
FILE NO: A21/0018188

COMPLAINANT: [REDACTED]

LICENSED PREMISES: Zebra Lounge, Pyrmont – LIQO624009503

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, John Coady, Manager Regulatory Interventions Team, a delegate of the Secretary, Department of Customer Service, in relation to the complaint made in respect to Zebra Lounge, Pyrmont – LIQO624009503 have decided to **impose a condition** prohibiting the use of the venue's outdoor speaker.

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

REASONS FOR DECISION

Legislative framework

1. Section 79 of the Act provides that a prescribed person may complain to the Secretary, that the quiet and good order of the neighbourhood of the licensed premises is being unduly disturbed because of the manner in which the business of the licensed premises is conducted, or the behaviour of persons after they leave the licensed premises (including, but not limited to, the incidence of anti-social behaviour or alcohol-related violence).
2. For the purpose of section 79 of the Act, a person who has standing to make a complaint includes a person who is a resident in the neighbourhood of the licensed premises and is authorised in writing by two or more other residents.

3. Section 80 of the Act enables the Secretary to deal with a complaint by way of written submissions from the licensee and any other person the Secretary considers appropriate. After dealing with the complaint, section 81 of the Act provides that the Secretary may decide to impose, vary or revoke licence conditions, issue a warning, or take no action.
4. In exercising functions under the Act, the Secretary must have regard to the Objects set out in section 3 of the Act and must have regard to the matters set out in section 3(2) which are:
 - 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 –
 - (i) live music industry, and
 - (ii) arts, tourism, community and cultural sectors.

The complaint and background information

The complaint

5. On 22 January 2021, [REDACTED] of [REDACTED] (the complainant) lodged a complaint (the 2021 complaint) with Liquor & Gaming NSW (L&GNSW) alleging undue disturbance from the operation of Zebra Lounge (the venue). The complainant lodged the complaint as a resident authorised by two other residents. The complainant resides in an apartment in the [REDACTED], located directly above the venue.
6. The complainant alleges excessive noise from activities inside the venue, with disturbances emanating predominantly from the speaker installed by the venue in its outdoor canopy area, as well as from patron noise, live bands and furniture being dragged along concrete flooring. The complainant states the canopy and outdoor speaker is located directly next to their living room, approximately [REDACTED] metres away in distance.
7. The complainant alleges the venue has a history of making excessive noise, highlighting the noise disturbance complaint submitted in 2012 (the 2012 complaint), which resulted in a voluntary undertaking to cease operation by 5:00pm on any trading day (the 2013 outcome). The complainant submits the voluntary undertaking is frequently breached and remains ineffective in dealing with their noise concerns.

8. The complainant states loud music is frequently played through the outdoor amplifier during functions, including from live bands, DJ, singing and speaking through a microphone. The amplified music is also played without any patrons present at the venue and on many occasions continues past midnight. The complainant submits loud noise, through amplified music, base and vibration, can be heard and felt in the living room and bedrooms of their residence. Attached to the complaint is a statutory declaration by the complainant containing a noise log of incidents of excessive noise at the venue recorded between 20 December 2019 and 15 January 2021.
9. The complainant states the excessive noise has caused ongoing stress for over eight years and has had an adverse impact on her family's mental and physical health. The noise and vibration from the amplified music travels through the building structure and the extensive exposure causes headaches, anxiety, high blood pressure, loss of concentration and interrupted sleep. The complainant submits the excessive noise affects her ability to concentrate and work from home and has also impacted on the studying ability of her school-aged child. To minimise the impact, the complainant states she has to wear noise cancelling headphones however extended wear has caused redness and inflammation. Additionally, the complainant alleges the noise has been unbearable on several occasions, resulting in her family having to leave their home.
10. The complainant notes that whilst there is no recorded acoustic assessment report available for the venue through the original development application, the recommendations in an acoustic report for a nearby licensed premises should be implemented by the venue. The acoustic report, which was supplied with the complaint, was for a licensed premises located 200 metres from the venue and its conditions of consent include no speakers being installed nor music being played in the outdoor area of the premises. The complainant maintains the buildings are located in the same community with a similar background environment, thus the same approach should be adopted with the venue in relation to whether speakers are installed, and music played outside.
11. The complainant states they have attempted to take action to have their noise concerns addressed. These measures include complaining to City of Sydney Council, contacting the venue's leasing and management agent, and involving the Strata Committee to resolve the issue informally by meeting with the venue's owner and operator in July 2020, amongst several other actions. The complainant states City of Sydney Council rangers have issued two Noise Abatement Directions and one warning to the venue in 2019 and 2020 for offensive noise; however these actions are ignored by the venue. Attached to the complaint are copies of the Noise Abatement Directions and Authorised Officer

Offensive Noise Assessment Forms, which the complainant highlights the level of noise was considered 'offensive', 'deep bass' and 'thumping'.

