

---

**FILE NO:** A21/0020801

**COMPLAINANT:** ██████████

**LICENSED PREMISES:** Hustle & Flow Bar, Redfern - LIQH440018920

**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, Dimitri Argeres, Director Compliance & Enforcement, Liquor & Gaming NSW, a delegate of the Secretary of the Department of Enterprise, Investment and Trade in relation to the complaint made in respect to Hustle & Flow Bar, Redfern – LIQH440018920 have decided to **issue a warning** to the licensee in the following terms:

*Under Section 81(d) of the Liquor Act 2007, I Dimitri Argeres, Director Compliance & Enforcement, Liquor & Gaming NSW, a delegate of the Secretary, Department of Enterprise, Investment and Trade, warn Bar Whispers Pty Ltd, the corporate licensee of Hustle & Flow Bar, that it must ensure no future undue disturbance is caused by the operation of Hustle & Flow Bar, Redfern, including the provision of live amplified entertainment and patron noise.*

---

## 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; and,
  - c) the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life. 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 14 December 2021, [REDACTED] (the complainant) of [REDACTED], [REDACTED] lodged a section 79 noise disturbance complaint with Liquor & Gaming NSW (L&GNSW) alleging undue disturbance from the operation of Hustle & Flow Bar (the Venue). The complainant lodged the complaint as a resident authorised by seven other residents.
6. The complainant alleges disturbance is caused by excessive noise from activities inside the Venue including loud amplified music from speakers located at the entrance to the Venue and excessive noise from patrons lingering outside the Venue. The complainant submits the entrance door to the Venue is constantly open due to foot traffic of patrons which causes music to be audible inside their residence, including the bedroom and living areas. The complainant further submits that patrons linger outside the Venue once it has closed, engaging in anti-social and violent behaviour including smoking, screaming, singing, fighting and damaging public property. The complainant states the disturbance is damaging their mental health and is disruptive to sleep. The complainant submits the

disturbance occurs predominantly on Thursday, Friday, Saturday, and Sunday evenings until 2:00am.

7. The complainant alleges the Venue is failing to trade in accordance with Development Approval (DA) D/2012/975/D approved by City of Sydney Council (Council). Reference is made to a development consent condition relating to noise which outlines that noise must not be audible in a habitable room between 12:00am and 7:00am. The complainant further submits that:
  - a) repeated complaints made to the Venue, NSW Police (Police) and Council by residents since 2016 have not resulted in a lasting change or improvement to the Venue's operation. The complainant asserts that despite lodging numerous noise complaints with Council concerning the Venue and providing submissions objecting to relevant development applications, no action has been taken by Council to resolve the issues.
  - b) the Venue has also not offered any concrete solutions or taken action to address and resolve disturbance concerns raised by residents.
  - c) in 2020 they engaged with Council to oppose the installation of footpath dining outside the Venue, which was subsequently approved for use as part of the NSW Government's Alfresco Dining initiative. The complainant submits that in 2019 they lodged a complaint with L&GNSW concerning noise at the Venue and was directed to contact Council and advised of the statutory disturbance complaint process under section 79 of the Act.
  - d) they raised concerns with Council regarding Development Application (DA) D/2012/975/D relating to the modification application to extend the approved trading hours of the Venue until 2:00am, which was granted on 11 November 2020 for a one-year trial. The complainant provided the Council response outlined in an email dated 14 May 2021, which stated "determination of the DA was based off the level of compliance with the relevant controls for the site, weighed up with submissions made by the general public". Further, it was outlined during Council's assessment, a review of complaints made against the Venue was conducted and properties located within a 25m radius of the Venue were notified of the application as per Council's notification policy. As the complainant's building is located outside this radius, there was no requirement for the complainant to be notified for DA D/2012/975/D.
8. The complainant provided an email to Council dated 15 November 2021 in relation to DAs D/2012/975/E, opposing the application to extend the Venue's trading hours to 3:00am. The complainant outlines the historical issues regarding alleged disturbance

from music and patron noise attributed to the Venue and submits the ongoing disturbance is damaging their mental health.

9. Included with the complaint is email correspondence between Council and the complainant dated between 15 August 2019 and 15 November 2021 regarding development application approvals and noise disturbance issues, a copy of email correspondence between the complainant and L&GNSW dated 16 May 2019, and a City of Sydney Health and Building Unit Noise nuisance recording log with entries dated between 26 November 2021 to 11 December 2021.
10. The complainant's desired outcome includes the Venue install the internal door, as stipulated in the previous DA (D/2012/975/C), the volume of music and bass be lowered to an acceptable level, trading hours be restricted to 11:00pm, soundproof facilities are installed at the Venue, relocate and move the speaker and sound system to the rear of the Venue, and ensure staff monitor the activities and behaviour of patrons.

