



Independent Liquor & Gaming Authority

A statutory board established under the Gaming and Liquor Administration Act 2007

The Review Applicant Abercrombie Street Redfern NSW 2016	Mr Matthew Sweeney Licensee, Eveleigh Hotel C/o Ms Ellie Yoo LAS Lawyers & Consultants PO Box K1077 Haymarket NSW 1240 admin@lawlawyers.com.au	Mr Nathan Grogan Acting Director Investigations, Interventions & Review Delegate of the Secretary of the NSW Department of Customer Service nathan.grogan@liquorandgaming.nsw.gov.au
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Dear Sir

2 June 2020

Application No. A19/0015267
Applicant A Resident of Abercrombie Street Redfern
Application for Review of a decision made under section 81 of the *Liquor Act 2007* (NSW) by a delegate of the Secretary of the NSW Department of Customer Service.
Licence name The Eveleigh Hotel
Premises 158-160 Abercrombie Street
Redfern NSW 2016
Date of Reviewable Decision 12 February 2020
Legislation Section 36A of the *Gaming and Liquor Administration Act 2007* (NSW)

Decision of the Independent Liquor and Gaming Authority – Application for review of a decision made under section 81 of the *Liquor Act 2007* (NSW) by a delegate of the Secretary of the NSW Department of Customer Service – The Eveleigh Hotel, Redfern

The Independent Liquor and Gaming Authority (“Authority”) has completed its review of a decision made by a delegate of the Secretary of the NSW Department of Customer Service under section 81 of the *Liquor Act 2007* (“Act”) on your complaint under section 79 of the Act alleging that the operations of the Eveleigh Hotel, a licensed hotel located at 158-160 Abercrombie Street, Redfern NSW 2016 and/or the behaviour of its patrons, was causing undue disturbance to the quiet and good order of the neighbourhood.

The Authority has decided, pursuant to section 36A(4) of the *Gaming and Liquor Administration Act 2007* (NSW), to confirm the decision under review. Attached is a statement of reasons for the Authority’s decision, prepared in the context of a high-volume liquor and gaming jurisdiction, in which the Authority is required to publish reasons for its decisions as soon as practicable.

If you have any enquiries about this letter please contact the Authority Secretariat via email to ilga.secretariat@liquorandgaming.nsw.gov.au

Yours faithfully

Philip Crawford
Chairperson
For and on behalf of the Independent Liquor and Gaming Authority

Statement of Reasons

Reviewable Decision

1. Section 36A(1)(a)(iv) of the *Gaming and Liquor Administration Act 2007* (NSW) ("GALA Act") provides that a decision made under section 81 of the *Liquor Act 2007* (NSW) ("Act") is a reviewable decision. Pursuant to section 36A(2) of the GALA Act, a person aggrieved of a reviewable decision may seek review by the Authority.
2. In emails received by the Authority on 9 and 13 March 2020 the Independent Liquor and Gaming Authority ("Authority") received an application for review ("Review Application") from the complainant ("Complainant") in a disturbance complaint ("Complaint") made to the Secretary of the New South Wales Department of Customer Service ("Department").
3. The Complaint was made under section 79 of the Act, alleging that the operations of The Eveleigh Hotel, a full hotel licensed premises located at 158-160 Abercrombie Street, Redfern NSW 2016 ("Hotel") and/or the behaviour of its patrons, was causing undue disturbance to the quiet and good order of the neighbourhood.
4. On 12 February 2020 a delegate of the Secretary of the Department ("Delegate") determined the Complaint, finding that the Hotel had, at times, caused undue disturbance. The Delegate determined under section 81 of the Act to issue a written warning to Mr Matthew Sweeney, licensee of the Hotel ("Licensee"), to ensure that no future undue disturbance is caused by overuse of the Hotel's external footpath area ("Reviewable Decision").
5. The Complainant seeks review of the Reviewable Decision on the bases summarised below.

The Complaint

6. The Complaint material comprises a four-page Disturbance Complaint form FM2002 which according to the Reviewable Decision was received by the Department on 13 May 2019. It was accompanied by four "Attachment A" Complaint Authorisation forms, signed by four separate local residents dated from 28 April to 10 May 2019.
7. The Complaint was made by a resident in the neighbourhood of the premises and was verified, for the purposes of section 79(3) of the Act, by four other residents in the neighbourhood. The Complainant and authorising residents have requested that their personal information not be provided to the Licensee and the Authority has received redacted versions of their forms.
8. The Authority is satisfied that the Complaint was validly made.
9. Details of the Complaint are provided in an accompanying 10-page submission ("Complaint Submission") comprising two pages of submissions and 8 pages of photographs of patrons outside the Hotel.
10. The Complainant raises three issues. The first concerns use of outdoor areas of the Hotel by patrons. The Complainant contends that:
 - Use of the outdoor seating area is very frequently in breach of council's conditions of consent.
 - Patrons change the layout of the outdoor area by joining tables and/or adding chairs and the footpath is used by standing patrons to drink and/or smoke.
 - Seating on the Hotel footpath is overused, by up to 30 to 40 patrons using this area.

