
FILE NO: A21/0018684

COMPLAINANT: [REDACTED]

LICENSED PREMISES: The Cliff Dive Pty Ltd, Darlinghurst – LIQO624006608

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 Team, a delegate of the Secretary, Department of Customer Service, in relation to the complaint made in respect to The Cliff Dive Pty Ltd – LIQO624006608 have decided to **impose one condition** on the licence in relation to:

1. Security Patrols

Details of this condition, including the date it becomes effective, is 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 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) 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 7 April 2021, [REDACTED] of [REDACTED] (the complainant) lodged a complaint with Liquor & Gaming NSW (L&GNSW) alleging undue disturbance from the operation of The Cliff Dive Pty Ltd (the venue). The complainant lodged this complaint as a resident authorised by six other residents.
6. The complainant alleges disturbance is a result of the behaviour of patrons exiting the venue and loitering along Riley Street and Burton Street, Darlinghurst. Disturbance allegedly occurs most frequently on Friday and Saturday nights from 11:00pm onwards. The complainant details an incident which occurred on 4 April 2021 at 4:00am where NSW Police was called to respond to a violent altercation on Burton Street involving patrons from the venue. The complainant submits there is a history of noise disturbance,

violence, anti-social behaviour, vandalism, intimidation and unacceptable public disorder directly linked to the venue.

7. The complainant states that over the past four years, she has made several complaints to the owners and management of the venue and several community meetings have been held with the venue, however the issues are beyond mediation. Despite the owners attempting to be accommodating to complaints, the complainant contends the venue fails to control patrons who then disrespect the neighbourhood and residential properties. The complainant states that security simply move patrons away from Oxford Square resulting in patrons drinking and loitering in the neighbouring residential streets. The complainant states that she fully accepts the compromises necessary to reside in a shared residential and entertainment community. She asserts that all other nearby late trading licensed premises operate without issue or disturbance, which reinforces that the venue is not a proper or acceptable licensed premises for the local community.
8. The complainant seeks to have the venue closed and 're-zoned'. The complainant also requests the venue complies with existing noise related conditions on its liquor licence.

The venue, licence details, compliance history

9. The venue is located at 10-18 Oxford Square, Darlinghurst within the Sydney CBD Entertainment Precinct. [REDACTED] [REDACTED] [REDACTED]. The venue has an extended trade authorisation. The venue's trading hours for consumption on premises is 24 hours from 5:00am until 5:00am Monday to Saturday and 10:00am until 5:00am on Sundays. The venue is subject to a number of licence conditions including a LA10 noise condition, CCTV condition, RSA Marshal condition, glass condition and exiting of the venue condition.
10. The venue is also currently subject to two licence conditions relating to security, which were imposed by the Independent Liquor & Gaming Authority (the Authority) and commenced on 1 July 2008. Condition 310 states that from midnight until all patrons have left the venue and the vicinity of the venue, one licensed uniformed security person is to conduct patrols outside the venue and the immediate vicinity to ensure patrons do not cause disturbance to the neighbourhood. Condition 350 states that a register is to be kept by the licensee identifying all security personnel and at the commencement of each shift, each security officer is to be allocated a number which is to be displayed on clothing whilst performing duties at the venue. The register is to be produced for inspection to NSW Police or Special Inspector.

11. The current approved manager is Mr Jordan Peter Richard Young who commenced in the role on 1 April 2021. The Cliff Dive Pty Ltd is the corporate licensee and business owner since 18 July 2013.

Submissions

11. Between 22 April 2021 and 1 March 2022, various material was received from parties to the complaint, including the complainant, the venue, NSW Police (Police) and City of Sydney Council (Council). The material that is before the delegate is set out in **Annexure 2** and summarised below.

Council submission

12. In response to the complaint Council provided a submission on 22 April 2021. Council advised that in June 2015 partial approval for modification of development consent (D/2008/57/D) was granted for use of the basement level of the venue as a nightclub, as it is today. No approval was granted for the application to change security requirements under the consent conditions. Council note several development consent conditions including hours of operation being restricted to 12:00pm and 6:00am the following day, seven days a week, and the capacity of the venue shall not exceed 315 persons.
13. Council also state that security related conditions were provided on the development consent, including:

19 SECURITY – PUBS, HOTELS, BARS AND NIGHTCLUBS

(A) One uniformed licensed security officer to be employed at the main entrance/exit of the premises at all times when the premise is used. Additionally, after 9pm one guard must roam the Riley Street perimeter and within the confines of Oxford Square.

(B) These security officers are to remain at that entry/exit point until 30 minutes after closing even when the last patron has left the licensed premises and shall assist in the quiet and good order of the patrons leaving.

(C) Licensing security personnel are to be employed internally within the premises whenever the premises is being utilised for entertainment and that ratio be no less than 1 security per 100 patrons or part thereof once the venue has reached 100 patrons or more. Notwithstanding this, licensed security (I.e. at the entrance) must be employed at all times.

(E) Security officers shall move-on any persons loitering or congregating on the footway or any adjoining area within a 50-metre radius of the premise, so as to

maintain unobstructed pedestrian access and the social amenity of the area. A 2m unobstructed pedestrian path of travel running parallel to the building frontage, adjacent to the licensed footway seating area through Oxford Square must be maintained at all times by Management / security.

