
FILE NO:	A21/0020763
COMPLAINANT:	[REDACTED]
LICENSED PREMISES:	La Vida Loca Bar, Newport – LIQH440010082
ISSUES:	Whether the quiet and good order of the neighbourhood of the licensed premises is being unduly disturbed.
LEGISLATION:	<i>Liquor Act 2007</i>

SECTION 81 DECISION

Under Section 81 of the *Liquor Act 2007* (the Act) I, Jane Lin, Executive Director, Regulatory Operations & Enforcement, Liquor & Gaming, a delegate of the Secretary of the NSW Department of Enterprise, Investment and Trade, in relation to the complaint made in respect to La Vida Loca Bar - LIQH440010082 have decided to **take no further action**.

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 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) of the Act which are:
 - a) the need to minimise harm associated with the misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour);
 - b) the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor;
 - c) the need to ensure that the sale, supply and consumption of liquor, and the operation of licensed premises, contributes to, and does not detract from, the amenity of community life; and
 - d) the need to support employment and other opportunities in the –
 - (i) live music industry, and
 - (ii) arts, tourism, community and cultural sectors.

The complaint and background information

The complaint

5. On 7 December 2021, [REDACTED] of [REDACTED] (the complainant) lodged a complaint with Liquor & Gaming NSW (L&GNSW) alleging undue disturbance from the operation of La Vida Loca Bar (the Hotel). The complainant lodged this complaint as a resident authorised by two other residents.
6. It is alleged that disturbance is a result of excessive noise from activities inside the Hotel, including live and amplified music with loud bass and drums. The complainant submits disturbance occurs every Wednesday, Friday and Saturday night between the hours of 7:00pm and midnight. Activities alleged to be causing the excessive noise included amplified music and patrons singing at karaoke events on Wednesday evenings and live bands utilising amplifiers on Friday and Saturday evenings. The complainant stated that excessive noise was audible within their residence when all windows and doors are closed, disturbing their quiet enjoyment and affecting their ability to sleep.

7. The complainant stated that issues regarding noise emanating from the Hotel were raised with Ms Kashni Sharma, the licensee of the Hotel, on or around 15 October 2021. It is submitted that the licensee was advised that noise from live bands playing at the Hotel was excessive and that the Hotel's development consent is subject to conditions relating to a prohibition on live music and the LA10 noise criteria. It is alleged that the licensee responded in an aggressive and confrontational manner, stating that the Hotel was within its rights to play music and that a bouncer utilises a noise meter and all recordings are within the required limits. The complainant submitted that although the licensee conceded to close the Hotel's front door after 8:00pm, this was not enforced and the complainant has had to attend the Hotel at 11:00pm to request the door be closed.
8. The complainant advises they have contacted NSW Police on three occasions due to noise emanating from the Hotel. It is submitted that Police advised they cannot prevent the noise from occurring, however, would speak with the Hotel. The complainant received no further information regarding whether this had occurred.
9. Included with the complaint was a copy of Modification of Development Consent N0490/09 for occupation and use of the Hotel premises as a wine bar determined by Pittwater Council, dated 19 December 2011. The development consent outlined conditions of approval including the LA10 noise criteria, use of a noise limiter and noise level requirements for the provision of live amplified music. Also included was a report prepared by The Acoustic Group dated 15 March 2010 and a screen shot of the Hotel's website advertising itself as a 'music venue and bar'.
10. The complainant submits they have contacted Northern Beaches Council (Council) regarding concerns that the Hotel may be in breach of its development consent conditions. The complainant submitted that at the time of lodging the disturbance complaint, Council had advised the complainant that it had requested and subsequently received information from the Hotel, and that the matter had been referred for investigation.
11. Condition 61 of Development Consent N0490/09, under 'Part B. Matters to be incorporated into the development and maintained over the life of the development' states:

'Live amplified music or music which exceeds 5dba when measured from the nearest residential property is prohibited.'

12. The complainant interprets condition 61 to read that all live amplified music is prohibited at the Hotel regardless of noise levels. In an email from Council dated 25 October 2021, it clarified that condition 61 refers to noise limits for live music and does not prevent live music from occurring at the Hotel. Included with the complaint were copies of email correspondence between the complainant and Council dated between 19 October 2021 and 9 November 2021.
13. As a desired outcome, the complainant seeks the cessation of live amplified music at the Hotel and/or the cessation of any music that creates excessive noise for neighbouring residents. Furthermore, the complainant wants the Hotel to comply with all relevant development consent conditions.

