



DOC23/054402

FILE NO: A22/0024155

COMPLAINANT: [REDACTED]

LICENSED PREMISES: The Great Club, Marrickville – LIQO660011232

ISSUES: Whether the quiet and good order of the neighbourhood of the licensed premises is being unduly disturbed.

LEGISLATION: *Liquor Act 2007*

SECTION 81 DECISION

Under Section 81 of the *Liquor Act 2007* (the Act) I, Jane Lin, Executive Director, Regulatory Operations & Enforcement, Liquor & Gaming, a delegate of the Secretary, Department of Enterprise, Investment and Trade, in relation to the complaint made in respect to The Great Club, Marrickville have decided to **impose a condition** on the licence in relation to:

1. Outdoor amplified entertainment and music

Details of this condition, including the date it becomes effective, are set out in **Annexure 1**.

REASONS FOR DECISION

Legislative framework

1. Section 79 of the Act provides that a prescribed person may complain to the Secretary, that the quiet and good order of the neighbourhood of the licensed premises is being unduly disturbed because of the manner in which the business of the licensed premises is conducted, or the behaviour of persons after they leave the licensed premises (including, but not limited to, the incidence of anti-social behaviour or alcohol-related violence).

2. For the purpose of section 79 of the Act, a person who has standing to make a complaint includes a person who is a resident in the neighbourhood of the licensed premises and is authorised in writing by two or more other residents.
3. Section 80 of the Act enables the Secretary to deal with a complaint by way of written submissions from the licensee and any other person the Secretary considers appropriate. After dealing with the complaint, section 81 of the Act provides that the Secretary may decide to impose, vary or revoke licence conditions, issue a warning, or take no action.
4. In exercising functions under the Act, the Secretary must have regard to the Objects set out in section 3 of the Act and must have regard to the matters set out in section 3(2) which are:
 - the need to minimise harm associated with the misuse and abuse of liquor;
 - the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,
 - the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life, and;
 - the need to support employment and other opportunities in the live music industry and arts, tourism, community and cultural sectors.

The complaint and background information

The complaint

5. On 28 November 2022, [REDACTED] (the complainant) of [REDACTED] [REDACTED] lodged a complaint with Liquor & Gaming NSW (L&GNSW) alleging undue disturbance from the operation of the Great Club (the Venue). The complainant lodged the complaint as a resident authorised by 15 other residents.
6. The complainant states that excessive noise from music at the Venue causes disturbance and can be heard inside surrounding residences. Disturbance is also caused by patrons in the car park area and when leaving the Venue; drinking, smoking, and talking very loudly, with lewd conversations often being entirely audible. The complainant submits that the disturbance happens several times a week, particularly from Thursday night through to Sundays. The complainant states there is little regard for the fact that the Venue is surrounded by residential properties.
7. Supporting statements from authorising residents to the complaint state that the car park is being used by the Venue for outdoor entertainment, with loudspeakers being utilised

outdoors. It is further alleged that noise from the Venue is so loud that vibrations can be felt in surrounding residences.

8. It is submitted that the Venue's limited parking (partly as a result of the car park having been converted for other use) has caused patrons to park their vehicles on the surrounding crowded streets. Vehicles are often parked across driveways, and it is alleged that residents' vehicles have been damaged. Further, it has also created the issue of patrons making noise while walking through the streets late at night to get back to their vehicles. It is submitted that there appears to be a lack of security on site to manage patron behaviour.
9. The complainant advised that following a disturbance outside the Venue that required NSW Police attendance (date not provided), the complainant went into the Venue to ask management to tell patrons to be quieter and more respectful of neighbours. It is alleged that staff at the Venue advised the complainant that people outside the Venue were not their problem.
10. The complainant and authorising residents advise that they have made repeated calls to Inner West Council (Council) and NSW Police regarding the disturbance over the last few years, yet the disturbance persists, and little action has resulted. It is submitted that Police have responded to complaints by stating they can only request the Venue to reduce noise and will only act after 11pm Friday to Sunday, and from 10pm Monday to Thursday.
11. The complainant submitted the following list of desired outcomes:
 - The closure of the Venue in its current form (i.e., to no longer be a music venue), or failing that;
 - Significant and updated acoustic insulation and soundproofing to the Venue;
 - For the car park to be used solely as a car park;
 - Security to monitor patrons as they leave the Venue;
 - No consumption of alcohol outside; and
 - Reduced trading hours to be implemented and the Venue to cease trading at 10pm Monday to Sunday.

The Venue, licence details, compliance history

12. The Venue is located at 160-164 Livingstone Road, Marrickville. A review of the location and surrounding environment of the Venue utilising open-source internet searches and feedback from L&GNSW inspectors identifies that the Venue is located in an area that appears to be primarily residential.

13. A review of the Venue's website details that the Venue offers 'world class live entertainment' with a '350 capacity band room'. The Venue is 'open for shows Wednesday through to Saturday', with shows on Sunday available subject to approval. The website further states that there is a 'top of the range PA [public address system]' at the Venue and a baby grand piano and drum kit are also available. Artist bookings and band submissions are available through the website and the Venue is also available for private events and functions such as weddings, private parties or corporate events. The Venue capacity is 350 for general admission standing and 220 for seated shows. The Venue's website and social media accounts advertise a range of musical performances and parties, some ticketed.
14. Previously the Venue was operated under a club liquor licence (LIQC300228517) and traded under the licence name of Greek Macedonian Club 'Alexander The Great' Limited, a cultural club for the Greek Macedonian community. The premises owner was [REDACTED]
[REDACTED] This liquor licence commenced on 6 April 1955 and was surrendered in September 2010.
15. A new on-premises liquor licence was issued for the Venue on 9 February 2011, trading under the licence name of [REDACTED] with a business type of 'club activity and support'. The business owner was [REDACTED]
[REDACTED]
16. On 30 November 2020, Miss Alison Avron Flett commenced as licensee of the Venue and on 17 December 2020, L&GNSW approved the change in licence name to The Great Club. [REDACTED] is the current business owner and [REDACTED]
[REDACTED] is the current premises owner, both commencing on 30 November 2020.
17. The Venue's licensed trading hours for consumption on premises are 10:00am to 12:00 midnight Monday to Saturday and 10:00am to 10:00pm on Sunday.
18. On 29 September 2021, the Venue lodged a development application with Council, seeking approval for outdoor seating with the description "Footpath Approval -60 chairs & 10 tables- CARPARK". On 5 November 2021 Council made the determination to refuse the application citing the following reason:
- "Does not comply with permit/licence requirements
- is now exempt under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (SEPP) however major issues with noise and hours - compliance investigating"

