

DOC18/219430

FILE NO: A18/0013868

COMPLAINANT: [REDACTED]

LICENSED PREMISES: The Bridge Hotel - LIQH400108729

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 a delegate of the Secretary, Department of Industry, in relation to the complaint made in respect to The Bridge Hotel (the hotel) have decided to impose two conditions on the liquor licence:

1. **LA10 Noise Condition**
2. **Staff Patrols**

The details of the proposed conditions, including the dates in which they become effective, are outlined in **Annexure 1**.

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, 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 5 October 2018, [REDACTED] (the principal complainant) of [REDACTED] lodged a complaint with Liquor and Gaming NSW (L&GNSW) alleging undue disturbance from the operation of the hotel. The complainant lodged this complaint as a resident authorised by three other residents.
6. The principal complainant alleges disturbance is caused by live entertainment being conducted in the hotel's outdoor area. Disturbance is caused by a range of activities including DJs, bands and amplified microphones through a public address system. The complainants allege that sound can be heard from within their houses, even when doors and windows are closed.
7. Disturbance is further alleged to be caused by patrons of the hotel. This includes patrons who are utilising the outdoor areas, as well as those who are departing the hotel late at night. The principal complainant alleges that patrons are permitted to become intoxicated and are further permitted to remain at the premises after it has closed, causing further late-night disturbance to residents.

8. The principal complainant seeks the imposition of the following conditions:
- Noise to be inaudible within houses after midnight from Thursday to Saturday and after 10:00pm on Sunday to Wednesday.
 - Noise to be at a more reasonable level at all other times.
 - Management to supervisor patrons utilising outdoor areas and when leaving the hotel, including during events.
9. Between 31 October 2018 and 11 January 2019, various submissions were lodged by all parties. A list of the material that is before the delegate is set out in **Annexure 2**.

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

10. The Act requires that the Secretary have regard to the following statutory considerations.
11. *The order of occupancy between the licensed premises and the complainant* – the licensed premises has operated at its present site since 4 June 1951. The current licensee commenced at the hotel on 29 September 2017. The hotel predates the principal complainant's occupation of the residence. This fact is not in dispute and I consider the order of occupancy is in favour of the hotel.
12. *Any changes in the licensed premises and the premises occupied by the complainant, including structural changes to the premises* – The principal complainant indicates that the hotel, under the direction of former licensees, erected additional outdoor spaces at the hotel. This space has been added to over the years and includes a shed, covered outdoor area and enclosed concrete stage area. Additional tables, seating, sound equipment and fireplaces were also installed in these areas.
13. *Any changes in the activities conducted on the licensed premises over a period of time* – the principal complainant submits that the structural changes at the venue have resulted in a shift of operations and increase to hotel capacity. Entertainment has shifted from inside to the newly established outdoor spaces and the installation of fireplaces and roof coverings permit year round outdoor operations and entertainment.

Other Considerations

Undue disturbance

14. I am satisfied the material before me is sufficient to support a finding the hotel has, at times, caused undue disturbance to the neighbourhood. In making this finding, I have

balanced the submissions made by the licensee, the complainant, NSW Police and Council.

15. The hotel is located on the corner of Bridge Street and Vale Road, Perthville. The outdoor area is on the western side of the hotel. It faces towards Bridge and Perth Streets, which contains residential properties, including the residence of the principal complainant and supporting residences. The principal complainant's residence is approximately [REDACTED] metres from the hotel, separated by a creek and vegetation. The hotel is permitted to sell liquor between 5:00am and midnight, Monday to Saturday and 10:00am to 10:00pm on Sundays.
16. The principal complaint advises that, between 23 September 2017 and 1 October 2018, he contacted Police eight times in response to noise disturbances at the hotel. Seven of these reports were made after midnight and relate primarily to patron and music disturbance in the outdoor area of the hotel. The principal complainant states that there were further instances of disturbance, however, he only contacted the Police on these occasions as disturbance was significantly higher and was occurring after midnight.
17. Bathurst Regional Council advised that several complaints have been received in relation to noise and disturbance at the hotel, with the earliest complaint received in April 2018. The complainant was advised to contact L&GNSW. The hotel was also contacted by Council in relation to the unauthorised construction of the outdoor enclosure. As of 31 October 2018, Council had not received an application in relation to this structure.
18. Chifley Police District advised that a small number of complaints have been received in relation to noise or anti-social behaviour at the hotel. Police believe that the majority of complaints received are from those who are party to this complaint. Police also spoke with nearby residents, who stated that Friday and Saturday night noise can be easily heard within their home and that there is often anti-social behaviour from patrons as they leave the hotel.
19. On 1 October 2018 at 1:30am, Police attended the hotel in response to a noise complaint. Upon arrival Police identified that the hotel was not in operation, however the manager and patrons remained on the premises, testing new sound equipment. Police requested that the manager cease testing the sound equipment and the manager complied.
20. Police attended the hotel to discuss the matter with the licensee and the manager. Upon inspection of the hotel and the outdoor areas, Police identified that recent flood

mitigation work by council, which involved the removal of vegetation, may be contributing to the increase of noise being heard from the hotel. To mitigate noise disturbance from the hotel, Police recommend the imposition of conditions relating to the use of a decibel metre and signage seeking patrons leave the hotel quietly. Police further submit that if L&GNSW believe the imposition of the LA10 noise criteria is appropriate, they would support this.

21. After the submission process was completed, L&GNSW received three additional complaints between December 2018 and March 2019 from the principal complainant. These complaints outlined further instances of disturbance, caused by unattended patrons in the outdoor areas after close, patrons exiting the hotel and loud music played in the outdoor area.

Action taken to mitigate disturbance

22. 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.
23. In response to the complaint, the licensee attests that they trade within their authorised hours and ensure last drinks are called 30 minutes before the cease of trade, at which time patrons are asked to leave the premises. The licensee and other staff at the hotel do their best to ensure patrons leave the area in a quiet and undistruptive manner. Further, the licensee indicates that some instances of anti-social behaviour experienced by the complainants are from persons who were not patrons of the hotel.
24. The licensee submitted that he was willing to work with the complainants and the community overall. The hotel has grown as the local community has grown and the hotel aims to provide activities that support the local community. The licensee has engaged with members of the local community to assist in the identification of any concerns, as well as seeking input from ways to address these concerns. The licensee is disappointed that the complainant is unwilling to communicate with him and conveyed that changes could have been made earlier had he been aware of the complaints.
25. The licensee has consulted with Police, Council and a delegate from the Australian Hotels Association in relation to the complaint. As a result the following measures are being implemented at the venue to address the concerns raised by the complainants:

- a) Relocating jukebox speakers so that they point downwards for ground absorption and to limit noise travelling
 - b) Limiting outdoor band performances to significant occasions and introducing acoustic acts
 - c) Conducting research into noise attenuation works in the outdoor areas and consideration to relocating live entertainment to face away from the village
 - d) Developing and utilising a community notification list, to facilitate advance notification to stakeholders that music events will be occurring at the hotel
 - e) Putting up signs to remind patrons to be respectful of neighbours when leaving the venue and in relation to drink driving
 - f) Planting additional plants in and around the outdoor areas of the hotel
 - g) Using a sound metre to determine decibel levels coming from the hotel.
26. The licensee has introduced a new staff policy that requires staff members to remain at the hotel until all patrons have left the hotel, as well as permitting those patrons waiting for taxis to wait inside. Further, the hotel has introduced the use of an incident register and reviewed their internal operation policies in relation to the responsible service of alcohol.
27. The licensee has begun to trial an earlier 'last drinks' on busy evenings to ensure patrons clear the area by the close of trade. The earlier 'last drinks' has been on trial at the hotel since November 2018, and the licensee reports a positive outcome in respect to patron disbursements.
28. In light of the actions taken at the hotel and the additional planned actions, the licensee requests that no further action be taken in relation to the disturbance complaint. The licensee would like more time and opportunity to demonstrate the effectiveness of the newly implemented strategies and would be open to conduct a review of these measures in the future.

Findings and conclusion

29. I have considered the submissions of the principal complainant, licensee, Police and Council. I have also had regard to the particular context in which the venue operates. In deciding whether to impose conditions on the licence relating to disturbance, I have considered the matters outlined below.

