

FILE NO: A21/0020523

COMPLAINANT: [REDACTED]

LICENSED PREMISES: Harp Hotel, Wollongong - LIQH400122187

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, John Coady, Manager Regulatory Interventions, Liquor & Gaming NSW, a delegate of the Secretary, Department of Enterprise, Investment and Trade, in relation to the complaint made in respect to Harp Hotel, Wollongong 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 is required to have due regard to the matters set out in section 3(2) which are:
 - (a) the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),
 - (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, and the operation of licensed premises, contributes to, and does not detract from, the amenity of community life,
 - (d) the need to support employment and other opportunities in the—
 - i. live music industry, and
 - ii. arts, tourism, community and cultural sectors.

The complaint and background information

The complaint

5. On 18 November 2021, [REDACTED] (**the Complainant**) of [REDACTED] [REDACTED] lodged a section 79 noise disturbance complaint with Liquor & Gaming NSW (**L&GNSW**) alleging undue disturbance to the quiet and good order of the neighbourhood caused by the Harp Hotel, Wollongong (**the Hotel**). The Complainant lodged the complaint as a resident authorised by two other residents.
6. The Complainant submits that extremely loud bass music from the Hotel can be heard within their apartment even with doors closed and sound proofing in the main bedroom. This disturbance is said to occur from Tuesday to Sunday, prevents sleep and, on most occasions, does not cease until 2:00am when the Hotel closes. The Complainant also submits that on occasions, verbal arguments, brawls and excessive noise are heard from people leaving the Hotel who are alleged to be intoxicated. However, the overwhelming disturbance complained of is due to loud music being played, exacerbated by excessive amplification of the bass component.

7. The Complainant seeks as a desired outcome that noise from music is contained within the Hotel and the Hotel cease playing music at a volume which disturbs sleep at any time but especially between midnight and 2:00am.

The hotel, licence details and compliance history

8. The Hotel is located at 124-128 Corrimal Street, Wollongong and has been trading under a full hotel liquor licence since 4 February 1946. The Hotel's licensee is Wollongong Dayspots Pty Limited, commencing from 12 May 2011. The Hotel's approved managed is Mr Lupco Ristov, commencing on 6 July 2020.
9. The Hotel's trading hours for consumption on premises are from 5:00am until 2:00am on Monday to Saturday and from 10:00am until midnight on a Sunday. The Hotel's licence is subject to a number of conditions, including an LA10 noise condition and a security condition. The security condition requires that a security officer patrol the environs of the Hotel between 10:30pm and 2:30am on any night the Hotel trades after midnight and between 9:30pm and 12:30am on Sundays with the purpose of ensuring the quiet and good order of the neighbourhood.
10. L&GNSW records show the Hotel received four noise complaints in October 2020 that were dealt with via remedial engagement with the Hotel. Three further noise complaints were received in December 2020, January 2021 and April 2021 and dealt with simultaneously.
11. On 18 April 2021, L&GNSW inspectors attended the addresses of two complainants to assess the Hotel's compliance with the post-midnight criteria of the LA10 noise condition. The testing was inconclusive and did not establish non-compliance. On 30 May 2021, inspectors re-attended the same addresses and did not identify non-compliance with the Hotel's LA10 noise condition, with one of the complainants advising it had been quiet all evening. No regulatory action was taken and recommendations were made that further testing occur post the COVID-19 pandemic and for the complainants to lodge a section 79 disturbance complaint with L&GNSW.

Submissions

12. Between 23 December 2021 and 1 June 2022, various submissions and associated material were lodged by the Complainant, the Hotel, NSW Police (**Police**) and Wollongong City Council (**Council**).
13. The material before the delegate is set out in **Annexure 1** and summarised below.

