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FILE NO: A16/0008331

COMPLAINANT: [REDACTED]

LICENSED PREMISES: Watsons Bay Dunbar House – LIQO600461026

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 (L&GNSW), a delegate of the Secretary, Department of Industry, in relation to the disturbance complaint made against Watsons Bay Dunbar House (the venue), have decided to impose a condition on the liquor licence relating to the following:

1. LA10 noise condition.

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

REASONS FOR DECISION

Legislation

1. Section 79 of the Act permits a person to make a complaint 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 a licensed premises is conducted, or because of 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 particular 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 October 2016, [REDACTED] lodged a disturbance complaint under section 79 of the Act concerning the venue. The complainant alleged they were being unduly disturbed because of the manner in which the business is conducted and due to the behaviour of patrons leaving the premises. More specifically, the complainant asserted the disturbance was caused by noise from music within the venue, movement of rubbish bins after 10.30PM, noise from glass disposal, noise from patrons within the venue and patrons leaving the venue.
6. The complainants stated they had spoken with the licensee, Mark Holmes and Tahli Stopford, Venue Manager and the group proprietor Manny Spinola in early 2016. Mr Spinola made some improvements, however, previous issues returned.

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

7. The Act requires that the Secretary have regard to the following statutory considerations.
8. *The order of occupancy between the licensed premises and the complainant* – the licensed premises has operated at its present site for 7 years and predates the

complainant, who has lived at the residence since March 2014. This fact is not in dispute and I consider the order of occupancy is in favour of the venue.

9. *Any changes in the licensed premises and the premises occupied by the complainant, including structural changes to the premises* – the licensee advises that the venue has operated in its current form under a Council development consent since 2010. The venue was refurbished extensively by the licensee in 2010. There is no evidence before me that there have been changes to the complainant's residence.
10. *Any changes in the activities conducted on the licensed premises over a period of time* – the operations of the venue have remained constant since 2010. The venue operates as a café for breakfast and lunch trade and then as a wedding function venue at night.

Other considerations

Undue disturbance

11. 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 caused primarily by amplified music and patron noise at the premises. In making this finding, I have balanced the submissions made by the licensee, the complainant, NSW Police and the Council.
12. The venue is located in a unique area, comprising mostly of residential properties yet being a popular tourist destination with several restaurants and licensed premises nearby. The venue is situated in an open area with clear line of sight to the complainant's residence which is located behind the venue across a public grassed area. The licensee advises that the distance between the complainant's residence and the venue is between 40 and 50 meters.
13. Council advised that between 5 January 2016 and 21 November 2016, nine emails were received from the complainant concerning disturbance from the venue arising from patron noise and the disposal of glass and deliveries to the venue.
14. Council indicates in its submission that it intends to serve the venue with a notice of intention to give an order pursuant to the *Environmental Planning and Assessment Act 1979*.
15. The licensee provided three acoustic reports which were conducted in 2011, 2013 and 2016. The 2016 acoustic report, completed by Acoustic Logic, was conducted with reference to L&GNSW patron and music noise guidelines. The 2016 acoustic report indicted some non-compliance with the LA10 standard, caused by bass from DJ entertainment and acoustic drums. The acoustic report also indicated that patrons were remaining around the exterior of the venue after midnight which is of concern to the complainant.

16. NSW Police advised that they conducted observations at the venue on Friday 9 December 2016 at 8.45PM and on Saturday 17 December 2016. Police advised that the venue appeared compliant at the time at which the observations were undertaken. Police did note that noise could be heard from another licensed premises in Watsons Bay.
17. An ongoing concern for the complainant is disturbance caused by patrons departing the venue. This includes patrons lingering in front of the venue and cars arriving to collect patrons after the venue has closed. The complainant has provided video evidence, which he has recorded at various positions around the venue. The quality of the video is generally poor and not time stamped. Although there is some footage of a patron appearing to urinate against a tree near the complainant's residence and an employee hosing down a rear pathway, most of the footage concerns patrons lingering at the front of the venue, which is the furthest point from the complainant's residence.