(F) Security officers and management shall communicate by held radios at all times, so if the additional guard is required to help at the front entry, he/she could be summoned immediately. These security officers are to remain at the entry/exit point until 30 minutes after closing even when the last patron has left the licensed premises and shall assist in the quiet and good order of patrons leaving.

(25) OPERATIONAL CONROLS

Security officers shall move-on any intoxicated persons or drinking alcohol or behaving inappropriately in front of the premises so as to prevent noise emission and from impacting on the adjoining neighbouring residents in the area.

14. Provided with the submission was a copy of the Notice of Determination of the original development application containing amendments resulting from the modification. It is noted that consent conditions apply to closed circuit television, neighbourhood amenity, complaints register, patron queuing and noise control, including the LA10 noise criteria and the use of a noise limiter.
15. Council submit that the venue is subject to regular inspections to check compliance with the venue's operational consent. In the past five years Council note there have been no detrimental compliance matters recorded in relation to the venue. Regarding noise complaints received on 7 December 2019 and 9 December 2019, neither City Rangers nor Health & Building staff could establish that the noise was attributable to the venue.

Police submission

16. On 12 May 2021, Police provided a submission in response to the complaint. Regarding the location of the venue, Police note it is located in the Oxford Street Precinct Liquor Accord Area, within the Sydney CBD Entertainment precinct and located adjacent to an area with diverse building types and predominantly residential buildings. The venue is also located within the Late-Night Management Areas as per the City of Sydney Late Night Trading Premises Development Control Plan 2007.
17. Police submit that within the last two weeks of December 2020, when the venue reopened following COVID-19 restrictions, they received two noise complaints for post-midnight noise emanating from the venue.

18. Police state they have undertaken patrols in the vicinity of the venue and business inspections regarding the monitoring of noise from the venue. Police submit that over a four-week period since the venue re-opened in December 2020, the venue has become significantly busier with their operations and promotions now targeting a younger demographic. During patrols, Police state they have identified anti-social behaviour from patrons loitering around the venue resulting in adverse interactions with Police. These interactions include littering, drug use and possession, public urination and patrons congregating in Riley Street. Additionally, Police have observed loud music audible from inside the venue and large queues at the front of the venue.
19. Police detail that during patrols on 23 April 2021 and 24 April 2021 from 1:00am in the surrounding residential area of the venue, they did not encounter loud or excessive noise from the venue. However, they did note that band members from the Oxford Art Factory were drinking and talking at the rear of the Oxford Art Factory on Norman Street.
20. On 6 May 2021, Police conducted a meeting with the approved manager, Mr Jordan Young. During the meeting, Police state Mr Young provided a response to the complaint which they deemed to include positive strategies and procedures. These included the potential for more prominent signage of alcohol-free zones to reduce instances of patrons attending the Oxford Street entertainment precinct disrupting residents in the area.
21. Police submit the disturbance complaint could be resolved by imposing a Plan of Management condition on the venue's licence and to reinforce existing security and LA10 licence conditions.

Venue response to complaint

22. On 12 May 2021, in response to the complaint, the Director of the business, Mr Alexander Dowd, provided a submission. Mr Dowd states the venue's liquor licence is subject to stringent noise conditions which the venue currently complies with, and in some cases, exceeds. Included in the submission was a statement from the licensee, a copy of the relevant liquor licence, Development Approval and Plan of Management conditions and the venue's AusComply data, outlining residential patrols from 1 April 2021 to 5 May 2021.
23. The submission details that it operates in a historical nightclub tenancy which started in 1979 and after redevelopment took up the entire building at 10 – 14 Oxford Square, Darlinghurst with approval for over 700 patrons. When the venue took over the liquor licence in 2013, the patron capacity was reduced to 315 to negate some of the social

amenity impacts associated with the previous use, which included approval for outdoor seating in Oxford Square. Since 2013, the programming of the entertainment in the venue has not significantly changed and the venue has been operating in the same format and ownership since its inception. Mr Dowd submits that lock out laws enacted in February 2014 significantly shortened the original 24-hour licence, with the venue closing at 4:00am.

