
Sent: 4/06/2020 9:08:29 AM
Subject: Submission re DA 2019/1478- attn. Tony Collier
Attachments: Not -Joint Submission re DA2019.docx;

Dear Sir

Please find attached my submission on this matter.
Yours faithfully

Michael Morris

Submission re DA2019/1478 - Michael Morris

Please note that all previous submissions objections and communications in regard to this DA still stand and are to be taken in conjunction with the following.

I note further DA proposals are now being considered (see below) and the applicant has commissioned 3 new reports, including an Acoustic report, a Plan of Management, and an Arborist report. In addition there are now also various internal Council Departmental reports available for comment.

Introduction

This D.A. is about modifying outside dining on the Reserve.

- The Applicant explicitly relies on: “Council’s Ocean Beaches Plan of Management and in particular, Part 7.0 – North Narrabeen Rock Pool.” (S.E.E. p4)
- Specifically: “The PoM at page 45 also notes: **Proposed Outdoor Eating Area** *This Plan of Management expressly authorises the future leasing of a proposed outdoor eating area in conjunction with the existing commercial outlet adjacent to the reserve. The proposed work will enhance the function of the outdoor dining area*”. (S.E.E. p4)
- The D.A. clearly applies to outside dining on the Reserve: “The proposed work will enhance the function of the outdoor dining area..”. (S.E.E. p4)

Further DA proposals

I note by virtue of a copy of a letter to the applicant from Acting Manager Parks Assets of 17/1/20, confirmed by your covering letter to me of 20/3/20, that the DA now also includes:

(my italics)

1. A 2.6m pergola over the existing tiled area (*the tiled area outside Sushi at One*).
2. A 1.5m wide path to existing outdoor tiled area (*path and outdoor tiled area of the Outside Dining Area at Main entrance, both already existing*).
3. Stone and railway sleeper fence 1.2m high around outdoor area (*existing posts and benchtops enclose an area 5m wide running the entire length of the building, with caged stone baskets under, some existing, some shown on DA plan*).
4. A railway sleeper deck connecting the 2 tiled areas (*existing*).
5. Soft landscaping 22 m² (*shown in DA plan*).

Not mentioned are existing catenary lights over the Reserve from the building to and around the Pines, 3 huge landscaping boulders and a number of vertical railway sleeper posts effectively closing off the Reserve area at the eastern end of the building.

Objections to Further DA Proposals.

These various structures clearly form part of a much enlarged Outdoor Dining area, intended to allow private functions and parties, cocktail parties, and amplified music performances with guests standing at the benches. All these have already occurred, unauthorised, starting with the party last NYE.

The various structures clearly fail the following Council requirements for Outdoor Dining Area structures:

1. "Fostering neighbouring amenity by minimising additional noise visual and other adverse impact" (Policy p1).

There is already a very considerable adverse impact from functions and music.

2. "Must be temporary and only used during the approved operating hours." (Guide p4).

These structures are clearly very permanent, and already prevent access 24/7.

3. "Outdoor dining areas are to make a positive contribution to the character of the streetscapes. They are to appear as temporary uses of the public domain, not permanent fixtures. The essential elements of an outdoor dining area are temporary chairs, tables.." (Guide p6).

The array of fixed posts and connecting benchtops at which people sit on stools or stand, stone baskets, and the paving and sleeper deck look and are permanent, and visually link the entire area to the Restaurant , not the Reserve.

4. "Barriers or structures around the area give the appearance that the public space has been privatised and become an obstacle to access and movement will generally not be supported." (Guide p6).
5. "All outdoor dining furniture is the responsibility of the restaurant/café owner and must be removed from the footpath outside approved hours of operation." (Guide p6).

Clearly not a possibility in this situation.

6. "Barriers which enclose the outdoor dining area will only be supported where there is a licence under the Liquor Act 2007 to serve alcohol in the outdoor dining area and the café/restaurant is in a designated Alcohol Free Zone." (Guide p7).

This Reserve is not an Alcohol Free Zone therefore the barriers should not be supported. The benches form a very substantial physical and visual exclusionary barrier.

