

**FILE NO:** A19/0015563

**COMPLAINANT:** [REDACTED]

**LICENSED PREMISES:** The Palais Reception Centre - LIQO624004679

**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, Sean Goodchild, Director Compliance Operations, Liquor & Gaming NSW, a delegate of the Secretary, Department of Customer Service, in relation to the complaint made in respect to The Palais Reception Centre (the venue) have decided to impose two conditions on the liquor licence:

1. **Noise Limiter**
2. **Security patrols**

The details of the conditions, including the dates in which they become effective, are outlined 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; and,
  - 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.

### **The Complaint**

5. On 4 July 2019, [REDACTED] of [REDACTED], [REDACTED] lodged a complaint with Liquor & Gaming NSW (L&GNSW) alleging undue disturbance from the operation of the venue. The principal complainant lodged this complaint as a resident authorised by two other residents.
6. On 10 July 2019, a second complaint was lodged with L&GNSW with similar allegations of undue disturbance from the operation of the venue. The complainant was authorised by two other residents. To streamline the complaint process, the two complainants agreed to work under one complaint, with [REDACTED] being the principal complainant.
7. The principal complainant alleges disturbance is attributed to the recent introduction of dance parties and nightclub type events at the venue. The complaint alleges that disturbances are caused by music and patrons exiting the venue who loiter, scream, rev car engines and beep car horns. Patrons are also responsible for leaving behind rubbish in the vicinity of the venue.
8. The principal complainant seeks a reduction in noise emitted from the venue, both from music and the anti-social behaviour of patrons. The principal complainant further seeks that no noise be audible from the venue after midnight.

9. During the complaint process, the licence was transferred from Mr Michael Onoufriadis, who is also the premises owner, to Mr Avikesk Avikesh. Mr Onoufriadis submitted that he ceased involvement with the venue since August 2017. Since this time, Mr Avikesh has operated the venue and on behalf of Dee Vine Group Pty Ltd (Dee Vine Group) who sub-lease the premises. Mr Avikesh was approved as the licensee of the venue on 16 August 2019.
10. Between 22 July 2019 and 9 December 2019, various submissions and further complaints were received from parties to the complaint. A list of the material that is before the delegate is set out in **Annexure 2**.

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

11. The Act requires that the Secretary have regard to the following statutory considerations.
12. *The order of occupancy between the licensed premises and the complainant* – the licensed premises has operated under the current liquor licence since 13 May 1994. The venue's liquor licence does not predate the principal complainant's occupation of the residence, who has resided at her current address for 31 years. This fact is not in dispute and I consider the order of occupancy is in favour of the complainant.
13. *Any changes in the licensed premises and the premises occupied by the complainant, including structural changes to the premises* – there is no indication that structural changes have been made to the complainant's residence or to the venue.
14. *Any changes in the activities conducted on the licensed premises over a period of time* – the principal complainant submits that since the introduction of new tenants at the venue, there have been changes to the venue's operations, including the introduction of dance party events and concerts. Prior to the introduction of the new tenants, the venue operated solely as a function centre.

**Other Considerations**

*Undue disturbance*

15. I am satisfied the material before me is sufficient to support a finding the venue has, at times, caused undue disturbance to the neighbourhood. In making this finding, I have balanced the submissions made by the licensee, the complainant, NSW Police and Inner West Council, as well as evidence obtained by L&GNSW inspectors.
16. The venue is located on 2 Catherine Street, Leichhardt. The venue's front entrance is located on Catherine Street, however the building encompasses the street corner of

Parramatta Road, Catherine Street and Redmond Street, Leichhardt. The complainant's residence is located north of the venue, approximately 60 metres from the venue's entrance. The venue is authorised under an extended trade authorisation to sell liquor between 5:00am and 3:00am, Monday to Saturday and 6:00am to 3:00am on Sundays.