24. Mr Dowd contends that when informed of disturbance issues in 2018 regarding patrons loitering in Norman Street and Burton Street, the owners and management of the venue met regularly with residents to alleviate concerns. The venue responded by increasing their external security presence, changing their compliance software and increased the external perimeter security patrols at a significant cost to the venue. Prior to the COVID-19 pandemic, Mr Dowd submits that quarterly meetings were held at the venue with local residents, which resulted in understanding issues and increasing local amenity. Mr Dowd proffers that residents have direct contact with the venue owners and management via phone and email and that all complaints are responded to directly as they occur.
25. Mr Dowd submits that Public Health Orders relating to the COVID-19 pandemic have had a significant impact on the venue, having been forced to close for 12 months and then reopen at 50% capacity. As a consequence of this, the venue made adjustments to security and staff to ensure financial viability of the business. Upon reopening, Mr Dowd states that there was an extremely large influx of patrons resulting in long wait times and individuals being turned away from the venue. An internal assessment of the situation resulted in a number of procedures being implemented to deal with patrons outside the venue.
26. Mr Dowd asserts the location of the venue at Oxford Square, with pedestrian area and stairs leading north down to Riley Street have been difficult to control as it acts as a pedestrian thoroughfare. He states the architecture of the nearby fountain in Oxford Square and the surrounding area makes it a natural place for people to congregate and is a constant focus for the venue's security team.
27. In response to the incident raised by the complainant on 4 April 2021, Mr Dowd states the incident occurred on Oxford Street and involved a group of 10 individuals, which was attended to by venue management and security as well as Police. Mr Dowd contends while some people involved in the incident were patrons of the venue, many were not. Once the incident was under control by Police, the licensee conducted a residential perimeter patrol and identified a group of people loitering in an alley to which he flagged down Police to deal with the matter. As a result of this incident and with advice from

Police, the venue has enacted a number of stringent policies designed at reducing amenity impacts to the surrounding area.

28. The strategies and procedures in place to deal with disturbance issues include:

- Half hourly perimeter checks of Riley Street, Norman Street, Burton Street and Liverpool Street conducted by security wearing high visibility vests from 8pm.
- Security are instructed to move along loiterers and details of the patrols are recorded in the compliance software AusComply, which Mr Dowd submits had resulted in a large decrease in loiterers over the last four weeks from the date of this submission.
- If any loiterers refuse to move on, they will be denied entry to the venue and staff are instructed to contact Police. Mr Dowd notes that as some of the surrounding streets are outside the 50m zone of the venue, there are times when there is little power venue management and security hold.
- Any persons identified as “consistent” loiterers in the local surrounds will be banned permanently.
- During peak times, two full-time static security guards are positioned at Oxford Street near the fountain and at Oxford Square near the Riley Street stairs, to deter patrons from loitering and ensure the venue quickly asks them to leave the immediate area as loitering is not tolerated.
- External signage has been placed on the wall of the venue, Riley Street and Oxford Square outlining conditions of entry and warning patrons not to loiter in the area.
- Patrons are unable to queue and line up further than the designated queue across the front of the building facing Oxford Street, to avoid spill over into residential areas. Patrons are requested to leave the immediate area if the queue is at capacity.
- Implemented ID scanners to log and create a database for offenders and act as deterrent for banned patrons to attempt to gain entry to the venue or loiter in surrounding streets.

29. A minimum of eight and a maximum of 10 security guards are employed before 10pm on Friday and Saturday nights, which goes well beyond security requirements as listed in the venue’s development approval and liquor licence. Mr Dowd notes that security patrols have identified that not all people loitering in the area are patrons of the venue,

with many simply using Riley Street for parking or to “pre-load’ alcohol before events at other licensed premises in the area. Mr Dowd submits that these people are noted by security and informed they will be refused entry to the venue due to drinking on approach. The venue has also implemented a register of all complaints and disturbances received in relation to the venue’s operations.

30. Mr Dowd states that historically there was a residential patrol conducted by other licensed premises nearby including the Oxford Art Factory, The Burdekin and The Gaff, however the venue is now taking full responsibility for its amenity. He believes that a shared sense of ownership of the area, and an increased financial input from other licensed premises would result in a higher frequency of local security patrols.
31. Mr Dowd also submits the venue has found that increased signage has been an effective deterrent for undesirable behaviour and proposes that more prominent signage reinforcing alcohol-free zones could potentially work to reduce disturbances. He states that changes to parking restrictions in the residential streets during the evenings over weekends would deter people from parking in the residential areas as they attend the Oxford Street entertainment area. Further, resident only parking areas would effectively control patron noise, particularly noting the area is known as a late trading precinct.
32. Mr Dowd asserts the venue understands that it is part of a local community of businesses, residents and patrons and empathises with residents in the area. He believes the enforced COVID-19 closure of the venue and subsequent reopening would have been extremely visible for residents that had become accustomed to a quieter Oxford Square and the increase of foot traffic along Oxford Street is back to levels predating the lockdown laws introduced in 2014. He contends that alongside plans to reinvigorate Kings Cross, there is little doubt the influx of patrons looking for safe and interesting late-night experiences will continue to rise in Darlinghurst.
33. Mr Young’s statement, as attached with the submission, outlines that Oxford Square is an area that attracts a diverse array of people, and its position creates a thoroughfare for pedestrian traffic and a public place to gather. He has taken responsibility for supervision of the area.
34. Mr Young states the venue takes the concerns of the community seriously and has invested significant efforts to maintain a symbiotic relationship with local residents and guests of the entertainment precinct. He submits that the AusComply data displays dozens of times the venue’s security has peacefully moved along loiterers with the intention of de-escalating any conflict and maintaining a quiet and safe residential zone.

He believes this indicates the venue's responses and practices implemented are working and the diligence of security has had a noticeable impact on disturbances.

Complainant final submission and further complaint material

35. In response to the venue submission, the complainant provided a final submission on 2 June 2021. The complainant submits the continued zoning approval of a late-night club in close proximity to a residential neighbourhood is not in the best interest of the local community. The local residents of Riley Street, Norman Street and Burton Street, Darlinghurst have formed a Residents Committee. The Resident's Committee was created to form a unified approach to the complaint and as such, individual and additional complaints have not submitted to Council or Police since formalising the complaint process with L&GNSW. The complainant states there have been ongoing issues with the venue, dating back to 2010.
36. The complainant submits the observations by Police regarding anti-social behaviour and patrons loitering support the argument the venue is unable to assist in the quiet and good order of patrons leaving the venue. The complainant also believes that security moving people on within a 50-metre radius of the venue, funnels intoxicated people into the residential areas creating more disturbance to the community.
37. In response to increased signage at the venue, the complainant disagrees it is an effective deterrent and notes an alcohol-free zone sign at the foot of the Riley Street stairs leading to Oxford Square and adjacent to the venue is ignored. The complainant states Police are unable to enforce the direction, and as such submits how the venue can consider their signage is effective.
38. The complainant, as part of their submission, supplied screen shots of the venue's Instagram page, citing excessive queueing of patrons and that promotion by the venue is exacerbating problems and attracting a young and aggressive crowd. The complainant submits the excessive queueing and additional security at the front of the venue has encourage patrons to "pre-load" in the nearby residential streets outside the 50m radius of the venue, leading to instances of disturbance, violence and public indecency. Attached with the submission is a series of photographs displaying people congregating in Oxford Square and on the stairs leading to Riley Street, and small groups of people loitering on Norman Street up to 150 metres away from the venue.
39. The complainant highlights whilst the venue was closed for a period of time as a result of COVID-19 restrictions, other venues were operating nearby without any complaints

from the local residential community. The complainant therefore asserts this strengthens the argument that the primary source of disturbance emanates from the venue.

40. In response to the venue's list of procedures to mitigate disturbance, the complainant appreciates the additional security steps, but does not deem them to be satisfactory and this in fact supports the argument that the venue's crowd is extremely hard to control and manage. The complainant submits with a capacity of only 300 people, patrons wait for extended periods of time to gain entry to the venue resulting in them 'pre-loading' and urinating in the surrounding streets. The complainant asserts the location and zoning of the venue is not suitable for the local community and suggests there are more suitable locations for the venue to relocate to without the heavy social impacts.
41. Finally, the complainant submits the venue poses an unacceptable and intolerable ongoing risk to the local neighbourhood. The venue's Development Application consent conditions are not effective in addressing disturbances and nuisances generated by the venue, and in fact compound the levels of violence, intoxication, indecency and public nuisance. The complainant believes they have exhausted all efforts over a 10-year period to mediate with the current and former venue operators and exhausted all avenues of complaints to Council and Police.
42. It is noted that on 18 June 2021 the complainant contacted L&GNSW to advise that over the June long weekend an incident occurred involving patrons of the venue which resulted in Police intervention.

Venue final submission and other material

43. On 22 July 2021, Mr Dowd supplied a final submission in response to the complaint. The submission contained AusComply data detailing neighbourhood patrols, three emails from local residents providing positive feedback, and a Certificate of Compliance dated 7 June 2019 from Mr Kevin Davidson of Davidson Audio Services Pty Ltd.
44. Mr Dowd states the submissions from Council and Police reinforce that the venue is abiding by their licence conditions and Development Consents and submits that any assertion or conjecture otherwise is a misrepresentation.
45. Mr Dowd acknowledges the venue had few impacts on local amenity until 2018, when they engaged with affected residents and proactively dealt with the issues as evidenced in the supporting emails from residents dated between October to December 2018. Mr Dowd submits the positive relationship with local residents extended into 2020, where increased security and changes to software compliance during this period was met with

approval by residents, forming the basis that the venue had a positive impact on local amenities.

46. Mr Dowd states the venue was closed due to the COVID-19 pandemic from March 2020 until December 2020; and then again from late December 2020 until April 2021. Mr Dowd submits that upon reopening, the venue has been quick to implement changes and respond to feedback from the community as evidenced in the residential security patrols outside of what is mandated by any licence condition or development consent. In response to photographs of patrons queuing at the venue, Mr Dowd states that they display a well-managed queue with security seen at the back of the line in a high visibility vest.
47. Regarding residential security patrols Mr Dowd submits that they are a preventative measure, rather than reactionary, and are designed to ensure patrons attending any licensed premises in the Oxford Street entertainment area respect local amenity. Additionally, Mr Dowd states the venue has taken on this responsibility for other licensed premises in the area. He submits the streets surrounding the venue offer the closest parking to licensed premises between Hyde Park and Taylor Square, with Riley Street representing the main pedestrian corridor towards Kings Cross, the provision of extra security illustrates the venue's commitment to residents based on issues that occurred in 2018, five years after the current ownership took tenancy of the venue.
48. Mr Dowd details the venues basement has been approved as a late-night venue since the 1970's and the Oxford Street strip is one of Sydney's most loved and historically important entertainment precincts. He also asserts there is a significant push from both Council and the community to reinvigorate the area as a creative precinct, contributing to its vibrancy which will consequently increase foot traffic in the local area.
49. In response to the photographs supplied by the complainant, Mr Dowd contends the majority of the images were taken in 2018 prior to any new strategies being implemented by the venue, including neighbourhood patrols and changes to compliance software, and as such are not a current representation of the venue. In specific reference to a photograph of people in Oxford Square, Mr Dowd submits these photographs are from April 2021 and are associated with a gallery opening in Oxford Square and not the venue.
50. In response to issues raised by Police in their submissions, Mr Dowd reaffirms the complaints from December 2021 were due to pent up demand for nightclub experiences, and COVID-19 restrictions impacting patron capacity and numbers allowed on the dancefloor. Many of these factors were ameliorated with the easing of restrictions in

