

DECISION OF THE DIRECTOR OF LIQUOR LICENSING

COMPLAINANTS: SAMUEL ROBERT PHILLIPS
JULIE WOOD
MICHELLE HARRIS

LICENSEE: FUSION SIX PTY LTD

PREMISES: FUSION 6

PREMISES ADDRESS: 230 CAMBRIDGE STREET, WEMBLEY

LICENCE NO.: 606209555417

NATURE OF MATTER: SECTION 117 COMPLAINT

DATE OF DETERMINATION: 1 OCTOBER 2021

Background

1. On 11 May 2019, Samuel Robert Phillips, Julie Wood and Michelle Harris (the Complainants) lodged a complaint with the Director of Liquor Licensing (the Director) against Fusion Six Pty Ltd (the Licensee) of the licensed premises situated at 230 Cambridge Street, Wembley and known Fusion 6.
2. The complaint was made pursuant to s 117 of the *Liquor Control Act 1988* (the Act); and since its lodgement in accordance with s 117(3a) of the Act, officers of the Director have attempted to settle the matter, between the parties, by way of conciliation and negotiation.
3. On 30 August 2021, the complaint was referred to me to determine, under delegation of the Director, as the matter could not be settled between the parties by conciliation or negotiation.
4. In accordance with s 117(4) of the Act, by letter dated 3 September 2021, the parties to these proceedings were advised that I proposed to determine the matter on the papers; and the parties were given the opportunity to make submissions (in two stages, 22 September 2021 and 30 September 202) to be taken into consideration in the determination of this matter.
5. The Licensee was also advised that further and better particulars were required in respect of two days trading, regarding the function room of the licensed premises, namely 10 April 2021 and 26 June 2021. This request for further and better particulars was confirmed by email to the Licensee dated 15 September 2021; and the Licensee was advised that the information was required to be lodged within the first stage of submissions being 22 September 2021.

6. Pursuant to ss 13 and 16 of the Act, this matter will be determined on the papers presented to me including inspectors' reports, details of meetings and referral to the Director.

Background to the lodgement of the complaint

7. On 9 January 2017, the Licensee lodged an application for the grant of a restaurant licence for premises situated at 230 Cambridge Street, Wembley.

8. The principal parts of the proposed licensed premises comprised:

- rear dining (function) area of approximately 222m²;
- alfresco dining area of approximately 56m²;
- front dining area of approximately 46m²;
- foyer of approximately 60m²;
- garden dining area of approximately 20m²;
- kitchen and associated facilities of approximately 3m²; and
- toilets.

9. The premises included a stage of approximately 14m², a bar (rear dining room) of approximately 4.2 metres and a bar (front dining room) of approximately 3 metres.

10. The inspector examining the Licensee's application for a restaurant licence in his report dated 18 January 2017 included:

*"As mentioned in the PIA, the premises will focus on providing **"quality and healthy food to customers"**.*

*In relation to the potential impact on the locality, the applicant states **"The premises will play soft music which will not disturb the residents and during events volume will kept down considering the community"**.*

There is no detail about the type of events that are proposed at the premises. I will ask for further information in the schedule of requirements before I decide on whether an acoustic report is required.

Given the menu submitted and the proposed layout of the premises, I consider that this will be a genuine restaurant."

11. A noise impact assessment prepared by AAP Acoustics & Audio Production dated 1 June 2017, requested by the inspector, was lodged and the premises were deemed to be suitable.

12. On 19 June 2017, the Licensee was granted a restaurant licence for the premises situated at 230 Cambridge Street, Wembley. The restaurant licence was granted subject to conditions including:

- The consumption of liquor by persons while standing at the "Bar", is prohibited.
- Noise emanating from the licensed premises must not exceed that permitted under the Environmental Protection (Noise) Regulations 1997.

13. A complaint alleging that the Licensee may be operating outside its licence conditions was the subject of inspector's report dated 24 August 2017. The complainant requested help to stop *"... the loud noise, karaoke parties & excessive noise when patrons are leaving the premises.*
14. Since the grant of this restaurant licence, the Licensee has been the subject of a number of complaints, ultimately resulting in the lodgement on 11 May 2019 of the complaint pursuant to s 117 of the Act. The complaint was outlined as follows:

"There has now been over 28 noise complaints shared with Fusion 6 and the Town of Cambridge since June 2017. Despite all efforts to resolve this by all parties involved there has ben no resolution to date. Liquor Licensing have been involved for years now and no resolution has been provided either."

Determination

15. The Licensee, in this matter, is the holder of a restaurant licence pursuant to s 50 of the Act; and during permitted hours the Licensee is authorised to sell to any person liquor on the licensed premises for consumption on the premises ancillary to a meal supplied by the licensee to, and eaten by, that person there.
16. Section 50(3) of the Act also provides as follows:

"Every restaurant licence is subject to the conditions that –

- (a) the business conducted at the licensed premises must consist primarily and predominantly of the regular supply to customers of meals to be eaten there; and*
- (b) subject to subsection (1a), liquor must not be consumed by a person on the licensed premises except ancillary to a meal supplied, by the licensee to, and eaten by, that person there; and*
- (c) the licensed premises must contain kitchen facilities that are suitable for the preparation of the meals to be supplied by the licensee.*

In respect of what is a meal under the Act, section 5 defines a meal as follows:

"meal means food-

- (a) that is eaten by a person sitting at a table, or a fixed structure used as a table, with cutlery provided for the purpose of eating the food; and*
- (b) that is of sufficient substance as to be ordinarily accepted as a meal; and*
- (c) that may consist of one or more courses*

17. The report (INV76754) prepared by inspector Britton summarised the nature of the complaint lodged against the Licensee, the efforts made to reconcile the complaint and the conclusion that the complaint could not be resolved by way of conciliation or negotiation.

18. In respect of the information presented and inspector Britton's report, I believe the relevant information has been made available to the parties, in particular the Licensee. Therefore, I see no reason to summarise the evidence within this decision other than to say that the nature of the business being conducted on the licensing premises is impacting on the complainants, in particular:
- noise (music) emanating from the premises; and
 - noise generated by persons resorting to or leaving the licensed premises.
19. In considering this matter, I consider that it is worth noting that while Mr Phillips confirmed his complaint before 22 September 2021, the Licensee has not responded to my request for further and better particulars regarding functions held at the premises on 10 April 2021 and 26 June 2021; and has not lodged any submissions, for consideration, in the determination of this complaint.
20. Therefore based on the information before me, I am satisfied on the balance of probabilities that the complaint has been established and that it is appropriate to make an order so as to resolve the complaint.
21. In making the order I have taken into consideration the provisions of ss 50 and 53 of the Act and that it is not a requirement under the Act for the holder of a restaurant licence to provide live entertainment.
22. Accordingly, in accordance with s 117 (5) of the Act, effective as from 8 October 2021, the Licensee will be subject to further conditions as follows:
1. Live entertainment, including pre-recorded music presented by a person or in the form of karaoke, is prohibited;
 2. All pre-recorded music provided at the premises is to be played through an in-house system, must be background in nature only and at a level sufficient to allow normal level conversation to occur.
 3. Liquor may only be consumed by patrons while seated at a table, or a fixed structure used as a table for the eating of food, and not elsewhere. Therefore, the sale and supply of liquor to patrons is restricted to table service by staff of the licensee.
23. Parties to this matter dissatisfied with the outcome may seek a review of the Decision under s 25 of the Act. The application for review must be lodged with the Liquor Commission within one month after the date upon which the parties receive notice of this Decision.
24. This matter has been determined by me under delegation pursuant to s 15 of the Act.



Eric Romato
DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING