
FILE NO: A21/0018859

COMPLAINANT: [REDACTED]

LICENSED PREMISES: The Station Newcastle NSW, Newcastle – LIQO660034691

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, Dimitri Argeres, Director Compliance & Enforcement, a delegate of the Secretary, Department of Enterprise, Investment and Trade, in relation to the complaint made in respect to The Station Newcastle NSW have decided to **take no further action** in relation to this matter.

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 purposes 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:
 - a) the need to minimise harm associated with the misuse and abuse of liquor;
 - b) the need to encourage responsible attitudes and practices towards the promotion, sale, supply, services and consumption of liquor,
 - c) 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
 - d) 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 30 April 2021, [REDACTED] (the complainant) of [REDACTED] lodged a complaint with Liquor & Gaming NSW (L&GNSW) alleging undue disturbance from the operation of The Station Newcastle NSW (the venue). The complainant lodged the complaint as a resident authorised by seven other residents, with the complainant and all authorising residents wishing to remain anonymous.
6. The complainant alleges that extreme noise disturbance emanates predominantly from amplified music events that are held on the outdoor, open air platform space at the venue. The complainant also alleges the venue conducts several different activities which result in noise disturbance ranging from nil to extreme. Low impact events include outdoor markets, community food events, themed festivals and community workshops. The impact of these events depends mostly on whether there is any musical entertainment included, with simple acoustic performances generally being low impact. The amplified music events, usually in the form of ticketed concerts, allegedly cause extreme noise disturbance. The complainant specifically refers to a Spin for Kids event that had very heavy bass and allegedly breached the LA10 noise criteria.
7. The complainant claims the disturbance does not have a fixed pattern, though at the time of lodging the complaint the disturbance occurred on the previous two weekends and

another concert was scheduled for a fortnight's time. The disturbance consistently occurs whenever outdoor amplified music events are held at the venue. The complainant submits contact with the venue's approved manager has been documented in previous disturbance complaints against the venue and they have never received any consideration from the approved manager, rather the approved manager always denies there is a problem, even when presented with measurements to the contrary. Correspondence with the approved manager has never resulted in any decrease in disturbance from the venue.

8. The complainant has also corresponded with the City of Newcastle (Council) and NSW Police (Police). The complainant submits Council do not involve themselves in noise disturbances related to licensed premises. The complainant has reported noise disturbances to Police on multiple occasions. The complainant advises that Police attended the venue on 9 January 2021 and again on 20 April 2021. These complaints were also lodged with L&GNSW.
9. The complainant has also expressed concerns to the Hunter and Central Coast Development Corporation (HCCDC) who own and manage the site. The complainant alleges the venue is in breach of its LA10 noise condition when holding large concert events. The complainant also states the venue has substantially increased the frequency with which amplified concerts are being held in the outdoor platform space. This has increased from once a year for the first couple of years to now being up to weekly or fortnightly at the time of lodging the complaint.
10. The complainant's desired outcomes include banning amplified music events at the venue and the mandatory use of a noise limiter for all events. Additionally, the complainant requests that a reduction in maximum volume limits on site be enforced, including noise limiter settings, with the addition of appropriate octave band limit settings for the venue's noise limiter which should be based on actual testing at residents' boundaries and not simply modelling. Finally, the complainant requests enforcement of existing LA10 limits for any and all continuing activities, without the requirement for residents to repeatedly complain.

The venue, licence details, compliance history

11. The venue is located at the former Newcastle Railway Station site in Newcastle's East End, specifically on the corner of Scott and Watt Streets, Newcastle. The venue's liquor licence commenced on 21 November 2018. The licensee is a corporate entity, Liquor and Gaming Solutions Pty Ltd, and the approved manager is [REDACTED]. The

venue holds an on-premises liquor licence and encompasses four different business types including catering services, a cinema public entertainment venue, a public arena and events and a theatre public entertainment venue. The venue has authorised trading hours for consumption on premises across seven areas. The trading hours for these areas are as follows:

- Areas 1, 2 and 6 (Indoor) – Monday to Sunday 10am until 6pm.
- Area 3 (Indoor) – Monday to Sunday 10am until 9pm.
- Area 4 (Indoor) – Monday to Wednesday and Friday 10am until 6pm, Thursday 10am until 9pm and Saturday to Sunday 10am until 4pm.
- Area 5 (Indoor) – Monday to Sunday 10am until 10pm.
- Area 7 (Outdoor) – Monday to Sunday 10am until 10pm.

12. The venue also has 18 licence conditions, including two conditions relating to noise. These two conditions include a requirement to adhere to the LA10 noise criteria and that the licensee will not permit the conduct of an amplified live music event in the outdoor platform area on more than 12 days per calendar month.
13. L&GNSW records indicate that since 8 October 2019 the venue has received 11 noise complaints concerning noise and non-compliance with noise-related conditions, excluding this formal disturbance complaint.

Submissions

14. Between 1 June 2021 and 3 August 2021, various material was received from the parties to the complaint, including the complainant, the approved manager, HCCDC, Police and Council. The material that is before the delegate is set out in **Annexure 1** and is summarised below.

Police

15. On 1 June 2021, Police provided a submission to the complaint. Police provided wording for the LA10 condition currently imposed on the venue's liquor licence. Police submit they do not possess the skills or training to test the venue's LA10 noise condition. Police are only able to attend noise complaints when made and assess whether the noise emanating at that time is deemed offensive. COPS data shows that between 5 October 2019 and 18 April 2021, Police attended the venue for six noise complaints, two incidents relating to licensing legislation and one business inspection. Police do not provide any submissions

regarding any action taken in relation to these incidents. Police are also unable to comment on the permissible operating hours of the venue under the Development Approval as they do not have a copy of it.

Council

16. On 9 July 2021, Council provided a submission to the complaint. Council submit they have received one complaint concerning alleged excessive noise in the afternoon and evening of 9 January 2021. Council was also provided with correspondence from a customer raising noise concerns with the approved manager of the venue, regarding events on 9 January 2021 and 18 April 2021.
17. Council provides some relevant conditions from Development Approval DA2019/00867, including:
 - the hours of operation or trading at the venue are to be no more than 6am until 10pm Monday to Sunday.
 - live entertainment on the platform area or inside any of the indoor tenancies must cease prior to 10pm Monday to Sunday.
 - the use and occupation of the venue, including all plant and equipment installed thereon, is not to give rise to any offensive noise.
 - noise generating activities from bootcamp classes are to be confined to the western portion of the platform.
 - the internal windows of the entertainment space are to include installation of heavy velour rubber backed drapes or equivalent.
 - the emergency doors (southern façade) of the entertainment space are to be retrofitted to include acoustic seals to eliminate gaps around the door edges.
 - the venue is to be operated within the confines of the plan of management/alcohol management plan prepared by the corporate licensee dated March 2019 and is only to be amended with the consultation of Council and Police.
 - an events traffic management plan is to be prepared for any event involving 1500 or more people.