Council Submission

14. On 23 December 2021, a submission was received from Council. Council noted it received one noise complaint in January 2021 which referred to loud noise causing impact during the night. The complaint was referred to L&GNSW and no action was taken.
15. Council advised the Hotel is conditionally approved under DA-2002/1852 with a restricted operational period from *“Monday to Saturday (inclusive) 5.00am to 2.00am – Sunday 10.00 am to Midnight”*. Further, there are no pending applications with Council at this time.
16. Council submits that relevantly, in November 2020 Council adopted the policy titled *“Wollongong CBD Night Time Economy”* (**Council Policy**) for determining the operational hours of businesses which trade in the *“Wollongong CBD – Zoned B3 Commercial Core”*. Council noted the policy was designed as guidance for new businesses, but the *‘current hours of operation are more stringent than the approved hours approved under DA-2002/1852’*. Council submits that according to the Council Policy, the Hotel could now be considered to be in a location of *“residential interface”*, which may further restrict hours of operation on the Hotel.
17. Council submits it does not have information relating to the Complainant’s location to consider, however property owners in the Wollongong CBD are provided notification on their section 10.7 Planning Certificate when purchasing a property set out as follows:

“The Wollongong City Centre and Town Centres, play a key role in accommodation cultural, sporting and business uses.

A key to the revitalisation of these centres is to build on these aspects through greater activation and investment beyond 5pm through an evening economy. Future residents should be aware that these uses may generate noise, odour, traffic and have longer hours of operation, which is part of living in/near a commercial centre.”

18. Council submits that L&GNSW ought to consider placing restrictions on music being played at the Hotel to reduce any excessive noise impacts to nearby residences. Council notes such a restriction may mean music is only permitted to be played until 12:00am on Thursday, Friday and Saturday and until 10:00pm on other days.

Proposed acoustic testing by the Hotel

19. On 28 January 2022, Mr Kim Stapleton of JDK Legal sent a letter to L&GNSW on behalf of the approved manager of the Hotel.
20. While the letter sought an extension of time to provide submissions, Mr Stapleton also noted he had retained Mr Steven Cooper, acoustic engineer, to conduct acoustic testing at the Hotel. Mr Stapleton advised Mr Cooper was available to conduct acoustic testing at the Complainant's residence on Saturday 5 February 2022 and Friday 11 February 2022. Further, Mr Cooper would deal directly with L&GNSW regarding arrangements for testing to protect the Complainant's anonymity.
21. On 1 February 2022, L&GNSW informed the Complainant of the proposed acoustic testing and sought their consent for acoustic testing at their residence. On 2 February 2022, the Complainant advised that they and the two authorising residents did not give permission for acoustic testing at their properties.

Police Submission

22. On 1 February 2022, a submission was received by NSW Police in relation to the disturbance complaint.
23. Police submit the Hotel is one of the busiest in the Wollongong CBD, attracting large crowds typically on a Friday and Saturday night. There is a high migration of patrons through the CBD to the Hotel on most Friday and Saturday nights and on nights when Hotel trading is busy, it is typical for the Hotel to have large lines of up to 100 patrons attempting to enter the Hotel. This line is generally managed by the security, however at times can become disorganised and congested.
24. Police submit a number of new high rise residential buildings have been constructed in the Wollongong CBD, some less than 100 metres from the Hotel. Police have seen an increase in noise complaints relating to noise from the Hotel. Police do not believe noise from the Hotel is any more excessive than in previous years, however they have not conducted any specific noise or acoustic testing in the area around the Hotel.
25. Police have conducted approximately 200 business inspections at the Hotel between January 2021 and January 2022. In this time, there were 25 reported assaults; 10 drug detections; 19 'fail to quit' offences; 6 alleged sexual or indecent assaults; and 2 malicious damage offences. Police note these issues do not relate to noise complaints, however show significant Police response is required for patrons inside and leaving the Hotel.

26. Police are aware of measures the Hotel has taken to reduce noise, including installing a new speaker system facing inwards, away from the road and open spaces to attempt to mitigate noise emanating from the Hotel. Police have also observed a consistent effort from staff and security of the Hotel to move patrons from the Hotel and its vicinity in a timely manner upon closing time to minimise street noise when patrons are leaving the Hotel.
27. Police are not aware of a significant number of noise complaints reported in the past 12 months regarding the Hotel. Police suspect the COVID-19 lockdowns have meant local residents have not been exposed to street noise for many months and since reopening there has been a steady increase in patrons to the Hotel, and general foot traffic in the area. Police note while this recent increase in noise may appear excessive to residents, this is not necessarily the case.
28. Police submit the entire CBD Wollongong has been unusually quiet for much of 2021 and now that COVID-19 restrictions have eased it is not unrealistic to have an increase in noise in the area.

