City of Port Adelaide Enfield v Adrian Conway Galindo t/as Milledge's Distillery **[2025] SALC 89**

LICENSING COURT OF SOUTH AUSTRALIA

CITY OF PORT ADELAIDE ENFIELD

v

GALINDO, Adrian Conway t/as MILLEDGE'S DISTILLERY

JURISDICTION: Referral from Commissioner

CASE NO/S: LC-24-00120

HEARING DATE: 7 July 2025

JUDGMENT OF: His Honour Judge BP Gilchrist

DELIVERED ON: 11 September 2025

CATCHWORDS:

Referral of a noise complaint by the Liquor and Gambling Commissioner – The complainant is the City of Port Adelaide Enfield (the Council) – The Council lodged the complaint following complaints to it by residents about the noise and disturbance emanating from Milledge's Distillery – Milledge's Distillery is situated in a former warehouse in Todd Street, Port Adelaide – The owner obtained planning approval to convert the building into a distillery, an office area and a café area – The owner obtained a production and sales licence that enables Milledge's Distillery to sell, for consumption on and off the premises, liquor that it produces from a distillery within the premises and to sell liquor at any time for consumption on the licensed premises with or ancillary to a meal provided by it or to a person attending a function at which food is provided or is seated at a table – The owner regularly conducts events in the café area that comprise of live entertainment – Those events frequently involve dancing with little evidence of food being supplied or patrons sitting at tables – The primary complainant lives in Todd Street across the road from Milledge's Distillery – Following a meeting with the primary complainant, the owner spent more than $20,000 replacing the doors with thick glass doors, arranged for sound treatment where the stage area is at a cost of around $10,000, and implemented sound controlling measures at a cost of about $3,000 – Noise testing reveals that when the doors of the venue are shut the noise emanating from the premises is acceptable but when opened, as patrons enter and leave the premises, it can

*be excessive – Following lodgement of the complaint the Council sent a circular letter to the owners and occupiers of residential properties in the vicinity of Milledge's Distillery seeking support – Only the primary complainant has given evidence in support of the complaint – An online petition conducted by the owner provides some evidence of widespread community support for the venue – The venue is situated in a part of the Council area that contains many licensed venues and the history of the premises in relation to other premises in the vicinity is that it can fairly be regarded as forming part of a group of licensed facilities that might be expected to be offering entertainment, to be adding to the attractiveness of the area, and promoting the live music industry, tourism and the hospitality industry generally – The primary complainant's evidence suggests that his view as to what amounts to unacceptable noise emanating from licensed premises does not conform with contemporary community standards – It is of concern that some of the promotional material put out in connection with Milledge's Distillery sought to portray it as a late night party venue – It is also of concern that the venue might from time to time have acted in a way that is inconsistent with what the liquor licence permits – However these do not establish that the gateway to the invocation of s 106 of the Act has been met – **Held** that the complaint that the noise emanating from the premises is undue has not been made out – **Held** that the application is dismissed – Liquor Licensing Act 1997, Planning, Development and Infrastructure Act 2016, Environment Protection Act 1993.*

Elliston Apartments v Young Grey Nomads Pty Ltd t/as Elliston Hotel [2025] SALC 1
McCarthy v Barbara Anne & Graham John Cox t/as Lord Exmouth Hotel [2024] SALC 22
Music Talking Pty Ltd as Trustee for the Orlando Farese Family Trust v Villis Group Services & Ors [2011] SASCFC 142
Boettcher v Bacchus Wine Bar Pty Ltd [2024] SALC 131
The Palace Gallery Pty Ltd t/as The Palace / Level Up v The Commissioner of Police for the State of South Australia [2025] SALC 70

REPRESENTATION:

Counsel:
Applicant: Mr J Roder
Respondent: Mr N Healy

Solicitors:
Applicant: Kelledy Jones Lawyers
Respondent: Piper Alderman Lawyers

1 Licensed premises can be expected to generate a fair degree of noise, disturbance, and interference to those who reside, work or worship in the vicinity. But there are limits as to what those persons can reasonably be expected to put up with.

2 The *Liquor Licensing Act 1997* (the Act) provides a mechanism through which this can be tested. Section 106(2) of the Act permits the Commissioner of Police, the council for the area in which the licensed premises are situated, or a person claiming to be adversely affected, to lodge a complaint that can lead to conciliation, mediation and adjudication that may result in an order against the licensee resolving the subject matter of the complaint, that might include the addition or variation of the conditions of the licence.[1]

3 Milledge's Distillery is a licensed premises trading under a liquor production and sales licence out of premises in Todd Street, Port Adelaide. Those premises are within the City of Port Adelaide Enfield council area.

4 The production and sales licence enables Milledge's Distillery to sell, for consumption on and off the premises, liquor that it produces from a distillery within the premises.[2] It also enables it to sell liquor at any time for consumption on the licensed premises with or ancillary to a meal provided by it or to a person attending a function at which food is provided or who is seated at a table.[3]

5 Certain residents complained to the City of Port Adelaide Enfield (the Council) about the noise and disturbance emanating from Milledge's Distillery. The Council resolved to act upon those complaints and has filed a complaint pursuant to s 106(2) of the Act.

6 In prosecuting this complaint, the Council relies upon the evidence of Mark Niehus, who lives in Todd Street, almost directly across the road from a Milledge's Distillery. It also relies upon the evidence of the acoustics engineer, Jason Turner.

7 This Court must now determine whether that complaint has been made out and if so, what measures should be taken to ameliorate that noise and disturbance.

8 Milledge's Distillery is owned by Adrian Galindo. It is situated in the general vicinity of the Queen's Wharf and the nearby Port River, which are to the west. The building that it occupies was formerly a warehouse that extends from Todd Street in the north to Timpson Street to the south.

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[1] Section 106(6a) and (7) of the Act.
[2] Section 39(1)(a),(b) and (c) of the Act.
[3] Section 39(1)(g) of the Act.

Todd Street and Timpson Street run parallel to each other and run in a roughly east-west direction ending to the east at the junction of St Vincent Street. St Vincent Street is one of the main streets in Port Adelaide.

9 A few hundred metres to the south of the junction with Todd Street, St Vincent Street intersects Commercial Road, which is the continuation of Port Road. That intersection is a significant feature of the Port Adelaide area and was once known as the Black Diamond corner.

10 The area in the general vicinity of Milledge's Distillery is replete with heritage listed buildings, as well as the South Australian Maritime Museum, and the National Railway Museum. Collectively, with the Queens Wharf, the adjacent lighthouse, and the river, it is a tourist area that celebrates the area's maritime history.

11 In December 2022, Mr Galindo obtained planning consent to convert the warehouse into a multi-use facility that would include offices, a café, and a distillery.[4]

12 Mr Galindo's redevelopment of the building saw the construction of a distillery which is situated in the Todd Street end of the building; offices in the middle; and a café and bar towards the Timpson Road end of the building. The bar is set up on the eastern side of that area and a small unelevated stage area is set up in the north-western corner.

13 When the building was first redeveloped, the doors leading into Todd Street were constructed of corrugated iron.

14 This part of Port Adelaide is described for planning purposes as an "Urban Activity Centre Zone". It is intended to comprise of "A cohesive and legible environment supporting a broad spectrum of regional level business, shopping, entertainment and recreational facilities that can cater for large crowds, smaller gatherings and events over extended hours."[5] It includes within its list of the entertainment facilities that it contemplates, hotels and other licensed premises.[6]

15 Consistent with this, there are many licensed facilities in this area. They include: The 10 Gallon Hat bar in St Vincent Street, just south of the intersection with Commercial Road; the Banksia Tree Café and Restaurant, a little further south along St Vincent Street; The Port Admiral Hotel, on the north-western corner of the intersection of St Vincent Street and Commercial Road; Fergie Mac's Lounge, a restaurant in St Vincent Street, about 50 metres west of Timpson Street; the Royal Arms Hotel on

[4] Exhibit (Ex) A1 at 2.
[5] Ex A1 at 215.
[6] Ex A1 at 216.

the south-western corner of Timpson Street and St Vincent Street; and Pirate Life Brewing about 200 metres further east, in Baker Street.

16 It is also notable that immediately adjacent to Milledge's Distillery was the site of the Port Dock Hotel that this Court is permitted to know was trading as a hotel until about 2020.

17 Since he obtained his liquor licence, Mr Galindo has conducted a range of activities at the premises. These have included comedy nights, film nights, and live and recorded music. Although the licence permits trade until midnight, Mr Galindo rarely trades after 11.00 pm.

18 Mr Galindo said that the café commences trade at 7.00 am and closes between 2.00 pm and 2.30 pm each day. He said that it does not sell alcohol during the day.