- Planning approval by City of Sydney Council (“Council”) to use the footpath outside the Hotel has caused “severe” disturbance to local amenity.
 - “Loud, foul mouthed and intoxicated” patrons are seated only a few metres from the nearest residence.
 - Sound from patrons outside the Hotel reverberates around the street frontage.
 - Tobacco smoke emanates from this area.
 - Pedestrians must walk off the footpath to negotiate Hotel patrons.
11. The Complainant seeks that this aspect of the Complaint be addressed by preventing the use of this outdoor seating area and the congregation of Hotel patrons outside the venue.
 12. The second issue concerns noise disturbance from within the Hotel. The Complainant here contends that the venue can “fill up any day of the week”, that windows and doors are left open all day until closing and that noise can be heard from adjacent properties. The Complainant contends that it only takes one intoxicated patron to cause noise disturbance and that the noise emitted by patrons is “distressing” to neighbours.
 13. The Complainant seeks that this aspect of the Complaint be addressed through the prevention of noise from within the Hotel from being audible outside the Hotel “at all times”.
 14. The third issue, related to the first, concerns the management of loitering and smoking by Hotel patrons outside the venue. The Complainant contends that patrons are “very frequently” loitering, talking and smoking in front of nearby residential properties. The Complainant refers to smoking laws that prohibit patrons from smoking within 4 metres from the entry to the Hotel and contends that this prompts patrons to stand in front of nearby residential properties located at 162, 164, 170 and 172 Abercrombie Street, which is detrimental to the amenity of the households.
 15. The Complainant seeks that this aspect of the Complaint be addressed by requiring the Hotel to “effectively” deter patrons from smoking and loitering in front of neighbouring properties through measures such as security staff and signage. The Complainant also seeks the provision of ashtrays outside the venue, in accordance with the Hotel’s Plan of Management.
 16. The Authority notes that the Complaint Submission includes 16 photographs, which are labelled by the Complainant as to time and date taken including a brief description of what they depict. They span a time period of some two years - from 11 February 2017 to 1 May 2019. The earliest photograph is stated to have been taken at 2:30 pm (14 April 2019) with the latest at 10:52 pm (1 May 2019). These photographs depict patrons outside the venue, mostly in small groups, but three photographs show 20 or more patrons outside (taken on 22 December 2017 at 3:43 pm, 25 October 2017 at 8:51 pm and 11 February 2017 at 8:02 pm).

Consultation on the Complaint

17. A summary of the evidence and material before the Delegate, including the Licensees response, is provided in Schedule 1.
18. The Delegate consultation on the Complaint occurred between March 2019 and August 2019 and included consultation with the Council, Redfern Local Area Command of NSW Police (“Police”), the Licensee of the Hotel and with the Complainant. This correspondence is briefly described in Schedule 1 to this letter.

Reviewable Decision

19. Without repeating all of the matters discussed in the Reviewable Decision, the Delegate made the following findings on the statutory considerations to which a decision maker must have regard under section 81(3) of the Act:
- On the matter of the order of occupancy between the licensed premises and the Complainant (section 81(3)(a)) the Hotel, which was then known as the Berkeley Hotel, was purchased by the Licensee on 10 April 2012. The then general bar licence had been dormant since 4 October 2010 when the former Berkeley Hotel business ceased to trade. The Hotel recommenced trade under the Licensee on 22 August 2014 and on 22 March 2017 the Licensee was granted the current "full hotel" licence, upon surrendering the general bar licence. The Complainant has resided at his home for around 2 years prior to the Complaint. The order of occupancy favours the Hotel.
 - On the matter of any changes to the licensed premises, or the Complainant's premises (section 81(3)(b)) the Complainant contends that works on the new Hotel dining room caused considerable disturbance but this matter does not form part of his Complaint, but is being investigated by Council. While these works are contentious, they do not form part of the current Complaint.
 - On the matter of any changes in activities at the licensed premises (section 81(3)(c)) Council has granted approval to use the footway as an outside dining area in 2015. This area of 9.3sqm must be used in conjunction with food service and its current hours are from 10:00 am to 10:00 pm Monday to Saturday and 10:00 am to 9:00 pm Sunday.
20. On the ultimate issue of whether the Hotel has caused undue disturbance within the meaning of section 79 of the Act, the Delegate found that several of the Complainant's photographs and his video material show people congregating outside the Hotel, in excess of the footway approval.
21. The Delegate notes Council records of having received 11 recent complaints about the Hotel with 3 of them requiring further action. Council Rangers confirmed that offensive noise was audible emanating from the Hotel, audible within a neighbouring residence on 5 April 2019. On 21 February 2019 Rangers noticed that the footpath area was in use while the permit had expired and on 6 December 2018 Rangers cautioned the premises for use of the footpath area outside of approved hours. The Delegate also noted the Police record of attendance at the Hotel on 9 February 2018, when over 20 patrons were using the footpath outside the Hotel.
22. After considering the Hotel's submissions through LAS Lawyers, the Delegate was satisfied that:
- The Hotel has, "at times" caused undue disturbance to the quiet and good order of the neighbourhood, from patron use of the footpath.
 - There is insufficient evidence to establish undue disturbance from other sources alleged in the Complaint, such as the general operation of the premises or patrons loitering or smoking, while noting that the Licensee has addressed concerns in relation to smoking through the updated Plan of Management. The Delegate noted that the Complainant provided further information after the closure of submissions regarding alleged continued disturbance caused on 4 October 2019 by a group of patrons within and outside the Hotel, caused on 17 December 2019 with images taken of a group of patrons smoking in front of a nearby residence and on 10 and 18 January 2020 with further images of patrons outside the Hotel.