*The venue, licence details, compliance history*

11. The Venue holds a hotel licence and is located on the ground floor at Unit 3, 105 Regent Street, Redfern. The venue holds an extended trade authorisation. Bar Whispers Pty Ltd has been the corporate licensee since 7 January 2016 and Mr Nigel Trevor Tarrant (the Approved Manager) has been the Approved Manager since 27 January 2016.
12. On 5 November 2021, the Venue's application for a temporary change of boundaries was approved by the Independent Liquor & Gaming Authority (the Authority) and is valid until 30 April 2022. The approval permits the use of a small outdoor area along the footpath adjacent to the Venue. Trading hours for the temporary outdoor area (alfresco) area are 11:00am to 10:00pm each day of the week. In other areas, the Venue is permitted to trade from 11:00am to 2:00am each day of the week under its extended trading authorisation.
13. On 22 July 2022, the Venue lodged a change of boundaries application with L&GNSW to expand the licensed boundary and the existing extended trading authorisation into Unit 2, 105 Regent Street, Redfern. If granted, the Venue's patron capacity will increase to 120 patrons by expanding into the adjoining tenancy of Unit 2. Included with the application is DA D/2022/114, approved by Council on 13 July 2022 for the expansion of the site of the Venue and FA/2022/149, approved by Council on 6 September 2022 in relation to outdoor dining approval. The L&GNSW applications in relation to change of boundaries and extended trading authorisations are currently awaiting determination by the Independent Liquor & Gaming Authority.
14. The Venue is subject to a number of licence conditions including participation in the local liquor accord, social impact, plan of management, CCTV, crime scene preservation,

incident register, the sale and service of liquor ceasing 15 minutes prior to close and security requirements on nights when the Venue trades past midnight.

15. A review of L&GNSW records identified two complaints against the Venue lodged in 2014 and 2016, with neither complaint relating to noise or disturbance.

### **Submissions**

16. Between 5 January 2022 and 28 July 2022, various material was received from parties to the complaint, including the complainant, the Approved Manager, Council and NSW Police (Police). The material before the delegate is set out in **Annexure 1** and is summarised below.

#### *Council submission*

17. On 5 January 2022, Council provided a submission in response to the complaint. Included with the submission is a copy of Footway (Outdoor Dining) Approval FA/2021/119/A, Notice of Determination for Modification of Development Consent D/2012/975/D, Noise Impact Assessment Report (the Acoustic Report) conducted by Rodney Stevens Acoustics (RSA) dated 27 August 2020, a copy of the Venue's submission to Council in response to objections raised in relation to D/2012/975/D dated 10 September 2020, Plan of Management dated 2020 and three floor plans of the Venue.
18. In its submission, Council advises that:
  - a) since July 2018, 17 disturbance complaints have been received which relate to allegations of excessive noise from the Venue. Eleven of the complaints originate from one resident located at the complainant's building and the remaining six did not disclose their address. Council also advised that three inspections have resulted in Noise Abatement Directions being served on the Venue (30 January 2019, 27 February 2019 and 8 May 2019) and three warnings issued for breaching development consent.
  - b) the Venue was granted outdoor dining approval FA/2021/119/A on 9 September 2021, which expires on 9 September 2023. FA/2021/119/A gives approval for the use of an area measuring 5.5m<sup>2</sup> on the footway of Regent Street adjoining the Venue. The hours of operation of the outdoor dining area are restricted to 11:00am to 10:00pm Monday to Sunday. FA/2021/119/A also contains consent conditions relating to amplified noise and music and restricts the operation of the outdoor dining area for use by seated patrons consuming food or drink.
  - c) DA D/2012/975/D was approved on 11 November 2020 and allows for an extension of trading until 2:00am, Monday to Sunday, for a trial period expiring on 1 December 2021. The application was approved subject to consent conditions which required

compliance with a Plan of Management and the Acoustic Report (including implementation of requirements and recommendations), no speakers or music outside the Venue, neighbourhood amenity, CCTV, restrictions on noise emissions, and the use of noise limiter for all amplified equipment.

- d) the Venue lodged a new application to continue the extended trading hours until 2:00am prior to the expiry under D/2012/975/D. Therefore, in accordance with Council's Development Control Plan, the Venue is permitted to operate under the approved trial hours while the new application is assessed.
- e) there is a pending DA D/2012/975/E to PAN-160525 S4.55(2) for modification of consent for the Venue to continue trial trading hours from 11:00pm to 2:00am and extend to 3:00am for live music and performance nights, seven days a week. Council also state there is a current investigation open into the allegation of offensive noise from the Venue.

#### *Police submission*

19. On 14 January 2022, a submission was received from Police in response to the complaint. Police advise the general theme of the Venue includes live 'hip hop', live bands, DJ's and dancing. Included with the submission is a copy of the Venue's DAs (D/2012/975, D/2012/975A, D/2012/975B, D/2012/975C and D/2012/975D), a copy of the Venue's liquor licence, Police objection to the granting of the liquor licence dated 13 June 2012, Police objection to the transfer of the liquor licence to the Approved Manager dated 7 January 2016 and copies of the Venue's Plan of Management dated 2017 and 2021.

