
FILE NO: A22/0021387

COMPLAINANT: [REDACTED]

LICENSED PREMISES: Plata O Plomo, The Entrance – LIQO660035751

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, John Coady, Manager, Regulatory Interventions, Liquor & Gaming NSW, a delegate of the Secretary, Department of Enterprise, Investment and Trade, in relation to the complaint made in respect to Plata O Plomo – LIQO660035751 have decided to **impose three conditions** on the licence in relation to:

1. **LA10 Noise Criteria**
2. **Noise limiter**
3. **Outdoor dining (rear courtyard)**

Details of these conditions, including the dates they become effective, are set out in **Annexure 1**.

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 due to 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) 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;
 - 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; 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 18 February 2022, [REDACTED] (the Complainant) lodged a complaint with Liquor & Gaming NSW (L&GNSW) alleging undue disturbance from the operation of Plata O Plomo (the Venue). The Complainant lodged this complaint as a resident authorised by two other residents and advised he represents 103 owners in [REDACTED]
6. The Complainant advises the Venue has a temporary outdoor area located at the front facing Memorial Park, and there are several restaurants in the vicinity. The Venue's rear

courtyard was previously a vacant lot used as a car park opening onto Duffys Lane

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7. The Complainant alleges disturbance occurs predominantly on Wednesday, Friday, Saturday, Sunday and public holidays and is caused by excessive noise from activities at the Venue including live music and amplified music from speakers located in the rear courtyard, and noise from patrons in the rear courtyard of the Venue. They allege the Venue has altered the rear courtyard from a car park into a beer garden and built a permanent structure to house a DJ with an additional cocktail bar. The Complainant also states the Venue operates at times as a bar or nightclub, contrary to its licence.
8. The Complainant submits the Venue has poor patron management in relation to responsible service of alcohol, with excessive noise from patrons gradually increasing during the evenings. The Complainant alleges noise from the Venue interferes unreasonably with the comfort in their residence, including the noise being excessive while the Complainant's doors are closed and TV operating. The Complainant also states they have attempted to call the Venue on five separate occasions between 11 December 2021 and 20 February 2022, with no success and have messaged the Venue via its Facebook platform to advise of the disturbance to them and additional residents.
9. The Complainant submits they and multiple residents of their Strata have made repeated complaints, which have resulted in no lasting change to the operation of the Venue. The Complainant details several incidents between 11 December 2021 and 12 February 2022 where the Venue created excessive noise from amplified music and patron behaviour. The Complainant also states that until November 2020, the Venue solely operated within the premises and outdoor area located on the council walkway at the front of the Venue.
10. The Complainant submits that NSW Police (Police) have attended on multiple occasions and instructed the Venue to lower the volume of amplified music, however they are restricted due to the Venue's current licence conditions. The Complainant states they support the business operation of a restaurant with background music at a reasonable level, but a DJ, loud music and crowds is unacceptable.
11. On 1 March 2022, L&GNSW received a separate noise complaint from ██████████
██ The complaint was lodged on behalf of The Committee Owners Corporation of ██████████ Following a discussion with the Complainant, a decision was made to invite ██████████ and the two authorising residents to become an official party to the existing noise disturbance complaint. On 22

March 2022, [REDACTED] and the two authorising residents each completed a 'complainant authorisation' form and joined the existing complaint.

The Venue, licence details, compliance history

12. The Venue is located at 115 The Entrance Road, The Entrance. EL Primo Group Pty Ltd has been the licensee since 6 August 2021. The Venue holds an on-premises liquor licence (restaurant) and is permitted to sell liquor on premises between 10:00am and midnight, Monday to Saturday. On Sundays, the Venue is permitted to sell liquor on-premises between 10:00am and 10:00pm. The Venue also holds a primary service authorisation (PSA) for the indoor area which allows the sale of alcohol without food, however the sale or supply of alcohol must not be the primary purpose of the business.
13. The Venue is subject to a condition imposed by the Authority to authorise the change of boundaries (application number SR0000673712) for the duration of the period approved by the consent authority. This approval for a temporary licensed boundary extension included the car park (rear of Venue) and footpath (front of Venue) and was first granted on 25 November 2021 for a period of five months. The approval has since been extended until 31 December 2023.
14. The Venue previously operated as 'Mojo's Café & Restaurant' between 1999 and mid-2012. The Venue then operated as "The Old Bank Café Restaurant' and changed to 'Plata O Plomo' in November 2020.
15. The current licensee, El Primo Group Pty Ltd, commenced on 6 August 2021. At the time the complaint was lodged, [REDACTED] was recorded as the Approved Manager, and on 4 April 2022, Ms Kirri Akhurst became the Approved Manager. Mr Zack Leaudais has owned the business since 25 November 2020.
16. The Venue's liquor licence currently contains conditions relating to liquor sale hours, trading hours, plan of management, drink restrictions and change of boundaries. On 13 April 2022, the condition 'Temporary outdoor dining' LA10 Noise levels was imposed and effective until 30 June 2022. The LA10 Noise level condition was approved by L&GNSW Licensing Branch to support the approval of extending the period in which the Venue could trade outdoors and address concerns regarding noise levels from the outdoor areas.

Submissions

17. Between 1 March 2022 and 21 April 2022, various material was received from parties to the complaint, including the Complainant, the Venue, Police and Central Coast Council (Council). The material before the delegate is set out in Annexure 2 and summarised below.

Council

18. On 14 March 2022, Council provided a submission in response to the complaint. In its submission, Council advises it has received two complaints since 20 December 2021, both from the same complainant and related to excessive noise from the Venue. Council notes the Venue operates as a restaurant under Development Consent DA75/238, approved on 3 December 1975. Council also advises under DA75/238 the maximum seating accommodation must not exceed 50 persons.
19. Council advises the Venue is currently using the approved carpark at the rear of the premises for outdoor dining, with the use identified as 'exempt development' under subdivision 20B Outdoor Dining – General of the NSW *State Environment Planning Policy (Exempt and Complying Development Codes) 2008* (the Codes SEPP). Council notes the provision of the Codes SEPP was enacted on 1 December 2021 as part of the NSW government strategy to revitalise the hospitality industry.
20. Council advises in October 2021, the Venue lodged Development Application DA/1573/2021 for the use of the rear courtyard for outdoor dining. The application was returned due to lack of information and Council indicated there are no current development applications for the use of the rear courtyard for outdoor dining. Council further notes there is an on-going investigation into whether the current use of the additional outdoor dining areas constitutes a breach of condition (f) of development consent DA75/238, which relates to maximum seating at the Venue. Council provided an update on 16 November 2022 noting no enforcement action was taken in relation to this investigation.

Police

21. On 15 March 2022, a submission was received from the Tuggerah Lakes Police District. Police submit the Venue is subject to a licence condition to operate at all times in accordance with the Plan of Management, which includes procedures in relation to Noise Management such as 'Staff and Management of Plata O Plomo will monitor noise levels

throughout trading hours to ensure there is no excessive noise emanating from the Venue’.

22. Police submit on 15 February 2022, Mr Zack Leudais attended Wyong Police station and agreed to participate in a voluntary undertaking Local Licensing Agreement (LLA) in relation to CCTV, incident register, crime scene preservation, reporting incidents of violence, outdoor dining area and social impact conditions. Police also submit Mr Leudais advised it was his intention to operate a nightclub with the continued use of a DJ for entertainment purposes.
23. Police submit that since the Venue commenced operation in November 2020 until 3 March 2022, they have conducted nine business inspections and been called to attend the Venue on several other occasions in response to noise complaints, anti-social behaviour and violence at the Venue. Police provide COPS Event summaries in support of these incidents. Police note between 27 November 2021 and 12 February 2022 they received eight noise complaints.
24. Police also submit additional conditions relating to noise abatement; prohibition on selling or supplying liquor before 10:00am or after 11:00pm; prohibition or restriction of any activities that encourage the misuse or abuse of liquor; restriction of trading hours and public access to the premises; and requirement for the licensee to participate in and comply with a liquor accord should be considered to mitigate the disturbance caused by the Venue.
25. Police submit during multiple inspections of the Venue at approximately 10:00pm, access inside the Venue is closed and the only area for patrons to enter and consume liquor on the premises is the rear courtyard from which the noise disturbance emanates.

