

## Environmental Health Referral Response - industrial use

<b>Application Number:</b>	DA2023/0368
<b>Proposed Development:</b>	Fit out and use of the courtyard for the seating of 100 patrons, operating from 8.00am to 10.00pm (same as existing)
<b>Date:</b>	23/05/2023
<b>To:</b>	Nick England
<b>Land to be developed (Address):</b>	Lot 1 SP 61679 , 1 / 9 - 15 Central Avenue 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

The applicant advises:

The proposal seeks Council approval to refurbish the existing communal outdoor dining space to improve the amenity and functionality of the space.

The use of the communal commercial courtyard is to remain unchanged, with the capacity restricted to 100 patrons and operation limited to between 8.00 am and 10.00 pm only (in line with current approvals).

1. Fitout works of the existing commercial courtyard:

- (a) Demolition of the planter boxes along the eastern boundary
- (b) Removal of small palms from within the planters
- (c) Removal and replacement of part of existing rear wall and rebuilding part of this wall along the boundary line
- (d) Construction of a new service area with back of house wash-up (+21.3sqm of GFA)
- (e) Construction of new storeroom (+9.1sqm of GFA)
- (f) New timber pergolas plus new retractable awning
- (g) New internal corridor to provide access to communal sanitary facilities

2. Use of the courtyard as follows:

- (a) Capacity for up to 100 persons (seated only) (same as existing)
- (b) Operating hours: Monday to Sunday 8.00 am and 10.00 pm (same as existing).

No change is proposed to the operation of the existing shop tenancies (indoor and out), current liquor licenses and license boundaries are to remain unchanged as a result of this refurbishment.

4.2 Gross floor area (GFA) and floor space ratio (FSR)

As calculated by SARM Architects and noted within previous Council Assessment Reports (Development Consent No. 0279/2019):

- The existing site has an approved GFA of 13,052.5m<sup>2</sup> and an FSR of 2.915:1
- The proposed GFA is 13,082.9m<sup>2</sup> and an FSR is 2.922:1 (with a site area of 4478m<sup>2</sup>)
- An increase of 30.4m<sup>2</sup> GFA of is proposed.

The existing communal commercial outdoor dining area will operate between the hours of 8.00 am and 10.00 pm Monday to Sunday (same as existing).

There will be a maximum of 100 patrons (seated) within the courtyard at any one time, with management of the existing establishments monitoring numbers at the entrance to the venues.

If the outdoor venue is at capacity, patrons will not be permitted to queue outside the venue. Patrons will be instructed to return at an appropriate time for an available table. No live entertainment is to occur within the courtyard, with music to be played through speakers at a low and controlled setting to encourage conversation.

#### Sanitary facilities

Patrons will have access to the sanitary facilities located within the building (same as existing). As a result of the proposed works, patrons located within Shop 1 – Insitu and Shop 2 - Ground Zero will no longer need to exit the premises through the rear courtyard to access the communal toilets. Instead now, patrons located within Shop 1 and Shop 2 can access the shared facilities internally.

An acoustic assessment has been carried out and makes reference to the existing Consent:

#### 2.1 Conditions of Consent

Northern Beaches Council, through the Notice of Determination (ref: 230617 DA684/99 S96(2) P7 & P8 CD:LP:LW, dated 15 June 2017), has stipulated the following Conditions of Consent relevant for noise control:

##### — ANS04:

All music and amplified sound whether live or recorded must be controlled by a noise limiter. The limiter shall be set by an acoustic expert so that noise emissions comply with the noise criteria specified in condition ANS01[1]. Certification must be submitted to Council twenty-eight (28) days from issuing the Occupation Certificate, certifying the limiter has been installed in accordance with condition ANS01[1].

##### ➤ Comments:

— Please refer to the nominated outdoor music noise limits outlined in Table 3.1.

— We understand no changes are proposed to the internal operation of InSitu, including internal music noise levels. Existing conditions have been assumed to be compliant and to remain compliant with the project noise criteria. This has therefore not been addressed any further.

— Note that this acoustic assessment for the outdoor courtyard includes contribution from internal patron and music noise breaking out to the courtyard as described in Section 3.1.

