
FILE NO:	A21/0019630
COMPLAINANT:	██████████
LICENSED PREMISES:	Harvest Milton, Milton – LIQO624014549
ISSUES:	Whether the quiet and good order of the neighbourhood of the licensed premises is being unduly disturbed.
LEGISLATION:	<i>Liquor Act 2007</i>

SECTION 81 DECISION

Under Section 81 of the *Liquor Act 2007* (the Act) I, Dimitri Argeres, Director Compliance & Enforcement, a delegate of the Secretary, Department of Enterprise, Investment and Trade, in relation to the complaint made in respect to Harvest Milton, Milton (the venue) have decided to **issue a warning** in the following terms:

“Under section 81(1)(d) of the Liquor Act 2007 I, Dimitri Argeres, Director Compliance & Enforcement, a delegate of the Secretary of the Department of Enterprise, Investment & Trade, warn Sophie Nowlan, licensee of Harvest Milton, that she must ensure that no future undue disturbance is caused by the provision of amplified or other entertainment, or patron behaviour”.

REASONS FOR DECISION

Legislative framework

1. Section 79 of the Act provides the framework for which a disturbance complaint can be made under the Act. Section 79(1) sets out the following:

“(1) A person may complain to the Secretary that the quiet and good order of the neighbourhood of licensed premises are being unduly disturbed because of—

(a) the manner in which the business of the licensed premises is conducted, or

- (b) 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. A person who has standing to make a complaint under section 79 of the Act is defined in section 79(3) of the Act and 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 inviting written submissions from the Licensee of the licensed premises and any other person the Secretary considers appropriate. After dealing with the complaint, section 81(1) 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 in section 3 of the Act and must have regard to the matters set out in section 3(2) of the Act:

"(2) In order to secure the objects of this Act, each person who exercises functions under this Act (including a Licensee) is required to have due regard to the following—

(a) the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),

(b) the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,

(c) the need to ensure that the sale, supply and consumption of liquor, and the operation of licensed premises, contributes to, and does not detract from, the amenity of community life,

(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 24 August 2021, [REDACTED] (the complainant) lodged a complaint with Liquor & Gaming NSW (L&GNSW) alleging undue disturbance from the operation of Harvest Milton (the venue). The complainant lodged the complaint

as a resident authorised by seven other residents, in compliance with section 79(3)(a) of the Act.

6. The complainant alleges that excessive noise emanates from activities inside the venue and from the behaviour of people leaving the venue. The complainant submits the following regarding the disturbance:

- The disturbance occurs one to two times per week, particularly on Friday and Saturday;
- The disturbance is worse in the warmer months when there are more tourists and patrons; and
- The complainant states they has lived at their residence for approximately 32 years.

7. Regarding noise from patrons leaving the venue, the complainant submits the following:

- Groups of people congregate outside the venue awaiting transport, with the noise increasing due to intoxication, on Croobyar Road and Myrtle Street, Milton.
- The complainant alleges local residents complain of being awakened by the noise.
- The complainant has contacted the Licensee by phone on one occasion and has engaged with them face to face on three occasions regarding these issues.
- The complainant also submits they has contacted Shoalhaven City Council (Council) on 12 July 2021 and NSW Police (Police) on 13 June 2021 and 31 July 2021 regarding noise disturbance.
- The complainant alleges the venue was sold to the current owners [REDACTED], [REDACTED], [REDACTED] in March 2021 and prior to that the venue was a restaurant known as St Isidore. They allege that the previous operators of St Isidore had a good relationship with nearby residents. Since the new owners have taken over, the complainant submits the venue is now operating as a bar/pub/music venue.
- The venue is allegedly open later than when it was under the management of the previous operators, when it was known as St Isidore, and the venue has larger groups departing at various times but particularly at closing with greater disturbance than when St Isidore was operating.

8. Regarding noise inside the venue, the complainant submits the following:

- They commissioned an independent noise assessment by Integrated Engineering Systems Pty Ltd (IES) which showed exceedances in 83% of trading hours monitored and intrusive noise levels occurred in 63% of trading hours monitored.
 - They allege noise levels must remain within legal limits as defined by the Environmental Protection Authority (EPA) and feels the Licensee will not be able to achieve this without structural changes to the venue such as sound barriers and limitations to the number of patrons outdoors.
 - The venue is situated less than [REDACTED] metres from the complainant's residence with no physical barriers in place to minimise the noise generated.
 - The Licensee has established a large open outdoor courtyard area which attracts most of the patrons who then decide to remain outdoors.
 - The noise level increases during the night and if there is live music playing, the noise becomes so loud the complainant says they cannot clearly hear their television with the windows closed.
9. The complainant submits the following regarding behaviour of patrons from the venue:
- There has been a substantial increase in litter, including empty or broken bottles on the road and in neighbourhood properties.
 - There has been damage to street signs on Myrtle Street and roadwork cones have been removed.
 - The complainant alleges a fight occurred in the carpark area of the venue on 19 June 2021.
 - The complainant alleges there is a public safety issue to local residents and patrons. This apparently resulting from the fact the street is poorly lit, cars are parked on the road verge forcing pedestrians to walk on the roadway and there is a creek close to the entrance gates with a three metre drop into the water with minimal barriers.
10. The Complainant outlines the desired outcome in resolving the complaint against the venue as including the following:
- Imposing a closing time on the venue no later than 10:00pm;
 - A requirement that security guards prevent crowds congregating outside the venue; and

- A requirement that the venue provide transport to prevent crowd aggregation with accompanying noise.

