

## Environmental Health Referral Response - commercial use

<b>Application Number:</b>	DA2020/0962
<b>Date:</b>	02/09/2020
<b>To:</b>	Anne-Marie Young
<b>Land to be developed (Address):</b>	Lot 1 DP 1170245 , 0 Wharves And Jetties MANLY NSW 2095

### 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

This referral would normally have been under our "industrial" category as it has implications for noise but is completed here.

In regard to increased food service, there are no additional health implications.

The issue on this site is noise, potentially from a slight increase in hours and increased patronage in the external area.

This application is to provide additional outside capacity for patrons from 11:30 am to 12 midnight (business ceasing 11.30 -vacating by 12) seven days a week; external area will increase from current patrons number 50 to 80; internal capacity of 150 patrons is not to change.

The most likely affected residential receivers are some 120 metres to the north of the site.

The immediate area is a medium-density transport and entertainment hub and residents residing in this location would expect some background noise.

However the increase in the external capacity and hours until midnight for a restaurant and bar may result in offensive noise.

A nearby restaurant was previously the subject of protracted and ongoing legal action for noise involving Council, Police and the Liquor Licencing Authority; the significant issue being entertainment and amplified music in an external area.

For this application the acoustic engineer has carried out a "compliant" noise assessment but this does not allow for noisy groups or noisy members of a group trying to out talk each other under the influence of alcohol. Nor does it specifically deal with the changes to the windows. From information available it appears to be a design change rather than a change of use.

Likewise the ability of the restaurant to actually control Customers leaving or having left the premises sounds useful but is unlikely due to operational procedures, i.e. staff leaving the premises and safety issues late at night.

Unlike the internal part of the restaurant where doors windows etc can be closed and acoustic reducing materials can be included in design of effectively applied later, there are no such safeguards with regard to offensive noise from this external area. Seating of smaller groups ie. 4 people, may assist. A precedent exists nearby which appears to be successfully managed now.

Where no external entertainment or music beyond background occurs and groups are managed, the proposal has merit and may be considered for approval as recommended in the acoustic assessment supplied .

Conditions will be imposed incorporating the acoustic recommendations for example including :

1. A maximum of 80 patrons at any given time are allowed to the Western outdoor area
2. A maximum of 36 patrons at any time are allowed at the southern outdoor area
3. No amplified music or live entertainment is permitted at either the western or southern outdoor patron areas
4. The outdoor areas are not to be used between the hours of 12 am midnight to 7 am
5. These conditions are to be consistent with current conditions applying to the operation under the existing consent
6. Management is to ensure that patrons departing the premises do so in an orderly manner to minimise noise impacts (especially after 10 pm)
7. Garbage and bottle disposal should be undertaken prior to 10 pm and not before 7 am

Cleaning/washing activities, litter and wind blown material adjacent to the Penguin habitat are to be commented by other teams.

### **Recommendation**

APPROVAL - subject to conditions

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:**

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

### **Operational Noise Related Conditions based on the Acoustic Assessment**

1. A maximum of 80 patrons at any given time are allowed to the Western outdoor area
2. A maximum of 36 patrons at any time are allowed at the southern outdoor area
3. No amplified music or live entertainment is permitted at either the western or southern outdoor patron areas
4. The outdoor areas are not to be used between the hours of 12 am midnight to 7 am
5. These conditions are to be consistent with any current conditions applying to the operation

6. Management is to ensure that patrons departing the premises do so in an orderly manner to minimise noise impacts (especially after 10 pm)
7. Garbage and bottle disposal should be undertaken prior to 10 pm and not before 7 am
8. A register of any complaints and action taken being maintained on site.
9. Any proposed changes to the external window design or use shall not increase current noise levels to local residents.
10. These noise related requirements being included in a Plan of Management for the business and a copy being kept on site.

Reason: To avoid adverse noise impacts on neighbouring residents .