

NSW Independent Liquor & Gaming Authority

Licensee The Great Club	Executive Director, Regulatory Operations & Enforcement L&GNSW
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28 May 2024

Reference No.	DOC24/118490
Applicant	Miss Alison Avron Flett
Application for	Review of a decision made under section 81 of the <i>Liquor Act 2007</i> by a delegate of the Secretary of the NSW Department of Enterprise, Investment and Trade
Licence Name	The Great Club
Premises	160-164 Livingstone Road Marrickville NSW 2204
Date of reviewable decision	5 July 2023
Legislation	Section 36A of the <i>Gaming and Liquor Administration Act 2007</i>

Application for review of a delegated decision The Great Club, Marrickville

Our decision

We have decided to **confirm** the delegate's decision:

The delegate's decision

On 5 July 2023, a delegate of the Secretary of the NSW Department of Enterprise, Investment and Trade issued a notice under section 81 of the *Liquor Act 2007* (the Act), imposing the following condition on the licence of The Great Club, Marrickville (the venue):

- Amplified music (live or otherwise) and the use of a sound system or speakers is prohibited in the outdoor area of the licensed premises, including the car park.

This condition came into effect on 6 July 2023.

The condition was imposed as a result of a noise disturbance complaint in relation to the venue lodged by a resident representing 15 other residents. The complaint alleged that the car park was being used by the venue for outdoor entertainment, which was able to be heard inside surrounding residences and was causing disturbance.

The delegate concluded that the venue had, at times, caused undue disturbance. The condition was imposed on the basis that the temporary alfresco dining approval relating to the car park was intended for outdoor dining and not for music events or entertainment purposes. The delegate was of the view that imposing the condition would provide regulatory certainty that the car park would be used for its approved purpose and that it would significantly reduce instances of disturbance.

Summary of the delegate's findings

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

- The order of occupancy between the venue and the complainant is in favour of the complainants. Although the building, property and site location has existed since 1955 in various iterations, the previous club liquor licence was surrendered in 2010 and a new liquor licence of a different licence and business type was later issued in 2011. As such, the venue should be considered a different licensed premises to the club that preceded it. A number of the complainants have occupied their residences for 20 or more years.
- No significant structural changes to the complainant's residence or the venue were noted in submissions.
- The complainant submits that between 2015 to mid-2019 the venue was used as an office site for a development project on Livingstone Road. Since the licensee assumed their position at the venue in November 2020, the venue has been trading as a live music and entertainment venue with regular performances. The Police submission also noted that the previous operation of the venue was as community and cultural club.
- A further substantial change to the venue's activities came following the approval for the temporary change of boundaries in November 2021. Following this approval, the venue, on several occasions, used its car park as an outdoor entertainment space. This involved setting up a stage and speakers, playing music, and hosting crowds of people in an outdoor space close to neighbouring residences with no sound barriers in place.

Undue disturbance:

- The venue's business model is centred around the offering of live music, so it was reasonable to expect some level of noise would be generated from the normal operation of the venue, including noise from amplified entertainment, patrons, and pedestrian traffic.
- The use of the car park for events is a significant change to the venue's operation. There are no sound barriers between the car park and neighbouring residences to mitigate noise from outdoor events.
- While the venue was granted approval for alfresco dining in the car park, it was clear that the venue has been using this space for other purposes, including for events which on at least one occasion involved live music. The venue conceded it was in breach of the State Environmental Planning Policy (SEPP).
- While the venue submitted it was putting procedures in place to ensure no live music would be held in the car park, the submission contained no material demonstrating any steps had been taken to attempt to mitigate noise from amplified music or patrons.
- Based on the ongoing noise complaints received by L&GNSW, the observations made by L&GNSW inspectors, and the submissions provided by Council and Police regarding noise disturbance concerns, it was reasonable to conclude that the venue had, at times, caused undue disturbance, particularly when events were held in the car park.

Regulatory outcome:

- Contrary to an argument made throughout the venue's submission that it believed there to be only one or two neighbours making repeated complaints and therefore the complaints should be given less weight, the complaint was made by 16 residents. Almost all provided supporting statements outlining their specific issues and concerns, going beyond what is required to file a complaint under the legislation.
- A major source of disturbance appears to be the venue's use of the temporary change of boundaries, whereby the car park is being used as an event and entertainment space. Given

the proximity of the car park to residences, it appears clear that the disturbance is likely to have affected a large number of people.

