

DOC16/016292

FILE NO: A15/0005291

COMPLAINANT: [REDACTED]

LICENSED PREMISES: Fitzroy Food Co, Kirribilli - LIQO660011431

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 Justice, in relation to the complaint made in respect to the Fitzroy Food Co, Kirribilli (the restaurant) have decided to close the complaint with no further action.

REASONS FOR DECISION

Legislation

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 14 April 2015 [REDACTED] the complainant, of [REDACTED] lodged a complaint in relation to the Fitzroy Food Co, Shop 2/31A Fitzroy Street, Kirribilli alleging undue disturbance from an increase in patron numbers dining in both the internal and external areas of the restaurant and noise escaping from open bi fold doors until late at night. The complainant asserted that the disturbance occurred each night since the restaurant has commenced operations. The complainant lodged the complaint as a resident authorised by two other residents.
6. The complaint also refers to the operation of a previous restaurant that operated on the same site, Catalonia Restaurant. That restaurant was subject to a previous complaint under section 104 of the *Liquor Act 1982* being the equivalent legislation which existed under the previous Act. It is noted that the Catalonia Restaurant licence was surrendered in June 2012, and the complaint is made against a completely separate licence and separate licensee.
7. Between 14 April 2015 and 19 October 2015 various submissions were lodged by all parties to the complaint including the complainant, the licensee, police and local council.

A list of the material that is before the delegate of the Secretary is set out in Annexure 1. A summary of key information obtained during the submission period is set out in Annexure 2.

Considerations and findings

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

8. The Act requires that in certain cases the Secretary have regard to three statutory considerations being the order of occupancy between the licensed premises and the complainant; any changes in the licensed premises and the premises occupied by the complainant, including structural changes to the premises; and, any changes in the activities conducted on the licensed premises over a period of time.
9. *The order of occupancy between the licensed premises and the complainant* – The restaurant has operated at the present site since 19 July 2011 with the current licensee taking over the business on 14 January 2015. This however does not predate the complainant who has resided at the nominated address for 15 years. This fact is not in dispute and I consider that the order of occupancy consideration is in favour of the complainant.
10. *Any changes in the licensed premises and the premises occupied by the complainant, including structural changes to the premises* – There is no evidence of any material structural changes to either the restaurant or the complainant's residence.
11. *Any changes in the activities conducted on the licensed premises over a period of time* – The complainant asserts that since the licensee has taken over there has been an increase to the restaurant's trading hours, and a substantial increase in the number of patrons attending the restaurant. The restaurant is authorised to trade (under its liquor licence) to 10pm each night, the council DA provides a patron capacity of 48 although this was increased to 83 during a recent trial DA period.

Consideration of *undue disturbance*

12. I have considered the submissions of the complainant, licensee, NSW Police and the local council. I have also had regard to the particular context in which the restaurant operates (including statutory considerations mentioned above).

13. I am not satisfied that on the material before me there is sufficient evidence to support a finding that the restaurant caused undue disturbance to the neighbourhood.

14. A person may complain to the Secretary that the quiet and good order of the neighbourhood of licensed premises are being *unduly* disturbed because of:

(a) the manner in which the business of the licensed premises is conducted, or

(b) 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).

This test implies that there is a certain level of disturbance that is expected from the operation of a licensed premises but it is only when that disturbance is *undue* there are grounds to prove a complaint.

15. In other words, there is a threshold test that must be met under the legislation that the level of disturbance must be *undue* for action to be taken under the disturbance provisions under the Act.

16. Considering what amounts to undue disturbance necessarily involves consideration of a broad range of factors including the nature and environs of the neighbourhood and the nature of the subject premises. In this case the restaurant is a small to medium sized restaurant in a local village precinct which includes a number of other restaurants and other commercial premises. The restaurant is adjoined by other shops that are opposite the complainant's residence. Located on the western side of the restaurant is café and a restaurant. On the eastern side, a convenience store operates until 11:00pm. Opposite the restaurant adjacent to the complainant's residence there are five other operating businesses, of which three are licensed. Outdoor seating is present on both sides of Fitzroy Street. The restaurant does not trade past 10pm or before 11am (i.e. it is not authorised to sell liquor prior to 11am or after 10pm, it may be authorised to do other things such as operate a food business). For the purpose of this decision only the liquor operations are relevant to the decision, and it is noted that the trading hours are less than standard trading hours as defined under the Act.