Action taken to mitigate disturbance

18. The licensee advised that in response to the 2016 acoustic report a noise limiter would be installed at a cost of \$11,500. The noise limiter was installed sometime in December and is evidenced by a letter from Aaron Lee of Showtime Promotions and Productions. The sound limiter is calibrated to the LA10 standard as imposed by the Council Development Approval.
19. The licensee also submitted that the venue implemented a Noise Plan of Management in 2013 to address disturbance caused to the neighbourhood. Under the Noise Plan of Management venue staff are to take regular acoustic measurements from the boundary of nearby residences when functions are being held at the venue and no bottles, rubbish or cardboard is to be removed after 8.00PM or before 8.00AM.

Findings and conclusion

20. 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 venue operates. In deciding whether to impose conditions on the licence relating to disturbance, I have considered the following points.
21. I have taken the statutory considerations into account and acknowledge the order of occupancy is in favour of the venue. I note that the venue has operated in the same fashion over the previous seven years.
22. I have considered the acoustic reports provided by the licensee, particularly the report completed in November 2016. I am satisfied that the acoustic report indicates some non-compliance with the LA10 standard. I note that the complainant's legal

representative indicates that the report discusses patron movement outside of the venue after midnight, which is consistent with the complainant's concerns.

23. In determining whether the disturbance is undue, I have considered that the venue has a long history of operation pre-dating the current licensee and some disturbance is to be expected. Due to the location of the venue, a certain level of disturbance is to be expected from its operation. However, the venue has a responsibility to ensure that disturbance to the neighbourhood is minimised.
24. I accept the licensee has implemented a range of measures since the complaint was made to manage disturbance at the venue. This has included changes to the method and timing of glass and other waste disposal. General waste is collected from the premises between 8.00AM – 11.00PM. A glass crusher in the premises has been relocated away from the complainant's residence and is only in use between 9.00AM – 5.00PM. I note the licensee also states that the Noise Plan of Management has been revised and the venue is continuing to address the issue of managing patrons leaving the venue. Regardless of the changes, the complainant submits that undue disturbance continues.
25. I am satisfied that the licensee continues to take steps to address disturbance from patrons, including a requirement in their noise plan of management that staff request guests leaving the venue have transport ready to collect them. I also accept that effective patron management is impaired by the venue's geographical location, namely its close proximity to the beach and open parkland, and note the licensee's submission that other residents in the area support action taken by the venue to address disturbance. I do not consider it necessary to impose a condition specific to disturbance from patrons leaving the venue at this time.
26. However in response to music noise and patron noise from within the venue, in order to ensure appropriate controls are in place for the future operation of the venue and for better regulatory certainty that the venue will limit disturbance to the neighbourhood, I have decided to impose a condition requiring compliance with the LA10 noise standard. I consider that the imposition of this condition is an appropriate regulatory response.

Date of decision: 12 May 2017



Sean Goodchild
Director Compliance Operations
Delegate of the Secretary, 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 *9 JUNE 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.liquorandgaming.nsw.gov.au.



Annexure 1

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:

Watsons Bay Dunbar House (LIQO600461026)

LA10 Noise Condition

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.

** 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: 19 May 2017

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

1. Section 79 Noise Disturbance Complaint lodged by [REDACTED] on 17 October 2016 attaching an email dated 16 October 2016 and links to multimedia files.
2. Submission from Mr Ryan Watts, solicitor director of Slater & Elias Lawyers, on behalf of the licensee on 1 December 2016 attaching an acoustic report compiled by Acoustic Logic and dated 29 November 2016.
3. Submission from Woollahra Municipal Council dated 23 November 2016.
4. Submission from NSW Police dated 20 December 2016.
5. Response to the licensee's submission received from Mr Don McDougall, solicitor, on behalf of the complainant, dated 27 January 2017.
6. Submission from Mr Ryan Watts, solicitor director of Slater & Elias Lawyers, on behalf of the licensee dated 8 March 2017.
7. Further letter from Mr Ryan Watts, solicitor director of Slater & Elias Lawyers, on behalf of the licensee, attaching an email in support of the venue dated 8 March 2017.