Venue response to complaint

26. On 24 February 2022, L&GNSW provided ██████████ the then Approved Manager, and the licensee a copy of the complaint and requested a submission in response.
27. On 24 February 2022, Mr Leudais submitted he had met with local Police in relation to the noise disturbance and addressed the issue. Mr Leudais also stated the Venue will be conducting an acoustic report for the preparation of a development application for use of the outdoor area (for when the temporary approval lapses).

28. On 3 March 2022, ██████████ noted ██████ is no longer associated with the Venue and has not been involved with the Venue in capacity as a Manager since December 2021. ██████ ██████ also noted ██████ was assaulted inside the Venue by a patron on 4 December 2021, which resulted in three fractures to ██████ face requiring surgery. ██████████ also stated ██████ has not had any contact with Mr Leudais since 22 December 2021 and requested assistance in ██████ removal from the Venue's liquor licence.
29. On 7 March 2022, L&GNSW contacted Mr Leudais noting ██████████ was currently listed as the Approved Manager and the licensee must appoint a manager approved by the Authority in accordance with the Act. L&GNSW also requested confirmation if any additional written submission would be provided.
30. On 8 March 2022, Mr Leudais advised he was in the process of appointing Ms Kirri Ann Akhurst as Approved Manager.
31. On 18 March 2022, L&GNSW notified Mr Leudais the due date of 17 March 2022 for a written submission in relation to alleged disturbance caused by the Venue had passed and requested confirmation whether an extension was required or if any additional written submission would be provided in response to the complaint.
32. On 18 March 2022, the Mr Leudais noted the Venue was still waiting for a consultant to conduct an acoustic report and indicated he believed the disturbance issues had been addressed. On 18 March 2022, L&GNSW provided a response to the Venue and advised an acoustic report may be submitted during the Venue's final submission period.
33. On 22 March 2022, L&GNSW further advised Mr Leudais an additional noise disturbance complaint had been received and, as a result, three additional individuals have signed on as authorising residents to the current proceedings.

Complainant final submission and further complaint material

34. The Complainant provided all the material for their final submission by 12 April 2022. The material includes written submissions from five separate strata managements affected by noise emanating from the Venue. The Complainant notes more than 195 apartments are located within the five strata managed properties and they receive multiple complaints from owners, tenants and short-term holiday rentals in relation to the noise generated from the Venue. The Complainant acknowledges a certain level of noise is to be expected from licensed venues in the area, but indicates the disturbance generated by amplified noise and patrons in the rear courtyard area is undue and

exceeds regulatory consents, guidelines and by-laws governing the Venue. The Complainant states they have now approached L&GNSW as a last resort, in circumstances where the issue has increased, and engagement with the Venue, NSW Police and Council have failed to mitigate the undue disturbance.

35. The Complainant submits they have operated the strata premises since 2004 and have existed more than 17 years prior to the current operation of the Venue. The Complainant also submits the operation of the Venue has significantly altered from the previous business operation of The Old Bank Café Restaurant. The Complainant states the rear courtyard is approved for use as a carpark, and the Venue has completed structural changes including a concrete pathway, fencing of the rear courtyard, permanent decking installed, permanent structure installed with a DJ entertainment and bar service area, speakers to project amplified music, and electricity for the use of strobe lighting. The Complainant states the video footage of the rear courtyard provided demonstrates the undue disturbance caused by the current operation of the Venue.
36. The Complainant submits observations have been made on patrons engaging in anti-social behaviour when departing the Venue and patron management is non-existent by the staff members or security personnel. The Complainant states in relation to the residents affected undue disturbance includes not being able to use the outdoor balcony of the apartments, having to turn the volume of the TV to an excessive level with doors and windows closed inside the apartments, and disrupting persons from being able to sleep during the evenings with all doors and windows closed.
37. The Complainant submits the Venue has advised they intend to make the structural changes permanent by way of a development application, however discussions with Council confirm no application has been lodged. The Complainant also submits the current operation of the Venue contravenes the standards set out in section 2.40D of the Code where any development must not cause 'offensive noise within the meaning of the *Protection of the Environment Operations Act 1997* or other nuisances that affect adjoining owners'. The Complainant alleges the operation of a beer garden until 12:00am in the rear courtyard with a DJ playing live amplified music continues to unduly disturb the neighbourhood.
38. The Complainant submits the Authority's temporary approval for the rear courtyard to be included within the licensed boundary has significantly increased the number of patrons and activity in this area, subsequently increasing noise levels. The Complainant submits the Venue operates under DA75/238, which does not impose conditions on limiting the hours of operation, and requests that L&GNSW refuse the licence approval of the rear

courtyard, refuse the use of a DJ and amplified music in the rear courtyard, and take the surrounding residential area into consideration.