The Hotel, licence details and compliance history

14. The Hotel holds a hotel liquor licence with a general bar licence sub-type, which commenced on 6 December 2011. The Hotel previously traded as Kave Bar, however on 23 June 2021, an application was approved by L&GNSW to change the Hotel's licence name to La Vida Loca Bar.
15. The Hotel is located at Shop 3, 370 Barrenjoey Road, Newport on the lower ground and is accessible via stairs. The Hotel's trading hours for consumption on premises are 10:00am until 12:00 midnight, Monday to Saturday and 10:00am until 10:00pm on Sundays. The Hotel is also permitted to sell liquor for consumption in the temporary outdoor area (alfresco) between 10:00am and 10:00pm, Monday to Sunday.
16. The current licensee and business owner is Ms Kashni Sharma since 8 June 2021. The Hotel's liquor licence is subject to conditions relating to liquor sales, trading hours, local liquor accord, outdoor dining area (alfresco) and social impact.
17. The complainant's residence is located [REDACTED], on Barrenjoey Road, divided by four lanes of roadway. Nearby buildings are occupied by a mix of commercial spaces, offices and residential, at street level and above.
18. A review of L&GNSW records indicate that one complaint was lodged against the Hotel on 1 April 2023, alleging the sale and supply of liquor to minors. L&GNSW determined to take no further action in respect to the complaint and reminded the licensee of their responsibilities in relation to the responsible service of alcohol.

Submissions

19. Between 7 December 2021 and 18 May 2023, various material was received from parties to the complaint, including the complainant, the Hotel, NSW Police and Council. The material that is before the delegate is set out in Annexure 1 and summarised below.

NSW Police submission

20. On 30 December 2021, Police provided a submission in response to the disturbance complaint. Included with the Police submission was a total of seven COPS Event narratives regarding interactions with the Hotel between 31 July 2021 and 24 December 2021, as outlined below:

- Three COPS Event narratives regarding noise disturbance complaints received from members of the public.
- Three COPS Event narratives regarding COVID-19 business inspections, two of which confirm that live music was being performed at the time of the inspections, and
- One COPS Event narrative regarding a business inspection conducted at the Hotel as a result of the section 79 disturbance complaint received from L&GNSW.

21. Four COPS Event narratives regarding noise disturbance attributed to the Hotel are summarised below.

22. On 3 December 2021, Police attended the Hotel at 11:30pm in response to an alleged assault and three separate noise complaints. On arrival Police observed no noise to be emanating from the Hotel. Police observed a band packing up their musical instruments and approximately 20 patrons inside the Hotel. Police then engaged with the licensee and noted that they became agitated when questioned in relation to noise coming from the Hotel. The licensee stated that noise levels at the Hotel were within the required decibel range and the Hotel was working with Council to address noise-related issues. Police enquired about the alleged assault and provided instruction to the licensee to record the details regarding the incident in the Hotel's incident register.

23. On 4 December 2021, Police attended the Hotel at 10:00pm in response to a noise complaint. When standing outside the Hotel, Police observed music from a live band playing inside the Hotel to be audible. Police then entered the Hotel and observed approximately 25 patrons, two staff members and one security guard inside. The volume

of music was noted to be extremely loud resulting in Police being unable to communicate with the licensee. Police then engaged with the licensee outside the Hotel regarding the level of noise emanating from the Hotel. Police submit that the licensee became defunctive and advised Police that the Hotel 'has always been a live music venue'. Police advised the licensee that the noise at the Hotel was not acceptable, and the volume of music was turned down to an appropriate level.

