



DOC16/079224

**FILE NO:** A15/0006652

**COMPLAINANT:**



**LICENSED PREMISES:** Lemnian Association of NSW Maroula Club Ltd -  
LIQC300200493

**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 Lemnian Association of NSW Maroula Club Ltd (the club) have decided to impose five 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. Deployment of security staff in the car park to monitor and control disturbance caused by patrons entering and leaving the premises
4. Restriction on the use of drum entertainment 'zaffa' groups
5. Doors and windows of the venue to be closed at all times during a function at the premises.

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

## **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 1 December 2015, [REDACTED] the complainant, of [REDACTED] [REDACTED] lodged a complaint in relation to the club, alleging undue disturbance following the redevelopment and extension of the club into a function centre. The complainant lodged the complaint as a resident authorised by ten other residents.
6. The complainant alleged disturbance is caused by constant drumming and other music coming from the club that can be heard in residents' homes.
7. The complainant also alleged noise abatement material was not installed as part of renovations to the club and when they contact the club to complain, the club ignores requests to turn the music down.
8. Between December 2015 and September 2016, 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:**

9. The Act requires that the Secretary have regard to the following statutory considerations.
10. *The order of occupancy between the licensed premises and the complainant* – The licensed premises has operated at its present site for 32 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 club.

11. *Any changes in the licensed premises and the premises occupied by the complainant, including structural changes to the premises* – Over the last three years, the club has undergone significant change. In November 2013, the club lodged a development application (DA-518/2013) with Canterbury Council, for alterations and additions to the existing club, including upgrading its disability, fire and carpark facilities. DA-518/2013 was approved. The original development application was followed by two subsequent applications, to amend the layout and design of the approved alterations and additions to the club. Before the subsequent applications were approved, a Council site inspection revealed works undertaken by the club were 'vastly different' to those approved under DA-518/2013. Council advised that unauthorised work to the premises resulted in a change in the permitted use, which does not include operating as a function centre. This made the premises a prohibited development in the relevant R3 Medium Density Residential zoning. Council advised the club withdraw its application and lodge a new one (DA-396/2015), which it subsequently did. The outcome of Council's assessment of the application is considered in more detail below.
12. *Any changes in the activities conducted on the licensed premises over a period of time* – The complainant alleges within the last 12 months, activities at the club have changed from those of a registered club to purely functions focused. Both Police and Council confirmed following renovations, the club went from being a medium-sized function hall utilised by members for occasional functions, to a full-time function centre that regularly hosts large events, (mainly weddings) at a capacity of between 300-600 people.

## **Other Considerations**

### *Undue disturbance*

13. I am satisfied the material before me is sufficient to support a finding the club has at times, caused undue disturbance to the neighbourhood. Particularly this disturbance is attributable to functions being held at the club and includes disturbance from amplified music, non-amplified drums and patrons leaving the venue. Disturbance has increased significantly since the club was extended to accommodate a change in its business model but the change in operation has 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 the Council.
14. The club is close to three residential streets, being Albert Street to the north of the club, Cecilia Street to the west and Adelaide Street to the south. The area is classified by council as Zone R3, medium density residential zone.
15. NSW Police submit that local residents started to complain about disturbance after the club re-opened following renovations in 2014. Police had also been contacted by Council about a petition against the club signed by residents in relation to a number of concerns, including music playing beyond 2:00 am.
16. Police advised they met with the authorised complainant on 16 December 2015, to discuss disturbance from the club. The following day, Police attended the complainant's unit block to speak with other residents about the disturbance. Residents identified the following sources of noise from the premises:

- a) music
  - b) exhaust fans
  - c) people in the car park
  - d) loud drumming (mainly on Fridays, Saturdays and Sundays).
17. On 12 March 2016, L&GNSW Inspectors conducted a covert inspection of the club and observed noise and music coming from the club in front of complainants' residences as well as outside in their backyards. Staff from the club could also be clearly heard talking outside in the carpark.
18. Council's submission identified 17 complaints received about the club between December 2014 and December 2015, relating to noise and its use as a function centre.
19. Council also provided a history of action taken against the club in relation to the unauthorised work and prohibited use as a function centre after DA-518/2013 was not approved. Action taken by Council included issuing a notice of intention to cease use as the club did not have an occupation certificate, issuing (and later re-issuing) an order to cease use immediately, and commencing legal action against the club. Regardless of this action, the club has continued to operate in the same fashion.
20. Council advised the club to withdraw application DA-518/2013 and lodge a new application, which subsequently became DA-396/2015. Council advised L&GNSW they would engage an independent consultant to assess DA-396/2015.
21. The independent assessment has been completed and the final report considered by the Council's Independent Hearing and Assessment Panel. The report recommends DA-396/2015 be refused on several grounds, including:
- a) The proposed development does not demonstrate the club will remain as a registered club and retain the benefit of its Existing Use Rights
  - b) The proposed development will likely have adverse environmental impacts on the amenity of the surrounding residential neighbourhood due to unacceptable noise levels generated by patrons attending events at the club and inadequate on-site car parking
  - c) The site is not suitable for the development under s79C(1)(c) of the *Environmental Planning and Assessment Act 1979*
  - d) The proposed development is not in the public interest.
22. In relation to disturbance, the report noted the club is advertised as a wedding venue that can cater for 300-600 guests seven days a week. The noise generated, particularly by patrons entering and leaving the premises will have an unacceptable impact on surrounding residences.
23. At a meeting of the Independent Hearing and Assessment Panel on 19 September 2016, the Panel decided that DA-396/2015 be refused on the basis that the building work related to the lower ground floor of the existing registered club is unauthorised.
24. In response to the complaint, the licensee submitted the club had been making efforts to address disturbance with residents and had already resolved a number of issues identified by the complainant. The licensee alleged after being in a state of decline for several years, the complainant is dissatisfied the club has been revived and the residents were colluding to shut the club down.

25. Whilst a certain level of disturbance is expected due to the operation of a registered club, the disturbance in this case is excessive and unwarranted in the context of a registered club operating in a residential neighbourhood and has been exacerbated due to a lack of adequate management and mitigation strategies to address the risks associated with the operation of the club's function room. It is common for registered clubs to offer function facilities, in this case it appears to be a disproportionately significant part of the club's business. The scale of the operation is likely to result in significant revenue for the club, but there does not appear to have been sufficient investment in disturbance mitigation measures commensurate with the increase in function activities.

*Action taken to mitigate disturbance*

26. In considering whether to impose conditions on the club's 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 the disturbance.

27. In contact with Police on 21 December 2015, the licensee advised she had met with the complainants about their concerns. One concern raised was the level of bass. The licensee advised four speakers were installed and three of these had now been disconnected.

28. In a submission to L&GNSW dated 14 January 2016, the licensee advised they had been proactively trying to resolve issues with the residents, including holding meetings with them to discuss and resolve their concerns where possible. The licensee submitted a number of issues had been resolved, including changing the times staff emptied bottles into bins outside and installing an insulation barrier around the exhaust fan.

29. On 2 February 2016, the licensee provided L&GNSW with a copy of an acoustic report from Noise and Sound Services following an acoustic test conducted at the club on 16 January 2016. The test focused on checking LA10 compliance in relation to use of the PA system. The test found the noise levels exceeded the LA10 by up to 6dB and recommended closure of all external doors during the operation of the PA system and installation of a noise limiter. The test did not appear to address patron noise or noise generated from drum entertainment groups.

30. On 9 February 2016, L&GNSW Inspectors attended a meeting at Canterbury Leagues Club to address the disturbance complaint. In total, 16 people attended, including residents, Council and Police. An amicable agreement could not be reached, however the licensee made the following voluntary undertakings:

- a) installation of a noise limiter to be fitted and calibrated by an acoustic consultant
- b) stopping the use of non-amplified drums and outdoor music
- c) closure of doors and windows when amplified music is playing
- d) licensee or nominated person to be on the premises during functions.

31. The licensee engaged Noise and Sound Services to conduct a sound insulation assessment of the club, which took place on 29 March 2016. The assessment identified a number of noise leaks in the building would contribute to the disturbance of nearby residences. Recommendations were made to control disturbance relating to doors, the roof/ceiling, walls, louvres and the implementation of a noise management program.