Acoustic Report
Objections

1. The Acoustic report doesn't mention or investigate the options of music inside the restaurant only, or of no amplified music at all, as noise mitigation measures. Proposed is a new and currently unauthorised activity on Crown Reserve. At p2: "...it is understood that the existing live outdoor music is the element that is to specifically be assessed in this assessment."
2. Music and entertainment are specifically **not** permitted under NBC Outdoor Dining Guide, even assuming a new ODA lease over Crown Reserve were granted outside Sushi at One to allow the proposed pergola. Functions in this area have caused significant adjacent property noise since last NYE, with issuing of a Noise Abatement Order by NBC. (Note this is **not** the existing/currently lapsed 10x4 metre ODA area outside the main entrance, renewal of which is **supported**).
3. p13 "music ...playing between 12pm and 10 pm". Similarly the POM "restricts" the music to 12pm to 10pm, clearly excessive.
4. p5 fig 2 "resident at 3 NPP ... working with applicant...therefore not considered". Correct planning decisions for a property are independent of the current occupant.
5. p5 "patrons will not be permitted to exceed the background sound of any live music" What does this mean- how could they and how would this be monitored?
6. p12 table 8 "Attended levels on 2 occasions on 15/3/20".
As it happens, we have diary notes and videos (available) taken at 1.40pm and 1.42pm on 15/3/20. The music began at 1.30 and ceased at 3.30 due to rain. Despite there being only a single guitarist doing his own vocals and there being a moderate southerly, words and music were clearly audible inside and outside, upstairs and down, and on the video.
7. The only hypothetical "receiver" considered is R1 on our veranda, but the side veranda of No.7 is the same distance as R1 from the speakers. No actual measurements were taken at either of these sites. Previous experience has repeatedly shown that music on the Reserve channels up the "canyon" between the rear of No3 and the front of our building and is fully audible on our entry pathway, only a metre in front of the No7 veranda, but this is not considered either.
8. In our view it is impossible that the proposed 2.5m high acoustic curtains attached to one aspect of the proposed pergola can have the slightest effect, given that whenever outside music was played on the Reserve it was clearly audible for up to 100m and more up and down Narrabeen

Park Parade, and on all parts of our property including our driveway, which is separated from the speakers by the width of the land of 1 and 3 NPP, and the buildings thereon, being 3 storeys in the case of No3. If that doesn't control the noise, how could a 2.5m curtain, regardless of what "modelling" is claimed to show?

9. The practical problems of enforcing such measures have already been amply demonstrated by repeated local resident complaints to Council resulting in Council issuing Noise Abatement Orders. Last New Year's Eve Party was the subject of residents' complaints to Council and Police and was shut down by police around 12.45am. There have been numerous noise complaints to NBC since with Ranger and Police attendances.
10. No consideration has been given to detriment to other users of the Reserve, the bird life habitat of the Norfolk Pines, and especially the Caravan Park opposite by outside music, functions and parties.

Plan of Management

Objections

1. Hours; p2.
 - This restaurant is allowed only as an existing use in a residential zone.
 - Therefore Council's existing Outside Dining Hours need to be strictly observed i.e. 7am to 10pm.
 - Given the noise and disorder at the party last NYE no latitude should be allowed, and the same hours should apply to the Restaurant itself, with time to clean up and close down, say to 11.00 p.m. Note that Council outdoor Dining Guide p.9 provides "ODA shall generally be restricted ... 7am to 10pm".
 - As indicated above, music (if permitted at all) should be inside only and preferably confined to 5.00pm to 7.00pm Thursday to Saturday or less.
2. Live Music/ Noise Management; p4.
 - The measures proposed mirror those of the Acoustic report and are unacceptable for the same reasons. The extraordinary noise and disorder which occurred last NYE on the reserve shows the inadequacy of these.
 - Music is proposed from 12 pm to 10 pm, quite unacceptable; if performed outside this would be in breach of Council's Outside Dining Area rules, and if inside as recommended by "Council's Environmental Health Response- Industrial Use" would exceed their recommendation of 5pm to 9.00 p.m. Thursday to Saturday.