12. The complainant states they have exhausted all avenues to mediate and resolve the noise disturbance issues to no avail. Therefore, the complainant has lodged the 2021 complaint with L&GNSW to seek a resolution. The complainant states the desired outcome is for the venue to comply with its development application, to comply with the voluntary undertaking adopted in the 2013 outcome and ensure that all licence conditions be adhered to. The complainant also seeks the removal of the outdoor speaker and for no outdoor music, including bands or live music, to be played at any time. Further, the complainant seeks a formal acoustic assessment be undertaken by an accredited engineer in consultation with local residents, and appropriate acoustic insulation be installed if music is to be played at the venue.

The venue, licence details, compliance history

13. The venue is located on the ground floor at Shop 1, 1 Harris Street, Pyrmont. The licensee is Mr Craig Robert Jarman who commenced in the role on 6 September 2010. The venue holds an on-premises liquor licence and the trading hours for consumption on premises is 7:00am to 12:00 midnight Monday to Saturday and 7:00am to 10:30pm on Sundays. The venue also holds a primary service authorisation and an extended trade authorisation. The venue does not have any noise related conditions on its liquor licence.
14. The venue previously operated as Savichees however changed the licence name to Zebra Lounge in 2013.
15. In 2012, the venue was subject to a noise disturbance complaint made pursuant to section 79 of the Act. The Department of NSW Trade & Investment determined to finalise the complaint by accepting a voluntary undertaking from the licensee that they would cease to operate at 5:00pm on any given day, therefore no further action was taken. The delegate was of the view that the voluntary undertaking was sufficient to address the risk of future undue disturbance created by noise from the venue.
16. Since 2013 until the 2021 complaint was lodged, L&GNSW has received one complaint concerning noise emanating from the venue in January 2014.

Submissions

17. Between 22 January 2021 and 23 July 2021, various material was received from parties to the complaint, including the complainant, the licensee, NSW Police (Police) and the

City of Sydney (Council). The material that is before the delegate is set out in **Annexure 2** and is summarised below.

Council

18. On 17 February 2021, Council provided a submission and advised that since July 2018, they have received 38 complaints concerning the venue. Council submit that 34 complaints have come from one resident of the [REDACTED] and two complaints have come from a second resident of the same building. Council notes that 32 complaints received relate to allegations of excessive noise from the venue.
19. Council state that between December 2018 and February 2020, four noise abatement directions have been served on the venue as a result of the complaints and subsequent inspections conducted. The remaining complaints had no action taken as the noise was deemed not offensive or had ceased prior to the arrival of Council rangers. Council further advise that three matters relating to poor waste containment, excessive outdoor area use and unauthorised building works are currently under investigation.
20. Council advise the venue's development application (DA 161-07-01) was approved on 11 October 2001 which contains consent conditions relating to the outdoor seating area. Condition 8 specifies the permissible hours for the external seating area is until 10:30pm seven days a week. Council advise no modification application for a continuation of the hours of operation has been lodged by the venue. Additionally, consent condition 11 provides that the use of the licensed area shall not give rise to a nuisance or offensive noise to adjoining properties or the public.

Police

21. A submission was received from Police on 17 February 2021. As a result of the noise disturbance complaint, Police conducted surveillance on the venue on three separate occasions during February 2021. Police observed there was a minimum of two patrons and a maximum of 18 patrons at the venue at any one occasion and the outdoor speaker was not in use. Police note that whilst seated directly opposite the venue and when standing near the entrance to the venue, low background music could be heard emanating from inside the venue. Low level patron noise could be heard on one occasion and noise from moving outdoor furniture was heard on two occasions. Observations were also made from approximately 50 metres over water during which time music was not audible. Police submit the findings are representative of noise levels which would be reasonably expected from the normal day-to-day operation of a licensed premises like the venue.

