



DOC17/064230

FILE NO: A15/0006591

COMPLAINANT: [REDACTED]

LICENSED PREMISES: Gracelands Events - LIQO600400752

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 Industry, in relation to the complaint made in respect to Gracelands Events (the premises) have decided to impose three conditions on the liquor licence:

1. LA10 noise condition
2. Installation and use of a noise limiter to control all amplified entertainment at the premises
3. Outdoor area to the rear of the premises to be closed to all patrons at 10:00pm.

The details of the proposed conditions, including the dates in which they become effective, are outlined in Annexure 1.

REASONS FOR DECISION

Legislative framework

1. Section 79 of the Act provides that a prescribed person may complain to the Secretary, that the quiet and good order of the neighbourhood of the licensed premises is being

unduly disturbed because of the manner in which the business of the licensed premises is conducted, or the behaviour of persons after they leave the licensed premises (including, but not limited to, the incidence of anti-social behaviour or alcohol-related violence).

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

The Complaint

5. On 17 November 2015, [REDACTED] [REDACTED] lodged a complaint in relation to the premises, alleging undue disturbance following a change in management at the premises. The complainant lodged the complaint as a resident authorised by three other residents.
6. The complainant alleged disturbance is caused by amplified music, a PA system used by the premises during functions and patron noise both inside and outside the premises, which can be heard in residents' homes.
7. The complainant alleged the new owners changed the premises back garden into a 'beer garden' where food and drink are served to patrons.

8. Disturbance is caused by amplified sound escaping from the premises due to the back doors regularly being left open during events, made worse by the apparent positioning of the stage / entertainment area, close to the back doors.
9. Noise abatement material was not installed as part of renovations to the premises.
10. Between November 2015 and April 2017, various submissions were lodged by all parties. A list of the material is before the delegate of the Secretary is set out in Annexure 2.

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

11. The Act requires that the Secretary have regard to the following statutory considerations.
12. *The order of occupancy between the licensed premises and the complainant* – the licensed premises has operated at its present site for over 35 years and predates the complainant's occupation of the residence. This fact is not in dispute and I consider the order of occupancy is in favour of the premises.
13. *Any changes in the licensed premises and the premises occupied by the complainant, including structural changes to the premises* – following a change in licensee in January 2015, the premises underwent significant renovation. The back garden was cleared of trees and shrubs and is now a paved, grass area containing dining chairs and seating for patrons, with the doors of the main room of the premises regularly opened out on to the backyard. The complainant also alleges that entertainment (live bands, etc) at weddings was previously positioned at the front of the venue, closer to the street – however it is now positioned towards the rear of the premises near the doors facing the complainant's residence.
14. *Any changes in the activities conducted on the licensed premises over a period of time* – the premises was a wedding and events centre for over 20 years prior to the change in ownership. Since the change in ownership, the complainant alleges the premises now hosts a more diverse range of events over weekends, and the premises garden has transformed into a 'beer garden'. The complainant states that amplified entertainment is used in the garden and wedding guests are allowed full access to the outdoor area during wedding ceremonies and receptions. The licensee agrees that they host events other than weddings at the premises, including 'pop up restaurant nights' and live music

nights, however claims that these events are not being held as frequently as the complainant alleges.