The venue, licence details, compliance history

11. The venue is located at 89 Croobyar Road, Milton NSW 2538. The venue's liquor licence LIQO624014549 commenced on 1 November 2006. The venue holds an on-premises liquor licence and contains two different business types including catering service and restaurant. The venue also has a sale on other premises authorisation and a primary service authorisation.
12. The relevant parties associated with the venue are identified below:
 - The Licensee is Miss Sophie Camille Nowlan (Licensee), with a start date of 9 December 2020;
 - The business owners are identified as:
 - [REDACTED] with a start date of 9 December 2020;
 - [REDACTED] with a start date of 9 December 2020; and
 - [REDACTED] with a start date of 15 July 2011.
 - The premises owners are identified as:
 - [REDACTED], with a start date of 9 December 2020; and
 - [REDACTED], with a start date of 9 December 2020.
13. The venue has two licence conditions relating to the catering service and the sale on other premises authorisation. The venue's licence also sets out authorised trading hours for consumption on premises for its catering service, restaurant and a sale on other premises authorisation, with the following times:
 - The catering service can trade from Monday to Saturday 10am until 12 midnight and Sundays from 10am until 10pm;
 - The restaurant can trade from Monday to Saturday 5am until 12 midnight and Sundays from 10am until 10pm; and
 - The sale on other premises authorisation trades from Monday to Saturday 12 noon until 11pm and Sundays from 12 noon until 8pm.

Submissions

14. Between 15 September 2021 and 4 November 2021, material was received from the parties to the complaint, including the complainant, the Licensee, Police and Council. The material that is before the delegate is set out in **Annexure 1** and is summarised below.

Council submissions

15. On 16 September 2021, Council provided a submission to the complaint. Council submit the venue's uses permitted within the development consent in the RU1 Zone include artisan food and drink industries and food and drink premises.
16. Council submits they received correspondence on 13 July 2021 from a resident which outlined concerns over the use of the venue in the time since change of ownership on 17 March 2021. These concerns related to noise from music, excessive number of patrons and parking matters.
17. Further correspondence was received by Council from another resident on 19 July 2021. The correspondence received on 13 July 2021 included the IES Noise Impact Assessment dated July 2021. The IES report was referred to Council's Environmental Services for review and comment. Council's Senior Environmental Health Officer reviewed the IES Report and found it to be "below industry standard". Accordingly, Council noted that on this basis the assessment does not enable Council to regulate under the *Protection of the Environment Operations Act 1997*.
18. An assessment of the venue by Council's Compliance Team found the venue was approved in 2002 with subsequent modifications. This approval was for a bed and breakfast with a detached restaurant, including provision for 60 persons to be seated outside. There are no conditioned operating hours and no consent for outdoor music, stating that this would require the lodgement of a development application. Council state the venue appears to be operating more as a small bar/pub than a restaurant and note the venue is located immediately adjacent to a number of residential premises. Additionally, Council confirms there is no consent for a small bar or pub at the premises site and development consent would be required should the operators proceed down this path, which would include the completion of a noise assessment and amenity assessment report.
19. Council relevantly submits the following regarding their further contact with the owner of the venue regarding the above issues:

- That at the time of submission the venue is not currently operating for dine in patrons due to current lockdowns associated with the COVID-19 pandemic.
- Council's Environmental Services have contacted the owners regarding the registration of the food business.
- Council note that should the noise issue from outdoor music continue after reopening, Council has the option to issue a Development Control Order.

Police submissions

20. On 15 September 2021, Police provided a submission in relation to the complaint. The submissions made by Police are as follows:

- They have known the Licensee and owners of the venue in a professional capacity for the past couple of years and have found them to always be professional, receptive, and respectful towards Police.
- The Licensee has approached Police numerous times in the past seeking advice regarding liquor licensing matters.
- The venue has a positive reputation, but Police note that its location presents greater challenges in terms of effective management.
- Police note the liquor licence for the venue has minimal conditions currently imposed on it and allege this makes it harder to enforce liquor compliance and could have a potential negative impact on the local community.
- Despite their positive impression of the venue, Police submit that some improvements need to be made to help ensure that the local surrounding residences are not negatively impacted by the venue's practices.
- They note the venue is situated in a fairly dense residential area, with two primary residences situated on either side of the venue, within a short distance of the boundaries.
- Police further contend the venue has a serious responsibility in ensuring noise from the venue does not negatively impact on the surrounding residents. Police allege the way in which the venue has been managed does not appear to have often fulfilled this responsibility. Accordingly, Police recommend a LA10 noise condition be imposed on the licence.

- Police also refer to the Noise Impact Assessment from IES provided by the complainant, and note it appears to outline a need for noise management to be addressed at the venue.
21. Police refer to several alleged incidents of “behaviour disturbance” where damage to property has been caused by patrons leaving the venue and being noisy. One instance included a fight that occurred in the car park of the venue at around 10:15pm on 19 June 2021. Police confirm this incident has been reported in the Computerised Operational Policing System (COPS) Event E305814498. The incident involved a group of patrons having a physical altercation within the venue and a staff member was allegedly injured while trying to break up the fight. Some patrons involved were allegedly consuming alcohol in the car park area of the venue after the altercation. Some of those patrons also allegedly later intimidated a taxi driver conveying them to their accommodation. Police submit the incident was not reported by staff or by any patrons at the time and was later reported by the taxi driver. Local Police at Ulladulla investigated the matter, and the victim withdrew their complaint. Police submit that it is a cause for concern that neither the Licensee and/or staff reported the matter to Police.
 22. Police state they have since attended the venue and spoken to the Licensee regarding the above matter. Police issued the Licensee a warning and a recommendation that in the future staff contact Police about such matters. Due to this incident and the reasons outlined above, Police suggest imposing a crime scene preservation condition on the venue’s liquor licence. Police allege this will enable them to intervene in similar matters as soon as possible, and potentially prevent a subsequent disturbance to the neighbourhood.
 23. Police note they are not aware of any matters regarding “disturbance to the neighbourhood” by patrons leaving the venue. However, Police submit that based on the complaints that have been put forward by local residents and the location of the venue being in close proximity to surrounding residences, the risk of disturbance needs to be mitigated. Accordingly, Police suggest imposing a condition requiring the Licensee and employees patrol the vicinity of the venue to ensure no patrons loiter or linger in the area or cause nuisance to the neighbourhood. These patrols are proposed to be carried out from 10pm until the last patrons have left the premises and the vicinity of the venue.
 24. Police submit that a domestic violence matter between patrons is the only other record of a violent incident associated with the venue, along with the 19 June 2021 event as outlined in paragraph [21].

