

FILE NO: A19/0015213

COMPLAINANT: [REDACTED]

LICENSED VENUE: Pasadena Sydney - LIQO600462049

ISSUES: Whether the quiet and good order of the neighbourhood of the licensed venue 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 Customer Service, in relation to the complaint made in respect to Pasadena Sydney – LIQO600462049 (the venue) have decided to **issue a warning** to the licensee in the following terms:

Under section 81(d) of the Liquor Act 2007, I, Sean Goodchild, Director Compliance Operations, Liquor & Gaming NSW, a delegate of the Secretary, Department of Customer Service, warn Altius Pty Ltd, the corporate licensee of the Pasadena Sydney, that it must ensure that no future undue disturbance is caused by functions and events hosted at the Pasadena Sydney, Church Point.

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 venue is being unduly disturbed because of the manner in which the business of the licensed venue is conducted, or the behaviour of persons after they leave the licensed venue (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 venue 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 29 April 2019, [REDACTED] (the complainant), of [REDACTED] [REDACTED] lodged a complaint in relation to Pasadena Sydney (the venue), alleging undue disturbance to the quiet and good order of the neighbourhood caused by amplified sound from music and speeches, and anti-social behaviour from patrons. The complainant lodged the complaint as a resident authorised by 24 other residents of [REDACTED].
6. The complainant submits disturbance occurs whenever the venue holds events and is increasing in frequency to more than once per month. The complainant submits that she has communicated her concerns and complaints to the management team of the venue.
7. The complainant would like to see a variety of outcomes and seeks a number of measures be implemented by the venue, including:
 - (a) Adherence to the LA10 noise condition at all times.
 - (b) Appropriate noise reduction additions to the venue to meet the acoustic requirements such as noise limiters, automatic closing doors and 12mm thick glass.
 - (c) Ensuring the venue's phone is manned to receive phone calls.
 - (d) Restricting all amplified sound to within the venue and closure of all doors when there is amplification of sound.

- (e) Ceasing the amplification of sound on the lawn of the venue.
 - (f) Ceasing all amplified music and speeches by 10pm.
 - (g) Employing suitable staff and security trained in minimising the anti-social behaviour of patrons.
 - (h) The undertaking of professional acoustic testing.
 - (i) Northern Beaches Council, NSW Police and L&GNSW work together to ensure acoustic compliance.
 - (j) Northern Beaches Council to reinspect the venue to ensure the building is meeting the consent requirements regarding acoustics and to ensure the venue is operating within its development consent.
 - (k) Ensure all patrons do not engage in loud yelling, screaming or anti-social and inappropriate behaviour, unless they are within the building with doors closed.
8. Between 4 June 2019 and 30 July 2019 various submissions were lodged by all parties.

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 venue and the complainant* – the venue's licence commenced on 29 August 1966. The complainant has lived at their residence on [REDACTED] for 10 years. While the venue appears to have ceased trade for approximately 10 years between 2008 and 2018 (see paragraph 12 below), its original occupancy predates the complainant. In these circumstances, I consider the order of occupancy to be in favour of the venue.
11. *Any changes in the licensed venue and the venue occupied by the complainant, including structural changes to the venue* – L&GNSW records indicate that the venue was transferred to the current owner on 12 March 2014. The current corporate licensee also commenced on this date, while Mr Paul Peterkin commenced as Approved Manager on 22 July 2019. The original Pasadena Roadhouse (unlicensed) contained a post office, general store, garage and boat shed, plus a dance hall ballroom on the first floor. The venue was modified in the 1960's to resemble the current operational structure which includes a boutique style hotel of 13 guest rooms and a two-bedroom apartment upstairs with a restaurant and function centre downstairs. The licensee submits the venue was recently refurbished and upgraded to comply with current building standards and operates in accordance with a 1961 development consent and 1963 building approval. There are no noise related conditions attached to this consent. The complainant submits she added a deck to her residence prior to the reopening of the venue.

12. *Any changes in the activities conducted on the licensed venue over a period of time* – the complainant submits the venue was closed between 2008 and late 2018, which does not appear to be in dispute. The material suggests the venue re-opened as a boutique style hotel with a restaurant and function centre specialising in corporate and private events – essentially a modern version of its prior operation.

Other Considerations

Undue disturbance

13. I am satisfied the material before me is sufficient to support a finding the venue has, at times, caused undue disturbance to the neighbourhood. In making this finding, I have balanced the submissions made by the venue, the complainant, NSW Police and the Northern Beaches Council (Council).
14. The venue holds an on-premises liquor licence with a restaurant business type and is located at 1858 Pittwater Road, Church Point. The venue has authorised trading hours of Monday to Saturday 5:00am to 12:00 midnight and 10:00am to 10:00pm on Sundays. Relevantly, the venue's liquor licence is subject to a LA10 noise condition.
15. The complainant and authorising residents all reside [REDACTED] [REDACTED] directly across the water from the venue. As a result, there are no sound barriers between the complainants and the venue. The distance from the complainant's residence to the venue is approximately [REDACTED] metres, with the distance to other authorising residents varying between [REDACTED] metres and [REDACTED] metres.
16. The complainant has submitted material including photographs of the live entertainment playing at wedding functions which show the use of amplified speakers outside the venue, copies of phone call records made to the venue and Police, records of text messages to the management of the venue, and three acoustic reports previously prepared for the venue. The complaint material also includes eight individual submissions from authorising residents as further evidence of disturbance.
17. The complainant alleges undue disturbance from the venue and has highlighted five specific dates from 31 December 2018 to 14 April 2019 where amplified music and speeches emanating from the venue have been excessively loud, stating every beat of the drum and every song can clearly be heard by residents on [REDACTED]. The complainant states that even with windows closed and at the back of her house, the volume of music has at times been extremely loud causing a disruption to sleeping.

18. The complainant submits anti-social behaviour and inappropriate noise from patrons at the venue has also caused disturbance, highlighting the lack of security present at some events to minimise such behaviour and ensure patrons are efficiently escorted from the venue on departure in a respectful manner. The complainant also submits several complaints were lodged with Police in these cases.
19. The complainant outlines she attended a community impact meeting on 10 April 2019, where a representative from the venue stated they do not play amplified music outside the bi-fold doors and close the doors when there is amplified music playing. The complainant contends that on Saturday 13 April 2019, while attending a wedding service held on the outside lawn of the venue, there was amplified speakers located outside the bi-fold doors facing out towards the water loudly amplifying the celebrant speeches and music from a two-piece band. The complainant also submits that throughout the course of the evening, music was playing inside the venue with the doors wide open until approximately 10:40pm. The complainant has also provided that the next day on Sunday 14 April 2019 starting at 12:30pm, there was amplified music clearly audible from a band playing outside on the lawn, which was again contrary to discussions at the community meeting.
20. The complainant believes the venue is not complying with the LA10 noise condition imposed on its licence and has not implemented any of the recommendations to mitigate noise disturbance set out in three acoustic assessment reports previously conducted for the venue. The reports were prepared by Atkins Acoustics in December 2012 and July 2013, and by The Acoustic Group in June 2016. The 2016 report included predictive values for enhancement and reflection of noise over water and concluded that with the venue operating with the provision of music for functions at nominated levels, it would exceed the LA10 criteria on [REDACTED]. The 2016 report proposed the installation of a noise limiter to limit the internal levels of music on the in-house system. The complainant also refers to a 2016 Plan of Management completed for the venue, which outlines operational recommendations regarding noise management and patron behaviour in line with the 2016 acoustic report.
21. The complainant asserts she complained directly to the venue on Saturday 16 February 2019 regarding the volume of music being played. As a result, the doors were closed, however the complainant states it made a negligible difference in sound. The complainant stated a program being used to monitor decibel levels at her residence was still registering at a peak of 60db. The complainant also claims management of the venue became aggressive after this incident and as such the residents no longer feel comfortable engaging with the venue directly regarding disturbances.