20. The Police submission further includes that:

- a) on 28 November 2021, the complainant contacted Police in relation to the level of music at the Venue, the behaviour of patrons when leaving the Venue and expressed concern regarding the application lodged with Council to extend the Venue's trading hours to 3:00am. A copy of the complainant's email was included with the Police submission. Police further advise they have objected to the applications lodged with Council to extend the Venue's trading hours.
- b) in the last two years, 23 police reports have been linked to the Venue, as well as numerous other attendances which did not result in the creation of a formal police report. Police also present a summary of 15 COPS events linked to the Venue dated between 22 March 2014 and 15 October 2021.
- c) a review of the COPS events indicates three events were recorded for 2021, with one event relating to a domestic argument between two patrons who had left the Venue

and no security present. The second event related to a large group of patrons observed congregating at the front of the Venue, with some patrons drinking alcohol and removing glass from the Venue in contravention of the Venue's development consent and Plan of Management. Police engaged with the Approved Manager who acknowledged no security was present at the Venue and COVID-19 related requirements were not being effectively managed. Police also considered noise emanating from the Venue to be excessive and a warning was issued. The third event related to a large group of patrons drinking alcohol and smoking on the footpath outside the Venue not complying with COVID-19 requirements. Police expressed concerns to the Approved Manager regarding the management of the Venue and observed no security to be present at the time of the incident.

- d) two events were recorded in 2019 and 2020 relating to patrons consuming liquor on the footpath outside the Venue and a patron being moved on by Police after being refused entry to the Venue due to intoxication. Four events were recorded in 2018, with two events relating to brawls involving patrons of the Venue, one event concerning a domestic related incident outside the Venue and the fourth event relating to an inspection by Police following complaints received from residents of offensive noise. Police identified the noise from live music emanating from the Venue to be offensive. In all four incidents, Police observed no security to be present at the Venue.
- e) the history of the Venue indicates there is an on-going negative impact on local residents and the quiet and good order of the neighbourhood. Police reiterate that many of the issues relate to patron management on the footpath outside the Venue and noise omitted from the DJ or live music within the Venue.
- f) they believe the Approved Manager and the current managerial arrangements of the Venue are inadequate and fail to effectively manage its patronage. Police further contend numerous commitments in the Plan of Management and requirements of the relevant development consent in relation to noise and patron control are not being adhered to.
- g) numerous warnings have been issued to the Venue and the Approved Manager has committed to improve practices at the Venue, however this has not occurred. Police have also recommended the Venue engage security personnel to improve the management of patrons, however this has not been implemented and disturbance issues have continued.
- h) permitting the Venue to continue to operate without any additional noise reduction strategies or formal security arrangements in place will increase disturbance to local residents. Police are of the view that nearly all incidents attended to at the Venue

could have been prevented, or significantly reduced, had a dedicated security guard been present.

21. In order to mitigate disturbance concerns, Police seek the imposition of a LA10 noise condition on the Venue's licence, as well as conditions relating to security and complaint management as outlined below:

- a) When the Venue operates past 10:00pm, one (1) licensed uniformed security officer is to continually patrol the area in the vicinity of the premises and are to continue such patrol from 10:00pm until 30 minutes after the closing time and the last patrons have left the premises and the vicinity;
- b) The licensee must maintain a telephone line that affords direct contact with the licensee or manager in charge of the Venue, whereby members of the public can advise the Venue about matters of concern or make complaints about the Venue's operation. The telephone number must be displayed at the Venue in a manner that any reasonable person would be able to view it. The Venue shall keep and maintain records of any complaint made with respect to the operation of the Venue. Upon receipt of a complaint, the licensee will respond in an efficient and sympathetic manner. A logbook of these complaints is to be kept and be made available for inspection on request.

22. On 2 March 2022, Police advised L&GNSW the Venue had submitted to Police a notice of intent of a change of licensed boundary and an application for the current extended trading authorisation (to 2:00am) to apply to the extended boundary. Police note the application seeks to double the Venue's licensed footprint into Unit 2, 105 Regent Street, Redfern which will also increase patron capacity to 120.

23. Police submit they hold major concerns, noting the Venue's current arrangements and management have been subject to significant neighbourhood disruption and complaints. Police further advise they intend on objecting to the application lodged with L&GNSW.

#### *Venue response to complaint*

24. On 17 January 2022, the Approved Manager provided a submission in response to the complaint. Included with the submission is the Venue's Plan of Management dated 2021, the Acoustic Report and an Acoustic Occupational Certificate Report (the Acoustic Occupational Report) conducted by RSA, dated 16 April 2021.

25. It is submitted that prior to the L&GNSW notification of the disturbance complaint, the only correspondence the Venue had received in relation to noise complaints was a Facebook



message from one resident and one inspection from Council. The Approved Manager states upon the outcome of Council's inspection, the noise levels at the Venue were deemed to be at an "acceptable level".