##### — ANS05:

The premises shall comply with the following:

(a) The LA10\* noise level emitted from the premises shall not exceed the background of noise level (LA90) in any Octave Band Centre Frequency (31.5Hz-8kHz inclusive) by more than 5dB between 7:00am and 12 midnight at the boundary of any affected residence

##### ➤ Comments:

— Applicable criteria that have been developed based on ANS05 and the measured background noise levels are outlined in Table 2.1.

1 We have assumed this refers to the noise criteria outlined in ANS05.

— WSP notes that this “background + 5dB” criteria for noise impacts from 7am until 12 midnight is in line with the requirements from the Manly Development Control Plan 2013 and the standard Office of Liquor, Gaming and Racing regulations (OLGR) noise criteria.

(b) The LA10\* noise level emitted from the premises shall not exceed the background noise level (LA90) in any Octave Band Centre Frequency (31.5Hz-8kHz inclusive) between 12 midnight and 7:00am at the boundary of any affected residence

##### ➤ Comments:

— Criteria are not applicable for the proposed courtyard operation between 8am and 10pm and ANS05 b) has therefore not been addressed in this report.

(c) Notwithstanding compliance with the above, the noise from the premises shall not be

audible within any habitable room in any residential premises between the hours of 12 midnight and 7:00am

➤ Comments:

— Criteria are not applicable for the proposed courtyard operation between 8am and 10pm and ANS05 c) has therefore not been addressed in this report.

(d) The LA10 noise level emitted from the premises shall not exceed the background noise level (LA90) in any Octave Band Centre Frequency (31.5Hz-8kHz inclusive) by more than 3dB when assessed indoors at any occupied commercial premises whilst that premises is in operation

➤ Comments:

— We understand the existing commercial premises facing the courtyard currently share access to the courtyard with an estimated total capacity of 106 patrons which is very similar to the capacity of up to 100 patrons proposed for the sole usage of the courtyard by InSitu. We understand the premises facing the courtyard will maintain access to the courtyard to access the shared toilets.

— For the commercial receivers located at 18 Sydney Road facing the courtyard, it has been assumed that a similar number of patrons will result in similar noise emissions. We understand emissions are currently deemed acceptable by the landlord and commercial neighbours facing the courtyard. InSitu maintains a good relationship with their commercial neighbours and we are currently not aware of any noise complaints.

— For other commercial receivers, not located at 18 Sydney Road, the individual criteria have currently not been developed. This assessment assumes that compliance with the residential receiver criteria at receiver R1 also infers compliance for the commercial receivers at greater distances and shielding from the venue.

\* (for the purposes of this condition, the LA10 can be taken as the average maximum deflection of the noise emission from the premises).

— ANS06:

The rear doors to the courtyard are to be closed from 10.00pm onwards every night except for the purposes of allowing patrons to enter and leave the internal area of the premises to use the toilets. A staff member must be stationed at the rear doors during this time until close of business. The staff member is to ensure that the doors remain closed and any patrons using the toilets do not linger outside or make noise that would disturb the nearby residents.

➤ Comment:

— We understand no changes are proposed to the internal operation of InSitu and to the operation of the existing rear doors which are to be closed from 10:00pm onwards. Existing conditions have been assumed to be compliant and to remain compliant with the project noise criteria. This has therefore not been addressed any further.

— ANS07:

The rear doors shall be acoustically treated including the seals and glass to ensure noise from the premises complies with Condition ANS05.

➤ Comment:

— We understand no changes are proposed to the internal operation of InSitu and to the construction of the existing rear doors. Existing conditions have been assumed to be compliant and to remain compliant with the project noise criteria. This has therefore not been addressed any further.

— ANS10:

All patrons must be cleared from the rear courtyard area by 10:00pm every night

➤ Comment:

— This noise impact assessment has been based on the assumption that all patrons

are cleared from the rear courtyard area by 10:00pm every night.

— ANS11:

Both sets of rear bi-folding doors must be closed from 10:00pm onwards every night.

➤ Comment:

— We understand no changes are proposed to the internal operation of InSitu and to the operation of the existing rear bi-folding doors which are to be closed from 10:00pm onwards. Existing conditions have been assumed to be compliant and to remain compliant with the project noise criteria. This has therefore not been addressed any further.

