

FILE NO: A22/0021467

COMPLAINANT: [REDACTED]

LICENSED PREMISES: Sinaloa Sydney, Double Bay - LIQO660010512 (currently trading as Tanuki Sydney)

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, a delegate of the Secretary, NSW Department of Enterprise, Investment and Trade, in relation to the complaint made in respect to Sinaloa Sydney, Double Bay - LIQO660010512 (currently trading as Tanuki Sydney) have decided to **take no further action**.

REASONS FOR DECISION

Legislative framework

1. Section 79 of the Act provides a that 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 is required to have due regard to the matters set out in section 3(2) which are:
 - (a) the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),
 - (b) the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,
 - (c) the need to ensure that the sale, supply and consumption of liquor, and the operation of licensed premises, contributes to, and does not detract from, the amenity of community life, and
 - (d) the need to support employment and other opportunities in the—
 - i. live music industry, and
 - ii. arts, tourism, community and cultural sectors.

The complaint and background information

The complaint

5. On 25 February 2022, [REDACTED] (the complainant) of [REDACTED] [REDACTED] lodged a disturbance complaint under section 79 of the Act with Liquor & Gaming NSW (L&GNSW) alleging undue disturbance caused by the operation of Sinaloa Sydney (the Venue). The complainant lodged the complaint as a resident authorised by seven other residents.
6. The complainant alleged that disturbance was a result of excessive noise from activities inside the Venue including loud music, singing, shouting and patrons dancing. It was submitted that disturbance occurred on Friday and Saturday nights, Sunday afternoon to evening and on Wednesday and Thursdays, depending on patron levels. The disturbance was either intermittent or at continuous times, with a final peak at the Venue's then closing time at 1:00am on Fridays and Saturdays or Sundays at 10:00-11:00pm. The complainant

stated that the temporary business closures and restrictions associated with the COVID-19 pandemic had resulted in disturbance being less severe or frequent, however activity at the Venue had since increased on Friday, Saturday and Sundays.

7. The complainant alleged that noise from the Venue recorded from their bedroom and acoustic recordings taken [REDACTED] demonstrates an increase of at least 5db, and up to 8dB over background sound recordings from a distance of [REDACTED] from the Venue. The noise disturbance is alleged to particularly emanate from the '*semi-open rear area for bar/disco activity*' located at the rear of the Venue backing onto Gum Tree Lane. The complainant stated their [REDACTED] including bedroom areas are in proximity to [REDACTED] the Venue.
8. The complainant submitted that [REDACTED] [REDACTED] wrote to the Venue on 17 November 2021, on behalf of [REDACTED]. Included with the submission is a copy of the letter which alleged that [REDACTED] were unable to sleep due to excessive noise from the Venue and that the open rear area results in excessive disturbance. [REDACTED] advised that they personally attended the Venue three times one night to complain to the duty manager, who apologised and said the music would be turned down which subsequently did not occur. It was also alleged that noise and anti-social behaviour of patrons exiting the Venue was intolerable, with patrons loitering in the vicinity after the Venue had closed.
9. The submission noted that [REDACTED] met with the former approved manager, Mr Lance Craig Alaalatoa on 22 November 2021, regarding the allegations raised in the letter. A summary of this engagement was provided with the complaint which outlined that the Venue would be installing a new sound system, containing a noise limiter and that speakers would be faced inwards. Additionally, a retractable awning with soundproofing was to be installed in the rear area, signage was being erected advising patrons to be mindful of residents when leaving and security guards being tasked to oversee patrons departing the Venue. Despite these undertakings, the complainant submitted that other than a sliding door separating the disco/bar section to the dining area of the Venue, any noise amelioration works had not reduced noise disturbance emanating from the rear of the Venue.
10. The complainant advised that [REDACTED] contacted City of Woollahra Municipal Council (Council) concerning noise emanating from the Venue and NSW Police was also contacted on multiple occasions between 30 October 2021 to 22 January 2022.

