

FILE NO: A22/0022571

COMPLAINANT: [REDACTED]

LICENSED PREMISES: Pasadena Sydney, Church Point – LIQO600462049

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

LEGISLATION: *Liquor Act 2007*

SECTION 81 DECISION

Under Section 81 of the *Liquor Act 2007* (the Act) I, Jane Lin, Executive Director, Regulatory Operations & Enforcement, Liquor & Gaming NSW, a delegate of the Secretary, Department of Enterprise, Investment and Trade, in relation to the complaint made in respect to Pasadena Sydney (the Venue) have decided to **impose three conditions** on the licence in relation to:

1. **Acoustic Report Recommendations**
2. **Noise Limiter**
3. **Prohibition on amplified sound after 11:00pm**

Details of these condition are set out in **Annexure 1**.

REASONS FOR DECISION

Legislative framework

1. Section 79 of the Act provides that a prescribed person may complain to the Secretary, that the quiet and good order of the neighbourhood of the licensed premises is being unduly disturbed because of the manner in which the business of the licensed premises is conducted, or the behaviour of persons after they leave the licensed premises

(including, but not limited to, the incidence of anti-social behaviour or alcohol-related violence).

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

The complaint and background information

The complaint

5. On 4 June 2022, [REDACTED] (the Complainant) of [REDACTED] [REDACTED] lodged a complaint with Liquor & Gaming NSW (L&GNSW) alleging undue disturbance from the operation of the Venue. The Complainant lodged the complaint as a resident authorised by 27 other residents.
6. The Complainant states that up to four days a week, excessive noise can be heard from activities inside the Venue, especially on Thursday, Friday, and Saturdays, sometimes starting from as early as 11:00am and continuing until around 11:00pm.
7. The complaint submits that the Venue reopened in late 2018 following significant renovations after having been closed for approximately 10 years. Since reopening, the

functions held at the Venue, which are primarily weddings, create noise disturbance and affect the quality of life of nearby residents.

8. The complaint states the COVID pandemic provided relief from the disturbance, however since the Venue reopened it has been hosting a backlog of functions which has increased the frequency of disturbance.
9. The complaint provided a list of occasions on which the Venue is alleged to have caused undue disturbance during a 13-week period from 14 January 2022 to 16 April 2022. The list notes 33 dates on which functions were held. The primary cause of disturbance noted during these events was from loud amplified music, with patron noise and a clearly audible PA system also being noted. The Complainant provided videos of many of these events to support their claims.
10. The complaint also complains, and provides videos, of anti-social patron behaviour including incidents of patrons fighting outside the Venue, loud shouting, and skylarking after exiting the Venue, public urination, and patrons continuing to party post-midnight in rooms and on balconies in the accommodation above the Venue.
11. Of note, the complaint provides details of a wedding held on 21 January 2022. The Complainant states that at 10:00pm they recorded a decibel reading from their residence of 70Db. They also state they were able to use the 'Shazam' mobile app from their home at 11:15pm to identify the song being played. The Complainant states at least two calls were made to Mona Vale Police and believes Police attended the Venue. Residents attempted to call the Venue but their calls were not answered.
12. The next day the Venue's manager [REDACTED] returned the call to the complainant. The manager claimed the event had finished by 10:45pm and that decibels inside the Venue were around 50Db. The Complainant informed the manager of their own decibel reading and ability to identify a song at 11:15pm, in reply to which the manager allegedly suggested the nearby Waterfront Café was the cause of noise. The Complainant noted that they can see both the Venue and the café from their residence and the café was closed at that time of night.
13. The Complainant submits this incident is indicative of serious behavioural concerns in relation to the Venue. Namely, the Venue response is always to deny being the cause of any breach of its requirements, does not answer the phones during events and therefore does not allow complaints to be immediately managed. The Venue also does not record or simply 'makes up' decibel readings, does not have or does not use a noise limiter and its management systems are so poor that its management/ staff either don't

know the answer to the Complainant's questions or are deceptive in answering. Further, they consistently attempt to blame another venue and they do not close their doors when amplified music is being provided as they previously undertook to do.

14. The Complainant submits that a community member entered the Venue on 25 January 2022 during an event seeking the music to be turned down and asked to sight the Venue's decibel meter so they could jointly observe the decibels inside the Venue. The event manager present could not find the decibel meter, even when they rang the owner and the manager to help them locate it.
15. The complaint also notes the collection of waste and hired chairs or other furniture often occurs after events, causing loud noise at varying times between 9:00pm and 7:00am.
16. The Complainant notes that on 29 November 2019, a warning was issued to the licensee of the Venue under section 81 of the Act following a disturbance complaint made to L&GNSW under section 79 of the Act on 29 April 2019 (the 2019 Disturbance Complaint). They submit there has been no observed change of behaviour from the Venue since this warning was issued, or following other warnings from L&GNSW, Police, Northern Beaches Council, or requests from the community. The complaint notes the Venue made various undertakings during this previous disturbance complaint which it has not adhered to.
17. The Complainant provided screenshots from a private Facebook group showing residents complaining about noise from the Venue, particularly noting a wedding being held on Monday 14 November 2022. Residents state they were unable to contact the Venue to discuss the noise, and that one resident who did get in contact was allegedly hung up on. The submission also included a decibel reading of 81Db taken at 9:40pm on 16 December 2022 from a resident's home on Scotland Island. This level of noise allegedly occurred despite a 25-knot southerly wind blowing at the time, which should have reduced the noise.
18. The submission provides details of three other specific instances of disturbance caused by functions at the Venue, including one instance where Police attended.
19. The Complainant's desired outcome is that the Venue should not be permitted to run events. Failing that, they want the Venue to undergo significant sound-proofing renovations in order to minimise disturbance to the community and to ensure adherence to L&GNSW conditions. The Complainant submits the current situation is untenable and the Venue has shown it cannot comply under its current structure. The Complainant proposes that until improvements have been completed the Venue should not be

allowed to continue to host functions. When the Venue operates as a restaurant only, no noise or compliance issues appear to occur.

