



FILE NO: A17/0010726

COMPLAINANT: [REDACTED]

LICENSED PREMISES: Queanbeyan Hotel, Queanbeyan – LIQH400119348

ISSUES: Whether the quiet and good order of the neighbourhood of the licensed premises is being unduly disturbed.

LEGISLATION: *Liquor Act 2007*

SECTION 81 DECISION

Under Section 81 of the *Liquor Act 2007* (the Act) I, Sean Goodchild, Director Compliance Operations, Liquor & Gaming NSW (L&GNSW) a delegate of the Secretary, Department of Industry, in relation to the complaint made in respect to Queanbeyan Hotel (the hotel) have decided to **take no action** in regards to the complaint.

REASONS FOR DECISION

Legislative framework

1. Section 79(1) of the Act provides that a prescribed person may complain to the Secretary, that the quiet and good order of the neighbourhood of the licensed premises is being unduly disturbed because of the manner in which the business of the licensed premises is conducted, or 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. For the purpose of section 79(3) of the Act, a person who has standing to make a complaint includes a person who satisfies the Secretary that his or her interests, financial or other, are adversely affected by the undue disturbance to which the person's complaint relates.

3. Section 80 of the Act enables the Secretary to deal with a complaint by way of written submissions from the licensee and any other person the Secretary considers appropriate. After dealing with the complaint, section 81 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 set out in section 3 of the Act and must have regard to the matters set out in section 3(2) which are:
 - a) the need to minimise harm associated with the misuse and abuse of liquor;
 - b) the need to encourage responsible attitudes and practices towards the promotion, sale, supply, services and consumption of liquor; and,
 - c) the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.

The Complaint

5. On 17 October 2017, [REDACTED] the owner of [REDACTED], lodged a complaint in relation to the impact of the hotel on his business. [REDACTED] alleges that patrons from the hotel are unlawfully accessing his designated tenant parking area and damaging his property.
6. [REDACTED] alleges that patrons from the hotel have been captured on CCTV parking and trespassing on his property, removing and damaging security devices, and breaking windows of adjoining premises.
7. [REDACTED] lodged the complaint as a person whose financial interests are adversely affected by undue disturbance caused by patrons from hotel.
8. [REDACTED] advised that the disturbance is having a significant financial cost due to the ongoing repair and replacement of chains and locks, as well as multiple attendances to the site to inspect and repair the damage. Additionally, [REDACTED] further highlights that the lack of available parking spaces is jeopardising his ability to fulfil his leasing agreement with his tenants.
9. [REDACTED] provided a brief chronology of incidents that have occurred between 28 July 2017 and 25 August 2017. The chronology includes details of specific examples of vandalism and disturbance, including CCTV footage showing patrons forcefully removing, damaging and vandalising security devices in order to exit the parking area.

10. Between 25 October 2017 and 13 March 2018, various submissions were lodged by all parties to the complaint including the complainant, the licensee, Police and local council.
11. A list of the material that is before the delegate of the Secretary is set out in Annexure 1.

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

12. The Act requires that the Secretary have regard to the following statutory considerations.
13. *The order of occupancy between the licensed premises and the complainant* - the licensed premises has operated at its present site for 56 years and predates the complainant's business premises. This fact is not in dispute and I consider the order of occupancy is in favour of the licensed premises.
14. *Any changes in the licensed premises and the premises occupied by the complainant, including structural changes to the premises* – there is no evidence that there has been any changes to the licensed premises or the complainant's commercial premises, prior to the complaint being lodged with L&GNSW.
15. *Any changes in the activities conducted on the licensed premises over a period of time* - there is no evidence that there have been any changes in the activities conducted on the licensed premises.