26. The Approved Manager states the Venue satisfied several conditions and implemented processes in relation to sound management for the extended trading hours including:
  - a) Installation of a new PA system to direct sound away from the entrance and distribute a more even sound throughout the Venue.
  - b) Installation of a digital control mixer to have better control and set limits on sound levels.
  - c) Installation of new entrance/exit doors to seal up pre-existing air gaps to negate sound bleed when the doors are closed.
  - d) Installation of a 'push to exit' button on the internal side of the entrance/exit doors to stop the sensor of the doors from activating and opening the doors unnecessarily.
  - e) Employment of one (1) security guard for crowd control and management of external areas.
  - f) Acoustic testing conducted by RSA.
  - g) Updated Plan of Management.
  
27. The Venue's Plan of Management outlines noise management procedures which include open communication with residents, maintaining a register of complaints, audio system levels programmed by an independent acoustic engineer, closing down procedures involving lowering the volume of music 30 minutes prior to closing and signage for patrons to be mindful of noise levels when departing the Venue. Security provisions are also contained in the Plan of Management detailing the deployment of one uniformed security after midnight for patron management and dispersal of patrons upon closing to minimise disruption to the neighbourhood
  
28. The Approved Manager further submits the Venue wants to work towards a practical solution for all parties to be considered whilst continuing to operate their business. To manage any future complaints, the Approved Manager proposes to redirect the business landline to their personal mobile number to manage complaints in an effective manner, implement a Noise Complaints form to document and reply to complaints officially, ensure the door guard(s) are diligent in managing patrons and noise levels outside the Venue, and installing more visible signage directing patrons to keep noise levels low and to be mindful of neighbours.
  
29. The Approved Manager states upgrading the Venue's PA system and employing security personnel has been both a financial and operational challenge at a time where business has been disrupted by the COVID-19 pandemic. They believe the Venue is operating

within its licence conditions and the DA, however, is open to revising and improving the current operations of the Venue.

### The Acoustic Report

30. The Acoustic Report states RSA was engaged by the Venue to assess the noise impacts associated with the proposed extension of trading hours (11:00am to 2:00am Monday to Sunday) and provide acoustic control recommendations so the extension of trading hours at the Venue may operate and comply with Council requirements.
31. The Acoustic Report details the results of a noise survey during a site inspection at the Venue on 20 August 2020 where both background music and live music was assessed during night-time trade. The Acoustic Report provides an assessment of measured noise levels and predicted noise levels from the proposed extension of trading hours against Council's noise criteria.
32. The Acoustic Report determined noise emissions from the Venue's proposed extension of hours can comply with Council noise criteria and guidelines if the gap under the glass sliding doors at the front of the Venue is filled to ensure noise does not exit through the gap, and a noise limiter is installed on the Venue's PA sound system and set to specific requirements.

### The Acoustic Occupational Report

33. The Acoustic Occupational Report states RSA was engaged by the Venue to prepare an acoustic occupational assessment and certification of the approved extension of trading hours at the Venue. The Acoustic Occupational Report was prepared to ensure compliance with D/2012/975 and the recommendations set out in the Acoustic Report.
34. The Acoustic Occupational Report details a site inspection conducted on 15 April 2021 to ensure the recommendations of the Acoustic Report have been incorporated at the Venue and to calibrate and test the limiter system. The Acoustic Occupational Report confirmed the external door to the Venue had been changed and the noise limiter was operational and had been calibrated and measured by RSA, which would ensure compliance with Council's criteria.
35. On 7 February 2022, the Approved Manager provided further information to L&GNSW advising the Venue is adjusting operations to mitigate the complaints, including lowering the volume of the PA system and redirecting the business landline to their personal mobile. The Approved Manager further noted all DJ performances at the Venue for the month of February 2022 had been cancelled.

*Complainant final submission and further complaint material*

36. On 8 February 2022 a submission was received from the complainant. Included with the submission is email correspondence with Council dated between 18 January 2022 and 4 February 2022, copies of Facebook Messenger conversations with the Venue concerning noise dated between 13 February 2019 and 29 January 2022, City of Sydney Health and Building Unit Noise nuisance recording log with entries dated between 26 November 2021 to 29 January 2022 (the Noise Nuisance Log) and six video and audio recordings taken between 20 December 2020 and 4 February 2022 highlighting incidents of disturbance involving music emanating from the Venue and anti-social behaviour from patrons including singing and screaming on the footpath outside the Venue.
37. The complainant submits the observations by Police regarding violence, noise pollution and disturbance to the neighbourhood support the argument the Venue is having a negative impact on residents and the neighbourhood. The complainant asserts the imposition of a LA10 noise condition should be implemented.
38. The complainant states on 26 December 2021 they contacted Council regarding excessive noise from the Venue, which was clearly audible inside their bedroom and living room. As a result, a Council Ranger attended the complainant's residence to conduct a noise assessment at 12:20am on 27 December 2021 and deemed noise from the Venue to be offensive and audible inside the residence with doors closed. The complainant submits this to be strong evidence of the Venue breaching their DA, with consent conditions requiring that noise "must not be audible within any habitable room in any residential use between the hours of 12:00am midnight and 7:00am".
39. The complainant submits they are currently in contact with Council to resolve the noise issues attributed to the Venue and refers to email correspondence from Council dated 20 January 2022, which outlines Council's modified approach in addressing noise issues. The complainant stresses that such an approach does not guarantee an effective enforcement of, or solution to, the noise issues. The complainant also refers to an email to Council dated 30 January 2022 which expresses frustration at being unable to contact the Venue when disturbance occurs, submitting the Venue is unwilling to communicate with residents to resolve the issues.
40. In support the complainant supplied screen shots of correspondence with the Venue that occurred through the Facebook Messenger application, with the complainant advising the Venue of excessive noise and requesting action to reduce noise levels. The messages show apologies from the Venue for the disturbance, however, fail to provide any mitigating action taken by the Venue at the time of the disturbances. The complainant further states phone calls to the Venue go unanswered and despite leaving voicemails, no phone calls are returned.