The Venue, licence details, compliance history

20. The Venue is located at 1858 Pittwater Road, Church Point. It is located in a primarily residential area with no large commercial or industrial facilities in the immediate vicinity. The Venue is located on the waterfront of Church Point, directly facing Scotland Island approximately 400 metres away and surrounded by the body of water known as Pittwater. The Venue's location means there are no sound barriers to many of the nearby residential premises, in particular those located across the water on Scotland Island. The only other licensed premises in close proximity are The Waterfront Store & Cafe Church Point - LIQO660032075 and the Church Point Cellars - LIQP700350679, the latter being a takeaway liquor store.
21. The Venue holds an on-premises liquor licence which commenced in 1966. The trading hours for consumption on premises for accommodation and the restaurant are 5:00am to midnight Monday to Saturday and 10:00am to 10:00pm on Sunday. The trading hours for consumption on premises for the catering service are 10:00am to midnight Monday to Saturday and 10:00am to 10:00pm on Sunday. Altius Pty Ltd is the licensee, since 12 March 2014, and [REDACTED] is the manager, commencing in this role on 22 July 2019. The Venue is subject to a noise condition, condition 220, relating to LA10 noise criteria.
22. According to L&GNSW records, the Venue has been subject to 13 complaints in addition to this and the 2019 Disturbance Complaint. One complaint was in 2018 and unrelated to noise. Three complaints were made in 2021 and nine in 2022, all related to noise from the Venue.
23. The 2019 Disturbance Complaint was made by 25 local residents and alleged the Venue was causing undue disturbance to the quiet and good order of the neighbourhood due to amplified sound from music and speeches at the Venue along with anti-social behaviour from patrons. The decision established that while the Venue had at times caused undue disturbance from amplified entertainment and patron noise, there was a lack of objective evidence from Council, Police or an acoustic engineer to demonstrate the severity of the disturbance. The outcome of the 2019 Disturbance Complaint was a warning with a strong recommendation for the installation of a noise limiter at the Venue.
24. On 7 June 2022, an application by the Venue to change its licensed boundaries was approved by the Independent Liquor & Gaming Authority (the Authority). The application

sought to extend the licensed boundary across an internal area of retail space. In approving the application, the Authority imposed three conditions on the Venue's licence relating to a plan of management, CCTV, and liquor accord.

25. On 15 July 2022, the Venue's application to change business type was approved by the Authority and 'Accommodation' and 'Catering service' classes were included on the Venue's liquor licence, in addition to the existing 'Restaurant' class.
26. Before a decision was made on whether to deal with the current disturbance complaint, the matter was referred to the L&GNSW Compliance Operations Team to conduct inspections of the Venue. The purpose of these inspections was to ascertain whether the noise disturbance was sufficiently serious to warrant the progression of the section 79 complaint.
27. On 23 September 2022 between 7.00pm and 9.30pm, L&GNSW Inspectors attended the address of the Complainant and an authorising resident to conduct observations of noise emanating from the Venue. During the inspection, officers were able to confirm that loud noise from music was emanating from the Venue, and that this noise was believed to be a possible breach of the Venue's noise condition. It was determined an acoustic engineer would be engaged to conduct acoustic testing at the affected residence of the Complainant.
28. The acoustic testing took place on 21 October 2022 and on 21 November 2022, a report of the acoustic testing by Osborn Fong, Senior Acoustic Engineer of Acoustic Directions Pty Ltd (Acoustic Directions Report) was provided to L&GNSW. This report identified that the Venue was non-compliant with its noise condition between approximately 8.00pm and 11.30pm on 21 October 2022. A penalty notice was issued to the Venue on 30 December 2022 for breaching condition 220.
29. On 14 December 2022, a letter was sent to Police and Council inviting submissions in response to the complaint under the disturbance provisions of the Act.

Submissions

30. Between 4 June 2022 and 3 May 2023, various material was received from parties to the complaint, NSW Police and Northern Beaches Council (Council). The material that is before the delegate is set out in Annexure 2 and is summarised below.

Police

31. On 30 December 2022, NSW Police made a submission in response to the disturbance complaint. Attached to the submission were;
 - Seven Computer Aided Dispatch (CAD) entries relating to the Venue from 2020 to 2022, all relating to noise complaints received by Police;
 - Nine Computerised Operational Policing System (COPS) entries regarding inspections at the Venue between 7 January 2020 and 2 November 2022; and
 - Notice of Determination Mod2021/0005 from Council.
32. Police note the northern end of the Venue, consisting of the bar, covered area, and outdoor dining, is where most patrons are located when the Venue is in operation. The layout and use of the Venue results in noise being projected towards Scotland Island.
33. Police submit that eight business inspections of the Venue were conducted between 2020 and 2022. On two such occasions Police identified strategies of potential noise abatement (closing exterior doors) which were suggested to the Venue but have not been adhered to.
34. Police note the previous disturbance complaint uncovered evidence that the neighbouring venue was also generating undue and offensive noise that was disrupting the quiet and good order of the neighbourhood. Licensing Police were aware of this information during their inspections and confirmed no other venues in the area were contributing to noise when completing their inspections.
35. Police note six video recordings of the Venue made between 14 January 2022 and 26 March 2022 show loud entertainment which may have also breached the LA10 noise condition. However, due to the technical equipment required to receive and test noise levels before midnight and provide this data at a court, it is difficult to enforce this condition without a complainant commencing a section 79 disturbance complaint. Police state it is clear from the video evidence that the noise was a direct result of the Venue or patrons from the Venue. It is the opinion of Police that the noise generated by the Venue constitutes an undue disturbance.
36. Police note the previous disturbance complaint resulted in a warning being issued and no conditions being imposed due to a lack of objective evidence demonstrating the severity of noise from the Venue. In this instance Police consider evidence supports the allegation that the noise was severe and emanating from the Venue. Police are not aware of the Venue engaging them within the previous two years.

37. Police submit that while the Complainant cannot expect the Venue to make no noise, the level of noise generated by the Venue needs to be within legislative levels and community expectations and not cause undue disturbance to the neighbouring residences. In reviewing the information, Police believe that there have been instances where the Venue has exceeded these levels causing undue disturbance and steps need to be taken to prevent further non-compliance.
38. Police made six recommendations:
- An acoustic engineer completes a site inspection and review of the Venue with an aim to understand how the Venue is operated, review acoustic equipment, control sound limiting devices, and to make recommendations. Police want any such recommendations to form a condition on the licence.
 - A condition regarding the Venue's doors be imposed on the licence as follows:
 - *All external windows and doors to remain closed when any amplified music or entertainment is provided. All doors are to be fitted with self-closing features and not be left open when any amplified music or entertainment is provided.*
 - A condition regarding noise limiters be imposed on the licence as follows:
 - *Any amplified music or entertainment provided on the premise shall only use the Hotel's sound system attached to set sound limiters for amplification. These limiters be set in compliance with LA10 Noise condition restrictions.*
 - A condition regarding a plan of management be imposed on the licence.
 - A public phone number be displayed at the front of the Venue to enable the public to call and lodge complaints.
 - Signage be displayed at the exit advising patrons to leave the area quietly and respect neighbours.