- The complaint also raised issues with noise from music inside the venue. There was insufficient evidence provided to the delegate to warrant imposition of conditions concerning noise from inside the venue. The venue was urged to continue working with Council in consultation with neighbours to address any concerns regarding noise from inside the venue.
- There was significant change in use of the venue to a live music and entertainment venue since the licensee assumed their role. It is likely that the building was not designed as an entertainment venue and would therefore achieve less noise attenuation than would a purpose-built music venue. The delegate recommended the venue engage an acoustic engineer to conduct testing, and the venue implement any recommendations for sound attenuation the engineer may make. Alternatively, consideration should be given to the use of a noise limiter as a noise mitigation strategy.
- The complaint also noted frequent disturbance caused by patrons loitering around the venue, particularly in the car park, and that there is a lack of security on site to manage patron behaviour. The plan of management did not provide clear details on the venue's approach to security and patron management, and further complaints referencing noise and anti-social behaviour of patrons loitering outside the venue followed the initial complaint.
- Neither the Council or Police provided any objective evidence concerning patron noise and behaviour causing disturbance. However, at the mediation on 13 March 2023, the venue agreed to have security guards proactively monitor the surrounding streets and respond to any matters concerning patron noise and behaviour.
- The delegate did not find enough evidence to impose a security condition, however recommended that at least two uniformed security guards be employed during the venue's peak trading hours on Friday and Saturday nights, or when a large number of patrons will be in attendance for an event. The security guards would undertake regular patrols of the area and move along patrons loitering in the area and remain until the last patron has left the vicinity of the venue.

Application for review

On 1 August 2023, you sought a review of the delegate's decision. You provided a table titled 'Grounds For Review' which outlined how you were aggrieved by the decision on the grounds that:

- The delegate erred in the finding of fact that 'a major source of disturbance appears to be the venue's use of the temporary change of boundaries, whereby the car park is being used as an event and entertainment space'.
- The decision erred in finding that there is an ongoing course of conduct by the venue in 'misusing' the car park in breach of the SEPP. This finding is not available on the facts.
- The delegate erred in law in taking into account Council's submissions which manifestly involved actual bias against the licensee and venue.
- The delegate erred in law in 'balancing' (or giving equal weight to) the submissions of Council and the Police as those of the complaint, the venue and the observations made by L&GNSW.
- The delegate erred in conflating complaints about noise from 'the car park' at night during an event and as patrons leave the venue, with noise from the car park in relation to temporary, isolated alfresco use.

- The delegate erred in giving weight to additional ‘ongoing noise complaints’ as evidence that it is reasonable to conclude that the venue has, at times, caused undue disturbance, particularly when events are held in the car park.
- The delegate erred in not accepting continuity of ownership, use of the premises and continuity of the nature of the licence for ‘club purposes’ or ‘club activities and support’.
- The delegate erred in not taking into account significant structural changes made to a complainant’s residence.
- The delegate erred by not giving due regard to the matters set out in section 3(2) of the *Liquor Act 2007*.

Your application seeks for the delegate’s decision to be varied or revoked.

Application for a stay of the decision

On 9 August 2023 you also sought a stay of the delegate’s decision, which we refused. Notification of that decision was provided to you on 25 January 2024.

Submissions and consultation

On 20 February 2024, the Office of ILGA (the OILGA) invited further submissions from relevant parties and yourself in response to the review application. Submissions on behalf of L&GNSW and local residents were received during the submission period.

Submission on behalf of L&GNSW

The delegate made a submission on 5 March 2024 in relation to your review application which stated the following:

The decision was correct based on evidence

- The decision was made on the basis of evidence that the venue at times caused undue disturbance to the neighbourhood, particularly when events were held in the car park.
- The outdoor amplified entertainment and music condition was imposed on the basis that the temporary alfresco dining approval relating to the outdoor space (car park) is intended for outdoor dining and not for music events or entertainment purposes. The delegate submitted that while the provision of amplified music was not prohibited under this approval, the venue had used the change in boundaries for reasons beyond its intended purpose.