17. There is some discussion in the complaint about authorised hours in the local planning sense. It is important to distinguish between the regulatory frameworks that exist around local planning laws and liquor laws. It is the role of local planning laws to determine/approve the appropriate use of premises including business type, patron capacity and trading hours, while the Liquor Act is confined to the question of undue disturbance in the context of the framework of liquor legislation and the objects of the

Liquor Act. The liquor framework should not purport to be a remedy for planning disputes about the appropriate business use for a premises, but does provide a remedy for inappropriate use of a liquor licence.

18. There is no evidence which demonstrates that the liquor operations of the restaurant are a contributing factor to undue disturbance caused either by the behaviour of patrons leaving the venue or the manner in which the business of the licensed premises is conducted. There is no evidence of anti-social behaviour, malicious damage to property, public urination, fighting, loud swearing etc. The disturbance in this case appears to be confined to loud patron conversation. Whilst this could amount to undue disturbance in certain circumstances, based on the available evidence, in my view it does not reach the threshold of being *undue*. That is, it might be occasionally annoying, but the disturbance is not excessive or unwarranted. The restaurant does not trade past 10pm and even though it has a capacity of 83, it rarely trades at that level. Given the nature of the neighbourhood, I do not consider normal patron conversation occurring at the restaurant before 10pm to amount to undue disturbance.
19. There are several key pieces of information which are persuasive in informing my view on the undue disturbance issue being the acoustic report, observations of L&GNSW compliance officers and the submission of NSW police. I have discussed each of these pieces of information in more detail below.
20. *The acoustic report* - The 2015 Wilkinson Murray acoustic report submitted by the licensee suggests that even if there were 20 patrons outside, it would not offend the LA10 noise criteria. Whilst the complainant refers to a previous acoustic report which assessed a previous restaurant (Catalonia), I prefer the more recent report which looked at the current restaurant operation. I accept that the Wilkinson Murray acoustic report was prepared for the purpose of a DA and was not specifically commissioned for the purpose of this disturbance complaint, however on balance I accept that it provides reliable general information about the level of noise emitted from the restaurant and in the eyes of the expert reporter, even with 20 patrons outside, it is unlikely to offend the LA10 criteria (which is an accepted industry standard).
21. *Observations of L&G compliance officers* - I am also persuaded by observations of Liquor & Gaming NSW inspectors who conducted observations on three separate occasions during peak trading periods to assess noise emissions from the restaurant. The outcome of the observations identified that the restaurant's contribution to the overall noise levels of the area was not considered undue. Inspectors identified that

there were multiple factors in the vicinity of the complainant's residence contributing to the noise levels namely, vehicles traversing Fitzroy and Broughton Streets, pedestrian movements, noise and activity from the convenience store and noise from persons using outdoor seating facilities at other premises.

22. *No assertion that restaurant causes disturbance by NSW Police* - I also note that local police who have good local knowledge do not make any assertion that the restaurant has caused undue disturbance in their submission. There is no history of substantiated noise issues, complaints to police from other residents, or reports of violence or anti-social behaviour contained in the police submission.

23. I also considered video evidence in the form of 3 short videos of a group of patrons at the restaurant in October 2015 provided by the complainant and accept the video shows a group of women congregating and standing in the footpath dining area. The noise from their conversation is relatively loud and if such activity was a daily occurrence or if it occurred frequently late at night it may amount to undue disturbance. However, in the context of the operation of the restaurant early in the evening in a village precinct, the incident does not appear particularly egregious.

Summary and conclusion

24. In determining whether the disturbance is undue, I have considered that the restaurant has operated in one form or another for over five years, and it is reasonable to expect that some noise will be generated by its ongoing operation. I note that the restaurant is authorised to trade until 10pm and regularly closes before this time. I am of the view that in the specific circumstances, patron voices being audible in the neighbourhood of the licensed premises up until 10pm does not constitute undue disturbance.

25. In the absence of a finding that there has been undue disturbance, the appropriate response in the context of the formal disturbance complaint is to take no further action. That is not to say that the licensee does not have an ongoing obligation to manage and minimise levels of disturbance caused by the restaurant. I strongly encourage the licensee to proactively manage this issue. In the event there is an escalation of disturbance or fresh evidence presented which demonstrates poor management of disturbance issues then it is open for the matter to be reconsidered and for regulatory intervention to occur. I strongly encourage the licensee to be vigilant in this regard to minimise disturbance particularly as we approach the busy summer and Christmas period.