19. On 19 October 2021, the licensee lodged an application to L&GNSW for alfresco dining by way of a temporary change of boundaries as part of the Alfresco Restart Package. Attached to the application was a sketch showing the proposed use of the Venue's car park for 10 – 11 outdoor dining tables.
20. On 1 November 2021, L&GNSW determined to approve the temporary change of boundaries, and the licensee was notified of the approval on 12 November 2021. This approval was initially valid until 18 April 2022 but has since been extended until 31 December 2023. The trading hours for consumption on premises in the temporary outdoor area (alfresco) are 10:00am to 10:00pm Sunday to Thursday and 10:00am to 12:00 midnight Friday and Saturday.
21. A review of L&GNSW records indicates that from July 2011 until lodgement of the disturbance complaint in November 2022, the Venue had been subject to 10 complaints. It is noted that the two complaints dating back to 2011 relate to the Venue when it was trading as 'Alexander The Great'. The remaining eight complaints all relate to noise disturbance, referencing patron noise and loud music, and were received between October 2021 and August 2022. It is further noted that six of these complaints specifically reference noise from the use of the car park or from patron noise outside the Venue. The complaints were either dealt with by referral to Council for consideration or via remedial engagement with the licensee.

Submissions

22. Between 28 November 2023 and 20 April 2023, various material was received from parties to the complaint, NSW Police, Council and the Venue. The material that is before the delegate is set out in Annexure 2 and is summarised below.

NSW Police

23. On 12 January 2023, a submission was received from Police in response to the disturbance complaint.
24. Police advised that they do not hold extensive records on the Venue, however they had recently been engaging with the Venue on a regular basis as a direct result of noise complaints raised by local residents. Police noted that on multiple occasions the complaints made to Police have been regarding the use of the outdoor space at the Venue, including the car park. Police submit that the receipt of these noise complaints and the subsequent attendance at the Venue are an expenditure of Police time and resources.

25. Police records indicate that during the 12-month period prior to the submission, Police attended the Venue in response to noise complaints on five separate occasions, with four of these attendances being in December 2022. Police advised that due to the process by which tasks are allocated to Police via the Computer Assisted Dispatch system (CAD), where noise complaints may receive a lower priority than other matters, not all noise complaints result in Police attendance. Further, noise complaints received via phone at the local police station do not require formal records to be made. Therefore, it is submitted that the actual number of complaints received by Police in relation to the Venue may be higher than the five attendances suggest. Police further noted they have no records of noise complaints attributed to the Venue prior to October 2021.
26. Police provided a brief history of the Venue, noting that in 1955 it was establishment as 'Alexander The Great' club to service the Greek and Macedonian community. In 2011 the current liquor licence was granted, after the original club licence was surrendered. In 2020, the Venue was taken over under new ownership by the licensee.
27. Police submit that general observations made during attendances at the Venue have indicated the noise not to be of an offensive nature as defined under the *Protection of the Environment Operations Act 1997* (POEO Act), which is a subjective test applied by officers on scene. However, per subdivision 15AB of the SEPP, 'low impact' performance of live music or arts is permitted so long as it is not carried out in a residential zone and must be carried on inside a building.
28. On 10 December 2022, General Duties and Licensing Police attended the Venue on four occasions in a two-hour period due to noise complaints received by residents. On this date, the Venue hosted 'Normfest '22', a live music event in the outdoor car park area of the Venue featuring a DJ and three-piece band. Police observed that, contrary to the approval granted to the Venue for the Temporary Change of Boundary for use as an alfresco dining space, no tables or chairs were set up in the style or format as depicted in the approved plan, and the volume of the live music was 'quite loud'. Further, marketing material for the event included an 'outdoor stage', with a copy of the promotional material provided with the submission.
29. Police are of the opinion that the outdoor space at the Venue on that occasion was being used as a live entertainment area in contravention of the approval. Furthermore, the usage of the outdoor space was in contravention of the SEPP, as it was not 'low impact', was carried out in a primarily residential zone, and was not carried on inside a building.
30. Police believe that based on the timeline of complaints received, the new ownership of the Venue, and the observed use of the outdoor dining space, the complaints stem from

the significant change of use of the Venue. Police submit that this change has caused tension, with residents taking issue with being located next to a live music venue where none existed prior. Police state that the matter is further exacerbated by the Venue's continued use of the temporary outdoor dining space for live or amplified music in contravention of conditions of the temporary change of boundaries for outdoor dining and the SEPP. Police submit that regulatory agencies, including L&GNSW and Council, will continue to receive noise complaints if the Venue continues to use the outdoor dining space in this manner.

31. Police noted that on 10 January 2023, the licensee advised Police that the Venue intended to host an event in the car park for the Triple J Hottest 100 to be held on Saturday 28 January 2023. It is submitted the licensee advised that the Triple J broadcast would be playing on a speaker in the car park until 8pm and a DJ would follow inside the Venue until 11pm.
32. Police recommended that consideration be given to the variation or revocation of the temporary change of premises boundaries for outdoor dining afforded to the Venue. Police submit this would significantly alter the manner in which the Venue is operated, resulting in fewer Police resources being required to attend the Venue and reducing the likelihood of further complaints being lodged.
33. Police provided the following material in support of their submission:
 - A copy of seven COPS Events relating to Police engagement and attendance at the Venue dated between 22 January 2022 and 15 December 2022.
 - A summary of eight incident reports relating to noise complaints attributed to the use of the car park and patron noise, dated between 29 October 2022 and 23 December 2022
 - Copies of historical Development Consents relating to the Venue including Development Consent Permit No. 275 issued by Marrickville Municipal Council, dated 1 September 1952, and Development Consent Permit No. 339 issued by Marrickville Municipal Council, dated 15 December 1952.
 - Copies of historical Development Applications relating to the Venue including:
 - Development Application Determination No. 14172 issued by Marrickville Municipal Council, dated 5 February 1992,
 - Development Application Determination No. 15142 issued by Marrickville Council, dated 6 October 1993,

- Development Application Determination No. 16626 issued by Marrickville Council, dated 9 July 1996, and
- Development Application Determination No. 200300713 issued by Marrickville Council, dated 25 February 2004.
- Development Application Determination No. 201800385 issued by Inner West Council, dated 7 June 2019.
- Copies of email correspondence between Police and the licensee dated 9 and 10 November 2022, and between 9 December 2022 and 10 January 2023.
- A copy of the Venue's Crowd Management & Safety Plan dated 1 December 2022.
- A copy of the marketing material for the 'Normfest '22' event hosted at the Venue on 10 December 2022 detailing the line up on the outdoor stage and a copy of the marketing material for the Triple J Hottest 100 Marrickville Block Party hosted at the Venue on 28 January 2023.
- A screen shot of the Venue's event schedule for December 2022 as featured on the Venue's website.
- A copy of email correspondence between L&GNSW Licensing unit and the licensee in relation to the temporary change to liquor licence boundaries for outdoor dining dated between November 2021 and June 2022.
- A copy of the notice of temporary change to liquor licence boundaries for outdoor dining issued by L&GNSW and a copy of the temporary approved plan dated 10 November 2021.

Council

34. On 25 January 2023 a submission was received from Inner West Council in relation to the disturbance complaint. Council advised that since October 2021, 26 complaints have been received relating to both internal and external noise from live and amplified music, entertainment, and patrons at the Venue. Council submitted that there has been an increase in noise complaints with 19 of these complaints being received since October 2022, and majority of the complaints relate to the use of the car park for music, entertainment, and dining.
35. Council stated that evidence has been obtained confirming that the car park has routinely been used in contravention of the SEPP:

- *Subdivision 15AB* – Use of the car park for live music and entertainment contravenes section 2.30AD (1) in that all low impact performance of live music or arts must be carried on inside a building.
 - *Subdivision 20B* – Use of the car park for outdoor dining contravenes section 2.40D(a)(ii) in that it causes the emission of offensive noise and nuisance that affects adjoining owners.
36. In December 2022, Council served the licensee a formal notice under the POEO Act requiring production of the incident logbook for an event held on 1 December 2022, and a draft Prevention Notice to undertake an acoustic assessment on the operation of the Venue.
37. In January 2023, Council's General Counsel wrote to the solicitors acting on behalf of the licensee providing notice that criminal proceedings may commence in the event of misuse of the car park for any future events.
38. Council notes that the Venue has development approval for use as a club and advised that there are no pending development applications. Included with the submission was a copy of historical Development Approval and Consents related to the Venue as provided with the Police submission and set out above in paragraph 33.
39. Council is of the opinion that continued misuse of the car park and the previous disregard displayed by the licensee in relation to legislative and licensing requirements are the foremost contributing factors to all noise complaints being reported to Council regarding the Venue. Council advised it is supportive of any proposed regulatory action that L&GNSW may take in relation to this and any future disturbance complaints. Further, Council stated that it strongly supports L&GNSW revoking the temporary liquor licence approval relating to the extension of the licensed area (including the car park) should non-compliance with the SEPP continue and the emission of offensive noise be identified.

Venue response

40. In response to the complaint and the submissions from Police and Council, the Venue engaged solicitors, Sonic Lawyers, to provide a submission on its behalf. The submission was received by L&GNSW on 6 March 2023.
41. The Venue's solicitors argue that the disturbance complaint is primarily about excessive noise from activities inside the Venue, excessive noise from people leaving the Venue, and behaviour from people leaving the Venue. The solicitors acknowledge that L&GNSW explained that the disturbance complaint is cast this way because the fields on the

complaint application form are set up with these three headings, however it is argued that the content of the complaint shows the issues to be about noise from the Venue at night (inside and outside) and patrons as they leave the Venue at night. It is submitted that the disturbance complaint cannot be characterised as being about the temporary alfresco use of the car park, which takes place during daylight hours only (until 8pm in summer and 6pm in winter).

42. It is noted there is no dispute that the Venue's current liquor licence extends to include the temporary use of the car park for alfresco dining until 31 December 2023. It is submitted that at night the car park is used for parking with a table set up near the Venue's main exit doors for smokers. No alcohol is served outside.
43. On 5 November 2022 the licensee met with Mr Darcy Byrne, the Mayor of the Inner West and discussed live music venues and the operation of the *Inner West Good Neighbour Policy (Live Music Venues & Licensed Premise)*, a copy of which was included with the submission. Acting in good faith, the licensee then met with Council and Police in November and December 2022, to advise of upcoming events and to ensure protocols were in place to the satisfaction of the authorities.
44. The submission alleges that at the meeting with Council on 21 November 2022, "Council staff advised that amplified music could be played in car park in conjunction with alfresco dining, but 'don't be too loud'." Following this meeting, it was the Venue's understanding that it could use amplified music in the outdoor car park area, but it was not able to have bands playing outside. Included with the submission is a copy of the minutes of the meeting as prepared by Council.
45. Acting on the advice of Police and Council, the Venue submits that it implemented the following measures:
 - Provided a week's notice of upcoming events to all residents in surrounding streets by letter drop advising of the event details, start and finish times and contact details to discuss any concerns or complaints.
 - Revised the music line-up for the Kraken presents "Subterranean Summer" event held on 1 December 2022 and liaised with the sponsor to ensure bands only played inside the Venue.
 - Revised its Plan of Management for the Kraken event, putting additional procedures in place to include drink and purchase limits in line with Responsible Service of Alcohol practices, notification letters to neighbours and adopting a crowd management and safety plan.

