



DOC19/177036

FILE NO: A19/0015267
COMPLAINANT: [REDACTED]
LICENSED PREMISES: The Eveleigh Hotel - LIQH440018985
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, Nathan Grogan, Acting Director Investigations, Interventions & Review, a delegate of the Secretary, Department of Customer Service, in relation to the complaint made in respect to The Eveleigh Hotel – LIQH440018985 (the hotel) have decided to **issue a warning** to the licensee in the following terms:

'Under Section 81(1)(d) of the Liquor Act 2007 I, Nathan Grogan, Acting Director Investigations, Interventions & Review, a delegate of the Secretary, Department of Customer Service, warn Mr Mathew Sweeney, licensee of The Eveleigh Hotel, that he must ensure no future undue disturbance is caused by overuse of the hotel's footpath area.'

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).

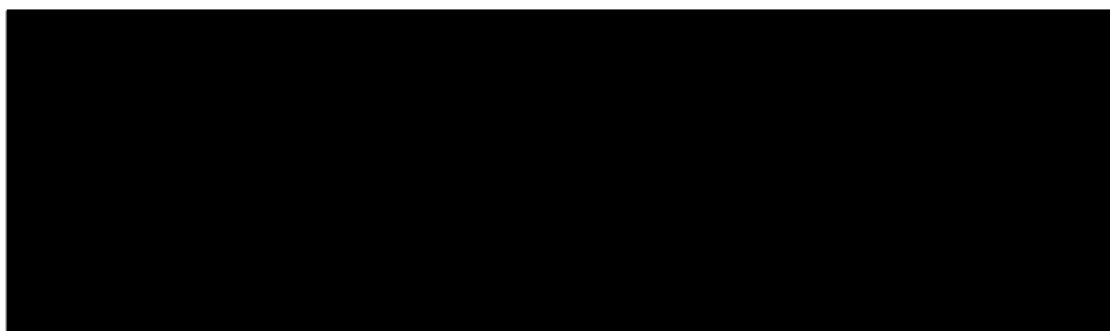
2. For the purpose of section 79 of the Act, a person who has standing to make a complaint includes a person who is a resident in the neighbourhood of the licensed premises and is authorised in writing by two or more other residents.
3. Section 80 of the Act enables the Secretary to deal with a complaint 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 13 May 2019, L&GNSW received a complaint in relation to the hotel alleging undue disturbance from overuse of the hotel's footpath area, noise from operations within the hotel, and patrons smoking or loitering outside nearby residences. The complainant lodged the complaint as a resident authorised by four other residents.
6. The complainant would like the footpath seating area removed and patrons prevented from congregating outside the hotel. He also seeks the prevention of internal noise from the hotel being audible outside at all times, that patrons be effectively deterred from smoking or loitering outside residential properties and the provision of ashtrays outside the hotel in accordance with its latest management plan.
7. Between 4 June 2019 and 27 August 2019, various submissions were lodged by all parties, including the complainant, NSW Police, City of Sydney Council (Council), the licensee and LAS Lawyers on behalf of the licensee. A list of the material before the delegate is set out in **Annexure 1**.

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

8. The Act requires that the Secretary have regard to the following statutory considerations.
9. *The order of occupancy between the licensed premises and the complainant* – the premises was previously known as the Berkeley Hotel, which operated a general bar licence from 14 May 2010 until it ceased trade on 4 October 2010. Mr Sweeney, the licensee of the hotel, purchased the Berkeley Hotel on 10 April 2012 and changed the name of the premises to The Eveleigh Hotel Pty Limited on 22 August 2014 after recommencing trade. Mr Sweeney applied to surrender the general bar licence on 24 February 2017 and the premises was granted a full hotel licence on 22 March 2017. At the time of lodging the complaint, the complainant had resided at his residence for approximately [REDACTED]
10. Police submit that while the hotel probably predates the current parties to the complaint, consideration should be given to the fact it was closed for some time and has only used the footpath area in more recent times. On this issue, LAS Lawyers (acting on behalf of the licensee) acknowledges there was a pause in the hotel's operation between late 2010 and September 2012, however submits the liquor licence was not surrendered during this period, the hotel is listed as a Heritage Contributory Building and the order of occupancy should be in its favour.
11. The hotel's conversion to a full hotel licence, while requiring a new licence number, does not in practical terms affect the order of occupancy in this instance. I also do not view the closure period to be significant given it predates the complainant's occupancy of his residence. As such, I consider the order of occupancy to be 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* – [REDACTED]