11. The complainant's desired outcome was the elimination of noise disturbance from the Venue to affected residents [REDACTED] and for the Venue to not cause disturbance by its manner of operation. The Complainant also sought the installation of appropriate building structures to the rear of the Venue and effective sound insulation to prevent further noise disturbance.
12. Included with the complaint were images displaying DJ entertainment at the Venue and a semi-enclosed area apparently gathered from open internet sources, a summary of noise disturbance reports made by [REDACTED] to Police dated between 30 October 2021 and 22 January 2022 and a summary of Google reviews extracted from the Venue's website.

The venue, licence details and compliance history

13. The Venue holds an on-premises liquor licence with a restaurant business type and is located at 37 Bay Street, Double Bay.
14. At the time of the complaint being lodged with L&GNSW, Mr Lance Craig Alaalatoa (the former approved manager) was the approved manager. He held this role from 26 October 2020 until 29 August 2022. Mr Blake Phillips then commenced as the approved manager on 30 August 2022 and remained in the role until 1 February 2023.
15. Bondi Beach Brewing Pty Ltd was the licensee and business owner from 26 October 2020 until 31 July 2023. The premises owner was Oro Group Pty Ltd, from 18 July 2018 until 2 June 2023.
16. In March 2023, L&GNSW conducted a desktop audit of the Venue via open source online searches which indicated the Venue known as Sinaloa had permanently closed and its ownership/management were no longer involved in the business. Subsequently L&GNSW put consideration of this disturbance complaint on hold pending further information as to the status of the business and its related parties. The complainant was given this update on 17 March 2023.
17. On 30 May 2023, L&GNSW received formal notification that the previous licensee Bondi Beach Brewing Pty Ltd had ceased its connection with the Venue on 14 February 2023.
18. Mr Joong Hyun Pascal Charpentier (the approved manager) is the current approved manager, commencing in the role on 1 August 2023. The current licensee and business owner is Bay Street Japanese Pty Ltd, starting on 31 July 2023. Bayside Pacific Developments Pty Ltd is the current premises owner, starting on 2 June 2023.

19. On 29 August 2023, an application was lodged with L&GNSW to change the liquor licence name from Sinaloa Sydney to Tanuki Sydney. The application was approved on 30 August 2023.
20. The Venue holds a Primary Service Authorisation (PSA) and extended trading authorisation. The Venue's trading hours for "Consumption on Premises" are 10:00am to 12:00 midnight on Monday to Thursday and Sunday, and 10:00am to 1:00am on Friday and Saturday. The trading hours for "Primary service authorisation: Consumption on premises" are 10:00am to 12:00 midnight on Monday to Saturday and 10:00am to 10:00pm on Sundays.
21. On 19 January 2024, the approved manager lodged an application to L&GNSW for alfresco dining by way of a temporary change of boundaries. Attached to the application was a plan showing the proposed use of the footpath along Bay Street containing dining tables and chairs with approval from Council.
22. On 23 January 2024, L&GNSW approved the temporary change of boundaries, valid until 22 April 2025. The trading hours for the "Temporary Outdoor Area (Alfresco)" are 11:00am to 10:00pm Monday to Thursday and Sunday, and 11:00am to 11:00pm Friday and Saturday.
23. The Venue's liquor licence is subject to a number of conditions, including social impact, local liquor accord, temporary outdoor dining and a condition regarding trading hours which states "*The premises are only permitted to trade the hours approved by the local consent authority for the trial period while it remains in force*".
24. L&GNSW records indicate that on 16 November 2022 the Venue (while trading as Sinaloa Sydney and under the former management and ownership) was issued a warning notice by L&GNSW following an investigation into the Venue's primary purpose requirements. It was established that following an inspection conducted by L&GNSW on 20 May 2022, the Venue was not operating in accordance with the business type as conferred on the liquor licence and was identified, at the time, to be trading in a similar style to that offered by a nightclub or bar, not its intended primary purpose.