22. Police note that eight business inspections have been conducted at the venue between June 2014 to February 2021, with a total of 14 incidents relating to the venue recorded in the Computer Aided Dispatch system for the same period. Of these incidents, two were noise complaints, one dated 8 October 2016 and the other dated 5 December 2020. Police state no breaches have been identified and no formal action taken in relation to the recorded incidents.

Venue response to complaint

23. In response to the complaint, the licensee engaged Liquor Licence Consultant, Mr Owen Rogerson, to provide a submission on their behalf. The submission was received on 25 February 2021, addressing the noise disturbance concerns and disputing the order of occupancy in the noise disturbance complaint.
24. The licensee disputes the complainants claim they have resided at their residence for over 20 years and two months as the apartment they reside in was sold in 2015. The licensee submits that the venue has operated at the business address since 17 December 2001 and he has been the licensee since 6 September 2010, predating the complainant. Further, the licensee submits that there have been no changes to activities conducted at the venue and that no structural changes have occurred to the [REDACTED] which would impact the complainant's residence or the venue.
25. The licensee acknowledges there have been ongoing noise complaints which have been received from residents of the [REDACTED]. However, they state that a number of these complaints were not from the operation of the venue, but due to the operation of other sources within the vicinity, such as cruise ships that dock at Pyrmont and large crowds having functions in nearby parklands.
26. The licensee submits they have always tried to maintain a good relationship with the residents of the [REDACTED] and cooperate when noise concerns arise. In the past this has led to the services of a musician, engaged to play music on a non-amplified guitar on Saturday afternoons, being terminated due to numerous noise complaints. Nonetheless, the licensee maintains they have been subjected to abusive behaviour, including several threats to revoke the venue's liquor licence and close the business by people claiming to be residents.
27. The licensee submits certain complaints, such as celebrating his birthday with a water slide, was an error in judgment. However, the licensee rejects the idea that the venue operates as a function centre or nightclub. The licensee maintains they mainly trade within the hours of 7:00am to 4:00pm to provide quality café services to locals and tourists during

breakfast and lunch periods. They note there are a small number of functions held at the venue during the warmer months (mainly during November and December Christmas period), however these events conclude by 10:00pm.

28. On 20 February 2021, the venue owner, Mrs Lorraine Palmer, held a meeting with the venue's manager, the complainant and an authorising resident, who is also the chairperson of [REDACTED] (the [REDACTED]). The licensee submits he was present to welcome the residents however did not attend the meeting due to the basis of comments set out in the complaint. Provided with the submission was a copy of the minutes of the meeting in an email dated 22 February 2021, setting out the issues discussed and agreed outcomes.
29. The meeting resulted in additional undertakings being implemented to mitigate noise, such as operating the single outdoor speaker between 10:00am until 3:00pm every day on a low setting and ensuring that sound equipment to adjust volume levels will be inaccessible to patrons. Additionally, internal music levels will be maintained on a low setting and staff will be instructed to minimise noise when moving furniture, as well as sourcing rubber pads to install on all movable external chairs. The licensee submits that further noise mitigation strategies would be implemented to ensure undue noise from the venue's operation would not occur, including a register of noise complaints to be actioned by the manager.
30. The licensee maintains despite COVID-19 hardships, they have cooperated with the complainant and is of the opinion that the meeting convened between the affected parties has provided reasonable outcomes to reduce the potential for undue disturbance. The licensee submits the venue's predominant day time trading operation along with the additional undertakings should be sufficient to address noise concerns and request the delegate deal with the noise complaint by way of a warning.

Complainant final submission and further complaint material

31. On 16 March 2021, the complainant provided their final submission. The complainant submits that their order of occupancy predates the venue and highlights they were also one of the 13 authorising residents in the 2012 complaint. They maintain they have resided at the apartment since November 2000 when the apartment was first purchased by her husband's parents and was subsequently purchased by the complainant and her husband in July 2015. Attached to the complaint is a statutory declaration in support of this claim.