17. The venue is currently subject to an LA10 noise restriction condition (reference 240). The condition sets a limit to which background noise at a residential boundary cannot be exceeded. Further, the condition requires that noise from the venue must not be audible within any habitable room of a residential premises between midnight and 7:00am.
18. Inner West Council (Council) advised that seven complaints have been received in relation to noise and disturbance at the venue. All but one of these complaints were received in 2019. The complaints received in 2019 identify disturbance as a result of music until early hours of the morning, aggressive behaviour of patrons and rubbish on the streets.
19. Council state their records indicate that the venue has been operating as a function centre since 1938 and as such predates planning controls. Therefore the venue can operate without a consent and Council have no powers to dictate how the venue must operate, or for what purpose.
20. Leichhardt Police Area Command advised that, in May 2019, they had received complaints from several residents who live near the venue. The complaints allege that undue disturbance was a result of loud music, behaviour of patrons outside the venue upon arrival and exit and rubbish left behind by patrons. Police were advised that disturbance issues had begun over the Easter weekend in April 2019 and had continued over several weekends, with further complaints being received for incidents up until June 2019.
21. Police submit that prior to this, no complaints had been received in relation to the venue for the previous six years. Only one violent incident had been attributed to the venue in the past 11 years, being a violent brawl on 13 May 2017.
22. Police further state since 1 January 2019, Police have received 11 noise disturbance complaints directly relating to the venue. A further seven incidents are reported in connection to the vicinity of the venue, with each requiring Police intervention.
23. Police identified a change in the operation of the venue, noting that the venue now operated ticketed events, such as dance parties, rather than weddings. These ticketed dance parties draw a bigger crowd than wedding functions, with dance party tickets selling

out on each occasion. Police attribute the change in operations to the introduction of a new management at the venue, when the former licensee, Mr Onoufriadis, leased the venue to Dee Vine Group.

24. On 20 July 2019, Police attended a scheduled dance party at the venue. Police observed that music from the venue was audible from outside and patron noise when entering and exiting the venue was also high.
25. In an attempt to eliminate disturbance from the venue, Police met with Mr Simon Elias, Director of Dee Vine Group, and Mr Avikesh on three occasions. Police conveyed to venue management that ticketed dance party events were not permitted under council regulations and as such they should not be operating in this fashion. In response Police were advised that wedding bookings had reduced and as such these events were introduced to supplement income from the venue.
26. Police further advised that on 25 August 2019, Police attended the venue in response to a noise disturbance complaint. During the inspection Police identified a breach of the LA10 noise condition as music from the venue was audible inside two separate residential dwellings after midnight. Subsequently a penalty notice was issued to Mr Aviskesh on 31 August 2019. According to Revenue NSW data received by L&GNSW on 26 November 2019, the penalty notice was closed enforced on 23 November 2019.
27. Police requested L&GNSW consider the imposition of the following conditions at the venue:
  - Crime scene preservation;
  - Security guard patrols when the venue operates after midnight;
  - Installation and maintenance of CCTV cameras; and
  - Venue to operate in accordance with the Community Impact Statement.

*Sub-lease of venue and Supreme Court ruling*

28. On 23 September 2019, Mr Onoufriadis notified L&GNSW that Dee Vine Group were issued with a Notice of Determination of Lease and evicted from the premises on 22 September 2019 due to breaches of the sub-lease. Reasons include failure to pay rent, use of the venue in a manner other than as a reception venue, noise complaints and failure to keep the venue clean. In response, Dee Vine Group commenced proceedings in the Supreme Court and provided the Court with a number of undertakings, including the use of the premises as a reception centre as per terms of the sub-lease. Upon this

and other undertakings, the Court refrained the Notice of Determination of Lease from being enforced while the matter was being prepared for hearing.

29. On 23 October 2019, the Court granted Dee Vine Group a "relief against forfeiture of sub-lease". This ruling permitted Dee Vine Group to operate the venue, however upon strict terms. Use of the property was restricted to a reception venue, in line with the conditions of a previously issued Place of Public Entertainment (POPE) licence.
30. The POPE licence had been issued by Leichhardt Council (now Inner West Council) in 2004 and it remained unclear to the Court if the POPE licence is still applicable. However, in determining the matter the Court concluded that regardless of whether the POPE still applied, condition 12 of the POPE remained relevant to the operation of the venue. As such, one of the conditions of the relief against forfeiture was that the venue must comply with condition 12 of the POPE, which requires (in part):

*"The operation of the place of public entertainment is for the purposes providing entertainment associated with wedding receptions and the like and providing dance music from a DJ in association with a booked function. The premises shall not be used to provide entertainment to individual members of the public by entry of a ticket or otherwise or as a night club..."*

31. The decision by the Supreme Court also discloses that Mr Elias admitted to knowingly breaching the venue's sub-lease and its undertaking to the Court when the venue hosted a nightclub style ticketed event on 5 October 2019. While the Court was satisfied that the venue was unlikely to breach this condition again in the future, the Court felt it was necessary to impose a restriction limiting the use of venue in line with clause 12 of the POPE licence.