Complainant further submission

39. On 11 January 2023, the Complainant provided an updated submission which was sought by L&GNSW due to time that had passed since the lodgement of the complaint.
40. The Complainant submits that the Venue continues to create disturbance and states this is supported by screenshots from their local Facebook page which were included in the submission material. The Complainant submits this demonstrates an ongoing and persistent pattern of behaviour by the Venue.

41. The Complainant also made submissions regarding the Acoustic Directions Report. The Complainant submits it is clear that the Venue is not compliant with its noise condition. The Complainant further advises that while the Acoustic Directions Report does not make recommendations that they believe would resolve the non-compliance, a 2016 acoustic report by The Acoustic Group does offer some possible solutions that the Venue has either not adopted or, if it has adopted them, were ineffectual.

Council

42. On 23 January 2023, Council provided a submission in response to the disturbance complaint.
43. Council states that the Venue operates under consent A212/63, a consent that was issued 60 years ago. The site encompasses leased Crown land, Lot 3 DP1148738 to the north of the Venue building that is included within the current liquor licence boundary that is approximately twice the size in area of the restaurant. The Crown Land was not subject to consent A212/63 and therefore does not have any conditions attached to its use. There are currently no pending development applications on Council records for the Venue.
44. Council advises that Consent A212/63 is silent on patron numbers and recent liquor licence applications from the Venue have stated proposed patron numbers of 400. Council submits this proposed patronage is considered excessive for the size of the restaurant approved under the development consent A212/63 and Council is strongly opposed to the proposed 400 patrons. Council further advised that the potential of 400 people in the outdoor area would impact nearby residents as highlighted in the Acoustic Directions Report and there is no indication of how many patrons would be using the outdoor area at any one time.
45. Council submits there have been numerous complaints regarding the Venue during the 12 months prior to the submission, with Council being notified about excessive noise emanating from the Venue on eight separate occasions. These are noted to be predominately when weddings are held.
46. It is Council's view that a fresh development application with a merit assessment that represents the current associated impacts of the Venue would provide an appropriate approach for the owner and the community to obtain an appropriate assessment of the merits for the restaurant to operate with a capacity of 400 patrons.

47. Council recommends the Venue be required to propose practical measures that are designed and implemented to achieve demonstrated compliance with the noise condition of the liquor licence.

Communications with the Venue and Complainant regarding acoustic testing

48. On 30 January 2023 the Venue's solicitor, Tony Schwartz of Back Schwartz Vaughan, contacted L&GNSW and requested an extension of time to allow sufficient opportunity to commission acoustic testing.
49. On 8 February 2023, the Venue's solicitor advised acoustic testing was scheduled for 18 March 2023. On 16 February 2023, the Complainant advised of their consent to acoustic testing at their premises on the proposed date.

Complainant's submission regarding the Venue's acoustic testing

50. On 22 April 2023, the Complainant provided a submission regarding the acoustic testing commissioned by the Venue and continuing disturbance from the Venue.
51. The submission confirms that acoustic testing was carried out by Mr Steven Cooper of The Acoustic Group on 18 March 2023 at a Scotland Island residence and from the ferry wharf located closest to the Venue. The Complainant understands that the Venue was aware acoustic testing was being conducted on this night.
52. The Complainant submits that the Venue was unusually subdued on the night of the testing and doors were kept closed. There was no live band and the amplified music ran for a much shorter period than usual, about 45 minutes which the Complainant considers to be 'out of character' for the Venue's events. The Complainant states that a person unrelated to the acoustic testing was seen at the Venue with acoustic monitoring devices and was allegedly managing the sound being emitted in what the Complainant believes to be an attempt to ensure favourable results that do not reflect the usual operations of the Venue. The Complainant included video recordings in their submission to support their argument.
53. The Complainant submits the community continued to monitor the Venue following the acoustic testing and alleges that undue disturbance continues to occur. The submission notes three events since the testing where excessively loud music was emanating from the Venue, at levels much louder than on the night of the acoustic testing; levels the Complainant states are much more typical of the Venue's standard operations. Video footage of these events was provided. The submission states these observations show the Venue's behaviour on the night of the acoustic testing "was an aberration

orchestrated by the Venue, not consistent with usual behaviour and we submit was an attempt to distort and lower the acoustic sound results that night.”

Venue response

54. In response to the complaint and the submissions from Police, Council and the Complainant, the Venue’s solicitor provided a response on 3 May 2023. It was submitted that while the Venue intends to pay the fine for the alleged breach of its LA10 noise condition, this is not an admission (as provided for in section 22A of the *Fines Act 1996*) but is being paid due to the inconvenience and cost of contesting the same. As is expanded upon below, the Venue denies that it has breached its noise condition.
55. The Venue submits that the Complainant and authorising residents have been acting under the misapprehension that they are entitled to silence. That is, they do not appear to understand that the LA10 condition permits noise from the Venue to be audible within their residence prior to midnight, within an acceptable range. The Venue submits that the fact that the Complainant has taken this position is supported by the report prepared by The Acoustic Group, in which Mr Cooper states the Complainant told him that in their opinion, the only acceptable situation was inaudibility.
56. The Venue submits that it can and has complied with its acoustic obligations but does concede they can improve.
57. The Venue’s submission detailed its business model, the type of entertainment provided, its use of a decibel reader to monitor and manage noise, the operational manner in which it holds function and events, and its L&GNSW approved Plan of Management.

Acoustic Report

58. The submission included an acoustic report by Steven Cooper of The Acoustic Group, dated 19 April 2023 (the Acoustic Group Report). Mr Cooper alleges there are a number of issues and technical errors in the (earlier) Acoustic Directions Report, which the Venue submits means it should be given less weight in this decision. These issues include that the Acoustic Directions Report does not identify whether measurements were conducted in accordance with Australian Standard AS 1055, and it appears the measurements were in fact not in accordance with this standard, as the microphone of the meter was within 3 metres of a vertical surface (the glass windows of the dwelling behind the meter).
59. Mr Cooper claims the Acoustic Directions Report did not address the matter of audibility of noise from the Venue versus measured levels, as one can have audible noise and be

well under the nominated limits. Further, Mr Cooper states the relationship of the alleged noise from the Venue versus the environment of the area has not been addressed, as a fundamental requirement in an acoustic assessment is to assess the noise of the complaint in the environment in which it occurs.