2021. Mr Dowd supports the Police proposal to update its Plan of Management reflecting additional strategies discussed with Police on 6 May 2021. Mr Dowd submits the venue appreciates and values its relationship with Police.

51. Included in the venue's final submission was a Certificate of Compliance from Mr Kevin Davidson from Davidson Audio Services Pty Ltd, dated 7 June 2019 (the Certificate). The Certificate was regarding the venue's sound system and limiter calibration and identifies that due to the solid building structure and sound locks on the exits, very little sound escapes from the building. Mr Davidson states that the venue's sound system is controlled by a processor, which provides limiter settings which are set according to Development Approval requirements. The processor has no external controls and the compressor and limiter settings can only be accessed or adjusted using the proprietary software which is password protected to which only Davidson Audio has access.
52. Mr Davidson states the venue's sound system is calibrated regularly, but there is difficulty making meaningful measurements outside in the area due to noise. Therefore, listening tests outside the venue are the most effective way to ensure appropriate sound levels to verify compliance. Mr Davidson certifies the sound system at the venue is controlled and limited to comply with conditions stipulated in the venue's development consent.

Inspection by L&GNSW – 19 December 2021

53. On 19 December 2021, around 10:55pm, L&GNSW Inspectors conducted external observations along Oxford Street, Darlinghurst and identified a number of licensed premises to be operating. Inspectors approached Oxford Square and when standing in the Square observed that no patron noise or music was audible from these licensed premises. It was noted that overall noise levels on Oxford Street was predominately from traffic.
54. Whilst outside the complainant's residence Inspectors noticed techno style music with heavy bass to be audible and originating from the venue. The repetitive bass and beats from the music appeared to be emanating from the side gate leading to the laneway at the rear of the venue located on Riley Street. Inspectors then proceeded to patrol the surrounding streets and no significant noise from other sources was identified, except for traffic and mechanical noise from air conditioning units.
55. Around 11:20pm, Inspectors were standing in Oxford Square overlooking the entrance to the venue and observed two security guards at the entrance to the venue. A group of

five people were observed congregating in Oxford Square and an additional five people queuing to gain entry to the venue. Overall patron noise levels were considered low and noise from traffic on Oxford Street was evident. Low levels of techno style music and bass emanating from the venue was audible, however Inspectors could easily converse. When standing at the gate to the rear laneway of the venue on Riley Street, [REDACTED] [REDACTED] Inspectors observed clear bass/beats from house/techno style music (no lyrics or vocals) emanating from the venue to be evident and more significant.

56. Inspectors then entered the complainant's residence at 12:01am to conduct compliance testing of the LA10 noise criteria. At 12:07am, Inspectors observed that techno style music was clearly audible inside the front bedroom on the first floor of the residence, with doors to the balcony area open. The overall level of music and bass was considered low and Inspectors could converse without raised voices. Inspectors noted with the balcony doors closed, the music was faint, with the bass noise remaining slightly audible. As Inspectors walked toward the staircase to proceed downstairs, the same music and bass noise was audible but at a lower level compared to the front bedroom.
57. At 12:25am Inspectors noted when standing on the ground floor of the residence in the front lounge room, with the front door open and screen door closed, techno style music and bass was audible at a low level, as was low level patron noise and traffic. Inspectors could easily converse with the complainant without raised voices. Inspectors then requested the front door to be closed and observed that with the door closed no music or bass was audible. Inspectors formed the view that the music audible inside the complainant's residence was emanating from the venue.
58. Upon leaving the complainant's residence at 12:30am and approaching the venue, Inspectors saw a security guard approach a group of people sitting at the base of the stairs at Oxford Square and move them on, reminding them to be quiet in the residential area. Inspectors observed approximately 10 people sitting outside the venue in Oxford Square before entering the venue to conduct further observations.
59. On entry into the main dancefloor area, Inspectors observed a DJ to be playing techno style music with no lyrics or vocals. The music was extremely loud with strong bass and Inspectors had difficulty holding a conversation due to the volume of the music. On exiting the venue, Inspectors noted two signs painted on the walls at the base of the staircase reminding patrons to leave quietly and exit towards Oxford Street.

