

## Environmental Health Referral Response - industrial use

<b>Application Number:</b>	DA2022/0528
<b>Date:</b>	10/05/2022
<b>To:</b>	Adam Croft
<b>Land to be developed (Address):</b>	Lot 1 DP 100563 , 22 Lawrence 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

#### General Comments

Proposal to expand operating hours of a food and drinks business to: Monday to Saturday: 6:00am-10:00pm, Sunday: 7:00am-10:00pm. This would be in-line with other licensed restaurants in this row of shops, those having consent to operate 6 am to midnight without onerous restrictions.

The applicant has proposed the following restrictions to minimise any noise impacts on residents:

- "- Background music from 7am only
- Sign to ask patrons to leave in a quiet and efficient manner
- All doors and windows closed before 7am
- Staff to monitor noise and patrons outside the premises
- Waste to be removed after 7am to prevent noise outdoors in the bin room"

We reason that some of these restrictions are not practical, effective, nor necessary. Respectively:

- Restaurants/cafes of this nature rarely have loud amplified music because patrons would otherwise be unable to converse. Amplified music can be effectively regulated through existing offensive noise provisions in the *Protection of Environment Operations Act 1997*. Between 10pm and 7am operations are categorically "night time" according to the *Noise Policy for Industry 2017 (NPfl)*, and therefore amplified music found to be audible and impacting the repose of residents is simply deemed "offensive", the operator will be directed to cease any noise nuisance in-situ.
- Its unclear what material difference signage will have to patron behaviour in this scenario. Such a requirement is likely to be superfluous.
- Doors must be open to allow patrons to enter and exit the premises. Thus, "closed doors prior to 7am" is an unreasonable and impractical requirement.
- Lacking clear jurisdiction, we 'err on the side of caution' and view patrons outside of the premises as being beyond the legal responsibility of staff and business. A condition to the contrary may be seen as un-enforceable and unreasonable.
- Putrescible waste should not be kept inside the premises overnight as will attracts pests -in breach *Food Safety Standards* and *Food Act 2003*, therefore its unlikely that this will be an issue early morning. However, it is noted that noise from discarding bottles may become a nuisance to residents if done early in the morning. Restricting waste removal to 'daytime' hours (NPfl, 2017) is a reasonable condition.

The proposal has a low risk of detrimental amenity impacts on residents, is in-line with surrounding

operations.

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**

**Waste Removal Hours**

Waste must only be removed from the food premises during the hours of 7am to 10pm.

Reason: to prevent excessive or offensive noise during night hours according to the *Noise Policy for Industry* 2017.(DACHPBOC5)