Other Considerations

Undue disturbance

15. I am satisfied the material before me is sufficient to support a finding the premises has at times, caused undue disturbance to the neighbourhood. It is likely that disturbance has increased since the change in owners, both as a result of the renovations undertaken, and the frequency and type of functions held at the venue. These changes have not been accompanied by appropriate sound proofing and noise management procedures to control the increase in disturbance. In making this finding, I have balanced the submissions made by the licensee, the complainant, NSW Police and Council.
16. The premises is located in close proximity to the complainant's residence, and the backyard of the premises shares a fence with the complainant's backyard. The front of the premises faces Forresters Beach Road, which is a main street and contains a number of shops and other business.
17. Since the initiation of this matter, L&GNSW has received regular correspondence from the complainant about disturbance from the premises. Some correspondence has been accompanied by sound and video recordings, primarily taken outside in the complainant's backyard. The complainant alleges disturbance is caused by a number of factors, including:
 - a) loud, amplified music and heavy bass beats
 - b) patron noise from the outdoor area at the rear of the premises and disorderly patron behaviour
 - c) glass doors installed at the premises at the rear of the premises are often left open, allowing noise to escape. Furthermore, the doors are not adequate in blocking sound when they are closed
 - d) lack of any noise barriers being installed in rear outdoor area following clearing of the back garden, and
 - e) amplified music or sound in the outdoor area at the rear of the premises.

18. Council's submission identified three complaints received about the premises between 3 10 January 2015 and 3 February 2016, regarding the new activities being offered at the premises and the change in the back garden layout, which had allegedly been constructed without a noise barrier.
19. NSW Police submitted they were not aware of any major issues regarding disturbance at the venue.
20. The licensee engaged PKA Acoustic Consulting to conduct an acoustic test of the premises compliance with the LA10 noise condition on Friday, 11 December 2015. The test was carried out at 10:00pm, during a function.
21. Following the test, an acoustic report was provided to L&GNSW. The report found that the premises did not comply with the LA10 prior to midnight, with exceedances being anywhere between 9dB to 18dB over the noise criteria.
22. The consultant observed that exceedance could be due to a combination of factors, including:
 - a) low background noise level due to the suburban surroundings
 - b) close proximity of the complainant's dwelling to the commercial portion of Forresters Beach Road
 - c) poor performing external glazed doors and glazed façade of the premises
 - d) loud pre-recorded music playing in the function room
 - e) reflective surfaces within the function room causing sound to be amplified
 - f) there was approximately ten patrons outside in the backyard at the time of the test and while they were audible at the complainant's boundary, they were not the dominant noise source
 - g) the use of the outdoor courtyard past 10:00pm would result in inappropriate noise impacts.
23. One consistent observation made by the acoustic consultant is that due to environmental factors, it would be difficult for the licensee to achieve strict compliance with the LA10, especially in relation to outdoor ceremonies.
24. The consultant made a number of recommendations to manage disturbance caused by the venue, including:
 - a) installing a noise limiter, calibrated by an acoustic consultant

- b) installing absorptive treatment to the ceiling of the internal function room space as well as the long wall behind the stage with a minimum 70% coverage with absorptive material that achieves a minimum noise reduction coefficient of 0.80
 - c) upgrading the existing double glazed doors leading to the courtyard to expertly tested sound insulated doors that open and close automatically to limit the time for noise escaping
 - d) restricting use of the outdoor courtyard area to daytime / evening hours and closing the courtyard to all patrons from 10:00pm onwards.
25. While a certain level of disturbance is expected due to the nature of the premises operation as a functions venue, there is evidence to suggest the disturbance is excessive and unwarranted in the context of the proximity of the complainant's residence and the changes made to the layout of the premises, including the rear outdoor area, which appear to have been undertaken without adequate assessment of increased noise and implementation of noise mitigation strategies.

Action taken to mitigate disturbance

26. In considering whether to impose conditions on the liquor licence, I have balanced the submissions of all parties, having specific regard to any action taken by the licensee in response to the complaint and the effectiveness of any measures that have been implemented to address disturbance.
27. In response to the complaint, the licensee submitted that the new venue is essentially a re-brand of the existing events venue, Manon's House, which was in operation for more than 20 years. Manon's House frequently used the backyard area for wedding ceremonies and events, and the current operation is no different. The licensee suspects that now the business has improved and events are happening more frequently this has resulted in the complaint.
28. The licensee agreed that the backyard area had been cleared of overgrowth and decay, however rejected the complainant's submission that the area had been changed into a 'beer garden'.
29. Between 8 December 2015 and 28 November 2016, the licensee advised the following measures had been implemented to control disturbance:
- a) staff instructed not to empty rubbish into the recycling bin after 10:00pm
 - b) more trees and foliage planted in the backyard to provide a sound barrier and greater privacy

