

**FILE NO:** A20/0016491

**COMPLAINANT:** [REDACTED]

**LICENSED PREMISES:** Mr Crown, Wollongong – LIQH400122403

**ISSUES:** Whether the quiet and good order of the neighbourhood of the licensed premises is being unduly disturbed.

**LEGISLATION:** *Liquor Act 2007*

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## SECTION 81 DECISION

Under Section 81 of the *Liquor Act 2007* (the Act) I, John Coady, Manager Regulatory Interventions, a delegate of the Secretary, Department of Enterprise, Investment and Trade, in relation to the complaint made in respect to Mr Crown, Wollongong (the Hotel) have decided to **take no further action**.

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## REASONS FOR DECISION

### Legislative framework

1. Section 79 of the Act provides that a prescribed person may complain to the Secretary, that the quiet and good order of the neighbourhood of the licensed premises is being unduly disturbed because of the manner in which the business of the licensed premises is conducted, or the behaviour of persons after they leave the licensed premises (including, but not limited to, the incidence of anti-social behaviour or alcohol-related violence).
2. For the purpose of section 79 of the Act, a person who has standing to make a complaint includes a person who is a resident in the neighbourhood of the licensed premises and is authorised in writing by two or more other residents.

3. Section 80 of the Act enables the Secretary to deal with a complaint by way of written submissions from the licensee and any other person the Secretary considers appropriate. After dealing with the complaint, section 81 of the Act provides that the Secretary may decide to impose, vary or revoke licence conditions, issue a warning, or take no action.
4. In exercising functions under the Act, the Secretary must have regard to the Objects set out in section 3 of the Act and must have regard to the matters set out in section 3(2) which are:
  - a) the need to minimise harm associated with the misuse and abuse of liquor;
  - b) the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,
  - c) the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life, and;
  - d) the need to support employment and other opportunities in the live music industry and arts, tourism, community and cultural sectors.

## **The complaint and background information**

### *The complaint*

5. On 7 February 2020, [REDACTED] (the complainant) of [REDACTED] [REDACTED] lodged a complaint with Liquor & Gaming NSW (L&GNSW) alleging undue disturbance from the operation of the Hotel. The complainant lodged the complaint as a resident authorised by four other residents.
6. The complainant submits noise disturbance is a result of excessive noise from music and bass and the Hotel failing to relocate music to inside the Hotel after midnight. In the summer months, patrons continue to utilise outdoor areas until 3:00am. Music disturbance primarily relates to disco-style music with a bass drum.
7. The complainant alleges that further disturbance is caused by patrons leaving the Hotel. Patrons exiting the Hotel exhibit loud behaviour, often including the use of inappropriate language. Patrons exiting the Hotel via Town Hall Place, at the rear of the Hotel, use this space to urinate in public. Disturbance is said to occur on Wednesdays, Saturdays and most Sundays.
8. The complainant states contact has been made with the Hotel. In many instances when the complainant has contacted the Hotel, they receive no answer to their telephone calls. When the complainant has spoken with the Hotel, they have indicated they would turn the music down, however the complainant submits this does not occur. The complainant

advised that on one occasion the owner of the Hotel contacted the complainant to apologise, claiming the Hotel was complying with noise requirements. The complainant disputes this claim and believes the Hotel is not complying with current noise conditions.

9. The complainant submits the Hotel's extended trade until 3:00am was not granted in consultation with the local community and is unhappy the Hotel is permitted to operate until this time, given its location in a residential area.