19 He said that the café area opens on Wednesday nights for what he called an "open mic night". He explained that is that when someone comes to perform, and might bring their own musical instrument, such as an acoustic guitar or ukulele. He said that this generally attracts an older demographic who are people from the local community who are either performing or cheering on their mates. He said that the average age of patrons is around about 70 years. He said that while they are watching they might have a toasted sandwich, a bowl of soup, and a cup of tea or coffee. He said that very little alcohol drinking occurs. He said that this event typically goes from about 8.00 pm to 11.00 pm. He said that notwithstanding a crowd capacity of 100, the number that attend on a Wednesday night is about two dozen.

20 Mr Galindo said that once a month, on a Thursday night, the café area is open for what he described as "the comedy night". He said that those who perform are usually paid performers and that three or four comics might perform over the course of the night. He said that the demographic for a Thursday night tended to be younger, being people in their twenties or thirties with perhaps some a bit older. He said that this event also typically goes from about 8.00 pm to 11.00 pm.

21 Mr Galindo said that Friday nights were generally very quiet. He said that every other week on a Friday night, he conducts in the café area what he described as "musical bingo". He explained that someone comes in and plays a song, and the patrons then cross the song off on their bingo card. He said that the patron must identify the band playing the song and if their card is complete, they say "bingo". He described the music as "soft rock", or "yacht rock" such as music produced by the likes of Hall & Oates, Gerry Rafferty and Boz Scaggs.

22 He said that on other Friday nights, in the café area, he conducts live music events that typically comprise of one person playing a guitar, or something of that nature, in the north-western corner.

23 As with Wednesdays and Thursdays, the venue usually closes at 11.00 pm.

24 Mr Galindo said that the venue has acoustic sessions on Saturday and Sunday afternoons with a guitar or a ukulele or something of that nature, but sometimes they will have some amplification. He said that the type of music then played was "folky" or "soft rock".

25 He said that on a Saturday this would usually commence once the café had closed at about 2.30 pm and would finish up around about 8:00 pm. He said that sometimes the venue stayed open later with an acoustic session.

26 Mr Galindo said that the venue has had DJs play there in the past, but that was some time ago. He said that now patrons play music from Spotify through a little boom box as background music. He said that on Saturday nights they ask people to stop at 11.30 pm at the latest.

27 Mr Galindo said that the venue does not engage security or crowd controllers. He said that he tends to know what number of patrons will be attending and arranges staff accordingly. This might involve putting someone on the door, who will take the tickets and make sure the door stays shut and no one drinks outside.

28 Mr Galindo said that in about February 2023, Mr Niehus and his partner came to see him at Milledge's Distillery and that they expressed to him their concern about the noise emanating from the premises. He said that he took these concerns seriously and accepted that some level of noise attenuation was required. He said that this was especially in connection with the doors then in place that faced into Todd Street. He accepted that they were not adequate to prevent leakage of noise. As mentioned earlier, these doors were constructed of corrugated iron.

29 Mr Galindo said that he contacted a door specialist and acting upon their recommendation, he spent more than $20,000 replacing the doors with thick glass doors that were imported from Poland.

30 He said that he also arranged for sound treatment where the stage area is. This comprised of the walls being treated with a Soundchek plasterboard at a cost or around $10,000.

31 He said that at a cost of about $3,000 he purchased a 24-channel mixer, which is controlled by an iPhone. The effect of this is, is that if the sound levels get past a certain level, he can literally pick up his phone and turn

the level of music down. He said that when external performers are engaged, they are required to enter a contract wherein they must agree not produce excessive sound and to operate through the mixing desk so that the venue can control the level of sound.

32 He said that he has put in place a Management Plan for the venue that specifically addresses the need to prevent unnecessary disturbance to its residential neighbours. This requires staff to take reasonable steps to ameliorate noise and disturbance. He said that staff are made aware that part of their duties is to make sure that the door is only opened very periodically and that whenever possible, not for any length of time; they are to stop people drinking outside; and they are to request people who are outside to keep the noise down and not order their taxi or wait for their taxi there.

33 The Council accepts that Mr Galindo is entitled to run a successful business and it has no difficulty as a matter of principle in the venue offering entertainment. But it contends that the venue generates excessive noise and it has concerns about the behaviour of patrons in the vicinity of the premises, particularly, when people are coming and going from the venue and at closing time.

