



<b>FILE NO:</b>	A16/0007267
<b>COMPLAINANT:</b>	[REDACTED]
<b>LICENSEE:</b>	Giovannino Navarra
<b>LICENSED PREMISES:</b>	Oatlands House Restaurant, Oatlands – LIQO600402666
<b>ISSUES:</b>	Whether the quiet and good order of the neighbourhood of the licensed premises is being unduly disturbed.
<b>LEGISLATION:</b>	<i>Liquor Act 2007</i>

## SECTION 81 DECISION

Under Section 81 of the *Liquor Act 2007* (the Act) I, Sean Goodchild, Director Compliance Operations, Liquor & Gaming NSW (L&GNSW), a delegate of the Secretary, NSW Department of Industry, in relation to the disturbance complaint made against the Oatlands House Restaurant (the venue), have decided to **impose two conditions** on the liquor licence.

The conditions imposed on the liquor licence relate to the following:

1. LA10 noise condition.
2. Installation and use of a noise limiter to control all amplified entertainment at the licensed premises. The noise limiter must be set by a qualified acoustic engineer in order to ensure compliance with the LA10 noise criteria.

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

## REASONS FOR DECISION

### Legislation

1. Section 79 of the Act permits a person to 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(3)(a) 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 15 March 2016, [REDACTED] (the complainant) of [REDACTED] lodged a disturbance complaint under section 79 against the venue. The complainant alleges undue disturbance has been caused by the venue's operations and the behaviour of persons after they leave the premises. Specifically, this disturbance is alleged to be caused by intrusive noise from amplified entertainment and patrons; as well as the anti-social behaviour of patrons after leaving functions. The complainant lodged the complaint as a resident of the neighbourhood authorised by three residents.
6. The complainant submits she has spoken with the venue's representatives on a number of occasions prior to this complaint; however the issues raised were not resolved.
7. Submissions were lodged by all relevant parties, including the licensee and NSW Police. A list of the material that is before the delegate of the Secretary is set out in Annexure B.

## Statutory Considerations

*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 venue 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 venue's liquor licence indicates it has operated from the licensed premises since 30 July 1982, and the complainant has lived in her residence since 1975. I consider the order of occupancy to be in favour of the complainant.
10. *Any change in the licensed premises and the premises occupied by the complainant, including any structural changes to the premises* – the complainant's residence has had structural changes made to the family room and rear deck though there is no information to indicate the nature of these changes. The venue has undergone extensive renovations since 2012 when it changed management. Recently, structural acoustic treatments to the Garden Suite function room at the venue's western corner were completed.
11. *Any changes in the activities conducted on the licensed premises over a period of time* – the venue previously operated as a restaurant with minor function room operations. It now operates as a catered function centre for events including, amongst others, weddings and parties. The function rooms can be set up for live amplified music from bands or DJs. It is noted the Garden suite (also known as the Garden Ballroom) has a patron capacity between 220 and 380 people.

## Other Considerations

12. A person may complain to the Secretary that the quiet and good order of the neighbourhood of licenses 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).

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

13. I have balanced the submissions made on behalf of the venue, the complainant, and NSW Police. Whilst I have considered all the material relevant to the complaint, these written reasons focus on the material that is key to the decision.

*Undue disturbance*

14. I am satisfied the material before me is sufficient to support a finding that the venue has, at times, caused undue disturbance to the neighbourhood. The disturbance has been caused by the venue's operations; primarily noise from amplified entertainment and patrons attending functions at the venue.

15. To consider what amounts to undue disturbance involves considering a broad range of factors that includes the surrounding environment and neighbourhood and the nature of the venue's operations.

16. In this instance, the venue is a large two level complex located within the Oatlands Golf Course; near the Oatlands Golf Club. The venue's licence restricts trading hours between 5:00am and 12:00 midnight Monday to Saturday and 10:00am and 10:00pm on Sunday. There are residences located approximately 80 metres from the venue's north-western corner, approximately 140 metres away on the western side, and approximately 400 metres away at the southern end. The ambient noise, according to the 16 May 2016 acoustic report, is dominated by distant traffic and aircraft-related noise.

17. The complainant submits that since the new owners took over and changed the venue's operations from a restaurant to a function centre there have been constant noise disturbances. The majority of disturbances, it is submitted, occur on Fridays, Saturdays and Sundays in the morning, afternoon and evening. The complainant also submits a complaint was made to NSW Police on 16 January 2016 about loud music which continued until 12:25am the following day. The complainant contacted the venue at 7:30pm and asked the doors be closed due to the disturbance. A staff member indicated the doors were closed, however when the complainant walked to the venue to confirm, she could see the doors remained open. NSW Police corroborate that a complaint was made, as their submission indicates officers attended the premises at 9:04pm and issued a noise abatement direction due to the disturbance.