— Condition 17:

No noise nuisance shall be caused through the operation of any plant or equipment at the premises. Noise is considered a nuisance when it exceeds 5dB(a) above the background noise level.

➤ Comment:

— We understand no changes are required to the existing mechanical systems for the proposed alteration of the courtyard. Existing conditions have been assumed to be compliant and to remain compliant with the project noise criteria. This has therefore not been addressed any further.

Recommendations include:

The noise emissions from the InSitu outdoor courtyard are predicted to comply with the project noise criteria for the hours of operation, with the assumptions presented Section 3 including the following treatments and operational measures:

- Capacity of the outdoor courtyard to be limited up to 100 patrons.
- Outdoor courtyard to only operate and be occupied until 10:00pm.
- All rear doors must be closed when live or amplified music is played inside.
- Rear doors to the courtyard to be closed after 10:00pm to minimise noise breakout from internal areas which operate until 12 midnight as per ANS06.
- Signage to be displayed throughout the venue and staff to be informed to not allow access to the courtyard after 10:00pm.
- Soft chair furnishing and plant features throughout the courtyard.
- Northern boundary fence to the residential courtyard built with solid construction at  $\geq 2.7$  metres high as shown in Figure 3.1. New access door on the northern boundary fence to be built of solid construction with minimal gaps between the door leaf and frame and no gaps between the door frame and fence.
- New outdoor servery and small storage structures to be built  $\geq 3$  metres high from solid construction in the locations shown in Figure 3.1.
- Any music in the courtyard to be low background music limited to the maximum noise spectrum shown in Table 3.1 with the loudspeaker installed adjacent the building façade under the awning.
- Either operable roof Option 1 (Section 4.1) or awning extension Option 2 (Section 4.2) to be installed above the courtyard.

Environmental Health's Comments:

- Environmental Health is concerned that "offensive noise " cannot be prevented. This includes shouting, yelling, laughing, dropping of glasses etc which would exceed the assessment documentation.
- Without full enclosure elimination of a potential nuisance is uncertain. Numerous residential premises overlook the site.
- However having said that the outdoor area currently has apparently Council approval for total occupancy of 106. This is for 4 commercial occupancies to use, proposed is 100 max for InSitu, Question :Will other occupancies be prevented from using this area or reduced to the balance of

6 customers and there is the issue of access to toilets by these other venues we understand.

- It is assumed the proposal is to increase custom and customer experience. Yet no current occupancy numbers have been provided to determine if noise will increase from current levels but its assumed the awning/openable roof is to address this.
- The impacts of reflected sound off hard services with full occupancy of the courtyard is yet to be determined. Soft furnishings proposed may not be enough but conditions of any approval can potentially address this.
- There is no evidence that the currently approved 100 customers in the outdoor area have reached this capacity to determine current and future noise impacts. The Acoustic Survey (29 March to 7 April 2022) does not detail the number of patrons present at that time.
- As a number of venues with separate liquor licenses are/may use the area; It is not clear who is responsible to manage all patron numbers and noise from the area.
- Cleaning up, moving of tables and chairs, post 10pm is considered a problem particularly week nights.
- Opening the doors to the courtyard while music is being played inside is an issue for noise breakout to be addressed fully. An airlock may solve this issue. Existing conditions of approval require a staff member to be stationed at the rear doors but customers will want to move between areas.
- The Operable Roof option is not favoured as it requires additional management by staff and head counting to close at required times and maintenance of moving parts/seals over the life of the development, however we note it covers a larger area.

NB. Complaints (not necessarily verified) to Council on this site include :

3 restaurants including Insitu, Joe's pizza and Ground Zero, share outdoor area, heavy outdoor tables are constantly being dragged around and customer can not hear her own TV. tables moved around 6 - 7 am and during opening times to accommodate different customers requirements. Extremely loud music sometimes until 1 am. Door of one of these restaurants difficult to close and takes repeated attempts which involves loud banging. Also, the company Naked Wines, have parties on the premises until late.

Potential breaches of consent at Insitu including operating hours, breach of noise limits and use of outdoor section outside of approved hours.

Environmental Health would like the applicant to address and clarify the above issues before we complete our report.

Therefore the proposal is not currently supported at this time.

The proposal is therefore unsupported.

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

#### **Recommended Environmental Investigations Conditions:**

Nil.