- outdoor amplified entertainment sound sources are to be located no closer than 50 metres from the nearest residential receivers where there is a direct line of sight between the source and the receivers.
- Where the location is less than 50 metres from the nearest residential receiver:
 - there is no direct line of sight by locating speakers beneath an awning or providing a permanent or temporary acoustic barrier between the speaker and the nearest receivers; or
 - sound limiters are to be implemented to ensure that noise levels from amplified sound does not exceed 94dB (LA10).

18. Council also submits there is a pending development application relating to the inclusion of a playground currently being assessed by Council.

Approved manager's response to complaint

19. On 9 June 2021, the approved manager provided a submission to the complaint. This included a submission from HCCDC and included annexures such as the venue's noise management policy and a notification document of upcoming events.
20. The approved manager expresses disappointment the complainants have remained anonymous as the venue submits it is in their interest to resolve any genuine noise disturbance that is affecting nearby residents. All residents living within 100 metres of the venue have been provided with a fridge magnet containing the venue's contact details for a dedicated disturbance hotline. The approved manager submits the venue has a long-standing noise management plan which is always adhered to. The approved manager submits that the location of sound amplification equipment has been moved and music turned down from an abundance of caution on the rare occasions the venue has received genuine complaints.
21. The approved manager suggests the complainant has chosen to remain anonymous to conceal a potential broader agenda in making the complaint and believes that if their concerns are so great, they would approach the venue to fix the issues. For these reasons, the approved manager requests that L&GNSW provide additional information regarding the complainant and authorised residents in order to provide a 'proper, meaningful and relevant response'. The approved manager submits they receive daily feedback that many neighbours overwhelmingly support the activation of the venue.

22. The venue maintains a noise disturbance register in accordance with the noise management plan which has been in place since the venue opened on 28 September 2018. The approved manager is unable to share relevant sections of the register as the dates of disturbance the complaint relates to are not known. The approved manager would be happy to disclose this document on a confidential and commercial in confidence basis and believes the provision of said records would show L&GNSW the robust systems and procedures in place at the venue.
23. The approved manager asserts the complaint does not meet the threshold required under section 79, namely that the disturbance has been undue. The approved manager submits the location of the complainant's residence must be known to establish a base level, but he assumes the complainant lives within close proximity to the venue. The approved manager submits the venue is situated within the Newcastle CBD and recently replaced a working 'end of line' train station, which operated 24/7, with trains stopping and being shunted all day every day. The approved manager submits this would have generated substantial noise and attracted a constant array of people and activities. The approved manager asserts this is relevant as it indicates the local surrounds of the venue are that of a thriving CBD hub and nearby residents should expect a certain degree of noise. The approved manager however submits the existence of noise in the context of a thriving CBD does not mean the noise can be categorised as undue.
24. The approved manager submits that significant numbers of visitors, tourists, and residents travel to the Newcastle CBD every weekend to experience a multitude of hospitality and event offerings provided by several Newcastle businesses. It is therefore reasonable to expect noise from these activities that occur in approved outdoor spaces and may emanate around the local neighbourhood during the day and prior to 10pm. The approved manager submits it is unfair for the complainant to rely on the subjective LA10 octave band limits without taking into consideration that the ambient street noise of the CBD will often exceed such levels without the operation of any licensed venue. The approved manager submits it is unreasonable to suggest that any noise generated from a public outdoor space prior to 10pm is creating an undue disturbance.
25. The approved manager disagrees with the complainant's assertion that the background noise level of inner-city Newcastle CBD is 60dB. The approved manager submits that after reviewing a Safe Work Australia report regarding sound decibel levels and what they are in real time, a normal conversation is equivalent to 60dB. The approved manager submits the operation of the light rail, the operation of three nearby pubs with live music and the sound of ships entering Newcastle harbour indicate the venue's surrounds could not be reflective of a quiet suburban area. The approved manager also submits previous

sound readings in the venue's possession demonstrate that sound coming from events held at the venue does not exceed the background volume of a busy road or light rail corridor. The approved manager submits he attended the home of a nearby resident on 28 September 2018, to observe disturbance at a time the resident alleged they were experiencing disturbance from music being played at the venue. The approved manager reported that any noise from outside was completely inaudible whilst inside the apartment, meaning that the resident's concerns were unsubstantiated.

26. The approved manager submits the complainant may be looking for a technical breach of the LA10 condition. The approved manager submits the venue is adhering to the conditions of its liquor licence and DA, especially noise related conditions like the LA10. The approved manager highlights the DA condition that where the location of outdoor amplified entertainment sound sources is less than 50 metres from the nearest residential receiver, sound limiters are to be implemented to ensure noise levels from amplified sound does not exceed 94dB. The approved manager submits this is the maximum dB reading within the venue that will meet compliance with the DA and the LA10 and this is a measurable, independently imposed regulation with which the venue is complying. The approved manager submits the complainant's assertion that the venue is in breach of the LA10 condition of the liquor licence is based on the mistaken belief the ambient background noise level of Newcastle CBD is 60dB.
27. The approved manager provides submissions relating to the Spin for Kids event held on Friday 23 April 2021 from 10am until 3pm. The event was a charity fundraiser for Variety Kids Charity and there was no liquor sold or supplied at the event. The event was held in the newly renovated Piazza portion of the venue, more than 100 metres away from residents. The approved manager notes this area is not currently covered by the venue's liquor licence and that the site manager met with a complainant at 11:30am and took decibel readings. The music was recorded at 65.3dB at a distance of 50 metres which the approved manager submits is at a level of conversational speaking voice. The approved manager submits it is objectively unreasonable that an event of this nature which took place between 10am and 3pm on a Friday could cause anyone undue disturbance. Additionally, the approved manager submits the complainant is completely unrealistic in their expectations of acceptable noise levels for an outdoor function space in the Newcastle CBD.
28. The approved manager also refers to other events held at the venue, noting that three concert events have been held since January 2021. These events include outdoor markets, themed festivals, temporary water parks, and community food events amongst others. Almost all of these events include some form of live entertainment and are part of

a broad range of activities the local community want to see. Events like the markets or children's water parks do not have liquor sold or supplied. The approved manager submits it is objectively unreasonable to suggest any of these events cause an undue disturbance. It is unreasonable that these matters are subject to a noise disturbance complaint under section 79 when the liquor licence is not active during these events.