34 The Council's primary concern relates to how the venue is marketed and operated, which it contends is inconsistent with the licence it has, and the planning approval that it has obtained. It contends that it is promoted and operates in a manner akin to a hotel licence whereby the focus is on the provision of entertainment and that food is very much a second thought. Its case is that if the venue traded as was contemplated by the licence and the planning approval, that is with alcohol only being sold for on premises consumption to be sampled with food, and without the live music, it would be unlikely that there would be any issues regarding the noise and behaviour of patrons. Its case is that if Mr Galindo wishes to run the venue as is he should have the proper licence and have the proper planning approvals.

Mr Niehus

35 Mr Niehus moved into Todd Street in 2019. He said that at that time much of the surrounding area was barren land and the street itself was much quieter. He said that Port Adelaide changed a lot since then, in that it now has more cafes and restaurants, which he thought was a good thing.

36 Mr Niehus said that in 2019, he understood that the building now occupied by Milledge's Distillery was a gallery, although he never saw it operating. He said that in about late 2022 he became aware from talk around the community that there was going to be a potential distillery opening up

there, and maybe a cafe, which he thought that this was a good thing. He said that he was quite excited about it.

37 He said that the premises began to trade in around September/December 2022. He said that initially, it only traded as a café, but by January/February 2023, there was live music and bands playing. He said that he was surprised by this. He said that he and his partner noticed that, when in their upstairs living area, the music was clearly audible and disruptive. He said that it was not something they had expected.

38 He said that he and his partner like to sit in their upstairs living area in the evening on weekends and listen to our own music. He said that the music from Milledge's Distillery was audible over the top of their music. He said that the bass would vibrate through the building and sometimes it would vibrate the window frames.

39 He said that the music was disruptive from about 8.00 pm through to midnight and that patron noise could continue to 12.45 am. He said that it was loud enough to disrupt his television viewing or book reading and would wake him up if he had gone to bed.

40 He said that after the activities at the premises had changed in about January or February, he sent an email to the owners in which he and his partner outlined their concerns. He said that he and his partner offered an opportunity for them to sit and talk about the issues and try to resolve them and that a meeting was organised to take place at the premises in March 2023. He described the meeting as a "a positive experience". He said that the owners were receptive to their comments and said that they would address them, that they would look into installing new doors that would improve the sound, and address, also, the activity of patrons on the footpath.

41 At around this time Mr Niehus began documenting activities taking place in and about the premises by recording on his computer a file described as "Activity Diary Milledge's Distillation Café & Venue". For convenience I shall refer to this as the Diary. The computer file has since been converted to a paper document that is 87 pages long, with multiple entries on each page. It contains multiple recordings, photographs and screen shots.

42 Despite having described the meeting as positive Mr Niehus said:

> I felt that – potentially – that at this point, the issues weren't going to be resolved, and that I should start documenting the activity to present to council initially just to demonstrate what we were experiencing.[7]

[7] Transcript (Tr) p 15.

43 Amongst other things Mr Niehus took screen shots of the noise levels recorded on an app that he had installed on his mobile phone. He regularly filmed the premises on his phone and said that he did sound measurements to correspond with the description with the videos that he took.

44 Mr Niehus said that he sent the videos and the sound measurements to Mr Galindo via email just to demonstrate to him what he and his partner were experiencing. He said that he also sent them to the Council.

45 Mr Niehus then spoke of the new doors being installed in September 2023. He said that these reduced the noise to a degree, but not to what he felt was an acceptable degree. He therefore continued to do sound measurements. He accepted that the measurements were not undertaken on special equipment, but thought that because he used the same device it was a way to show Mr Galindo what the degree of change was.

46 Mr Niehus said that despite the installation of the new doors, the noise emanating from the premises continued to be disruptive, so much so that it forced him and his partner to change the way they operated from their home.

47 He said that they began to watch television with the volume at a higher level than we would normally have it, to drown out the impact, and would stay up much later than we would normally because, if they were to go to bed before midnight, it made it difficult to sleep.

48 Mr Niehus said that as a result he communicated this to Mr Galindo. He said that the doors of the premises were often left open and that he and his partner would walk across the street requesting that the doors be closed.

49 He said that despite expressing his concerns, nothing changed. He said that he experiences noise disturbance between three to four times a week. He said that this was mainly in the evenings but it also occurred on Saturday and Sunday afternoons.

50 In cross-examination, Mr Niehus was asked whether he would take up an offer of having the windows of his home that faced into Todd Street double glazed. He said he would not. He said that these windows are their only source of fresh air, and they are regularly open.

