

Environmental Health Referral Response - industrial use

Application Number:	DA2019/1478
Date:	18/06/2020
To:	Tony Collier
Land to be developed (Address):	Lot 1 DP 1005148 , 1 Narrabeen Park Parade NORTH NARRABEEN NSW 2101

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

General Comments

Environmental Health have been requested to provide comment on the development application. As part of this assessment the following matters were considered; Noise.

Noise

Reference is made to the statement of environmental effects by Vaughan Milligan Development Consulting Pty Ltd, dated October 2019. The development proposal aims to extend the hours of operation from the current condition of consent which states;

Restaurant trading hours including any take away meals service shall be confined to:

- 12 midday- 3.00pm, Wednesday to Sunday
- 6.30pm -10.30pm, Wednesdays, Thursdays and Sundays
- 6.30pm -11.30pm, Fridays and Saturdays

All staff and customers are to vacate the restaurant premises by 12 midnight

The development proposes to alter the existing trading hours to the ones listed below;

- Monday – Saturday: 6.30am – 12.00 midnight
- Sunday: 6.30am – 10.00pm
- New Year's Eve – until 2.00am closing.

This proposal significantly increases the trading hours and allows trading on Monday and Tuesday which if not properly managed or controlled can have a detrimental effect on the amenity of surrounding residence.

The proposal also aims to increase the current seating capacity from a maximum of 50 persons to 100

persons to both indoor and outdoor areas. This increase in patronage is anticipated to increase noise generated from the premises especially if outdoor seating is used.

The property department at Northern Beaches Council has been requested to comment on the outdoor dining at the property and they have advised that the approval mentioned in the SEE was for a previous business operator. Outdoor dining licences under section 68 of the Local Government Act are non-transferable and as such the business has no current approval for any outdoor dining. The property department state that "Any agreement going forward would be assessed under a Crown Land licence.". As there is currently no crown land licence agreement, this will need to be addressed prior to the issuing of any consent.

As part of a request for additional information the applicant has submitted an acoustic report and a plan of management.

The plan of management has multiple inconsistencies with the SEE i recommend conditioning that an amended plan of management be submitted prior to OC for approval from the Environmental Health Department. Below i have listed the problems i have identified;

- The SEE list the proposed hours of operation as;

Monday – Saturday: 6.30am – 12.00 midnight

Sunday: 6.30am – 10.00pm

New Year's Eve – until 2.00am closing.

The POM list hours as;

Monday – Saturday – 6.00am -12.00 midnight

Sunday 6.00am -10.00pm

New Year's Eve - - 2.00am

This is inconsistent with the SEE's proposal, The plan of management must mirror the proposed hours in the SEE.

- In (h) Shutdown Procedure it is stated that " All waste is removed to the rear bins and the areas tidied."

Environmental Health would prefer if waste was enclosed and contained within in the premise until the following day where it is disposed in the rear bins. This is due to loading commercial bins at 11:45pm-12pm is quite a noisy activity for that late at night. This can be mitigated through this practice.

- In Live Music/ Noise Management: section there is mention to recommendations from the acoustic report.

This should refer to the conditions of consent Environmental Health propose to impose instead of the recommendations. As such I will be recommending that the POM be reviewed to the satisfaction of EH prior to OC where these change can be made.

- Under Patronage: there is mention of 100 seated patrons and 180 in the event of a stand up cocktail event. There is no mention of 180 patrons within the SEE and as such this number should be removed from the POM. A condition of consent also be imposed to limit the number of patrons to 100 which is still double what the existing consent allowed.

- In the conclusion section;

The statement below alludes that DA 2019/1478 provides consent for the outdoor dining area. This is incorrect as a separate lease from crown lands/Council would permit its use;

"The plan forms an integral part of the operation of the restaurant and the use of the outdoor dining area for which DA 2019/1478 provides approval."

The acoustic report has been provided by the applicant by Pulse Acoustic consultancy referenced as 2020.064 One Café – Acoustic Assessment and dated 6 April 2020.

The Acoustic report provides a number of recommendations based on the assessment undertaken in order to preserve the amenity of receivers these have been considered and associated conditions of consent have been proposed.

Based on the number of submissions inconsistencies in the POM and significant increased intensity in the use of the site and hours of operation. A number of conditions of consent have been imposed to review the use of the site over a period of time. such as at OC stage, 12 month's after the interim OC is issued. This way if the use is not appropriate further conditions can be imposed.

Further comments (12/06/2020)

A Submission has been received by Northern Beaches Council giving a peer review of the acoustic report submitted by the applicant of the proposed development. The Peer review document referenced as 50.5413.R1:MSC, dated 2 June 2020 and titled Peer-review of acoustic assessment one cafe, 1 Narrabeen Park Parade, North Narrabeen by the acoustic group, provides some clarity on the deficiencies of the acoustic report submitted by Pulse Acoustic Consultancy in some but not all matters. In considering this review Environmental Health has reconsidered some of its proposed conditions of consent to limit speakers within the building of 1 Narrabeen Park Parade. This was for a number of reasons including to remove a temporary administrative control and replace it with a physical structure (the building), Placing the onus on the applicant to gain consent for the use they desire on Crown land at 1A Narrabeen park parade and to enable a simpler approach to enforcement of conditions of consent i.e. If the speakers are outside of the property it is a breach of consent. It is deemed that the effect of live music can still be enjoyed by patron when played from speakers indoors while also protecting the amenity of surrounding residents. It is also anticipated that the physical structure will provide far greater noise mitigation than a noise curtain or wall outside.