22. In response, the venue contends there are inconsistencies regarding the claims raised by the complainant on the specified dates lodged in the original complaint compared to the actual events held at the venue. The venue submitted a running log of each of the events and functions held in the specified time frame which provided a summary of the operating details, event starting and finishing times, and if any incidents were recorded. The venue notes that on two occasions there were no speeches or music at the events hosted at the venue, and on another there was a jazz band playing with no drums.
23. The venue also refers specifically to the wedding attended by the complainant on Saturday 13 April 2019. The venue asserts there was no band or DJ for the evening portion of the function, with all music playing through the in-house speaker system from 6:00pm to 10:00pm, which can only reach background levels. The venue submits that during the outdoor wedding ceremony, a live duo consisting of a guitarist and singer were performing from 3:30pm to approximately 5:30pm, using a small amplifier for the vocalist. There was also a speaker set up for the celebrant, however it was not intentionally pointed towards [REDACTED] but merely towards the guests.
24. The venue further contends they are not the only venue in the immediate vicinity who host live music acts, and as such would like to ensure they are not solely being held accountable for disturbances. Specifically referring to Sunday 14 April 2019, the venue submit they had a four-piece band playing until 6:00pm and have provided decibel readings taken by the band's sound technician at their perimeter during the performance (readings ranged from 60 to 77db on a hand held device). The venue state that on the same day, a neighbouring venue advertised a sold out ticketed performance of a seven piece band who performed from 3:30pm to 6:30pm.
25. The venue also asserts that the complainant's husband is heavily involved in the local live music scene, being a member of a band that regularly plays at a neighbouring licensed premises. Screen shots are provided of amplified music and video material showcasing patrons whistling, yelling and clapping along to live music hosted at this neighbouring licensed premises. The venue indicates that this material demonstrates the same behaviours and actions that have been referred to in the disturbance complaint as being 'objectionable' and 'contributing to noise pollution'.
26. In relation to the local community meeting held on 10 April 2019, the venue submits it advised the community group that any concerns raised would be accommodated and they would no longer play amplified music outside on Sundays, which the venue provide they have adhered to. It is also submitted that in most cases the live music held is acoustic

and have only had a small speaker present on two occasions which were for the ceremony components of weddings and hosted during appropriate day time hours.

27. The venue provides correspondence from Boston Blyth Fleming Town Planners dated 29 July 2019, stating the venue has been refurbished and upgraded to comply with current building standards and has recommenced use in accordance with the 1961 development consent and 1963 building approval. This correspondence also notes the three acoustic reports provided in the complaint, stating that as they relate to refused or lapsed development applications and consents for the venue, they are obsolete and carry no statutory weight.
28. The complainant contends that actions taken to date by the venue, such as closing the doors at 9:00pm, are not effective or sufficient. She states if there aren't any noise limiting or acoustic measures in place, as per the recommendations of the acoustic reports, whenever there is loud music playing there will continue to be a disturbance, which is further increased due to the reflection and attenuation over water.
29. In response to noise emanating from a neighbouring licensed premises, the complainant contends the disturbance on Sunday 14 April 2019 occurred before this premises had live music scheduled, eliminating them from being the source of the disturbance. The complainant further states that the residents have no objections to amplified music and people enjoying themselves as long as it is compliant with the LA10 requirement and does not cause a disturbance to the community.
30. Council provided two submissions dated 20 June 2019 and 26 June 2019. Council submit a search of their records revealed that no disturbance complaints pertaining to the venue have been received, there are no records stating the conditions of consent in relation to the manner of operation of the venue or permissible hours, and there are no pending development applications for the property.
31. Northern Beaches Licensing Police provided a submission on 10 July 2019. Police submit that prior to the venue reopening they were contacted by the owner to discuss the business and requirements, and have addressed controls to implement directly relating to noise and the local community.
32. Police records indicate only two occasions where Police were called to attend the venue since it recommenced trading in 2018, however only one was directly related to the conduct of the venue. On 8 December 2018, Police received a call at 11:00pm regarding loud music emanating from the venue, with the caller specifically referring to the '5 decibel

outside the ambient noise' requirement. Police were unable to attend the venue until well after the complaint had been received and the noise had ceased.