The car park is a major (but not only) source of disturbance and there is evidence that it has been used in a manner considered to be a misuse of the approved temporary boundary change (Grounds 1, 2 and 5)

- The venue’s car park was not the only issue raised in the complaint, but there was strong indication from residents that a large source of disturbance was due to the venue’s use of the car park.
- There is no legislative requirement for the delegate to find an ongoing course of conduct in the making of a decision under section 81 of the Act. The decision sought to address disturbance caused by a significant change in the activities conducted on the licensed premises and the use of the car park, per section 81(3)(c) of the Act.
- The condition imposed seeks to prevent further disturbance from the use of the car park space.
- The review application suggests the decision conflated complaints about noise from patrons in the car park when leaving the venue with noise from the use of the car park in relation to alfresco use, and specifically refers to observations made by L&GNSW inspectors. There was clear evidence available to make the finding that noise from

amplified music in the car park was a source of disturbance. Observations made by L&GNSW inspectors were not relied on as sole evidence for disturbance finding, rather, they provided further evidence in support of claims made by residents, Council and Police.

Consideration of submissions (Grounds 3 and 4)

- Council was not the decision maker in this matter, and it is not L&GNSW's place to comment on an allegation of actual bias in this regard. However, the specific opinions giving rise to the allegation were not given any significant weight in the decision.
- Contrary to the applicant's submissions, the statement that the evidence of the parties was 'balanced' does not mean that all submissions were given equal weight, rather the merits of all submissions received were considered and assessed in the decision.

Consideration of additional complaints (Ground 6)

- Additional noise complaints received (although not all relating to the use of the car park) demonstrated ongoing issues relating to noise disturbance from the venue.
- While the imposed condition specifically relates to the car park area, the decision clearly noted that disturbance from inside the venue, and patron behaviour was also an issue that needed to be addressed and recommended additional security and a noise limiter be used.
- The decision was clear that if disturbance from the venue were to continue, then additional conditions may need to be imposed to address these other sources of noise.
- An argument that these, or any other, complaints that do not specifically discuss the alfresco use of the car park should not be given weight ignores the broader application and intent of the decision and arguably demonstrates a disregard for the concerns of neighbours.

Order of occupancy (Ground 7)

- While the physical premises may have existed for some time, the current operations and licence are substantially different from the previous, surrendered licence.
- Even if the order of occupancy was in favour of the venue, the condition imposed would remain the appropriate outcome.
- The condition imposed only affects the alfresco use of the car park - a right the venue has only had the benefit of since November 2021, and therefore not a matter to which order of occupancy would be given significant weight.

Structural changes to a complainant's home (Ground 8)

- Plans that predate the venue's approval to use the car park for alfresco dining show a converted space (similar to a loft or granny flat) above one complainant's garage, which the venue's solicitor provided commentary on in relation to legitimacy and habitability.
- It cannot be ignored that 16 residents contributed to the complaint and almost all of the residents provided supporting statements outlining their issues and concerns.

Regard for the Objects of the Act (Ground 9)

- The objectives of the relevant legislation are considered in each decision. Paragraph 87 of the decision touched on section 3(2)(d)(i) of the Act relating to supporting the development of related industries including music and entertainment.
- Imposing a condition that solely relates to noise from outside the venue was a measure designed to allow the venue to continue to provide live music indoors. Given the venue's residential location and proximity to neighbours, this is a reasonable condition.
- The imposition of the condition does not change the venue's ability to have an alfresco dining option available for its patrons.

Subsequent change of business type application

- On 8 August 2023, the venue submitted a request to change the business type from ‘club activities and support’ to ‘live entertainment venue, music venue, restaurant’, which was approved by us on 21 February 2024.
- As part of the approval, several conditions were imposed on the venue’s licence including: plan of management, social impact, noise limiter, LA10 noise and complaints register conditions.
- The imposition of these conditions will greatly benefit issues of disturbance from the venue, in particular the LA10 noise condition. However, it would likely be difficult to ensure amplified sound from the outdoor area of the venue complies with such a condition, noting the lack of physical sound barriers.
- The condition imposed on the 5 July 2023 remains in place as it is a condition designed for the particular issues at the venue and provides regulatory certainty to all parties.

