penrith City Council for approval. If Council is not the certifying authority, a copy of Council's approval is to be provided to the Principal Certifier. The CEMP is to address the environmental aspects of the construction phase of the development and is to include details on the environmental management practices and controls to be implemented on the site.

The CEMP is to address, but is not limited to the following:

- Water quality management,
- Noise control and hours of operation,
- Dust suppression,
- Waste management (including solid and liquid waste),
- Erosion and sediment control,
- Air quality including dust control.

All construction activities on the site are to be implemented and carried out in accordance with the approved CEMP.

- 10 **Prior to the issue of the Construction Certificate**, a Construction Noise and Vibration Impact Assessment and Management Plan, prepared by a suitably qualified acoustic consultant, is to be prepared and submitted to Penrith City Council for approval. This assessment is to consider (at minimum) the noise and vibration impacts associated with the construction phase, as well as details of the construction program, construction methods, equipment and vehicles in association with the NSW Department of Environment and Climate Change's "Interim Construction Noise Guideline" 2009.

The recommendations of the Council approved Management Plan are to be implemented and adhered to during the construction phase of the development.

{Note: For the purpose of this condition a suitably qualified acoustic consultant means a consultant who possesses the qualifications to render them eligible for membership of the Australian Acoustics Society, Institution of Engineers Australia or the Association of Australian Acoustic Consultants at the grade of member}.

- 11 **Prior to the issue of the Construction Certificate**, a plan for the interim management of the groundwater during the construction phase is to be provided to Penrith City Council for approval. This plan is to be prepared by a suitably qualified environmental consultant and is to detail:

- the circumstances where de-watering is required,
- the relevant approvals / licences that need to be obtained,
- the additional sampling and analysis of groundwater that is required,
- demonstrating compliance with applicable guidelines and standards,
- the treatment measures that will need to be implemented prior to off-site disposal.

Should de-watering be required, this plan is to be implemented and adhered to, alongside any other conditions of development consent or an approval issued by the relevant regulatory authority.

12 **Twelve (12) months after the issue of the Occupation Certificate**, an Acoustic Compliance Report is to be submitted to and approved by Penrith City Council. The report is to be prepared by a suitably qualified acoustic consultant and is to address all noise generating activities on the site and the level of compliance with the noise criteria set within the 'Noise Impact Assessment (Stage 1) (document ref: 20210908.1/1911A/R1/AS)' prepared by Acoustic Logic and dated 19/11/2021, as well as the council approved updated NIA required by condition **number ### of** this consent. It is to consider the requirements of the NSW Environment Protection Authority's Noise Policy for Industry, other relevant guideline documents and the conditions of this development consent.

Should the Compliance Report identify any non-compliance issues, the report is to provide suitable recommendations for the mitigation of those issues. Any mitigation works are to be undertaken within thirty (30) days from the date of notice from Council, unless otherwise specified.

{Note: For the purpose of this condition a suitably qualified acoustic consultant means a consultant who possesses the qualifications to render them eligible for membership of the Australian Acoustics Society, Institution of Engineers Australia or the Association of Australian Acoustic Consultants at the grade of member}.

13 **Prior to the issue of the Construction Certificate**, further details on the type and location of all mechanical plant and equipment associated with the development is to be provided to Penrith City Council for consideration and approval. Suitable data and information assessed by a suitably qualified acoustic consultant is to be supplied to demonstrate compliance with the established noise criteria detailed in the 'Noise Impact Assessment (Stage 1) (document ref: 20210908.1/1911A/R1/AS)' prepared by Acoustic Logic and dated 19/11/2021.

{Note: For the purpose of this condition a suitably qualified acoustic consultant means a consultant who possesses the qualifications to render them eligible for membership of the Australian Acoustics Society, Institution of Engineers Australia or the Association of Australian Acoustic Consultants at the grade of member}

14 Wastewater from the washing of garbage bins and vehicles is not to enter the stormwater system.

15 Waste collection activities and use of the loading docks is not to occur during the hours of 10pm-7am, unless otherwise approved in writing by Penrith City Council.

16 The recommendations provided in the Council approved Noise Impact Assessment required by **condition number ### of** this consent, shall be implemented and incorporated into the design and construction of the development, and **shall be shown on plans accompanying the Construction Certificate application.**

17

A certificate is to be obtained from a qualified acoustic consultant certifying that the development has been constructed to meet the noise criteria in accordance with the Council approved Noise Impact Assessment required **by condition ### of** this consent. This certificate is to be submitted to the Principal Certifying Authority **prior to the issue of an Occupation Certificate.**

{Note: For the purpose of this condition a suitably qualified acoustic consultant means a consultant who possesses the qualifications to render them eligible for membership of the Australian Acoustics Society, Institution of Engineers Australia or the Association of Australian Acoustic Consultants at the grade of member}.

- 18 Should any "unexpected finds" occur during site excavation and earthworks including, but not limited to, the identification/finding of contaminated soils, buried building materials, asbestos, odour and/or staining, works are to cease immediately, and Penrith City Council is to be notified. Any such "unexpected finds" shall be addressed by an appropriately qualified environmental consultant.

Should contamination be found during development works and should remediation works be required, Penrith City Council is to be notified prior to commencement of remediation. All remediation works are to be carried out in compliance with State Environmental Planning Policy (SEPP) (Resilience and Hazards) 2021, applicable NSW EPA Contaminated Land Guidelines and the National Environment Protection (Assessment of Site Contamination) Measure 2013 [NEPC2013].

{For the purpose of this condition, an appropriately qualified person is defined as "a person who, in the opinion of Council, has a demonstrated experience, or access to experience in hydrology, environmental chemistry, soil science, eco-toxicology, sampling and analytical procedures, risk evaluation and remediation technologies. In addition, the person will be required to have appropriate professional indemnity and public risk insurance."}.

- 19 Dust suppression techniques are to be employed during all construction works to reduce any potential nuisances to surrounding properties.