Hotel Response to Complaint

29. On 7 February 2022, Mr Stapleton, on behalf of the approved manager, provided a submission in response to the complaint.
30. The submission advised that management of the Hotel are cognisant of their obligations to ensure the operation of the Hotel does not disturb the quiet and good order of the neighbourhood. Management of the Hotel take acoustic measurements at each of the two entrances of the Hotel and from within the Hotel's two entertainment rooms to ensure compliance with noise standards. Each entertainment room is also fitted with a noise limiter to ensure noise from amplified entertainment does not exceed the recommended maximum. Further, the Hotel's security personnel are diligent in ensuring the quiet dispersal of patrons from the Hotel during and at close of business.
31. The submission advised that upon receipt of the complaint, the Hotel retained an acoustic consultant to advise what measures could be taken to address the issues raised in the complaint. A list of upgrading works was proposed and attached to the submission. The submission included a document titled "*Acoustical Treatment of the Harp Hotel Ground Floor and Basement Venues*" prepared by Tim van den Berg of Illawarra Production Services (IPS). The document recommends the following be conducted at the Hotel:

Nightclub:

- ❖ *Remove and reorient EV Sx300 dancefloor loudspeakers to minimize spill onto Corrimal St.*
- ❖ *Install Bose Controlspace digital sound processor. Apply 18db/octave highpass filter to Nightclub amplifiers to minimize excessive bass energy.*
- ❖ *Install four ceiling speakers in Bar Area for background music. Apply ducker to mute this system when dancefloor music is on to minimize spill onto Corrimal St.*
- ❖ *Apply limiter to DJ system to prevent excessive SPL.*

Karaoke Bar:

- ❖ *Remove Sx300 loudspeakers from audience area and replace with ceiling mounted planar array to minimize spill onto Corrimal St. Apply 4 x delay zones to further control directivity. Apply limiter to all Karaoke Bar amplifiers.*
- ❖ *Install 4 x equidistant subwoofers under stage floor to create low frequency linesource and minimize spill onto Corrimal St. Apply 18dB/octave highpass filter to minimize excessive bass energy.*
- ❖ *Build and install custom wide-band absorbers on entire stage ceiling and back wall to minimize spill onto Corrimal St.*

Hip Hop Room:

- ❖ *Install Biamp Nexia digital sound processor. Apply limiter to all Hip Hop Room amplifiers.*
- ❖ *Apply ducker to subwoofer amplifiers to progressively mute the amplifiers if voltage threshold is exceeded.*
- ❖ *Design and prototype low frequency bass trap for stairwell adjoining rear entrance to Hotel. This is yet to be installed.*

32. The submission stated the total cost of the works was in the range of \$100,000 and the upgrading works were completed by the Hotel in good faith and for more abundant caution. Further, the Hotel continually upgrades its sound systems and acoustic attenuation measures to ensure compliance with the Act.
33. In addition, the Hotel on the advice of Mr Stapleton, retained Mr Cooper to advise regarding the complaint. Mr Cooper was noted as being the pre-eminent acoustic engineer in NSW. The submission also referred to the Complainant's refusal to facilitate acoustic testing at their residence and submits it is disappointing as it is impossible to establish whether there is a breach of noise standards, and to identify its source, without testing at their residence.

34. The submission further stated Mr Cooper would review the Hotel's practices and procedures to assess their effectiveness, and that a report of that assessment would be provided to L&GNSW. This report was provided to L&GNSW on 25 March 2022. The submission also offered the Complainant another opportunity to have acoustic testing done at their residence and on a confidential basis.
35. The submission contends the Hotel is in an entertainment precinct and in close proximity to several other licensed premises, some of which also provide amplified music and trade with similar hours to the Hotel. The submission stated the Hotel has had practices and procedures in place for many years designed to avoid issues of noise disturbance, which have proved effective. The submission states that the complaint is without substance and the Hotel rejects the assertion that it is the source of the alleged disturbance.