51 Mr Niehus said that he had shot over a hundred videos. Some were shown in Court. Their contents are the subject of the Diary. They extend beyond issues around noise.

52 For example, the Diary contains an entry of 11 August 2023: "Milledge's installed food truck without a permit from council." It contains a

photograph of the outside of the premises and records an exchange of an email that he received from the Council that presumably advised that there was no council permit issued. It contains two entries on 25 May 2024, one at 3.30 pm, the other at 4.13 pm. Both record that there were tables and chairs on the footpath with a note that this was in breach of its outdoor licence, which approved outdoor dining between 7.00 am and 3.00 pm. It contains as an entry on 6 July 2024, noting a recording of a table being set up on the footpath to sell tickets to patrons. And there is an entry on 28 February 2025, of a table and chair being on the footpath operating as a box office during the Fringe Festival.

53 It is apparent that Mr Niehus regards music being played before 8.00 pm on a weekend to be unduly disruptive and that at times, his surveillance of Milledge's Distillery has been intense.

54 To take two examples, the Diary contains entries on Friday, 21 February 2025 that contains recordings of allegedly excessive noise at 7.17 pm, 7.21 pm, 7.46 pm, and 7.48 pm, and on Sunday, 23 March 2025, at 3.40 pm, 4.35 pm, 4.42 pm, 5.02 pm, 5.58 pm, 6.10 pm. 6.17 pm, and 7.37 pm.

Mr Turner

55 Mr Turner conducted music level measurements at the premises on 26 October 2024 between 1.45 pm and 3.30 pm. He said that the music was coming from an amplified four-piece band that was playing a soft rock style.

56 He found that the average noise level from music with the door open was 59 dB(a) and that lowest background noise level without music was 49 dB(a).

57 He conducted further measuring on Saturday 30 November 2024, at a time when the door fronting Todd Street was predominantly closed time during testing and noted that the music levels were not clearly audible and could not be accurately measured.

58 Clearly an issue regarding noise emanating from the premises is the opening of the door facing Todd Street as patrons come and go. Mr Turner's evidence establishes that on occasions when the doors facing Todd Street are open, the noise levels emanating from the premises can exceed recommended guidelines.

59 Mr Turner raised for consideration an airlock mechanism that comprises of two doors spaced apart to ensure that as a person enters or exist there will always be at least one closed door. In cross-examination he accepted

that it was easier and cheaper to incorporate an airlock mechanism as part of an original design as opposed doing it retrospectively.

Other evidence

60 Included in the material placed before the Court were extracts from GLAM Adelaide,[8] which the Court is permitted to know is an online publication that amongst things, promotes new venues and activities. The GLAM material states: COMING SOON: Nightlife in the Port is about to be boosted with Milledges Distillation", "In the heart of Port Adelaide sits an old warehouse that until recently was empty and lifeless but has since become a hub of activity and shaping up to be one of the area's must-go new venues".

61 The publication quotes "Right now, not much in the Port is open past 10.00pm …We're going to be the place you go after dinner and stay late. We've got a late licence so you can expect it to be a bit of a party venue".

62 The publication then adds "With DJs and live bands on the cards, you can bet your bottom dollar that Milledges will be THE place to go in the West on a weekend."

63 The material also includes images taken within the café area when the premises are trading that show patrons dancing with no tables and chairs in sight, patrons standing with drinks in hand, and patrons partying.

64 Also included was a brochure advertising the New Found Sound Festival which was to take place at multiple venues on 18 January 2025 involving 31 acts.[9] The venues identified include many in the general vicinity of Milledge's Distillery. The brochure states: "Experience Live Music Across the Port". It identifies the Council as the presenter of the festival.

65 Also included was a circular letter sent by the Council to the owners and occupiers of residential properties in the vicinity of Milledge's Distillery. Over 70 letters were sent. Relevantly, the letter read:

> The Council is currently investigating the use of Milledge's Bar and Venue for live music events and the impact, if any, that these events have had on the local amenity. Our current investigation concerns noise generated by the venue both during the day and night, and whether you have experienced any disturbance as a result of this.
>
> In an effort to capture the views of the surrounding residents, the Council is inviting you, as an owner and/or occupier of a residence

[8] Ex A1 at 269-279.
[9] Ex R2 at 65.

