



DOC22/187943

FILE NO: A22/0022030

COMPLAINANT: [REDACTED]

LICENSED PREMISES: Family Hotel Newcastle – LIQH400117485

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, Jane Lin, Executive Director, Regulatory Operations and Enforcement, Liquor & Gaming NSW, a delegate of the Secretary of the NSW Department of Enterprise, Investment and Trade, in relation to the complaint made in respect to the Family Hotel Newcastle (the Hotel) have decided to **take no further action**.

REASONS FOR DECISION

Legislative framework

1. Section 79 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 of the Act, a person who has standing to make a complaint includes a person who is a resident in the neighbourhood of the licensed premises and is authorised in writing by two or more other residents.

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, service and consumption of liquor,
 - 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, and;
 - d) the need to support employment and other opportunities in the live music industry and arts, tourism, community and cultural sectors.

The complaint and background information

The complaint

5. On 17 April 2022, [REDACTED] (the Complainant) of [REDACTED], [REDACTED] lodged a disturbance complaint with Liquor & Gaming NSW (L&GNSW) alleging undue disturbance from the operation of the Hotel. The Complainant lodged the complaint as a resident authorised by five other residents.
6. The Complainant alleged that disturbance from the Hotel is a result of activities inside the premises and due to amplified speakers. Disturbance was said to generally occur three times a week, between Friday and Monday, from 8:00pm until midnight. The Complainant stated that the Hotel's doors and windows are typically open and speakers project sound across Steel Street to nearby residential buildings. This includes music as well as shouting over a microphone. Additionally, amplified speakers may also be placed outside to broadcast sound. The Complainant further alleged that the noise from the Hotel is so great that bedrooms that face Steel Street are unusable, even when windows remain closed.
7. The Complainant advised they contacted the Hotel in November 2021, shortly after the Hotel reopened following COVID-19 related restrictions. The Complainant submitted that the Hotel's response to noise complaints was that the Hotel had been operating in its

location for more than 30 years, prior to the development of the residential buildings. The Complainant also stated that the Hotel's representative further responded that they were within their rights to operate the Hotel in the current manner and that residents should have conducted more research before moving to the location. The Complainant indicated that the Hotel was unwilling to discuss noise mitigation and appeared unempathetic to the concerns of residents.

8. The Complainant advised that Police have been contacted on a regular and continuous basis, and that Police have been helpful and have acknowledged there is a disturbance issue with Hotel. On occasions the sound has been turned down after complainants have contacted Police.
9. The Complainant also advised that the City of Newcastle Council (Council) was not supportive when initially contacted and they were referred to L&GNSW. The complainant advised that Council subsequently set up a discussion group, however no further detail or outcome was provided by the complainant, or within the submission received later from Council
10. As a desired outcome, the Complainant seeks to have the Hotel's doors and windows closed from 8:00pm and that all sound be contained within the Hotel. Further, the Complainant proposed that sound measuring devices be installed external to the premises and sound absorbing structures or solutions be installed.

The venue, licence details, compliance history

11. The Hotel is located at 635 Hunter Street, Newcastle. The Hotel is permitted to sell liquor for consumption on the premises between 5:00am and 12:00 midnight, Monday to Saturday and between 10:00am and 10:00pm on Sundays. The current licensee is Mr Steven Forbes (the Licensee) since 25 November 2022. The Licensee is also listed with L&GNSW as the business owner since 1 September 2016. The previous licensee was Newy World Order Pty Ltd, from 14 October 2021 until 24 November 2022.
12. The Hotel's licence is subject to a number of conditions, the majority of which relate to the responsible service of alcohol and the operation of the Hotel in an extended trade period. While the Hotel may have previously operated under extended trading hours, the Hotel is currently authorised to operate only until midnight. The licence is not currently subject to any noise related conditions.
13. L&GNSW records indicate that the Hotel has not received any other noise complaints in recent years. The last noise complaint relating to the Hotel was received in April 2017 and alleged the Hotel traded past its authorised trading hours causing disturbance. No

further action was taken by L&GNSW due to insufficient evidence to substantiate the complaint.