*The Hotel, licence details, compliance history*

10. The Hotel is located at 90 Crown Street, Wollongong. Wollongong Dayspots Pty Limited has been the licensee since 16 May 2011. Mr Resmi Dema has been the Approved Manager since 5 June 2018. The Hotel holds a full hotel licence and is permitted to sell liquor for consumption on premises between 5:00am and 4:00am Monday to Saturday and between 10:00am and 10:00pm on Sundays. The Hotel is permitted to undertake take away sales between 5:00am and midnight Monday to Saturday and between 10:00am and 10:00pm on Sundays.
11. The liquor licence under which the Hotel operates has been in force since 5 May 1953. The Hotel is subject to four licence conditions related to noise attenuation. These include the LA10 noise condition, as well as conditions prohibiting the use of the rear courtyard after midnight (until an acoustic compliance report is provided), requiring doors to the rear courtyard to be closed from midnight whenever amplified music is played, and requiring glass doors to the front courtyard to be closed whenever amplified music is played (with the exception to allow patrons to enter and exit the area). These conditions were imposed in 2013 under the provisions of section 81 of the Act, following a finding of undue disturbance in a previous noise complaint.
12. L&GNSW has received four general noise disturbance complaints in relation to the Hotel between 2019 and 2022, in addition to this complaint under section 79 of the Act.
13. The Hotel has also been subject to additional compliance actions from L&GNSW in recent times. In January 2021, the Hotel received three penalty notices from L&GNSW in relation to three offences detected during an inspection. The offences detected were *licensee permit intoxication* and two counts of *licensee fail to comply with licence conditions* relating to the provision of prohibited drinks and failure to maintain incident register.
14. On 19 November 2021, the Hotel was issued a direction under section 102 of the Act restricting the Hotel from undertaking liquor promotions that discount liquor after 7:00pm, run for longer than two hours, or involve a discount of greater than 50% of the Hotel's standard price.

## Submissions

15. Between 7 February 2020 and 24 May 2022, various material was received from parties to the complaint, NSW Police and Wollongong City Council (Council). As the matter was placed on hold due to trading restrictions resulting from the COVID-19 pandemic, initial submissions were received from relevant stakeholders in 2020 and further submissions were received in 2022. This was to ensure the delegate was provided with the most recent and relevant information, accounting for any changes that may have occurred during the extended period since the initial complaint was lodged.
16. The material before the delegate is set out in Annexure 1 and is summarised below.

### *Licensee response to complaint – 2020*

17. On 4 March 2020, [REDACTED] provided a response to the complaint on behalf of the Hotel. The response notes entertainment is provided at the Hotel on Wednesday, Friday and Saturday evenings. On these nights, closing times are usually between 1:30am and 3:00am depending on the number of patrons present.
18. The Hotel submits work has been undertaken to eliminate any noise disturbance to surrounding residents. This includes new sound systems without sub-woofers and the addition of acoustic sound panelling throughout the Hotel. The Hotel provided a tax invoice dated 5 June 2019 for the installation of acoustic panels to the ceiling and the installation of a glass screen in the outdoor areas. The Hotel also provided photographs demonstrating the location of the panels and speakers in situ at the Hotel.
19. [REDACTED] notes he has provided the complainant with his personal contact details to facilitate communication between the Hotel and the complainants.
20. The Hotel also provided an acoustic report dated 8 October 2019, completed by Rodney Stevens Acoustic Pty Ltd (the Acoustic Report). The Acoustic Report relates to noise monitoring conducted at the Hotel and at a residential apartment on Market Street, Wollongong from 10:30pm on Saturday 14 September 2019 to 1:30am on 15 September 2019.
21. The acoustic engineer noted some patron/pedestrian noise was audible on the balcony on the apartment and from within the residential premises, however it was not possible to conclude the exact source of this noise. The acoustic engineer identified several venues in the immediate vicinity of the Hotel and noted they would contribute to the noise levels in the apartment. Noise from the Hotel's public address system was not audible from either inside or outside the apartment.

22. The acoustic engineer concluded noise specifically from the Hotel was not audible within the test premises and the Hotel was operating in an acoustically compliant manner with no further noise control measures required.

*Submission from Council – 2020*

23. On 6 April 2020, Council advised it had not received any complaints in relation to the Hotel and would not be making any submission given the COVID-19 restrictions.