Complainant Further Submission

36. On 9 March 2022, the Complainant provided a further submission regarding the submissions from Council, Police and the Hotel. The complainant acknowledged the Hotel is in an entertainment precinct of Wollongong but submits it is the only hotel in the block boundary of Corrimal, Market and Crown streets and is the only venue playing loud amplified music for extended periods. The Complainant submits with *"an almost alarming degree of certainty and experience"* that no other venue generates amplified music that can be heard at their residence, let alone disturbs and prevents sleep.
37. Regarding the offer from the Hotel to have acoustic testing conducted by Mr Cooper, the Complainant submits it is *"trite to say that allowing a contractor from the Hotel into the residence of a complainant at a time and date allocated by the Hotel stretches credulity on the point of transparency and independence."*
38. In relation the Hotel's alleged upgraded soundproofing works, the Complainant questions why a corporate entity would spend \$100,000 in costs to satisfy a single complaint when it contends it is not the source of noise. The Complainant argues the Hotel's submission is without foundation and ought to be rejected.
39. The Complainant comments on the document titled *"Acoustical Treatment of the Harp Hotel Ground Floor and Basement Venues"*, submitting the document is not signed or dated and relates only to proposed works. Further, it also does not contain any verified or verifiable evidence of those works being carried out. Additionally, the Hotel's submission refers to two entertainment rooms but this document refers to three distinct noise generating areas.

40. The Complainant also refers to the Police submission that states Hotel security sometimes have difficulty with the entry queues that become disorganised and congested. The complainant raises that Police also advise of an increase in noise complainants received regarding excessive noise emitting from the Hotel. Further, Police state in their submission *“The sheer volume of alcohol related crime inside and linked to the venue indicate there is a significant police response required for patrons inside and leaving the venue”*.
41. Regarding the submission by Council, the Complainant notes Council’s request for L&GNSW to consider restrictions relating to music. The Complainant submits it is the clear view and desire of Council to curtail the noise generated by the Hotel and to bring the Hotel in line with its current policy on the Wollongong CBD night-time economy.
42. In concluding, the Complainant submits the Hotel should have a greater understanding of its obligations to nearby residences, give some consideration to reviewing its current demographic profile and consider engaging in different musical profile of an acoustic or low volume. The Complainant requests L&GNSW prevent the Hotel from playing amplified music at any time or at the very least adopt the suggestion by Council to restrict music from Sunday to Wednesday evenings until 10pm and until midnight from Thursday to Saturday. This would also require strict limiting of amplified output volume at any time by the Hotel.

Acoustic Report

43. On 25 March 2022, Mr Stapleton provided a report to L&GNSW prepared by Mr Steven Cooper of The Acoustic Group, dated 24 March 2022 (**the Acoustic Report**).
44. The Acoustic Report outlines the results of acoustic testing at the Hotel by Mr Cooper on the night of Friday, 11 February 2022. During testing, Mr Cooper requested that sound systems were *“pushed to maximum”* and was able to confirm the sound systems were limited. Mr Cooper submits for the level of music in the Hotel, he was unable to correlate the current operations of the Hotel with respect to the disturbance complaint.
45. On attending the north-eastern corner of the intersection between Market Street and Corrimal Street, Mr Cooper was unable to detect any music from the Hotel at an ambient background level of 59 dB(A) controlled by road traffic noise. Mr Cooper submits on the basis of the site visit, the current operations of the Hotel and operation of the sound system at maximum levels would not, in his opinion, give rise to noise disturbance and had no correlation with the basis of the complaint.

46. Mr Cooper also submits it is difficult to assess whether the complaint is valid without knowing the Complainant's location and without access to their residence to undertake measurements while the Hotel is operating. Mr Cooper notes of critical importance is the identification of the proximity of the Complainant's residence to the Hotel in order to place the complaint in the correct context.
47. Mr Cooper noted there is no identification of when the sound system treatment, as outlined in the Hotel's submission, was provided by IPS. Accordingly, the disturbance complaint may not be relevant to the sound system currently installed in the Hotel. Mr Cooper submits that if the complaint does not relate to the modified sound system, and instead relate to noise emission from the previous sound system, the situation may be different than what he observed while at the Hotel.
48. Mr Cooper was also requested to examine the Hotel sound system and layout and provide comments on what could assist in reducing noise from the Hotel. The following are the observations he made:
- A number of the speakers in the Hotel were not angled into the patron areas, which could be rectified by orienting them to face into the dance areas.
 - One speaker above the DJ box in the northern part of the Hotel was directed outward toward Corrimal Street. It was recommended this speaker be moved.
 - The terrace area outside the Hotel has a hard, reflective ceiling. It was suggested this be upgraded to a *"weatherproof acoustic absorbing tile to reduce the build-up of sound of patrons on the terrace area"*.
49. Mr Cooper noted there are high rise developments to the south and north of the Hotel that are classified as mixed-use developments, having commercial use on the ground floor and residential use above. Mr Cooper submits that apartment buildings with mixed-use developments should incorporate appropriate noise controls and if residences have not been constructed in accordance with the acoustic privacy standards mentioned in the Acoustic Report, then those residences are to be ignored for the purpose of compliance testing with the LA10 condition. Mr Cooper submits that without having been to the Complainant's residence, it is not known if their premises has noise control measures and if the complaints occur with such noise control measure in operation.