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13. *Any changes in the activities conducted on the licensed premises over a period of time* – the hotel was granted approval by Council to use part of the public footway on Abercrombie Street as an outside dining area in 2015 (the footway approval). The footway approval is for an area of 9.3 square metres and a maximum of three tables and nine patrons. The use of the area must be in conjunction with food service and its hours of operation are (as updated in 8 March 2019) from 10:00am to 10:00pm Monday to Saturday and 10:00am to 9:00pm on Sundays.

Other Considerations

Undue disturbance

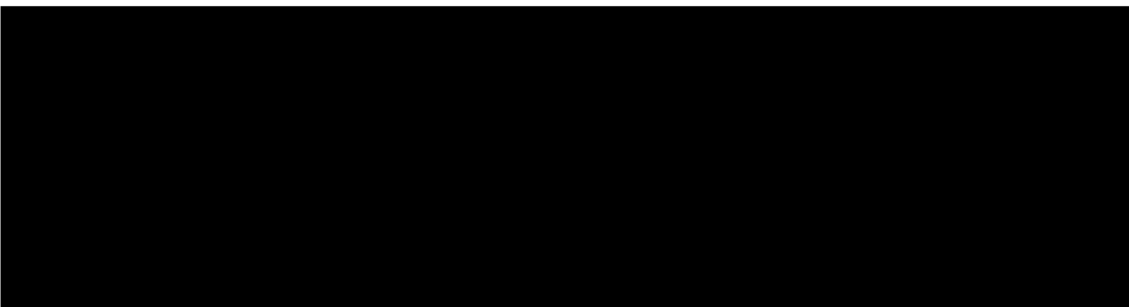
14. I am satisfied the material before me is sufficient to support a finding the hotel has, at times, caused undue disturbance to the neighbourhood. In making this finding, I have balanced the submissions made by the licensee, the complainant, NSW Police and Council.
15. The hotel is located at 158-160 Abercrombie Street, Redfern and is predominately surrounded by residential terrace houses and apartments. It is licensed to trade from 10:00am to 12:00 midnight Monday to Saturday, and 10:00am to 10:00pm on Sundays.
16. The complainant alleges disturbance from three sources:
- (a) Overuse of the hotel's footpath area on Abercrombie Street – the number of patrons congregating outside can sometimes number up to approximately 30 to 40 people, with the layout of the outdoor seating being inadequate which results in disturbance to nearby residents from loud and intoxicated patrons. Further tobacco smoke can be sensed from inside adjacent properties.
 - (b) Noise from hotel operations – windows and doors are left open throughout the day until cease of trade and groups of loud individuals can be heard from adjacent properties.
 - (c) Management of patrons smoking and/or loitering – patrons of the hotel frequently loiter outside neighbouring residential properties.