60. Mr Cooper also submits the Acoustic Directions Report makes reference to using LAeq levels and not LA10 levels as required by the condition, expressing measured noise levels in linear octave bands instead of A-weighted octave bands, and that an allegedly flawed methodology was used to determine the Venue's noise contribution that did not properly subtract the background level from the measured level of noise. Mr Cooper concludes that the results of the Acoustic Direction Report cannot be accepted as there is no material to substantiate an implied claim that the Venue was non-compliant with its noise condition over the entire monitoring period identified as between 8pm and 11:30pm.
61. For his own report conducted on the night of Saturday 18 March 2023, Mr Cooper advised that measurements of noise emitted from the Venue and ambient measurements were taken in accordance with the Australian Standard AS1055 "Acoustics - Description and Measurement of Environmental Noise" and the short-term ambient background measurement procedures set out in Fact Sheet B of the NSW Environmental Protection Authority's Noise Policy for Industry ("NPfI"). For the acoustic compliance testing the ambient background levels that were used were conducted in accordance with part B2 of the NPfI, "determining background noise using short-term noise measurements".
62. Mr Cooper notes weather conditions at the time of the survey were mild, clear sky and negligible wind at the monitoring locations on the island. For monitoring on the balcony of the residence, it was identified that the appropriate positions were in front of the sliding doors but having the doors open so as to not have a reflected vertical surface within 3 metres of the microphone. The testing on the balcony included two tests with one sliding door open for DJ music and another for the live band.
63. The predominant extraneous noise was identified to be associated with boats using the water way and wharf visible from the balcony. It was observed that depending upon the speed of the boats there were significant differences in the overall noise levels.
64. The door open test identified an increase in the background level and slightly higher LA10 levels.

65. Mr Cooper's report found there was compliance from the balcony with the LA10 noise condition when the doors to the Venue were closed, and only minor exceedances when they were open (noting that Mr Cooper requested the doors be opened briefly for the purpose of his testing). The Venue notes that Section 6 of the Plan of Management outlines that all external doors are closed by 9:30pm when live music is played through an amplified system at the Premises.
66. Mr Cooper noted that the proper place for testing, per the wording of the condition, is the Complainant's boundary. Measurements taken at the Complainant's boundary showed compliance (though it should be noted there was no differentiation between the door of the Venue being opened or closed and there do not appear to be readings specific to the Venue door being open and closed as was the case with testing from the balcony).
67. The Acoustic Group Report made the following recommendations:

Immediate works:

- The music levels inside the Venue when assessed at the open door locations should be reduced by 2 dB(A) until completion of the building works recommended below, at which time the levels can return to what was measured during testing.

Physical/Operational Noise Controls:

- With respect to the Outdoor Area, the current membrane is to be replaced by a solid structure of metal deck roofing panels over insulation over the appropriate supporting members. It is necessary to ensure there are no gaps between the new roof and the existing building structure. Fix one layer of 13mm thick plasterboard to the underside of the supporting members and then install an acoustic absorption/ceiling finish having an NRC of not less than 0.85, or acoustic insulation similar to Martini MD50 and faced with perforated FC sheet (minimum open area of 23%).
- Sound locks to the outdoor garden are required if access to the garden is permitted during functions when entertainment is provided. The sound lock(s) are to incorporate one 90° bend and have doors at either end of the sound lock. All doors to the sound lock are to have self-closers. The sound lock can be a glass construction using 12.76 Vlam Hush glass. The roof/ceiling of the sound lock is to be similar to the proposed roof/ceiling for the Outdoor Area.

- The restaurant internal walls and ceiling are treated with acoustic panels or similar to control reverberation to less than 1.2 seconds.
- When the restaurant/outdoor area is in restaurant mode only there are no restrictions in terms of doors or windows being closed.
- However, when entertainment is provided that may be associated with functions or similar, then the doors and windows to the restaurant/covered area are to be closed and access to the outside is to be via the sound locks or the front door of the Venue.

Sound System Controls

- In addition to the doors being closed there is a requirement for limiting of the music levels occurring to satisfy the LA10 noise condition. At the present time the sound levels are monitored by management.

If all music is to be using an in-house sound system, it is preferred to use direct inputs so as to limit amplification of band instruments. The system is to have RMS compressor limiters controlling the entire signal chain. The compressor should have a ratio of infinity to 1 with an attack time of 1ms and a release time of 1 second. The limiter should have an attack time of 1ms and a release time of 1 second. When the compressor/limiters are installed the threshold levels for limiting are to be set so as to satisfy the LA10 noise condition.

68. The Venue submits that it is agreeable to all of the recommendations, with the exception that it believes doors and windows to the restaurant/covered area should only need to be closed from 8.00pm onwards, even when entertainment is provided in association with a function, as prior to 8.00pm any music is only “background music”. The Venue also noted, regarding the Sound System Controls, that the use of “direct inputs” is already in place, but the balance of the condition is agreed and can be implemented within one month of a decision confirming that it must carry out the work.
69. The Venue has received advice from a town planner that all the agreed recommended works can be completed within two to three months after approvals are obtained. The Venue will take the relevant steps to obtain such approvals after a decision is made confirming that it must carry out the work. The Venue agreeing to carry out this work is offered as a sign of “good will” with the intention of improving the relationship with the complainants.

Undue Disturbance

70. The Venue's submission states that "there is a clear lack of objective evidence to support any finding that the Premises has caused undue disturbance to the quiet and good order of the neighbourhood." It is submitted that undue disturbance is the threshold required to be met under section 79(1) of the Act, and that it is the Venue's position this threshold has not been met.
71. The submission discusses the definition of 'undue disturbance', noting it is not defined in the Act or Regulation. The submission cites several decisions from authorities in other jurisdictions. These decisions, while differing slightly in their wording, support a definition of undue disturbance as what would objectively be considered unreasonable, having regard to relevant circumstances, such as licence type, time of day, the characteristics of the neighbourhood, etc. That is, for the disturbance to be considered undue, it must be over and above the level of noise that is deemed acceptable under ordinary business operations, in the context of the location.
72. It is argued that the Complainant has not considered that a level of noise from the ordinary operation of a venue is to be expected, and that only noise over and above this ordinary, acceptable, level can be considered undue.
73. The Acoustic Group Report notes that the background noise in this location is impacted by sources of noise other than the Venue, particularly vessels on the water. This heightened level of background noise is to be taken into consideration when assessing whether noise from the Venue is undue for the neighbourhood it is in.
74. Citing a previous L&GNSW decision, the Venue notes that a finding that an LA10 condition has been breached does not, on its own, constitute undue disturbance. The Venue, relying on Mr Cooper's report as discussed above, denies there is credible evidence to support it breached the LA10 condition in any event.
75. It is submitted that, when considering undue disturbance, it is relevant to consider the trading hours of the Venue. The Venue does not operate late into the evening, with its latest functions ending by 11:00pm.