> in the local area to voice any comments and/or concerns in relation to the investigation of Milledge's Bar and Venue.[10]

66 The Court was informed that only one recipient of the letter supports the within complaint.

67 There was one letter that opposed the complaint. It expressed support for Milledge's Distillery, stating that it was a wonderful business, there was no significant noise when events were held there, any noise is not excessive and events never run late into the night.

68 Also include in the material was a report of an online petition that identified the issue as follows:

> Milledge's Distillery, the much loved live venue in Port Adelaide, is under threat of closure due to a single noise complaint. This single complainant is supported by local council, the City of Port Adelaide Enfield.
>
> Sign below to support Milledge's in our battle to stay open and continue operating as the community hub many have come to know and love over the past few years.[11]

69 It asserted 1,837 verified signatures.

The parties' submissions

70 Mr Roder, counsel for the Council, submitted that I should not have any concern about the extent of Mr Niehus's recordings and that I should resist finding that it had been kept for any other ulterior purpose. He submitted that I should accept his evidence that it was a detailed record because Mr Niehus intended it to be as accurate as possible, consistent with his experience. He made the point that had Mr Niehus been more circumspect in his record keeping he might well have been met with the argument: "Well, you've only written down how many complaints in how many years? It can't be that bad".

71 He added that nothing should be made of the fact that the complaint is only actively supported by Mr Niehus. In the first place he is not a sole voice; he also speaks for his partner. Second, an absence of complaint is emblematic of a human nature, in that most people do not tend to complain about things most of the time.

72 Mr Roder submitted that in this case it was important to recognise that the premises do not trade under a general and hotel licence: the licence here is

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[10] Ex R2 at 41.
[11] Ex R2 at 48.

production and sales licence. Thus, statements in cases to the effect that those "who reside in the vicinity of a hotel are expected to put up with noise at times and at levels that would be regarded as intolerable in other places away from the hotel",[12] are not relevant.

73 Mr Roder submitted that there was a world of difference between entertainment to be enjoyed by patrons standing up and without a meal that might be expected in a hotel offering live entertainment and entertainment to be enjoyed by patrons sitting down with table service or with a meal.

74 I understood him to contend that the Court should be very concerned about how Milledge's Distillery was trading and whether its business model conformed with the licence that it had obtained.

75 Mr Healy, counsel for the licensee, emphasised the demographic of most of the patrons. He submitted that these were not hoons that are there until all hours, throwing bottles in the street, and making nuisances of themselves. He added that the venue is not one that trades every night, emanating loud music. He submitted that in fact it has limited trading hours and it has a very limited capacity.

76 Mr Healy sought to draw parallels with *McCarthy v Barbara Anne & Graham John Cox t/as Lord Exmouth Hotel* (*McCarthy*).[13] That case concerned an old style hotel in Semaphore which featured live music, that was described by the Court as "predominantly soft rock and folk rock, played at a modest volume"[14] playing to an audience that the Court described "relatively old and tame",[15] and that the hotel traded for very limited hours.[16]

77 Mr Healy submitted that in evaluating Mr Niehus's evidence, that included complains about noise coming from the premises on Saturday and Sunday afternoons, I might have the same concerns that I did in *Elliston Apartments*,[17] where I noted that someone who thought it reasonable to complain about noise emanating from a hotel at 9.26 pm on a Friday night and 10.03 pm on a Saturday night, had a view about what constitutes excessive noise that does not conform with contemporary community standards.[18]

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[12] *Elliston Apartments v Young Grey Nomads Pty Ltd t/as Elliston Hotel* (*Elliston Apartments*) [2025] SALC 1 at [72].
[13] [2024] SALC 22.
[14] Ibid at [77].
[15] Ibid at [66].
[16] Ibid at [78].
[17] Ibid.
[18] Ibid at [72].

78 Mr Healy submitted that the premises are situated in a vibrant urban area where live music was to be expected and indeed celebrated as evidenced by the New Found Sound Festival that the Council itself was promoting.

79 He then made the point that this was not a case where the licensee had ignored the concerns expressed by Mr Niehus. To the contrary, he had expended a considerable sum of money to appease those concerns.

80 I understood him to contend that any issues regarding strict compliance with the terms of the licence were not matters of concern to the Court in dealing with a complaint of this type.