Hotel Final Submission

50. On 4 April 2022, Mr Stapleton provided the Hotel's final submission regarding the disturbance complaint and submission from Police, Council and the Complainant.

51. The submission advised the Hotel's offer to conduct acoustic testing at the Complainant's residence was an attempt to better understand any impact of noise on nearby residents. It also emphasised that the offer had been made on a confidential basis meaning that Mr Cooper would make arrangements with L&GNSW to conduct testing at the Hotel without informing the Hotel of the date or time. A further offer was made to conduct acoustic testing at the Complainant's address on a confidential basis.
52. The submission referred to the Acoustic Report and highlights the difficulty associated with the Complainant not wanting acoustic testing to be conducted from their residence. Further, it was submitted that the Acoustic Report found full compliance with the LA10 noise condition.
53. The submission also commented on the submission by Police, stating that Police are aware the Hotel has installed a new speaker system to mitigate noise emanating from the Hotel. Further, Police have observed Hotel staff and security make a consistent effort to disband patrons when they exit the Hotel to minimise street noise.
54. The submission advised the Hotel has a good working relationship with Police and that the Hotel has a "*proud record of crowd control*" and complies with Responsible Service of Alcohol (RSA) obligations, having not had any adverse comment from Police "*for some time*" regarding RSA obligations.
55. Regarding the submission by Council, the Hotel submits it is "*hard to reconcile the Council's position*" given Council has received one noise complaint in 12 months regarding the operation of the Hotel.
56. The submission concludes by stating there have probably been three or four noise complaints made to L&GNSW in the last 15 months and there is "*no evidence*" before L&GNSW of "*undue disturbance of the neighbourhood*" per the requirements of the Act. The only expert evidence before L&GNSW is the Acoustic Report which states the Hotel has not been causing the relevant noise disturbance. In the circumstances, the Hotel submits that L&GNSW should take no further action regarding the complaint.

Complainant Submission on Acoustic Report

57. On 19 April 2022, the Complainant provided a further submission regarding the Acoustic Report.

58. The Complainant advised they were willing to accept further acoustic testing however did not agree with the terms on which this was offered. The Complainant relevantly submitted the following:

- Having the acoustic engineer chosen by the Hotel attend the residence of the Complainant to conduct acoustic testing was rejected as lacking transparency.
- The Complainant and authorising residents would allow testing at their residences on the following terms:
 - 1) *“The complainants are to select an appropriately qualified acoustic engineer of their own choosing and,*
 - 2) *The complainants shall choose the date and time of such survey and testing at their discretion and,*
 - 3) *The venue shall bear the full costs of payment to the expert chosen in this matter.”*

59. The Complainant also submitted the following regarding the Acoustic Report:

- The Hotel repeating its offer to pay for further acoustic testing by their expert means they should accept their offer above.
- The Acoustic Report *“has no form of corroborative compliance as to give genuine efficacy to its findings”*.
- The Acoustic Report was based on one date of testing and was aimed specifically at one residential tower so *“its findings must be seen as specious”*.
- The Hotel relies on the Acoustic Report and it fails to address the issues raised in the submissions by Police and Council. In particular, the Council submission to reduce the ability of the Hotel to play amplified music and the number of assaults and other criminal behaviour *“emanating from the venue”*.

Further communication between the Hotel and Complainant

60. Between 28 April 2022 and 1 June 2022, communications were made to the Hotel and the Complainant regarding conducting further acoustic testing. The Hotel management's position remained that they would only pay for further acoustic testing if it were conducted by Mr Cooper. Any acoustic testing carried out by another acoustic engineer would be at the Complainant's cost. The Complainant's position remained that testing by an acoustic engineer other than Mr Cooper should be paid for by the Hotel, and accordingly they would not be conducting their own acoustic testing. No further acoustic testing occurred.