60. Inspectors spoke to the manager on duty, Mr Tejendra Thapa, who advised the DJ plays house/techno style music until approximately 4:00am as part KODE Sundays and all audio equipment is connected through the in-house sound system. Mr Thapa advised that five security guards were on shift that night and conduct patrols every hour from 10pm along Riley Street down to Liverpool Street and along Burton Street. Mr Thapa also advised that security ask patrons to move on to Oxford Street unless they are waiting for transport pickups on Riley Street.
61. Inspectors then informed Mr Thapa that compliance testing of the LA10 condition was conducted in a nearby residence and explained the post-midnight criteria. Inspectors then advised Mr Thapa that noise was audible inside the residence, which exceeded the LA10 post-midnight criteria. Inspectors then requested the volume of the DJ and speakers be turned down to which he agreed. At this time, Inspectors observed a security guard move on two patrons who were loitering at the base of the stairs on Riley Street. Inspectors reminded Mr Thapa to be proactive in conducting security patrols and moving patrons on to minimise disturbance to the neighbourhood.

Venue response to L&GNSW Inspection

62. On 8 January 2022, Mr Young, provided a submission in response to the L&GNSW inspection of the venue and compliance testing of the LA10 condition. Mr Young notes that the complainant has contacts numbers of the venue owners and management, however the volume of the venue's sound system has never been raised in complaints previously received. Mr Young asserts the venue is committed to compliance and has immediately reacted to the observations of Inspectors and engaged in training both security and assistant management in the exact nature of the venue's licence conditions that affect sound, namely the LA10 condition.
63. Mr Young states that on 31 December 2021, Davidson Audio conducted maintenance on the noise limiter and adjustments in order to ensure the venue is complying with the LA10 condition. In addition to this, Mr Young advises the venue has scheduled monthly sound tests with Davidson Audio to ensure future compliance, which includes an audibility test at the closest residential receivers. The venue has also engaged two acoustic specialists to provide quotations on upgrading acoustic seals to minimise sound leakage. Mr Young states the venue is committed to these upgrades in early 2022.
64. Mr Young also identifies that hourly security residential patrols will now include audibility checks at the closest residential receiver and will be logged on AusComply. A phone

application linked to the venue's sound system has been purchased and installed, allowing management to remotely turn down sound levels based on residential patrols and audibility checks in real time.

65. Mr Young concludes by stating venue management and security are extremely proactive in maintaining local amenity and are of the view the additional measures implemented should negate issues and concerns raised by Inspectors. Mr Young submits the venue is committed to continually working alongside the local community to allay any concerns.

Additional complaints to L&GNSW

66. On 6 December 2021, the complainant contacted L&GNSW alleging disturbance from music and patron noise emanating from the venue the previous night. The complainant submits that music from the venue was audible inside the bedrooms at her residence and noise from patrons yelling and screaming continued into the early hours. The complainant reiterated the desire for the venue to be rezoned.
67. On 24 February 2022, the complainant contacted L&GNSW regarding a violent incident that occurred outside her residence on 20 February 2022. The complainant alleges this incident took place as a result of the venue reopening and reiterates that the venue must be closed or relocated to ensure it is safe for local residents.
68. L&GNSW conducted a review of the venue's social media pages and established that the venue had remained closed since January 2022 due to extended COVID-19 restrictions and was set to reopen on 25 February 2022. That same day L&GNSW contacted Mr Young to confirm that with the easing of COVID-19 restrictions, the venue would be officially reopened on 25 February 2022. Mr Young confirmed this was the case in a reply email.
69. On 25 February 2022, L&GNSW contacted the complainant via email and advised that after conducting enquiries with the venue it was confirmed that the venue was reopening on 25 February 2022 after remaining closed from January due to extended COVID-19 restrictions. L&GNSW made note that this was consistent with the venue's social media pages, which L&GNSW had been monitoring.
70. On 1 March 2022, the complainant contacted L&GNSW advising of disturbance from loud music emanating from the venue at 11:45pm on 27 February 2022. The complainant submits the music lasts until 4:00am which is disruptive to residents who

work Monday morning. The complainant questioned how a venue with a long history of disturbance complaints can be operating in close proximity to residential areas.

Inspection by L&GNSW – 5 March 2022

71. On 5 March 2022 at 11:05pm L&GNSW Inspectors attended the venue as part of Operation Mardi Gras 2022. As Inspectors approached the venue from Oxford Street, a large number of people, approximately 200-250, was observed queuing outside the venue in Oxford Square to gain entry. Two security guards were observed engaging with people in the queue, directing them to move on. Inspectors observed an ID scanner at the entrance to the venue to be in use.
72. Inspectors engaged with Mr Young who advised that eight security guards were on shift that evening with one RSA Marshal also present. Inspectors then entered the venue and observed a DJ to be playing with the dancefloor full of patrons. Inspectors conducted further external observations of the venue noting that patrons were queued along the front of the building inside the roped bollards, and further queues extended along the stairs of Oxford Square adjacent to Burton Street. Mr Young approached Inspectors and advised that venue security had informed people in the extended queues they would not be gaining entry into the venue and requested them to leave the area, however most people were ignoring security's requests. Inspectors noted that large numbers of people were observed gathered on Oxford Street and remained in the nearby area due to Mardi Gras.