- On the issue of internal noise transmission from the Hotel through an adjoining boundary wall with a neighbouring residence, the Delegate noted that this issue does not form part of the Complainant but is being addressed by Council. The Delegate notes the scope for at least partial alleviation of these emissions through the current attendance to Fire Safety Separation requirements and the additional works that the Licensee has informed the Delegate will be performed, in his submission to Liquor and Gaming New South Wales.
23. On the question of remedial action, the Delegate balanced the statutory objects and considerations in section 3 of the Act and noted that the new August 2019 Plan of Management will be enforceable through the operation of a licence condition numbered “3030” on the Hotel’s licence record. This requires the Hotel to be operated at all times in accordance with the Plan of Management, as varied from time to time after consultation with the Local Police Commander.
24. The Delegate directed the Licensee to provide the Hotel’s updated signed Plan of Management to local Police within 28 days. In the circumstances of this new enforceable Plan and the additional construction measures to be undertaken by the Licensee, the Delegate was satisfied with issuing a *warning* to the Licensee to “proactively manage all potential disturbance issues” was the appropriate course of action. The Delegate notes that in the event of fresh undue disturbance it will be open to further regulatory intervention to occur.

Review Application

25. In emails to the Authority Secretariat dated 9 and 13 March 2020 the Complainant sought review of the Reviewable Decision. The substantive Review Application material comprises a six-page departmental form AM0666 *Application to review a decision made by the Secretary, NSW Department of Industry* signed by the Complainant and dated 12 March 2020. A ten-page document dated 11 March 2019 accompanies the official form containing two-pages of written submissions, one-page of photographs of the street view of the Hotel, one-page of architectural diagrams of the Hotel and six-pages of photographs. The photographs provided depict the footpath outside the Hotel and range from 8 February 2020 to 28 February 2020 with the earliest time being 3:56 pm (28 February 2020) and the latest being 8:09 pm (15 February 2020). Also attached to the Review Application is a copy of the redacted Reviewable Decision.
26. The Complainant submits that the following material submitted with the Complaint was “omitted” by the Delegate when making the decision:
- The videos and images of incident involving a group of intoxicated patrons obstructing traffic and tackling in front of the Hotel, submitted on 8 October 2019.
 - Report into the illegal alterations and additions, including structural works, carried out by the Hotel to change a storage room into a lounge room, dated 12 August 2019.
 - Statutory declaration by one of the residents dated 12 August 2019.
27. On the order of occupancy the Complainant submits that the Delegate only had regard to the Complainant’s order of occupancy and not the authorising residents, who have resided in their homes for 20 and 27 years. Having regard to the order of occupancy with respect to “all complainants” would be consistent with decisions A 19/0014974 and A 18/0014060. The Complainant notes that the disturbance complaints made to Council were filed by other long-term residents in Abercrombie Street, not simply the Complainant.

28. On the issue of any changes to the licensed premises, the Complainant submits that the Delegate does not appear to have considered the “illegal” changes to the licensed venue documented in the neighbouring resident’s report of 12 August 2019. The Complainant contends that this report identifies “illegal alterations and additions” carried out by the current Hotel owner to change the use of 160 Abercrombie Street, by converting a “storage” area to a “lounge” area with a capacity for approximately 30 people. The Complainant contends that this resulted in an increase of the Hotel’s “active frontage” on Abercrombie Street by approximately 40%. Like the rest of the premises, the new lounge area operates with open doors and windows at all times of the day and this results in excessive noise from the venue spilling into Abercrombie Street. According to the Complainant, the nearest resident receiving noise has a property boundary that is only one metre away from the Hotel while the nearest resident’s window is only two metres from the new lounge window.
29. The Complainant seeks that the Hotel windows on Abercrombie Street and the door at 160 Abercrombie Street (new lounge) be required to be closed shut with double glazing installed where appropriate in order to limit the noise travelling from the interior of the pub to Abercrombie Street. The Hotel doors should be fitted with self-closers to mitigate disturbance and not held open.
30. The Complainant contends that after the Reviewable Decision was published, the Hotel has kept operating the outdoor area in breach of its Footway Approval conditions. The layout of the tables has changed, with tables being moved into Vine Street, with patrons smoking in front of residential homes or drinking on the footpath.
31. The Complainant seeks that this “continued disturbance” be remedied with the removal of any use of this outdoor area of the Hotel.