25. Police also refer to a report from local Police, who conducted a business inspection on 25 June 2021, outlined in COPS Event E82961380. The intelligence report indicates Police observed intoxication of a few patrons. Police spoke with the Licensee regarding their observations and the Licensee allegedly informed Police the sale of liquor at the venue had ceased and therefore the intoxicated patrons had been cut off. However, Police note those patrons were not asked to leave as required by the liquor legislation.
26. As a result of the above, Senior Constable [REDACTED] (SC [REDACTED]) attended the venue on 16 July 2021 and spoke to the Licensee and business owner. SC [REDACTED] recommended that in the future, patrons who are assessed as being intoxicated should be moved on and that the incident was being investigated as a "Licensee permit intoxication" offence. Police advised they requested CCTV and that it was not provided as the Licensee alleged their newly installed CCTV system only saved recordings for the previous 12 days. SC [REDACTED] accepted the Licensee's version of events and issued a warning to the Licensee for the offences. The Licensee assured SC [REDACTED] that the CCTV system would be upgraded immediately to ensure future compliance. Police submit that due to CCTV being unable to be provided regarding the incident outlined in this paragraph and paragraph [25], a CCTV condition should be imposed on the liquor licence to ensure future compliance.
27. Police submit all other reported incidents at the venue since its opening have not been adverse. Approximately six inspections have been reported to have occurred at the current venue since its re-opening in April 2021. As of 15 September 2021, Police also advise they have not been able to access previous Development Consent records for the venue due to technical issues. Accordingly, they cannot compare or comment on permitted trading hours under Development Consent for the venue. However, Police suggest that in order to further minimise disturbance to the residences neighbouring the venue, and in further consideration of recommendations to ensure staff monitor patrons in the car park area, the trading hours for the outdoor areas should be restricted and cease at 10pm.
28. In summary, the Police submissions set out the suggested outcome should be the imposing of four licence conditions which in general are as follows:
- An LA10 noise level condition;
 - Crime Scene Preservation condition;

- A condition requiring the Licensee and employees patrol the vicinity of the premises to ensure patrons do not loiter or linger in the area from 10:00pm until the last patrons have left the area of the venue; and
- CCTV condition requiring that CCTV must be maintained on the premises, record all areas that the public has access to, be recorded at a minimum of 15 frames per second and be retained for at least 30 days.

The Police also suggest that trading in the outside areas should cease by 10:00pm.

Licensee's response to complaint

29. On 15 September 2021, the Licensee provided a submission in response to the complaint. Included with the submission were various documents, including supporting letters from local residents and maps indicating other venues and distances between properties in the nearby areas.
30. The Licensee alleges they are unaware of any issues the complainant has raised and that they have not contacted the Licensee regarding any of the concerns put forward in this complaint.
31. The Licensee notes the business owners previously ran a venue known as The Harvest at Milton, located at 4/23 Wason Street, Milton. Due to the COVID-19 pandemic, the business ceased its operation for months and upon reopening, it was only permitted to trade with 33 patrons. As a result, the Licensee relocated the business to a bigger venue that would allow for increased patronage. In March 2021, the business owners purchased the premises site previously known as St Isidore and opened Harvest Milton.
32. The Licensee submits the venue is located 80 metres from the Milton Showground which hosts a variety of events, including local markets every Saturday, a camp/caravan ground, and various sporting and entertainment events, including the Milton Food & Wine Festival which thousands of people attend. Additionally, the venue is located 150 metres away from Altar Wine Bar and The Old Church Milton. The Altar Wine Bar is allegedly marketed towards locals and tourists, hosting live music on Friday and Saturday nights and on Sunday during the day. The Old Church is said to be a wedding venue that hosts outdoor weddings with live entertainment.
33. The Licensee submits the complainant has only spoken to the owners once regarding a light from the venue apparently shining into their house.

34. The Licensee also alleges the complainant sent out a letter to hundreds of residents petitioning to have the venue and Altar Bar closed down as they were said to be destroying the community.
35. The Licensee notes that some patrons stay in the carpark while waiting for taxi services.
36. The Licensee alleges the venue is seeking to purchase a bus to enable patrons to be transported home along with installing new signage for patrons requesting they are courteous and thoughtful of neighbours when leaving the venue.
37. The Licensee relevantly submits the following regarding the alleged noise issues generated by the venue:
 - The noise level assessment of IES is not accurate as the receivers are located [REDACTED] metres and [REDACTED] metres from the venue.
 - A house which is on the same property as the venue (located no more than 10 metres from the venue and five metres from the courtyard) has two young children living there, with one having sensory issues with sound. The children have never had issues with noise relating to the venue.
 - The Licensee has received no complaints of neighbours being woken in the night due to noise, and if such complaints were received, the Licensee claims they would have rectified the situation immediately.
38. The Licensee notes they applied for a liquor licence before the venue commenced trade after the business was relocated from its previous location as outlined in paragraph [31] and released a community impact statement to surrounding neighbours. L&GNSW later informed the Licensee that the previous licence for St Isidore was still in place and was transferred into the Licensee's name instead. The Licensee submits that during a discussion with the complainant in April 2021, the complainant allegedly said they could hear a little bit of noise, but it was not overly disturbing, and that a floodlight was shining into their residence. The Licensee alleges they fixed the issue with the floodlight and does not believe that they were rude towards the complainant and believed they had a good relationship.
39. On 13 June 2021, the Licensee allegedly received a call from Ulladulla Police regarding a noise complaint and the Licensee alleges the venue immediately turned the noise down.
40. On 31 August 2021, the Licensee alleges live music performances took place in the outside area of the venue to support local musicians who had lost work due to COVID-