17. The complainant provides supporting images and video footage of people outside the hotel and neighbouring residences. Several images show large groups of people congregated outside the hotel, in excess of that approved under the footway approval.
18. On 4 June 2019, Council advised that it had received 11 complaints about the hotel over the last 12 months, with three of the complaints requiring further action. On 5 April 2019, rangers attended a nearby resident's home following a complaint that there were excessive numbers of patrons sitting and drinking outside the hotel. Rangers conducted a noise assessment inside the resident's house and deemed noise from the hotel to be offensive. On 21 February 2019, rangers attended the hotel and confirmed the footpath area was being used on an expired permit, and on 6 December 2018 rangers issued a caution to the hotel for operating the footpath area outside of approved hours.
19. On 12 June 2019, NSW Police provided a submission in relation to the complaint. Police submit they are of the view the hotel should be doing more to comply with the conditions of the footway approval. By way of evidence, Police provide photos and observations made of the hotel at 9:56pm on Friday 9 February 2018, submitting that over 20 patrons were using the footpath at the time and there was no indication hotel management were planning to have the footpath clear by 10:00pm. Police submit they believe the complaint has merit, with the operation of the hotel detrimentally affecting the amenity of the neighbourhood. Police further contend that to date the hotel has ignored requests to manage the footpath in a more empathetic manner, noting it as an ongoing issue.
20. On behalf of the licensee, LAS Lawyers provided a final submission on 27 August 2019, which included an updated 2019 Plan of Management for the hotel. LAS Lawyers submit that it is unclear from the photos provided by the complainant whether the persons congregating outside the hotel were patrons, noting there are several other licensed venues and Redfern train station within walking distance, which all create a substantial amount of foot traffic. As such, it would be unreasonable to apportion responsibility of random members of the public to the hotel.
21. In response to the Police submission, LAS Lawyers note that, regarding the inspection on 9 February 2018, hotel staff were preparing to clear away furniture from the footpath area when Police arrived, and the hotel was not formally warned or reprimanded in any way. They also highlight that despite Police conducting a dozen business inspections over the past four years, Police concede "there have been no adverse incidents of a major nature". LAS Lawyers state the hotel is a community-orientated business that positively contributes to the amenity of the local neighbourhood. The hotel takes its

relationship with the local community seriously and accordingly has implemented policy changes regarding patron control and capacity in the outdoor seating area, which is reflected in the updated Plan of Management.

22. While a level of disturbance from the normal operation of the hotel is to be expected, I am satisfied there is sufficient evidence to demonstrate that the hotel has, at times, caused undue disturbance to the neighbourhood as a result of patron noise from the footpath area. In making this finding, I have placed significant weight on the submissions of Council and Police which include an assessment by a council ranger on 5 April 2019 that noise generated by patrons of the hotel was offensive, and observations of Police officers that in excess of 20 patrons were using the footpath area at 9:56pm on 9 February 2018. I also note the partial concessions contained in the submission of LAS Lawyers which describe the hotel as having changed its operating policies to ensure the number and management of patrons using the footpath area is proactively monitored and strictly adhered to (as discussed further below).
23. I am not satisfied there is sufficient evidence to establish undue disturbance arising from the other sources alleged by the complainant, being the general operations of the hotel and patrons smoking or loitering outside residential properties. I have made this decision given the bulk of evidentiary material before me relates to the hotel's misuse of the footpath area, suggesting this is the primary source of disturbance. I note, however, that the licensee has addressed the complainant's concerns in relation to smoking and loitering outside residences in the hotel's updated plan of management.

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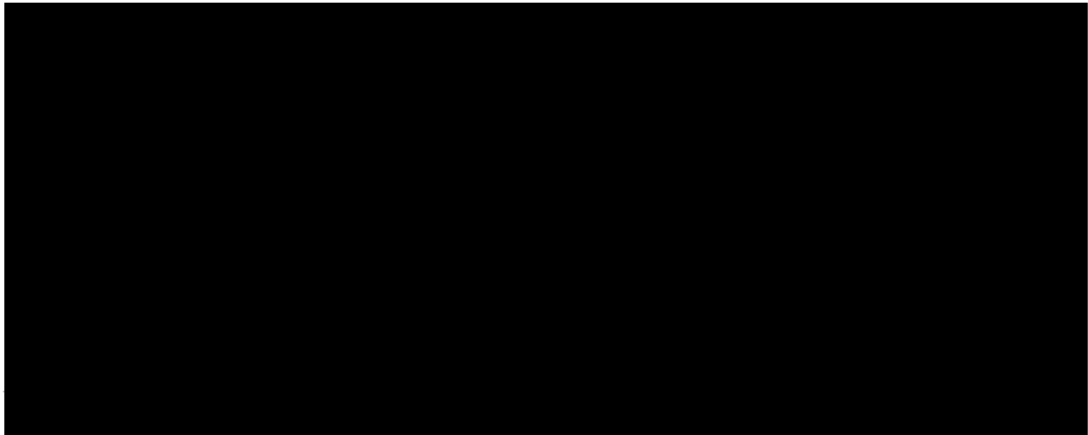
Action taken to mitigate disturbance

25. 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.