24. On 17 December 2021, Police attended the Hotel at 11:30pm in response to a noise complaint alleging the Hotel was not complying with its development application condition relating to amplified live music. Police observed the noise from the live band to be audible but 'muffled' and did not deem the noise to be excessive or offensive.
25. On 24 December 2021 at 10:45pm, Police attended the Hotel for a business inspection in response to receiving a disturbance complaint referred from L&GNSW. During the inspection Police observed a two-piece band playing inside the Hotel and noted that the front door was closed. Police deemed the noise coming from the Hotel to be acceptable. Police spoke with the licensee who advised that they had downloaded a mobile phone application to monitor sound levels.
26. Police then observed a patron leave the Hotel with the front door left open, immediately amplifying the level of noise emanating from the Hotel. Police advised the licensee to consider having a staff member stationed at the door, install signage or install an automatic door to mitigate potential disturbance and noise leakage from within the Hotel.
27. During the discussion with the licensee Police also spoke with a member of the public who resided above the Hotel. The individual advised Police that they had experienced noise disturbance from the Hotel on the night it had opened some weeks prior but hadn't experienced any further disturbance since that date.
28. Police reviewed development consent, DA N0489/09/S96/1, and noted that the Hotel is subject to consent conditions relating to the LA10 noise criteria and noise limits to live amplified music.

Hotel response to complaint

29. On 3 January 2022, the licensee provided a submission in response to the disturbance complaint. The licensee contended that the information submitted by the complainant was false and exaggerated. It was submitted that noise generated from the Hotel is within the allowable limits of the development approval and a mobile phone application utilising a decibel reader is used to monitor noise levels at the Hotel.

30. The licensee stated that the Hotel does not intend to cause disturbance to the neighbourhood or not comply with its development consent conditions and had discussed the disturbance complaints with a member of Council's Environmental Compliance Service team.
31. The licensee submitted that Police had attended the Hotel on several occasions and no issues in relation to noise emanating from the Hotel had been raised. The licensee stated that the Hotel tries to accommodate residents however noted that the Hotel is a music venue and bar, and some level of noise is to be expected from its operation.
32. Included with the submission was a signed letter of support from a resident who resides above the Hotel, stating that the operation of the Hotel does not impact their sleep or lifestyle.

Complainant final submission and further complaint material

33. On 28 January 2022 a final submission was received from the complainant. Included with the submission was a copy of email correspondence between the complainant and Council dated between 19 October 2021 to 8 December 2021, and a video recording taken from the complainant's residence on 28 January 2022.
34. The complainant denied the licensee's claim that the allegations raised in the complaint were false or exaggerated and noted that the licensee did not provide any particulars or evidence to support their position. The complainant further stated that although the licensee referenced an engagement with a Council staff member from the Environmental Compliance Service team, no further particulars regarding this correspondence were provided.
35. The complainant maintained their argument and interpretation of development consent condition 61 that live amplified music is prohibited at the Hotel. The complainant provided a copy of email correspondence between themselves and two Council departments, the Building Control team and the Environmental Health team. The email correspondence referred to the alleged disturbance attributed to the Hotel and compliance with development consent conditions, particularly around the provision of live amplified music as set out in consent condition 61.
36. It is also noted that there was a differing in interpretation of development consent condition 61 expressed in the email correspondence, specifically about whether the condition was written to prohibit live amplified music exclusively at the Hotel or whether it referred to specific noise limits for live amplified music at the Hotel when measured

from the nearest residential property. Further, in the email dated 8 December 2021 from Council's Environmental Health team, it was noted that live amplified music at the Hotel appeared to be the main issue.

37. The complainant asserts that the noise parameters for the Hotel, as specified in the LA10 noise consent condition, require testing be measured from the boundary of any affected neighbouring residence. The complainant submitted that at no time did the Hotel request access to their property to test the LA10 noise parameters, nor provide a report prepared by a qualified acoustic expert to establish the background noise levels. As such, it is contended that it is impossible for the Hotel to accurately determine whether its noise emissions comply with the relevant consent condition. Further, the complainant submits that a decibel meter application installed on a mobile phone, as the licensee has done, is not an accurate or sufficient method to monitor noise from the Hotel.
38. The complainant referenced the video recording alleged to have been taken from a bedroom inside their residence at approximately 9:15pm on 28 January 2022 to demonstrate the level of noise being emitted from the Hotel. It is submitted that noise from the Hotel prevents them from having windows open at night, and that even with windows closed, noise from the Hotel disrupts the enjoyment of their home and their ability to sleep.
39. In response to the letter of support provided with the licensee's submission, the complainant contends that the position of the neighbour located upstairs in the same building is materially different to the position of neighbours located opposite the Hotel due to the directional nature of sound waves and the structural shielding of the building construction.
40. On 28 March 2022, a copy of the Police submission received in response to the disturbance complaint was cross served on the complainant with an invitation to provide a submission. No further submissions were received by the complainant.
41. On 4 May 2022, the complainant contacted L&GNSW to request an update on the matter and advised that they had purchased a house and were relocating away from the area.