39. The Complainant submits the licensee signed a Local Licensing Agreement in February 2022 which included a condition for the outdoor dining area to minimise disruption and not operate in a manner that impacts the greater overall social well-being of the local community. The Complainant submits the Venue has failed to abide by the agreement and should the rear courtyard receive licensing approval a detailed acoustic investigation must be undertaken to identify measures to mitigate the undue disturbance.
40. The Complainant requests action be taken by L&GNSW to prevent any part of the Venue being used as a nightclub or bar in contravention of its licence type. The Complainant submits that since noise complaints regarding the Venue have frequently been caused by live music, including DJs, action be taken by L&GNSW to prevent the Venue from hosting such events.
41. The Complainant submits they recognise and support the necessity of local restaurant establishments within the area to be financially viable, however the change in operation of the Venue has lowered the quality of life for neighbouring residents. The Complainant submits their mental and physical well-being has suffered as a result of the frustration of not being able to have the disturbance resolved, including engagement with the Venue owner who has dismissed the complaints in their entirety.
42. On 13 September 2022, the Complainant provided additional material to indicate the Venue had further renovated the rear courtyard and alleged the total seating capacity of the Venue is in excess of 120, which is significantly more than the seating limit of 50 as per condition (f) of DA75/238. The Complainant also submits the Venue have continued to operate amplified music in the rear courtyard, consequently causing further disturbance to the residents.
43. On 18 September 2022, the Complainant advised the Venue was trading as Flow Bar and stated concerns regarding the liquor operations and continued noise levels emanating from the rear courtyard. Attached to the submission was a video recording at 9:45pm on Saturday 17 September, portraying patrons in the rear courtyard while amplified entertainment was in operation. The Complainant raised further concerns that in the coming summer months, residents will not be able to enjoy their residence with the anticipated increase in patrons attending the Venue.

Venue final submission and other material

44. On 25 March 2022, L&GNSW served Mr Leudais with the submissions from Council and Police. On 8 April 2022, L&GNSW served Mr Leudais with the Complainant's final submission and requested any written submission to be received by 29 April 2022. On 12 April 2022, L&GNSW served Mr Leudais with additional material provided by the Complainant and advised the due date for a response was now 3 May 2022.
45. On 4 May 2022, L&GNSW provided correspondence to the recorded Approved Manager, now Ms Akhurst, and copied in Mr Leudais, advising the due date for a final submission of 3 May 2022 had passed. L&GNSW also served the complaint, and all submissions received in the proceedings onto Ms Akhurst as she was now the recorded Approved Manager of the Venue. L&GNSW requested a response to advise if the Venue would require an extension to allow a formal written submission in response to the complaint. No response was received from the Venue.
46. On 4 May 2022, L&GNSW called the recorded telephone numbers on the Venue's liquor licence for the Approved Manager, Licensee, and business owner. There was no response from any party.

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

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

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

48. The licensed premises has operated under the current liquor licence since 25 November 2020, with the current business owner commencing on 25 November 2020 and the corporate licensee commencing on 6 August 2021. Prior to this, the licensed premises held an on-premises liquor licence (restaurant) commencing on 1 December 1999 and traded under three different business names. This predates the Complainant, who has resided at ■■■ current address for seven years. It also predates the occupancy of the second complainant (who ultimately joined the primary complaint) who has lived near the Venue for just over 11 years. I consider the order of occupancy to be, technically, in favour of the Venue.

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

49. The original configuration of the Venue was a restaurant. In 2020, the Venue was reconfigured externally to reconstruct the carpark area to create a DJ entertainment

area, bar service area, permanent decking, speakers, removal of trees, fencing of the rear courtyard and instalment of tables, chairs and umbrellas for patrons. Material provided by the Complainant indicates the Venue has completed additional changes to include further decking and tables and chairs. The rear courtyard [REDACTED] faces the affected residents, with the [REDACTED]. There have been no changes made to the apartments occupied by the Complainant and affected residents within the strata managements.