Submissions

14. Between 5 May 2022 and 24 August 2022, various material was received from parties to the complaint, NSW Police and Council. The material that is before the delegate is set out in Annexure 1 and is summarised below.

Police

15. A submission was received from Police on 5 May 2022 in response to the complaint. Police advised that between 1 May 2021 and 1 May 2022, Police attended the Hotel on six occasions to conduct business inspections. On three occasions, no issues were identified, including one night where there was no noise emanating from the Hotel. On two occasions Police attended the Hotel due to an assault and attended the Hotel on one occasion due to an instance of stealing.
16. Police also advised of two other occasions where Police attended the Hotel as a direct result of noise complaints which are detailed below.
17. On 30 October 2021, Police attended the Hotel due to a noise complaint from a nearby resident. The Police information provided suggests that this was the second complaint received within a two week period. Police observed a DJ playing music through speakers in a partially open room at the rear of the Hotel. Police advised the manager of the Hotel that this was the second noise complaint received in the previous two weeks and warned a disturbance complaint may be lodged if residents continued to experience disturbance.
18. On 26 March 2022, Police attended the Hotel in response to a complaint letter received on 3 March 2022 and a second complaint received on a date not provided by Police. Police provided a summary of the two complaints which raised similar issues to the disturbance complaint and also contained an allegation that the Hotel had recently completed renovations, including the creation of a beer garden area and a verandah. Police advised that during the inspection on 26 March 2022, one static guard was located at the entrance to screen patrons, all doors and windows were closed except for the main entry door, and Police could hear music emanating from the rear of the Hotel, but it was not deemed by Police to be offensive.

Council

19. On 10 June 2022, a submission was received from Council in response to the complaint. Council advised it received two complaints about the Hotel in November and December 2021 concerning excess noise. Council contacted the Hotel to advise of the concerns of nearby residents and referred the complainants to L&GNSW. Council also advised there were no pending development applications or modifications current under assessment and provided a list of historical development applications for the Hotel.
20. On 17 October 2022, L&GNSW received a supplementary submission from Council that provided corrected information, namely the list of development applications applicable to the Hotel. The submission also provided further details of the two noise complaints recorded with Council. The first complaint alleged that the Hotel had constructed an outdoor balcony/verandah area during lockdown and was now playing loud music outside. The Complainant alleged that music could be heard from their property at [REDACTED]. The second complaint alleged that the hotel was playing loud music in the beer garden until midnight on Monday nights.

Venue response to complaint

21. On 17 May 2022, a response to the complaint was received from the Licensee. The Licensee submitted that noise complaints in the area appear to be common following the reopening of venues after COVID-19 related lockdowns. It is the Licensee's view that there are some new residents in the nearby Verve Apartments and surrounds who have moved into the area during the COVID-19 shutdown period and may not have known the Hotel and other late night trading venues existed in the area.
22. The Licensee submitted that the Hotel has not made any changes to the sound systems since they took ownership of the Hotel six years ago, but rather they have significantly reduced the number of musical offerings at the Hotel. The Hotel now only has a band once every three to four months, in comparison to previously having three to four bands or DJs a week. The Licensee also raised that the Hotel is only licensed to trade until midnight at the latest.
23. The Licensee advised that in response to the complaint, they have removed the only speaker in the beer garden area, are keeping all doors and windows closed and have professionally balanced the sound levels so that the level can be limited when a microphone is in use.
24. Lastly, the Licensee advised they are open to meeting any concerned residents so they can work through solutions together.