29. The approved manager explains there are areas of the venue that are licensed and unlicensed, with many events not including the sale, supply, or consumption of liquor. The approved manager submits the complaint has not adequately detailed the events which cause disturbance, and it is the approved manager's opinion that many of these events did not take place in licensed areas. The approved manager submits L&GNSW's jurisdiction to deal with complaints does not carry over to the unlicensed areas of the venue's space.
30. The approved manager submits the venue is subject to several onerous licence conditions and complies with all of them. The approved manager submits the venue conducts significant pre-planning in cooperation with Police for large events with more than 1500 persons, in line with the licence condition which relates to such events. Additionally, the approved manager submits it is unnecessary and punitive to further limit the venue's ability to conduct amplified live music. The approved manager also denies the complainant's assertion the venue hosts amplified concerts on a weekly to fortnightly basis.
31. The approved manager submits the outcomes proposed by the complainant are unnecessary and onerous. There is no reason to ban amplified music events as the provision of these events caters to a very real and significant demand from the community, and the venue is uniquely designed and located to provide amplified music events in a responsible way. There is no reason for mandatory use of a noise limiter as the noise management plan, DA and licence conditions are robust and complied with. The venue is already subject to reasonable maximum volume limits which are contained within the DA, licence conditions and plan of management. The LA10 is already being complied with and the venue has passed each inspection without any issues being raised by Police or any other regulatory bodies.
32. The approved manager strenuously denies the allegations made by the complainant and notes the outcomes sought by the complainant will have a negative impact on other residents and the broader Newcastle community and should be dismissed accordingly. The complainant has provided no evidence to support the allegations made. The venue is broadly supported by other nearby residents, the Newcastle community and by Council.

33. The approved manager submits the venue will continue to engage meaningfully with the community and adhere to their strict DA and liquor licence conditions and the venue's own robust policies and procedures.

HCCDC's response to complaint

34. On 9 June 2021, HCCDC provided a response to the complaint. HCCDC submits temporary activation of the venue site has brought vibrancy and life back to an important heritage precinct, which has allowed the community to engage with the space in new and different ways. This activation is based on years of community engagement and HCCDC is proud to continue to deliver activation that is in line with community aspirations and within the parameters of the venue's DA and licence conditions.
35. HCCDC submits the venue is situated in an important state heritage listed building located in Newcastle's East End. The venue is a significant component of the \$650 million Revitalising Newcastle program and currently provides significant community benefit as a temporarily activated precinct for all to enjoy, until a longer-term future use is identified. The precinct has been earmarked as a vibrant tourism destination, as informed by the Newcastle LEP 2012 and HCCDC is looking to realise this opportunity with a long-term lease in the coming years. Community engagement for the site has included campaigns such as Design Newcastle 2014, Revitalising Newcastle 2015 and Ideas Festival 2016.
36. These campaigns have refined the community's expectations for the precinct and how it can be used by the community. Specifically, from the Ideas Festival 2016, more than 1500 comments were received resulting in 146 unique ideas for the future use of the site and the surrounding precinct. This engagement highlighted four common ideas that were supported through the engagement process, including an active art space, eateries, piazza for performances and a cinema under the stars. At the conclusion of this engagement, HCCDC committed to undertaking key restoration works and platform infill construction to enable temporary activation of the precinct, while preparing for a longer-term expression of interest process.
37. HCCDC has undertaken significant restoration works to the venue. These works include providing new access to the site from Scott Street and Wharf Road, providing greenspace connections with Market Street Lawn, restoring and revealing the original veranda and opening up spaces on the ground floor for new use. These works resulted in HCCDC being awarded the 2019 Australian Institute of Architects, Newcastle Award for Heritage. Further works were undertaken in 2020. Significant landscaping and the removal of fixed fencing has resulted in increased amenity which has created positive engagement with

the community, and allows citizens to pass through or use some of the venue space even when events are not being held.

38. HCCDC submits they do not have a profit motive for the activation of space or the use of the liquor licence at the venue. During this temporary activation, many events have been held that contribute to the ongoing revitalisation of the city. The venue can cater for large and small events, meaning the venue can host large scale comedy festivals and international events, as well as regular Friday night food truck events and small-scale networking events. HCCDC submits there are physical components of the venue that are licensed and others that are not. Additionally, many events held at the venue do not include the sale, supply or consumption of liquor. Events where liquor is not sold or supplied are held in the unlicensed area or a combination of both licensed and unlicensed areas.
39. HCCDC has a dedicated team committed to the appropriate activation of the venue. This team is guided by documentation including Development Approval 2019/0087, the venue's liquor licence and the alcohol management plan. All conditions of the DA and licence are continuously and robustly monitored and enforced using appropriately engaged staff, policies, and procedures. HCCDC appointed the approved manager and the corporate licensee and is aware that on a daily and weekly basis both the approved manager and the venue's event co-ordinator continuously liaise with all stakeholders of the venue, including Police, Council, residents and users of the venue.
40. HCCDC finds it difficult to ascertain and properly assess the veracity of the complaint as the complainant's identity and proximity to the venue are unidentified, as is the specific nature of the complaints and issues. HCCDC requests more information be immediately provided so they can begin to work towards identifying any specific ideas for improvement and secondly provide a targeted and meaningful response and proposed resolution to the complaint. HCCDC and its advisors state they would be open to execute a confidentiality agreement to allow detailed and meaningful information to be provided.
41. HCCDC submits that the objective of the activation of the venue remains as a place with a community heart, and that it believes that all members of the community can continue to enjoy and utilise the activation of the award-winning restoration of space without experiencing undue disturbance. HCCDC submits it will continue to provide community activation at the venue in accordance with the requirements of its current local government development consent, considerable existing licence conditions and the expectations of the wider community.