Submissions

25. Between 25 February 2022 and 18 October 2023, various material was received from parties to the complaint, including the Venue, Council, Police and the complainant. The material that is before the delegate is set out in **Annexure 1** and is summarised below.

Venue response to complaint

26. On 25 March 2022, the former approved manager provided a submission in response to the complaint. Included with the submission was a number of documents outlining remedial and noise reduction works completed at the Venue and sketch plans outlining the awning structure to be installed.

27. The submission outlined the following (in summary):

- Approximately \$80,000 worth of remedial sound proofing works have been conducted at the Venue to reduce noise exiting the rear courtyard.
- The existing retractable awning has been replaced with a new retractable awning that covers the open area at the Venue and contains noise cancelling material.
- The Perspex on the side of the bar located at the rear of the Venue has been replaced with 20mm Perspex to assist in reducing noise escaping towards [REDACTED]

28. On 4 April 2022, the former approved manager provided additional supporting material, including quotes and technical specification documents for the installation of the retractable roof system and other acoustic treatments.

Council submission

29. On 30 March 2022, a submission was received from Council in response to the complaint. Included with the submission was a copy of Development Application (DA) DA-543/2008/1 and DA-695/2010, a copy of the Venue's Plan of Management (undated) and floor plans for DA-695/2010 approved by Council on 21 March 2011.

30. The submission outlined the following (in summary):

- Between 31 October 2021 and 14 March 2022, 11 complaints were received by Council from seven residents, including from [REDACTED]
- The complaints related to loud music and patron noise emanating from the Venue including until after midnight. It was alleged that the disturbance caused the floor and windows to vibrate impacting work or sleep, and patrons loitered in the vicinity of the Venue engaging in anti-social behaviour. It was also alleged that the Venue was operating as a night club rather than a restaurant and the rear courtyard used for DJ entertainment and dancing until 1:00am on Fridays and Saturdays.

- DA-543/2008 was approved on 14 November 2008 for a change of use to a café which included alterations and additions to the building, including for internal courtyard seating.
- On 21 March 2011, DA-695/2010 was approved for the extension of the approved restaurant including use of the outdoor courtyard for seating. The development consent was modified on 8 November 2011 to include a trial of extended trading hours to 12:00 midnight from Sunday to Thursday, and to 1:00am on Friday and Saturdays for a period of 12 months.
- Relevant conditions of consent relating to both DA-543/2008 and DA-695/2010 require the use of a plan of management, provision of security guards on Thursday to Sunday from 9:00pm until 15 minutes after cessation of trade, trading hours as outlined above, outdoor seating on Bay Street to cease operating and be removed by 12:00 midnight on Monday to Saturday and 10:00pm on Sundays, and an LA10 condition.

31. On 5 April 2022, L&GNSW contacted Council to confirm the approved trading hours of the Venue. Council confirmed that the Venue's extended trading hours to 1:00am on Friday and Saturday and 12:00 midnight on Sundays had lapsed on 8 November 2012. The Venue's trading hours are 6:30am to 12:00 midnight Monday to Saturday and 6:30am to 10:00pm on Sunday.
32. On 20 April 2022, Council advised of a further complaint alleging that the Venue was operating as a night club with offensive noise emanating from the rear area.

Police submission

33. On 8 April 2022, a submission was received from NSW Police in relation to the complaint. Included with the submission was a copy of five COPS events outlining instances of disturbance attributed to the Venue dated between November 2021 and April 2022, a video taken from social media showing the provision of DJ entertainment at the Venue, a map extract showing the Venue location and the Venue's Local Licensing Agreement (LLA) dated 21 December 2021.
34. The submission outlined the following (in summary):
- The Venue commenced trading on 26 October 2020 and is made up of four distinct areas. The general demographic of the Venue is people between the ages of 20 to 35.
 - The first area is referred to as the 'restaurant'. This area includes several dining tables and chairs and a small bar directly servicing patrons.