#### *Action taken by L&GNSW*

32. On 15 September 2019, L&GNSW inspectors attended the venue and assessed the venue's compliance with the LA10 noise condition. The inspection occurred while the venue was operating a nightclub style ticketed event. During the inspection, an inspector remained inside the venue while two inspectors entered a habitable room of two separate residences. The inspectors communicated with each and were able to confirm noise from the venue was audible inside two separate residential dwellings. This noise consisted of a bass sound, the MC singing and patrons yelling outside the venue. On 4 December 2019, Mr Avikesh was issued a penalty notice for the offence of *licensee fail to comply with condition of licence* under section 11 of the Act.

33. On 7 October 2019, L&GNSW received a further complaint from the principal complainant, alleging disturbance as a result of a nightclub style ticketed event at the venue on 5 October 2019. The complainant alleged that patrons were drinking on the street and that the event appeared out of control. The event eventually became under control, due to a strong Police presence and the principal complainant noted that a wedding function held on the following day did not cause the residence any undue disturbance.
34. On 9 October 2019, L&GNSW inspectors met with the Mr Avikesh and Mr Elias to discuss the event and ongoing disturbance concerns at the venue. During the meeting Mr Avikesh agreed to cease conducting events between 12:00 midnight and 3:00am.
35. On 11 October 2019, L&GNSW issued a written direction to the venue under the provisions of section 75 of the Act. The direction required that:

*From 10:00pm on 11 October 2019 until 3:00am on 21 October 2019 the licensee must not conduct any events at the licensed premises between midnight and 3:00am.*

36. This direction was in place until 21 October 2019 and served to prevent further disturbance while awaiting a determination by the Supreme Court.

#### *Action taken to mitigate disturbance*

37. In considering whether to impose conditions on the liquor licence, I have balanced the submissions of all parties, having specific regard to any action taken by the licensee in response to the complaint, and the effectiveness of any measures that have been implemented to address disturbance..
38. Mr Avikesh was contacted by L&GNSW on at least six occasions between 20 August 2019 and 9 December 2019 and on each occasion provided an opportunity to make a submission in response to the noise disturbance complaint. No formal response has been received from Mr Avikesh. However, during a telephone conversation on 9 December 2019 with L&GNSW, Mr Avikesh conveyed that the venue had ceased all nightclub style ticketed events.

#### **Findings and conclusion**

39. I have considered the submissions of the principal complainant, licensee, Police and Council. A submission has not been received from Mr Avikesh for consideration. I have also had regard to the particular context in which the venue operates. In deciding whether to impose conditions on the licence relating to disturbance, I have considered the matters outlined below.

40. I have taken the statutory considerations into account and acknowledge the order of occupancy is in favour of the principal complainant. I have considered that it is reasonable to expect some form of noise will be generated from the operation of a licensed function centre.
41. I note there is a clear connection between the introduction of nightclub style ticketed events at the venue and recent noise disturbance experienced by residents. This trend has been expressed in the submissions received from Police, Council and residents and is demonstrated by an increase in complaints in recent times. During recent inspections at the venue, Police and L&GNSW identified non-compliance with the LA10 noise condition and on these occasions the venue was operating a nightclub style event.
42. I also note the granting of relief against forfeiture by the Supreme Court is conditional upon Dee Vine Group complying with clause 12 of the POPE licence. This clause prohibits the venue from being used to provide entertainment to individual members of the public or as a nightclub and any entertainment provided is to be associated with wedding receptions and the like. Since this decision by the Supreme Court, the venue has ceased nightclub style events and L&GNSW have received no new complaints after this time.
43. While restricting the provision of entertainment to weddings and the like does mitigate the risk of disturbances escalating to the previous levels experienced by residents, it does not in any way restrict the offerings at the permissible events. The LA10 noise condition currently imposed on the licence is an important and valuable condition to mitigate the risk of disturbance, however it relies on venues to act appropriately to ensure that undue disturbance is not experienced by neighbours. Unfortunately, the licensee has demonstrated an inability to comply with this condition in recent times and this increases the risk that similar breaches of the LA10 noise condition may occur in the future. In this regard I am satisfied a regulatory response is warranted.
44. I consider it necessary to impose a condition on the venue's licence requiring the installation of a noise limiter at the venue. A noise limiter, when installed and calibrated in conjunction with a qualified acoustic consultant, will ensure amplified entertainment is controlled to a level that is compliant with the LA10 noise condition. The use of a noise limiter provides assurance to residents, as well as removing any uncertainties for the venue, given entertainment providers can vary from one event to another.
45. I also consider it necessary to impose a condition requiring security guards to patrol the vicinity of the venue whenever trade is past midnight. In imposing this condition, I have considered the submissions of residents that disturbance was caused, in part, by patrons