81 He submitted that the complaint should be dismissed.

Consideration

82 In determining the complaint, the Court must take into account the following matters prescribed by s 106(6)(b) of the Act:

> (i) the relevant history of the licensed premises in relation to other premises in the vicinity and, in particular, the period of time over which the activity, noise or behaviour complained about has been occurring and any significant change at any relevant time in the level or frequency at which it has occurred; and
>
> (ii) the unreasonableness or otherwise of the activity, noise or behaviour complained about; and
>
> (iii) the trading hours and character of the business carried out by the licensee on the licensed premises; and
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> (iv) the desired future character of the locality in which the licensed premises are situated as stated in any relevant provision of the Planning and Design Code under the *Planning, Development and Infrastructure Act 2016*; and
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> (v) whether or not any environment protection policy made under Part 5 of the *Environment Protection Act 1993*, or guidelines published by the Environment Protection Authority established under that Act, applicable to the provision of live music on the licensed premises have been complied with; and
>
> (vi) any other matter that the Commissioner or the Court considers relevant.

83 As with all matters to be decided under the Act, regard must be had to the objects of the Act.[19] Those objects include facilitating "the responsible

[19] Section 3(2) of the Act.

development of the licensed liquor industry and associated industries, including the live music industry, tourism and the hospitality industry".[20]

84 In terms of the history of the premises, this case is unlike others before this Court where the complainant has recently moved into the vicinity of licensed premises. In those cases the Court has taken the view that principles along the lines of "let the buyer beware" apply.[21] In contrast to this, here Mr Niehus lived in his home before Mr Galindo obtained his liquor licence.

85 But it is important to note that s 106(6)(b)(i) speaks of "the relevant history of the licensed premises **in relation to other premises in the vicinity**". (Emphasis mine) This is important, because it requires the licensing authority to consider the history by reference to other licensed premises within the vicinity. Prior to Milledge's Distillery's establishment, there were many licensed premises in the vicinity. These include the Port Admiral Hotel, on the north-western corner of the intersection of St Vincent Street and Commercial Road, the Royal Arms Hotel on the south-western corner of Timpson Street and St Vincent Street, and Pirate Life Brewing, about 200 metres further east, in Baker Street. It is also significant that in Todd Street, until about 2020, the Port Dock Hotel was trading. It was almost directly across the road from where Mr Niehus lives.

86 Thus the history of the premises in relation to other premises in the vicinity is that it can fairly be regarded as forming part of a group of licensed facilities that might be expected to be offering entertainment, to be adding to the attractiveness of the area, and promoting the live music industry, tourism and the hospitality industry generally.

87 I now turn to consider the unreasonableness or otherwise of the activity, noise or behaviour complained about. This is a question of degree that must be adjudged objectively and by reference to contemporary community standards, having regard to all the relevant circumstances.[22]

88 Mr Healy is right to draw some comparisons between *McCarthy*.[23] Like that case the live music under consideration here is predominantly soft rock and folk rock, played at a modest volume.

89 In *Elliston Apartments*,[24] in explaining how the words "resides, works or worships in the vicinity of licensed premises" should be construed, I made the point that s 106 of the Act is focussed on enabling members of the

[20] Section 3(1)(d) of the Act.
[21] *Elliston Apartments* Ibid at [72].
[22] *McCarthy* Ibid at [74].
[23] [2024] SALC 22.
[24] Ibid.

relevant community, be they residents, workers or worshippers, to voice their complaint because **it is a community concern, not just an individual's concern**.[25] In my opinion, this also informs how the unreasonableness or otherwise of the activity, noise or behaviour complained about is to be evaluated.

90 I accept that from time to time when the doors facing Todd Street are open the noise levels emanating from the premises can exceed recommended guidelines and would be a source of annoyance to those living nearby.

91 But it is also significant that of the 70 or so letters that the Council sent to the owners and occupiers of residential properties in the vicinity of Milledge's Distillery, only one, Mr Niehus has stepped forward to give evidence in support of the Council's application. Although there is some uncertainty as to the provenance of the online petition that sought support for Milledge's Distillery, the statement of there being 1837 signatures in apparent support of the venue, cannot be dismissed out of hand. It provides some evidence of widespread community support.[26] It evokes consideration along the lines of legitimate grievances by individual members of the relevant community about noise and disturbance needing to yield for the common good.[27]

92 To this I would add the observation that this Court made in *Boettcher v Bacchus Wine Bar Pty Ltd*:[28]

> … residents living near licensed premises can reasonably be expected to put up with levels of noise and disturbance that in the general community would be considered excessive, especially when what is involved is live music and premises that facilitate tourism.
>
> As such, a licensing authority should exercise some restraint before finding that a complaint made under s 106 of the Act has been made out, and before imposing conditions that curtail the activities that can be conducted on licensed premises.[29]

93 It is also significant that Mr Niehus saw fit to record what he regarded as excessive noise just after 7.00 pm on a Friday night and at 3.40 pm, on a Sunday afternoon. This, and his evidence more generally, left me with the impression that his view as to what amounts to unacceptable noise emanating from licensed premises does not conform with contemporary community standards.