32. The complainant disputes the licensee's claim that there have been no structural changes to the venue, stating a permanent outdoor canopy has been installed as well as an outdoor speaker, which has been attached to a pole of the canopy. They maintain this creates additional permanent floor space. The complainant reiterates that undue disturbance predominantly emanates from this area as the amplified music and vibration carries through the building walls.
33. The complainant submits the 2013 outcome proposed a change of activities at the venue due to the voluntary undertaking, however, contends that the licensee has failed to adhere to this undertaking. The complainant further submits the licensee has failed to detail the additional undertakings implemented as stated in the first submissions for the 2021 complaint.
34. The complainant disputes the claims that noise from party boats and large crowds in nearby parklands have been blamed on the venue. They submit they are able to clearly distinguish noise originating from the venue compared to other possible sources nearby. The complainant also rejects assertions made by the licensee that he has been a victim of harassment and/or intimidation and instead contends that residents have been subject to threatening language from the licensee when attempts have been made to resolve noise concerns over the past two years. The complainant refers to a letter from the Chairperson of the [REDACTED] dated 14 March 2021 and a letter from the venue's solicitor dated 31 March 2020 in support of their claim. Further, the complainant submits that the licensee's failure to attend the scheduled meeting on 20 February 2021 shows he has little interest in resolving the disturbance issues.
35. The complainant states the licensee's undertaking to keep music at a low level is subjective and does not assist to address the noise concerns as the acceptable levels are unknown and the type of noise can vary with a mix of sound and thumping vibrations travelling through the building. Furthermore, they state the licensee's concept of acceptable levels is different to others, evidenced by their failure to deal with the Council ranger on 15 June 2019, who deemed noise levels to be 'offensive'.
36. The complainant reiterated the acoustic report completed in October 2020 for the nearby licensed premises should be used as guidance on acceptable levels of noise on the basis they are similar buildings located in the same vicinity. They submit the same outcome from the acoustic report should be adopted for the venue, being no speaker should be installed, nor music played in the outdoor areas.
37. The complainant highlights they have continually attempted to address their noise concerns with the venue and have approached other committees for support. They note

they have received support from both the [REDACTED] (the [REDACTED]) and the [REDACTED]. In a letter addressed to the licensee and business owner, dated 21 February 2021, the [REDACTED] stated that noise from the venue adversely impacts residents of the [REDACTED] and other residential buildings nearby. The letter also steps out the agreed outcomes from the meeting held on 20 February 2021 and advises that the venue is subject to [REDACTED] by-laws, in particular those relating to noise and community amenity. The [REDACTED] confirmed in a meeting on 23 February 2021 the resolution that noise from the venue was persistent and ongoing following documented complaint logs between December 2019 and January 2021. The [REDACTED] resolved that noise disturbance from the venue remained ongoing and unresolved, and supported the current noise complaint.

38. The complainant submits a warning is not sufficient as it is the venue's second noise complaint, there is a history of non-compliance and a warning would not deter further breaches or the recurrence of disturbance in the future. They state the non-compliance is evidenced by the licensee's failure to uphold the voluntary undertaking, and the noise abatement directions and warnings issued by Council.
39. The complainant seeks that the venue abides by the voluntary undertaking and not operate past 5:00pm, removes the outdoor speaker, ensures no live music is played, ensures rubber style pads are placed on all movable external chairs, and ensures indoor music does not cause noise disturbance. The complainant also requests that noise restriction and neighbourhood amenity conditions be imposed on the venue's liquor licence.

Venue final submission and other material

40. On 13 April 2021, Mr Rogerson provided a final submission on behalf of the licensee. The submission notes that the complainant proceeded with the purchase of the property in 2015 despite being aware of the alleged noise disturbance issues for which they signed on as an authorising resident in the 2012 complaint.
41. The licensee submits the canopy structure was erected with Council consent, the purpose being to provide shade to patrons dining in the approved outdoor area. They maintain that no direction or comment has been provided by Council officers regarding the structures placement and intended use, or its placement being contrary to the development consent.
42. In relation to the failure of the licensee to attend the meeting with residents on 20 February 2021, the licensee reiterates he did not attend the meeting due to comments made of his demeanour in the noise disturbance complaint. As a result, the complainant submits his

presence may have countered the meetings' purpose, which was to resolve issues raised in the complaint. The licensee maintains he has been subject to anonymous abusive phone calls and threats. Additionally, the outdoor canopy material has incurred damage by lit cigarettes being dropped from the apartments above, as well as having wastewater thrown from an apartment window into the outdoor area where patrons were dining. However, the persons responsible for these incidents have not been identified.