41. The complainant also refers to the Noise Nuisance Log which outlines 12 incidents of noise disturbance from the Venue between 26 November 2021 and 29 January 2022, including mention of the Council Ranger attendance on the evening of 26 December 2021 and note of the offensive noise.
42. The complainant refutes the Approved Manager's claim that they were surprised by the disturbance complaint and having no previous complaints made against the Venue. The complainant states they have been complaining against the Venue since 2018, with the Police submission supporting the argument that noise disturbance has been occurring at the Venue since 2016.
43. The complainant contends the excessive noise from amplified music and vibration from heavy bass emanating from the Venue has caused ongoing stress for over three years and has had an adverse impact on both their mental and physical health. This includes interrupted sleep, headaches, anxiety and loss of concentration the next day impacting their duties at work. The complainant further submits they have started to use noise cancelling headphones to reduce the noise disturbance; however, this has caused physical discomfort and inflammation of the ears.
44. In response to the Venue's Plan of Management dated 2021, the complainant submits the productive working relationship between the Venue and Police, as alleged by the Venue, is false. The complainant further contends the Venue failed to adhere to its complaint register procedure as outlined in the Plan of Management referencing the previous attempts made through phone calls and Facebook messages to the Venue which were not all responded to.
45. In response to the Acoustic Report, the complainant questions the accuracy of the noise assessment on the impact of the neighbourhood noting their residence is not included on the map as a nearby sensitive receiver. The complaint also submits there is no signage located at the exit of the Venue reminding patrons to be mindful of noise when leaving the Venue, they are unable to communicate directly with the Venue, and the Venue's alleged track record of no violent incidents is false which is contradicted by the Police submission and the complainant's video recordings.
46. The complainant acknowledges the Venue's submission has satisfied a number of conditions in relation to sound management for their extended trading hours, however, contends the music from the Venue continues to be at an offensive level. As such, it is submitted the methods implemented are not effective or sufficient in addressing disturbances and nuisances generated by the Venue. The complainant believes they have exhausted all avenues to mediate and resolve the noise disturbance issues to no avail.

*Venue final submission and other material*

47. On 18 March 2022, the Approved Manager supplied a final submission in response to the complaint. The submission outlines a summary of approvals relating to the current development consent for the Venue and notes the determination by Council on 1 March 2022 to continue the Venue's extension of trading hours until 2:00am.
48. The submission included an additional copy of the Acoustic Report, a summary of Council Ranger's reports dated between 7 April 2017 and 26 December 2021, Facebook Messenger correspondence concerning noise complaints dated between 13 February 2019 and 30 January 2022 and email correspondence between the Approved Manager and a resident acting on behalf of the strata executive committee of a nearby apartment block dated between 16 May 2019 and 10 October 2019.
49. In response to the Police submission, the Approved Manager states the Venue regularly updates and maintains an incident register to ensure a safe environment and accurate record keeping of incidents. It is further submitted over a period of six years from 2016 to present, Police only identified 13 adverse incidents under the current tenure of the licensee and Approved Manager. The Approved Manager contends following a meeting with Police on 7 November 2021, it was agreed the Venue was not a focus of concern at that time.
50. The Approved Manager submits the Venue is, and has been since 2013, an open and safe space for cultural exchange, live music and artistic expression. Following the negative impact COVID-19 had on the entertainment industry, the Venue is committed to supporting local artists and DJ's. In acknowledging the Venue's responsibilities to the community, the Venue's PA system has been specifically designed with advice from an audio engineer to direct the speakers away from the entry and deliver an even and controlled sound throughout the Venue. The Approved Manager further states the system has been programmed with audio limitations to adhere to consent conditions on DA D/2012/975/D, which is supported by the acoustic reports prepared by RSA.
51. In response to the Police recommendation regarding the employment of security guards, the Approved Manager submits the safety of patrons and the community has been always carefully considered and from 26 November 2021, one security guard is deployed when the Venue trades past midnight. It is further submitted that, to ensure effective patron management, the Venue has been proactive in recognising ineffective security personnel previously employed and has since engaged the services of a more suitable company as of 25 February 2022.
52. In response to Police concerns regarding direct communication between the Venue and the community, the Approved Manager states the matter was addressed with Council on

2 February 2022. The Venue's telephone landline has been diverted to their personal mobile to facilitate open communication and deal with concerns raised by residents.