Complainant final submission and further complaint material

42. On 26 June 2021, the complainant provided their final submission in this matter. Included with the submission were prior complaints the complainant has raised with numerous regulatory bodies, two acoustic reports from Muller Acoustic Consulting (MAC) dated August 2018 and August 2019, an acoustic report from Spectrum Acoustics for a nearby licensed hotel dated 18 October 2017, screenshots of audio recordings from a mobile phone and a comparison between phone audio recordings and those of Mac and Spectrum. Also included were text message and phone call transcripts between the complainant and approved manager, a noise complaint assessment for a nearby licensed hotel by Global Acoustics dated August 2018, and two Statements of Environmental Effects regarding the venue by Elton Consulting and ADW Johnson.
43. The complainant submits most of the submission from HCCDC is irrelevant to the matter. The complainant submits HCCDC refer to some events which do not include the sale or supply of liquor and that some events occur in both the licensed and unlicensed areas of the venue. The complainant submits HCCDC is questioning the jurisdiction of L&GNSW and the Independent Liquor and Gaming Authority (the Authority) over the operations at the site that are subject to the complaint. The complainant submits they have had discussions with L&GNSW who have indicated consideration of this matter falls within its jurisdiction. The complainant disputes HCCDC's submission that the approved manager liaises with complainants on a regular basis and that no evidence has been provided by HCCDC to support the claim that all conditions of the liquor licence and DA are monitored and enforced.
44. The complainant also provided responses regarding the approved manager's submission. The complainant submits it is their right to choose whether they remain anonymous or not despite the approved manager questioning whether they are genuine neighbouring residents and whether due diligence has been conducted to validate this. The complainant submits the approved manager does not provide any evidence of turning the volume down or moving sound amplification equipment when complaints have been received. The complainant disregards the approved manager and HCCDC's request for additional information regarding the complainants, noting that all requirements under the disturbance complaint form have been adhered to.
45. The complainant submits the complaint does have merit as there is sufficient evidence in the complaint and that L&GNSW hold additional information regarding prior informal complaints that provides substantial detail and supporting evidence. The complainant notes the collecting and documenting of additional evidence of noise disturbance is above

and beyond what might be normally received by L&GNSW and this demonstrates the genuine nature of the complaint.

46. The complainant submits the approved manager seeks to further dismiss the complaint by claiming the disturbance is not undue. This claim seems to focus on the CBD location of the venue, though the complainant submits there are plans to move the CBD to Newcastle West, and that the suburb in the venue's vicinity is now heavily residential with the amount of commercial activity markedly decreased. The complainant submits they were residing at their residence when the venue was still operating as a train station and note the disturbance from its operation is nothing compared to what emanates from events occurring at the venue today.
47. The complainant submits the approved manager is expressing his subjective opinion that people visiting the Newcastle CBD justifies noise, presumably of any level, emanating from the venue he is operating. The complainant asserts the onus is on the approved manager to operate the venue in a way that does not allow undue disturbance and he is not relieved of his responsibility by virtue of the venue being predominantly outdoors. The complainant submits the LA10 octave bands are objective and not subjective measurements and that multiple attempts have been made to remind the approved manager to comply with the LA10 condition and to update his understanding of LA10 criteria. The complainant submits in their subjective experience, the noise from the venue has absolutely dominated the local sound environment, for example, the complainant can sing along to songs known to them with doors and windows closed and televisions on. The complainant also states that it is alarming that the licensee has elected not to conduct acoustic testing as encouraged by L&GNSW and would instead rely upon his own opinions that demonstrate clear misunderstanding of the LA10 limit.
48. The complainant provides submissions that the approved manager does not properly understand the LA10 noise criteria by comparing submissions made by the approved manager and data accumulated by the venue's own report by MAC. For example, the approved manager submits it is unrealistic to claim the background level of the Newcastle CBD is 60dB, however noise recordings from MAC between 23 July 2018 and 31 July 2018 show the measured background LA90 noise levels to be below 60dB.
49. The complainant submits much of the objective evidence to support non-compliance with the LA10 condition, including LA10 measurements during events, has been provided to L&GNSW in previous informal noise complaints. These readings took place on 5 October 2019, 26 October 2019, 9 January 2021, 18 April 2021 and 8 May 2021. Each recorded time included LA10 exceedances. However, the complainant notes these readings were

performed with a 'noise capture' app on a mobile phone. The complainant notes the microphone on the phone has not been professionally calibrated, though the complainant submits they have compared these readings with professional noise meters and found the phone readings were generally 1dB either side of the professional meter. The complainant submits this is some objective evidence to support multiple occasions of LA10 limit breaches from the venue and notes the approved manager has not provided any objective evidence in response.

50. The complainant also disputes the approved manager's submission that he attended the home of a resident to address noise concerns. The complainant submits one of the authorised residents to the complaint may be the resident who was visited by the approved manager and that the noise was audible within this person's residence, which is contradictory to what the approved manager has submitted.
51. The complainant disputes the approved manager's submission that they are looking for a technical breach of the LA10 condition. The complainant submits the LA10 condition is very technical in that to reach the level of evidence sufficient to apply penalties for a venue, specialised and calibrated equipment and the services of a qualified acoustic engineer are required. The complainant submits less technical criteria would make the assessment of undue noise disturbance easier for non-technically trained regulatory officers to assess when attending at the time of disturbance. This would be achieved by making the LA10 condition applicable to the whole 24-hour period, namely that noise should not be audible within any habitable room in any residential premises at any time. This proposed change to the LA10 condition is included as a new outcome requested by the complainant.
52. The complainant submits that adherence to conditions included in the venue's DA does not remove their obligation to adhere to conditions under the liquor licence. The complainant submits the venue employs a loose interpretation of their DA condition that outdoor speakers are to be directed away from the residential properties on Scott Street. The complainant submits that any reasonable person would understand this statement to mean that speakers are to be directed in the opposite direction to Scott Street. However, the speakers are directed towards Watt Street and the Customs House Hotel, which still causes noise to emanate towards residences on Scott Street.
53. The complainant submits the approved manager and HCCDC are seeking to dismiss the Spin for Kids event because it was held in an unlicensed area and there was no supply of alcohol at the event. The complainant understands that this does not preclude it from consideration under a complaint and is generally unaware of the exact location in the

outdoor space where each event may be held or whether alcohol is supplied. The complainant submits the complainant who met the approved manager at 11:30am on 23 April 2021 is not a party to this current complaint, which indicates there are other complainants experiencing noise from the venue.