32. On 16 April 2016, L&GNSW Inspectors attended the complainant's residence to conduct observations in relation to disturbance from the club. Inspectors observed noise from staff talking in the car park, and glass bottles being emptied into a large bin behind the club. After 9:00 pm, Inspectors heard music from the club, which continued until the Inspectors left the residence approximately an hour later. Inspectors assessed the noise as a constant low frequency bass.
33. Between 15 March 2016 and 15 May 2016, the licensee advised the following measures had been implemented to control disturbance:
- a) installation of 'please leave quietly' signs
  - b) installation and calibration of a noise limiter that applies to all amplified music in the venue and is centrally controlled
  - c) installation of three new doors, door jams and an air-lock system
  - d) advice provided to all drum entertainment groups, they are not allowed to practice outside the club or in the club foyer and were limited to playing for a maximum period of 15 minutes only in the main ballroom and never after 8:00 pm
  - e) all entertainment performers now sign the 'entertainment register', to acknowledge they have read the rules and will adhere to them
  - f) deployment of a person to patrol the car park to make sure entertainers do not use their instruments outside
  - g) insulation added to ceiling
  - h) installation of a 'Pyrotek Wavebar' sound absorption material the west wall
  - i) removal of existing roof sheets, replaced with 'Wavebar' 8kg/m<sup>2</sup> sound absorption sheets.
34. On 15 May 2016, L&GNSW Inspectors conducted an inspection of the premises and nearby residences. The inspection was organised to coincide with the acoustic test carried out by Noise and Sound Services to test the club's compliance with the LA10 noise condition.
35. The club was hosting a wedding on the night and Inspectors were provided a run sheet of the entertainment, which included a live band, DJ and drum entertainment group. While outside the complainant's residence, Inspectors observed a low bass sound and noise from the exhaust fan. Acoustic testing was conducted inside and outside the complainant's residence when the live band was playing, between 9:45pm – 10:00pm, however not when the full drum entertainment group complement was playing.
36. Following the test, an acoustic report was provided to L&GNSW. The report found there was no audible or measurable noise levels from the club inside the complainant's residence. In the external area at the rear of the property it was found the noise levels exceeded the LA10 by 5dB.
37. Since the acoustic test, the licensee advised additional noise abatement measures had been installed, including:
- a) upgrade of the existing sound system from analogue to digital to allow sound to travel to certain distances, certain frequencies to be toned down during operation and pre-set mixer scenes for entertainers so the club has total control over sound levels at all times

- b) re-positioning of the rear/west facing speakers to the dance floor ceiling facing down onto the dance floor
  - c) decreased frequency on all speakers.
38. The licensee also advised the club planned to replace and upgrade a damaged rear fire exit door to an 82mm metal clad door with sound proofing core.
39. Since the initiation of this matter, L&GNSW and Police have received weekly correspondence and contact from the complainant about disturbance from the club. Regardless of the changes made, the complainant has advised excessive noise from the club continues and in some instances is 'worse than ever'.
40. The complainant has provided numerous video and sound recordings from various nights. In some recordings, the noise from patrons in the car park is clearly audible or a faint drumming sound can be heard. The majority of recordings appear to have been recorded outside the complainant's home in the yard.
41. Similarly, the licensee has provided L&GNSW with video recordings on busy nights, which have demonstrated the difference in noise from inside the premises to outside – with the noise inside the premises being extremely loud compared to outside in the carpark, where noise from inside the premises is less audible.

### **Findings and conclusion**

42. I have considered the submissions of the complainant, licensee, Police and the Council. I have also had regard to the particular context in which the club operates (including statutory considerations mentioned above). In deciding whether to impose conditions on the licence relating to disturbance, I have considered the following points.
43. I have taken the statutory considerations into account and acknowledge the order of occupancy is in favour of the club. However, the club has undergone significant change, both in structure and business model, resulting in a significant increase in patron capacity and frequency of functions at the club.
44. Disturbance generated as a result of these changes was exacerbated by the fact renovations to the club did not include installation of adequate noise mitigation measures. This view is supported by the findings and recommendations from the sound insulation assessment, and observations made by L&GNSW Inspectors.
45. I have taken into account the efforts made by the club to engage with the complainant and the practical measures they have implemented to manage disturbance. It is likely these improvements contributed to a more favourable result in the last acoustic test, which was conducted during a wedding and live amplified music, although the noise still exceeded the LA10 noise criteria by 5dB outside the complainant's residence.
46. I have given weight to the Council submissions, in particular the fact that the extension of the club was unauthorised and they are prohibited from operating as a function centre. I have also been persuaded by the club's history of non-compliance with Council orders.
47. I have noted the findings of the independent assessment report presented to the Council's Independent Hearing and Assessment Panel, which recommended the development application be refused because the changes made to the club have not taken into consideration the amenity of the surrounding neighbourhood.
48. After considering the material before me, I am satisfied a regulatory response is warranted. I have decided to impose the LA10 noise criteria condition on the club's