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

61. The Act requires the Secretary have regard to the following statutory considerations.

The order of occupancy between the licensed premises and the complainant

62. Under its current licence, the Hotel has operated at its present site since 4 February 1946 and the current licensee commenced on 12 May 2011. At the time the complaint was made, the Complainant had been located at their residence for four years and five months. Accordingly, the Hotel predates the time from which the Complainant has occupied their residence. This fact 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

63. There is no indication of structural changes to the Hotel or the Complainant's residence. The Complainant submits that sound proofing has been conducted in the main bedroom. The Hotel submits that approximately \$100,000 worth of upgrade works have been completed as noted above.

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

64. There is no indication of significant changes to the activities conducted at the Hotel over a period of time. It is noted during COVID-19 related lockdowns, the Hotel would have been closed or trading under restrictions for a lengthy period of time. Police submit the return from this reduction in street noise and foot traffic may have been perceived as excessive to local residents upon the Hotel returning to pre-COVID-19 trading.

Findings and Decision

Undue disturbance

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

66. After considering the material before me, I am not satisfied there is sufficient evidence before me to conclude the Hotel has caused undue disturbance to the quiet and good order of the neighbourhood. In reaching this conclusion I have considered the evidence provided in the submissions of all parties to the disturbance complaint.

67. While I have considered the complaint material, I note there is a lack of objective evidence from Council and Police to support a finding that the Hotel has caused undue disturbance to the quiet and good order of the neighbourhood. I have also given particular weight to the findings of the Acoustic Report and considered the measures taken by the Hotel to mitigate disturbance.
68. The Acoustic Report concludes there was no basis of support for the disturbance complaint on the date of the inspection. While I acknowledge testing was limited to one night, the Acoustic Report notes the Hotel's sound system was assessed at maximum levels and the acoustic engineer was unable to correlate the disturbance alleged with the operation of the Hotel's sound system. The Acoustic Report also notes that without testing at the Complainant's residence it is difficult to determine the validity of the complaint.
69. It is noted that the Hotel and Complainant were unable to reach an agreement regarding further acoustic testing. This impasse is regrettable as further acoustic testing, particularly from the Complainant's residence, may have enabled additional findings which provide greater clarity regarding whether the Hotel is the source of any disturbance.
70. Further, I have reviewed L&GNSW compliance holdings and note since the lodgement of this disturbance complaint, there have been no complaints from other persons regarding noise disturbance from the Hotel.
71. In consideration of the above and the material before me, I am not satisfied there is sufficient evidence to conclude the Hotel has unduly disturbed the quiet and good order of the neighbourhood.

Regulatory Outcome

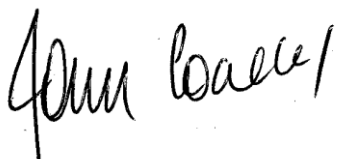
72. In deciding the appropriate regulatory outcome, I have considered the statutory considerations, the material set out in **Annexure 1**, and the above finding.
73. I acknowledge the order of occupancy is in favour of the Hotel. There is no indication of significant changes to the activities conducted at the Hotel over a period of time (apart from a lull during the period of COVID-19 restrictions), nor any indication of structural changes to the Hotel or Complainant's residence. I note the Hotel submits a number of upgrade works have been completed to mitigate noise and acknowledge the Complainant's concerns regarding the verification of these works.