18. The complainant also submits further instances of disturbance occurred as follows:

- a. 12 June 2016 (Sunday) – Complainant called designated venue number to complain about noise and left a message to be forwarded on.

- b. 18 June 2016 (Saturday) – Complainant called designated venue number to complain about noise from loud music and patrons yelling. A message was left to be forwarded on and the noise continued until 11:15pm.
  - c. 19 June 2016 (Sunday) – Complainant called designated venue number to complain about noise from drums, music and patrons yelling, and that the western side doors were all open. The noise continued until 11:15pm.
19. On 20 June 2016, the licensee's representatives were advised by L&GNSW of further instances of noise disturbance listed above, and that all amplified entertainment and patron noise must not exceed the LA10 noise criteria. A status update for noise mitigation works, as recommended in the 16 May 2016 acoustic report prepared by Acoustic Logic, was also requested. A formal response was not received from the venue representatives until 22 July 2016.
20. With regard to anti-social behaviour, the complainant submits she witnessed individuals, on occasion, vomiting and urinating in front of her home after leaving the premises. The licensee disputes this, stating these persons could have come from other residences or the golf club. As the material does not provide any further information with regard to this allegation, I cannot reasonably determine that disturbance has been caused by persons after having left the premises.
21. NSW Police submit there are no COPS events recorded for disturbance complaints, assaults, breaches of licensing legislation, or street offences against the venue. The NSW Police Computerised Aided Dispatch (CAD) system does record that officers responded to the noise complaint lodged by the complainant on 16 January 2016 and issued a noise abatement order.
22. NSW Police indicate a meeting with the licensee was held on 19 May 2016 to discuss and resolve issues identified by Police regarding the venue's operations. NSW Police submit the licensee agreed to, amongst other measures, enter into a Local Licensing Agreement (LLA) with Rosehill Local Area Command. This agreement referred to a dedicated contact number, entertainment restrictions, announcements to patrons, signage and RSA marshals. Specifically, the LLA also refers to the licensee ensuring noise levels comply with the LA10 noise criteria. I note there is a period of approximately eight months between the licensee agreeing to enter into the LLA and when it was signed on 24 January 2017.

### *Acoustic Reports*

23. The licensee engaged Acoustic Logic to undertake a noise survey and measure the results against the LA10 noise criteria. Acoustic testing occurred on Saturday 7 May 2016 and again between the 9 December and 12 December 2016.
24. The testing on Saturday 7 May 2016 occurred between 8:50pm and 10:15pm, from within the venue and from residential receivers located at Niblick Crescent's most affected boundaries. The final acoustic report, submitted on 16 May 2016, concluded there were instances where noise emitted from the Garden Suite exceeded the LA10 noise criteria. The report recommended a number of building treatments including:
  - a. Retaining the existing façade of the Garden Suite.
  - b. Building an additional glazed façade over the Garden Suite's existing windows and doors.
  - c. Installing acoustic seals on any operable windows and doors in the new glazed elements.
  - d. Closing all Garden Suite windows and doors when amplified music is used and installing double doors at the main entry.
  - e. Locating all speakers and amplification equipment within the restaurant's building fabric and facing them away from building openings.
25. The report recommended installing a noise limiter system for music played in the Garden Suite, limiting outdoor seating for the Garden Suite to a maximum 15 people, and displaying signs around the venue to remind patrons to minimise noise when outside and when leaving.
26. The licensee re-engaged Acoustic Logic to test the venue's noise levels after the recommended noise mitigation works had been completed. The test was conducted between 9 December to 12 December 2016 during two Christmas parties and two weddings in the venue's Garden Suite. Measurements were specifically taken against the LA10 noise criteria, and from the complainant's residence located approximately 140 metres away. The 20 December 2016 acoustic report indicated that, despite some slightly audible noise generated by patrons from the venue, the treatments were effective in reducing all noise types to LA10 compliant levels.

### *Action Taken to Mitigate Disturbance*

27. Upon the recommendations of Acoustic Logic, the venue has undertaken a number of measures to mitigate disturbance, including installation of a noise monitor and noise limiter within the Garden Suite, an upgrade of glazing to the façade of the venue, installation of an



airlock as well as installation of venue signage reminding patrons to minimise noise. The licensee also submits the Garden Suite's patron management strategies have been revised to direct patrons to the venue's inner courtyard and away from residences. Additionally, the licensee entered into an LLA with NSW Police that specifically requires the licensee to ensure noise levels comply with the LA10 noise criteria.