- Instructed lawyers to deal with any concerns/complaints raised by residents and provided these contact details to surrounding residents; and
 - Established a complaints register to be operated by security at the Venue (Reddawn Venues).
46. It was submitted the Venue had held three events in the car park utilising it as an alfresco area, as follows:
- Kraken presents “Subterranean Summer” – 1 December 2022
 - Heaps Normal presents Normfest – 10 December 2022
 - Triple J Hottest 100 Marrickville Block Party – 28 January 2023
47. The submission provides the details of complaints recorded on the complaints register for the three events held in the car park, and the related information relevant to Police attendance at the Venue. It is submitted that while Police did attend the Venue in relation to these events no issues were identified that required action to be taken.
48. The submission notes that the ‘Normfest’ event held on 10 December 2022 was the only event to provide live music outdoors, in breach of the SEPP. However, it is submitted that the live music was organised by the sponsor of the event and not the licensee. It is advised that the licensee made multiple attempts to get in touch with the sponsor and by the time a response was received, a full line up of bands scheduled for both inside and outside had already been organised, including the use of a PA system outside. It is submitted that the licensee was insistent that music could not be played through the PA system and mixing desk outside, and negotiations were made to limit entertainment to a small portable amplifier. Given the above, it is stated that the licensee did what they could to minimise sound levels outside without cancelling the musicians.
49. The submission advises that as part of the noise management for the ‘Normfest’ event, a consultant was engaged to conduct regular noise level readings along the perimeter of the premises. It is noted that the recordings were compliant with the recommended levels as set out in a Noise Management Plan prepared for the Venue by Gardiner Stuckey Acoustical Services in September 2020. A copy of the Noise Management Plan was included with the submission.
50. It is further provided that to ensure compliance for sponsored events in the future, the Venue’s terms and conditions for sponsors has been revised to state that all live music can only be played inside the Venue, and any equipment set up outside in the car park will be immediately removed by the Venue.

51. Regarding Police attendance at the Venue in response to noise complaints, it is noted that Police did not find any breach requiring action for noise on any occasion. The only action taken by Police was in issuing an infringement notice in relation to the obstruction of a fire exit on 22 January 2022. Included with the submission was a summary overview of the dates and outcome of Police attendance at the Venue in relation to complaints received dating between 22 January 2022 and 15 December 2022.
52. The Venue's solicitors suspect that the majority of complaints to Police are being made by the same complainant. This view is allegedly supported by the Police call out sheets noting "several call[s] to station" and "informant has made multiple complaints that the patrons are rowdy and excessively noisy." Due to this suspicion and the lack of breaches identified by Police, it is submitted that the inference made by Police, that revoking the temporary alfresco use would be a beneficial outcome and result in a reduction in expenditure of Police resources, is flawed. It is submitted that the proper inference is that the complaint is not legitimate, and Police should stop attending the Venue in response to this serial complainant.
53. It is argued that where a complaint is made to Police and no breach is found, it is beyond the scope of Police powers to recommend the revocation of the Venue's alfresco approval as a valid outcome merely because they do not want to expend resources attending a licensed premises. "It is appalling policy to suggest that the way to save police resources is to penalise a music venue that caters to many music tastes and styles and penalise its many patrons (by restricting its ability to trade)."
54. It is further argued that taking such action as recommended by Police does not guarantee the complainant will cease complaining. If it is the case that a complainant wants the Venue shut down, then even if outdoor dining was restricted, the complainant will continue to complain about other noise attributed to the Venue, which is what the resident continues to do without respite.
55. The submission refutes claims by Police that residents have taken issue with being located next to a live music venue where none existed prior, stating that the Venue has always been a live music venue since its inception in 1952. Instead, it is submitted that the changing factor is attributed to COVID-19 restrictions, which resulted in the neighbourhood becoming very quiet. It is also noted that there is no restriction on amplified music being played outside as long as it is compliant with the POEO Act. Police attendance and the subsequent finding of 'no offensive noise on each occasion' support that the POEO Act has not been contravened.

56. Regarding the Council submission, the Venue's solicitors categorically reject both the purported facts and the imputations of wilful disregard that Council asserts against the licensee. The submission notes that:

- It was the licensee who instigated a meeting with Council on 21 November 2022 to ensure the Venue was compliant for upcoming events.
- The use of amplified music at the Kraken event on 1 December 2022 was done in consultation with Council and the licensee contacted the event sponsor to advise that all live music must be inside the Venue.
- The licensee accepts that the 'Normfest' event on 10 December 2022 was not compliant with the SEPP. However, the Venue acted to minimise the impact on neighbours of noise from this event; and
- the Venue's terms and conditions for venue hire/sponsorship has been modified to expressly prohibit live music outside.

57. Reference is made to the Council statement that the "majority" of complaints Council had received since October 2022 related to the use of the car park for music, entertainment and dining. The Venue's solicitors question why the exact number of these complaints relating to the use of the car park was not disclosed.

58. The solicitors note they have requested Council provide the evidence it is relying on to state that the car park has routinely been used in contravention of the SEPP but are yet to receive same. Further, Council does not identify whether the alleged breach of the SEPP is in relation to alfresco dining, or at night (such as when people are leaving the Venue after a gig). The solicitors submit that the majority of the complaints as referenced by Council relate to the use of the car park at night-time and does not relate to the temporary alfresco dining which occurs during daylight hours only.

59. The submission states that while Council claims the Venue is emitting offensive noise it has not provided any supporting evidence. It is asserted that the findings by Police of no offensive noise and the perimeter decibel reading checks conducted by the Venue at several events, support the opposite finding. It is submitted that Council has never attended the Venue during an event to conduct its own formal noise assessment, instead relying on complaints made by residents. Further, it is suspected that the complaints being received by Council are being made by the same one or two residents, and these residents have circulated a flyer in an active campaign to galvanise opposition to the Venue. A copy of this flyer, signed by 'Marrickville-Midjuburi Residents' was included in the submission.