- c) all music to cease by 11:00pm, bar closes at 11:30pm and all patrons vacate premises by 12:00am
 - d) cancelled live music sessions on Sundays
 - e) licensee present at all times when a wedding or function is taking place to monitor patrons and disturbance
 - f) no patron access to the back yard area after 10:00pm and back doors locked at this time
 - g) installation of signage, including 'quiet please' signs in the rear garden
 - h) acoustic panelling installed in the main room, including sound proof ceiling panels
 - i) sound proof, automatic doors installed to the rear outdoor area
 - j) installation of double glazed glass walls to replace windows facing rear outdoor area
 - k) relocation of the stage to a wall which is further away from the rear glazed wall
 - l) installation of noise limiter calibrated by an acoustic consultant.
30. The licensee advised they had invited the complainant to the venue to discuss the issues with them, however the offer was declined. Further, the licensee had sent correspondence to the complainant to inform them of proposed changes to the venue to address disturbance.
31. Following the completion of the above measures, the licensee again engaged PKA Acoustic Consulting to conduct an acoustic test of the premises compliance with the LA10 noise condition. The test was carried out on Saturday, 12 November 2016, during a wedding function when a live band was playing.
32. Following the test, an acoustic report was provided to L&GNSW. The report found that the venue now achieved compliance with the LA10 prior to midnight.
33. On Saturday 19 November 2016, L&GNSW Inspectors attended two of the complainant's residences to conduct observations in relation to disturbance from the venue. Inspectors were in attendance at the residences between 5:45pm and 6:30pm, at which time a wedding reception was underway at the venue.
34. Inspectors observed some patron noise and music was audible within the residence but at a very low level. The disturbance was occasionally punctuated by bursts of patron noise.

35. Later the same evening, L&GNSW Inspectors conducted an inspection of the premises, where they observed a live, four piece band playing to a wedding reception of approximately 50 patrons.
36. At 7:40pm, Inspectors returned to the complainant's residence to determine if any further noise issues had arisen. Inspectors were advised that the doors were closed and that there did not seem to be any further issues at the time. Inspectors observed noise levels as minimal to nil.
37. Since the initiation of this matter, L&GNSW has received regular correspondence from the complainant about disturbance from the venue. The complainant concedes that while the changes made have had a positive impact, instances of undue disturbance continue.
38. Specifically, the complainant notes that when the doors are closed the disturbance is significantly reduced, although disturbance from patrons in the backyard continues to be an issue, even when the doors are closed. While the complainant acknowledges the positive impact of the changes made by the venue to date, they are seeking a 9:00pm closure of the rear outdoor area of the premises as a means of resolving the complaint.

Findings and conclusion

39. I have considered the submissions of the complainant, licensee, Police and Council. I have also had regard to the particular context in which the venue operates. In deciding whether to impose conditions on the licence relating to disturbance, I have considered the following points.
40. I have taken the statutory considerations into account and acknowledge the order of occupancy is in favour of the venue. However, the venue has undergone substantial change, principally in relation to its layout. The complainant notes a change in business model at the venue to include other events such as live concerts and outdoor cinema sessions. I consider that while the business model may have changed to a degree, the primary purpose of the venue remains as a function centre, catering mostly to weddings. Following the disturbance complaint, I note the licensee made an effort to adjust their approach to these miscellaneous events in an effort to address the complainant's concerns.
41. It is apparent that the change in ownership and marketing strategy has resulted in the venue becoming more popular, and weddings are held more frequently at the venue, which naturally increases frequency of disturbance. The complainant has asked that the

venue change their business model to host indoor events only with limited garden access. I do not agree that this is an appropriate response in this instance. The venue has always been a function centre and presumably the complainant moved in to their residence with this understanding. It is unreasonable to impose an onerous condition on the licensee on the basis their business has increased or is doing better than before. I am satisfied the licensee has adjusted their business strategy appropriately to manage disturbance.