33. Police also received correspondence regarding the conduct of liquor promotions at the venue. Information obtained from the venue's social media platforms regarding drinks promotions and hosting live music on Sundays were sent to Police on 28 March 2019 and 5 April 2019. Police reviewed the material finding all promotions to be in accordance with the Liquor Promotion Guidelines and confirmed there is currently no licence or development consent condition preventing the venue providing live music. Licensing Police were also sent footage of people causing a disturbance in the public carpark next to the venue on the evening Monday 15 April 2019. Police made enquiries and confirmed the venue was not open or trading that evening.
34. Police attended the venue on Sunday 9 June 2019 at 6:30pm to make observations, however the venue was closed with no functions being held. Police did note however, that loud music and patron noise could be heard emanating from a neighbouring licensed premises. Detailed observations were made of patrons consuming alcohol on the wharf, who indicated to Police they had been patrons of this premises, not the venue.
35. Police submit that management of the neighbouring premises confirmed that they hold regular live music on Sundays from 3:30pm to 6:30pm. As such, Police submit they are concerned that noise disturbance is not limited to the venue.
36. Police submit they have made the below recommendations to the venue when hosting functions/weddings:
 - (a) All patrons must be removed from outdoor areas of the venue by 10:00pm.
 - (b) No amplified music is to be played in the outdoor area except via an internal sound system which must be controlled by a noise limiter. Access to the limiter must be restricted to the licensee or manager.
 - (c) All doors to the outdoor area must be closed by 10:00pm.
 - (d) No alcohol or drink containers are to be taken from the "licensed area/roped outdoor area".
37. Police have outlined two further recommendations relating to functions held at the venue with over 50 patrons. These recommendations include:
 - (a) Suitable transport arrangements must be made by the venue operator to ensure a bus/shuttle service is available to run to Mona Vale, or other suitable transport hubs be made available to reduce the impact of patron noise and disturbance.

- (b) Suitable security should also be employed to ensure that patrons leaving functions are managed in terms of their behaviour and do not disturb the local community and residents.

38. While a level of disturbance from the normal operation of the venue is to be expected, I am satisfied that there is sufficient evidence to demonstrate that the venue has, at times, caused undue disturbance to the neighbourhood with respect to amplified entertainment and patron noise. In making this finding, I am persuaded by the number of authorising residents to the complaint and individual submissions incorporated into the complaint material, along with the unique location of the venue in relation to the complainants, specifically the lack of sound barriers between the two. I have also given weight to the recommendations made by Police to the venue to reduce disturbance along with the most recent acoustic assessment which, while only predictive in nature, recommends amplified music from the site be controlled by a noise limiter to ensure compliance with the LA10 noise criteria.

Action taken to mitigate disturbance

39. 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.

40. The venue submits that it has engaged with the complainants by initiating the community impact meeting and has met with Police to take an active approach to mitigate any potential disturbances by implementing controls with the community in mind. In this regard, the venue advises it has implemented the following measures to control disturbance, including:

- (a) Assisting and sourcing modes of transport after weddings or events, which have been placed in the Terms and Conditions of hiring the venue.
- (b) Sourcing security for night time and full capacity weddings and events.
- (c) As per Terms and Conditions for weddings and events, all bar and music operations cease at 11:00pm with no subwoofers or micro-phoned drum kits permitted in the venue. The 11:00pm cease time for all Monday to Saturday events was implemented with the local community in mind, despite being licensed until midnight.
- (d) Guidance, recommendations and assistance has been sourced from an acoustics company in obtaining a decibel reader and sound level control for the venue.

- (e) Accommodation of all council inspections and continued operation within the venue's development consent.
 - (f) Induction of all team members including training in dealing with inappropriate and anti-social behaviour.
 - (g) The implementation of a new phone system to direct calls for specific areas and after hours emergencies.
 - (h) The closure of all doors at 9:00pm when amplified entertainment is being provided.
 - (i) Ceasing to play amplified music outside on Sundays.
 - (j) Ensuring a sound check is undertaken prior to the commencement of an event involving live entertainment to ensure noise levels are adhered to.
41. The venue submits that since the initial noise complaint in April, they have had numerous events and entertainment which have been closely monitored by management resulting in no further complaints or incidents being received to date.
42. Since the final submission in this matter, L&GNSW has received several communications from the complainant alleging multiple further disturbances in the months of September, October and November. Police have also provided further information stating, relevantly, that they attended [REDACTED] on 26 October 2019 and regarded noise from the venue to be 'slight', noting that loud music was being generated from a house party on [REDACTED]