- The second area is the outdoor bar area, which contains a large bar and is predominantly used for dancing and functions. There are large speakers with DJ entertainment provided on 'peak' trade nights. No dining tables or chairs are present in this area when patrons are dancing. There is no solid constructed roof in the outdoor area and therefore no insulation of sound.
- The third area is the "VIP area". Patrons hire booths for a fee which includes 'VIP Bottle Service'.
- The fourth area is located above the 'VIP area', accessible by stairs. It contains a small bar and is used for private functions.
- Since the Venue commenced trade in 2020, there have been over 100 COPS events attributed to the Venue.
- The Venue is causing undue disturbance due to its current business model and is operating akin to a bar instead of a restaurant. The Venue's business model is focused on selling alcohol and providing night-club entertainment and is not appropriately acoustically treated.
- There is no adopted plan of management or house policy reinforcing the Venue's primary purpose, noise attenuation or responsible service of alcohol responsibilities.
- The appropriate outcome would be the revocation of the Venue's PSA and the imposition of a Plan of Management condition on the Venue's licence.

Inspection by L&GNSW

35. On 20 May 2022 at approximately 8:35pm, L&GNSW Inspectors attended the Venue to test compliance with liquor legislation, including making observations of noise disturbance. The following observations were made (outlined in summary):

- Nightclub style RnB music was being played in the outdoor courtyard area through amplified speakers, with two people operating the DJ equipment. Groups of patrons were observed seated at high tables, with empty cups and cocktail glasses on the table. No patrons were observed to be eating in the courtyard area and no tables were set for dining. Patrons were observed standing and consuming glasses of wine and cocktails, with some patrons dancing to music.
- Between 8:47pm and 9:30pm, in the restaurant area most tables were occupied with patrons consuming meals and liquor.
- By 9:45pm, most tables in the restaurant area had been vacated and by 10:20pm staff were observed to be cleaning the kitchen with food no longer being prepared.
- At 10:35pm, L&GNSW Inspectors returned to the outdoor courtyard and observed it to be very busy with between 70-100 patrons. Loud amplified music was being

played by a DJ, strobe like fluorescent lighting and patrons were observed standing and dancing whilst consuming drinks. No food was observed being consumed in this area and security guards were observed to be patrolling the area.

- At 10:49pm, L&GNSW Inspectors exited the Venue and observed bass music emanating from the Venue to be audible when standing on Gum Tree Lane, behind the Venue.

Complainant final submission

36. On 23 June 2022, the complainant provided final submissions regarding the complaint. Included with the submission was a copy of the Venue's Plan of Management (undated).

37. The submission outlined the following (in summary):

- The Venue's trading hours should have reverted to Monday to Saturday 6.30am to 12:00 midnight, and Sunday 6.30am to 10.00pm following the Council trial approval of extended trading hours lapsing.
- Under DA-695/2010, approval was granted for the Venue to use the outdoor courtyard for seating. However, the courtyard is primarily being used for dancing, and more as a nightclub than a restaurant.
- The Venue is not compliant with its LA10 requirements, which are clearly set out in the Venue's Plan of Management as approved under DA-695/2010.
- It is submitted that noise coming from the Venue constitutes 'offensive noise' as defined by the *Protection of the Environment Operations Act 1997* (the POEO Act).
- Acknowledgement is made towards the noise mitigation attempts by the Venue, particularly the construction work carried out to the retractable awning over the rear courtyard area.
- The Venue is not compliant with its closing time, noise can be heard within residences post-midnight and amateur noise recording measurements undertaken by residents demonstrate the Venue's non-compliance with noise requirements.
- Noise disturbance typically occurs on Friday and Saturday nights from 10:00pm onward, Sunday afternoons and on holidays. Further, when the Venue closes, departing patrons cause disturbance, which includes banging of bins and vomiting patrons.
- Noise disturbance emanating from the Venue could be reduced by limiting the volume of the DJ speakers or moving them to inside the main building, ensure sound proofing to the rear area of the Venue, compliance with DA required opening hours and requiring the consumption of food on tables for all patrons.