Venue response to submissions by Complainant, Police, and Council

76. The Venue's submission included a detailed response to all of the points made by the Complainant, Police, and Council. This response has been taken into consideration in this decision, and the salient arguments are summarised below.

77. The submission notes that the Venue is approximately 480 metres from Scotland Island and that, per the Acoustic Group Report, “there are no residential dwellings in the immediate proximity of the venue.”
78. It is argued the good record of the Venue is an important consideration. There have been no allegations that the Venue has permitted intoxication, sold alcohol to persons who are underage, or that the business operations of the Venue have resulted in violent incidents, or any significant alcohol related anti-social behaviour. The Venue has not been prosecuted for any type of offence apart from noise related matters.
79. The Venue notes that the Complainant submitted a number of decibel readings that were taken via an app on a mobile phone. It is submitted that no weight should be given to such readings as it is impossible to know with certainty where the person using the app was standing, what they were doing, what noise was being detected, and what the prevailing background noise was. The Acoustic Group was asked to comment on the use of such apps and advised that while they may provide an indication of noise (though what noise is being detected is unknown) they are far too unreliable for use in any formal proceedings.
80. The Venue also notes that several of the video recordings submitted by the complainants have been taken in an inappropriate manner, and usually from a location where it is unreasonable to take a sound recording that attempts to show undue disturbance (such as taking a recording directly on the border of the Venue). It was also noted that the only evidence of the date and time of the recordings is the labels given to same by the complainants themselves.
81. The Venue provided a summary of considerations it submits are relevant to a determination under section 79 of the Act, and its reply to these considerations, as follows.
82. *The level of disturbance to be expected from the Venue, with consideration to its operations:*

The Venue submits it is important to acknowledge that a significant restaurant/function centre has been available in this location since the 1930s. The Venue does not need to be perfect in its business operations but any noise emanating from the Venue cannot be unreasonable.

83. *The geographical location:*

The Venue submits the location is unique. The position would clearly be different if there was not a large body of water between the Venue and the Complainant's home. Sound travels differently over water compared with land. It relates to the effect of temperature differences of the air over land and over water – if the water is calm, its flat surface allows sound waves to travel unobstructed and to reflect from the surface. On land, sound is dissipated by obstructions (such as trees, buildings and even grass). Therefore, sound travels further over water than it does over land. Clearly this is something not contemplated by the Act and Regulation. It would be very unusual for a home some [REDACTED] metres away from a licensed premises to hear any noise from that licensed venue. Here it is theoretically possible due to the body of water between each location however that does not mean the sound emanating from the Venue is unreasonable. The carrying of sound is something that every waterfront home (that has neighbours) puts up with or accepts due to the trade-off of living in a waterfront property. Again, the level of noise that is considered reasonable here should also be based on the location where the licensed premises operates from.

The Venue is also not the only source of noise in this location. The Acoustic Group Report also identifies other noise influences on the night of the testing including noise from vessels, but it was also said by Mr Cooper “[d]uring my attendance at the wharf, music noise and people noise was clearly audible from a dwelling on the southern side of the island, NNE of the wharf and above Richard Road. There is a potential for such music noise to be incorrectly attributed to the subject venue”.

84. *The length of trading and history of operations:*

The Venue has traded at its current location since the 1930's (although there was a period of non-trading between 2008 and 2018). The Complainant has lived in their home for 6 years.

85. *Proximity to residential premises:*

The Complainant's home is [REDACTED] metres (straight line distance) from the Venue. It is also noted that some of the authorising residents could not be reasonably impacted by noise (as one example, one authorising resident lives [REDACTED] metres from the Venue). The Venue again highlights that, as outlined in the Acoustic Group Report “[t]here are no residential dwellings in the immediate proximity of the venue”.

86. *Steps taken by the Licensee/Venue to reduce disturbance:*

The management and staff at the Venue have taken significant steps to address any complaint when received. The Venue is being responsibly managed through a L&GNSW approved Plan of Management and has a very good trading record with L&GNSW (with no suggestions of any violent incidents, intoxication, underage sales or significant anti-social behaviour). The Venue will also now implement the recommendations in the Acoustic Group Report.

However, it is evident that the Complainant would only be happy if functions and events cease at the Venue and no music is played whatsoever other than background restaurant music. Clearly a resolution cannot be reached.

87. *Evidence in the form of photographs or videos of the alleged undue disturbance:*

The video evidence submitted by the Complainant was recorded directly outside the Venue and not at their home [REDACTED] metres away at Scotland Island. What can or cannot be heard directly outside the Venue is irrelevant to the LA10 noise condition (as the readings are taken from the residential home not at the Venue or at another public place). It is also noted the Complainant relies on screenshots of a decibel reading app. No weight can be given to these screen shots for the reasons outlined above. It is accepted that noise has emanated from the Venue from time to time. However, it is submitted that there is a lack of objective evidence from the Complainant to support a finding that the Venue has caused undue disturbance to the quiet and good order of the neighbourhood.

88. *Police attendances to the Venue:*

The CAD/COPS entries show that there have been nine inspections at the Venue between 4 January 2019 and 1 November 2022, and all entailed a business inspection. The evidence submitted by the Police shows repeated and consistent complaints made by residents which have no substantive value upon inspection by the Police. A case could be made that many of the repeated complaints are of vexatious intent by residents not actually aggrieved by the Venue. Furthermore, the COPS entries indicate strong and controlled management of patrons and staff, with no breaches of the Plan of Management or licence conditions, and a willingness to immediately rectify any rare concern of the Police. What the Police data also illustrates is that each time the Police have visited the Venue there have been no allegations of violent incidents, anti-social behaviour, intoxication or the staff and management at the Premises are not responsibly managing the business.

89. *Audibility of noise within neighbouring residences:*

The Acoustic Group Report explains, in detail, the alleged significant number of technical errors in the Acoustic Directions Report, which in turn mean far less weight (or no weight at all) should be given to it. The Acoustic Group Report states that the Acoustic Directions Report “cannot be accepted as there is no material to substantiate an implied claim that the venue was non-compliant with the noise condition over the entire monitoring period identified as between 8pm and 11:30pm”.

Further, and in respect of the recordings taken from directly outside the Venue, the Venue submits that none of these provide any evidence of undue disturbance when considering there is no legal requirement for the Venue to cause zero noise and further when consideration is given to what is the acceptable background noise for this location.

It is noted that when the Complainant’s home was sold in 2016 it had wide “open bifold doors” that meant the indoor of the home formed part of the outdoor spaces and deck. The home has sweeping waterfront views. The Complainant’s consideration of noise from their home is what they can hear with all the doors open, and they expect to hear zero noise.