Licensee Response to Review Application

32. The Licensee has responded to the Review Application with a ten-page submission made through his solicitor, Ms Ellie Yoo of LAS Lawyers & Consultants dated 31 March 2020 (“Licensee Review Submission”). In summary, the Licensee:
 - Contends that he is not aware of any issues pertaining to intoxication in the Hotel’s patrons nor any incidents of anti-social behaviour.
 - Contends that no incidents have been reported or recorded by the Police in relation to any such alleged incidents. The Licensee has not had the opportunity to view the Complainants’ late images and video footage and is not able to respond to that material but denies any alleged incidents of intoxication or anti-social behaviour by Hotel patrons.
 - Submits that the Report from a neighbouring resident dated 12 August 2019 regarding changes to the premises and related noise transmission matters has not been prepared by an independent professional. The said “store -room” is a “side room” that has, since the 1970s, formed part of the licensed boundary and has always been “in use” by the Hotel. However, during 2019 additional furniture was installed as part of an extension to the dining area. Council was aware of this change and has not raised any objection to its use.
 - Submits that the statutory declaration dated 12 August 2019 does not constitute “relevant or admissible” evidence that would have assisted the Secretary in making his decision and any allegation that the Licensee was intoxicated is “unfounded” and “false”.
 - Submits, that the Authority should consider not only the occupancy of the Complainant but also the authorising residents. The Hotel has traded in its current location since about November

1879 with the earliest photographic evidence of the Hotel (provided with the submission sourced from the Australian National University Open Research Library) from October 1930. The Hotel is a Heritage Contributory Building (Sydney Heritage Development Control Plan 2006). Despite the premises being closed between 2010 and 2012, a hotel has traded on the site under various names for 90 years. The order of occupancy should be confirmed as favouring the Hotel.

- Submits that any changes to use of the “side room” were cosmetic and not structural and the repurposing of this room as an extension of the dining area does not constitute a relevant change to the premises for the purposes of section 81(3)(b) or a change in activities for the purposes of section 81(3)(c). Furthermore, the neighbouring resident (who has reported internal noise transmission) would have been aware, when moving to their address, that their residence shares a common boundary wall and roof cavities with the Hotel.
- Advises that fire safety works are due to be completed within 2 weeks after the date of this submission and by 3 April 2020 the Licensee will “schedule” the attendance of an acoustic expert to attend the premises.
- Contends, in response to the Complainant’s allegations of “continuing disturbance” from outdoor areas that the Licensee is (now) using this area in a compliant manner with the new Plan although he is “not reasonably capable of exercising complete control over human behaviour” in these outdoor spaces.
- Submits that Council’s permission to use the footway area is not a matter within the Authority’s jurisdiction.
- Contends that the neighbourhood and nearby streets are an active, and not a “quiet” area, with several (specified) licensed venues and other businesses in the neighbourhood.
- Calls into question whether the Complainant’s photographs establish the following contended matters:
 - Whether the numbers of patrons exceeded the footway approval (image 5);
 - Whether the patrons outside were loud or intoxicated (image 5);
 - Whether persons featured were patrons of the hotel (images 5, 9, 10 and 11);
 - Whether the patrons featured were clearly smoking (images 7 and 8); and
 - Patrons are permitted to smoke in public, provided that they do so more than 4 metres from the entrance to the Hotel (image 6).

33. The Licensee concludes with a request that the Authority find in favour of the Hotel on this Review or defer taking any further action until the Hotel obtains an acoustic report, to be prepared by Acoustic Logic.

Complainant Reply Submissions

34. In a submission letter dated 16 March 2020 (“Complainant Reply Submission”) the Complainant attaches a letter from Council dated 8 November 2019 regarding noise transmission from within the Hotel and replies to the Licensee Review Submission by making the following contentions:

- Most of the Complainant and authorising residents have lived in their homes before “the current ownership and management” of the Hotel.

- The change in use to the street facing lounge area involved structural, not cosmetic changes to the Hotel and these works were carried out without development consent. They increased the Hotel's "active frontage" causing disturbance to neighbouring residents.
- The issue of a Fire Compliance Order and Direction to Take Preventative Action under section 96 of the *Protection of the Environment Operations Act 1997* (NSW) are "confirmation" that changes to the licensed premises have resulted in undue disturbance to the adjacent property.
- Abercrombie Street is a largely residential area, noting the Offensive Noise Assessment carried out by Council and that visiting the area during the day will establish that this is a peaceful area, which exacerbates any disturbance by the Hotel.
- The Licensee has conceded that he cannot manage human behaviour outside the Hotel. The Complainant has provided evidence of breaches by the Hotel of condition 3030, through failure to operate in accordance with its Plan of Management.
- It is highly unlikely that passers-by would sit in front of a residence to smoke but for the operation of the Hotel and this submission betrays insensitivity to the residents' position on this issue.
- The Complainant reiterates his request for the outcomes specified in the Complaint.