30. I have taken the statutory considerations into account and acknowledge the order of occupancy is in favour of the hotel and that it is reasonable to expect some form of noise will be generated from the operation of the hotel.
31. I note that the hotel has taken steps to introduce new measures to assist in mitigating disturbance at the hotel (as listed at paragraph 25 above). I give some weight to the licensee's assertion that the new measures are working to reduce disturbance to local residents and that further time is needed to demonstrate the full effectiveness of these new initiatives.
32. However, I also note that the hotel's operations have changed in recent times, with the increased use of outdoor space by hotel patrons and entertainment providers. I am reasonably satisfied that the use of the hotel's outdoor spaces has at times generated undue disturbance which has impacted upon neighbouring residents, as a result of the actions of both the licensee and hotel patrons.
33. Considering the submissions of the parties, I have decided to impose the LA10 noise condition on the hotel's liquor licence, as I am satisfied that the imposition of this condition is an appropriate response to the undue disturbance created by the hotel. The LA10 condition is a generally accepted technical standard for noise from licensed venues. Of note, the condition contains a non-technical element in that noise from the licensed premises must not be audible within a habitable room of the affected residential premises after midnight.
34. The imposition of the LA10 condition strikes a balance between meeting the expectations of the neighbouring community and ensuring that the hotel can continue to provide entertainment to its patrons. I do not consider that the imposition of this condition will unduly burden the hotel.
35. The principal complaint has sought a variation to the standard LA10 noise condition, requesting that the post-midnight restrictions apply from 10.00pm Sunday – Wednesday. While it appears that some instances of disturbance have occurred in the earlier parts of the week, I do not consider it necessary to vary to the standard condition. The measures currently being undertaken at the venue, combined with the introduction of the LA10 noise condition should be sufficient in mitigating the risk of ongoing undue disturbance experienced by local residents, including disturbances experienced on weekdays.
36. I have also decided on the basis of the submissions of the parties to impose a condition requiring staff to patrol the vicinity of the hotel to ensure patrons do not loiter and do not

cause undue disturbance to neighbours. These patrols will be required 30 minutes prior to the cease of trade and will continue until all patrons have left the hotel and the vicinity of the hotel.

37. In imposing this condition, I have taken into consideration the voluntary measures currently being undertaken at the hotel and determined that the imposition of a formal condition will provide regulatory certainty the hotel will take measures to ensure patrons do not loiter and cause disturbance. I am reasonably satisfied that the risk of disturbance and potential harm to unsupervised patrons warrants the imposition of this condition which formalises the voluntary undertaking of the licensee.
38. I consider the imposition of a staff patrol condition and the LA10 noise condition to be an appropriate regulatory response to address the finding of undue disturbance and mitigate future disturbance.
39. Finally, I am satisfied that this decision is a proportionate regulatory response to the disturbance identified in the complaint.

Decision Date: 24 May 2019



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 21 June 2019. 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.liquorandgamingsw.nsw.gov.au



Under section 81 of the *Liquor Act 2007* a delegate of the Secretary of the Department of Industry has imposed the following conditions on the liquor licence of:

The Bridge Hotel, Perthville (LIQH400108729)

LA10 Noise Condition

The LA10* noise level emitted from the licensed premises shall not exceed the background noise level in any octave band frequency (centred on 31.5 Hz-8 kHz inclusive) by more than 5dB between 7:00am and midnight at the boundary of any affected residence.

The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in any octave band frequency (centred on 31.5 Hz-8 kHz inclusive) between 12:00 midnight and 7:00am at the boundary of any affected residence.

Notwithstanding compliance with the above, noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 12:00 midnight and 7:00am

** For the purpose of this condition, the LA10 can be taken as the average maximum deflection on a sound level meter of noise emitted from the licensed premises.*

Date condition effective: 31 May 2019

Staff patrols

A staff member is to patrol the vicinity of the licensed premises to ensure that patrons do not loiter or linger in the area or cause nuisance or annoyance to the neighbourhood. Such patrols are commence 30 minutes prior to the cease of trade and are to continue until the last patron has left the licensed premises and the vicinity of the licensed premises.

Date condition effective: 31 May 2019

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

1. Section 79 Disturbance Complaint lodged by [REDACTED] on 5 October 2018 and 8 October 2018.
2. Email with further information from principal complainant, received 8 October 2018.
3. Email with further information from principal complainant, received 10 October 2018.
4. Email with further information from principal complainant, received 15 October 2018.
5. Submission from [REDACTED] Bathurst Regional Council, received on 31 October 2018.
6. Submission from [REDACTED] Chifley Police District, received on 7 November 2018.
7. Submission from John Neradovsky, Licensee, Bridge Hotel, received on 9 November 2018.
8. Final submission from the principal complainant, received 4 December 2018.
9. Additional complaint from principal complainant, received 24 December 2018.
10. Final submission from the licensee, received 11 January 2019.
11. Additional complaint from principal complainant, received 25 February 2019.
12. Additional complaint from principal complainant, received 4 March 2019.