53. In response to the Police recommendation to impose a LA10 noise condition, the Approved Manager acknowledges the issues raised and submits the Venue continually manages noise levels in real time, having invested in an engineered PA system and conducted acoustic testing. In addition, the Venue has undertaken steps throughout the years to minimise noise including installing new entrance doors to close the air gap to prevent noise escaping and a push to exit button to counteract the automatic sensor.
54. In response to Council's submission, the Approved Manager submits that of the 17 complaints in relation to the Venue, 11 are from the one complainant and the remaining six could not be verified. The Approved Manager also states the Venue requested all Customer Service Module (CSM) records held by Council and linked to the Venue for review as they were previously unaware of many of the existing complaints. It is submitted of the 21 CSM's provided, only four amounted to an official determination the music at the Venue was offensive. In addition, many of the records also note while music was audible, it could not be heard over the traffic on Regent Street.
55. It is submitted the noise abatement order issued on 9 May 2019, as referred to in the Council submission, was in place for a period of 28 days and during that time, the complainant lodge five complaints with Council concerning noise levels at the Venue. On 24 May 2019, Council Rangers conducted a noise impact assessment, and the noise was deemed not offensive. The Approved Manager contends this indicates the Venue takes noise complaints seriously and complies with all requirements to ensure it is operating at a level appropriate for the location and community.
56. The Approved Manager believes the Venue has been unfairly targeted by a particular complainant with many complaints unsubstantiated by assessments conducted by Council Rangers. Reference is made to five CSM's outlining observations from Council Rangers in support of this claim. The Approved Manager further states that, where the disturbance is substantiated, the Venue has acted in the best interest of the community to improve its operations.
57. In response to the complainant's final submission regarding the Venue's violent history, the Approved Manager states the Venue has been in operation since 2013 and during this period only 15 Police reports were provided in connection with the Venue. It is submitted that many of the incidents did not relate to noise disturbance and on average amounts to less than two incidents a year.
58. The Approved Manager reiterates the Venue manages noise levels by utilising a system that is designed to direct noise inwards and makes use of limiters on the PA system,

calibrated in accordance with the acoustic reports prepared for the Venue to monitor noise levels. It is further highlighted where there were noise assessments conducted by Council Rangers and the music emanating from the Venue was audible, it could not be heard above the local traffic.

59. In response to the noise assessment conducted by Council Rangers at the complainant's residence after midnight on 27 December 2021, the Approved Manager notes although noise was audible with volume increases for a few seconds causing it to be offensive, the balcony door was open. Additionally, when the balcony door was closed, the noise was drowned out by the traffic in additional rooms of the residence, with the bass remaining. It is submitted the few seconds of increase in volume as observed by Council Rangers would originate when the Venue's entrance doors open to allow patron ingress and egress. The Approved Manager also refers to the Acoustic Report and maintains the Venue is operating at a level in accordance with D/2012/975/D.
60. In response to the Noise Nuisance Log provided by the complainant, the Approved Manager submits of the 12 log entries, only two incidents are substantiated by a noise assessment conducted by Council Rangers which were deemed to be offensive. The Approved Manager contends minimal weight should be given to the remaining 10 entries as they provide little context into the alleged level of noise disturbance.
61. In response to the video footage provided by the complainant, the Approved Manager submits it does not provide accurate evidence of the level of noise within the complainant's residence as the recordings were taken outside on the street or on a balcony. In referring to a video recording the attendance of Police and Ambulance at the Venue on 11 December 2021, the Approved Manager submits this was not as a result of a physical altercation as alleged by the complainant, but due to the Venue calling Police for assistance to remove a patron who had been asked to leave the Venue however required urgent medical attention. The Approved Manager also notes the video capturing a brawl outside the Venue on 4 February 2022 shows the Approved Manager and security attempting to intervene and move patrons on. It is submitted a more effective security company has since been employed as of 25 February 2022 to manage patron behaviour.
62. The Approved Manager submits the Venue is a culturally safe space for people in the local community and is one of the few First Nations owned businesses in the area. In this regard, the Approved Manager states the complainant's statement that the Venue's patrons have a tendency towards violence is "offensive".
63. It is submitted the Venue has endeavoured to maintain an open relationship with the community to mitigate noise concerns, including diverting the landline to the Approved Manager's personal mobile, replying to complaints made via the Venue's Facebook

Messenger and holding a public consultation meeting on 15 March 2022 with the complainant to discuss concerns regarding the Venue. The Approved Manager also refers to email correspondence in 2019 between a resident acting on behalf of a strata executive committee to depict a productive relationship in dealing with previous noise disturbances caused by the Venue. The Approved Manager further states the Venue went above and beyond cancelling live DJ entertainment for February 2022 in an attempt to appease the complainant to the detriment of the business.