## **Conclusion**

28. I have considered the submissions of the complainant, the licensee, and NSW Police. I have also considered the particular context in which the venue operates (including the statutory considerations above). In deciding whether to impose conditions on the licence relating to the disturbance, I have considered the following points.
29. I consider the order of occupancy is in favour of the complainant as she has resided in the Niblick Crescent premises since 1975; approximately eight years longer than the venue has been in operation.
30. I accept the venue has primarily operated as a restaurant since 1982, and that it is reasonable to expect that some noise will be generated by a restaurant's ongoing operations. However the material indicates the venue's operations have significantly changed to operate solely as a function centre; catering for significant patron numbers and providing amplified entertainment in close proximity to residential homes.
31. I have considered the acoustic reports provided by the licensee, and find it relevant the noise measurements were recorded against the LA10 noise criteria. I am satisfied with the 16 May 2016 acoustic report conclusions indicating the venue's noise levels exceeded the LA10 noise criteria. I am also satisfied the licensee has taken positive steps by implementing a number of effective noise mitigation measures which received a positive assessment in the 20 December 2016 acoustic report.
32. However I have considered these report findings against recently raised concerns indicating patrons can book their own bands and DJs for functions at the venue. In particular, there have been two instances where performers refused to connect their equipment into the installed noise limiter system; thereby creating an inconsistency in the established noise control measures.
33. I am satisfied the licensee has undertaken a range of measures to reduce noise disturbance, including glazing treatments, noise monitoring/limiting systems, and implementing new patron management strategies. I have also considered the recently

signed LLA which specifies obligations for noise control and patron management. However, I have balanced this against the delay in achieving a timely resolution to the complaint. I have also balanced this against potential future inconsistencies in controlling noise when patrons can book their own amplified entertainment. Furthermore I also acknowledge the complainant's view that, although the licensee has taken positive steps, there have still been instances of disturbance.

34. In considering the above factors, I am persuaded there is a need for regulatory intervention to limit future instances of undue disturbance. On this basis, I have decided to impose the LA10 noise criteria condition, and a condition requiring the installation and calibration of a noise limiter in accordance with the LA10 noise criteria.
35. Where the venue continues to host functions featuring amplified entertainment and significant patron numbers, I would encourage the licensee to ensure that all entertainment provided must comply with both the noise limiter calibrations and the LA10 noise criteria.
36. In order to provide regulatory certainty and ensure appropriate safeguards are in place to prevent future undue disturbance, I consider the conditions imposed to be appropriate. These conditions do not unduly burden the licensee and largely mandate the voluntary measures already in place. Imposing these measures on the venue's licence as conditions means they can be enforced by L&GNSW inspectors and NSW Police should the need arise. I consider this to be a proportionate and evidence based regulatory response to the issues raised in the complaint.

Date of decision: 7 April 2017



**Sean Goodchild**  
Director Compliance Operations  
Liquor & Gaming NSW  
Delegate of the Secretary, NSW Department of Industry

#### **IMPORTANT NOTES**

**Should you be aggrieved by this decision, you may seek a review by the Independent Liquor and Gaming Authority by an application which must be lodged within 28 days of the date of this decision. A \$500 application fee applies. Further information can be obtained from Authority Guideline No 2 published at [www.liquorandgaming.justice.nsw.gov.au](http://www.liquorandgaming.justice.nsw.gov.au). Please ensure you also send a copy of your application to [review.lgnsw@justice.nsw.gov.au](mailto:review.lgnsw@justice.nsw.gov.au)**

**You should also note that in accordance with the provisions of section 36C of the *Gaming and Liquor Administration Act 2007*, this decision will be published on the Liquor & Gaming NSW website at [www.liquorandgaming.justice.nsw.gov.au](http://www.liquorandgaming.justice.nsw.gov.au).**



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

**Oatlands House Restaurant - (LIQO600402666)**

**LA10 Noise Criteria**

The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz-8kHz inclusive) by more than 5db between 07:00am and 12:00 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 (31.5Hz-8kHz inclusive) between 12:00 midnight and 07:00am at the boundary of any affected residence.

Notwithstanding compliance with the above, the 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 07:00am.

**Date condition effective: 7 April 2017**

**Noise Limiter**

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

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

**Date condition effective: 5 May 2017**

## **Annexure B**

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

1. Section 79 Disturbance Complaint lodged by complainant, received on 15 April 2016.
2. Submission from licensee received 24 May 2016 (including acoustic report from Acoustic Logic, dated 19 May 2016).
3. Submission of NSW Police, received 25 May 2016.
4. Email from complainant regarding further noise disturbances received 20 June 2016.
5. Email from O'Sullivan Saddington Lawyers regarding update on noise mitigation works received 22 July 2016.
6. File Note – Phone call from Mr John Navarra to L&GNSW dated 14 December 2016.
7. File Note – Phone call to complainant regarding status of noise disturbances and re-testing of acoustic impact, dated 15 December 2016.
8. Final submission from licensee comprising acoustic report from Acoustic Logic, dated 20 December 2016.
9. Signed Local Licensing Agreement dated 24 January 2017.