19. 132 patrons were booked to attend, with only 32 patrons allowed inside the building. The Licensee states this was discussed with Police about whether putting the music outside would be permissible considering COVID-19 concerns and claims the Police agreed this was satisfactory. The music allegedly finished at 8:50pm and the venue closed at 10:15pm.

41. Regarding the operation of the venue, the Licensee relevantly submits the following:

- The venue trades with 150 patrons.
- The previous business on the premises site St Isidore (see paragraph [31]) was well known for having weddings, live music and for having patrons outside.
- The current venue has not opened a large courtyard, rather the venue's two courtyards have been established for years prior to the Licensee operating the current business.
- The venue does have live entertainment with local artists between the hours of 6pm and 9pm on a Saturday night and hosts a group of local musicians who play on a Thursday afternoon from 4pm until 5pm. Entertainment is kept inside the restaurant and the speakers face towards the back of the property where there are no houses.
- That a sound check is conducted every evening they have entertainment on.

42. In terms of steps taken since receiving the complaint, the Licensee submits they have written a letter and personally dropped it off at neighbouring residences on [REDACTED] Road, apologising for any disturbance and highlighting measures to be implemented to fix these issues. The Licensee's personal mobile number and email address was included should anyone wish to contact them with any concerns.

43. Regarding the noise assessment contained in the IES Report, the Licensee relevantly submits the following:

- The assessment has not been done correctly and is biased as it does not take other surrounding factors into account.
- That no receivers were placed on [REDACTED] Road where the report states the noise is coming from.
- There are issues with the reported receiver distance from the complainant's residence and that another receiver is located closer to The Old Church and Altar Bar (see paragraph [32]) which could have picked up their noise levels as well.

44. Regarding the noise disturbance emanating from the venue, the Licensee disputes the complainant's submission that there is an empty paddock [REDACTED] [REDACTED] the venue. Instead the Licensee relevantly submits the following:

- The venue is surrounded by trees, bushes, plants, dams, a shed and trees [REDACTED] [REDACTED].
- Most patrons have sat inside due to opening in the colder months and are only outside when capacity is reached.
- The Licensee refutes the complainant's submission of being unable to hear their television with the windows being closed while a young family allegedly living five metres from the venue have never had any noise issues.
- The venue has installed noise absorbing panels on the internal roof.

45. Regarding the alleged disturbance caused by music from the venue, the Licensee relevantly submits the following:

- That a request for no live music at the venue is extreme as the Licensee believes live music plays an important role economically, socially and culturally within the local community.
- The Licensee does not believe eliminating live music would be good for the community which has suffered heavy losses over the last few years due to the Black Summer bushfires and the COVID-19 pandemic.
- The venue is currently being operated in accordance with its licence and is usually closed around 9pm on weekdays, between 10pm and 10:30pm on Fridays and Saturdays and at 4pm on Sundays.

46. Regarding alleged disturbance caused by patrons, the Licensee relevantly submits the following:

- The Licensee is unaware of rubbish in the neighbourhood allegedly caused by the venue/its patrons and that they check every morning for litter.
- The venue also does not sell bottled products and so any discarded bottles in the immediate vicinity would not have come from the venue.
- The Licensee will also check for litter every evening once the venue has closed.
- The Licensee disputes any submissions relating to property damage through the use of stolen roadwork cones.

- The Licensee also submits there was no fight in the venue's carpark on 19 June 2021, rather there was an altercation on the footpath with a group of people after they had left the venue.
 - The Licensee notes there is a Police report on the incident, and this is the only "fight" that has occurred on the venue in the past five years.
 - The Licensee states they have an extremely good relationship with local Ulladulla and Shoalhaven Police and engage with Police regularly. Police complete a walk-through of the venue almost every weekend on both Friday and Saturday nights.
47. Regarding the allegations concerning the carpark and alleged parking by patrons of the venue in the area, the Licensee relevantly submits the following:
- There are Council car spaces along the front of the venue, and they have installed extra lighting the whole way along the car park to increase visibility.
 - No cars can park across the road from the venue, which is where the majority of foot traffic is, because all of the houses are on that side of the road.
48. Regarding the nature of the complaint raised and the complainant more generally, the Licensee relevantly submits the following:
- That the complainant had a biased view as the venue had been closed for a year and a half prior to them relocating.
 - The complainant has apparently never entered the venue or spoken to the Licensee despite having been provided their phone number and email address.
49. In summary, the Licensee submits they have done their best to rectify some issues raised by the complainant by way of the following:
- The installation of noise-absorbing panels in the roof of the venue;
 - Installation of lighting out the front of the venue facing the street and in the parking area to provide more lighting for when patrons are going to their cars.
 - The removal of the spotlight in the car park the complainant mentioned; and
 - Seeking to purchase a courtesy bus to prevent patrons from loitering in the car park and causing disturbance.