Complainant final submission and further complaint material

25. On 5 July 2022, a final submission was received from the Complainant.
26. In response to the submission made by Council, the Complainant advised they had attended two Council Community Group sessions and that disturbance from the Hotel was discussed. The Complainant submits that Council acknowledged the noise emissions from the Hotel continued to interfere with the peaceful occupation of residences.
27. In response to the submission by Police, the Complainant submitted that dozens of phone calls had been made to Police by the complainants over the previous eight months regarding noise disturbance from the Hotel, and that Police would have logged these calls.
28. The Complainant acknowledged that there had been a slight reduction in the regularity of noise disturbance from the Hotel, however, asserted that noise disturbance remained ongoing. The Complainant further asserted that the noise disturbance meets the description of 'intrusive noise' per the 2013 Noise Guide for Local Government published by the NSW Environment Protection Authority, and also meets the description of 'offensive noise' under the *NSW Protection of the Environment Operations Act 1997*.
29. The Complainant contends that a plan of management condition could be imposed on the Hotel's licence as a noise mitigation measure and referred to a disturbance complaint in relation to the Royal Hotel, Paddington where a plan of management condition was imposed by L&GNSW.
30. Specifically, the Complainant seeks that measures are in place to prevent the broadcast of noise into the neighbouring residential area after 10:00pm, either through a reduction of operating hours or through a requirement to keep all doors and windows closed after 10:00pm. In addition, noise monitoring equipment should be installed to ensure compliance with '*EPA noise pollution limits during all operating hours.*'

Venue final submission

31. On 24 August 2022 a final submission was received from the Licensee. The Licensee advised that during a meeting with Police on 27 July 2022, Police advised no further complaints had been received following the removal of the outdoor speaker.
32. The submission reinforced the Hotel's view that the complainants were likely new residents who moved in during COVID-19 lockdowns and were unaware of the operation of nearby venues. The Licensee submitted that they had not received any noise complaints prior to the arrival of these new residents.

33. The Licensee advised that they have altered the Hotel's operating model to have a greater emphasis on food and beverage in order to work cohesively with the local community. The Licensee indicated that they would be unwilling to alter their trading hours and expressed that the Hotel's current closing time of midnight was already standard trading for a hotel within the Newcastle Entertainment precinct.
34. The Licensee stated that new management procedures are in place to ensure events with amplified music are contained inside the Hotel where possible. The Licensee submits that amplified music events are rare at the Hotel following a change in business model as a result of COVID-19, with the Hotel pivoting to a food and beverage-oriented business.
35. Finally, the Licensee submitted that the cause of some disturbance in the area is generated by an accommodation business that operates above the Hotel. The Licensee advised that the Hotel is not associated with accommodation business and believes the Hotel is often tarnished with complaints related to this business.

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

36. The Act requires that the Secretary have regard to the following statutory considerations:

The order of occupancy between the licensed premises and the complainant-

37. The Hotel has operated under its current liquor licence since 15 June 1937. The Complainant had been residing at their residence for seven months at the time of lodging this complaint. This is not in dispute and I consider the order of occupancy in favour of the Hotel.

Any changes in the licensed premises and the premises occupied by the complainant, including structural changes to the premises-

38. The Complainant submits that the Hotel appears to have constructed a verandah during 2021 to enable the Hotel to operate both internally and externally. A complaint lodged with Council in 2021 references to the undertaking of building works, however Council in its submission has not advised of any building works undertaken by the Hotel or any investigation by Council into recent building works at the Hotel.
39. There is no indication of any other changes to the Hotel or changes to the Complainant's residence.

Any changes in the activities conducted on the licensed premises over a period of time-

40. The Hotel submits its operations have altered following COVID-19 related trading restrictions. The Hotel submits amplified entertainment has reduced significantly as it has shifted its operations to focus on food and beverage services. The Licensee contends the Hotel now only has a band once every three to four months.

Findings and Decision

Undue disturbance

41. In deciding whether the Hotel has unduly disturbed the quiet and good order of neighbourhood, I have balanced the submissions made by the Complainant, the Licensee, Police and Council.