Decision

35. The Authority notes that while the late material provided by the Complainant was received after submissions closed, the Delegate was aware of the material and has described it in the Reviewable Decision. This additional media was not put to the Licensee but considering the description of this material in the Reviewable Decision and the action taken on this review, the Authority has not needed to engage in a further submission on that evidence.
36. The Authority has considered the Complaint having regard to sections 79 to 82 of the Act and all the statutory objects and considerations in section 3 of the Act, as extracted in the attached Schedule 2.
37. The Authority is satisfied for the purposes of section 81(3)(a), that the order of occupancy favours the Hotel, on the information and evidence provided in the Licensee Review Submission.
38. The Authority is satisfied, for the purposes of section 81(3)(b) that there have been some recent changes in the licensed premises. The primary change arose from Council's permission, since 2015, for planning purposes, of the use of the outdoor area of the premises by a maximum of 9 persons. Use of this outdoor dining area might also be characterised as a change in the "activities" conducted on the licensed premises for the purposes of section 81(3)(c).
39. The Authority finds that the Hotel has made extensive use of this outdoor area. Patrons congregating outside the Hotel have, on several occasions, exceeded the numbers permitted by the planning permit. This is most clearly established by photographs showing 20 or more patrons outside the premises on 22 December 2017 at 3:43 pm, 25 October 2017 at 8:51 pm and 11 February 2017 at 8:02 pm and 4 October 2019. There are also photographs taken at the following date and times that depict more than 9 patrons albeit to a lesser number than the photos identified above: 8 February 2020 at 7:29 pm, 13 April 2019 at 5:20 pm and 13 April 2019 at 6:10 pm.

40. The video footage provided on the evening of 8 October 2019 depicts a larger group of patrons milling around the exterior of the Hotel, with some patrons fooling around on the road while the video provided on 19 January 2020, taken from inside a resident's bedroom in the evening, indicates that, when the windows of neighbouring homes are open, noise at a certain level can be heard emanating from the Hotel.
41. Furthermore, accepting the time of photographs as contended by the Complainant, the following images establish use of the footpath beyond the 9:00 pm Sunday and 10:00 pm Monday to Saturday time restrictions (albeit no footpath tables/seating can be seen in these photographs):
- On 21 March 2019 at 10:30 pm – photograph depicting 3 people standing on the footpath outside of the Premises.
 - On 24 March 2019 (a Sunday) at 9:12 pm – photograph depicting 4 people standing on the footpath outside the Hotel.
 - On 2 April 2019 at 10:30 pm – photograph depicting a small number of people standing on the footpath.
 - On 1 May 2019 at 10:52 pm – photograph depicting approximately 4 people standing on the footpath outside the Hotel.
 - On 4 October 2019 at approximately 10:05:37 pm – photograph depicting approximately 17 people standing on the footpath outside the Hotel.
42. The Authority is also satisfied, for the purpose of section 81(3)(b) of the Act, that there has also been some change to the interior layout of the licensed premises, through extension of the dining area in a front facing room described by the Licensee as a former "side room". This occurred during 2019. The Authority accepts the Complainant's contention that this increases the front facing area of the Hotel that is utilised by patrons.
43. The Complaint include a substantial focus upon the Hotel's non-compliance with development consents. The facts surrounding breach of a development consent may also be relevant to an alleged disturbance, but these are primarily for the attention of Council or Police, who have the power to enforce the conditions of a development consent.
44. The Authority is concerned with whether the operation of the Hotel and the conduct of its patrons has caused *undue disturbance* to the quiet and good order of the neighbourhood. The Authority finds that undue disturbance has occurred based on the following evidence or material:
- Complainant photographs showing 20 or more patrons outside the premises on 22 December 2017 at 3:43 pm, 25 October 2017 at 8:51 pm, 11 February 2017 at 8:02 pm and on 4 October 2019.
 - Complainant video footage of 4 October 2019 provided on 8 October 2019.
 - Police attendance at the Premises on 9 February 2018 as described in the Police submission of 23 May 2019.
 - Council Rangers confirmation that "offensive" level of noise was audible inside a neighbouring residence on 5 April 2019.
45. The Complainant's material, spanning some 2 years, does not establish that *undue* disturbance is commonplace, but that it does occur from time to time. This is particularly

apparent when patron numbers outside the Hotel reach levels of 20 to 30. Nevertheless, the undue disturbance established in this Complaint was not associated with any serious misconduct. Nor did it occur very late in the evening.

46. The detailed and complex claims of internal noise transmission from the structure of the Hotel through the wall and roof of an adjoining residence that were raised in a submission dated 12 August 2019, were not squarely put in the initial Complaint. The Authority shares the view of the Delegate that these matters fall outside the scope of this Complaint, noting that Council has responded to these matters by requiring certain fire separation works.
47. In the absence of an independent expert acoustic report (of the kind the Licensee has said he will obtain) the Authority cannot ascertain the extent to which the operation of the Hotel generates to *undue* disturbance to the quiet and good order of the neighbourhood. An independent report would be of greatest utility once the Hotel returns to peak trading and would benefit from the cooperation of immediate neighbours to ascertain noise levels within their homes.
48. The Authority notes that this venue is licensed to trade within standard trading hours. The LA10 noise control recognises that there will be some level of noise emission from licensed premises above background noise levels, between the hours of 7:00 am and Midnight.
49. The Authority has some sympathy for the claim that residents in immediately neighbouring homes are exposed to occasional cigarette smoke from patrons outside the Hotel. This is an unintended consequence of the requirement in the *Smoke Free Environment Act 2000* that persons not smoke within 4 metres of a pedestrian access point to a building and in a commercial outdoor dining area of licensed premises.
50. The Authority finds these complaints to be credible and accepts that smoking outside a neighbour's window may constitute a significant source of nuisance over time, which may be reduced if the Licensee proactively controls patron numbers near the venue. It is reasonable to expect a licensee to monitor not only what occurs on the designated 9.3 square metres footpath dining area, but within the close vicinity of the premises.