Venue final submission

38. On 4 August 2022, the former approved manager provided final submissions regarding the disturbance complaint. The submission outlined the following (in summary):
- A new retractable roof with custom sound proofing was installed on 4 March 2022.
 - Nine of the 11 complaints received by Council were prior to the Venue investing \$67,500 in sound proofing.
 - A revised Plan of Management was being prepared to include selected times and decibel levels when the courtyard retractable roof is permitted to open and the requirements for the use of a noise limiter.
 - The Venue has since reverted to its original DA trading hours of 'Monday – Saturday 12:00PM – 12:00AM the following day; and Sunday 10:00AM – 10:00PM'.
 - A third seating dinner option will be available from 10:00pm to 11:30pm providing a greater promotion and availability of food to maintain the Venue's primary purpose.
 - A formal meeting was held with the master licence holder of the Venue's security provider, Dalton Solutions Pty Ltd, concerning the management of patrons departing the Venue to minimise disturbance to neighbouring residents.

Update from Council regarding investigation

39. On 14 October 2022, Council provided further information regarding alleged breaches to the Venue's development consent condition relating to hours of operation as well as details outlining a complaint concerning noise disturbance from the Venue post-midnight. Council advised its view that the matter falls within the definition of 'offensive noise' in the POEO Act.
40. On 25 October 2022, L&GNSW contacted Council requesting an update on the investigation relating to the alleged ongoing breach of the Venue's DA relating to hours of operation.
41. On 2 November 2022, Council stated it had received information indicating that the Venue was closing at the correct times in accordance with its DA and that noise disturbance at night had reduced. Accordingly, Council advised that no further action would be taken regarding the breach of hours of operation.

Temporary closure of the Venue – matter on hold

42. On 17 March 2023, L&GNSW notified the complainant that due to the Venue ceasing trade as Sinaloa Sydney and permanently closing, consideration of their disturbance

complaint was placed on hold temporarily until further information could be gathered as to whether the Venue would re-open and in what manner of trade.

Update from Venue – new management and ownership

43. On 12 October 2023, L&GNSW was advised by AMW Lawyers that the Venue is now trading as Tanuki Sydney and operating under new management with a new licensee and business owner, Bay Street Japanese Pty Ltd. An update as to the status of the disturbance complaint lodged against the former operators of the Venue was requested, with the Venue submitting that the imposition of licence conditions would impact the new business. L&GNSW then requested further information regarding the proposed operation of the Venue as Tanuki Sydney, including the provision of entertainment, and when it is anticipated to commence trade.
44. On 18 October 2023, L&GNSW received a response from AMW Lawyers on behalf of the Venue. The submission outlined the following:
- The Venue will be a Japanese restaurant and bar with seating available throughout the premises. The Venue was proposed to open late November 2023.
 - Music will be played through the in-house system with DJ entertainment available for functions and events playing background music.
 - The Venue will comply with the requirements of the primary purpose of its licence and all conditions on its liquor licence.
 - Management is aware that the previous operations of the Venue mirrored a hybrid nightclub, and that is not the intended operation of the business.
 - A wall has been constructed in the courtyard area to build a banquet to allow for a better flow of service and assist in mitigating noise that may occur due to regular trade.
 - Soundproofing has been installed within the existing structure at the premises, including double glazed windows and sound insulation within the walls.
 - The new licensee and business owner are existing operators within the Double Bay community and are committed to operating in a manner that takes into consideration the neighbourhood and any effect the Venue will have within the area.
 - The Venue is willing to work with the local community to ensure noise emissions are kept to a minimum.

- The Venue seeks to have the matter finalised favourably so that licence conditions are not imposed due to the poor business operations of the previous tenant.

45. On 1 February 2024, L&GNSW contacted the approved manager requesting confirmation on the date the Venue recommenced trade. On 2 February 2024, the approved manager advised that the opening of the Venue was delayed with the official first day of trade being 11 January 2024.