Complainant final submission and further complaint material

50. On 3 October 2021, the complainant provided a response to the submissions of Police, Council and the Licensee. Included with the submission are supporting letters for the

complaint by other residents, a letter from the complainant to the Licensee, a response from IES to the previous submissions, and a copy of a public consultation site notice for the removal of an on-premises licence.

51. The complainant disputes that minimal incidents are known to Police as some local residents have raised complaints due to being greatly disturbed by noise and patron behaviour. It is noted that this does not accord with the Police submissions at paragraphs [20]-[28].
52. The complainant supports the measures proposed by Police and recommends that L&GNSW impose the suggested conditions on the venue's liquor licence.
53. Regarding the previous operation at the site of the venue, the complainant submits the following:
 - That the previous operation that occurred at the site of the venue, known as St Isidore, was a fine dining restaurant with subdued recorded music and ambiance and was only licenced to accommodate 60 seated guests.
 - That St Isidore was a far cry from the venue which has loud, live and amplified music, standing guests, yelling and at times audible swearing.
 - That the venue's set up is the equivalent of double the number of St Isidore wedding parties on most nights of the week.
54. The complainant submits that Altar Bar (see paragraph [32]) is not open on Friday and Saturday nights, and that their music is more ambient for conversation between patrons.
55. The complainant refutes the allegation that they sent a letter to hundreds of residents petitioning to have the venue and Altar Bar closed. The complainant submits this is an attempt to portray them as a vexatious neighbour to diminish the serious issues of noise and patron behaviour.
56. The complainant submits the house with the young children is the venue owner's house, and that this was not disclosed in the Licensee's first submission.
57. Regarding contact between the venue and the complainant, the complainant submits the following:
 - That they have not received voicemail messages from the Licensee and that the Licensee has had opportunity to approach them.

- The complainant later submits they did receive a letter from the venue on 10 September 2021 and that they responded to it.
- That they did call the venue on 13 June 2021 to complain about the noise however the phone was not answered, and they left a voicemail message that was not returned.
- That it is untrue that they have never called the venue or left a message for a return phone call.
- That the Licensee and venue owners have a history of not responding to previous complaints.

58. In terms of the noise and disturbance alleged to occur due to the outdoor area of the venue, the complainant submits the following:

- The venue does not have development consent for the outdoor music offered on 31 August 2021.
- That St Isidore (see paragraph [32]) did not use the courtyard for seated diners as they allegedly used to dine there often, rather there were 12 outside tables on the veranda of the building.
- That music from the venue is heard in the main complainant's residence on most nights and they have been informed by attendees at the venue that the music is so loud that most people are forced outside to have a comfortable conversation.
- The sound from outdoor gatherings at the venue travels to the complainant's house, including yelling and offensive language.
- The level of noise from remaining late patrons of St Isidore is not comparable to that from the current venue.

59. Regarding the testing that was carried out on behalf of the complainant by IES and the subsequent scrutiny of that testing, the complainant submits:

- The noise assessment of IES did account for other outside noise sources outside the venue's trading hours.
- That the receiver was placed within their boundary fence which is 30 metres from the external fascia of the house.
- The receiver was well within their property and not hanging over the fence.
- That there is an empty paddock [REDACTED] [REDACTED].

- That the sound monitor was on their property, so the sound already travelled through the shrubs, the dam amplifies the sound, the trees do little to contain the noise and the garden shed makes no impact.
 - The most severe noise incursions occur when there is a live band.
 - That if the combination of music and voices stays below levels as suggested in the Police submission, they have no issue. However, they believe the setup at the venue does not lend itself easily to this control.
 - That when they are home, they have the right to listen to the type of music they want, and they also have the right to not listen to music or to yelling, screaming, or swearing.
60. The complainant submits local residents have noticed an increase in litter, vandalism and even theft since the venue opened. The complainant notes this is just an observation and a call to tighten security at the venue.
61. The complainant states that a photograph taken on 13 July 2021, was taken by one of the seven authorised residents to the complaint. The photo shows a DJ on the courtyard wearing headphones and with a bank of speakers behind him. The photo's purpose is to demonstrate that there is loud music audible to neighbouring properties and the owners and Licensee are in breach of their development consent.
62. The complainant submits the noise from the campgrounds of the Showground is part of normal background noise, noting this area is several hundred metres from their house and that this noise is not audible outside or inside the house.
63. The complainant asserts that submissions relating to their bias towards the venue and that they and another complainant have put the same complaints in for other venues is untrue.
64. [REDACTED]
65. The complainant has attached letters from other residents who have been adversely affected by the venue's operations, demonstrating that noise levels not only affect the neighbourhood but at times can be a problem for residents in other parts of town.

66. The complainant re-asserts the position that the independent noise assessment of IES together with documented complainant issues and declarations by other residents show at the very least that the venue is operating at unacceptable sound levels.
67. The complainant further alleges that the Licensee and the venue in general has a history of responding to complaints with deflection, excuses, denial and aggression. The complainant alleges the Licensee and venue owners in general have made undertakings they do not keep and have shown a willingness to respond to criticism with personal attacks on character and false accusations. The complainant is not confident that any complaints they have in the future will be treated with respect and sincerity.
68. Included as part of the material was a response dated 30 September 2021 from IES to the initial submissions of the Licensee, Council and Police regarding the noise impact assessment. IES states that Council has not provided any evidence as to the capacity of its Senior Environmental Health Officer to properly review and comment on the report. Accordingly, IES requested elaboration by Council on this issue.
69. In terms of the methodology of the assessment, IES states the following:
- The assessment was not intended to be limited to excess noise caused by patrons leaving the venue, rather this is just one noise source that was monitored and assessed.
 - IES disputes all extraneous noise is excluded from monitoring data.
 - IES states all distances shown in the report are correct and were chosen appropriately.
 - That the subject monitor was positioned so that any loud noise from the Altar Bar was largely attenuated by the complainant's house.
 - It is a common misconception that trees and other vegetation 'significantly' attenuates noise and that all monitoring included any attenuation provided by trees and vegetation.
 - Finally, there is no indication as to when the noise absorbing panels were installed at the venue and whether this was before or after the noise impact assessment was carried out.