54. The complainant alleges the event was likely a breach of LA10 octave band limits in low frequency bands. The complainant has provided a table of relevant octave band limits based on measurements of the sound environment in the immediate vicinity. The complainant notes the approved manager's claimed level of 65.3dB for the event would be a substantial breach of the LA10 limits of 24dB and 37dB if made up of predominantly low frequency sounds. The complainant submits the approved manager believes his subjective opinion of what is undue disturbance should take precedence and that the complainant's expectations are unreasonable.
55. The complainant submits that not all activities at the venue result in noise disturbance. An example of this is the Marching Koala rehearsals, which are audible in the residences. However, the complainant submits the level is quite low, not overly disturbing and possibly in compliance with LA10 noise limits. The complainant submits they do not experience disturbance from all events at the venue, only those involving amplification.
56. The complainant submits the venue is not uniquely designed to provide amplified music events. The site was originally a train station and is now a public space, not a music venue. The complainant submits the venue would be better designed for amplified music if it was an indoor space where music could be contained. The complainant asserts the venue's location is the worst possible location for an outdoor amplified music venue as it is located only metres from four multi-storey apartment buildings that all have order of occupancy precedence.
57. The complainant disputes the approved manager's submission the current maximum noise limits are reasonable. The complainant submits the approved manager should question the current limits considering they have not been complying with current limits. The complainant alleges their ongoing denial of issues and repeated efforts to find ways to dismiss the complaint remains a major impediment to any resolution being achieved. The complainant submits the approved manager approaches the enforcement of the LA10 condition as an action for them to take rather than a request for action from bodies external to them. The complainant submits L&GNSW have received evidence on multiple occasions the venue has not complied with the LA10 noise condition. Additionally, the complainant submits the approved manager's submission that they have regular checks

from Police is questionable as Police state in their submission they are not able to test the condition.

58. The complainant is of the belief that their proposed variation to the LA10 condition will be better suited to assess and enforce LA10 compliance at the time of the event, as it will remove much of the technicality which prevents regulatory bodies from being able to actively enforce it. The complainant understands a condition banning amplified music events is onerous, but they were unable to devise a less onerous condition that has a high chance of preventing future disturbance. Failing the imposition of the requested ban on amplified events, the complainant suggests imposing a condition relating to the mandatory use of a noise limiter for all events. The complainant's concerns are linked with defining appropriate maximum levels.
59. The complainant submits a reduction in maximum volume limits should be adopted in conjunction with the above desired outcomes, though it is possible for this to be a standalone outcome. The issues the complainant has with this outcome is giving the venue the benefit of the doubt and assuming 100% compliance and that the current limit of 94dB contained in the development consent is inappropriately high. If the condition is adopted, the complainant submits it should be tested at the resident's boundaries. Additionally, as the venue holds events in so many different locations and configurations in the outdoor space, this would complicate the testing suggested above. The easiest solution to this would be to test for worst case scenarios. As aforementioned, the complainant wishes to extend the LA10 noise condition to the whole 24-hour period and that L&GNSW perform a review of the licensed area to include the whole of Lot 13 DP1251435 to remove any uncertainty as to L&GNSW's jurisdiction in these matters.
60. The complainant is thankful for the Police submission however they submit it provides minimal information beyond what L&GNSW would be aware. The Police submission highlights the difficulty, if not near impossibility, that residents face in achieving any enforcement of the LA10 noise limit.
61. In conclusion, the complainant submits they have provided objective evidence that documents the background (LA90) noise levels from two independent acoustic reports from MAC and Spectrum Acoustics. These reports have derived respective LA10 overall limits of 57dB or 51dB during daytime, 55dB and 51dB during evenings and 49dB or 48dB at night, which disputes the approved manager's submission that a background noise level of 60dB is unrealistic. The complainant submits they have provided evidence of LA10 breaches on multiple occasions through subjective opinions of multiple residents, and

audio recordings. Further, the evidence consists of objective measured levels performed on multiple dates and times during the events on these dates.

62. The complainant submits that on the other hand, the approved manager and HCCDC have made multiple claims of supporting residents by turning down the volume, but there is no supporting evidence to ratify this. The venue has declined to openly share their noise disturbance register or provide any professional acoustic testing by qualified acoustic engineers despite encouragement from L&GNSW. The complainant submits they have provided evidence of another venue in the same area having lower decibel limits in place despite being at a much greater distance from neighbouring residents. This calls into question the appropriateness of current limits contained in the venue's development consent, which are already deficient as it does not specify a distance at which the limit applies. The complainant concludes that L&GNSW need to do everything possible to protect them from any further noise disturbance in their homes.
63. On 14 July 2021, L&GNSW sent the Council submission to the complainant for comment as it was received some time after the initial submissions from the venue and Police were received. On 19 July 2021, the complainant submitted there was nothing in the Council submission that warranted a response. Additionally, the complainant submits there is nothing to contest regarding DA consent conditions and there is a lack of detail regarding complaints which makes commenting on it near impossible.

Venue owner's final submission and other material

64. On 3 August 2021, HCCDC provided their final submission in this matter. Included with the submission is a letter from Council CEO Mr Jeremy Bath dated 19 July 2021 which overwhelmingly endorses the venue. HCCDC maintains the historical/geographical significance and contribution the venue makes to the Newcastle community and economy should be considered. The venue reiterates that it abides by its conditions and other policies and requirements.
65. HCCDC submits the venue has a unique history which should be considered, most notably its prior use as a train station. In contrast to this, the venue's operations are now less frequent and cease prior to 10pm. HCCDC submits L&GNSW should disregard factually incorrect allegations made by the complainant that it has breached its requirements.
66. HCCDC submits that neither Police nor Council have had cause to issue any correspondence indicating the venue is in breach of a licence condition and the venue enjoys active support and encouragement from Council. There are high levels of ambient

street noise in the local area and the complainant has not provided any independent objective or credible evidence that any condition, including the LA10 condition, has been breached. It is contradictory for the complainant to allege that the licensee has never liaised with them and then particularise communication between the parties.

67. HCCDC rejects the allegation they have not made a serious attempt to address complaints and are seeking to prolong the complaint process. HCCDC seeks to continue providing community activation at the venue in accordance with the requirements of the current development consent, considerable liquor licence conditions and the expectations of the wider community.
68. Mr Bath, in his letter of 19 July 2021, states the venue is exceptionally well-run with both HCCDC and the approved manager specifically focusing on community amenity, noting significant modifications were undertaken to meet compliance with the conditions of consent. Mr Bath refers to the venue's development consent and licence, as well as the local environment plan. Mr Bath notes Council have received a minor number of complaints that when investigated resulted in no further action being taken.
69. Mr Bath rejects suggestions amplified music should not be permitted as it is contrary to Council's Live Music strategy and the Newcastle After Dark strategy, which were both approved unanimously by Council. Additionally, Mr Bath is of the view that amplified music until 10pm is both a critical and acceptable element of activating the city, which is required to stimulate economic activity and make streets safer. Further, there is broad and consistent community support for reinvigorating Newcastle's live music and performance industries. Mr Bath also submits the venue is adjacent to the Customs House Hotel and The Great Northern Hotel and 200 metres from The Queens Wharf Hotel, which are all permitted to feature amplified music. Mr Bath strongly supports the venue and its continued ability to encourage live music.

