

Environmental Health Referral Response - commercial use

Application Number:	DA2021/1541
Date:	14/09/2021
To:	Clare Costanzo
Land to be developed (Address):	Lot 21 DP 226287 , 20 Albert Street FRESHWATER NSW 2096

Reasons for referral

This application seeks consent for one or more of the following:

- Food premises, or
- Backpackers/Boarding house, or
- Mortuary, or
- Skin penetration, acupuncture, tattoo, beauty salon, or
- Public pool

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

Officer comments

General Comments

Proposed Change of Use from Take-Away Food Premises to a Restaurant with Increased Number of Patrons, Change in Hours of Operation and Conversion of 2 Car Spaces to Outdoor Seating.

The hours of operation sought are 11:30am-12:00am 7 days a week.

Features of the proposed development(from details supplied) include the following: -

Ground Floor:

- Demolition of some internal and external walls and structures.
- Proposed additional seats resulting in an additional 50 internal seats and 28 external seats.
- Bar stools fixed to decking.
- New timber deck to courtyard.
- Overhead awning over courtyard designed to Acoustic Consultant's requirements.
- Retractable dual fabric awning of Helioscreen All Seasons Novo System in PVC,
- Fabric part sunblock with second layer of Helio 100 with fabric.
- Breeze block wall to extend from existing low brick wall along boundary.
- Fixed banquette seating to courtyard.
- New breeze block wall behind banquette seat.
- New planters.
- New floor terracotta tiles to Courtyard entry and stairs with correct slope resistance for external use.
- New steps for rear access into building and into new courtyard space.
- Marine grade handrails and tactile.

Environmental Health is concerned with :

1. Noise from various sources(customer/mechanical/music)
- 2.Sanitary Facilities
3. Food Premises design
4. Smoke and odour

1. Noise

Noise from late night food and drink establishments are of concern and generate the majority of business related noise complaints to Council.

Where commercial uses are located immediate beside residential receivers, the use and hours of operation needs to be fully considered and often restricted by Council to avoid offensive noise. This is particularly relevant in neighborhoods where residential occupancy and amenity expectations is high, as opposed to an entertainment precinct.

Residential receivers are entitled to reasonable consideration especially at night where sleep disturbance can have adverse impacts.

The applicant is proposing to trade to 12am every day. An Acoustic assessment proposes a range of options to manage noise.

Highly prescriptive time related management practices are difficult to administer over time where operators and staff may change. Council has found that even garbage collection times can fail when drivers are on leave resulting in complaints and action but where acoustic sound levels are documented compliance can be difficult for operators and enforcement.

Therefore noise reduction systems need to be simple, obvious, automatic and fail safe, also easily enforceable to avoid disturbance to residential receivers.

The CONCLUSION by Pulse White Noise Acoustics Pty Ltd (PWNA) is of particular note and important to document here:

Our recommendations are thus split into 3 categories, being daytime (operation from 11:30 am to 7:00 pm), evening (operation from 7:00 pm to 10:00 pm), and night-time (operation from 10:00 pm to 12:00 am). Based on our predictive modelling and acoustic assessment, several operational control measures are advised for each operational period. These are summarised in Section 4.2.1.

For the night-time operating period (10:00 pm to 12:00 am), compliance is expected if either of the following two operational controls are enforced:

i. The restaurant operates at full patron capacity internally (maximum of 62 people indoors), but zero (0) capacity in the external area (i.e., no patrons outdoors), with all doors closed (including the door between the external and internal eating areas) and windows closed, awning retracted/open, and ambient music inside the restaurant is limited to a maximum level of 72 dBA LAeq. No amplified or acoustic music should not be played in the outdoor seating area.

ii. Alternatively, the restaurant operates at full patron capacity (maximum of 29 people outdoors, 62 people indoors), with all doors closed (including the door between the external and internal eating areas) and windows closed, awning fully extended over the entire external dining area, and ambient music inside the restaurant is limited to a maximum level of 72 dBA LAeq. No amplified or acoustic music should not be played in the outdoor seating area. If the awning is to be a retractable construction, it must remain extended (i.e., covering the entire outdoor area, with no gaps) for the entirety of the night-time operating period (i.e., from 10:00 pm to 12:00 am) if any patrons are seated in this area. The acoustic performance requirements for the overhead awning are as follows:

o The polycarbonate roofing system should have a minimum design sound insulation rating (Rw) of 20.