60. The Venue's solicitors note there is a difference between noise and "offensive noise", and state it is important that residents understand that the only way a music venue can 'stop the noise' altogether is to cease operating entirely. It is submitted that part of the problem appears to be that some residents want there to be no noise. The submission makes the comparison that noise from a school, while consistent, would not be considered offensive by its nature.
61. It is submitted that Council's submission to L&GNSW is a strident stance in opposition to the continuation of the extension of the Venue's liquor licence to include alfresco dining. It is noted that after receiving complaints in response to events that were held in December 2022, Council issued the Venue a draft prevention order on 19 December 2022 and a letter from Council's General Counsel dated 13 January 2023 threatening criminal proceedings against the licensee in relation to the Triple J Marrickville Block Party event. Included with the submission is a copy of the letter from Council's General Counsel and the response prepared by Sonic Lawyers dated 17 January 2023. It is submitted that Council did not make any preliminary inquiries with the Venue or licensee concerning the Triple J event, which is contrary to Council's Good Neighbour Policy.
62. It is asserted that passages from Council's submission show actual bias of Council, and that 'Council makes a number of highly charged statements that define the licensee as flagrantly ignoring the rules'. The submission further notes that Council's modus operandi appears to be to accept every complaint it receives on face value as evidence of a breach by the Venue.
63. Included with the submission are development application papers relating to ■ Lilydale Street, Marrickville and a number of photographs of the residence. It is argued that modifications to parts of this residence now allow sound from the Venue directly into the structure and are alleged to have been completed without certification. As such, it is submitted that weight should not be given to any complaints received about noise from the resident of that premises.
64. The submission advises that many letters of support from residents and community members have been received by the Venue, with many of these supporters also writing to The Honourable Jo Haylen, Member of Parliament. A small sample of these letters and emails were provided with the submission. Noted in the sample letters are statements from a nearby neighbour that they have not heard any noise from the Venue, and statements noting the Venue's contributions to the community and to the live music industry.

L&GNSW Inspection

65. On 21 January 2023 at approximately 6:40pm, L&GNSW inspectors attended the Venue's "Festi-ville" folk/punk rock music event in a covert capacity. It was noted that this was a smaller event with approximately 60 people in attendance, with music held indoors in a separate room containing a stage and dancefloor. The crowd was noted to be well behaved during the event.
66. At approximately 6:58pm a band started playing music containing drums, bass and electric guitar. Inspectors noted that the noise levels inside the Venue increased substantially. At 7:07pm Inspectors walked out to the car park alfresco area and observed approximately 10 patrons in this area before moving to the boundary of residences on [REDACTED] opposite the Venue. During this time noise from the Venue was identified as consistent and loud, but comparable to that of passing traffic.
67. At 7:20pm observations made from [REDACTED] were that noise from the band was quite loud and patron noise was also audible from the alfresco area. Between 7:30pm and 7:40pm observations were made from [REDACTED] (approximately 100 metres from the Venue) and from [REDACTED] (approximately 150 metres from the Venue); no band was playing at this time. It is noted that no noise was audible at [REDACTED] however at [REDACTED] patron noise from the alfresco area was audible. At 7:49pm further observations were made from [REDACTED] (approximately 100 metres from the Venue) once a band had commenced playing inside the Venue. It was noted that constant noise could be heard from the Venue, described as being no louder than passing traffic.
68. At 8:45pm Inspectors returned to the Venue and noted the music was quite loud from the street and was louder than the passing traffic. At 8:54pm and 8:56pm respectively, observations were made on [REDACTED] and [REDACTED] noting that music from the Venue was audible and considered to be constant but faint. At 8:59pm Inspectors noted that music from the Venue was observed to be quite loud and constant when standing on [REDACTED]. Inspectors left the Venue at approximately 9:03pm.

Mediation facilitated by Council

69. On 13 March 2023, Council conducted a mediation between itself, the Venue and its legal representatives from Sonic Lawyers, and three residents with a view to addressing the noise complaints. This meeting originated from requests for a mediation made by the Venue, per Council's Good Neighbour Policy. Council did not invite L&GNSW to attend the mediation and advised L&GNSW that it was unable to provide a copy of the minutes of the mediation due to the sensitive and public nature of the matter.

70. A copy of the minutes was provided to L&GNSW by the complainant on 11 April 2023. According to the minutes there were 13 items discussed during the mediation, as follows:

Item 1 – Good Neighbour Policy

The purposes and intention of the Good Neighbour Policy were discussed regarding facilitating mediation to proactively resolve noise and amenity issues. All attendees were provided with a copy of the Good Neighbour Policy.

Item 2 – Offensive Noise

The issues raised included use of the outdoor car park area by patrons, the provision of live and amplified music in the outdoor car park area, use of the indoor area for live music acts, patrons leaving the Venue, clarity on the definition and assessment of offensive noise, and updating the venue's soundproofing. All attendees were provided with the definition of offensive noise as set out in the POEO Act.

A number of action items were committed to by the Venue which included:

- Implementing stronger terms and conditions for sponsor/event organisers to operate within planning approvals which prohibit live music in the outdoor area,
- Communicate clearly what is permitted and not permitted to sponsor/event organisers,
- Consider the viability of installing and using a sound limiter,
- Consider facilitating a discussion and site inspection with an engaged sound engineer, and
- Ensure all doors are kept closed during live music acts.

Item 3 – Use of the outdoor car park area

It was noted that the Venue is permitted to use the car park for outdoor dining and alcohol consumption and low impact amplified music and announcements via a speaker can be provided if offensive noise is not being generated. Use of the car park area for live music acts or stage set ups is not permitted. The Venue is to comply with the relevant provisions of the SEPP with respect to indoor and outdoor operations.

Item 4 – Indoor Use

It was noted that live music and consumption of food and drink are permitted inside the Venue.

Item 5 – Venue Approvals

The Venue's current approvals were noted, and use of the premises as live music venue is permitted under the existing development consent. The Venue is to consider creating a public document which details the nature of the business and includes processes around incident management, plan of management, complaints management, security management, acoustic management, hours of operation, patron numbers, floor plan and layout of the car park for patron use.

Item 6 – Patron Capacity

It was noted the Venue has a capacity of 350 patrons standing, 250 patrons seated.