26. LAS Lawyers provide a summary of measures that have been implemented, or are to be implemented, by the hotel in response to the specific issues raised in the complaint, including:

(a) Overuse of footpath area – notices are displayed at the hotel's entrance and near the seating area requiring patrons to be seated at one of three tables provided with a maximum of three chairs per table. The outdoor patron capacity of nine is strictly enforced by staff and work has been done to formalise this, and compliance with other aspects of the footway approval, in an updated plan of management.

(b)



(c) Management of patrons – the hotel has changed its operating policy to proactively limit the number of patrons who are able to remain in the outdoor seating area and redirect patrons who are congregating in this area or in front of neighbouring residences to minimise any disturbances. The hotel has also installed a cigarette bin in the footpath area to prevent ash and littering, and strictly enforces compliance with the approved licensed boundaries and provision of food service in the outdoor seating area. These changes in policy have been formalised in the updated plan of management.


27. Since the final submission in this matter, L&GNSW has received further communication from the complainant alleging continued disturbance. The complainant submits disturbance was caused on 4 October 2019 by a group of patrons within and outside the hotel. The complainant also provided images taken on 17 December 2019 of a group of patrons smoking in front of nearby residence, and further images taken on 10 and 18 January 2020 of patrons in the outdoor seating area of the hotel.

Findings and conclusion

28. In making my decision, I have considered the submissions of the 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 following points.
29. I have taken the statutory considerations into account and acknowledge the order of occupancy is in favour of the hotel. It is reasonable to expect some form of noise will be generated by the hotel's ongoing operations. The complainant's request for noise from the hotel to be inaudible outside of the hotel at all times is not reasonable in the circumstances. I note, however, that the hotel's increased use of the footpath area in recent times represents a significant change in business activity requiring strict adherence to the parameters set out in the footway approval to ensure the quiet and good order of the neighbourhood. As noted above when making a finding of undue disturbance, the material before me demonstrates that this has not always occurred.
30. As such, I am satisfied that there is a need to manage disturbance generated from the use of the footpath area. I acknowledge the hotel has updated its plan of management with the intention of ensuring compliance with the footway approval. Further, I note condition 3030 on the hotel's liquor licence states the hotel *'must be operated at all times in accordance with the Plan of Management and House Policy dated 24 March 2017, as may be varied from time to time after consultation with the Local Area Commander of NSW Police'*.
31. I have determined it is appropriate to issue the licensee with a warning in this instance. Any future undue disturbance generated from the footpath area ought to be addressed by way of enforcement of condition 3030. Given the wording of this condition, I request the licensee provide evidence that they have consulted with NSW Police and serve a copy of the hotel's signed, updated plan of management to this office **within 28 days of this decision**. I am of the view that strict compliance with the updated plan of management will maintain the amenity of the neighbourhood and consider it to be overly burdensome to the hotel to completely remove the outdoor seating area, as requested by the complainant.
32. I am satisfied that issuing a warning is a proportionate, measured and appropriate regulatory response to the identified risks of undue disturbance in this case. The licensee should be aware that the hotel will be subject to monitoring and possible

enforcement action to ensure compliance with its updated plan of management, with a particular focus on the relevant disturbance mitigating measures.

33. Noting the largely residential area in which the hotel is situated, I strongly encourage the licensee to proactively manage all potential disturbance issues. In the event there is an escalation of disturbance or fresh and direct evidence demonstrating poor management of disturbance issues, then it is open for the matter to be reconsidered and for further regulatory intervention to occur.



Decision Date: *12 February 2020.*

Nathan Grogan

Acting Director Investigations, Interventions & Review

Delegate of the Secretary of the Department of Customer Service

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 . 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

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

1. Section 79 Noise Disturbance Complaint received on 13 May 2019.
2. Council submission dated 4 June 2019.
3. Police submission dated 23 May 2019.
4. Licensee's submission dated 1 July 2019.
5. Complainant submission in reply dated 14 July 2019.
6. Legal representative of hotel's final submission dated 27 August 2019 (attaching proposed updated plan of management, dated August 2019).
7. Copies of relevant Council footway approvals.