Submission on behalf of Marrickville residents’

- An individual, on behalf of the Marrickville residents, provided a submission on 5 March 2024, which submitted the following:
- Having lived in the area for 25+ years the residents know about the previous history of the club and the Greek and Macedonian cultural events that were hosted at the venue. It has been recalled that there were periods of years where no live music events were held. When there were events, it was on average 1-2 times a month.
- During the period 2015-2019, there was a change of use at the venue and no events with live music were held there.
- The current licensee now holds multiple events each week and the car park has now become an extension of the venue.
- Residents feel that there is a ‘general air of apathy’ for their concerns ‘by multiple parties’.
- Residents have faced health problems due to the increased stress associated with the change of use of the premises.
- After the imposition of the outdoor amplified sound condition on the licence on 5 July 2023, the venue used the car park to host an event with amplified sound audible from neighbouring residences due to the location of a speaker system near the thoroughfare connecting indoors and outdoors and venue doors being left wide open.
- The car park appears to be being used as a beer garden rather than an alfresco dining space.
- The recommendation associated with the noise management plan has not been followed to a degree that one would expect a venue willing to work with locals would.
- The resident with a loft above their garage considered double glazing to help reduce the noise, however after receiving a quote of between \$26,000-\$35,000, found it punitive.
- The venue does not appear willing to work with residents to achieve a fair resolution, belittling their concerns, and painting them as dishonest.
- The residents understand the inner-city location brings noise issues from being in a flight path and busy traffic thoroughfare. However, the noise from these activities is not constant due to curfews for flights and general petering out of traffic after peak hour. The noise from the venue is constant from both performances and patrons.
- The residents want to be able to enjoy and relax in their homes and support L&GNSW’s decision to restrict the use of the car park, stating that it has been a welcome reprieve.

Submission by the review applicant

You did not provide any further submissions in response.

Our findings

In accordance with powers under section 36A(4) of the *Gaming and Liquor Administration Act 2007* (GALA Act), we confirm the delegate's decision, dated 5 July 2023.

After considering the material on which the delegate made her decision, the submissions of the applicant's representative, L&GNSW, and the representative for residents in response to the review application, we agree with the delegate's findings that:

- the order of occupancy is in favour of the complainant and
- that the venue has, at times, unduly disturbed the quiet and good order of the neighbourhood, particularly when events are held in the car park.

We note that we recently approved (on 21 February 2024) a change in business type for the venue from 'club activities and support' to 'live entertainment venue, music venue, restaurant'. As part of that approval, several conditions were imposed on the venue's licence that should assist in addressing issues of disturbance from the venue. The LA10 noise condition in particular should help ensure sound from the venue is being produced at a level that should not be the subject of a reasonable complaint.

Relevant legislation

We are satisfied that the decision to confirm the delegate's decision has been made in accordance with the Authority's powers under section 36A of the GALA Act.

We are satisfied that the section 81 decision, to which the review application relates, is a reviewable decision for the purposes of section 36A(1) of the GALA Act and that the review applicant is able to lodge the review application in accordance with section 36A(2) of the GALA Act.

The material we considered

In determining the review application, the following material was considered:

Material before the delegate:

- s79 disturbance complaint dated 28 November 2022
- statement regarding Great Club ANZAC Day event dated 20 April 2023
- liquor licence for The Great Club, Marrickville (LIQ0660011232) dated 13 June 2023
- submission from NSW Police in response to the complaint, received 12 January 2023
- submission from Inner West Council in response to the complaint, received 25 January 2023
- submission from Sonic Lawyers on behalf of the licensee in response to the complaint, dated 5 March 2023
- L&GNSW Inspector's file note, dated 23 January 2023
- minutes of mediation held 13 March 2023 between Council, the venue, and residents - received 11 April 2023
- submission from complainant regarding the mediation, dated 11 April 2023
- submission from the venue regarding the mediation, dated 17 April 2023

Review application and submissions:

- review application dated 1 August 2023 and supporting documents
- submission from the delegate in response to the application for review, dated 5 March 2024
- submission from residents' representative (complainants) in response to the application for review, dated 5 March 2024

This decision will be published on the ILGA website in accordance with section 36C of the *Gaming and Liquor Administration Act 2007*.

If you have any questions

Please contact the Office of ILGA at office@ilga.nsw.gov.au if you have any questions.

Yours sincerely



Sarah Dinning

Deputy Chairperson

For and on behalf of the **Independent Liquor & Gaming Authority**