Conclusion

51. The Authority has considered whether additional remedial action of the kind proposed by the Complainant is the correct and preferable course to take in the circumstances prevailing at the time of this decision. The Licensee seeks that no further action be taken.
52. The Authority notes that the Complainant has already achieved a regulatory outcome beyond the Delegate's warning, in that the Licensee was prompted to update its Plan of Management through his solicitors. This Plan is reasonably specific with respect to the management of the outdoor areas of the Hotel and impact upon patron amenity. It does not require the use of a security guard and considering the Hotel's patron capacity, trading hours and regulatory record the Authority does not consider that one is required at this time.
53. The Authority expects that the Licensee will by now have complied with the Delegate's request that the August 2019 Plan of Management be provided to local Police. This new Plan will be enforceable through the operation of condition "3030" of the licence. The Authority also expects that the Licensee to have complied with all other representations that it has made in submissions to the Delegate and the Authority with respect to remedial building works and the proposed engagement of an expert acoustic report.

54. However, in the present constrained operation of licensed premises during the Covid-19 public health crisis, the Authority is satisfied that the Delegate's decision to issue a *warning* to the Licensee to proactively manage patron conduct is the preferable course to take.
55. As noted by the Delegate, it would be open to the Department to take further regulatory action should fresh conduct giving rise to undue disturbance be established. Police have indicated their awareness of the potential for outdoor patrons to cause noise disturbance and it is open to any person to complain to Departmental compliance officers, or Police, should the Hotel operate in breach of condition 3030. Breach of a licence condition by a licensee is an offence against section 11(2) of the Act, punishable by a maximum penalty of \$11,000, imprisonment for 12 months, or both.
56. The Authority **confirms** the Reviewable Decision under section 36A (4) of the GALA Act.
57. If you have any questions, please contact ilga.secretariat@liquorandgaming.nsw.gov.au

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Philip Crawford', enclosed in a thin black rectangular border.

Philip Crawford
Chairperson
For and on behalf of the Independent Liquor and Gaming Authority

Schedule 1 – Material considered by the Authority The Eveleigh Hotel

1. Disturbance Complaint form FM2002 (“Complaint”), received by the Secretary of the New South Wales Department of Customer Service (“the Department”) on 13 May 2019 in respect of the Eveleigh Hotel (“Hotel”) and accompanied by four “Attachment A” Complaint Authorisation forms, signed by four separate local residents dated from 28 April to 10 May 2019 and Complaint submission.
2. Letter from City of Sydney Council (“Council”) to Liquor and Gaming New South Wales (“L&GNSW”) dated 4 June 2019 summarising 11 disturbance complaints made in relation to the venue from 6 December 2018 to 10 May 2019, 3 of which required further action.
3. Letter from Redfern Local Area Command of NSW Police (“Police”) dated 23 May 2019, noting an incident on 9 February 2018 and describing footpath usage as an “on-going documented issue”.
4. Letter from the licensee of the premises, Mr Mathew Sweeney (“Licensee”), dated 1 July 2019, providing a short comment on the lengthy licensed history of the premises, the Hotel’s response to resident disturbance complaints and its work with Council on noise emissions.
5. Letter from the complainant (“Complainant”) and four authorising residents to L&GNSW dated 14 July 2019 attaching a summary of issues that have been referred to Council for action and replying to the Licensee letter of 1 July 2019.
6. Submission dated 12 August 2019 entitled “Report into the Issue of Noise Transmission” prepared by a resident of premises adjoining the Hotel with detailed allegations describing certain noise impacts emanating within the Hotel, accompanied by a short statutory declaration of 12 August 2019.
7. Submission from LAS Lawyers on behalf of the Licensee dated 27 August 2019. In this eight-page submission the Licensee addresses the order of occupancy, patronage, regulatory history March 2017, managing the external area, Council’s Fire Compliance Order of 14 August 2019, future proposed works on noise transmission, the LA10 control, the exhaust fan, its development consent D/2017/388 for an internal courtyard and proposed expert noise testing.
8. Hotel Plan of Management dated August 2019 provided by the Licensee in response to the Complaint.
9. Council determination D/2015/153/B dated 8 March 2019 approving, in part, a modification to the development application and permitting use of the public footway from 27 April 2015 to 27 April 2020, between 10:00 am and 8:00 pm Monday to Sunday, subject to a trial additional use until 10:00 pm Monday to Saturday and 9:00 pm on Sunday for 2 years from 8 March 2019. Conditions include the LA10 noise control, maximum patronage of 100 inside and outside the Hotel, with 9 on footpath.
10. Council determination FA/2019/12 dated 8 March 2019 providing a footway dining approval under sections 125-127 of the *Roads Act 1993* for an area of 9.3 square metres with a maximum of 9 patrons for 12 months that is extendable.
11. Late email submission to Delegate from Complainant dated 8 October 2019 alleging further disturbance events on the evening of Friday 4 October 2019 accompanied by the following media:
 - One photograph depicting a larger crowd of over 20 people on the footpath/road outside the Hotel (this image is not date or time stamped).
 - One photograph depicting approximately 17 people on the footpath/road outside the Hotel (this image is not date or time stamped).
 - One photograph depicting 6 people outside the Hotel on the footpath (date stamped 4 October 2019 at 9:30:52 pm).
 - One photograph depicting approximately 17 people outside the Hotel on the footpath/road (date stamped 4 October 2019 at 10:05:37 pm).