Item 7 – Hours of Operation

The authorised trading hours as permitted by the Venue's liquor licence were noted. The Venue restricts hours to a 11pm finish time with patrons expected to have vacated the Venue by 11:30pm. Currently events are occurring three to four times per week.

Item 8 – Parking

The issue of illegal parking and the lack of street parking during events was raised. Residents are to contact the Venue when a driveway is blocked, and the Venue is then to make an announcement over the PA system about same. Security guards are to proactively monitor streets for illegal parking.

As of 15 March 2023, the Venue had amended its website to remove a statement advertising ample parking, and instead encourages patrons to use public transport. As of 16 March 2023, Council had lodged a request with the Local Traffic Committee for consideration of timed parking in the area and for routine monitoring of illegal parking in the area.

Item 9 – Anti-social Behaviour

Residents were advised to report safety concerns to Police and any cyber safety concerns [relating to the use of social media to identify complainants] to the Office of the eSafety Commissioner. The Venue is to amend its contract of service to ensure expectation for security staff is clearly defined, and security guards are to proactively monitor the surrounding streets and respond to any matters.

Item 10 – Social Media

Residents have personal safety concerns. The Venue is to ensure no personal or identifiable information is released to the broader public. Residents should report any safety or cyber safety concerns as set out in Item 9.

Item 11 – Fire exit into car park

Patrons are congregating in this area, smoking and obstructing the fire exit. There is a banging noise from a damaged fire door. The Venue is to encourage patrons to use the front entrance for smoking and as of 15 March 2023, the Venue had repaired the damaged fire door.

Item 12 – Complaints Management

There has been inconsistent handling of complaints and poor complaint response. As of 15 March 2023, the Venue has published its Plan of Management on its website. The Venue is also to ensure calls received by residents during events are answered and promptly responded to. Residents are to contact the Venue directly when a concern is occurring. Residents and Council are to contact [REDACTED] (Venue solicitor) to report operational concerns.

Item 13 – Upcoming Events

It was raised that residents are receiving inadequate notification of upcoming events. Moving forward, the Venue is to provide letterbox notification letters or emails at least five days prior to any extraordinary events. The residents are to contact [REDACTED] (Venue solicitor) if they are interested in receiving email notification for upcoming extraordinary events.

Complainant submission regarding the Mediation

71. On 11 April 2023 the complainant provided a submission regarding the mediation, along with a copy of the minutes of the mediation as summarised above. It is submitted that residents from only three selected households were invited to the mediation despite others requesting they be able to attend. The complainant contends that while the meeting had some positives, one of the main issues, being sound emanating from the Venue, was brushed off by the Venue and Council, with the Venue stating they would not soundproof.
72. It is submitted that the Venue clearly stated they “will not stop the fun” and will continue to have events in the car park.
73. The complainant states that Council has not provided detailed minutes of everything that was discussed in the meeting, but have cherry picked the main points that were heavily discussed. The complainant describes the minutes as a non-binding document that the Venue and Council do not have to act on, and that it is more of a guide.

74. The complainant submits that the disturbance concerns has escalated with multiple residents having major mental health issues arising from the ongoing matter. It was further noted that one resident is now needing to see medical professionals for help.

Venue final response regarding the Mediation

75. On 17 April 2023 the licensee provided a final response regarding the mediation. The licensee advised that all parties at the mediation, including the residents, were given ample opportunity to amend the minutes of the meeting if there were any outstanding matters. Council circulated the first draft of the minutes to all parties on 16 March 2023, with instructions to reply within five days with any revisions or additions. It is submitted that the Venue sent through its comments and so are of the understanding that the residents had the same opportunity to approach Council and raise any discrepancies.
76. The licensee advises that during the mediation there were issues raised that the Venue attended to within 24 hours of the meeting. Included was a statement from the Venue outlining that “our longer-term plans for noise management are extensive, thorough and will be ongoing. This includes our willingness to continue the mediation process and work with all stakeholders to achieve the fairest results for everyone.”

Further Complaints

77. L&GNSW has received a further six complaints since the subject disturbance complaint was lodged. One in each month of December 2022, January 2023, February 2023, and April 2023 and two in March 2023. The complaints included concerns related to noise from the Venue being clearly audible within complainants’ homes, the use of the car park for events, and anti-social behaviour and noise from patrons loitering outside the Venue, including in the car park. It is also noted that a current L&GNSW investigation is ongoing, separate to the disturbance complaint, relating to the appropriateness of the Venue’s liquor licence and whether it is complying with the primary purpose test.

Council Statement

78. On 20 April 2023 Council published a statement on its website in response to the media attention following the Venue’s announcement they would not be holding an ANZAC Day event due to fear of receiving complaints. Council advised there was no obstacle to the Venue holding an ANZAC Day event in the car park and it had confirmed this directly with the Venue. Council further stated that there were no compliance or legal actions being taken by Council against the Venue. Council thanked the licensee for their good faith engagement with the Good Neighbour Policy and stated, “senior Council staff are working with the Great Club and neighbouring residents to find solutions that will allow the venue

to continue to provide some of Sydney's best live music while mediating to find solutions to some of the concerns of its neighbours."

79. Council has since confirmed with L&GNSW that the Notice of Intention / Draft Noise Prevention Notice referred to in paragraph 36 above has been withdrawn.

Statutory considerations of section 81(3) of the Act:

80. The Act requires that the Secretary have regard to the following statutory considerations:

The order of occupancy between the licensed premises and the complainant

81. The Venue, as it formerly traded as 'Alexander The Great', was previously operated under a club licence (LIQC300228517) from 1955 until 2010. During this time, it operated as a cultural club for the Greek Macedonian community. The Venue's current liquor licence, LIQO660011232, being an on-premises licence with club activity and support business type, has been in operation since February 2011. The complainant has occupied their residence for over 26 years. It is also noted that seven of the authorising residents to the complaint have occupied their current residences for at least 20 years, with one having been there for more than 50 years.