Approved manager's final submission and material

70. On 2 August 2021, the approved manager provided a final submission in the matter. Included in the submission is an extract of an opinion article regarding live music in Newcastle, an email between Police and the approved manager which includes a copy of an extract from the venue's noise disturbance register for an incident which occurred on Saturday 9 January 2021, and a copy of the Newcastle After Dark Night-time Economy Strategy.
71. The approved manager submits a complainant in this matter has made themselves known to him regarding this matter and an interaction on 28 September 2018. The approved

manager submits this complainant is an advocate for reduced trading hours and opposes changes to trading hours and conditions for licensed premises in Newcastle. Further, the approved manager understands this complainant has lodged several disturbance complaints against venues in Newcastle as part of a broader strategy to oppose the trial of increased trading hours in Newcastle. The venue is a participant in stage 2 of the trial and the approved manager alleges the complaint was lodged to impact on the results of the trial.

72. The approved manager refers to an incident involving this complainant failing to quit the venue on the evening of Saturday 9 January 2021. The approved manager submits this complainant forced their way into the venue and engaged in a verbal tirade of abuse towards him and staff. This complainant was eventually escorted from the venue, resulting in the complainant calling Police to lodge a complaint. Police did not find any evidence the venue had breached licence conditions and the approved manager declined the Police offer to charge this complainant with assault at that time. The approved manager submits this is highly relevant as it indicates the complaint is not only without merit but is vexatious and malicious and that no further action should be taken regarding the complaint.
73. The approved manager reiterates that the complaint is technical in nature and the complainant consistently asserts the venue has breached the LA10 condition. The approved manager submits the complainant is not alleging the noise is offensive, that the sound is occurring after 10pm or that it is preventing them from sleeping. The complainant has submitted that acoustic modelling from the development application in 2018 should be utilised as the baseline for background noise levels of Newcastle city. The approved manager submits using data from 2018 is misleading as it reflects a time that the venue and Scott Street were completely closed and the area was disused but does note that this is the most accurate data available at present.
74. The approved manager submits the complainant is using data in tables from the MAC report which represents LA90 measurements suitable for reporting in accordance with Council development guidelines. The approved manager submits that LA90 measurements are relevant to the measurement period for the acoustic test, that LA90 means the noise level exceeded for 90% of the measurement period and LA10 means the noise level exceeded for 10% of the measurement period. For this reason, the approved manager submits you cannot compare data from a LA90 test as a benchmark for compliance with the LA10 report.
75. The approved manager submits the acoustic tests provided by the complainant are performed using a phone app and not an actual acoustic meter. There is no indication of

the age of the phone, type and model and there is no calibration of any of the equipment used to conduct any of their testing. The approved manager submits acoustic measurements are peak measurements at any moment in time, and subjective to the split second in time which the complainant chooses to publish. The approved manager submits this is not consistent with the requirements for acoustic testing and there is no evidence to support where the readings were physically taken from.

76. Additionally, the approved manager submits the complainant has offered selective use of the data provided in the expert acoustic reports and provided explanatory notes which are his interpretation of that data. The complainant is offering unqualified opinion contrary to the expert opinion contained within the reports and is attempting to legitimise their opinions by misquoting expert reports. The complainant is not an expert, nor have they provided any qualifications as an acoustic engineer. It is objectively reasonable that no reliance should be placed on any of the complainant's apparent technical acoustic assertions, readings or conclusions.
77. The approved manager submits to demonstrate the unreasonable nature of the complaint, that even if they accepted these readings as accurate, the complainant's readings are generally between 60-70dB, which according to Safe Work Australia guidelines is equivalent to somewhere between a normal and loud conversation. The approved manager submits that light rail movements that occur every 15 minutes create dB meter readings between 68 and 80dB depending on the motor vehicles travelling behind. The approved manager submits the readings for the light rail were taken using a calibrated sound meter and are supported by EPA guidelines about the expected noise that the light rail is expected to make. The approved manager submits if the complainant's readings of between 60 and 70dB are treated as accurate, the loudest of noises from the venue would be less than the sound of the light rail which travels past complainants' residences every 15 minutes.
78. The proposed use described in the venue's DA includes a liquor licence and outdoor entertainment, and on this basis, experts provided their opinion in the report about how the venue could comply with the standard L&GNSW LA10 licence condition. The approved manager submits the data in the report was prepared in accordance with Council and EPA guidelines and the author uses the LA90 as a subjective measure of how sound will travel from the site. The measurements demonstrate the impact of the built environment on noise which emanates from the venue.
79. The approved manager submits that the two-storey double brick building on platform one actively deflects the sound away from residential properties on Scott Street. The modelling

within the MAC report shows how sound travels, thereby the reference to LA90 and LA10 (the time period that sound is measured) is not relevant. The approved manager submits the epicentre of the modelling is very close to the location of the stage during live music performances. As a result of this modelling, the acoustic engineer found that a band playing outdoors on the platform at 125dBA would not breach the LA10 noise condition. Therefore, the approved manager submits that on the best available expert opinion, a band playing outdoors on the platform at less than 94dBA could not breach the LA10 condition. The approved manager submits they have demonstrated ongoing compliance to Police with the development consent condition. Council imposed the condition on DA 2019/00867 based on their interpretation of the MAC report. The approved manager submits that Council, who retain the services of suitable qualified experts, interpreted this data to mean that outdoor music should not exceed 94dBA.

80. The approved manager submits the newly renovated stage 2 development area is not included in the licensed area for the liquor licence. The approved manager submits the complainant seems indifferent as to whether events happen within the venue and that it is not their responsibility to know what areas are licensed. The approved manager submits the complainant has objected to every liquor licence application lodged by the venue and records indicate this complainant has received copies of the licensed area plan and provided detailed responses. The approved manager submits this complainant is a community advocate who sits on several Council consultative committees and has a working knowledge of Council's policies to further develop Newcastle.
81. The approved manager disputes the complainant's submission there are plans by the Council or State Government to move the CBD. The area the venue is currently situated is consistent with the revitalisation of the CBD as it links the harbour foreshore with the CBD. The approved manager submits there is not a reduction in commercial activity, rather it has increased as new restaurants have opened in the area. The Newcastle After Dark Economy Strategy 2018-2022 identifies that Council has identified the East End as an entertainment precinct, which has an active night-time economy until 1am. Additionally, the Strategy clearly identifies the CBD as being located right next to the venue. The final paragraph of the document states that there is 'an expectation that life in a city centre is going to involve denser social and business interactions, and that these will extend beyond the comparative time periods of suburban neighbourhoods'. Further, the document states 'ultimately there needs to be acceptance on behalf of city centre residents that city life involves a degree of noise and activity'. The approved manager submits the statements by the complainant that the Council plan to relocate the CBD are

not just untrue, they are misleading as to the actual Council plans to redevelop the East End into an entertainment precinct.

