

### 3. NOISE FROM MUSIC – OXFORD TERRACE BARS

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The purpose of this report is to provide the Environment Committee with the report that it requested at its May meeting:

- “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.”*

The Committee also requested:

- “2. That the use of windbreaks as noise reduction barriers be referred to the Windbreak Subcommittee for investigation.”*

This report deals only with recommendation 1 as the Windbreak Subcommittee will be reporting separately.

As advised at the May Environment Committee meeting, changes can only be made to the existing deeds of licence by the mutual agreement of the parties. The existing Oxford Strip licences are due to expire on 31 July 2002. Again, the terms of any new licences will be a matter of negotiation.

On 26 June 2001, Council officers met with a number of the bar owners from Oxford Terrace (within the block between Cashel Mall and Hereford Street). Also in attendance at that meeting was the Bar Operators’ Association’s noise control officer, Simone Wikaira.

At that meeting of 26 June 2001, Legal Services sought to introduce additional nuisance provisions and a right of suspension.

The bar owners were not prepared to vary the licence, as they consider that they are complying with the noise provisions contained within the City Plan and that they should not be subjected to greater standards than those specified in the City Plan. The bar owners have however agreed that they will engage a noise consultant to reassess their existing sound system in relation to the base level. The bar owners indicated that they would be looking for directions from that noise consultant regarding their ability to redirect speakers, and place limiters on the volume controls.

The bar owners have also asked Ms Wikaira to speak to the Environment Committee regarding the issues as they see them. Ms Wikaira has sought speaking rights to this month’s Environment Committee meeting.

Ms Wikaira has been working for the Bar Operators’ Association for approximately one year. She works every night (excluding Mondays and Tuesdays) from midnight until the bars along Oxford Strip close. She is employed by the Association to monitor noise levels and ensure that those levels are kept within those specified in the City Plan. Ms Wikaira has a decibel meter which has been reconciled with the Council’s meters. She advises that she takes frequent noise readings in the course of her employment, but that those readings are not showing any breaches of the City Plan’s noise limits.

At the Environment Committee’s May meeting, the Committee expressed concern about the stereo speakers mounted on the outside of the bars. The bar owners have agreed that they will ensure that the outside speakers are always turned off before midnight.

At the time of the 26 June 2001 meeting, the Environmental Services Unit’s view was that the outside speakers have little effect on the noise issue. However, that unit has been contacted very recently by a resident of an inner-city apartment who considers the speakers are audibly intrusive before midnight. The situation will be monitored and appropriate action will be taken if the noise is found to be unreasonable or excessive under the Resource Management Act. In addition, if the Council wishes, it could enforce the removal of those speakers now under clause 17 of the tables and chairs licences. That clause provides:

*“... no loud speakers are to be placed on the Land.”*

It should be noted, however, that there would be nothing to stop the bar owners from making the speakers flush with the wall of their business premises, and therefore outside the licensed areas.

It appears that the outside speakers are used for background music for outside diners, particularly during the day. Therefore, rather than requiring the complete removal of the outside speakers from the licensed area, the Council may wish to have the speakers turned off at a time prior to midnight. The Environmental Services Unit has suggested a time of 10pm. This would need to be approached upon the basis that:

- (a) either the speakers are removed completely or they are turned off by the specified time; and
- (b) the Council may review that specified time if it receives complaints.

The Council's Environmental Health Officer, Russell Malthus, has compiled the attached maps which show the location of complainants, and the levels of music noise he has measured during operation of the bars. The maps cover the periods pre- and post -August 2000, the month that the bars engaged their own noise control officer. The pre-August 2000 map shows that the cumulative noise levels of the bars at the Entertainment Precinct's west boundary, on the west side of Cambridge Terrace, at times significantly exceeded the 60dBA limit permitted by the City Plan. The post-August measurements show that there has been a significant reduction in noise to within 1dBA of the 60dBA limit, which is not a noticeable difference in level. Since August 2000, there has also been a corresponding reduction in noise level at the east boundary of the Living Zone, on the west side of Montreal St. Complaint numbers have also dropped markedly.

Essentially, in addition to the options concerning the outside speakers, the options now available to the Council are to:

- (a) continue monitoring the noise levels to prevent breaches of the City Plan noise levels, explore the use of noise reduction barriers and include additional requirements into any new tables and chairs licences; or
- (b) consider terminating the licences, as a class, upon three months' notice.

If the Council wishes to pursue the second option, a report should be sought for the August Environment Committee meeting. It should, however, be noted that a fundamental problem with noise issues along Oxford Strip is the evidential issue of identifying which bar owner (if any) is in breach of the City Plan noise levels.

If the Council wishes to use its right to terminate upon three months' notice, it would need to terminate the licences as a class. Otherwise, in terms of administrative law principles, it would be acting unfairly if it terminated only one of the tables and chairs licences when there is no proof that that bar is generating more noise than the next.

Similarly, even if rights of suspension are negotiated or included in new tables and chairs licences, the Council would need to exercise those rights collectively unless it could identify the particular bar causing excess noise.

**Recommendation:** That the information be received.

**Chairman's**

**Recommendation:** That the noise levels of the Oxford strip bars continue to be monitored and that the results be reported to the Environment Committee, prior to the renewal of licences in July 2002.