Council submission

42. On 15 December 2021, L&GNSW invited written submissions from Council in response to the disturbance complaint. The complaint material was cross served on Council on 25 January 2022 and again on 22 February 2022, extending a further invitation to provide submissions in response to the disturbance complaint.

43. On 22 March 2022, L&GNSW received email correspondence from Council's Environmental Health team containing a copy of seven audio recordings dated between 27 October 2021 and 19 March 2022 which purportedly related to the Hotel. The audio recordings include noise from traffic, music and members of the public. It is unclear where the recordings were captured from due to the recordings being audio only and no supporting analysis or report confirming their authenticity.
44. On 11 April 2022, L&GNSW received email communication from Council's Environmental Health team advising that both the Environmental Health team and the Building Control team had received jobs regarding the Hotel from the Customer Service team. As the Hotel is subject to specific noise development consent conditions relating to the style of entertainment permitted at the Hotel, input from the Building Control team was required. However, it was advised that the matter was delegated to the Environmental Health team for investigation.
45. It was advised that a preliminary recommendation for a warning letter to be issued to the Hotel, directing it to comply with conditions of consent relating to live amplified music at the Hotel had been made, however at the time of providing the submission a determination on that outcome had not been made. It was also noted that live amplified music appeared to be the basis of the complaints on hand.

Hotel final submission and additional support material

46. On 14 April 2022, the licensee was invited to provide a final submission in response to the Police submission and the complainant's final response. An extension was granted to the licensee to seek legal representation.
47. On 31 May 2022, Ms Suzette Pereira of Brydens Lawyers advised that she was representing the licensee of the Hotel. A further extension was granted for the Hotel to prepare a response to the complaint material and arrange for acoustic testing to be conducted at the Hotel. As the due date for submissions had lapsed, multiple attempts were made by L&GNSW to contact the Hotel's solicitor in relation to the submission in response to the complaint causing an extensive delay in the submission process.
48. On 4 and 7 November 2022, L&GNSW received a submission from the Hotel's solicitor in response to the complaint. Included with the submission was a Noise Compliance Assessment report from Environmental Monitoring Services dated 24 June 2022 (Noise Compliance Assessment), a letter from the licensee and three letters from local residents supporting the operation of the Hotel.

49. The submission noted that the Hotel was opened on 15 October 2021 to provide hospitality and live music to the local community, and on 19 October 2021 the complainant lodged a complaint with Council regarding noise from live music at the Hotel. The licensee outlined the benefits that live bands and music have brought to the local community in Newport, especially in consideration of the lockdowns experienced during the COVID-19 pandemic. However, the licensee acknowledged that they were not sufficiently informed in relation to the consent conditions under the Hotel's development approval regarding noise levels for live amplified music.
50. It is submitted that Police attended the Hotel on three occasions in December 2021 and in May 2022 and noise emissions from the Hotel were not deemed to be offensive. Police advised the licensee that the main issue stemmed from patrons leaving the door open when entering and departing the Hotel which caused noise to be amplified. Following this discussion, arrangements were made for an automatic door to be installed.

Noise Compliance Assessment

51. On Friday 10 June 2022, a noise compliance assessment was conducted by Environmental Monitoring Services on behalf of the Hotel. The purpose of the assessment was to assess the noise levels emitted during a live band set at the Hotel in accordance with the LA10 noise criteria. The noise assessment was undertaken throughout the evening, while a live band played at the Hotel between 7:30pm and 11:30pm. The band connected to a mixing desk and utilised a multi-speaker sound system. There were no physical noise limiters in place at the Hotel.
52. Attended noise monitoring was conducted at two locations: one in front of a shop at 365-367 Barrenjoey Road (on the western side, directly across from the Hotel) and the other at the rear of the Hotel on Coles Parade, on the eastern side. Background noise at the first location was significantly influenced by heavy vehicle traffic, pedestrian noise and noise from other commercial premises open at the time, including restaurants. The second location was quieter, as most traffic noise is shielded by the buildings on Barrenjoey Road.
53. An assessment was conducted at the first location and taken at balcony height, between 9:46pm and 10:26pm. The front door of the Hotel was closed during this time, other than when patrons were entering/exiting the Hotel. Live music emanating from the Hotel exceeded the LA10 pre-midnight noise criteria in the octave band centre frequencies between 63Hz and 4kHz, with the exceedance range between 1dB and 7dB.