43. The licensee accepts their failure to comply with the voluntary undertaking adopted in the 2013 outcome. They note that strict compliance is not a viable proposition due to the current economic impact of COVID-19 on the venue. Thus, the licensee states they are withdrawing the voluntary undertaking and propose to trade according to the hours provided in the venue's development consent. To appease concerns raised in relation to amplified music, the licensee confirms that the outdoor speaker has been permanently disconnected and no amplified music will be provided in the outdoor canopy area.
44. In response to the complainant stating that the additional undertakings were not set out in the first round of submissions, the licensee reiterates the agreements made as a result of the meeting on 20 February 2021. These include:
 - introducing a formal procedure to manage noise complaints;
 - nominating a contact person for noise complaints and provide contact details to residents;
 - residents' concerns being heard by the venue and not ignored;
 - the venue acting in a timely manner to address and respond to complaints;
 - ensuring sound equipment is made inaccessible to customers; and
 - an understanding that the residents may take further action if noise concerns are not addressed.

The licensee also highlights their willingness to adopt noise prevention strategies, which include maintaining a noise register to be actioned by the manager, instructing staff to minimise noise when moving furniture, sourcing and fitting rubber style tips to outdoor chairs to prevent dragging noise, and ceasing amplified music in the outdoor area.

45. The licensee notes the complainant's submission contained an acoustic report for a nearby licensed premises. They note that whilst the licensed premises is in close proximity, the details of the acoustic report are confidential and specific to that tenancy, building and its intended purpose. Furthermore, the licensee submits that utilising an acoustic assessment related to another property is unsafe as the content and

recommendations are based on the noise and vibration related to the property subject to the assessment only.

46. The submission also notes that Police did not identify any breaches or concerns in the inspections conducted, nor take any formal action in relation to complaints received concerning the venue, which includes two noise complaints. Furthermore, whilst Council advised they conducted four inspections where noise abatement directions were issued, the overall volume of complaints to Council had no action required as the noise was deemed not offensive or had ceased before Council rangers arrived.
47. Whilst the licensee has decided to withdraw the voluntary undertaking on the basis of financial viability, the licensee submits a majority of the actions requested by the complainant are already in place. Further the licensee submits the meeting convened between the affected parties has provided reasonable outcomes to ensure undue disturbance to the neighbourhood does not occur. The licensee states they will operate in accordance with the venue's development consent and liquor licence conditions but submit they are not opposed to the LA10 noise condition being imposed on their liquor licence as an additional safeguard.

Additional submission provided by the complainant

48. On 21 July 2021, the complainant provided additional information relating to the operation of the venue and continuing allegations of undue noise disturbance from the use of the venue's outdoor speaker. The complainant submits four occasions of loud amplified music emanating from the venue occurring on 26 February 2021, 26 May 2021, 18 and 19 July 2021. The complainant contacted both the manager and the venue owner by text message on multiple occasions between 26 February and 19 July 2021 and provided a copy of the text messages to L&GNSW.
49. In a text message to the complainant on 27 May 2021, the manager confirmed she had disconnected the outdoor speaker and indicated there would be no further issues. The text messages from the manager to the complainant appear to be affirmative in taking action to respond to the concerns raised by the complainant and reduce disturbance.
50. In a series of text messages on 18 July 2021, the complainant was advised by the venue owner to no longer contact the manager and instead direct any future complaints to the strata manager. The owner states the venue is struggling due to COVID-19 related issues and the complaints are unfair as the business is under stress and trying to survive. In response to a request by the complainant to turn the outdoor speaker off, the venue owner admitted to playing music, however stated that the music outside was not offensive or

excessive. The venue owner also refers to the noise issues being caused by a premises next door to the venue. The complainant forwarded a copy of the letter from the [REDACTED] dated 21 February 2021 for the owner's reference, highlighting the agreed actions which included that the outdoor speaker will no longer be used and that residents can contact the manager regarding complaints. This was also followed with a request by the complainant on 19 July 2021 for the venue owner to disconnect the outdoor speaker.

51. The complainant reiterates that the venue agreed to not use the outdoor speaker and states that although the manager disconnected the speaker, it was reinstalled by the venue owner and consequently caused disturbance to residents. The complainant submits this provides evidence that the venue will not comply without appropriate regulatory intervention.