leaving the venue and an inspection by L&GNSW evidenced undue disturbance caused by patrons upon leaving the premises. I consider this condition necessary to ensure patrons do not loiter in the vicinity of the venue and cause undue disturbance. I do not consider that the imposition of this condition will unduly burden the venue, given the shift back to reception style events and the cessation of nightclub style events would result in less trade past midnight.

46. I do not consider it necessary to impose the conditions proposed by Police for CCTV and crime scene preservation. The complaints received and evidence obtained throughout this matter do not suggest that the imposition of these conditions would in any way reduce the disturbance experienced by residents. In the future and if further evidence is presented to the delegate that these conditions are necessary, the Delegate may consider imposing these conditions under section 54 of the Act.
47. I consider the imposition of conditions requiring a noise limiter and security patrols is an appropriate regulatory response to address the finding of undue disturbance and to mitigate future disturbance.
48. If further disturbance is experienced by residents, consideration may be given to reducing the venue's hours of operations and restricting the venue's mode of operation. I do however, consider this an opportunity for the venue to demonstrate that it can operate within the expectations of the local community.
49. Finally, I am satisfied that this decision is a proportionate regulatory response to the disturbance identified in the complaint.

**Decision Date:** 31 January 2020



**Sean Goodchild**

**Director Compliance Operations**

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 *28 February 2020*. A \$500 application fee applies. Further information can be obtained from Authority Guideline 2 published at [www.liquorandgaming.nsw.gov.au](http://www.liquorandgaming.nsw.gov.au)

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

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

**The Palais Reception Centre (LIQO624004679)**

**Noise Limiter**

At all times when amplified music is conducted, the licensee must ensure all amplifiers or noise generating equipment is under the control of a noise limiter.

- a. The noise limiter levels must be set by an acoustic engineer; and,
- b. The noise limiter controller must be contained within a locked container or secure area and is to be only accessible by venue management.

**Date condition effective: 13 March 2020**

**Security patrols**

Whenever the licensed premises operates beyond midnight, a minimum of two uniformed security guards are to continually patrol the vicinity of the licensed premises to ensure that patrons do not loiter or linger in the area or cause nuisance or annoyance to the neighbourhood. Such patrols are to continue until the last patron has left the licensed premises and vicinity of the licensed premises.

**Date condition effective: 17 February 2020**



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

1. Section 79 Disturbance Complaint lodged by the principal complainant on 4 July 2019.
2. Section 79 Disturbance Complaint lodged by a second complainant on 10 July 2019.
3. Email with further information from principal complainant received on 22 July 2019.
4. Submission from NSW Police received on 26 July 2019.
5. Email with further information from principal complainant, received 12 August 2019.
6. Submission from Inner West Council received on 20 August 2019.
7. Email from former licensee and premises owner received on 20 August 2019.
8. Email from NSW Police received on 29 August 2019.
9. Penalty notice issued by NSW Police on 31 August 2019.
10. Inspector file notes from inspection conducted on 15 September 2019.
11. Inspector final report (including penalty notice dated 4 December 2019) dated 3 December 2019.
12. Supreme Court decision dated 23 October 2019.
13. Email to the licensee sent on 9 December 2019.