Date of decision: 19 September 2016



Sean Goodchild
Director Compliance Operations
Delegate of the Secretary, Department of Justice

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 **17 October 2016**. A \$500 application fee applies. Further information can be obtained from Authority Guideline 2 published at www.liquorandgaming.justice.nsw.gov.au

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

Annexure 1

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

1. Section 79 Noise Disturbance Complaint lodged by [REDACTED] date 14 April 2015, received 20 April 2015.
2. Submission from Mr Gavin McConnell, Executive Planning Advisor, North Sydney Council dated 25 May 2015.
3. Further submission from [REDACTED] dated 18 May 2015, received 19 May 2015.
4. Submission from Senior Constable Aaron Melnyk, Harbourside Local Area Command with attached Development Application 160/14 dated 20 May 2015, received 27 May 2015.
5. Submission from Mr John Culina, Licensee dated 2 June 2015.
6. Acoustic report prepared by Wilkinson Murray for the purposes of DA noise assessment, February 2014 dated 2 June 2015.
7. Email with attached modified Development Application from Senior Constable Bradley Duke, Harbourside Local Area Command dated 6 June 2015.
8. Submission from [REDACTED] in response to Mr John Culina's submission dated 15 June 2015.
9. Email from [REDACTED] dated 16 June 2016
10. Notes by Inspector Karen Wilkinson, Liquor & Gaming NSW from observations of the premises 20 September 2015.
11. Email from Inspector Karen Wilkinson to [REDACTED] dated 2 October 2015.
12. Email from [REDACTED] dated 2 October 2015.
13. File note by Inspector Karen Wilkinson regarding meeting with Mr John Culina dated 8 October 2015.
14. Three emails from [REDACTED] and one email from Mr [REDACTED] with attached video footage of patrons outside of the premises dated 10 October 2015 and 13 October 2015.
15. Email to Mr John Culina requesting a response to video footage sent by [REDACTED] and response dated 13 October 2015 and 19 October 2015.
16. Notes by Inspector Karen Wilkinson from observations of the premises 12 December 2015.
17. Email to Mr John Culina requesting information on a further acoustic test dated 10 May 2016.
18. Email to [REDACTED] advising of complaint progress and requesting an update dated 12 May 2016.

Summary of key submissions

Submission from Mr Gavin McConnell, North Sydney Council dated 25 May 2015.

1. A submission was received from Mr Gavin McConnell, Executive Planning Advisor, North Sydney Council in response to the complaint. The submission provided information that approval was granted for an amendment to the development consent on 25 May 2015.
2. The amended approval increases the patron capacity from 48-90 patrons (the amended copy indicates the maximum patron capacity is 83) and amends the approved operating hours to now be from 7am to 10pm for 7 days. The change in hours involves earlier opening times.
3. The submission concludes;

'In considering the application Council has resolved that the amenity impacts on surrounding property can be adequately managed in such a way the degree of impact is considered to be reasonable'.

Second submission from [REDACTED], the complainant dated 18 May 2015.

1. A second submission was received from the complainant dated 18 May 2015 and received by this office on 19 May 2015 and reinforces the information contained within the section 79 noise disturbance application.

Submission from Senior Constable Aaron Melnyk, Harbourside Local Area Command dated 27 May 2015.

1. In response to the invitation to provide a submission for this matter Police prepared information relevant to their observations/visits to the premises, disturbance issues, COPS event entries relating to the restaurant and other matters deemed relevant to the complaint.
2. Police received a noise complaint on 15 January 2015 regarding the restaurant. At 10:45pm Police attended and noted there were no patrons at the premises. Police engaged with manager Daniel White who advised that the restaurant was utilising their liquor licence for the first time. A number of breaches were identified during an inspection and were dealt with by the attending officers.
3. A further complaint was received by Police at 9:50pm on Thursday 7 May 2015. On arrival officers identified approximately five female patrons who had exited the premises and were standing outside talking for about 10 minutes. Police made an assessment that the noise from these patrons was of a moderate level, although may have been excessive to neighbouring residents. Police observed that the bi-fold doors were closed and restaurant staff were packing up tables and chairs. Two patrons were seen to finish their beverages and leave the restaurant at approximately 10:10 pm.
4. During this inspection Police made arrangements to conduct a meeting with the business proprietor to work through the noise complaint.