82. The approved manager submits the substance of the complaint is reliant on technicalities and a misguided understanding and interpretation of technical acoustic measures. The complaint does not attempt to properly particularise any actual undue disturbance that the complainant has allegedly suffered. Instead, the complaint seeks to erroneously rely upon a position that there has been an alleged and unproven breach of a licence condition. The approved manager submits this does not meet the threshold of a complaint that the licensee has affected the quiet and good order of the neighbourhood.
83. The approved manager submits the complainant is presenting evidence based on LA90 noise measurements and that you cannot compare data from an LA90 test as the background noise level for compliance with a LA10 test. The Council imposed a DA condition requiring music to remain below 94dB based on the same acoustic report which the complainant is presenting as evidence of 60-70dB being excessive.
84. The approved manager concludes by respectfully submitting the Authority should take no further action regarding the complaint.

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

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

The order of occupancy between the licensed premises and the complainant -

86. The venue has operated under the current liquor licence since 21 November 2018 and [REDACTED] has been the approved manager since the same date. The order of occupancy has been disputed, however I do not consider the venue's occupancy to predate the complainant, as they indicate they have lived at their residence for 13 years. I consider the order of occupancy in the complainant's favour as they have resided in their residence since approximately 2008 and prior to the current liquor licence.

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

87. The material indicates that the venue is structurally and otherwise mostly unchanged from the commencement of the liquor licence in 2018. Prior to the location being transformed into a public entertainment venue, the site was formerly a working end of line train station. The train station and associated rail activities were in place during the complainant's occupation of their residence. The train station generated noise consisting of trains stopping and being shunted every day, along with a constant array of people utilising the

station, bus stops and other premises commonly found in a CBD hub. As the train station and site were transformed into the venue it is today, the construction and implementation of a light rail network also occurred. This resulted in the rail corridor being transformed into an open public space so that people can utilise an area previously dedicated to train tracks.

88. The complainant does not submit any structural changes occurred to their premises during the 13 years they have resided there.

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

89. As previously mentioned, during the complainant's occupation of their residence, the site has changed from a train station to a public entertainment venue. Since the venue commenced under its current liquor licence, it has hosted a variety of activities which are not all focused on live amplified entertainment. These activities include marching band open air rehearsals, live amplified concerts, shopping events, local markets, exercise classes, art galleries, children's playgrounds and food/drink festivals.
90. The complainant submits on numerous occasions to not have any significant issues with most events and activities that take place at the venue, rather they have issues when the venue hosts large, amplified music events. The complainant submits a change has occurred in that the venue has substantially increased the frequency of the concerts held in the outdoor platform space, from one per year to concerts being held weekly to fortnightly over the month prior to the complainant lodging the complaint. The approved manager however submits this is false.

Findings and Decision

Undue disturbance

91. In deciding whether the venue has unduly disturbed the quiet and good order of the neighbourhood, I have balanced the submissions made by the approved manager, the venue owner, the complainant, Police and Council. I have also had regard to the particular context within which the venue operates.
92. After considering the material before me, I am not satisfied that there is sufficient evidence to conclude that the venue has caused undue disturbance in relation to allegations raised in the complaint. In reaching this conclusion, I have given weight to the lack of objective evidence from the complainant, the lack of breaches identified, or action taken by regulatory bodies regarding prior informal noise complaints.

93. I note that undue disturbance is not defined in the Act, therefore I am to afford the term a general meaning. The complainant's submissions seek to establish non-compliance with the LA10 noise as the basis for a conclusion that the venue has caused undue disturbance and refers to the letter to the licensee inviting submissions which refers to the LA10 noise criteria as a benchmark for determining undue disturbance.
94. I note the following which has been previously articulated in similar decisions. The standard LA10 noise condition, which was developed many years ago in consultation with the acoustic consultant industry, provides a useful technical benchmark which can assist in any determination as to whether undue disturbance has occurred. The condition only sets a requirement that noise from licensed premises not be audible in any habitable room in residential premises between midnight and 7am. While exceedances of the LA10, when properly demonstrated by the assessment of an acoustic expert, can assist in a finding of undue disturbance, it is just one factor among several factors in determining whether there has been undue disturbance. Breaches of the LA10 are not the sole defining factor in these matters, and I note that the LA10 condition does not have any legislative basis.
95. I acknowledge the submission by Police submission that they do not have the necessary skills or training to test the LA10 condition, and they can only attend at the time of the noise complaint and assess whether the noise is deemed offensive. I also acknowledge Police have received minimal noise complaints and appear to have taken no further action regarding them.
96. I acknowledge the complainant has provided multiple noise complaints regarding the venue to L&GNSW and other regulatory bodies, audio recordings and their own audio recordings using an application on their mobile phone. The complainant only submits that noise from the venue likely breaches the LA10 octave band limits. The complainant also submits that noise from the venue dominates the sound environment and that songs known to the complainant can be heard even with windows closed and the television on. The complainant does not submit the disturbance occurs after 10pm when the venue closes, or results in them not being able to sleep. The complainant does not present any objective evidence to support a finding that the venue has breached the LA10 condition on its liquor licence.
97. The complainant does provide numerous recordings and measurements taken using a noise app on a mobile phone. While I note these sound readings apparently demonstrate exceedance of the LA10 condition, I find it difficult to place weight on the accuracy of the readings noting that any acoustic testing should be conducted by qualified personnel with appropriately calibrated equipment.

98. In making a finding of no undue disturbance, I find it relevant to consider the operation of the venue and some of its unique characteristics. I note the venue's standing as a community event space where a variety of events occur which have little or no connection with the operation of a licensed premises. This community event space hosts a vast array of events, not just amplified live music events, in the heart of the Newcastle CBD; for example, marching bands, exercise classes and market days. Surrounding the venue are a mix of residential and commercial properties, three hotels which feature regular live music and outdoor live music, an active harbour with regular cargo movements and a light railway line which has replaced the former train station. I appreciate this mix of properties and activities creates background noise likely more akin to an urban CBD and not a quiet suburban area. I consider these factors all point towards a conclusion that the venue has not caused undue disturbance.
99. I also note the venue is only licensed until 10pm. While undue disturbance is entirely possible prior to this time, it is relevant for a reasonable assessment of undue disturbance to consider this venue's limited trading hours and the distinction that draws with late trading venues where amplified entertainment continues into the early hours of the morning on most weekends.
100. It is reasonable to expect some level of disturbance will be generated from the normal operation of the venue. While I have concluded there has not been undue disturbance, I consider the venue is at risk during some events, particularly larger outdoor concerts, of causing undue disturbance.