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[25] Ibid at [48].
[26] See s 23 of the Act and the judgment of Anderson J in *Music Talking Pty Ltd as Trustee for the Orlando Farese Family Trust v Villis Group Services & Ors* [2011] SASCFC 142 at [19].
[27] *Elliston Apartments* Ibid [2025] SALC 1 at [62].
[28] [2024] SALC 131.
[29] Ibid at [71]-[72].

94 Turning now to the desired future character of the locality in which the licensed premises are situated, as noted earlier, Milledge's Distillery is within a part of the Council area that is described for planning purposes as an "Urban Activity Centre Zone". That zone, amongst other things, is intended to support entertainment and recreational facilities that might comprise of licensed premises. This is evidenced by the Council's promotion of the New Found Sound Festival.

95 But it is also notable that the locality has in recent years been the subject of much residential development, as evidenced by the many apartments that were seen on the Court's view. With this in mind, it is of concern that some of the promotional material put out in connection with Milledge's Distillery sought to portray it as a late night party venue. I think the Council is right to contend that this does not seem apt to describe a business model that can be inferred to have won planning approval from the Council on the basis that it was an entity trading under a liquor production and sales licence that would only be to selling liquor for on premises consumption in limited circumstances that were primarily connected with the provision of a meal.

96 There are no issues arising for consideration under the *Environment Protection Act 1993.*

97 Under sub-placitum (vi) of s 106(6)(b) of the Act the Court can take into account any other matter that it considers relevant.

98 As with the general discretion conferred upon a licensing authority under the Act, the reach of this provision it is not without limitation.[30] Ultimately, in determining what is a relevant matter that can be taken into consideration, a licensing authority must have the Act firmly in mind. And in connection with this, special consideration must be given to the objects of the Act.

99 It is notable that the prime object contained in s 3 of the Act is the regulation and control of the promotion, sale, supply and consumption of liquor. In my opinion, it follows that if the licensed premises subject to the s 106 complaint trades in a way that is inconsistent with the terms of the licence that it holds, a licensing authority may take this into account.

100 That said, the gateway to relief under s 106 of the Act is a finding that an activity on, or the noise emanating from the licensed premises, or the behaviour of persons making their way to or from the licensed premises, is unduly offensive, annoying, disturbing or inconvenient to a those who

[30] *The Palace Gallery Pty Ltd t/as The Palace / Level Up v The Commissioner of Police for the State of South Australia* [2025] SALC 70 at [27].

reside, work or worship in the vicinity of the premises.[31] Thus, for issues around non-compliance with the terms of the licence, can only relevant considerations if there is a connection between the non-compliance and the unduly offensive, annoying, disturbing or inconvenient activity or behaviour.

101 In this case, the licence held by Mr Galindo would enable him to conduct a cabaret style event in the café area of Milledge's Distillery, involving live music, every night of the week, until midnight. Thus, while it is a matter of concern to the Court that Mr Galindo might from time to time have acted in a way that is inconsistent with what his liquor licence permits, that finding does not, of itself, establish that the gateway to the invocation of s 106 of the Act has been met.

102 Milledge's Distillery is situated in a part of the Council area that contains many licensed venues that collectively might reasonably be expected to be the source of some noise. By contemporary standards, the time at which noise emanating from Milledge's Distillery occurs, is not late.[32] By contemporary standards, the nature of that noise would not be regarded as challenging. The evidence of the resident that the Council relies upon in support of the complaint, suggests that his view as to what amounts to unacceptable noise emanating from licensed premises does not conform with contemporary community standards.

103 Taking these matters into account, I find that viewed objectively, the degree of offence, annoyance, disturbance, and inconvenience that Mr Niehus and his partner and others in the Council area are being subjected to by the noise emanating from Milledge's Distillery, falls short of being undue for the purposes of s 106 of the Act.

104 For these reasons, the complaint is dismissed.

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[31] Section 106(1) of the Act.
[32] *Boettcher v Bacchus Wine Bar Pty Ltd* Ibid at [116], [117] and [127].