

Environmental Health Referral Response - industrial use

Application Number:	Mod2025/0424
Proposed Development:	Modification of Development Consent DA2024/0946 granted for Use of the premises as a restaurant
Date:	06/11/2025
To:	Alex Keller
Land to be developed (Address):	Lot B DP 329073 , 80 Undercliff Road FRESHWATER NSW 2096

Reasons for referral

This application seeks consent for large/and or industrial development.

And as such, Council's Environmental Investigations officers are required to consider the likely impacts.

Officer comments

Amended Condition 24.

Noise management

The restaurant is to be operated in accordance with the following:

- Any amplified music is only permitted during the hours of 10:00am to 11:00pm. Noise levels for amplified music must be limited to 90 dBA Sound Power Level (or equal to 73 dBA @ 3m) when measured as a sound pressure level.

For the lower and middle outdoor terrace areas:

- Exclusively in association with a ceremony, for up to two occasions per day, being held between 11:00am and 1:30pm AND between 4:30pm and 7:00pm.
- Music is limited to 73dBA @ 3m LA10 from any speaker (equal to Sound Power 90dBA).
- The times and noise levels approved for the lower and middle outdoor terrace areas are subject to a trial period of 24 months, commencing at the date of determination of MOD2025/0424. At the end of this trial period, a further modification application may be lodged to make these times and noise levels permanent.

For indoor dining areas:

- 90dBA LA10 (Sound Pressure Level) during all permitted trading times.
- Until 11pm daily (except for New Years eve).

All doors and windows must be closed during amplified music, doors and windows are permitted to be open during background music as per below.

- ~~No outdoor amplified music.~~
- ~~Outdoor background and/or acoustic (non-amplified) music is limited to 10pm.~~
- Background music must be no more than 65 dBA for dining areas, all measured as a sound pressure level.
- All doors and windows are to remain shut after 10:00pm and not opened before 7:00am and anytime amplified music is used. Low level background music is permitted to be played with windows and doors open.
- Removal of glass or waste should be done internally and must not be externally of the premises after 8:00pm and before 7:00am.

- *Signs must be displayed at all exits reminding patrons to be mindful of noise when leaving the premise.*

A revised Plan of Management (PoM) is to be prepared based on the following conditioned amendments:

- *Amended Operating Hours*
- *Amplified and non-amplified and background music requirements*
- *Opening of windows and doors*
- *A contact number must be displayed for the purposes of receiving any complaints if they arrive.*
- *A copy of PoM to be available on restaurant's webpage.*

The PoM must be sent to Council and approved prior to operating under this consent.

The PoM is to be reviewed at least once per year and any required updates must be approved by Council.

Reason: To maintain reasonable levels of amenity to residential neighbouring properties and surrounding public spaces."

General Comments

Environmental health has considered the original conditions of consent and planning panel assessment report, information provided with the modification proposal as well public submissions to date.

It is considered that the proposal would unreasonably impact on the reasonable enjoyment of residential receivers in a number of ways.

1. The extension of amplified music to be permitted until 11pm has the high potential to create sleep disturbance and is largely inconsistent with the intention of the original development that this modification seeks to modify - It is noted with the planning panel assessment report (when assessing noise limitations which seek to "...allow for appropriate respite for neighbouring development...")

2. *"The use of amplified music on the external terraces ... solely be for the purposes of a ceremony (typically accompanying weddings)":*

Up to twice a day, as follows:

- Time slot one (1); between 11:00am and 1:30pm.
- Time slot two (2); between 4:30pm and 7:00pm.

The broad description of "ceremony" does not provide confidence that the amenity of the surrounding properties can be maintained as the nature and intensity of such ceremonies, from a noise standpoint, cannot be readily defined.

At its worst, this represents the overall potential for a large number of outdoor daily "ceremonies" at the premises, seemingly ancillary to the main use, however having the potential to be for the entire duration of times proposed (by power of consent if approved), and create noise issues that has the potential to unreasonably affect the amenity of the surrounding area.

Other than the possible ability to noise limit any "house" sound equipment, there is also the potential for musical artists and entertainers to bring their own sound amplification equipment, resulting in high potential to create offensive noise, with the limiting factors of behavioral noise control measures as

outlined in any *Plan of Management* being the main method available to potentially mitigate noise in an outdoor environment, as opposed to any definitive sound attenuation achieved by building design or built form controls.

Accordingly, the proposal is not supported by Environmental Health.

Recommendation

Not Supported

Planning Comment:

The above H&B assessment considerations are noted and it potentially can include intrinsic crowd noise of persons at night in such gatherings associated also with service of alcohol.

The proposal is therefore supported.

Note: Should you have any concerns with the referral comments above, please discuss these with the Responsible Officer.

Recommended Environmental Investigations Conditions:

Nil.