Regulatory Outcome

101. In deciding the appropriate regulatory outcome in this instance, I have considered the statutory considerations, the material set out in Annexure 1, and the above finding of no undue disturbance. I have also had regard to the particular context in which the venue operates. The venue functions as a community event space and hosts a multitude of events including local markets, food and drink festivals, community events and live amplified entertainment concerts.
102. In terms of the venue, I acknowledge the statutory considerations which I must have regard to be in favour of the complainant. The order of occupancy is in favour of the complainant, who has lived in the same property for approximately 13 years.
103. I refer to the complainant's submissions that numerous prior informal complaints have been received by L&GNSW and provide a considerable portion of objective evidence by which L&GNSW can rely on for this matter. I confirm these complaints were provided to

the approved manager as part of the complainant's final submission. Upon review of the complaints received by L&GNSW, there have been no adverse findings regarding noise disturbance, with these complaints primarily resulting in remedial engagement with the approved manager. This course of action appears consistent with other regulatory bodies such as Council and Police who have also recorded no adverse findings.

104. I accept the approved manager's submission that there is no objective evidence to suggest the venue breaches the LA10 noise condition on the venue's licence. As I noted above the complainant has provided various noise readings from an application on their mobile phone. While this recording may show some sound recordings, the phone is not a proper acoustic recording device, nor has the complainant provided evidence of their status as an acoustic expert, and I do not accept these recordings as objective evidence of breaches to the LA10. I have reviewed the several acoustic reports provided and I note the report from MAC dated August 2019 which contains several recommendations including that an 'external band or amplified music would exceed the OLGR criteria where the noise source is located within 50m of the receivers and there is a clear line of sight to receiver'.

105. The MAC report recommended measures which are currently enforced by the venue's DA, primarily relating to situations where music being played is less than 50 metres from the receiver and the suggested use of sound limiters to ensure amplified music does not exceed 94dB. I note these two DA conditions, which are enforceable by Council, and I would encourage the complainant to approach Council about noise concerns as these strict measures have been imposed.

106. While L&GNSW encourages venues to undertake acoustic testing during these matters, this is not a requirement for the venues to abide by, as venues may decide not to undertake testing due to financial or access issues. Neither the approved manager nor HCCDC provided submissions they were considering undertaking acoustic testing. However, for the reasons above and considering the lengthy COVID-19 lockdowns that have affected NSW from around June to October, it would have been difficult to arrange this testing in the context of the venue's usual events, especially amplified music events. Additionally, I do not find the use of the Spectrum Acoustics report dated October 2017 and the Global Acoustics report dated August 2018 for a nearby licensed hotel to be persuasive or useful as objective evidence for the venue.

107. I note both HCCDC and the approved manager provided submissions in the earlier part of this matter questioning the validity of the complainant and authorising residents who chose to remain anonymous and whether L&GNSW had the jurisdiction to accept the

complaint considering the venue possesses licensed and unlicensed areas. Complainants may remain anonymous when lodging a complaint under section 79 of the Act. Venues can be assured that complaints only progress when the statutory criteria for lodging a complaint, including having appropriate authorising residents, is satisfied.

108. Having considered all available material before me and the statutory considerations, I have determined to take no further action in this matter. The decision reflects my conclusion that there is insufficient evidence of undue disturbance emanating from the venue. I do consider that there is potential for undue disturbance to arise given the proximity of the venue to nearby residences. The complainant must also be aware that living within a CBD and near the venue, a level of noise and disturbance from the general operation of the venue, including from a variety of events such as marching band rehearsals, charity events and live amplified performances, is to be expected.

109. Due to there being insufficient evidence of undue disturbance, I will only make brief references to the outcomes requested by the complainant. A ban on amplified music events is disproportionate and not in keeping with the Objects of the Act. I note that I am unable to ban live entertainment or the amplification of a musical instrument across the whole of a licensed premises or at all times under clause 70 of Schedule 1 of the Act. The totality of the evidence does not support banning amplified entertainment, imposing a mandatory noise limiter for all events or a reduction in maximum noise volume limits. I also do not support altering the LA10 condition so noise shall not be audible within any habitable room in any residential premises at any time.

110. The venue is also a community amenity and event space catering for large numbers of people in a wide demographic of the Newcastle CBD and the broader Hunter community. The provision of live amplified entertainment is not its primary purpose. The complainant's requested outcomes would dramatically affect the venue's ability to continue hosting many events which it has been doing since commencing in November 2018.

111. In reviewing the venue's current liquor licence and associated DA conditions, I am of the view there are sufficient conditions that act as a safeguard to ensure that the quiet and good order of the neighbourhood is not unduly disturbed by the operations of the venue. I am satisfied compliance with these conditions will minimise noise levels and ensure the venue does not cause undue disturbance to neighbouring residents.

112. L&GNSW remains committed to ensuring compliance with liquor licence conditions to ensure that the operation of licensed premises contributes to and does not detract from the amenity of community life. While on the material before there is no direct evidence to

suggest the venue has breached the LA10 noise condition, L&GNSW will continue to monitor the venue's compliance with its licence conditions. I also reiterate there are DA conditions applicable to the venue that are designed to mitigate disturbance and these conditions can and should be enforced, where appropriate, by Council and Police.

113. While I have determined to take no further action in this matter, I strongly remind the venue of its obligation to comply with these conditions and of its ongoing obligation to minimise levels of disturbance to the community. I encourage the approved manager of the venue to have respectful dialogue with nearby residents to properly address any and all disturbance concerns. 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 formal regulatory action to be taken.

Decision Date: 28 June 2022



Dimitri Argeres

Director, Compliance & 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 26 July 2022. 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

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

1. Copy of the liquor licence dated 29 November 2021.
2. Section 79 Disturbance Complaint lodged by the complainant on 30 April 2021.
3. Submission from NSW Police received on 1 June 2021.
4. Approved manager submission in response to complaint received on 9 June 2021.
5. HCCDC submission in response to complaint received on 9 June 2021.
6. Final submission from complainant received on 26 June 2021.
7. Submission from City of Newcastle received on 14 July 2021.
8. Final submission from approved manager submission received on 3 August 2021.
9. Final submission from HCCDC received on 3 August 2021.