64. On 25 July 2022, the Approved Manager provided further information including copies of the Council Ranger reports in response to complaints lodged with Council and Notice of Determination D/2022/114 approved by Council on 13 July 2022. D/2022/114 approves the amalgamation of the Venue's current location of Unit 3, and the proposed expansion into Unit 2, 105 Regent Street, Redfern. D/2022/114 outlines a number of consent conditions including a Plan of Management, incident register, increased security presence requiring a minimum of two (2) security guards to be present after 10:00pm Monday to Sunday, signage and neighbourhood amenity, LA noise criteria, installation of a noise limiter and the requirement to comply with the Acoustic Report prepared by RSA, dated 1 February 2022, Report No: R200451AR1, Rev 0, Noise Impact Assessment, Expansion of Existing Licensed Venue, Shop 2 and 3, 105 Regent St Redfern.
65. The Approved Manager states they received two phone calls on 6 and 7 May 2022 concerning noise emanating from the Venue, however, has not received any further complaints. The Approved Manager submits they contacted a member of the strata executive committee of the complainant's building and was informed there had been no complaints from any other tenants. The Approved Manager contends this shows a clear pattern of one main complainant lodging unsubstantiated complaints against the Venue. Additionally, the Approved Manager submits the approval of D/2022/114 indicates Council does not consider the Venue to have a negative impact on the community.

*Further information received from Council*

66. On 28 July 2022, Council advised the investigation into noise disturbance at the Venue had closed. It was noted noise were found to be at times an issue, however the Venue is taking greater responsibility in managing patrons on the footpath and music levels. Council further advised that since January 2022, eight complaints had been received relating to noise at the Venue. Council requires any noise complaints be verified by Council officers before enforcement action is taken. On the eight occasions referenced, no noise was able to be verified.



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

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

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

68. The Venue has operated under the current liquor licence since 31 October 2012. The Venue's current business owner and corporate licensee commenced on 7 January 2016. The complainant has resided at their address for eight years and six months. Whilst the current licensee commenced in January 2016, I consider the order of occupancy in favour of the Venue as the liquor licence for the Venue has been operational at this location since October 2012.

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

69. The Venue structure and fit out was approved and completed in 2012 under DA D/2012/975. A number of modifications to DA D/2012/975 have been lodged and approved by Council relating to extended trading hours to 2:00am and façade alterations, including the installation of double-glazed sliding doors at the entrance and a fixed double-glazed window. Footway (Outdoor Dining) Approvals have also been granted by Council which relate to the usage of outdoor seating area on the footway of Regent Street adjoining the Venue.

70. The Approved Manager submits alterations have been completed at the Venue including installing new entrance doors on 15 February 2021 to close the air gap and prevent noise escaping and installing a push to exit button on the entrance doors on 21 August 2019.

71. On 13 July 2022, Council approved DA D/2022/114, which approved the development and alterations to expand the Venue into Unit 2, 105 Regent Street, Redfern. Footway (Outdoor Dining) Approval FA/2022/149 was approved by Council on 6 September 2022 and relates to the expansion of the outdoor seating area on the footway of Regent Street.

72. There have been no changes made to the complainant's residence.

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

73. The Approved Manager submits since 2013 the Venue has been operating in the same format offering a space for local artists, DJ's and live music entertainment which has remained relatively unchanged since its inception. There is no evidence provided that indicates the activities at the Venue have changed.

## Findings and Decision

### *Undue disturbance*

74. In deciding whether the Venue has unduly disturbed the quiet and good order of the neighbourhood, I have balanced the submissions made by the Approved Manager, the complainant, Police and Council. I have also had regard to the particular context in which the Venue operates.
75. 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 patrons. I do not consider this type of disturbance as undue in a general sense, considering the nature of the local environment, being a busy inner-city thoroughfare with significant traffic noise. I also note the proximity of two additional licensed premises that provide live entertainment during the evenings located at 182 Regent Street, Redfern, and 101 Regent Street, Redfern. I am satisfied, however, there is sufficient evidence before me to reasonably conclude the Venue has, at times, unduly disturbed the quiet and good order of the neighbourhood.
76. In making a finding of undue disturbance, I have also been persuaded by the layout of the Venue, including the sound system set up at the front of the Venue, and its proximity to the complainant and authorising residents. I acknowledge the Acoustic Occupational Report as provided by the Venue indicated compliance with the relevant DA. I do not question the integrity of the acoustic assessment; however, I note it was completed in April 2021 and was to confirm compliance with the recommendations set out in the Acoustic Report dated 27 August 2020. The two recommendations included filling of the gap under the sliding doors and installation of a noise limiter on the Venue's PA sound system. I am satisfied both of these recommendations have been completed.
77. Notwithstanding the proactive steps taken by the Venue, I have also placed weight on the objective evidence provided by Council, in particular the Council Ranger's report from an assessment conducted on 27 December 2021. The outcome of the assessment determined noise emanating from the Venue was audible inside the complainant's residence after midnight and was deemed offensive for the time of day.