54. The Noise Compliance Assessment noted that there was only an 8-minute period during the acoustic testing where only the band was playing, and no other noise was detected. During the remaining time traffic noise from Barrenjoey Road and operations of other commercial premises were contributing to the noise.
55. An assessment was conducted at the second location and taken at balcony height between 10:54pm and 11:22pm. Live music emanating from the Hotel exceeded the LA10 pre-midnight noise criteria in the octave band frequencies between 125Hz and 250Hz, and in the 8kHz band. The exceedance in these bands ranged between 1-2 dB, which, according to the report, is barely perceptible.
56. The Noise Compliance Assessment noted that the live band was only audible in instances when there were no pedestrian or vehicle noise from the car park area on Coles Parade. It was noted that there was noise escaping from an unsealed fire sprinkler pipe, located above one of the Hotel's rear storage rooms. Noise was also observed to be escaping from the side passage containing electrical meter boards and garbage bins, but not from the rear door of the Hotel. This was pointed out to the Hotel's building representative, and it was confirmed that the area would be sealed to rectify the issue. The Noise Compliance Assessment noted that this treatment solution would likely result in compliance with the LA10 noise criteria at the location.
57. The Noise Compliance Assessment noted that Modification of Development Consent N0490/09 listed conditions from previous acoustic reports conducted in 2010 and 2011 which made recommendations for the Hotel to comply with the required noise limits. The recommendations found in these reports included the types of doors to be used onsite, ceiling and wall acoustic absorption specifications, maximum sound system noise levels, as well as the installation and use of a noise limiter.
58. The Noise Compliance Assessment recommended that these measures be implemented to prevent live band noise from disturbing nearby residents and to comply with the noise limits set out in the development consent.
59. The licensee advised that the following measures have been implemented at the Hotel to mitigate noise emissions:
 - Installation of an automatic door at the Hotel's entrance on Barrenjoey Road.
 - Installation of soundproofing panels to the ceiling of the Hotel to absorb noise with additional soundproofing panels to be installed on the entrance door and the high ceiling near the bar.

- The purchase of a new sound level meter, after acknowledging that the decibel meter application installed on the licensee's mobile phone was insufficient to determine compliance with noise requirements.
- a review of the location of the Hotel's smoking area situated at the front of the Hotel, after acknowledging that patrons in this area may be contributing to the noise.
- Sealing the identified external noise leaks as outlined in the Noise Compliance Assessment.

60. It was submitted that the Hotel has created a great community presence and supports local live bands to promote local talent. The licensee contended that ceasing to host live bands and entertainment at the Hotel would not only have a negative effect on its business but will also remove its impact in contributing to the music industry. Further, it was noted that the Hotel had not received any other complaints due to noise emitted from live bands nor any further complaints from Police.

Further information provided by Council

61. On 26 April 2023 L&GNSW sent an email to Council requesting an update in relation to the outcome of complaints received by Council regarding the Hotel and information relevant to the operation of the Hotel with respect to the provision of live amplified entertainment.

62. On 18 May 2023, a response was received from Council advising that there had been no further complaints regarding the Hotel, with the last complaint being received in November 2021. Council also stated that the complaints were dealt with by referring the complainants to L&GNSW.

63. Council further advised that there appeared to be no recent physical changes to the Hotel or to its development consent.

Further information provided by the Hotel

64. On 3 May 2023 L&GNSW sent an email to the Hotel's solicitor requesting an update on noise attenuation works undertaken at the Hotel and information regarding the operation of the Hotel and the development consent.

65. On 9 May 2023 the licensee provided L&GNSW with an update on recent changes at the Hotel, including measures implemented to mitigate noise emissions, such as:

- Installation of additional acoustic sound panelling and the automatic entrance door.
- Purchase and use of a sound measurement device that is used to ensure sound output is within the levels specified in the development consent conditions.
- Conducting regular sound checks when live entertainment is hosted at the Hotel, with performers advised of the relevant sound parameters.
- Reduction in live band entertainment offerings at the Hotel, with a shift to DJs and recorded music controlled in-house.
- Installation of signs and notices throughout the Hotel, requesting patrons exit quietly.