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

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

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

74. The licensed premises has operated under the current liquor licence since 13 January 1998, with the current business owner and corporate licensee commencing on 18 July 2013. This predates the complainant, who has resided at her current address for approximately four to five years. This fact is not in dispute, and I consider the order of occupancy is in favour of the venue.

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

75. The complainant notes that soundproof doors have been installed to the front bedroom of [REDACTED] residence [REDACTED]. There is no indication that structural changes have been made to the venue as a result of a development application.

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

76. The venue submits that since 2013 they have been operating in the same format with the programming of the entertainment provided in the venue remaining relatively unchanged since its inception. There is no evidence provided that indicates the activities in the venue have changed, with the venue operating as a nightclub under previous ownerships and tenancies.

Findings and Decision

Undue disturbance

77. In deciding whether the venue has unduly disturbed the quiet and good order of the neighbourhood, I have balanced the submissions made by the venue, the complainant, NSW Police and Council. I have also considered the observations of L&GNSW Inspectors during the inspections conducted on 19 December 2021 and 5 March 2022. I have also had regard to the particular context in which the venue operates.

78. 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. Additionally, it is clear that the unique location of the venue and the proximity of the complainant's residence is a significant factor to any potential disturbance that arises. Based on the available material before me, I am satisfied that there is sufficient evidence to reasonably conclude that the venue has, at times, unduly disturbed the quiet and good order of the neighbourhood.

79. In making a finding of undue disturbance, I have also been persuaded by the layout of the venue and its close proximity to the complainant and authorising residents. I acknowledge that the Certificate of Compliance by Davidson Audio and provided by the venue indicated compliance with all licence conditions. I do not question the integrity of this acoustic assessment; however, I note that it was completed in June 2019 and captures only a small sample size of the venue's total operation. Further, it is noted that Davidson Audio was retained by the venue in December 2021 with the noise limiter

requiring recalibration and adjustment. Based on the above factors, I am satisfied that the complainant and authorising residents have been impacted by undue disturbance.

Regulatory Outcome

80. 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 operates, noting that it is situated in the basement level of a building facing onto Oxford Square [REDACTED] [REDACTED]. I acknowledge that Oxford Square is a busy pedestrian thoroughfare located in the centre of an entertainment precinct of late trading licensed premises and note the practical implications this has.
81. I acknowledge the order of occupancy is in favour of the venue and that the venue's physical structure and business activities have not altered significantly.
82. I acknowledge the noise mitigation strategies the venue has adopted over time to reduce its noise impact. This includes the introduction of new compliance software, increasing the security presence outside the venue, increasing security patrols in the residential area to mitigate disturbance and to monitor audible noise during these patrols. I note that venue security and staff are now well versed in the application of the noise conditions the venue operates under in both their Development Application and liquor licence. The venue has been responsive to the complaint and has voluntarily implemented these measures to effectively reduce noise generated by patrons exiting the venue. It is clear the venue is taking the complaint seriously and is acting in a positive manner to address the issues and concerns raised.
83. The venue is currently subject to a LA10 noise condition on its liquor licence (Condition 320). The condition sets a limit to which background noise at a residential boundary cannot be exceeded. Furthermore, the condition requires that noise from the venue must not be audible within any habitable room of a residential premises between 12:00am midnight and 7:00am. I have placed weight on the L&GNSW inspection and compliance testing of the LA10 noise condition conducted at the complainant's residence on 19 December 2021. Relevantly, the findings of the compliance testing concluded that music was audible after midnight in the complainant's residence, indicating an exceedance to the LA10 post-midnight noise criteria.
84. On this point, I acknowledge the venue's response to the observations and concerns raised by L&GNSW Inspectors during the inspection and note the venue has re-engaged their acoustic consultant, Davidson Audio, to recalibrate the noise limiter. Additionally,

monthly acoustic testing is to be conducted at the closest residential receivers to ensure future compliance and acoustic amelioration upgrades to minimise sound leakage have been proposed by the venue. I am also encouraged that the venue has sourced and installed a phone application linked to the in-house sound system which allows real time adjustments to be made to sound levels during residential audibility checks. I find these steps collectively to be a positive representation of the venue's response to the complaint to mitigate concerns raised by the complainant. I strongly urge the venue to continue conducting acoustic testing regularly to ensure compliance with the LA10 noise condition.