- One photograph depicting approximately 13 people outside the Hotel on the footpath/road (date stamped 4 October 2019 at 10:06:03 pm).
 - One photograph depicting approximately 12 people outside the Hotel on the footpath/road (date stamped 4 October 2019 at 10:06:08 pm).
 - Two video footage files – one 19 seconds in duration and the other 33 seconds, showing the Hotel and patrons in the evening.
12. Late email submission to Delegate from Complainant dated 19 January 2020 alleging further disturbance from noise travelling inside the club and patrons on the footpath, attaching the following media:
- One photograph depicting three people standing on the footpath (date stamped 17 December 2019 at 8:30:37 pm).
 - Three photographs depicting people seated at the table and chairs on the footpath in front of the Hotel and some people standing on the footpath (date stamped 10 January 2020 at 8:16:27 pm, 18 January 2020 at 5:33:04 pm and 18 January 2020 at 7:00:50 pm).
 - Video footage for 23 seconds showing the operation of the hotel in the evening from a nearby resident's bedroom and balcony.
13. Nine-page decision letter of Mr Nathan Grogan, Acting Director Investigations, Interventions & Review, Delegate of the Secretary of the Department ("Reviewable Decision") dated 12 February 2020.
14. Review Application Emails from the Complainant to Authority dated 9 and 13 March 2020 accompanied by Application for Review form, ten-page submission, photographs and diagrams.
15. Ten-page response to the Review Application from the Licensee, made through Ms Ellie Yoo of LAS Lawyers & Consultants dated 31 March 2020 ("Licensee Review Submission").
16. Three-page submission letter from the Complainant dated 16 March 2020 replying to the Licensee Review Submission and attaching a letter from Council dated 8 November 2019 regarding noise transmission from within the Hotel.

Schedule 2 – Extracts from the *Liquor Act 2007* (NSW) The Eveleigh Hotel

3 Objects of Act

- (1) The objects of this Act are as follows—
 - (a) to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community,
 - (b) to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality,
 - (c) to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.
- (2) In order to secure the objects of this Act, each person who exercises functions under this Act (including a licensee) is required to have due regard to the following—
 - (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 contributes to, and does not detract from, the amenity of community life.

79 Making of complaint

- (1) A person may complain to the Secretary that the quiet and good order of the neighbourhood of licensed premises are being unduly disturbed because of—
 - (a) the manner in which the business of the licensed premises is conducted, or
 - (b) 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) Such a complaint must be in writing and be made or verified by statutory declaration.
- (3) A complaint under this section may only be made by any of the following persons (referred to in this Division as ***the complainant***)—
 - (a) a person authorised in writing by 3 or more persons residing in the neighbourhood of the licensed premises or a person who is such a resident and is authorised in writing by 2 or more other such residents,
 - (b) the Commissioner of Police,
 - (c) a person authorised by the local consent authority in relation to the licensed premises,
 - (d) 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.
- (4) A complaint may relate to more than one licensed premises.
- (5) In the application of this Division to an on-premises licence that relates to a catering service—
 - (a) a reference to licensed premises does not include private domestic premises, and
 - (b) a reference to the business of the licensed premises is a reference to the business of providing catering services on licensed premises (other than private domestic premises) under the licence.

80 Dealing with complaints

- (1) The Secretary may, after receiving a complaint under section 79, decide—
 - (a) to deal with the complaint in accordance with this Division, or
 - (b) to take no further action under this Division in relation to the complaint.
- (2) If the Secretary decides to deal with the complaint, the Secretary may—
 - (a) convene a conference to hear submissions in relation to the complaint, or
 - (b) invite written submissions from the licensee for the licensed premises to which the complaint relates, and from such other persons as the Secretary considers appropriate, and make a decision in relation to the complaint without convening a conference.
- (3) A conference, if convened, may deal with more than one complaint.
- (4) A complaint in relation to licensed premises that is being dealt with by the Secretary under this section may be extended to include other licensed premises if the Secretary is satisfied—
 - (a) that the evidence given in support of the complaint would support a complaint against the other licensed premises, or
 - (b) that, assuming that the complaint is shown to be justified, action taken in relation to the licensed premises the subject of the complaint will be ineffective unless similar action is taken in relation to the other licensed premises.

- (5) Any licensed premises in respect of which a complaint is extended as referred to in subsection (4) is, for the purposes of this Division, taken to be the subject of a complaint under this Division.
- (6) If, in relation to any such extended complaint, a conference is not convened, the Secretary must invite written submissions from the licensee for the licensed premises that are the subject of the extended complaint before making a decision in relation to the complaint.
- (7) If a conference is convened in relation to a complaint—
 - (a) notice of the time and place of the conference is to be given to all complainants and the licensee or licensees as specified by the Secretary, and
 - (b) the Secretary is not to make a decision in relation to the complaint unless each complainant and licensee who is present at the conference is given a reasonable opportunity to be heard.
- (8) A conference under this section is to be presided over by the Secretary and the procedure at the conference is to be determined by the Secretary.
- (9) Nothing in this section prevents the Secretary from taking other action in relation to a complaint under this Division or in relation to licensed premises that are the subject of a complaint under this Division.