Update from Complainant

46. On 1 February 2024, L&GNSW contacted the complainant to provide an update on the matter, advise of the operations of the Venue under its new ownership and management and seek any additional information from the complainant regarding noise since the new ownership. The complainant advised they were aware that the Venue is now trading as a Japanese restaurant and stated there had been no issues or problems to date concerning the new operations of the Venue. The complainant further stated that to their knowledge no other residents had expressed concerns regarding the Venue since it had re-opened and commenced trading as Tanuki Sydney. The complainant advised that they were happy for L&GNSW to close off the complaint against Sinaloa Sydney.

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

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

The order of occupancy between the licensed premises and the complainant

48. The Venue has operated under its current liquor licence since 16 September 2009, and previously traded under a different business name, Sinaloa Sydney. The complainant had resided at their current address for approximately nine months at the commencement of the complaint. These facts are not disputed and while a new licensee and business owner was appointed in July 2023 and an approved manager commenced in August 2023, I consider the order of occupancy to be in favour of the Venue.

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

49. There is no indication that structural changes have occurred to the complainant's residence.

50. Under the previous management and ownership, a retractable roof was installed in the rear courtyard of the Venue in March 2022 which also included sound proofing.
51. Since the Venue has come under new management and ownership in July 2023, noise attenuation and sound proofing works have been completed, including the construction of a banquet wall in the courtyard area, double glazed windows, and sound insulation installed within the walls of the building.

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

52. Submissions from all parties to the complaint outlined that a significant aspect of the Venue's previous operation, while trading as Sinaloa Sydney and under its former management and ownership, included the rear courtyard area and the provision of amplified DJ music. The current management of the Venue has submitted that the business focus of Tanuki Sydney is a restaurant and bar and there is no intention of operating akin to a 'hybrid nightclub'.

Findings and Decision

Undue disturbance

53. 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 evidence from L&GNSW Inspectors. I have also had regard to the previous operations and business model of the Venue, while trading as Sinaloa Sydney, noting that the Venue has recently re-opened under new ownership and management.
54. A level of noise and disturbance from the normal operation of the Venue is to be expected, including noise from patrons and amplified entertainment. I do not consider this type of disturbance as undue in a general sense. However, it is evident that the previous operation of the Venue, while trading as Sinaloa Sydney, coincided with the disturbance experienced by the complainant at that time. I am satisfied there is sufficient evidence before me to reasonably conclude that the Venue, while trading as Sinaloa Sydney and under its former management and ownership, had, at times, unduly disturbed the quiet and good order of the neighbourhood.
55. In making this finding, I have placed weight on the submissions and objective evidence provided by Council and Police, which indicated that the operations of the Venue, while trading as Sinaloa Sydney, likely caused undue disturbance to the neighbourhood. Both Council and Police raised concerns over the use of the rear courtyard for DJ entertainment and dancing, with Council confirming the Venue was not operating in accordance with its

DA approved trading hours and Police alleging that the Venue was trading contrary to its primary purpose. I also note that in November 2022 the Venue received a warning from L&GNSW for failing to operate in accordance with the business type as conferred on its liquor licence.

56. I note it has been a significant period since the Venue closed and ceased trading as Sinaloa Sydney. I acknowledge the submissions received on behalf of the current licensee and business owners of the Venue outlining the business model and intended operation of Tanuki Sydney as a Japanese restaurant and bar. I have also considered the proactive steps taken by the Venue in installing soundproofing measures to mitigate noise. Although the Venue only re-opened in January 2024, I note the complainant has indicated there have been no concerns to date regarding the operation of the Venue.
57. In consideration of the above, it is important to note that the finding of undue disturbance relates to the operation of the Venue while trading as Sinaloa Sydney and under its former management and ownership and does not extend to the current operations of the Venue, as Tanuki Sydney.