The venue owner's final submission and other material

70. On 4 November 2021, the final response was received from the Licensee's solicitor, [REDACTED] [REDACTED] of Pigott Stinson Lawyers. Included with the submission is a copy

of the venue's plan of management, letters of support from 14 nearby residents, and a letter from Sergeant [REDACTED] (Sgt [REDACTED] of Ulladulla Police which in general is supportive of the venue.

71. The Licensee submits the following regarding the method in which the venue is operated:

- The venue is a modest family run casual dining restaurant and not a bar, pub or nightclub as described by the complainant.
- The venue is currently open for lunch and dinner services and caters for all members of the local community of Milton, including local families, and will be open for breakfast service in the next few months.
- There have been no structural changes to the venue or changes to the trading areas since the Licensee commenced trading from the premises site.
- That the complainant's perception of the venue as a bar, pub or nightclub is intended to create an adverse perception of the actual business.

72. Regarding the licence of the venue, the Licensee submits:

- That the complainant does not address the fact the venue operates under the same liquor licence as the previous business on the site St Isidore and the Licensee has not made any applications to vary the terms of the licence.
- The Licensee holds an appropriate liquor licence for the type of business that they operate, that they are operating in accordance with the liquor licence, and that the primary purpose of the venue has not changed.

73. The Licensee has received numerous letters of support from members of the local community and from local Police. The Licensee states that the letters are relevant to the present complaint as they demonstrate how the wider local community views the venue and its operations. Amongst other things, the letters generally state that:

- The Licensee operates the venue in a responsible manner which is respectful of the local community.
- The venue is an asset to the local community and provides an important role in providing social inclusivity for a broad range of members of the local community.
- Additionally, the venue provides an important service to the community, the Licensee is of good character and repute and allege there are no issues with the operation of the venue.

- The letters of support clearly outweigh the number of complaints made against the Licensee.
 - The letters of support provide clear evidence that the Licensee operates the venue in a responsible and respectful manner and that, on balance, there are no ongoing issues or problems arising from the operation of the venue.
74. Regarding the substance of what has been raised by the complainant in their complaint and subsequent submissions, the Licensee submits that:
- Most of the complainants have failed to provide any actual evidence to substantiate their complaints.
 - The complainants rely heavily on anecdotal evidence, with use of exaggeration and incorrect hyperbolic statements to create a negative perception of the venue.
 - Statements used by the complainants are false and imply the Licensee operates a rock and roll venue, allows outrageously loud music to be played, that patrons are heavily intoxicated and that RSA obligations are not complied with.
 - The Licensee reiterates that the venue is operated as a restaurant, that music is played to create ambience and that patrons purchase and consume liquor in accordance with the Licensee's right to sell liquor.
75. The Licensee refers to Council's submissions that the noise impact assessment report of IES was apparently below industry standard. The Licensee submits that given the apparent expertise and impartiality of Council, the Authority should accept Council's position regarding the report. Further, the Licensee submits the IES report should be disregarded by the Authority when considering the complaint.
76. In terms of the trading hours of the venue, the Licensee submits the following:
- The venue is permitted to trade until midnight under its liquor licence.
 - There are no restrictions on trading hours from Council.
 - The Licensee reiterates the venue does not always trade to the full time permitted and closes at 9pm on Monday to Thursday, 10-10:30pm on Friday to Saturday and 4pm on Sundays.
 - The Licensee submits the venue's trading hours are modest and respectful while also being fair and reasonable.

77. Regarding the submissions including allegations of excessive noise generated by the venue and the allegations of noise disturbance cause by music and patrons, the Licensee submits the following:
- The Licensee admits that from time-to-time live music is provided at the venue, but “concerts” are not conducted regularly.
 - The music is provided inside the venue and regular sound checks are undertaken to ensure sound levels remain compliant.
 - The Licensee submits that the type, level, and amount of music provided at the venue is fair and reasonable and that they comply with the relevant laws regarding noise levels.
 - The Licensee denies there have been ongoing noise issues at the venue, noting that there has only been one occasion that was reported to Police. On 13 June 2021 at around 2:30pm, Police found the music was at an appropriate level for the time of day, yet still asked the venue to lower the volume of music, a request with which the venue complied.
 - If there were other instances of unbearable noise issues, it would be reasonable to assume that additional complaints would have been made to Police.
 - The Licensee submits that there are no ongoing noise issues to the venue as only a single noise complaint regarding the venue has been received and that the venue was complying with noise level requirements at the time.
78. The Licensee submits they treat their RSA obligations extremely seriously and all employees maintain up to date RSA qualifications. The Licensee also denies allegations that patrons act in a violent manner. The Licensee submits the violent incidents raised by Police included a domestic assault and intimidation of a taxi driver. The Licensee submits patrons do not act in a violent manner and are respectable members of the community.
79. Regarding the submissions including allegations concerning noise caused by patrons of the venue, the Licensee states the following:
- The Licensee agrees that patrons make some noise when they leave the venue. However, the Licensee denies allegations that patrons make excessive noise when leaving or are not mindful of local residents.
 - The Licensee avoids making everyone leave at the same time, rather they ‘wind down’ the operation of the venue when the majority of patrons have left.