82. Although the building, property and site location has existed since 1955 in various iterations, the previous club liquor licence was surrendered in 2010 and a new liquor licence of a different licence and business type was later issued to the Venue in 2011. As such, the Venue should be considered a different licensed premises to the club that preceded it. Therefore, I consider the order of occupancy in favour of the complainants.

Any changes in the licensed premises and the premises occupied by the complainant, including structural changes to the premises

83. The submissions did not note any significant structural changes made to the complainant's residence or the Venue.

Any changes in the activities conducted on the licensed premises over a period of time

84. The complainant submits that between 2015 to mid-2019 the Venue was used as an office site for a development project on Livingstone Road. Since the licensee assumed their position at the Venue in November 2020, the Venue has been trading as a live music and entertainment venue with regular performances. It is also noted in the Police submission that the previous operation of the Venue was as community and cultural club.

85. A further substantial change to the Venue's activities came following the approval for the temporary change of boundaries in November 2021. Following this approval, the Venue

has on several occasions used its car park as an outdoor entertainment space. This has involved setting up a stage and speakers, playing music, and hosting crowds of people in an outdoor space close to neighbouring residences with no sound barriers in place.

Findings and Decision

Undue disturbance

86. In deciding whether the Venue has unduly disturbed the quiet and good order of the neighbourhood, I have balanced the submissions made by the complainant, the Venue, Police, Council, and the observations made by L&GNSW inspectors.
87. The Venue's business model is centred around the offering of live music. I note that one of the objects of the Act is to support the responsible development of related industries including live music and entertainment. It is positive that the Venue is contributing to the support of these industries and a vibrant night-time economy, particularly since the harmful impact of the COVID-19 pandemic on them.
88. It is reasonable to expect some level of noise will be generated from the normal operation of the Venue, including noise from amplified entertainment, patrons and pedestrian traffic. I do not regard this type of disturbance as undue in a general sense. However, the location of the Venue and the proximity of the complainant and authorising residents' dwellings is a significant factor to any potential disturbance that arises. Based on the material before me, I am satisfied that there is sufficient evidence before me to reasonably conclude that the Venue has, at times, unduly disturbed the quiet and good order of the neighbourhood.
89. The use of the car park for events is a significant change to the Venue's operation. There are no sound barriers between the car park and neighbouring residences to mitigate noise from outdoor events. When an application was made by the licensee to Council for approval to use the car park this application was rejected on the basis of "major issues with noise". The Venue was granted approval for alfresco dining in the car park but it is clear that it has been using this space for other purposes, including for events which on at least one occasion have involved live music, which it concedes was in breach of the SEPP.
90. While the Venue submitted it is putting procedures in place to ensure no live music will be held in the car park, the submission contained no material demonstrating any steps had been taken to attempt to mitigate noise from amplified music or patrons.
91. Based on the ongoing noise complaints received by L&GNSW, the observations made by L&GNSW inspectors, and the submissions provided by Council and Police regarding

noise disturbance concerns associated with the Venue, it is reasonable to conclude that the Venue has, at times, caused undue disturbance, particularly when events are held in the car park.

92. I note the complaint also raised issues relating to parking on nearby residential streets, however this is outside the scope of issues that can be addressed by L&GNSW and is best addressed by Council.

Regulatory Outcome

93. In deciding the appropriate regulatory outcome is in this instance, I have considered the statutory considerations, the material set out in Annexure 2, and the above finding of undue disturbance. I acknowledge that the order of occupancy is in favour of the complainant. I also acknowledge that the Venue's use of the car park as an entertainment space is a significant change in its operations and the way it provides music entertainment. I am of the view that responsibility lies on the Venue to ensure its changes in operation do not unduly disturb the quiet and good order of the neighbourhood.
94. An argument made throughout the Venue's submission is that it believes there to be only one or two neighbours making repeated complaints, and therefore the complaint should be given less weight. The evidence before me does not suggest this to be the case. Foremost, this complaint was made by a total of 16 residents, with almost all of the residents providing supporting statements outlining their own specific issues and concerns with the Venue (going beyond what is required to file a valid complaint under the legislation). This is a substantial number of residents to join a disturbance complaint.
95. While the Venue's submission notes that the Police call sheets identify an informant made repeated calls to complain of noise, this does not necessarily suggest this caller is the only person who made complaints. The informants were not identified and as stated in the Police submission, not all noise complaints result in formal records being made. Further complaints lodged with L&GNSW also show there to be numerous residents making complaints with respect to the Venue.
96. A major source of disturbance appears to be the Venue's use of the temporary change of boundaries, whereby the car park is being used as an event and entertainment space. The temporary change of boundaries that was approved by L&GNSW was allowed as part of a government incentive to encourage alfresco dining in the wake of the COVID-19 pandemic. While the provision of amplified music was not prohibited as part of this approval, the Venue has clearly been using the temporary change of boundaries for reasons beyond its intended purpose (including, at times, in breach of the SEPP). Having

regard to the proximity of the Venue's car park to residences, it appears clear that the disturbance is likely to have affected a large number of people.

97. While the Venue's solicitors have argued that this complaint should not be viewed as a complaint against the use of the car park, it is impossible to ignore that this appears to be one of the main issues currently causing complaints. While the complainant's initial complaint did not specify that music in the car park was a concern, they did identify patron noise from the car park as causing disturbance. Further, various authorising residents to the complaint noted concerns over the use of the car park, specifically referencing loudspeakers being placed outdoors causing disturbance. I also note that additional complaints received by L&GNSW, as well as complaints received by Police and Council as noted in their respective submissions, regularly refer to the Venue's use of the car park. Further, the flyer that was circulated to local neighbours in opposition to the Venue, that was included in the Venue's own submission, specifically notes the use of the car park as the matter the aggrieved neighbours are taking issue with. While the complaint does raise concerns with noise from the Venue generally, I am of the view that the car park is a key issue that must be addressed if a resolution to the disturbance is to be found.
98. It was argued by Police and Council that the current use of the car park is in breach of the SEPP and the Venue's Development Approval. While this information informs my position, addressing such breaches is beyond the purview of L&GNSW. These breaches, if any, would need to be addressed by Council and Police, through appropriate processes.
99. I have determined to impose a condition on the Venue's licence prohibiting amplified music and entertainment and the use of any sound system in the outdoor alfresco area (car park). The temporary change of boundary allowing the use of space for purposes other than a car park was approved under the outdoor dining (Alfresco) scheme, which was designed to allow the provision of food services outdoors. I am of the view that imposing this condition will provide regulatory certainty that the outdoor space will be used for the purpose intended by the approval, and not for music events or entertainment purposes. This condition will require all music events to be hosted indoors at the Venue (noting that live music outdoors is already prohibited under the SEPP), where there is greater noise attenuation. I am of the view that this condition should significantly reduce instances of disturbance attributed to the use of the car park.
100. I note that as outlined in condition 2860 on the Venue's licence and relevant to the outdoor dining approval, the temporary alfresco dining approval may be revoked earlier by the Authority. Should complaints be received where the use of the car park area causes disturbance or affects the amenity of the neighbourhood and operates in a manner not in