66. The licensee submitted that no further noise complaints had been received since the above changes were implemented and the noise attenuation works were undertaken at the Hotel. The licensee further advised that they contacted Council to confirm if there were any matters or complaints pending in relation to the Hotel and was informed that the matter had been finalised. The licensee also stated that they believed the provision of live entertainment was permitted at the Hotel and Council had not raised this as an issue.

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

67. The Act requires that the Secretary have regard to the following statutory considerations.

The order of occupancy between the licensed premises and the complainant –

68. The Hotel has operated under the current liquor licence since 6 December 2011, with the current licensee commencing on 8 June 2021. This predates the complainant, who had resided at their address for approximately seven months at the time the complaint was lodged with L&GNSW in December 2021. This fact is not in dispute, and I consider the order of occupancy to be in favour of the Hotel.

69. It is noted that since lodging this complaint, the complainant has relocated and no longer resides at the address listed in the complaint.

Any changes in the licensed premises and the premises occupied by the complainant, including structural changes to the premises

70. There is no indication that structural changes have occurred to the complainant's residence. Noise attenuation works have been completed inside the Hotel since the disturbance complaint was lodged, including the installation of an automatic entrance door and acoustic sound panels.

Any changes in the activities conducted on the licensed premises over a period of time

71. The licensee advised that the Hotel opened in October 2021, identifying it as a live entertainment venue, committed to supporting the live entertainment industry recover following a downturn caused by trading restrictions imposed due to the COVID-19 pandemic. L&GNSW records further indicate that the Hotel, under its previous management and operation while trading as Kave Bar, also offered live music and entertainment.

72. More recently the licensee submitted that the Hotel has reduced the frequency of live bands performing at the Hotel and has since introduced DJs and in-house music offerings, such as open mic nights.

Findings and Decision

Undue disturbance

73. In deciding whether the hotel has unduly disturbed the quiet and good order of the neighbourhood, I have balanced the submissions made by the Hotel, the complainant, Police and Council.

74. A level of noise and disturbance from the normal operation of the Hotel is to be expected, including noise from amplified live entertainment and patron noise. I do not consider this type of disturbance as undue in a general sense. Noting the order of occupancy is in favour of the Hotel and considering the Hotel's location in a mixed commercial and residential area on a busy thoroughfare with significant traffic noise, it is reasonable to set a higher threshold for what should be considered undue disturbance.

75. Having considered the material before me, I am not satisfied that there is sufficient evidence to reasonably conclude that the Hotel has unduly disturbed the quiet and good order of the neighbourhood. I acknowledge that Police and Council had received noise complaints in relation to the Hotel, however I note that overall, there is a lack of objective evidence to support a finding that the Hotel has caused undue disturbance.

76. I have considered the submissions provided by Police and note that a number of inspections were conducted at the Hotel, including in response to noise complaints. I note that Police observations indicated noise from amplified music at the Hotel was deemed to be unreasonable on one occasion in late 2021, however the remaining three reports observed the Hotel's noise emissions to be acceptable or not audible. I have also placed weight on Council's recent submission advising that no further complaints concerning the Hotel have been received since November 2021.
77. While I acknowledge the Noise Compliance Assessment indicated slight exceedances to the LA10 pre-midnight noise criteria, I note it was reported that noise from traffic and operations of other commercial premises were contributing factors during the assessment. I have also had regard to the recommendations set out in the Noise Compliance Assessment and have considered the measures implemented at the Hotel to mitigate noise, including sound proofing, installation of an automatic door and reducing its live music event offerings. It is noted that the LA10 noise criteria provides a useful technical benchmark which can assist in any determination as to whether undue disturbance has occurred. However, while exceedances of the LA10 noise criteria can assist in such a finding, it is just one factor among several to consider.
78. I have reviewed L&GNSW compliance holdings and note that apart from this disturbance complaint, which was lodged in December 2021, no other noise complaints have been received in relation to the Hotel. Further, it is noted that the complainant no longer resides in the area.
79. In consideration of the above and the material before me, I am not satisfied that there is sufficient evidence to conclude that the Hotel has unduly disturbed the quiet and good order of the neighbourhood.

