

## Environmental Health Referral Response - industrial use

<b>Application Number:</b>	DA2021/2065
<b>Date:</b>	16/05/2022
<b>To:</b>	Alex Keller
<b>Land to be developed (Address):</b>	Lot 2849 DP 822227 , 0 Market Lane MANLY NSW 2095

### 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 Assessment Comments

Applicant seeks approval for the fit out and use of a temporary wine bar in Market Lane.

The SEE advises the following relevant information for this referral assessment

*A temporary 'pop-up' wine garden has been operating successfully in this location since January 2021, and Council through an open tender sought expression of interest (on 12 May 2021) from local venue operators to enter into a longer-term arrangement to continue its operation.*

*MNT Investments Pty Ltd (the owner and operator a number of other local venues comprising Donny's Bar, Insitu and Cumberland) were the successful tenderer. As part of the tender process, the operator is required to prepare and submit a DA to Council to continue this activity.*

2. Use as a temporary wine bar as follows:

- a) Capacity for up to 200 persons (both seated and standing)
- b) Operating hours open to the public are:
  - (i) Sunday to Thursday: 10.00 am and 10.00 pm
  - (ii) Friday and Saturday: 10.00 am and 10.30 pm
- c) Morning set-up to occur between 9.00 am and 10.00 am Monday to Sunday
- d) End of close pack-up to occur between 10.00 pm and 10.30 pm Sunday to Thursday and 10.30 pm and 11.00 pm Friday and Saturday
- e) Live music is to occur from 5.00 pm onwards Monday to Friday only
- f) One-year trial period with an option to extend for a further two-year period on completion of a successful trial period.

The SEE also advises the following regarding noise:

*Noise impacts from the proposed temporary outdoor wine bar under a one (1) year trial system will not cause a nuisance to the nearest residential accommodation as a result of its restricted hours of operation and patron capacities. A PoM has also been prepared to ensure the venue is managed responsibly.*

While the application will be under a one year trial system (with possible extensions) the noise would

not be considered as temporary given the length of time, the number of days a week trading and that a similar setup has already been ongoing in the short term. There are a number of potential acoustic impacts from the development including noise from patrons and noise from music that need to be considered.

Environmental Health recommends that an acoustic assessment be undertaken by a suitably qualified and experienced consultant in order to assess the acoustic impacts and if required propose acoustic controls to limit amenity impacts of the development. The acoustic assessment should include but not limited to an assessment of noise from patrons and music. The assessment and report is to be in accordance with the NSW EPA Noise Policy for Industry and other relevant guidelines. Given that there is currently a temporary approval for Market Lane that is similar to the proposed development it may be an opportune time to undertake the acoustic assessment while the event is occurring.

#### General review comments - 18 November 2021

Significant number of complaints received since May 2021. All regarding noise from patrons, live music and the event operating past 10pm in contravention of their temporary/trial permit issued by Open Space & Recreation Planning team.

#### Revised Comments May 2022

The proposed capacity of the venue has been reduced to 120 patrons.

Applicant has also provided an Acoustic Report by WSP Australia Pty Ltd dated 16 May 2022 (reference: PS131027-A) that includes a number of recommendations.

The applicant has also limited the live music to the following times:

- Monday – Thursday: 6pm – 9pm (after 5pm for 'background' recorded music except when trading on a public holiday that falls on a weekday, then 12 midday to 10pm )
- Friday: 5pm – 10.00pm
- Saturday: 3pm 10.00pm
- Sunday: 3pm – 10pm

Supported - 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 TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE**

#### **Plan of Management Update**

An updated Plan of Management is to be prepared to the satisfaction of Councils Environmental Health Team and the Principal Certifying Authority. Updates to the Plan of Management are to include:

- Incorporating recommendations from Section 4 of Acoustic Report by WSP Australia Pty Ltd

dated 16 May 2022 (reference: PS131027-A);

- Amplified music to be limited from one speaker as per modelling undertaken within the Acoustic Report;
- Amplified background music on Mondays to Fridays is to be limited to 5.00 pm onwards only (except when trading on a public holiday that falls on a weekday, then 12 midday to 10pm);
  
- Live music to be limited to the following times
  - Monday – Thursday: 6pm – 9pm
  - Friday: 5pm – 10.00 pm
  - Saturdays & Sundays: 3pm –10:00 pm
  
- Capacity of venue limited to 120 patrons
- Speaker to be fitted with an electronic limiter that limits the output to the noise spectrum within Table 3.1 of the Acoustic Report by WSP Australia Pty Ltd dated 16 May 2022 (reference: PS131027-A). 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.

The updated Plan of Management is to be submitted to Council for review and approval by Councils Environmental Health Team.

Reason: To maintain amenity of the surrounding area.

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

#### **Acoustic Report Certification**

Prior to any occupation certificate being issued, a further acoustic assessment is to be undertaken by a qualified and experienced person(s) to confirm compliance with recommendations within the Acoustic Report by WSP Australia Pty Ltd dated 16 May 2022 (reference: PS131027-A) and compliance with any relevant acoustic conditions of the consent.

Any recommendations made by the consultant must be implemented prior to issuing the Occupation Certificate in order to achieve compliance with noted conditions of this consent

Reason: To protect the acoustic amenity of neighbouring properties. (DACHPFPOC6)

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

#### **Noise Ongoing**

The Premises shall comply with the following:

- Capacity of venue limited to 120 patrons.
- Amplified music to be limited from one speaker.
- Amplified background music on Mondays to Fridays is to be limited to 5.00 pm onwards only (except when trading on a public holiday that falls on a weekday, then 12 midday to 10pm).
- Live music to be limited to the following times
  - Monday – Thursday: 6pm – 9pm
  - Friday: 5pm – 10.00 pm
  - Saturdays & Sundays: 3pm –10:00 pm

- Speaker to be fitted with an electronic limiter that limits the output to the noise spectrum within Table 3.1 of the Acoustic Report by WSP Australia Pty Ltd dated 16 May 2022 (reference: PS131027-A). 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.
- Notwithstanding compliance with the above, The LA10\* noise level emitted from the premises shall not exceed the background noise level (as determined by an Authorised Council Officer) in any Octave Band Centre Frequency (31.5Hz–8kHz inclusive) by more than 5dB between 7:00 am and 12:00 midnight at the boundary of any affected residence.

For the purpose of this condition, the LA10 can be taken as the average maximum deflection of the noise emission from the licensed premises. This is a minimum standard.

Reason: To maintain acoustic amenity of the surrounding area. (DACHPGOG5)

### **Compliance with Plan of Management**

The requirements of the Plan of Management are to be fully implemented in perpetuity from the issue of any interim / final occupation certificate.

Reason: To protect the amenity of the surrounding area. (DACHPGOG5)