### *Regulatory Outcome*

78. In deciding the appropriate regulatory outcome in this instance, I have considered statutory considerations, the material set out in Annexure 1, and the above finding of undue disturbance. I have also had regard to the particular context in which the Venue operates, noting it faces onto Regent Street [REDACTED]  
[REDACTED] I also acknowledge Regent Street is a relatively busy pedestrian and vehicle thoroughfare with additional late trading licensed

premises offering live entertainment located nearby and note the practical implications this has on the matter.

79. I note the Venue has a PA system and speakers from which music is played. In this context it is reasonable to expect significant responsibility lies with the Venue to ensure it does not disturb the quiet and good order of the neighbourhood. While I acknowledge the order of occupancy is in favour of the Venue, this does not relieve the Venue of the obligation to minimise noise and disturbance. I also acknowledge the Venue has extended trading authorisations to trade until 2:00am and note DA D/2022/114 recently approved by Council, relating to the expansion and alteration of the Venue into the adjoining unit.
80. I am encouraged by the noise mitigation strategies the Venue has adopted over time to reduce its noise impact. This includes commissioning acoustic testing, installation of a new PA system and noise limiter, employing a new security company, installation of new entrance doors to close the air gap underneath the doors and diverting the Venue's landline to the Approved Manager's personal mobile to respond to complaints and concerns effectively. I also note the Venue voluntarily ceased live entertainment for the month of February 2022 during the complaint process. The Venue has been responsive to the complaint, and I find the measures implemented to be a positive representation the Venue is taking the complaint seriously to address the issues and concerns raised.
81. I have also had regard to the findings of the assessment conducted at the complainant's residence by Council Ranger's on 27 December 2021. Relevantly, it was determined music emanating from the Venue was audible after midnight and deemed to be offensive. However, I note Council consequently closed the investigation into the Venue advising although noise was found to be at times an issue, the Venue is taking greater responsibility in managing patrons on the footpath and music levels.
82. I note the Venue is currently subject to a security condition (Condition 3100) requiring the deployment of one (1) uniformed security guard whenever the Venue trades past midnight. I have considered the Police submission, noting the recommendation that conditions be imposed relating to LA10 noise criteria and the requirement to deploy one (1) security guard from 10:00pm. On this point, I refer to DA D/2022/114 which contains stringent consent conditions requiring the deployment of two (2) security guards from 10:00pm Monday to Sunday and specific noise criteria for entertainment.
83. Having carefully reviewed the Venue's current liquor licence and DA D/2022/114, I am of the view there are sufficient conditions acting as safeguard to ensure the quiet and good order of the neighbourhood is not unduly disturbed by the operation of the Venue. I am satisfied compliance with these conditions will minimise noise levels and I do not consider it appropriate at this time to duplicate the same DA conditions on the Venue's

liquor licence. I also note the current DA conditions can and should be enforced, where appropriate, by Council and Police.

84. Having regard to the material before me, I consider the issuing of a warning to be an appropriate regulatory response to address the finding of undue disturbance. I am of the view this will provide the Approved Manager an opportunity to continue to develop and employ reasonable strategies to minimise undue disturbance and address any concerns as they arise. I strongly encourage the Approved Manager to be proactive in addressing disturbance and engage with local residents in a direct, positive and meaningful manner to minimise complaints.

85. Should further evidence be presented demonstrating undue disturbance or a disregard for the ongoing obligation to mitigate disturbance, it is open for the matter to be reconsidered and further regulatory action taken.

86. Finally, I am satisfied this decision is a proportionate and appropriate regulatory response to the disturbance identified in the complaint.

**Decision Date:** 11 November 2022



**Dimitri Argeres**

**Director Compliance and 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 **9 December 2022**. A \$500 application fee applies. Further information can be obtained from Authority Guideline 2 published at [https://www.liquorandgaming.nsw.gov.au/documents/ilga/guidelines/Authority\\_Guideline\\_2.pdf](https://www.liquorandgaming.nsw.gov.au/documents/ilga/guidelines/Authority_Guideline_2.pdf)

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](http://www.liquorandgamingnsw.nsw.gov.au)

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

1. Copy of the liquor licence dated 26 October 2022.
2. Section 79 Disturbance Complaint lodged by the complainant on 14 December 2021.
3. Submission and supporting material received from City of Sydney Council on 5 January 2022 and 28 July 2022.
4. Submission from NSW Police and supporting material received on 14 January 2022 and 2 March 2022.
5. Submission and supporting material from Approved Manager received on 17 January 2022. Enclosed with the submission is Rodney Stevens Acoustics Noise Impact Assessment dated 27 August 2020, and Rodney Stevens Acoustics Acoustic Occupational Certificate dated 16 April 2021.
6. Final submission and supporting material from the complainant received on 8 February 2022.
7. Final submission received from the Approved Manager on 18 March 2022.
8. Additional material received from the Approved Manager on 25 July 2022, including Council Rangers reports dated between 7 April 2017 to 26 December 2021 and Notice of Determination Approval D/2022/114 dated 13 July 2022.