Other Considerations

Undue disturbance

16. I am satisfied that there is sufficient material to support a finding that the venue has, at times, caused undue disturbance to the neighbourhood which has involved damage to the complainant's property. The complainant provides several examples of disturbance, including CCTV footage of incidents where his property has been subject to vandalism and damage.
17. On 12 December 2017, a submission was received from the Queanbeyan-Palerang Regional Council. Council submit that over a period of 10 years they have only received three complaints relating to parking in the relevant area. The scope of these complaints relates mostly to illegal parking on council roads; however council acknowledges parking in the area is constrained due to the increase in current development applications. As such the council consider [REDACTED] complaint to be legitimate.

18. On 2 November 2017, a submission was received from NSW Police. Police submit that they do not believe that all the issues relating to the parking or property damage can be attributed to patrons from the hotel. Police further submit that they hold no concerns with how the hotel is being managed by the licensee.
19. On 15 November 2017, a submission was received from the licensee. The licensee acknowledges that hotel patrons have utilised the car park, however refutes the assertion that the hotel is entirely responsible for continuously allowing patrons to occupy the complainant's commercial premises, as there are a number of housing developments under construction within the vicinity of the complainant's property. This has seen an increase in tradesmen utilising all available parking space within the area.

Action taken to mitigate disturbance

20. In considering whether to impose conditions on the liquor licence, I have balanced the submissions of all parties, having specific regard to any action taken by the licensee in response to the complaint and the effectiveness of any measures that have been implemented to address disturbance.
21. Since the initiation of this matter, the complainant has advised L&GNSW that he has installed a permanent security fence. The fence prevents unauthorised pedestrians and vehicle accessing the property. The complainant also notes the improvements initiated by the licensee in reducing the disturbance caused by patrons from the hotel.
22. In the licensee's submission dated 15 November 2017, the licensee outlines the measures undertaken including makes regular announcements to patrons within the hotel regarding parking restrictions. The licensee has also committed to regular security patrols of the vicinity of the hotel on Friday and Saturday nights and regular inspections of nearby car parks, including the complainant's.

Findings and conclusion

23. I have considered the submissions of the complainant, licensee, NSW Police and local council. In determining whether the disturbance is undue, I have considered that the hotel has operated at that location for over 50 years, and it is reasonable to expect that some disturbance will be generated by the hotel's ongoing operation.
24. I note the instances of undue disturbance, including vandalism and damage, have occurred at the complainant's property. These have been attributed at times to patrons of the hotel.

25. Based on the material before me, I am satisfied that there has been undue disturbance caused to the complainant's commercial property resulting in the complainant's financial interest being adversely affected.
26. However, I am also satisfied that the licensee and the complainant have taken appropriate action to remedy the ongoing disturbance. This includes the installation of a permanent security fence by the complainant and the installation of signage within the hotel, informing patrons that parking on private property is not permitted, as well as regular public announcements and security patrols arranged by the licensee.
27. Accordingly, I have decided that in this instance the appropriate regulatory response is to take no further action.
28. I note that in the event there is an escalation of disturbance or fresh evidence presented that identifies poor management of disturbance issues by the licensee, then this matter may be revisited and further regulatory action may be taken.

Decision Date: 26/4/18



Sean Goodchild

Director Compliance Operations

Liquor & Gaming NSW

Delegate of the Secretary of the Department of Industry

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 *24 May 2018*. A \$500 application fee applies. Further information can be obtained from Authority Guideline 2 published at www.liquorandgaming.nsw.gov.au

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 www.liquorandgamingnsw.nsw.gov.au



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

1. Section 79 Disturbance Complaint lodged by [REDACTED] dated 6 October 2017, received 17 October 2018.
2. Submission from [REDACTED] Crime Coordinator Monaro Local Area Command, received via email on 2 November 2017.
3. Submission from [REDACTED] Licensee of the Queanbeyan Hotel, received via email on 15 November 2017.
4. Submission from [REDACTED] Portfolio General Manager – Natural and Built Character, Queanbeyan-Palerang Regional Council, received via email on 12 December 2017.
5. Final submission from [REDACTED] in response to [REDACTED] submission, received via email on 6 February 2018.