5. On Wednesday 13 May 2015 Harbourside LAC Licensing Police attended the restaurant and engaged with the licensee in respect to the conditions under development application 160/14 and the disturbance complaint. Police also questioned the licensee concerning his understanding of 'primary purpose' in respect to the sale and supply of liquor.
6. Police believe that the main contributing factor to the noise can be attributed to patrons exiting the premises. This observation was communicated to the licensee who advised that he had advised staff on the matter and erected signage for patrons to observe when leaving the premises.

Submission from Mr John Culina, licensee, Fitzroy Food Co, Kirribilli, no date received 2 June 2015.

1. The licensee advised of attending a meeting with Mr Brendan Smith from Harbourside Local Area Command in relation to the complaint and some signage issues. A summary of the submission is as follows:
 - The continuing complaints from the complainant over the years have made him a familiar figure with council and the licensing Police.
 - That neighbours may have been disturbed by the five females, who left the premises on 7 May 2015, however he is of the belief that the premises conducted business in an appropriate manner.
 - The complainant continues to dictate when our doors should be closed. The complainant provided an acoustic report that is 8 years old and before many of the businesses opened in this location.
 - An acoustic consultant was engaged in relation to a request by the council. The council agreed on the hours of operation and the number of patrons.
 - The approved trading times have been followed since the premises opened. The use of the outdoor terrace ceases at 9:00 pm with the closure of doors at 10:00 pm as per the requirements of the development application.
 - The finalised amendments to the development application give the following restrictions:
 - i. Opening hours: 7:00am-10:00pm, 7 days per week
 - ii. Outdoor dining: 7:00am-10pm, 7 days per week
 - iii. Doors: to be closed by 10:00pm, ground floor and first floor.
 - iv. Patron number: 83
 - In an effort to minimise any noise complaints the licensee and staff remain vigilant ensuring patrons depart from the premises in a respectful manner. Patrons are not allowed to use the outdoor balcony areas with these doors remaining closed in the evening.
 - There is more noise coming from the music in the convenience store than our premises. The street is full of people coming and going to many venues and simply just travelling through Kirribilli. We operate as a restaurant café.

Acoustic Report prepared by Wilkinson Murray Pty Limited, February 2014 received 2 June 2015.

Outcome of this report detailed in this decision under ***Summary and Conclusion***.

Email received from Senior Constable Bradley Duke, Licensing, Habbourside Local Area Command dated 6 June 2015.

1. In response to the submission provided by the licensee, Senior Constable Duke prepared an email supporting the contents of the licensee's submission. The email is summarised below:
2. Senior Constable Duke indicated that a section 96 application to council was made by the licensee and determination was made on 25 May 2015.
3. A number of controls are in place and these controls should address noise concerns ensuring that the premises does not have any undue impact upon the neighbouring residents.

Submission received from the complainant in response to the licensee's and Senior Constable Aaron Melnyk submissions dated 15 June 2015.

The complainant requests that noise testing should be carried out when the premises is operating at capacity (83) and fully open to the street. Below is a summary of the complainant's response to the licensee's submission.

- The complainant did not make any complaints whilst the premises was trading as Bungalow Thai as its operation did not impact the amenity of his residence.
- A complaint regarding the five ladies leaving the premises on Thursday 7 May 2015 was never lodged. The complaint was originally lodged in relation to noise generated by the 90 (83) patrons of the premises. It is meaningless to suggest that there is any differentiation between the noise generated when patrons are on the premises or leaving as the premises are entirely open to the street.
- It is indisputable that the impact of 90 (83) patrons when the premises is at capacity would have a massive detrimental impact to the neighbourhood amenity.
- When speaking to the licensee regarding a disturbance complaint on Friday 8 May 2015 his very words were that it was *"hard to stop patrons from making noise"*.
- The noise test carried out by Wilkinson Murray (report No 14275-A) is irrelevant as it presents an estimate of the premises operating at full capacity.
- All doors are open during summer. They only operate with the upstairs doors closed when the weather is cold.
- Many of the immediate facilities adjacent and surrounding our property such as residential, a church, childcare, two schools, a convenience store and neighbourhood centre have no impact on our amenity.