- The Licensee submits they have taken active steps to mitigate excessive noise concerns by providing a courtesy bus service that will transport patrons from the venue on Friday nights, Saturday nights, and any other busy times where there is need for it. This will ensure that patrons are able to return home safely but will also not be congregating on the street outside the venue.
80. The Licensee notes the complainants requested outcomes to resolve this complaint can be summarised as below:
- Closing times for the venue of no later than 10pm;
 - Security to prevent crowds congregating outside the venue; and
 - Transport for patrons of the venue to prevent crowd aggregation with accompanying noise.
81. In response to those proposed outcomes, the Licensee states the following:
- The Licensee does not agree to any changes to its trading hours on the liquor licence.
 - The Licensee also does not propose to provide regular security at the venue unless there is a specific need for it.
 - The Licensee will use reasonable endeavours to ensure that crowds do not congregate outside the venue. As outlined in paragraph [79], the Licensee will provide a courtesy bus type of service on Friday and Saturday nights.
82. The Licensee vehemently denies the allegations made by the complainants. Notwithstanding this, the Licensee wishes to work with the complainants to ensure the venue and local residents can co-exist in a peaceful manner.
83. The Licensee notes that they do not wish to engage in ongoing correspondence with the complainants regarding the operation of the venue. However, to address some of the concerns raised by the complainants, the Licensee has:
- Arranged a courtesy bus service to drive patrons' home on Friday and Saturday evenings and other busy trading days;
 - Placed new lights for the car park to the venue;
 - Erected new signage at the venue requesting that patrons are quiet and respectful to the local community when leaving the premises;
 - Installed noise absorbing panels in the roof of the venue to minimise noise levels;

- Commenced conducting regular perimeter checks of the venue during trading hours to gauge noise levels;
- Erected a wall with sound isolation to prevent noise travelling to the complainant's residence;
- Provided their mobile phone number to local residents for them to call them if, in their view, there are any issues which need to be addressed during trading hours;
- Commenced conducting regular checks of the surrounds of the venue to see if there is any litter; and
- Adopted a plan of management for the venue.

84. Additionally, the Licensee will arrange meetings with Council and Nowra Licensing Police, including SC [REDACTED] in the near future. The purpose of these meetings will be to discuss venue operations and will attend to any matters should they arise.

85. The letter from Sgt [REDACTED] confirms submissions that since the venue opened at its current premises location (see paragraph [11]), there have been no adverse findings by Police despite numerous inspections. The only incidents Sgt [REDACTED] identified relate to a domestic assault, intimidation of a taxi driver, patrons being affected by alcohol despite the bar being closed early to prevent unacceptable intoxication levels and a noise complaint on 13 June 2021. This resulted in Police finding noise levels to be appropriate as of 2:30pm, yet still requested noise levels be lowered, which the owner did without issue. Sgt [REDACTED] is not aware of any other issues to report and notes the business owner and venue caters to many organisations in town and conducts numerous functions seemingly without incident.

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

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

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

87. The venue has operated under the current liquor licence since 1 November 2006. The order of occupancy has not been disputed, and I consider the complainant's occupancy to predate the venue, as they indicate they have lived at their residence for 32 years.

88. The current Licensee and the business and premises owners, [REDACTED], [REDACTED], have also only been operating the venue since 9 December 2020, as set out above in paragraph [12].

89. I consider the order of occupancy in the complainant's favour as they have resided in their residence since approximately 1988 and prior to the current liquor licence.

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

90. The venue was previously known as the restaurant St Isidore. The complainant submits the restaurant housed a maximum of 60 patrons. However, there is no evidence that this was the case. The complainant alleges the venue has opened up a large courtyard area and are accommodating a greater number of patrons than under the previous Licensee.

91. The Licensee submits the courtyard area already existed and is used for patrons who cannot sit or remain indoors. Regardless, the Licensee submits no structural changes have been made to the venue. There does not appear to be any submissions or information relating to whether there have been any recent structural changes other than an addition in 1992.

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

92. The complainant submits the venue was primarily utilised as a restaurant when operating as St Isidore. Since the venue has come under the management of the current Licensee and premises/business owners (see paragraph [12]), the complainant alleges the venue operates as a pub/bar/live music venue.

93. The Licensee submits that these submissions are untrue, and that the venue is a casual family restaurant. The Licensee submits live music is conducted from time to time, which includes local artists, an Irish fiddle band and a local choir. The complainant alleges the venue is open later than it did under previous management, however the Licensee submits they operate within their licensed trading hours.

Findings and Decision

Undue disturbance

94. In deciding whether the venue has unduly disturbed the quiet and good order of the neighbourhood, I have balanced the submissions made by the Licensee, the complainant, Police and Council. I have also had regard to the particular context in which the venue operates.

95. After considering the material before me, I am satisfied that there is sufficient evidence to conclude that the venue has at times caused undue disturbance. I concede that some level of disturbance that occurs merely from the normal and permitted operation of the

venue is to be expected. However, upon consideration of all the relevant circumstances I am of the view that the disturbance from the venue can be characterised as undue disturbance. In reaching this conclusion, I have given weight to the submission received from Police, the material presented in the complaint and the subsequent complainant's submissions and the nature of the venue's operation and the neighbourhood in which it operates.