History of Venue

90. The submission includes a brief history of the Venue, from the 1930s to date. The material shows that the Venue has been in operation from the 1930s, there is evidence of substantial business operations at the Venue from the 1960s, the outdoor area associated with the Venue has been in use since 1975 and officially formed part of the licenced area of the Venue since 1995. It is acknowledged that the form and style of amplified music has changed since the 1930s, but it is argued that the provision of amplified music in a form and style similar to what is available today has been provided at the Venue since the 1950s-1960s. The Venue was closed for around a decade from 2008 to 2018 while the premises underwent works, but it is argued that the operation of the Venue prior to that closure must be taken into consideration, and that the existence of the Venue and the types of functions it has historically held should have been known by the complainants when they purchased properties near the Venue. The Venue predates, by far, the residential development around it.
91. Regarding the works leading up to the Venue’s reopening in 2018, the Construction Certificate for the works was for the reinstatement of the building as originally approved pursuant to development consent A212/63, including necessary BCA Australian standards upgrade works. Part of the works undertaken were to enclose the pavilion

awning area with glass bifold doors (where wedding & functions are held). The old openings had pull down plastic screens with little to no acoustics. The Licensee also fitted out the Venue with double sheeted 16mm fire-check gyprock that absorbs noise. The awning roof remained unchanged. The Venue notes these changes were improvements to the restaurant because, when the doors are closed, it reduced the sound emanating from the Venue. They also argue that despite the works, the overall use of the Venue remained unchanged.

92. This history detailed the Venue's various approvals over time, including relatively recent approvals such as a change of boundaries and addition of 'accommodation' and 'catering' class on the Venue's licence. However, it is argued that these changes did not intensify the use of the Venue and did not result in any material or structural changes.
93. The Venue conducted a review of functions/events held on the 33 dates the complainants have claimed the Venue has caused undue disturbance. It found that the smallest function had 32 guests and the largest had 159, well below the Venue's approved capacity of 400. Further, the Venue notes that on seven of the 33 dates complained of, no function was held at all.

Conclusion

94. The Venue submits that its evidence confirms there is a clear lack of objective evidence from the Complainant and the Acoustic Directions Report to support any finding that the Venue has caused undue disturbance to the quiet and good order of the neighbourhood nor at any time has exceeded the requirements of the LA10 noise condition on the licence.
95. Nevertheless, the Venue is prepared to implement the recommendations made in the Acoustic Group Report to improve the soundproofing of the Venue as a sign of good will. The Venue seeks orders relating to the implementation of these matters only, and argues there are sufficient conditions currently in place to ensure the quiet and good order of the neighbourhood is not unduly disturbed by the operations of the Venue.
96. Finally, the Acoustic Group Report stated that there is a typographical error in the wording of licence condition 220, the LA10 noise condition. Namely, that the LA10 noise level should be identified as LA10* with the note; "**For the purpose of this condition, the LA10 can be taken as the average maximum deflection on a sound level meter of noise emitted from the licensed premises." The Venue's submission requests that the Secretary correct this alleged error through their power under section 54 of the Act.

Venue supplementary response

97. On 3 May 2023, the Venue's solicitor provided a supplementary response to the Complainant's submission regarding the Venue's acoustic testing.
98. The Venue notes that videos provided by the Complainant are all very brief and taken at times of their choosing. As noted in the primary response, the videos are not taken from appropriate locations, and therefore should hold any weight. Further, it was noted that no footage was provided that was taken from an affected residence, so no evidence of noise disturbance from any affected residence has been provided.
99. The Venue submits that its staff diligently take noise readings using their own decibel reader, and this is the 'person with acoustic monitoring devices' the complainants saw. It is argued this legitimate sound monitoring, which occurs at every function held by the Venue, was misunderstood by the complainants as an attempt to achieve artificial results in the Acoustic Group Report.
100. The submission reiterates a point made in the primary submission; that the complainants erroneously expect to be hearing no noise whatsoever, and that their actions and submissions, based on this misapprehension, are therefore unreasonable. The Venue claims the individual taking the videos even went so far as to enter the Venue and allegedly harass a staff member.
101. The Venue notes the video taken on the night the testing was done, that the Complainant alleges was purposefully more subdued, and was taken during the speeches, one of the quietest parts of the function. Further, the Venue's own noise measurements on their decibel reader show that the highest reading on the night of the acoustic testing was actually louder than any reading taken during the three occasions following the acoustic testing that the complainant claimed were notably louder.
102. The Venue submits it has done everything within its power to assist the complainants, including ensuring doors are closed when music is playing, and adjusting the sequence of events at functions to ensure doors facing the water can remain closed once the dancefloor commences. The Venue has also made attempts to reach out to the community via a community Facebook group but was denied access, being told members of the group did not want it there as there are "things they don't want you to see."
103. It is noted that the acoustic testing took place during a paid function. The Venue submits it is unreasonable to suggest that they would actively subdue a function (which documents in the primary submission show can cost tens of thousands of dollars) for

the purpose of an acoustic report. It is argued the complainants are attempting to cast doubt on the overall validity of the testing to support their position. They state that by no means did the Venue fabricate the readings or the Acoustic Group Report, and the accusations that it did are unsubstantiated and misconceived.

104. The Venue alleges that this complaint really stems from the long-term animosity towards the commercial properties by offshore residents over parking. In other words, the availability of parking for offshore residents is being used as an ongoing basis for their complaints even though the evidence confirms the General Store and the Venue have “existing use rights parking over the reserve”. The Venue states the off-shore residents go to great lengths to drive away patrons, including continually misinforming the public about parking availability which they have done on multiple occasions by commenting on the Venue’s promotional Facebook posts.
105. The Venue submits that while there has been no credible evidence it has caused undue disturbance, it has agreed to the recommendations in the Acoustic Group Report as a sign of good will with the intention to improve its relationship and dialogue with the complainants.

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

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

The order of occupancy between the licensed premises and the complainant

107. The Venue has existed since the 1930s and operated under its current licence since 1966. The Complainant had resided at their address for approximately six years when the complaint was submitted. Therefore, I consider the order of occupancy in favour of the Venue.

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

108. The submissions did not note any significant changes made to the Complainant’s residence.
109. I acknowledge the addition of ‘accommodation’ and ‘catering service’ classes on the Venue’s licence in July 2022, and the amendment of the Venue’s licensed boundary to include additional internal areas.
110. There is no indication of any other changes since the finalisation of the 2019 Disturbance Complaint.