Regulatory Outcome

58. In deciding the appropriate regulatory outcome, I have considered the statutory considerations, the material set out in Annexure 1, and the above finding of undue disturbance with respect to the operations of the Venue, while trading as Sinaloa Sydney.
59. A common theme from the submissions of the complainant, Council and Police along with inspections conducted by L&GNSW was that the primary source of disturbance was generated by amplified music and patron noise from the rear courtyard. I also acknowledge Police and L&GNSW concerns around the Venue appearing to trade as a bar or nightclub, as opposed to a restaurant. In my view, the activities and operation of the Venue, while trading as Sinaloa Sydney, created a much higher risk of disturbing the amenity of the neighbourhood and the overall risk profile of the Venue was higher than a typical restaurant business type.
60. I note the permanent closure and cessation of trade of the Venue as Sinaloa Sydney. A significant period has lapsed since this time and the Venue has recently recommenced trade as Tanuki Sydney under new management and ownership.
61. I acknowledge that the new owners and management of the Venue have proactively reached out to L&GNSW to address any residual concerns held with respect to the disturbance complaint associated with the previous operators of the Venue. I note that the

new business model of the Venue is a Japanese restaurant and bar and acknowledge the soundproofing strategies implemented at the Venue to reduce its noise impact. This includes construction of a banquet wall in the courtyard area to mitigate noise, double glazed windows and sound insulation within the walls. I am encouraged by the voluntary steps taken by the Venue, and I am of the view that this will have a positive effect in reducing the potential for noise disturbance.

62. I also acknowledge the commitment provided by the Venue to comply with the requirements of the primary purpose of its licence and its willingness to work with the local community to ensure noise emissions is kept to a minimum.
63. Having carefully considered the material before me, I am satisfied that regulatory intervention is not appropriate in the circumstances and I have determined to take no further action in this matter. The concerns raised in the complaint related to the previous operation of the Venue and I do not consider it appropriate in the circumstances to penalise the new operators of the Venue for the conduct and actions of its previous tenant. I am encouraged by the proactive and positive measures the new operators of the Venue have implemented and I am of the view the Venue's current business model, as a Japanese bar and restaurant, carries a lower risk profile. As such, I am satisfied the risk of undue disturbance from the current operations of the Venue is mitigated.
64. While I have determined to take no further action in this matter, I remind the Venue of its ongoing obligation to minimise levels of disturbance from its operation and to ensure it operates in a manner that is consistent with its primary purpose and community expectations.
65. Finally, I am satisfied that this decision is a proportionate and appropriate regulatory response to the disturbance identified in the complaint and the circumstances surrounding the change in operation of the Venue.

Decision Date: 23 February 2024



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 **22 March 2024**. A \$500 application fee applies. Further information can be obtained from Authority Guideline 2 published at www.liquorandgaming.nsw.gov.au

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.liquorandgaming.nsw.gov.au

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

1. Copy of the liquor licence dated 1 February 2024.
2. Section 79 Disturbance Complaint lodged by the complainant on 25 February 2022.
3. Submission from the Venue received on 25 March 2022, including additional documents provided on 4 April 2022.
4. Submission from Council received on 30 March 2022, including further information regarding the Venue operating hours provided on 5 April 2022.
5. Submission from Police received on 8 April 2022.
6. Additional material and information received from Council received on 20 April 2022.
7. L&GNSW Inspector file note of inspection conducted at the Venue on 20 May 2022.
8. Complainant final submissions received on 23 June 2022.
9. Venue final submission received on 4 August 2022.
10. Email dated 14 October 2022 from Council regarding DA compliance at the Venue.
11. Email dated 14 October 2022 from Council regarding noise disturbance investigation.
12. Email dated 2 November 2022 from Council regarding outcome of investigation in relation to DA compliance.
13. Email correspondence from AMW Lawyers on behalf of the Venue, dated between 12 October 2023 and 18 October 2023.
14. File note of phone conversation with complainant, dated 1 February 2024.
15. Email correspondence from Venue dated 2 February 2024.