96. I do not find the noise impact assessment contained in the IES report sufficiently persuasive to support the imposition of conditions. This is because the assessment was not conducted in accordance with the LA10 noise criteria, which is the preferred benchmark in NSW for assessing undue disturbance at licensed premises. Further, I note at paragraph [17] that the relevant Council officer found that the IES report was "below industry standard".
97. In making a finding that there has been undue disturbance, I have also had regard to the fact that the venue does at times host live amplified entertainment. As reflected in the submissions, the venue operates in a predominately residential area which can be characterised as a quiet area featuring homes and extensive vegetation. I have considered the other businesses in the area and the uses of the land. I am encouraged by the measures implemented by the venue which should assist in mitigating noise disturbance concerns for the complainant. These include but are not limited to the introduction of a courtesy bus, the installation of noise absorption panels, signage and an acoustic wall between the venue and complainant's residence and the venue's commitment to monitoring the venue and its surrounds for noise and litter.
98. I acknowledge the Council submission which suggests the venue is most likely trading outside its development consent. This mainly relates to their submissions that there is no consent for outdoor music, the venue is not registered as a food business, the venue is operating more as a small bar than a restaurant, is situated immediately near residential zoned land and there is no consent for a small bar or pub at the site. I note Council has been in contact with the venue about these issues and has mentioned its willingness to issue a Development Control Order if noise issues persist. I note that these issues remain a matter for Council.
99. As I have noted above, it is reasonable to expect some level of noise will be generated from the normal operation of the venue. However, a venue in such a residential setting must be mindful of the potential for undue disturbance particularly when hosting amplified entertainment.

Regulatory Outcome

100. In deciding the appropriate regulatory outcome in this instance, I have considered the statutory considerations, the material set out in **Annexure 1**, and my above finding that there has been at times undue disturbance. I have also had regard to the particular context in which the venue operates.
101. I acknowledge the order of occupancy is in favour of the complainant, who has apparently lived in the same property for approximately 32 years. I note the venue has apparently only been in active operation by the current Licensee since April 2021. In this context, significant responsibility lies on the Licensee to ensure the venue's operation does not disturb the quiet and good order of the neighbourhood, particularly to those residents in the immediate vicinity. It is within the Licensee and business owners right to mould the operation of the venue as they see fit, so long as it is not in contravention of any development approvals, liquor licence requirements or their obligation under any relevant legislation.
102. I am encouraged by the remedial steps taken to resolve the noise disturbance concerns, in particular the letter drop by the Licensee to residents to contact them by mobile phone if required. I strongly recommend the venue continue to work respectfully and collaboratively with neighbouring residents to address any instance of disturbance or other matters as they arise.
103. I again acknowledge the proactive measures implemented by the venue to mitigate noise and minimise disturbance to the local community. This includes the introduction of a courtesy bus, the installation of noise absorbing panels in the roof, the implementation of a plan of management, regular patrols to monitor noise levels and litter, new lighting in the car park, erecting a sound barrier between the venue and complainant's residence and the installation of signage to assist in the prevention of noise and patron disturbance. Disturbance caused by patrons congregating outdoors is stated as one of the complainant's primary noise concerns. I am satisfied the measures above will alleviate these concerns and may assist in reducing patron noise emanating from within the venue.
104. I acknowledge the concerns of the complainant and Council that the venue may currently be trading outside its development consent, in particular regarding the above mentioned live music conducted in the outside area of the venue. I remind the Licensee that the venue should always ensure it operates within its development consents, liquor licence and relevant legislation. I am encouraged by the Council submission that communication

has occurred between the parties highlighting these concerns and that the Licensee is amenable to engaging with Council.

105. I note the Police submission acknowledges the potential for the operation of the venue to cause undue disturbance. The licence conditions requested by Police are not supported by an appropriate amount of evidence. Should Police wish to pursue the implementation of these licence conditions, they are able to make an application pursuant to section 54 of the Act.
106. I find the complainant's requested outcomes to either be too onerous on the venue or that they have already been implemented. The venue states that in general it only trades until 10:00pm or 10:30pm on Friday and Saturday nights. I also note it is permitted to do so according to its liquor licence, as outlined above at paragraph [13]. A condition mandating the hiring and retention of security guards is not required. There have been very few violent incidents at the venue and none of them have been objectively serious enough to warrant the employment of a security guard.
107. However, I note the submissions of the Licensee acknowledging there may be occasions where security is appropriate to be provided. I also consider that the measures implemented by the Licensees should assist in ensuring patrons outside the venue do not cause undue disturbance. Based on the evidence at hand, in my view there are no licence conditions appropriate to impose on the venue's liquor licence at this time.
108. Accordingly, and noting in particular the voluntary measures implemented by the licensee, I have determined to deal with this complaint by **issuing a warning** to the Licensee. In taking this course of action I am giving the licensee an opportunity to continue to work with Police, Council, and neighbouring residents to implement appropriate controls and refine existing measures.
109. I strongly remind the Licensee and venue business/premises owners of the need to adhere to any mitigation measures and of their ongoing obligation to minimise levels of disturbance to the community. I note that if fresh and direct evidence is presented demonstrating further undue disturbance, it is open for the matter to be reconsidered and for further regulatory action to be taken.

Decision Date: 22 November 2022



Dimitri Argeres

Director Compliance & 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 **20 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

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/independent-liquor-and-gaming-authority/ilga-and-l-and-gnsw-decisions/disturbance-decisions>.



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

1. Copy of the liquor licence dated 10 November 2022.
2. Section 79 Disturbance Complaint lodged by the complainant on 3 August 2021.
3. Submission from Licensee received on 15 September 2021.
4. Submission from Council received on 16 September 2021.
5. Submission from Police received on 17 September 2021.
6. Final submission from complainant received on 3 October 2021.
7. Final submission from Licensee received on 4 November 2021.