Decision

43. In making my decision, 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.
44. I have taken the statutory considerations into account and acknowledge the order of occupancy is in favour of the venue. I also acknowledge that the venue was closed between 2008 and late 2018, and that its reopening represents a significant change in business activity requiring careful planning and consideration on behalf of the venue.
45. I have also had regard to Police concerns that the venue may not be the only source of noise disturbance in the neighbourhood, although I note that the neighbouring licensed premises in question appears to regularly host live entertainment on Sunday afternoons, and the reports of disturbance from the venue predominately relate to function held on Saturday evenings.

46. I acknowledge the venue has engaged with both the community and Police and adopted measures since the initiation of the complaint to reduce the risk of undue disturbance. I encourage the venue to continue with this engagement and work with all parties to minimise disturbance to the local community.
47. While I have made a finding that the venue has, at times, caused undue disturbance to the neighbourhood with respect to amplified entertainment and patron noise, I note that there is a lack of objective evidence in the form of information from Council, Police or an acoustic engineer demonstrating the severity of such disturbance. In this regard I also note that incidents of disturbance are predominantly limited to functions held at the venue prior to 11:00pm on some Saturday evenings.
48. Having carefully considered the material before me, I have decided to issue a warning to the licensee of the venue in relation to undue disturbance caused by amplified entertainment and patron noise. Furthermore, I strongly recommend the venue engage a qualified acoustic engineer to conduct noise testing based on the current operation of the venue and install a noise limiter to ensure compliance with the venue's LA10 condition. While it appears venue management have sourced advice and assistance from a sound technician and have invested in a mobile device and sound level meter to monitor noise levels inside and around the boundary of the venue, there is no evidence before me to demonstrate that this ensures compliance with the LA10 condition and in my opinion is not a long-term solution.
49. The imposition of further conditions on the venue's licence is not appropriate at this stage. This decision reflects the lack of objective evidence demonstrating the severity of noise emanating from the venue, and the evidence which suggests the venue has willingly engaged with stakeholders, including Police, in relation to the implementation of noise mitigating measures.
50. I am satisfied that issuing a warning and recommending the installation of a noise limiter is a proportionate, measured and appropriate regulatory response to the identified risks of undue disturbance in this case. Finally, the venue should be aware that if fresh and direct evidence be presented demonstrating further undue disturbance, it is open for the matter to be reconsidered and for further regulatory action to be taken.

Decision Date: 29 NOVEMBER 2019



Sean Goodchild

Director Compliance Operations

Liquor & Gaming NSW

Delegate of the Secretary of the Department of Customer Service

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 27/12/19. 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

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

1. Copy of the liquor licence dated 3 October 2019
2. Section 79 Noise Disturbance Complaint lodged by the complainant on 29 April 2019.
3. Submission from the venue dated 4 June 2019
4. Email from venue containing Instagram video of [REDACTED] from neighbouring venue [REDACTED] dated 11 June 2019
5. Submissions from Northern Beaches Council dated 20 June 2019 and 26 June 2019
6. Submission from Complainant dated 21 June 2019
7. Noise Impact Assessment from Atkins Acoustics and Associates dated December 2012
8. Noise Impact Assessment from Atkins Acoustics and Associates dated July 2013
9. Acoustic Report from The Acoustic Group dated 22 June 2016
10. Additional attachments provided by complainant – Boston Blyth Fleming Town Planners
Cover letter dated 5 December 2016, Memorandum of Advice dated 5 December 2016,
and Operational Plan of Management Pasadena dated December 2016
11. Submission from NSW Police dated 10 July 2019
12. Final submission from the venue dated 11 July 2019
13. Letter from Boston Blyth Fleming Town Planners dated 29 July 2019 – provided by the venue