- Our Submission is that if allowed at all, music be inside the Restaurant premises only and limited to 5 to 7pm.
3. Patronage; p5.
- The existing DA amendment (1990) (S.E.E appendix 2) allows 50 diners, and the now lapsed ODA lease (S.E.E appendix 3) another 40, so a total of already 90 exists. No reason is presented for an increase.
 - The proposal for cocktail parties for 180 is entirely inappropriate due to noise, parking and adjacent homes. This Restaurant is an existing use in a R2 zone and only seated dining is appropriate, inside or out.
4. Private functions
- Due to noise, parking problems and adjacent dwellings anything but seated dining for 90 is inappropriate. Conditions need be imposed so that any private functions observe this. This Restaurant is an existing use in R2 zone.
5. Conclusion p8.
- It is submitted that Responsibility for maintenance of unleased portions of Crown Reserve should not be left to the Restaurant, and use of unleased Crown Land for Restaurant purposes should be expressly prohibited by Council as Manager of the Reserve.
 - The unleased Reserve next to the Restaurant has already been occupied and public access impeded by the unauthorised works and activities of the Applicant, who sought to remove 4 of the 6 historic Norfolk Pines in an earlier DA. Maintenance needs to begin by removal of these unauthorised works and remediation of the area outside Sushi at One.

Further Comment

We note the “Petition-in Support” of 14/5/2020.

- This is not a petition.
- The entries are unsigned, undated , and the proposals so vaguely worded that they are “motherhood” proposals anyone could support.
- These names were collected pre-Covid when the restaurant was still open and before details of the new DA proposals were notified, but was submitted long after the initial closing date. There was no opportunity for those who subscribed the document to first examine the website.
- There is no mention of impact on trees, wildlife, or local amenity of the Reserve, or that the restaurant is in a residential zone.
- No weight be given to this document.

Submitted

- 1) The unauthorised existing works, the proposed additional works, and the proposed activities, are quite inappropriate for this significant Reserve. They fail the letter and the spirit of Council Guide and Council Policy provisions in regard to Outside Dining Areas, and should be rejected. Sleeper posts, bench tops, and the vertical sleeper fence at the eastern end, all permanently enclosing the Reserve are unsightly, prevent access, and should be removed.
- 2) Proposed pergola jutting from the side of the building will be unsightly and permanently alienate Reserve land. A retractable awning would be temporary, consistent with the ODA Guide.
- 3) Music should be strictly confined at most to inside the existing Restaurant premises, as recommended in Council's "Environmental Health Response-Industrial Use", to preserve the local amenity.
- 4) It would be more appropriately prohibited altogether, next to a residential area, close to the camping area, in an important and popular Recreational Zone. The Council Guide to Outside Dining Areas prohibits entertainment or music on Outside Dining areas.
- 5) Hours of Music inside the Restaurant, if any, be restricted to 5.00pm to 7p.m., Friday and Saturday only, or at most, as recommended in Council's Environmental Health Response- Industrial Use of 19/5/20, to Thursday to Saturday 4pm to 9.00pm.
- 6) Council's existing Outside Dining Hours need to be strictly observed i.e. 7am to 10pm, in line with Councils Outside Dining Hours Guide. Given the noise and disorder at the party last NYE no latitude should be allowed, and the same Hours should apply to the Restaurant itself, and with time to clean up and close down, vacated by 11.00 p.m. consistent with other local restaurants.
- 7) No music or entertainment on any part of an Outside Dining Area, as is required already under current NBC Outside Dining Area etc., Policy and Guide, to preserve quiet enjoyment of the reserve.
- 8) Only seated Outside Dining in accordance with current Guide and Policy, with no other outside activities to be permitted e.g. functions and New Year's Eve parties, or cocktail parties for 180 people.
- 9) Maintenance of unleased Reserve continue to be exclusively a Council function.
- 10) Current approved numbers are accommodated by the existing internal and Outside Dining areas. No reason is advanced to enlarge the existing Outside Dining Area to take up even more of the Reserve.
- 11) Renewal of the existing/currently lapsed ODA 10x4 metre area at the main entrance for 40 guests, is supported.