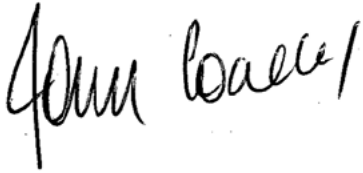
85. I note a significant focus of the complaint and the complainant's submissions is centred on the behaviour of patrons outside the venue and in nearby residential streets. As identified by the venue, the venue lies in a major thoroughfare to the Oxford Street entertainment precinct. Being adjacent to Oxford Square, the venue has attempted to take on sole responsibility of the Square. Given the density of late trading licensed premises along Oxford Street and the nature and locality of Oxford Square, it is reasonable to conclude that as a public gathering area not all individuals within this location can be attributed to the venue itself. On this point, I acknowledge that an increase in a shared responsibility across licensed venues in the immediate area to address loitering patrons in Oxford Square would have a positive impact in reducing disturbance.
86. Regarding concerns raised by the complainant relating to patrons 'pre-loading' in residential streets and causing disturbance, altering parking conditions in the surrounding residential streets and enforcing alcohol-free zones as recommended by the venue may assist in reducing the amount of pedestrian traffic disturbing local residents. It is noted that this is outside L&GNSW's purview and would be more appropriately addressed by Council. I also note the desired outcome identified by the complainant regarding the 'rezoning' of the venue. This too sits outside L&GNSW's jurisdiction and is not an outcome that may be considered under section 81 of the Act.
87. Having carefully considered the material before me, I am satisfied that there is a need to manage the disturbance generated by patron traffic and noise around the venue and that regulatory intervention is warranted. I have taken into consideration the voluntary measures currently being undertaken by the venue and have determined that the imposition of a security patrol condition on the venue's liquor licence will provide regulatory certainty and enforceability. I note the venue already has two security-related conditions on its licence imposed by the Authority in 2008 (Conditions 310 and 350).

Condition 310 requires one licensed security person to be engaged to patrol outside the venue, with the patrol commencing from 12:00 midnight until all patrons have left the venue and its vicinity. Condition 350 requires a security register be kept at the venue identifying all security personnel performing security activities for the venue. It is clear from submissions provided by Police, the complainant and the venue that Condition 310 is not adequate to address the unique location of the venue and the current situation.

88. In imposing this condition, I have considered the submissions by the complainant that disturbance is caused by patrons leaving the venue, and observations by Police regarding anti-social behaviour identified outside the venue. I consider this condition necessary to ensure patrons are discouraged from loitering in the vicinity of the venue and causing disturbance and will provide regulatory certainty that the voluntary security strategies currently implemented by the venue, including 30-minute residential security patrols from 9:00pm until 30 minutes after closing are strictly adhered to. This condition is targeted at security patrols and does not reflect the total security presence that the venue ought to have.
89. I note the security condition being imposed on the venue's liquor licence is similar in context to condition 19(A) and (B) of the venue's development consent. I do not consider that the imposition of this condition will be unduly burdensome to the venue, given the increase in security presence the venue has already voluntarily implemented. I am also of the view that the condition will not counteract Condition 310 as it provides for a longer period for security patrols to occur at regular intervals, as well as requiring one security guard to remain at the entrance to the venue at all times and one security guard to remain in Oxford Square during peak periods. This condition gives all parties the certainty of security conditions, noting that the venue has little recourse to address unruly patrons outside the 50-metre radius of the venue.
90. I am satisfied that 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 patron traffic, directing them from the immediate vicinity of the complainant's residence. I am confident this condition will reduce the impact of patron noise and behaviour in the surrounding areas to the neighbourhood. Noting the residential area in which the venue is located, I again remind the venue that it has a strong obligation to take all disturbance complaints seriously and proactively manage any potential disturbance that may be 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 the matter to be reconsidered and for further regulatory intervention to occur.

Decision Date: 24 March 2022



John Coady

Manager, Regulatory Interventions Team

Liquor & Gaming NSW

Delegate of the Secretary of the Department of Customer Service

Application for review:

Should you be aggrieved by this decision, you may seek a review by the Independent Liquor & Gaming Authority by an application which must be lodged within 28 days of the date of this decision, that is, by no later than 21 April 2022. 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/ilga/guidelines/Authority_Guideline_2.pdf

Under section 81 of the *Liquor Act 2007* a delegate of the Secretary of the Department of Customer Service has imposed the following condition on the liquor licence of:

The Cliff Dive Pty Ltd – LIQO624006608

Security patrols

1 (a) On Friday, Saturday and Sunday evenings, at least one (1) licensed uniformed security personnel is to conduct patrols at 30-minute intervals of the vicinity of the licensed premises, being Oxford Square, Burton Street, Riley Street, Norman Street and Oxford Street, to ensure that patrons do not loiter or linger in the area or cause nuisance or annoyance to the neighbourhood. Such patrols are to commence at 9:00pm and continue until the last patron has left the licensed premises and vicinity of the licensed premises.

(b) One (1) licensed uniformed security guard is to remain at the main entrance to the venue at all times.

(c) One (1) licensed uniformed security guard, during peak times, is to remain in Oxford Square and direct patrons loitering or lingering in the area to move on towards Oxford Street and in a direction away from residential streets.

Date condition effective: 1 April 2022



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

1. Copy of the liquor licence dated 25 February 2022.
2. Section 79 Disturbance Complaint lodged by the complainant on 7 April 2021.
3. Material received from City of Sydney Council received on 22 April 2021.
4. Submission from NSW Police received on 12 May 2021.
5. Venue submission in response to the complaint received on 12 May 2021.
6. Final submission from complainant received on 2 June 2021 and further complaint material received on 18 June 2021.
7. Venue final submission received on 22 July 2021.
8. File note from L&GNSW Inspector PIETRANTONIO from inspection of venue on 19 December 2021.
9. Venue submission in response to L&GNSW inspection received on 8 January 2022.
10. File note from L&GNSW Inspector BARRELL from inspection of venue on 5 March 2022.