

Environmental Health Referral Response - industrial use

Application Number:	DA2022/2281
Proposed Development:	Formalisation of the use of premises as a restaurant (Pilu at Freshwater) including ancillary use as a function centre, increased patron numbers and extended hours of operation
Date:	23/08/2023
To:	Phil Lane
Land to be developed (Address):	Lot B DP 329073 , 80 Undercliff Road FRESHWATER NSW 2096

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

This DA seeks to formalise the use of the site and its existing improvements as a restaurant with ancillary event services being permitted. This DA also proposes to update the restaurant's operating hours for consistency with the existing liquor licence to 10am – 12am (midnight), Monday to Saturday and 10am – 10pm Sundays. It also seeks to increase the maximum patron occupancy of the restaurant to a maximum of 50 patrons in the pavilion and a maximum of 100 patrons indoors but which must not cumulatively exceed 130 patrons at any one time.

The restaurant includes an existing outdoor pavilion and terrace area. This area is proposed to be used for private wedding ceremonies. During a ceremony, the outdoor area is proposed to host up to 100 patrons with the majority standing.

One of the issues that Environmental Health considers is noise implications.

The applicant has supplied an Acoustic Report by PWNA Revision 3 17th January 2022 which found:

Assessment Results and Recommendations

Predicted noise levels from the operation of the venue in full operation with Live Music between (all patrons and background music) has been predicted. To ensure compliance is achieved, the following recommendations must be implemented:

- No more than 100 patrons in the venue at any one time, staff not included. Breakdown of patrons are as follows:
 - For general dining:
 - Up to 100 patrons located inside.
 - No more than 50 permitted in the External Pavilion.
 - Up to 20 patrons located outside.
 - For a wedding ceremony:
 - 100 patrons outside in the middle and upper terrace for a short-term ceremony.
- Operation hours are:
 - Monday to Saturday: 5:00am to 12:00am (midnight).
 - Sunday: 10:00am to 10:00pm.
- Wedding ceremonies including the use of amplified music (assumed to be vocal and acoustic) and is permitted during the hours of 7:00am and 10:00pm. However, must be limited to 90 dBA Sound

Power Level (or equal to 73 dBA @ 3m) when measured as a sound pressure level.

Background music is assumed to be 65 dBA for dining areas, all measured as a sound pressure level.

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All doors and windows are to remain shut after 10:00pm and not opened before 7:00am and anytime amplified music is used. Low level background music is permitted to be played with windows open.

Removal of glass or waste should be done internally and must not be externally of the premises after 10:00pm and before 7:00am.

A contact number must be displayed for the purposes of receiving any complaints if they arrive.

Signs must be displayed at all exits reminding patrons to be mindful of noise when leaving the premise.

A revised Plan of Management (PoM) is to be prepared based on the additional trading hours. The plan should be reviewed regularly to ensure any required updates are captured.

On the assumption the recommendations outlined are incorporated compliance with the acoustic project criteria outlined in section 5 above will be achieved.

Subsequently, a pier review of the acoustic assessment report, by others found :

DISCUSSION

PWNA's methodology, establishment of noise criteria and noise levels used for calculation purposes are not satisfactory for the assessment of noise for this type of venue. The findings of PWNA's report show that under their proposed scenarios the licensed venue has the potential to comply with the noise criteria. This is based on the incorrect noise criteria used (Refer to Section 2.1). The noise levels used for the assessment of the licensed venue must be based on the AAAC guidelines.

It is our opinion that new noise assessment must be carried out. The noise criteria must be revised to reflect the correct time periods as per LG's requirements.

The new assessment should be based on the noise levels contained in the AAAC guidelines for activities taking place at the venue while operating at full capacity.

The resulting noise levels from the use of the licensed venue must be compared to the relevant noise criteria including sleep arousal, patrons and vehicle movements.

Clarification on the use of background music/PA system must be provided. It can be difficult to control noise from live performances taking place outdoors as musicians are likely to bring their own equipment that will not be connected to the in house sound system. Details of the types of live performances allowed i.e, duets, string quartets, etc. must be provided, all instruments and microphones must be connected to the in house sound system. The in house system must be calibrated to ensure compliance to noise criteria. Any noise mitigation measures required for such performances must be clearly detailed.

Section 6.1.3 of PWNA's report provides a number of recommendations, these must be reviewed and updated

- Council accepts that acoustic assessments on yet to be operated venues/areas are theoretical assessments usually to be certified at operational time and adjustments made if necessary to operations; however the issues raised in the Pier Review should be referred back to the applicant for clarification.
- We further note that we express concerns about any "outdoor " activity past 10pm any day due to neighbouring residential receivers and that restriction of activities inside the building and managing leaving guests (particularly following a wedding) will be difficult to manage and enforce .This is mainly in regard to "offensive noise" from potential shouting, yelling from an event which is sporadic and difficult to adequately manage.

We do not support the proposal at this time and invite the applicant to address the above issues raised.

Additional Review 23.8.2023

Additional submissions have been reviewed.

Our concerns relate to potentially offensive noise, from the outside areas, which may not be adequately controlled or managed due to its nature.

Offensive noise is noise that is harmful to persons outside the property it is coming from or that interferes unreasonably with the comfort or rest of a person outside of the place it is coming from.

This may be because of the level of the noise, its nature or quality or the time it is made.

Additionally, the EPA generally considers certain noise after 10pm in a residential area to be potentially offensive, hence requirements that domestic air conditioners and the like cannot be audible at all in a neighbouring residential habitable room past 10pm.

It is considered that activities within the enclosed buildings on this site can be managed without nuisance to midnight (so the trading hours here are supported) however external activities of a celebratory nature are likely to result in offensive noise if they occur past 10pm Weeknights Sunday to Thursday, when people are trying to sleep. Noise on Friday and Saturday night to 12pm is more likely to be tolerated by the community.

Therefore Environmental Health will only support the proposal with restrictive conditions including: Trading in the open or unenclosed parts of the site (ie not contained within an acoustically enclosed building) shall only operate to the following nighttime hours:
Sunday Monday Tuesday Wednesday and Thursday to 10pm.
Friday Saturday and New Years eve to 12 midnight.

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:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

Trading Hours

Trading in the open or unenclosed parts of the site commonly known as the outdoor pavilion and terrace area (i.e. not contained within an acoustically enclosed building) shall only operate to the following nighttime hours:

Sunday, Monday, Tuesday, Wednesday and Thursday to 10pm.

Friday Saturday and New Years eve to 12 midnight.

Reason: To maintain residential amenity and prevent offensive noise

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

Ongoing Noise Management requirements

1. Compliance with the Acoustic Report by PWNA (Pulse White Noise Acoustics Pty Ltd) Revision 3 17th January 2022 and recommendations within (but with reduced limited trading hours for external areas as required by this consent)
2. The Plan of Management being updated to include acoustic requirements and limitations imposed

(including approved limited trading hours as contained within this consent). The Plan shall include how compliance is to be achieved and the person or persons responsible for implementation on trading days. A copy of the plan being forwarded to Council for its records.

Reason: To manage noise implications and maintain residential amenity.