

3. NOISE FROM MUSIC – OXFORD TERRACE BARS

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Corporate Plan Output: Enforcement	

At the Chairman's request, this report has been prepared to review the disturbance of residents by amplified music at the Oxford Terrace bars within the Entertainment Precinct, after midnight when the bars are operated as night clubs. This matter was first reported to the Committee in May 1999. From time to time the operation of the bars after midnight causes unreasonable disturbance to residents of the Bridgewater Apartments in Cashel Street and in the Living Zone west of Montreal Street.

The Council's Environmental Health Officers, and the after-hours noise contractor Armourguard, have monitored noise levels and actioned complaints. The bar operators' association has also employed its own noise control officer to monitor and control noise from the bars. Consequently, complaints were substantially reduced last year, and no complaints were received in the last four months of the year. However further justified complaints about bass noise received in January and February this year indicate that some bar managers are still reliant on being told when the noise is too loud, rather than actively monitoring and controlling it themselves.

To supplement the enforcement provisions of the Resource Management Act 1991, the Chairman has requested that consideration be given to disincentives that could be applied to non-complying bar operators, to encourage better and consistent control of unreasonable or excessive noise. The following possibilities have been considered:

1. Cost recovery from the bar operators for monitoring and complaint action by Council's officers including that of Armourguard's service. Almost 100 complaints have been received over four years. Considerable time has also been spent in monitoring by Environmental Health Officers and in their dealings with complainants and bar owners.

The Resource Management Act does not provide for cost recovery for complaints except when equipment is seized under Section 328 of the Act (which does not occur unless there is a breach of an excessive noise direction). While monitoring charges can be recovered for resource consents, this is not applicable to the bars, as they are not subject to resource consents. The Act does provide for recovery of Infringement Offence fees in the event of contravention of a 72-hour excessive noise direction or noise abatement notice. However as there has been general compliance with noise directions that have been served, no infringement fees have been recoverable from the bars.

2. Imposition of financial or other disincentives, under the licences issued by the Council to bar operators to occupy the public space (ie "the Land") for provision of outdoor dining facilities and supply of liquor for consumption by their seated dining and casual customers (subject to the licensee obtaining an appropriate Sale of Liquor Licence). The Council's Property Officer has provided a copy of the Council's "Deed of Licence For Occupation of Legal Road" which applies to the bars.

Clauses of relevance to the noise control issue are:

- Clause 8 Costs**
The licensee shall pay on demand all costs, charges and expenses for which the Council becomes liable as a result of any breach by the licensee of any of the terms of this licence.
- Clause 11 Compliance with Statutes and Regulations**
The licensee will comply with all statutes, regulations and bylaws affecting the land made or imposed on it by any authority.
- Clause 17(b) No Noxious Use**
The licensee will not operate its business on the land or allow the land to be used in any way that may be in breach of the noise standards under any legislation, regulation, bylaws or the Christchurch City Plan.no loudspeakers are to be placed on the land.

Clause 18 Rights of Termination and Variation

18.1 The licence may be terminated or varied at any time by the Council at its sole and absolute discretion:

- (a) in the event of a breach by the licensee of any term or condition of this licence; or*
- (e) in the event of there being sustainable complaints from the Police and/or any Sale of Liquor Inspector in respect of the licensee's use of the land*

18.2 ...the Council may terminate this licence at any time for any reason by giving three month's notice in writing to the licensee.

Clause 18.1(a) gives the Council the ability to terminate or vary a licence if it considered the use of the land had contributed to a breach of the noise standards.

It should be noted that the land itself is not the location or source of the bars' sound amplification systems. These are contained within the bars with the exception of loudspeakers, which are mounted above the land, on the fronts of buildings. Noise from the land is caused by the bars' customers while queuing and socialising, and at times this noise is as loud as the bars' music. This "customer " noise is not a cause of complaint. However as the use of the land is part of the bars' business, and if the bars otherwise breach the noise rules, then the use of the land could be considered as a breach of the licence.

It would appear that Clause 18.1(e) refers only to complaints regarding Sale of Liquor Act matters.

The licences are due to be renegotiated as at 31 July 2002. It is suggested amendments could be considered at that time to more directly address the noise issue.

- Recommendation:**
1. That the Council's Legal Services Unit work with the Oxford Terrace bar owners and property owners towards resolving the conflict of noise from music non-compliance, through the Variation to the Deed of Licence for Occupation of Legal Road and report back to the July Environment Committee meeting.
 2. That the use of windbreaks as noise reduction barriers be referred to the Windbreak Subcommittee for investigation.