74. Having considered the nature of the Hotel, its location and proximity to the Complainant's residence, I find it reasonable to expect some level of noise and disturbance at times from the Hotel's general operation, including from patrons, entertainment, and live music. I also note the Complainant's residence is located in relatively close proximity to the Hotel in the Wollongong CBD, which is identified by Council as "*Wollongong CBD – Zoned B3 Commercial Core*".
75. It is evidenced the Hotel has taken this complaint seriously and has put in place measures attempting to address the potential for noise disturbance. This has included the works outlined in the IPS document "*Acoustical Treatment of the Harp Hotel Ground Floor and Basement Venues*" and the commissioning of the Acoustic Report to address the complaint.
76. Both the Acoustic Report and Police submission refer to upgrade works having been carried out, particularly regarding the sound system of the Hotel. While I note the position of the Complainant is the outlaying of a relatively significant sum of money to conduct upgrade works is indicative of there being some disturbance, I find the proactive undertaking of these works to be reflective of a willingness on the part of the Hotel to respond in a genuine way to the disturbance complaint.
77. Police have outlined a number of incidents in connection with the Hotel between January 2021 and January 2022 and submit a significant Police response is required for the Hotel. I agree with Police that these incidents do not directly relate to noise complaints and note the main aspect of the disturbance complaint is loud music. While it may be arguable the Hotel should be more proactive to prevent the occurrence of such incidents, they are not the subject of this complaint. Further, a section 79 disturbance complaint is not the appropriate mechanism by which regulatory action could be taken to address such issues.
78. Police also note the CBD area of Wollongong had been "*unusually quiet*" for much of 2021 due to the COVID-19 measures and since they have eased, it is not unrealistic for noise to increase in this area. I share the view that increases in patron numbers and noise generated by licensed premises, including at the Hotel, may have increased following the removal of relevant Covid-19 restrictions but it does not necessarily follow that this disturbance is undue. Further, Police note they have observed a consistent effort from staff and security of the Hotel to move patrons from the Hotel and its vicinity in a timely manner upon closing time to minimise street noise when patrons are leaving the Hotel.
79. The submission by Council requests L&GNSW consider restricting music to midnight on Thursday, Friday & Saturdays and on every other day until 10:00pm. This is despite the

Council's submission not outlining any significant numbers of noise disturbance complaints regarding the Hotel or providing evidence that music from the Hotel is excessive. I do not share the view of Council that such a restriction would be appropriate at this time. Council may wish to investigate its own powers in this regard. Similarly, I do not consider the outcomes proposed by the Complainant that restrict amplified music to be appropriate in the absence of a finding of undue disturbance.

80. However, I am of the view the Hotel has the onus to take necessary and proactive action to mitigate the impact of noise levels from music emitted from the Hotel, which appears to be the main source of the alleged disturbance. Noise limiters would be one such means by which this may be achieved. I note the IPS document "*Acoustical Treatment of the Harp Hotel Ground Floor and Basement Venues*", the Hotel's submissions and the Acoustic Report indicates noise limiters have been installed on the Hotel's sound system.
81. A noise limiter condition imposed by L&GNSW would require the installation and calibration of a noise limiter by a qualified acoustic engineer to ensure compliance with the Hotel's LA10 noise condition. Having considered the nature of this complaint and my finding above, I do not find it necessary or appropriate for a condition relating to a noise limiter to be imposed on the Hotel's licence at this time.
82. Having carefully considered the material before I have determined to take no further action in this matter. This decision reflects my findings that there is insufficient evidence of undue disturbance from the available material and acknowledges the measures adopted by the Hotel in attempting to address the concerns raised by the Complainant.
83. While I have determined to take no further action in this matter, I strongly remind the Hotel to comply with its mitigation measures and of its ongoing obligation to minimise levels of disturbance. I encourage the licensee of the Hotel and Complainant to open up a respectful dialogue to address further disturbance concerns as they arise.

Decision Date: 21 February 2023



John Coady

Manager Regulatory Interventions

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 **21 March 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 <https://www.liquorandgaming.nsw.gov.au/independent-liquor-and-gaming-authority/ilga-and-l-and-gnsw-decisions/disturbance-decisions>.

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

1. Copy of the liquor licence dated 31 March 2023.
2. Section 79 Disturbance Complaint lodged by the complainant on 18 November 2021.
3. Submission from Council received on 23 December 2021.
4. Email from Hotel on 28 January 2022 proposing testing and reply from Complainant on 2 February 2022.
5. Submission from Police received on 1 February 2022.
6. Submission from Licensee received on 7 February 2022.
7. Further submission from Complainant received on 9 March 2022.
8. Acoustic Report prepared by the Licensee and provided on 25 March 2022.
9. Final submission from the Licensee received on 4 April 2022.
10. Complainant submission regarding the Acoustic Report received on 19 April 2022.
11. Further communication between the Hotel and Complainant between 28 April 2022 and 1 June 2022.