Due to the removal of the administrative control proposed some controls have been relaxed such as days and hours of operation of live and amplified music. This is due to speakers being required to be located within the premise and not outside. The original acoustic report based their assessment for outdoor music which has lead to a lack of information on internal noise reduction fittings. As a condition of consent another acoustic report is to be submitted prior to the consent lapsing for consideration. Any additional acoustic report is to address internal noise control measures should they be needed after one year of operation.

Environmental Health recommend approval subject to the proposed conditions of consent being imposed.

Recommendation

APPROVAL - subject to conditions

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:

CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

Plan of management review

Prior to the issuing of any interim / final occupation certificate, a completed plan of management is to be submitted to Northern Beaches Council's Environmental Health Department for review. Northern Beaches Council's Environmental Health Department are to provide approval or approval with amendment in writing to the applicant once the plan of management has been reviewed.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To ensure the premises are maintained in an appropriate manner in perpetuity.(DACHPFPOC6)

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

Playing of live or amplified music

Live or amplified music may only be played inside the premises of 1 Narrabeen park parade under the following circumstances;

- On Thursday to Saturday except new years eve and new years day
- Between the hours of 12:00pm (midday) and 10:00pm, except new years eve to new (31 December - 1 January) where live or amplified music may be played from 12:00pm (midday) to 2:00am
- From two or less speakers
- Any speaker/s in operation are to be located solely within the premises of 1 Narrabeen Park Parade and 2 meters within the property boundary of 1 Narrabeen Park Parade.
- Each speaker is to have a maximum sound power level indicated in Table 10 of the acoustic assessment by Pulse Acoustic Consultancy referenced as 2020.064 One Café – Acoustic Assessment, dated 6 April 2020.
- Whilst in operation any speaker/s are to be westward facing.
- When played using the in-house speaker system.
- When controlled by a calibrated noise limiter, and set to a maximum of 92dB(A) when measured 5m in front of any speaker/s. The actual noise limits for the limiter (dB(A), dB(C), dB(ext filter) or dB(Lin)) appropriate for the limiter are to be determined by compliance testing which is to be completed by an appropriately qualified acoustic consultant. The limiter is to be installed in a tamper proof enclosure (or in the case of a DSP based limiter) with no access to the limiter controls by staff or management of the hotel.

Reason: To protect the amenity of neighboring residents from the effects of amplified music.
(DACHPGOG5)

Waste collection and delivery times

Waste collection and deliveries for the premise must not occur between the hours of 10:00pm and 7:00am Monday to Sunday, without prior approval of Council.

Reason: to minimise disruption to neighbouring properties. (DACHPGOG5)

Plan of management

The requirements of the One Narrabeen Park Parade Plan of Management North Narrabeen required by this consent is to be fully implemented in perpetuity from the issue of any interim / final occupation certificate.

Reason: To ensure the premises a maintained in an appropriate manner in perpetuity.(DACHPGOG6)

Complaint management register

A complaint management register is to be kept on-site at all times and be available for review by Council Staff or NSW Police upon request. Any complaint management register record is to be kept for a minimum period of 12 months from when the complaint was received and is to identify the following aspects of any complaint made;

- The nature of the complaint.
- How the complaint was received.
- The time and date the request was received.
- The time and date the complaint refers to, if known.
- How the complaint was addressed, responded to, rectified or process put into place to address the request.
- An action item to effectively address each complaint received and a due date for the completion of the action item.
- Any community engagement undertaken to manage repeated requests.

Reason: To assist in the management of complaints(DACHPGOG6)

Twelve Month Noise Trial Period for restaurant and live music venue

Consent is granted for the restaurant and live music venue to operate for a limited period in accordance with the following:

(a) The restaurant and live music venue shall be subject to a trial period of twelve (12) months from the date of issue of the interim occupation certificate.

(b) At the end of the 12 month period, if the applicant wishes to make the restaurant and live music venue use permanent, the applicant must lodge a Section 4.55 Modification of Consent application with supporting documentation (including the noise monitoring details required in (c) below) on or before 2 months before the end of the 12 month trial period. The S4.55 can include deletion of this requirement for any further review, and any modification to relevant conditions.

(c) During the 12 month trial period, a noise monitoring review is to be undertaken by a qualified expert Noise Consultant with a minimum of two (2) noise test monitoring procedures, at least 4 months apart, to determine the ongoing noise impacts of the restaurant and live music venue use and noise impact on

surrounding land uses. The monitoring survey and recommendations of the Noise Consultant are to be presented in a report to Council to accompany the Section 4.55 Application to be lodged at the end of 12 months from the date of issue of the interim occupation certificate.

(d) The approved restaurant and live music venue can remain in place until the Section 4.55 application has been finally determined subject to:

(i) A Class 1 Appeal to the Land and Environment Court being commenced against any actual refusal of the S4.55 application by Council within 14 days from the date of that refusal; or

(ii) If the Council has not determined the S4.55 application within 40 days of the lodgement of that application, a Class 1 Appeal being commenced against the Council's deemed refusal of the application within 60 days of the date of the lodgement of the S4.55 application; or

(iii) In the event that the Section 96 is not lodged in accordance with the above, Council may commence a Class 4 Appeal against a breach of these conditions.

Reason: Management of noise amenity.(DACPLG23)