In relation to the submission provided by Senior Constable Melnyk, the complainant provides the following response:

- We note that Police attended the premises on only one occasion (times and dates not specified)

Response from the complainant dated 15 June 2015 and email dated 16 June 2015 in response to the licensee and NSW Police submission

1. On 15 June 2015 the complainant provided a response to the licensee and NSW Police submissions.
2. The complainant advised that the development application does not require the premises to be enclosed and that the premises can continue to operate fully open, directly opposite the residence.
3. The complainant requests that a full noise test be carried out when the premises is fully operational as they are not able to live in their residence if the premises operates at capacity.

Observations at the restaurant by Inspectors John Coady and Karen Wilkinson on 20 September 2015.

1. At approximately 7:00pm on Sunday 20 September 2015 Inspectors John Coady and Karen Wilkinson conducted observations at the restaurant. The following information was obtained:
 - There were 10 or so patrons consuming a meal on the footway outside of the restaurant. The front double doors were open with an unidentified number of patrons inside. The restaurant was not at capacity.
 - Inspectors crossed the road and stood outside the complainant's residence and could see that the upstairs balcony doors were open however no patrons were observed using the dining facilities upstairs.
 - An adjoining restaurant was open as well as a pizza and seafood restaurant. Outdoor seating facilities were available at some of these other establishments.
 - Noise was not undue or offensive at the time of observations. It was noted that a continuous number of vehicles and pedestrians were utilising Fitzroy Street during the observation period.

Email from Inspector Karen Wilkinson to the complainant and response dated 2 October 2015.

1. On Friday 2 October 2015 Inspector Karen Wilkinson emailed the complainant to provide follow up information on a proposed meeting scheduled with the licensee. Inspector Wilkinson also made a request to the complainant to provide any updates in relation to noise disturbance that he may have experienced in the previous months and since last correspondence.
2. The complainant provided the following response:
 - In a short period of time we will be moving into the peak period of the premises and unless they are enclosed they will impact our residence to the extent of making it difficult to live here. During the winter months our residence is not impacted to the same extent because there are no patrons on the footpath and the premises are enclosed.
 - A request is made that the premises be enclosed (as the previous premises, Catalina was) and that noise testing be carried out. Alternatively we will be forced to carry out noise testing which is clearly unreasonable given we are not making the noise

File note by Inspector Karen Wilkinson regarding a meeting with the licensee dated 8 October 2015.

1. At 1pm on Thursday 8 October 2015 Inspectors Owen Rogerson and Karen Wilkinson attended a meeting with the licensee at the restaurant. The meeting was the discussion of the operation of the restaurant and any measures the premises had implemented in response to the complaint. Following is a summary from the discussion and observations made:

- On arrival Inspectors walked around Broughton, Fitzroy and Jeffreys Streets and observed a vibrant, social atmosphere with a number of premises open for lunch service. There were a number of premises which also utilised the footpath areas for dining purposes. Further a number of cars and people were seen travelling through Fitzroy and the adjoining streets. The licensee provided the following information:
- The complainant has made several complaints not only about the restaurant but about other undisclosed venues in the vicinity of the restaurant.
- The licensee advised that there had been no contact with the complainant in the past several months (cooler/winter months) resulting in the licensee's belief that the complainant didn't have any concerns about the operation of the restaurant. The licensee also noted that the cooler months did not affect the trade/patron numbers.
- There is no live music entertainment at the restaurant with the licensee preferring the use of minimal background music (the style and volume level of the music which was being played during the meeting was not loud or deemed to be excessive or offensive). Music noise was not audible outside of the restaurant.
- Some functions are held at the premises with the patron capacity being at 83.
- The convenience shop next door to the restaurant plays louder music than the restaurant (this was also observed by the Inspectors).
- The licensee alleged that SBK, a small bar across the street from the restaurant and in close proximity of the complainant's residence, generates more noise than the restaurant.

Emails from [REDACTED] dated 10 and 13 October 2015 with attached video footage dated 13 October 2015.

1. On Saturday 10 October 2015 [REDACTED] submitted three emails in relation to a function that was being held at the premises. The footage reveals a number of patrons utilising the front outdoor area. Further the footage shows a number of tables set up, dressed in white tablecloths and a number of unidentified bottles being held by patrons. The noise is clearly audible from the footage provided.
2. On the Tuesday 13 October 2015 the complainant emailed some further information concerning the incident provided in the footage mentioned above. The content of the email referring to a number of allegations relevant to breaches of the development application and a further allegation of alcohol service without food.