Regulatory Outcome

80. In deciding the appropriate regulatory outcome in this instance, I have considered the statutory considerations, the material set out in Annexure 1, and the above finding of no undue disturbance. I have also had regard to the context in which the Hotel operates, noting that it is situated below street level on Barrenjoey Road and that noise from vehicle traffic, commercial premises and pedestrians significantly contributes to noise experienced by residents.
81. I acknowledge the order of occupancy is in favour of the Hotel and that the Hotel's physical structure has not altered. In addition, I recognise changes made to the entertainment offered at the Hotel since the complaint was lodged, with fewer live bands

being hosted. I have also considered the nature of the Hotel's operation, noting that it does not trade past midnight and that live music on Wednesday, Friday and Saturday nights concludes by midnight.

82. While the Hotel has not always been responsive in this matter, I acknowledge the noise mitigation strategies the Hotel has adopted over time to reduce its noise impact. This includes the commissioning of acoustic testing, the installation of an automatic door at the Hotel's entrance on advice from Police, installation of acoustic panels to assist in sound absorption, the use of a sound monitoring device and regular sound checks, installation of signage asking patrons to depart the Hotel without causing disturbance and modifying the type of entertainment provided at the Hotel by reducing the frequency of live bands. I am encouraged by the voluntary steps adopted by the Hotel, and I am of the view that this has had, and will continue to have, a positive effect in mitigating the Hotel's noise impact.
83. As noted previously, the Hotel is not currently subject to noise-related conditions on its liquor licence. However, the Hotel is subject to several noise-related conditions under its development consent that are designed to mitigate disturbance, including the LA10 noise condition, noise limits for amplified music and the use of a noise limiter. I acknowledge that compliance with these consent conditions was a concern of the complainant and there was some debate regarding the interpretation of the consent condition regarding the provision of amplified music at the Hotel. The interpretation and subsequent enforcement of development consent conditions falls outside of the jurisdiction of L&GNSW and should be addressed by Council and Police, where appropriate.
84. Having considered the conditions currently in place under the Hotel's development consent, as well as proactive measures implemented by the Hotel, I am of the view that there are sufficient safeguards in place to mitigate noise levels from the Hotel, and that the licensee is now better informed about their obligations in relation to these conditions. Further, I am satisfied that compliance with these conditions, particularly the LA10 noise criteria, will assist in ensuring the operation of the Hotel does not unduly disturb the quiet and good order of the neighbourhood. As such, I do not consider it appropriate at this time to duplicate the same consent conditions on the Hotel's liquor licence.
85. Having carefully considered the material before me, and in the absence of a finding of undue disturbance, I have determined to take no further action in this matter. While it is possible that noise disturbance was attributable to the Hotel, at times, I do not find there is sufficient evidence to determine that the relevant noise disturbance reached the threshold of 'undue'.

86. While I have determined to take no further action in this matter, I remind the Hotel of its ongoing obligation to minimise levels of disturbance from its operation. I also consider this an opportunity for the licensee to continue to develop and employ strategies to minimise disturbance and noise from the Hotel. On this point, I strongly recommend the Hotel address any outstanding acoustic recommendations as set out in the Noise Compliance Assessment, including the installation and use of a noise limiter, noting that this is listed as a development consent condition.
87. I am satisfied that this decision is a proportionate and appropriate regulatory response to the disturbance identified in the complaint and the strength of the evidence at hand. The Hotel should be aware that if fresh and direct evidence be presented demonstrating undue disturbance, it is open for the matter to be reconsidered and for formal regulatory action to be taken.

Decision Date: 1 August 2023



Jane Lin

Executive Director, Regulatory Operations & Enforcement

Liquor & Gaming NSW

Delegate of the Secretary of the Department of Enterprise, Investment and Trade

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 **29 August 2023**. A \$500 application fee applies. Further information can be obtained from Authority Guideline 2 published at

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 https://www.liquorandgaming.nsw.gov.au/documents/ilqa/guidelines/Authority_Guideline_2.pdf



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

1. Copy of the liquor licence dated 10 July 2023.
2. Section 79 Disturbance Complaint lodged by the complainant on 7 December 2021.
3. Submission from NSW Police received on 30 December 2021.
4. Submission from the Hotel received on 3 January 2022.
5. Final submission from complainant and further complaint material received on 28 January 2022.
6. Correspondence from Northern Beaches Council received on 22 March 2022 and 11 April 2022.
7. Final submission from Brydens Lawyers on behalf of the Hotel, received on 4 and 7 November 2022.
8. Additional correspondence received from the Hotel on 9 May 2023.
9. Additional correspondence received from Northern Beaches Council on 18 May 2023.