liquor licence as well as a condition for a noise limiter to be installed and used at the club to control all amplified entertainment. I also consider it appropriate to impose a requirement for the closure of all doors and windows at the premises during a function and to have a staff member stationed in the car park when a function is in progress to monitor the behaviour and noise from patrons entering and leaving the club.

49. Finally, an ongoing point of contention between complainants and the licensee is the sound generated by the use of live drums at the club, specifically drum entertainment or 'zaffa' drum groups. These groups involve the beating of a large number of drums, usually as the bride and groom enter a wedding reception.
50. Use of drum entertainment groups was considered at the meeting between parties facilitated by L&GNSW on 9 February 2016, where it was acknowledged that non-amplified drum groups generate significant noise, and a voluntary undertaking was given by the licensee to cease use of non-amplified drums while work to manage noise at the club was being completed.
51. Regardless of the undertaking, the licensee continued to allow drum entertainment groups to perform at the club, subject to the following provisions:
  - a) Drum groups only play at the club for 15 minutes
  - b) Drum groups never play after 8:00 pm and thereafter no more than two drummers.
52. L&GNSW have pursued the complainant's concerns about the use of drum entertainment groups with the licensee, who advised they are reluctant to stop the use of these drum groups, because they are an essential element in the cultural wedding practices of their guests.
53. In deciding whether to ban the use of drum entertainment groups at the club, I have considered the situation as a whole. The premise is a registered club with a club liquor licence. Although it has a club functions authorisation, evidence suggests the club is operating almost exclusively as a function centre, regularly hosting weddings for between 300 – 600 patrons.
54. I also note when the last acoustic test was conducted, the full drum component was not playing. Considering noise exceeds the LA10 when drums are not playing, there is a likelihood that non-amplified drum entertainment groups of the variety regularly engaged to perform at club weddings ('zaffa' groups), would exceed the LA10 criteria.
55. I am not persuaded by the licensee's response and their action taken to manage noise generated by drum entertainment groups has been adequate. The lack of an adequate response to better control noise from drum groups, the inability to adhere to voluntary undertaking to cease drum entertainment, and the likelihood that even the asserted self-imposed restrictions on timeframes for drums are not being adhered to has led me to decide to impose a condition to restrict performances by drum entertainment groups at the club so that drum groups can only play at the club for a maximum of 15 minutes, must only play within the club premises when doors and windows are closed and must cease by 8:00 pm. I note that the LA10 condition provides an additional safeguard to limit noise.
56. In the event that undue disturbance continues, then it is open for the drum restriction to be tightened or for drum entertainment to be prohibited all together.
57. I consider the conditions imposed to be appropriate safeguards to prevent disturbance as it relates to the liquor licence. I have decided to give the conditions a future effective



date of 20 October 2016, which should provide the licensee a sufficient period of time to make arrangements to comply with the conditions.

Date of decision: 4 October 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 **1/11/2016**. A \$500 application fee applies. Further information can be obtained from Authority Guideline 2 published at [www.liquorandgaming.justice.nsw.gov.au](http://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.liquorandgamingsw.justice.nsw.gov.au](http://www.liquorandgamingsw.justice.nsw.gov.au)

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

**Lemnian Association of NSW Maroula Club Ltd (LIQC300200493)**

**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: 20 October 2016**

**Noise limiter**

The licensee must ensure a noise limiter is installed to control all amplified entertainment at the licensed premises. All amplifiers or noise generating equipment 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: 20 October 2016**

**Patron management**

At all times when a function is being held at the premises, the licensee must ensure at least one security guard is patrolling the car park. The security guard is responsible for monitoring and controlling disturbance caused by patrons entering and leaving the premises.