Note: If a polycarbonate roof system cannot be provided which meets an Rw rating of 20 it is recommended that glazed panels are installed. An equal construction would be a 6.38mm Laminate.

o The awning should be a continuous construction with no perforations or gaps. Note that the entire roofing system must have an overall Rw of at least 20, i.e., gaps will significantly reduce the acoustic performance of the selected roofing system.

In addition, noise emissions from the kitchen exhaust fan are found to be non-compliant with external noise level criteria corresponding to the proposed operational times. Due to this predicted exceedance, the following mitigation strategy is recommended:

- The exhaust fan selection should be altered such that the approximate noise level at 3m is no greater than 50 dBA, and,
- The western barrier (see Figure 4), which is at an approximate height of 1m, should be increased to an acoustic-rated barrier of minimum height 2m. The barrier fence should be a solid construction with no gaps or perforations. Providing it is structurally sound, the additional height may be fabricated out of

the same material as the existing barrier (or equivalent).

Provided that the acoustic conceptual measures discussed herein are implemented, then the proposed restaurant development is expected to be satisfactory in terms of acoustic impacts to the nearest affected locations.

Customers leaving food and drink premises at around 10pm to 12am are likely to disturb residents where they are immediate, issues include: talking laughing and waiting for transport/cabs etc 7 days a week.

The acoustic report while assessing people talking inside the venue and background noise does not address offensive noise which can come from yelling, cheering, singing even dropping the accidental smashing a plate. This noise late at night is likely to disturb immediate neighbours.

In summary we believe that the proposal is likely to create offensive noise to residential receivers. We have considered the operation of similar late night venues in the immediate area and consider similar hours maybe justified together with acoustic recommendations; provide no objections are received to the proposal otherwise Council should consider limiting trading to 9pm Sunday Monday Tuesday Wednesday Thursday.

Our conditions may include :

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Hours Of Operation

The hours of operation are to be restricted to:

Day	Open	Close
Monday	12 Noon	10pm
Tuesday	12 Noon	10pm
Wednesday	12 Noon	10pm
Thursday	12 Noon	12 Midnight
Friday	12 Noon	12 Midnight
Saturday	12 Noon	12 Midnight
Sunday	12 Noon	10pm

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Reason: To maintain the amenity of the locality and to ensure operation with this consent.

Commercial Waste Collection

Waste and recyclable material, generated by this premises, must not be collected between the hours of 9pm and 8am on any day.

Reason: To ensure the acoustic amenity of surrounding properties.

Delivery Hours

No deliveries, loading or unloading associated with the premises are to take place between the hours of 10pm and 6am on any day.

Reason: To ensure the acoustic amenity of surrounding properties.

Conditions would also be required for music sound levels, opening and closing of windows/doors and roof awning; acoustic review prior to OC.

2. Sanitary Facilities.

The applicant has not addressed the adequacy of sanitary facilities required by the BCA. The plan is not clear but appears to show - 1 accessible unisex and 1 female toilet only and no urinal. Similarly actual user numbers (staff and customers) are not clear and vary- eg in the Acoustic report (62 Plus 29 Plus standing) and Plan of Management (80 seated and 28 staff) 28 staff is the only reference to staff numbers.

This needs to be clarified.

3. Food Premises Design

A condition of approval can ensure modifications including the bar will comply with standards. No Objections

4. Smoke and Odour

Cooking activities 7 days a week (now to potentially 12am) have not been addressed in the SEE in regard to any potential impact on neighbouring residential occupiers. Continual odour (particularly where any grilling or BBQing) late at night is likely to lead to complaints unless the issue is addressed on how any impact is to be managed. This requires clarification to address this .

Recommendation

REFUSAL 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 Health and Protection Conditions:

Nil.