42. I accept that disturbance generated as a result of structural changes to the venue was exacerbated by the fact the renovations did not include installation of adequate noise mitigation measures. This view is supported by the findings and recommendations of the first acoustic report, which clearly demonstrate undue disturbance.
43. I acknowledge the efforts made by the licensee to engage with the complainant and the significant practical measures implemented at the venue to manage disturbance. These improvements have clearly resulted in a more favourable result in the second acoustic test, which indicates the venue has achieved compliance with the LA10 noise criteria.
44. However, the fact remains that the venue operates in extremely close proximity to residential properties. There is clear evidence that when noise is not adequately controlled in this environment, disturbance is certainly undue.
45. There is a need to manage the risk of disturbance escalating to the initial levels experienced again, and in this regard I am satisfied a regulatory response is warranted.
46. I have decided to impose the LA10 noise criteria condition on the venue's liquor licence, as well as a condition for a noise limiter to be installed and used at the premises to control amplified entertainment in the main function room.
47. I also consider it appropriate to impose a requirement for access to the outdoor area to the rear of the premises to be closed to all patrons from 10:00pm onwards.
48. Patron noise from the outdoor area continues to be an ongoing concern for the complainant. They are resolved to ask for a 9:00pm shut down of the back garden to all patrons, submitting that at 9:00pm patrons are less intoxicated, less anti-social and residents have a longer quiet time to relax and sleep without disturbance. Furthermore, the complainant submits this measure will not affect the venue's business as there is no public access or new customers during a wedding and guests will have had many hours outside before the backyard's closure.

49. L&GNSW has pursued a 9:00pm backyard closure time with the licensee, who advised they are reluctant to do this because their garden is a 'major draw card' for clients and a 9:00pm closure would substantially restrict their business.
50. On the material before me, I am not satisfied that imposing a 9:00pm closure time on the licence is reasonable. In making this decision, I have taken into account the significant effort and financial cost sustained by the licensee in addressing the disturbance, and the notable improvement these changes have made. I have also considered the frequency of the disturbance which, by the complainant's own admissions, is primarily on Saturday evenings when a wedding function is booked. The disturbance does not occur every night or all year round, as it tends to happen more during peak wedding season, in the warmer months of the year. Given the relative infrequency of the disturbance, the nature of the venue and the measures implemented to date, I believe a 10:00pm closure time for the rear outdoor area of the premises is appropriate.
51. I consider the conditions imposed to be appropriate safeguards to prevent disturbance as it relates to the liquor licence.

Decision Date: 9 June 2017



Sean Goodchild

Director Compliance Operations

Liquor and Gaming NSW

Delegate of the Secretary of the Department of Industry

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 *7 July 2017* . A \$500 application fee applies. Further information can be obtained from Authority Guideline 2 published at www.liquorandgaming.nsw.gov.au

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

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

Gracelands Events (LIQO600400752)

LA10 Noise Condition

The LA10* noise level emitted from the licensed premises shall not exceed the background noise level in any octave band frequency (centred on 31.5 Hz-8 kHz inclusive) by more than 5dB between 7:00am and midnight at the boundary of any affected residence.

The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in any octave band frequency (centred on 31.5 Hz-8 kHz inclusive) between 12:00 midnight and 7:00am at the boundary of any affected residence.

Notwithstanding compliance with the above, noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 12:00 midnight and 7:00am

** 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.*

Date condition effective: 9 June 2017

Noise limiter

The licensee must ensure a noise limiter is installed to control all amplified entertainment inside the licensed premises. All amplifiers or noise generating equipment operated within the venue must be under the control of the noise limiter that has been calibrated by a qualified acoustic consultant to ensure compliance with the LA10 noise criteria. The noise limiter controller must be contained within a locked container or secure area and is to be only accessible by venue management and qualified acoustic consultants.