81 Decision by Secretary in relation to complaint

- (1) The Secretary may, after dealing with a complaint in accordance with section 80, decide to do any one or more of the following—
 - (a) impose a condition on the licence for the licensed premises the subject of the complaint,
 - (b) vary or revoke a condition to which the licence is subject,
 - (c) if a conference has been convened in relation to the complaint—adjourn the conference subject to implementation and continuation of undertakings given by the licensee,
 - (d) issue a warning to the licensee,
 - (e) take no further action in relation to the complaint.
- (2) The conditions that may be imposed on a licence include, but are not limited to, conditions relating to any one or more of the following—
 - (a) noise abatement,
 - (b) prohibition of the sale or supply of liquor before 10 am and after 11 pm,
 - (c) prohibition of, or restriction on, activities (such as promotions or discounting) that could encourage misuse or abuse of liquor (such as binge drinking or excessive consumption),
 - (d) restricting the trading hours of, and public access to, the licensed premises,
 - (e) requiring the licensee to participate in, and to comply with, a liquor accord.
- (3) The Secretary is to take the following matters into consideration before making a decision under this section—
 - (a) the order of occupancy between the licensed premises and the complainant,
 - (b) any changes in the licensed premises and the premises occupied by the complainant, including structural changes to the premises,
 - (c) any changes in the activities conducted on the licensed premises over a period of time.
- (4) For the purposes of subsection (3), **complainant** does not include a complainant who is the Commissioner of Police or a person authorised by the local consent authority.

Extract from Gaming and *Liquor Administration Act 2007 (NSW)*

36A Review by Authority of certain decisions

- (1) In this section—

reviewable decision means—

 - (a) any of the following decisions of the Secretary under the [Liquor Act 2007](#)—
 - (i) a decision under section 54 to impose a condition on a licence or to vary or revoke any such condition,
 - (ii) a decision under section 54A to give a direction relating to the operation of a “sale on other premises” authorisation,
 - (iii) a decision under section 75 to give a direction relating to licensed premises,
 - (iv) a decision under section 81 in relation to a disturbance complaint,
 - (v) a decision under section 87 to make a late hour entry declaration,
 - (vi) a decision under section 90 to vary or revoke a late hour entry declaration,
 - (vii) a decision under section 101 to restrict or prohibit the sale or supply of undesirable liquor products,

- (viiia) a decision under section 102A to restrict or prohibit activities that encourage misuse or abuse of liquor,
 - (viii) a decision under section 102 to restrict or prohibit the undesirable promotion of liquor,
 - (viiiia) a decision of the Secretary under section 116B(4) to designate licensed premises as a high risk venue,
 - (ix) a decision under section 136 to give a direction to contribute to the costs of promoting or giving effect to a local liquor accord,
 - (ixa) a decision under section 136E to impose a condition on a licence requiring a licensee to participate in a precinct or community event liquor accord,
 - (x) a decision under section 136F to give a direction to contribute to the costs associated with the operation of a precinct liquor accord, or
 - (b) a decision of the Secretary to give a direction under section 44A (Location of gaming machines in venues) of the [Gaming Machines Act 2001](#), or
 - (c) a decision of the Secretary to give a direction to a registered club under the Registered Clubs Accountability Code within the meaning of the [Registered Clubs Act 1976](#), or
 - (d) a decision of a designated Public Service employee, or other Public Service employee, acting under a delegation given by the Authority in respect of an application made under a provision of the gaming and liquor legislation prescribed by the regulations for the purposes of this section (**delegated decision**).
- (2) Subject to subsection (2A), any person who is aggrieved by a reviewable decision may, in accordance with the regulations and on payment of such fee as may be prescribed by the regulations, apply in writing to the Authority for a review of the decision.
- (2A) An application for a review of a delegated decision may only be made by—
- (a) an applicant for, or the holder of, a gaming or liquor licence, or
 - (b) a person—
 - (i) who was required to be notified of the application the subject of the delegated decision, and
 - (ii) who made a submission to the Authority or the Secretary in respect of that application.
- (3) An application for such a review does not operate to stay the reviewable decision unless the Authority otherwise directs.
- (4) In determining an application for review under this section, the Authority may—
- (a) confirm the decision the subject of the application, or
 - (b) vary the decision, or
 - (c) revoke the decision.
- (5) However, in the case of a review of a decision of the Secretary under section 136F of the [Liquor Act 2007](#), the Authority may vary or revoke the Secretary's decision only if the Authority is satisfied that the amount of the contribution directed to be paid was not determined in accordance with the terms of the relevant precinct liquor accord (within the meaning of that Act).
- (6) The Secretary is to give effect to any decision of the Authority under this section to vary or revoke the decision the subject of the application for review.
- (7) The Authority may not make any decision in relation to an application for review under this section unless a member of the Authority who is or has been a Judge, or has been an Australian lawyer for at least 7 years, is present at the meeting of the Authority or the committee of the Authority at which the decision of the Authority is made.