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

50. I note the Complainant and Police both raise concerns that the manner of operation of the Venue, at times, resembles a nightclub or bar, and this mode of operation has increased under the current ownership. There is sufficient evidence provided by the Complainant, Council and Police to support that there have been significant changes in the activities conducted by the Venue particularly since November 2021, when the Venue was granted temporary approval to use the rear courtyard for dining purposes.

Findings and Decision

Undue disturbance

51. In deciding whether the Venue has unduly disturbed the quiet and good order of the neighbourhood, I have balanced the submissions made by the Complainant, the Venue, Police and Council. I have also had regard to the particular context in which the Venue now operates given its temporary approval to offer outdoor dining.

52. While it is reasonable to expect some level of noise will be generated from the normal operation of the Venue, including noise from amplified entertainment and patron noise, I am satisfied there is sufficient evidence to reasonably conclude the Venue has, at times, unduly disturbed the quiet and good order of the neighbourhood. In reaching this conclusion I have placed significant weight on the material provided by Police, which demonstrates the Venue has had multiple issues managing noise disturbance, and the evidence and submissions provided by the Complainant and authorising residents, including video and audio footage.

53. The Venue has not provided any material to demonstrate the steps, if any, it has taken to mitigate noise disturbance. On balance, the material before me suggests there is no concerted effort on behalf of the Venue to monitor or control the level of amplified sound at the Venue or patron management in the rear courtyard. Based on the above factors, I am satisfied the neighbourhood has been unduly disturbed by the Venue.

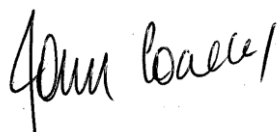
Regulatory Outcome

54. In deciding the appropriate regulatory outcome is in this instance, I have considered the statutory considerations, the material set out in Annexure 2, and the above finding of undue disturbance. I have also had regard to the particular context in which the Venue now operates, noting the recent alfresco dining temporary approval has extended its operation to an outdoor courtyard area [REDACTED] and affected strata management apartments.
55. While the order of occupancy is technically in favour of the Venue, given the recent structural changes and changes to the activities conducted at the Venue, both of which create a much higher risk of disturbing the quiet and good order of the neighbourhood than previous modes of operation, I am inclined to place greater weight on these statutory considerations.
56. I note the Venue has outdoor speakers from which music is played by a live DJ and sound system. In this context, and considering the above statutory considerations, it is reasonable to say significant responsibility lies with the Venue to ensure it does not disturb the quiet and good order of the neighbourhood. The Venue's primary submission in this matter appears to be that it is in the process of commissioning an acoustic report. While this is to be encouraged, the submission was made in February 2022 and L&GNSW has not been provided with a report. I consider the fact it is pending as evidence of the fact the Venue undertook significant changes to its business activities without informed consideration of how it would affect surrounding residents.
57. I acknowledge the concerns raised by both the Complainant and Police around the Venue appearing to trade as a bar or nightclub, as opposed to a restaurant in accordance with its licence type. The material before me suggests the Venue provides live entertainment including DJs both inside and outside the Venue and operates under a PSA. In my view, the times at which the Venue trades more like a bar increases the risk of it unduly disturbing the neighbourhood, particularly when this activity occurs in the rear courtyard. I take this opportunity to remind the Venue that the primary purpose of the business must at all times be the preparation and service of food as per the business type on its licence. Operating as a nightclub with a 'restaurant' business type is an offence under section 9(1)(b) of the Act (with a maximum penalty of \$11,000, or imprisonment for 12 months, or both) and could lead to the revocation of the Venue's PSA. In a similar vein, I remind the Venue that the temporary approval to use the rear courtyard is for dining purposes.