accordance with the intention of alfresco purposes as set out above, it is open for L&GNSW to recommend the Authority consider revoking the temporary outdoor dining approval prior to the current end date of 31 December 2023.

101. I note the complaint also raised issues with noise from music inside the Venue which could potentially be addressed by the imposition of further licence conditions. Having regard to the material before me, I do not find there to be sufficient evidence to impose conditions concerning noise from inside the Venue at this time. Further, as the primary issue appears to be noise from the use of the car park, the results of addressing this issue should be determined before further, potentially burdensome, regulatory action is taken to reduce noise from inside the Venue. On this point, I urge the Venue to continue working with Council in consultation with neighbours to address any concerns regarding noise from inside the Venue.
102. Noting the significant change in use of the Venue to a live music and entertainment venue since the licensee assumed their role, it is likely that the building in which the Venue resides was not designed as an entertainment venue and therefore would achieve less noise attenuation than would a purpose-built music venue. I strongly recommend the Venue engage an acoustic engineer to conduct testing, and that the Venue implement any recommendations for sound attenuation the engineer may make. Alternatively, if this is not an option to the Venue, consideration should be given to the use of a noise limiter as a noise mitigation strategy. I also note that this was outlined as an action item for the Venue to consider following the mediation meeting held on 13 March 2023.
103. The complaint also notes that disturbance is frequently caused by patrons loitering around the Venue, particularly in the car park, after leaving the Venue and that there is a lack of security on site to manage patron behaviour. The Venue's plan of management does not provide clear details on its approach to security and patron management. Since the subject disturbance complaint was lodged, L&GNSW has received complaints referencing noise and anti-social behaviour of patrons loitering outside the Venue.
104. While neither Council or Police provided any objective evidence concerning patron noise and behaviour causing disturbance, I note that the issue concerning patron behaviour was raised during the mediation held on 13 March 2023, where the Venue agreed to have security guards proactively monitor the surrounding streets and respond to any matters. I strongly recommend that the Venue adopt the proposed measure.
105. During the Venue's peak trading hours on Friday and Saturday nights, or when the Venue is hosting an event for which it is anticipated a large number of patrons will be in attendance, it is recommended that at least two uniformed security guards be employed.

These security guards should undertake regular patrols of the area, moving along patrons who are loitering in the area, and should remain until the last patron has left the vicinity of the Venue. While I do not find there is sufficient evidence to impose a security condition at this time, should L&GNSW be provided with evidence that patron behaviour and noise continues to cause disturbance, regulatory action may be taken to impose such a condition.

106. Given the significant change in activities provided at the Venue and noting the residential area in which the Venue is located, I remind the Venue of its ongoing obligations to ensure it does not unduly disturb the quiet and good order of the neighbourhood. Further, I remind the Venue to be respectful to its neighbours and address any concerns or issues as they arise by maintaining polite dialogue with a view to co-exist harmoniously with the local community.

107. I am satisfied that this decision is a proportionate and appropriate regulatory response to the identified risks of undue disturbance. The Venue should be aware that if fresh and direct evidence is presented demonstrating undue disturbance, it is open for the matter to be reconsidered and for further regulatory action to be taken.

Decision Date: 5 July 2023



Jane Lin

Executive Director, Regulatory Operations & Enforcement

Liquor & Gaming NSW

Delegate of the Secretary of the Department of Enterprise, Investment and Trade

Application for review:

Should you be aggrieved by this decision, you may seek a review by the Independent Liquor & Gaming Authority by an application which must be lodged within 28 days of the date of this decision, that is, by no later than **2 August 2023**. A \$500 application fee applies. Further information can be obtained from Authority Guideline 2 published at

In accordance with section 36C of the Gaming and Liquor Administration Act 2007 this decision will be published on the Liquor & Gaming NSW website at www.liquorandgamingnsw.nsw.gov.au



Annexure 1

Under section 81 of the *Liquor Act 2007* a delegate of the Secretary of the Department of Enterprise, Investment and Trade has imposed the following condition on the liquor licence of:

The Great Club – LIQO660011232

Outdoor amplified entertainment and music

Amplified music (live or otherwise) and the use of a sound system or speakers is prohibited in the outdoor area of the licensed premises, including the car park.

Date condition effective: 6 July 2023

Annexure 2

The Material before the delegate of the Secretary in making this decision comprises:

1. Section 79 Disturbance Complaint lodged by the complainant on 28 November 2022.
2. Copy of the liquor licence for The Great Club dated 13 June 2023.
3. Submission from NSW Police received on 12 January 2023.
4. Submission from Inner West Council received on 25 January 2023.
5. Submission from the Venue's solicitor in response to complaint, received on 6 March 2023.
6. L&GNSW Inspector's file note dated 23 January 2023.
7. Minutes of the mediation held on 13 March 2023 between Council, the Venue and residents, received 11 April 2023.
8. Submission from Complainant regarding the mediation dated 11 April 2023.
9. Submission from the Venue regarding the mediation dated 17 April 2023.
10. Inner West Council Statement regarding ANZAC Day event dated 20 April 2023.