Licensee response to the complainant's additional submission

52. On 21 July 2021, L&GNSW invited the licensee to provide a response to the complainant's additional submission and specifically raised concerns about the alleged reinstallation and use of the outdoor speaker.
53. On 23 July 2021, Mr Rogerson provided a response on behalf of the licensee. The licensee submits the outdoor speaker was disconnected as advised in their submission of 13 April 2021 and states that due to COVID-19, the venue is operating as take away only with trading hours of 8:00am to 4:00pm seven days a week.
54. The licensee denies undue disturbance is being caused by the venue as alleged by the complainant, rather he submits the venue is being blamed for disturbance caused from another licensed premises. The licensee submits that on 2 July 2021, Elements Bar & Grill commenced trading next to the venue and operates between 8:00am to 8:00pm seven days a week, playing very loud amplified music. The licensee asserts the music is so loud that he has directly spoken to the proprietor asking to reduce volume levels as the bass noise was clearly audible within the venue. The licensee requests that L&GNSW Inspectors conduct observations of the venue and the neighbouring premises to ascertain the alleged source of undue disturbance.

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

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

The order of occupancy between the licensed premises and the complainant

56. The venue has operated at its present site and under the current liquor licence since 17 December 2001. The order of occupancy has been disputed, however I do not consider the venue's occupancy to predate the complainant. Whilst the complainant purchased the property in July 2015, I consider the order of occupancy in their favour as they have resided in the property since November 2000, which is prior to the commencement of the current liquor licence.

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

57. A canopy structure was constructed in the venues outside area with a speaker being installed and attached to a pole. The complainant maintains this is a structural change as it increases floor space and is the predominant cause of the noise disturbance. The licensee maintains the canopy was constructed with Council consent and provides shade to the approved outdoor dining area. There is no indication additional structural changes have been made to the venue or the complainant's residence.

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

58. The complainant contends the voluntary undertaking entered into by the venue as a result of the 2012 complaint has resulted in a change to the activities conducted on the licensed premises. I am of the view the activities conducted by the venue remain the same but instead only the hours of operation have been affected by the voluntary undertaking. Therefore, there is no indication that there has been a change in the activities conducted at the venue.

Findings and Decision

Undue disturbance

59. In deciding whether the venue has unduly disturbed the quiet and good order of the neighbourhood, I have balanced the submissions made by on behalf of the licensee, the complainant, Police and Council. I have also had regard to the particular context in which the venue operates.

60. It is reasonable to expect some level of noise will be generated from the normal operation of the venue and it is clear the close proximity of the complainant's residence is a significant factor to any potential disturbance that arises. Based on the available material before me, I am satisfied that there is sufficient evidence to reasonably conclude that the venue has, at times, unduly disturbed the quiet and good order of the neighbourhood.

61. While there is a lack of detailed objective evidence from Police, in making this decision, I have placed weight on the volume of complaints received by Council, noting that four noise abatement directions have been issued to the venue between 2018 and 2020. I have also taken into account the 2013 outcome which resulted in the licensee entering into a voluntary undertaking pursuant to section 81 of the Act.
62. In making a finding of undue disturbance, I have also been persuaded by the layout of the venue and the location of the residences of the complainant and authorising residents. I note that a degree of undue disturbance is acknowledged in the submissions on behalf of the licensee.

Regulatory Outcome

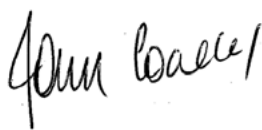
63. In deciding the appropriate regulatory outcome in this instance, I have considered the statutory considerations, the material set out in Annexure 2, and the above finding of undue disturbance. I have also had regard to the particular context in which the venue operates, noting that it is located on the ground floor of the [REDACTED], where the complainant and authorising residents reside, and am aware of the complexities in addressing the noise concerns.
64. I acknowledge the order of occupancy is in favour of the complainant, who has lived in the same property for over 20 years. I also note that the venue has erected a canopy structure covering the outdoor area on which a speaker was installed and from which music played. In this context, significant responsibility lies on the licensee to ensure the venue's operation does not disturb the quiet and good order of the neighbourhood, particularly those residents who reside in the [REDACTED].
65. I note the licensee recognises, at times, the poor choices made in the operation of the venue which has resulted in the noise disturbance issues. I am encouraged by the remedial steps taken to resolve the noise disturbance concerns, in particular the meeting of 20 February 2021 between the affected parties. I strongly recommend the venue and complainant continue to work collaboratively and in a respectful manner to address any instance of disturbance or other matters as they arise.
66. I acknowledge the proactive measures implemented by the venue to manage noise and minimise disturbance to the local community. This includes maintaining a noise register, ceasing outdoor amplified music, fitting rubber style tips to outdoor furniture to prevent dragging noise, maintaining internal music levels on a low setting and disconnecting the outdoor speaker. The outdoor speaker is the subject source of the majority of noise issues

and as such this measure should address the magnitude of the complaint and alleviate the concerns of the complainant.