58. The material before me suggests the Venue has not been appropriately engaged in this regulatory process, with several extensions granted to submission periods and unsuccessful attempts made to contact its representatives. I do not have confidence the Venue will, on a voluntary basis, engage with regulatory bodies and its neighbours with a view to mitigating noise disturbance. Given this, together with the finding of undue disturbance and above mentioned structural and operational changes at the Venue, the imposition of licence conditions is necessary.
59. The Venue was previously subject to an LA10 noise condition, originally imposed as part of the temporary alfresco dining approval. This condition sets a limit to which background noise at a residential boundary cannot be exceeded. Furthermore, it requires noise from the Venue to be inaudible within any habitable room of a residential premises between 12:00am midnight and 7:00am. I note this condition has dropped off the licence, perhaps during the process of renewing the outdoor dining approval to December 2023. In my opinion, an LA10 noise condition is appropriate in the circumstances and will go part way to ensuring the Venue does not continue to unduly disturb the neighbourhood. It will also provide a reference point to assist any acoustic consultant engaged by the Venue.
60. I note the concerns of Police in relation to the Venue's intention to continue to operate as a bar or nightclub as opposed to a restaurant. In the absence of any rebuttal from the Venue and considering the finding of undue disturbance caused by amplified entertainment, I consider it necessary to impose a noise limiter condition on the licence of the Venue. This condition requires the installation of a noise limiter by a qualified acoustic engineer and will provide regulatory certainty that any amplified entertainment conducted within the Venue complies with the LA10 noise criteria.
61. The Complainant has requested, if the rear courtyard is to remain licensed, it be closed at a reasonable hour in consideration of its proximity to residential surrounds. I consider this to be a reasonable request in the context of this disturbance complaint and have decided to impose a condition on the licence requiring this area to be closed from 10:00pm. Furthermore, considering the apparent lack of acoustic remediation work conducted by the Venue and the proximity of the rear courtyard to the Complainant and other residences, in my opinion it is necessary to prohibit DJs and other forms of live entertainment in the rear courtyard of the Venue. I note the Complainant indicates background music at a reasonable level is acceptable.

62. I am satisfied this decision is a proportionate regulatory response to the identified risks of undue disturbance in the complaint and the strength of the evidence at hand. It protects the Complainant and supporting residents from undue disturbance by managing noise levels emanating from the rear courtyard of the Venue and it allows the Venue to offer outdoor dining services with ambient background music until a reasonable hour. It should also go some way to ensuring the Venue both operates in accordance with its licence type, and utilises its temporary change in boundaries approval in an appropriate manner.
63. Noting the residential area in which the Venue is located, I remind its representatives they have a strong obligation to take all disturbance complaints seriously and proactively manage any potential disturbance caused by the Venue. In the event there is an escalation of disturbance or fresh and direct evidence demonstrating poor management of disturbance issues, it is open for Police, Council or local residents to commence another complaint under section 79 of the Act, which may lead to further regulatory action.

Decision Date: 21 December 2022



John Coady

Manager, Regulatory Interventions

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 18 January 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 www.liquorandgamingnsw.nsw.gov.au

Under section 81 of the *Liquor Act 2007* a delegate of the Secretary of the Department of Enterprise, Investment and Trade has imposed the following conditions on the liquor licence of:

Plata O Plomo – LIQO660035751

LA10 Noise Criteria

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

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

*Notwithstanding compliance with the above, the noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 12:00 midnight and 07:00am.

Date condition effective: 22 December 2022

Noise Limiter

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

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

Date condition effective: 31 January 2023

Outdoor dining (rear courtyard)

The licensee must ensure:

- i. The outdoor courtyard at the rear of the venue is closed between 10:00PM and 10:00AM; and
- ii. No live music and/or DJ is to operate from the outdoor courtyard at the rear of the venue.

Date condition effective: 22 December 2022

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

1. Copy of the liquor licence dated 26 May 2022.
2. Copy of the liquor licence dated 16 November 2022.
3. Section 79 Disturbance Complaint lodged by the Complainant on 18 February 2022.
4. Material received from Central Coast Council received on 14 March 2022.
5. Submission from NSW Police received on 15 March 2022.
6. Venue submission in response to the complaint received on 24 February 2022 and further material received on 8 March 2022 and 18 March 2022.
7. Final submission from complainant received on 7 April 2022 and further complaint material received on 8 April 2022, 11 April 2022, 12 April 2022, 13 September 2022, and 18 September 2022.
8. File note from L&GNSW Inspector from telephone call attempts to venue on 4 May 2022.