Email from Inspector Karen Wilkinson to the licensee and response requesting information about alleged disturbance and video footage provided by the complainant

1. On Tuesday 13 October 2015 Inspector Wilkinson advised the licensee of the allegation that a function hosted at the restaurant caused disturbance to the complainant. The footage of the incident was provided to the licensee.
2. The licensee was requested to view the footage provided and present a submission based on the disturbance allegations. The licensee was given a period of seven days to respond.
3. On Monday 19 October 2015 a submission was received by the licensee. A summary of reasons is presented below:
 - The licensee apologised for the inconvenience and did not anticipate that the noise from the patrons would create problems for the neighbours.

- The function was to celebrate a school reunion and consisted of 60 patrons from 6.00 pm-10.00 pm.
- The majority of the patrons were inside for most of the night. There were never more than 20 patrons outside at any time. This was controlled by staff before the licensee and his partner arrived at the restaurant.
- Food (canape function) was being served to all patrons in all areas but mainly inside. Most of the patrons stood up but there was ample seating available both upstairs and downstairs.
- Staff made sure that none of the patrons occupied the footpath area and only remained within the licensed area.
- People were able to pass the premises unhindered.
- At 7:00 pm one of the managers advised the licensee that Police attended due to a complaint that had been made.
- The licensee spoke to one of the attending officers who advised that she didn't believe there was any substance to the complaint based on her observations.
- Patrons were asked to be quiet after this complaint was received and were moved inside the premises by 9:00 pm.
- The licensee made observations from outside the complainant's house after 9.00 pm and no noise could be heard. By 10:00 pm all the patrons had left the premises with staff ensuring it was done as quietly as possible.
- The licensee states that the patrons were all well behaved except for the constant chatter.
- The licensee stated they will be more careful in the future.

Observations of the premises by Inspector Karen Wilkinson on 12 December 2015.

1. On Saturday 12 December 2015 Inspectors Leonie Gibson and Karen Wilkinson attended the restaurant and undertook covert observations. The following observations were recorded.
 - Observations were made between 7:10 pm and 7:30 pm. The weather was cool and slightly overcast. Fitzroy and Broughton Streets were bustling with people and vehicles and it was observed that Christmas Carols were being hosted in Bradfield Park.
 - Patrons were observed dining in the outdoor facilities at Kirribilli's Seafood, Small Bar & Kitchen, Bangkok Sidewalk, Bacino Espresso and upstairs at the Street Market (this restaurant has external plastic blinds).
 - The Kirribilli Neighbourhood Centre, situated two doors down from the complainant's residence was conducting an event and it was noted that the noise emissions from this establishment clearly exceeded any noise emissions from the restaurant. Noise emissions were also clearly audible from the Small Bar and Kitchen.
 - There were three parties dining outside the restaurant, one being a family with children. The doors on both levels were open and patrons were observed dining in the downstairs area.
 - People were frequently seen walking past the restaurant as well as up and down the street. Inspectors determined that the noise levels was a combination of all emissions from the mentioned restaurants and consisted of chatter and dining related noise.
 - There was no obvious music or entertainment noise from any of the other establishments including the restaurant.

Email from Inspector Karen Wilkinson to the licensee regarding further acoustic tests dated 10 May 2016.

1. On Tuesday 10 May 2016 Inspector Karen Wilkinson emailed the licensee in relation to the further acoustic testing requirement located on the amended Development Application D160/14.
2. A request was made for the licensee to advise if a further acoustic test had been conducted within the 60 day period of the commencement of the restaurant's operation.
3. On Tuesday 17 May 2016 Mr Glynn Pedlar, Executive Chef of the restaurant advised that no further acoustic testing had been conducted as per the condition outlined in the development consent and enquiries would be made with the Council to gauge whether or not testing would still need to take place.

Email to the complainant and response dated 12 and 13 May 2016.

1. On Thursday 12 May 2016 Inspector Karen Wilkinson emailed the complainant to request an update concerning whether any disturbance had been experienced in the past few months. On Friday 13 May 2016 the complainant responded:
 - *'The disturbance is described in our correspondence to OLGR'*