42. A level of noise and disturbance from the normal operation of the Hotel is to be expected, including noise from entertainment such as music, patrons, and pedestrian traffic. Noting the order of occupancy is heavily in favour of the Hotel and considering the Hotel's location in a predominantly retail and commercial area, it is reasonable to set a higher threshold for what should be considered undue disturbance.

43. Having considered the material before me, I am not satisfied there is sufficient evidence to make a finding that the Hotel has caused undue disturbance to the quiet and good order of the neighbourhood. I acknowledge that Police and Council have received noise complaints in relation to the Hotel, however this does not provide sufficient objective evidence that would allow me to conclude the Hotel has unduly disturbed the neighbourhood.

44. I have considered the submissions from Police and Council. I particularly note that Police have performed a number of inspections at the Hotel, including in response to noise complaints. Police in their submission have not advised that the operation of the Hotel causes disturbance to the neighbourhood nor do they recommend regulatory intervention by L&GNSW. Further, the last reported inspection of the Hotel by Police identified noise from music emanating at the rear of premises which Police did not consider to be offensive.

45. I have also reviewed L&GNSW compliance holdings and note that apart from this disturbance complaint, no other complaints in relation to noise from the Hotel have been received since 2017. I have also considered that the Hotel has reduced its music events, does not operate under an extended trading authorisation (to allow trade past midnight) and has taken other additional measures to mitigate noise from the Hotel.

46. In consideration of the above and material before me, I am not satisfied that there is sufficient evidence to conclude that the Hotel has unduly disturbed the quiet and good order of the neighbourhood.

Regulatory Outcome

47. In deciding the appropriate regulatory outcome in this instance, I have considered the statutory considerations, the material set out in Annexure 1, and the above finding. I acknowledge the order of occupancy is heavily in favour of the Hotel and do not consider that there have been any significant changes to the Hotel or activities conducted on the licensed premises over a recent period.

48. I note the concerns raised by the Complainant regarding the alleged construction and use of an outdoor area and verandah. I further note that concerns regarding the construction and authorisation of additional building works fall outside of the jurisdiction of L&GNSW and are more appropriately addressed by Council.

49. The Hotel has been responsive to the complaint and I have considered the actions taken by the Hotel to reduce noise emitted from the premises. This includes the removal of an outdoor speaker and closure of windows and doors which has been observed by Police during an inspection. Further, the Hotel has reduced its musical offerings and events involving amplification will be contained to inside the Hotel where possible. The Complainant has advised of some improvement though I acknowledge their position that seeks further measures to reduce disturbance.

50. Having carefully considered the material before me and in the absence of a finding of undue disturbance, I have determined to take no further action in this matter. This decision also acknowledges the measures implemented by the Hotel to mitigate future noise and disturbance from the Hotel's operations.

51. While I have determined to take no further action, I remind the Hotel of its ongoing obligation to minimise levels of disturbance from its operations. I also consider this an opportunity for the Licensee to continue to develop and employ strategies to minimise disturbance and noise from the Hotel. Lastly, I note the Licensee's willingness to engage with neighbours to rectify concerns relating to noise and I strongly encourage the Licensee and residents to develop a means of communication by which grievances can be expressed and resolved at a local level.

Decision Date: 23 May 2023



Jane Lin

Executive Director, Regulatory Operations & Enforcement

Liquor & Gaming NSW

Delegate of the Secretary of the Department of Enterprise, Investment and Trade

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 20 June 2023. A \$500 application fee applies. Further information can be obtained from Authority Guideline 2 published at

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



Annexure 1

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

1. Section 79 Disturbance Complaint lodged by the Complainant on 17 April 2022.
2. Copy of the liquor licence for The Family Hotel dated 1 February 2023.
3. Submission from NSW Police received on 5 May 2022.
4. Submission from City of Newcastle Council received on 10 June 2022.
5. Submission from Hotel dated 17 May 2022.
6. Response from the Complainant dated 5 July 2022.
7. Final submission from the Hotel dated 24 August 2022.
8. Submission from City of Newcastle Council received on 17 October 2022.