67. I note however that this has been the source of some conjecture between the parties following the complainant's submission of 21 July 2021. Upon reviewing the exchange of text messages between the complainant, manager and venue owner, it does appear that the outdoor speaker may have been reconnected and in use after 13 April 2021. This claim was also refuted by the licensee, who reiterates that the outdoor speaker has been disconnected. I acknowledge the licensee's response that a nearby licensed premises has commenced trading and is allegedly causing disturbance through loud amplified music. This is supported by the venue owner's text messages to the complainant on 18 July 2021.
68. Considering the history of this matter as captured in the material before me, including that voluntary undertakings were previously implemented and that regulatory certainty is needed to address the risk of future disturbance, I find it appropriate to impose a condition on the venue's licence prohibiting the connection and use of the outdoor speaker. I am of the view that disconnecting the outdoor speaker will address the complainant's concerns. Imposing this condition should provide regulatory certainty that the venue ensures the outdoor speaker is not used, thereby addressing concerns raised in the complainant's most recent submission of 21 July 2021.
69. I acknowledge the difficulties and stress imposed on the venue during the COVID-19 pandemic, nonetheless, I remind the venue of their obligation and responsibility to mitigate noise to the community and strongly urge the venue to continue to proactively manage and minimise levels of disturbance. While I acknowledge the steps taken by the venue in this regard, the condition will ensure a significant amount of disturbance is not realised considering the outdoor speaker will be disconnected and not used. In conjunction with the imposition of this condition, I recommend the continued monitoring of the use of the outdoor area be conducted.
70. Having carefully considered the material before me, I have decided to impose a condition on the venue's liquor licence regarding the use of the outdoor speaker in relation to undue disturbance caused by amplified music, entertainment and patron noise. In my opinion, the permanent disconnection and removal of the outdoor speaker will provide a long-term solution in mitigating noise from the venue and ensure that undue disturbance does not re-occur.

71. The imposition of a LA10 noise condition on the venue's liquor licence is not appropriate at this stage. In making this decision I have considered the permissible trading hours of the venue, noting they do not trade past midnight, the noise prevention strategies implemented to address noise concerns, and the evidence which suggests the venue has willingly engaged with the complainant and residents. I have decided to impose a condition prohibiting the venue from connecting the outdoor speaker and using it. The issue with the outdoor speaker, which formed the crux of the noise disturbance complaint, will be addressed by this condition and should resolve several concerns raised by the complainant.
72. I am satisfied that imposing a condition is a proportionate, measured and appropriate regulatory response to the identified risks of undue disturbance recognised in the complaint and the strength of the evidence at hand. I particularly remind the venue of its obligation to take all disturbance complaints seriously and minimise levels of disturbance to the community. The venue should be aware that if fresh and direct evidence is presented demonstrating undue disturbance, it is open for the matter to be reconsidered and for further regulatory intervention to occur.

Decision Date: 8 December 2021



John Coady

Manager, Regulatory Interventions Team

Liquor & Gaming NSW

Delegate of the Secretary of the Department of Customer Service

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 5 January 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 <https://www.liquorandgaming.nsw.gov.au/independent-liquor-and-gaming-authority/ilga-and-l-and-gnsw-decisions/disturbance-decisions>.

Under section 81 of the *Liquor Act 2007* a delegate of the Secretary of the Department of Customer Service has imposed the following condition on the liquor licence of:

Zebra Lounge, Pyrmont (LIQO624009503)

Outdoor Speaker

No outdoor speaker is to be used for the purpose of playing amplified entertainment.

Date condition effective: 15 December 2021

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

1. Copy of the liquor licence dated 1 November 2021.
2. Section 79 Disturbance Complaint lodged by the complainant on 22 January 2021.
3. Submission from City of Sydney Council received on 17 February 2021.
4. Submission from NSW Police received on 17 February 2021.
5. Venue submission in response to complaint received on 25 February 2021.
6. Final submission from complainant received on 16 March 2021.
7. Venue final submission received on 13 April 2021.
8. Additional submission from the complainant received on 21 July 2021.
9. Licensee response to complainant additional submission received on 23 July 2021.