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

111. The Venue states that it has held functions with amplified entertainment since the 1930s. It acknowledges that amplified entertainment has changed since that time, but argues that it has held such entertainment, in the manner that it is understood today, since the 1950s and 1960s. However, it is important to note that the Venue was closed for a period of around 10 years between 2008 and 2018. A 10-year cessation in operations is a significant amount of time not to trade. The complaint notes that since reopening, the Venue has been holding functions up to four times a week; a fact verified by the Venue's submission.
112. I consider such a substantial shift in the Venue's operations amounts to a material change in activities notwithstanding its historical use. In this context I also note that the 2019 Disturbance Complaint was made not long after the re-opening of the Venue, on 29 April 2019, and that decision noted that the re-opening of the Venue represented a significant change in business activity.

Findings and Decision

Undue disturbance

113. In deciding whether the Venue has unduly disturbed the quiet and good order of the neighbourhood, I have balanced the submissions made by the Complainant, the Venue, NSW Police and Council.
114. As argued by the Venue, undue disturbance is the generation of disturbance beyond what would reasonably be expected from the Venue in the relevant context of the type of licence, and the location in which it is situated. A level of disturbance from the normal operation of the Venue is to be expected, including noise from music entertainment and patrons. I am satisfied however, that there is sufficient evidence before me to reasonably conclude that the Venue has regularly unduly disturbed the quiet and good order of the neighbourhood. Considering the finding of undue disturbance in the 2019 Disturbance Complaint, and despite warnings, authority engagement, and receiving a penalty notice for breach of a noise condition, it is reasonable to conclude that this disturbance has persisted for years.
115. The current complaint was supported by 27 authorising residents. This is a substantial number of people to come forward and join a noise complaint and lends considerable weight to a finding that the quiet and good order of the neighbourhood is being unduly disturbed.

116. The 2019 Disturbance Complaint was made by 25 complainants on similar grounds to the current complaint. In the decision for that complaint, the Venue was found to be causing undue disturbance. The 2019 Disturbance Complaint resulted in a warning, with recommendations made on ways the Venue could control noise, including the installation of a noise limiter. Despite this warning, the Venue continues to create disturbance, receive complaints and there is no evidence to suggest the noise limiter has been installed.
117. The Acoustic Directions Report found the Venue had breached its noise condition. It is acknowledged the Acoustic Group Report alleges there are several issues with the Acoustic Directions Report, including that there was no evidence of a breach “over the entire monitoring period.” However, as raised in the Venue’s submission, this decision does not require a determination as to whether this condition was in fact breached. It is important to note the Acoustic Directions Report was commissioned by L&GNSW following repeated disturbance complaints over several years and following inspections by L&GNSW inspectors who deemed the noise from the Venue was causing sufficient disturbance to warrant the expense of commissioning the testing.
118. The Acoustic Directions Report identified loud music and patron noise emanating from the Venue, at times, with music from the Venue noticeably louder after 9.30pm when a live band started performing. Notably, while the Acoustic Group Report commissioned by the Venue claims the Venue’s noise condition had not been breached overall, it did identify several incidents where the noise emanating from the Venue exceeded the background noise by more than 5db on a night when it was aware acoustic testing was being conducted.
119. Police submitted they believe the noise from the Venue constitutes undue disturbance. Police have recommended a number of conditions be imposed to address this issue. Police note they have received repeated complaints about noise from the Venue and believe that steps need to be taken to avoid further non-compliance with the Venue’s obligations.
120. Council submitted it has also received several complaints about the Venue, and states it believes a fresh development application with a merit assessment that represents the current associated impacts of the Venue would be appropriate, especially given the age of the current approvals are around 60 years old. This demonstrates that Council, too, believes measures should be taken to address the issues with the Venue.
121. The Venue argues that the Complainant’s residence is not within immediate proximity of the Venue, which is approximately [REDACTED] metres away, and it is only because there is

a body of water that the sound from the Venue is able to travel this far. It is argued the level of noise that is considered reasonable here should be based on the location from where the licensed premises operates and that the carrying of sound is something that every waterfront home puts up with or accepts due to the trade-off of living in a waterfront property.

122. What the Venue fails to address in these arguments is that it too must accept it is a waterfront property and must adopt reasonable measures to ensure it does not cause undue disturbance in the context of its geographical location. The distance between a venue and residence is only one factor to be considered in what noise abatements/measures are required for a venue. There are no sound barriers between the Venue and neighbouring residences on Scotland Island, and the acoustically reflective nature of the water requires the Venue to take more care of the noise it creates. The Venue has demonstrated through its own submissions that it is well aware of the unique qualities of water in transmitting sound.
123. The Venue is not situated in a commercial business district. It is in a relatively remote area, with many of the numerous complainants living offshore on an island that can only be accessed by water. While residents should not expect silence from the Venue, the evidence before me shows that the level of disturbance being experienced by residents is beyond what would reasonably be expected from the Venue in its context.
124. The complaint also raised issues related to parking, but this is outside the scope of issues that can be addressed by L&GNSW.

Regulatory Outcome

125. In deciding the appropriate regulatory outcome in this instance, I have considered the statutory criteria, the material set out in Annexure 2, and the above finding of undue disturbance. I acknowledge that the order of occupancy is in favour of the Venue. However, I also acknowledge (as was noted in the 2019 Disturbance Complaint) that re-opening the Venue in 2018 after a 10-year closure represents a significant change in business activity requiring careful planning and consideration. On this point, I note there is no material before me to suggest that any prior version of the Venue caused any noise disturbance issues to the neighbourhood.
126. Since the re-opening, the Venue has been the subject of ongoing disturbance complaints to Police, Council, and L&GNSW. This is the second section 79 disturbance complaint made against the Venue where a finding of undue disturbance has been made. The Venue was warned, and strong recommendations made in the decision

following the 2019 Disturbance Complaint were not followed by the Venue, and it is clear that regulatory intervention is now required to address this ongoing issue.