Date condition effective: 7 July 2017

Restricted access to rear outdoor area

The outdoor area at the rear of the premises (backyard) is to be closed to all patrons from 10:00pm – 3:00am on all days the venue is in operation. The back doors are to remain closed during this time.

Date condition effective: 9 June 2017

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

1. Section 79 disturbance complaint lodged on 17 November 2015
2. Email from the licensee to complainant dated 1 December 2015
3. Emails from the complainant dated 1 and 8 December 2015
4. Licensee submission dated 9 December 2015
5. Letter from the complainant to the licensee dated 11 December 2015
6. Emails from the complainant dated 12 and 13 December 2015
7. Email from the licensee dated 22 December 2015
8. Email from the licensee dated 14 January 2016
9. Email from the complainant dated 16 February 2016
10. Acoustic report prepared by PKA Acoustic Consulting for the purpose of LA10 noise assessment conducted 11 December 2015, received 19 February 2016
11. Emails from the complainant dated 1 March 2016
12. File note from meeting between L&GNSW staff and the licensee, 10 March 2016
13. Email from the licensee dated 14 March 2016
14. Emails from the complainant dated 17 and 19 March 2016
15. Email from the licensee dated 22 March 2016
16. Email from the complainant dated 24 March 2016
17. Emails from the complainant dated 20 and 24 April 2016
18. Email from the premises owner dated 11 May 2016
19. Emails from the complainant dated 11 and 15 May 2016
20. Emails from the complainant dated 6, 8 and 12 July 2016
21. Email from the premises owner dated 12 July 2016
22. Email from the licensee dated 21 July 2016
23. Emails from the complainant dated 21, 22 and 24 July 2016
24. File note of conversation with the licensee dated 3 August 2016
25. Email from the licensee dated 11 August 2016
26. Email from the complainant dated 18 September 2016
27. File note of conversation with the licensee dated 28 September 2016
28. Email from the complainant dated 30 September 2016
29. Emails from the complainant dated 2, 6, 7, 9, 11, 14 and 18 October 2016
30. Email from the licensee dated 20 October 2016
31. Emails from the complainant dated 20 and 25 October 2016
32. Submission from LJ Hackett, Building Surveyor, Central Coast Council dated 31 October 2016
33. Correspondence from complainant sent by post, received 1 November 2016
34. Email from the licensee dated 3 November 2016

35. Email from the premises owner dated 3 November 2016
36. Emails from the complainant dated 3, 4, 6 and 7 November 2016
37. File note of conversation with premises owner dated 8 November 2016
38. Email from the premises owner dated 14 November 2016
39. Emails from the complainant dated 14 November 2016
40. Submission from Sergeant Jonathon Pearce, Brisbane Waters LAC dated 17 November 2016
41. Email from the complainant dated 17 November 2016
42. Emails from the premises owner dated 17 and 18 November 2016
43. File note by L&GNSW staff from observations of the premises 19 November 2016
44. Emails from the complainant dated 19 and 20 November 2016
45. Email from the premises owner dated 21 November 2016
46. Acoustic report prepared by PKA Acoustic Consulting for the purpose of LA10 noise assessment conducted 12 November 2016, received 28 November 2016
47. Emails from the complainant dated 28 November 2016
48. Email from the premises owner dated 30 November 2016
49. Email from the complainant dated 30 November 2016
50. Email from the licensee dated 1 December 2016
51. Emails from the complainant dated 5 and 9 December 2016
52. Submission from the complainant dated 21 December 2016
53. Emails from the complainant dated 21, 22 and 23 December 2016
54. Email from the premises owner dated 9 January 2017
55. Submission from the premises owner dated 20 January 2017
56. Emails from the complainant dated 8 and 24 February 2017
57. Emails from the complainant dated 12 and 20 March 2017
58. Emails from the complainant dated 8 and 17 April 2017.