**Date condition effective: 20 October 2016**

**Drum entertainment groups**

Drum entertainment groups (for example, 'zaffa' groups) are prohibited from performing at the premises except when they are performing before 8:00 pm, for a period of no longer than 15 minutes.

Drum entertainment groups are prohibited from using their instruments outside the premises at all times.

**Date condition effective: 20 October 2016**

**Closure of doors and windows**

At all times when a function is being held at the premises, all doors and windows are to remain closed and must only be opened to allow for the immediate entry or exit of patrons and staff.

**Date condition effective: 20 October 2016**

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

1. Section 79 noise disturbance complaint lodged on 1 December 2015
2. Further submission from complainant by email dated 10 December 2015
3. Submission from Mr Spiro Stavis, Director City Planning, City of Canterbury Council dated 23 December 2015
4. Submission from Senior Constable Michael Kynezos, Campsie LAC dated 22 December 2015
5. Emails from complainant dated 10 January 2016 and 13 January 2016
6. Submission from licensee dated 14 January 2016
7. Email from complainant dated 18 January 2016
8. Acoustic report prepared by Noise and Sound Services for the purposes of LA10 noise assessment, dated 26 January 2016 and submitted on 2 February 2016
9. Email from complainant dated 8 February 2016
10. File note by L&GNSW staff regarding meeting with parties to the complaint held at Canterbury Leagues Club on 9 February 2016
11. Email from Police dated 18 February 2016
12. Email from complainant dated 20 February 2016
13. Submission from Director City Planning, Canterbury Council dated 23 February 2016
14. Emails from the complainant dated 7, 9 and 10 March 2016
15. Email dated 14 March 2016 from L&GNSW staff to licensee and Police describing observations from L&GNSW inspection conducted 12 March 2016
16. Email from complainant dated 14 March 2016
17. Email from licensee dated 15 March 2016
18. Emails from the complainant dated 2, 3, 4, 5, 9, 10 and 11 April 2016
19. Emails from the licensee dated 10 and 24 April 2016
20. Emails from the complainant dated 30 April 2016
21. Emails from the complainant dated 1 and 2 May 2016
22. Email from the licensee dated 3 May 2016, including copy of acoustic report prepared by Noise and Sound Services for the purpose of a sound insulation assessment of the premises, conducted 29 March 2016
23. File note by L&GNSW staff from observations of the premises 16 April 2016
24. Acoustic report prepared by Noise and Sound Services for the purposes of LA10 noise assessment conducted 15 May 2016, received 31 May 2016
25. Email from the licensee dated 9 June 2016
26. Emails from the complainant dated 4 July 2016
27. File note of phone conversation between L&GNSW staff and licensee, 6 July 2016
28. Email from the complainant dated 8 July 2016
29. Email from licensee dated 9 July 2016
30. Emails from the complainant dated 10, 15, 17 and 18 July 2016
31. File note of phone conversation between L&GNSW staff and Campsie licencing Police, 19 July 2016
32. Email from the licensee dated 19 July 2016
33. Emails from the complainant dated 19 and 20 July 2016
34. File note of phone conversation between L&GNSW staff and Campsie licencing Police, 21 July 2016
35. Emails from the complainant dated 22, 23, and 25 July 2016
36. File note of phone conversation between L&GNSW staff and Canterbury Council, 26 July 2016
37. Emails from the complainant dated 26 and 27 July 2016
38. Email from the licensee dated 27 July 2016
39. Emails from the complainant dated 28, 30, and 31 July 2016; 5, 6, 11, 12, 14, 19, 20, 22, 26 and 27 August 2016; 3, 4, 5, 6, 10, 11, 16, 17, 19 and 20 September 2016
40. Agenda and Minutes from the Canterbury Bankstown Independent Hearing and Assessment Panel, dated 15 August 2016 (available: <http://www.canterbury.nsw.gov.au/Council/Council-Meetings/Meetings-Business-Papers>)
41. Agenda and minutes from the Canterbury Bankstown Independent Hearing and Assessment Panel, dated 19 September 2016 (available: <http://www.canterbury.nsw.gov.au/Council/Council-Meetings/Meetings-Business-Papers>)