127. Having considered the material before me, I have determined to impose a condition on the Venue's licence requiring the Venue to ensure all amplifiers or noise generating equipment is under the control of a noise limiter. Following the 2019 Disturbance Complaint which resulted in a finding of undue disturbance, L&GNSW recommended the Venue install a noise limiter. This recommendation does not appear to have been followed, and disturbance complaints have continued to be received regarding the Venue. Police have also identified a noise limiter as an appropriate response to the disturbance complaints and recommended this condition be imposed. To ensure the Venue now implements this measure, it is appropriate to impose this as a stand-alone condition on the licence.
128. I have also determined to impose a condition on the Venue's licence requiring the Venue to implement all of the recommendations made in the Acoustic Group Report dated 19 April 2023, detailed at [67]. I note, regarding the recommendation that "when entertainment is provided that may be associated with functions or similar, then the doors and windows to the restaurant/covered area are to be closed and access to the outside is to be via the sound locks or the front door of the venue," the Venue has submitted this should only apply from 8:00pm onwards. I do not accept this amendment to the recommendation. The Acoustic Group Report specifically stated it found there was compliance with the LA10 noise condition *when the doors to the premises were closed*. This recommendation was clearly made on the basis of this finding and appears to be a crucial measure in ensuring compliance.
129. The Venue has agreed to the balance of the recommendations in the Acoustic Group Report. However, I note that it has only offered to undertake these measures if a decision is made confirming that it must carry out the work and noting that town planning approval would be required before this can commence. Given that the Venue had already been put on notice of the need to implement noise abatement measures in 2019, it could have initiated the process for obtaining planning approval while awaiting this decision. Delaying remedial works recommended by its own acoustic expert demonstrates a disregard for the Venue's obligations and for its community.
130. Finally, I have determined to impose a condition on the Venue's licence requiring all amplified music and the use of any sound system to cease at the Venue by 11:00pm. The material provided by the Venue advises that events regularly run until 11:00pm. The complaint material advised of numerous occasions when music noise from events could

clearly be heard later than this. The Venue has demonstrated an unwillingness to work with residents to find a mutual solution to the complaints. Calls to the Venue reporting disturbance result in no action or go unanswered and much of the Venue's response to this complaint highlights that it considers the concerns of its neighbours to be unreasonable. Given the objective views put forward by Police and Council that intervention is required, and on the balance of the remaining material before me, I do not consider this position to be tenable.

131. The Venue is not a music venue and, as outlined above, is uniquely situated in a relatively remote location. The Venue operates as a restaurant and event space (primarily hosting weddings). The elimination of amplified noise from 11:00pm does not prevent the Venue from continuing to conduct these operations and carries no significant impost, financial or otherwise, and is in line with the Venue's Plan of Management. It will, however, in conjunction with the other measures to be implemented by the Venue, provide some respite to nearby residents by formalising the requirement for amplified sound to cease at 11:00pm and is appropriate given the unique geographical location and features of the Venue and its surrounds, and the frequency of disturbance generated by the Venue over a long period of time.
132. The Venue should be aware that if fresh and direct evidence is presented demonstrating continued undue disturbance and/or non-compliance with any of the conditions imposed, it is open for this matter to be reconsidered and for further regulatory action to be taken which could include measures such as limiting the activities permitted at the Venue.
133. I note the Complainant submitted in their initial complaint that they request the Venue "not be permitted to operate as an Event/Catering venue." This would be an extreme result and I consider this to be an excessive regulatory response. While sufficient material was provided to establish the Venue is causing undue disturbance and action is needed, I believe the other measures being implemented in this decision are sufficient to address the disturbance. I also note that the Venue's authorisation to operate in this manner was granted by the Authority and it is outside the scope of my powers under section 81 of the Act to consider its revocation.
134. Regarding the Venue's claim that this complaint stems from long-term animosity regarding parking for offshore residents; I am not persuaded that there is evidence of this issue being at the heart of this complaint. In any event, it is immaterial. Sufficient material was provided to establish undue disturbance is being caused.
135. Regarding the Venue's request for the Secretary to amend condition 220 on its liquor licence to reflect the condition as submitted by Mr Cooper; the requested amendment is

a technical change to the application of the condition which would make the condition easier to comply with. The Venue should note condition 220 was imposed by the Authority and so it is open for the Venue to apply directly to the Authority to have this condition amended.

136. I wish to remind the complainants that the Venue is permitted to hold functions which include the provision of entertainment, and that a reasonable level of noise is to be expected from the ordinary operations of the Venue. The complainants should note the conditions being imposed by this decision, including the recommendations made in the Acoustics Group Report, which the Venue has agreed to, are substantial measures which are being undertaken to mitigate the emanation of noise from the Venue. I include this reminder to ensure the complainants are aware that while they should not be subject to undue disturbance, they should not expect the Venue to be completely silent, even after these measures have been enacted.

137. I am satisfied that this decision is a proportionate and appropriate regulatory response to the identified risks of undue disturbance.

Decision Date: 25 August 2023



Jane Lin

Executive Director, Regulatory Operations & Enforcement

Liquor & Gaming NSW

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

Application for review:

Should you be aggrieved by this decision, you may seek a review by the Independent Liquor & Gaming Authority by an application which must be lodged within 28 days of the date of this decision, that is, by no later than 22 September 2023. A \$500 application fee applies. Further information can be obtained from Authority Guideline 2 published at

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

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

Pasadena Sydney – LIQO600462049

Acoustic Report Recommendations

The licensee must implement all the recommendations, including all recommended capital works, made on pages 19 and 20 of the Acoustical Assessment report prepared by The Acoustic Group, dated 19 April 2023. The recommendations are to be implemented by the following dates:

1. The 'immediate works' are to be implemented on the date this condition becomes effective.
2. The recommendation that 'when entertainment is provided that may be associated with functions or similar, then the doors and windows to the restaurant/covered area are to be closed and access to the outside is to be via the sound locks or the front door of the venue' is to be implemented on the date this condition becomes effective.
3. The 'sound system controls' are to be implemented within 28 days of the date this condition becomes effective.
4. Regarding the balance of the recommendations, the licensee must apply for the relevant approvals within 28 days of the date this condition becomes effective. The recommendations must be completed within 90 days of the relevant approvals being granted.

Date condition effective: 26 August 2023

Noise Limiter

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

1. The noise limiter levels must be set by an acoustic engineer; and
2. 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: 22 September 2023

Prohibition on amplified sound after 11:00pm

The licensee must ensure all amplified music and the use of any sound system has ceased by 11:00pm.

Date condition effective: 26 August 2023

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

1. Section 79 Disturbance Complaint lodged by the complainant on 4 June 2022.
2. Copy of the Acoustic Directions Report dated 21 November 2022.
3. Submission from NSW Police received on 30 December 2022.
4. Additional submission from the Complainant received on 11 January 2023.
5. Submission from Northern Beaches Council received on 23 January 2023.
6. Submission from Complainant regarding acoustic testing, received 22 April 2023.
7. Submission from the Venue's solicitor in response to complaint (including the Acoustic Group report), received on 3 May 2023.
8. Supplementary submission from the Venue's solicitor, in response to the complainant's additional submission, received on 3 May 2023.
9. Copy of the liquor licence for the Venue dated 11 July 2023.