

Environmental Health Referral Response - industrial use

Application Number:	DA2024/0946
Proposed Development:	Use of the premises as a restaurant including ancillary use as a function centre
Date:	30/09/2024
To:	Maxwell Duncan
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

General Comments

The DA seeks approval for the following:

To authorise the use of the site as a restaurant, and to formalise the detailed operations of the existing venue under an accompanying Plan of Management, including any necessary BCA and fire-related upgrades.

Operating Hours

- 10am – 12am (midnight), Monday to Saturday
- 10am – 10pm Sundays. Maximum Indoor Capacity
- 50 patrons in the Pavilion.
- 100 patrons in the Main Building.
- 130 patrons maximum may be hosted on the site (at any time).

This appears inconsistent with the Pulse White Noise Acoustics Pty Ltd Acoustic Assessment date 26 March 2024, which states

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

a pier review of the acoustic assessment report by an external consultant states:

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.

Therefore Environmental Health can not recommend approval or conditions at this time.

Further Review - 20th September 2024

Environmental Health has considered information provided within this proposal, including the statement of environmental effects, acoustic report with minor amendment and the plan of management.

Both current and previous public submissions and referral responses from the Environmental Health team have also been considered.

It is considered that the proposal should be supported however Environmental Health recommends conditions of consent (similar to those previously recommended) to regulate the night time trading hours in the interests of maintaining the residential amenity of the community.

Recommendation

SUPPORTED - with conditions

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 - External Areas

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) is only permissible during the following nighttime hours:

Sunday, Monday, Tuesday, Wednesday and Thursday:

- until 10pm.

Friday, Saturday and New Years eve:

- until 12 midnight.

Reason: To maintain residential amenity and prevent offensive noise

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

Acoustic Requirements - On-going

Ongoing compliance for the life of the development is required with the following:

1. recommendations contained within the Acoustic Report by PWNA (Pulse White Noise Acoustics Pty Ltd) Revision 4, dated 26th March 2024 with the exception of the following:

- Hours of operation of external areas of the establishment are limited by the condition of consent entitled "Trading Hours - External Areas".

Condition of consent entitled "Trading Hours - External Areas" limits the trading hours of external areas as follows:

Sunday, Monday, Tuesday, Wednesday and Thursday:

- until 10pm.

Friday, Saturday and New Years eve:

- until 12 midnight.

2. recommendations within the Plan of Management prepared by Planning Lab dated 12 July 2024 with the exception of the following:

- Hours of operation of external areas of the establishment are limited by the condition of consent entitled "Trading Hours - External Areas".

Condition of consent entitled "Trading Hours - External Areas" limits the trading hours of external areas as follows:

Sunday, Monday, Tuesday, Wednesday and Thursday:

- until 10pm.

Friday, Saturday and New Years eve:

- until 12 midnight.

Reason: To manage noise implications and maintain residential amenity.