

## Environmental Health Referral Response - industrial use

<b>Application Number:</b>	REV2023/0010
<b>Proposed Development:</b>	Review of Determination of Application DA2022/1320 for alterations and additions to an existing restaurant and a change of hours
<b>Date:</b>	19/04/2023
<b>To:</b>	Dean Pattalis
<b>Land to be developed (Address):</b>	Lot 21 DP 226287 , 20 Albert Street 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

The applicant has submitted additional information concerning "specifying the proposed fixed shut awning and change in material to provide a significantly improved Acoustic Performance" following Council concerns of the originally proposed retractable awning in DA2022/1320 with its long term acoustic properties, retractable nature.

The proposed awning material is changed from Serge Ferrari Soltis Proof 502 fabric to a fixed Polycarbonate roofing system, specifically Danpal Seamless Roof System with Danpalon Multicell Panels.

Our previous comments were:

The proposed development relates to alterations and additions to an existing restaurant to provide an outdoor seating area. Furthermore a change in the hours of operation is sought as follows;

Indoor Seating Area: Midday – Midnight Monday to Saturday  
Midday – 10:00pm Sunday

Outdoor Seating Area: Midday – 10:00pm Monday to Saturday  
Midday – 9:00pm Sunday

There is no overall increase in patron numbers to DA2021/1541- 71 seated patrons.

Impacts considered include noise from patrons and extended hours of the mechanical exhaust system. The acoustic assessment by Pulse White Noise Acoustic 12 July 2022 states:  
Our recommendations are 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 51 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 be played in the outdoor seating area.

ii. Alternatively, the restaurant operates at full patron capacity (maximum of 20 people outdoors, 51 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 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 nighttime 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 roofing system should have a minimum design sound insulation rating (Rw) of 16.

- o The proposed awning is to include Serge Ferrari Soltis Proof 502 fabric.

No acoustic data is available for this system. This system should meet the minimum required design sound insulation rating (Rw) of 16, and the following must be achieved as a minimum:

- 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 16, i.e., gaps will significantly reduce the acoustic performance of the selected roofing system.

- o The awning is fully extended and covers the entire external dining area (as specified above).

Note: If a PVC fabric roof system cannot be provided which meets an Rw rating of 16 it is recommended that glazed panels are installed. An equal construction would be a 6 mm float glass.

Comment.

Conditions of the current DA2021/1541 include:

#### 1. Amplified Music

All speakers or any sound equipment used as part of the development, must not exceed an output 65dB(A) when measured at any point inside the premises. An electronic limiter with a maximum output of 65 dB(A) must be installed at all times. 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.

Reason: To protect surrounding residence from any noise generated by the operation of the

#### 2. Compliance with the Plan of Management

The requirements of the approved 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

#### 3. Acoustic Report Certification

Prior to any occupation certificate being issued, a further acoustic assessment is to be undertaken by a suitably qualified professional such as an acoustic engineer to confirm compliance with recommendations within the Acoustic Report by Pulse White Noise Acoustics Pty Ltd dated 12 November 2021 (Rev5) 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.

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

Reason: To protect the acoustic amenity of neighbouring properties.

Comment.

With the minor works proposed and the business in operation we are not aware if an OC will be required therefore our conditions relate to "operations".

At this time we are not aware of any complaints or objections.

A residential receiver is located immediately next door.

The updating of Plan of Management is critical to avoiding a nuisance.

The acoustic assessment is very detailed and prescriptive and compliance ongoing essential.

Subject to conditions Environmental Health supports the proposal.

REVISION :

Our suitably amended comments are:

**The proposed change in awning/roof design is supported by Environmental Health.**

Effective management of noisy patron and other control measures are critical and the ongoing Plan Of Management for the life of the development needs to be robust.

The main noise issues are on patrons leaving the business, noisy groups, mechanical ventilation and to a lesser extent music which can be managed or eliminated.

The existing acoustic report predating this current application is still relevant although the roofing material has changed and is also now fixed shut. This improvement especially when combined with a condition for an acoustic reassessment on completion of works in an operational state is considered adequate.

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**

### **Acoustic review**

Within 30 days from the operations commencing under the terms of this Consent, an acoustic review of the findings and recommendations of Pulse White Noise Acoustic (12 July 2022) and any additional requirements at OC acoustic review stage; shall be carried out on site (during a busy period of trading) and any necessary action to obtain acoustic compliance, shall be completed within a further 30 days of the assessment.

The report associated with the compliance testing is to be furnished to Council for its records.

Reason: To ensure acoustic compliance in an operational situation.

### **Plan of Management- updating and compliance**

1. The requirements of the Plan of Management are to be upgraded to reflect the recommendations of the acoustic review by Pulse White Noise Acoustic 12 July 2022 and be fully implemented in perpetuity from the issue of any interim / final occupation certificate or operation under the terms of this consent.
2. The Plan of Management shall show each person/position responsible for outcomes and compliance for accountability.
3. Staff are to ensure patrons do not gather or linger outside the business generating noise to residents.
4. Details of any incidents and noise complaints shall be kept in a register on site and to be made

available to Council Officers

5. A copy of the updated plan is to be sent to Council for its records prior to operations commencing under this consent.

Reason: To protect the amenity of the surrounding area.

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

#### **Acoustic Requirements - ongoing**

Compliance with the recommendations within the Acoustic Assessment by Pulse White Noise Acoustic dated 12 July 2022 and any additional requirements at OC review stage.

Reason: To prevent a noise nuisance to any neighbouring residential receiver.