*Submission from Police – 2020*

24. On 8 April 2020, a submission was received from Wollongong Police District. Police advise the Hotel's busiest trading nights are Wednesday and Saturday nights, with trade extending until 3.00am on busier nights. Police note they had conducted numerous inspections at the Hotel between 2018 and 2020 and identified breaches for failure to comply with licence conditions, which were resolved through education, warnings, and infringement notices. Police also identified 19 instances in this period where they attended in relation to patrons failing to leave the Hotel.
25. Police describe the area in which the Hotel operates, a part of Wollongong CBD, as containing a high number of licensed premises, including 12 venues operating under extended trade authorisations. The Hotel is one of the busiest and attracts a large patronage. Police advise it considers the Hotel a high-risk venue by reason of its late trading hours, patron capacity and location. Police submit the Hotel attracts a considerable amount of alcohol-related crime and violence, with Police typically responding to alcohol-related assaults, street crime, noise complaints and intoxication.

*Complainant second submission in response to Hotel submission - 2020*

26. On 4 May 2020, a second submission was received from the complainant. The complainant submits, prior to COVID-19 pandemic related closures, the Hotel did not always comply with its noise restrictions. Residents experienced some nights where noise was reduced, though they expect this was a result of poor weather or low patronage, rather than compliance.
27. The complainant submits noise is audible from many residents' balconies, including noise such as a bass drumbeat, audience cheering and other patron noise. Further, they submit the Hotel's operations do not move inside after midnight per its licence conditions. The complainant suggested any testing be conducted without the involvement of the Hotel and involving L&GNSW Inspectors.

*Hotel second submission and offer to conduct acoustic testing*

28. On 19 May 2020, a submission was received from the Hotel in response to the Complainant's second submission. The Hotel proposed to engage an acoustic consultant to perform testing at the complainant's residence once the Hotel was operating in the same manner as prior to COVID-19 restrictions.

*COVID-19 related closures and restrictions*

29. On 20 May 2020, the complainant was advised the matter would be placed on hold until the Hotel recommenced normal trade. The complainant was also advised the Hotel had offered to undertake acoustic testing and that the complainant's consent would be required. On 21 May 2020, the complainant agreed to participate in acoustic testing and for the complaint to be placed on hold.
30. On 21 March 2021, the complainant provided an update as requested by L&GNSW and advised noise at that time was not an issue, but this was likely the result of COVID-19 restrictions. The complainant advised they would like the complaint to remain on hold and expressed concern that disturbance would begin again once full operations were restored.

*L&GNSW inspections and planned acoustic testing*

31. On Sunday 18 April 2021 at 1:30am, L&GNSW Inspectors attended the Hotel to conduct an inspection. Inspectors observed a small group lined up to enter the Hotel. Out the front of the Hotel, Inspectors also observed the Hotel's Duty Manager, [REDACTED] assisting a female patron who was showing signs of intoxication. Inspectors entered the premises at about 1:30am and proceeded to the rear courtyard to make observations. Inspectors observed no patrons present in the rear courtyard and doors to the rear courtyard were closed, in compliance with condition 10620 of the Hotel's liquor licence.
32. Following negotiations between the complainant and the Hotel, acoustic testing was scheduled for 8 May 2021. However, due to poor weather on this day, testing was cancelled.
33. On Sunday 16 May 2021 at around 2:30am, L&GNSW Inspectors attended the Hotel. They observed the doors to the rear courtyard were closed as required and music at the Hotel ceased shortly after 2:30am.
34. Further acoustic testing was scheduled for the Hotel on 19 June 2021, however, was cancelled due to poor weather conditions. The Hotel and complainant were in contact to reschedule the testing, however, no testing was conducted.

35. On 16 December 2021, the complainant provided an update, stating with the subsequent lockdowns due to COVID-19, the Hotel was closed and there were no issues. However, the complainant expressed concern disturbance would return.

#### *2022 submissions*

36. On 23 February 2022, L&GNSW sought a further update from the complainant and asked if they wished to proceed with the complaint. On 1 March 2022, the complainant advised music noise for the Hotel appeared to be under control, however, noise from patrons outside the Hotel was excessive. The complainant submits that on the previous Saturday night, excessive noise was a result of crowds outside the Hotel, which continued until 3:00am.
37. The complainant advised they had been in contact with the Hotel the following day, with the Hotel stating crowd numbers were large and likely a result of patrons being permitted to visit venues again after COVID-19 restrictions.
38. Following the above information from the complainant, further submissions were sought from the complainant, Police and Council in order to obtain current information regarding the Hotel's operations and current noise disturbance issues. Following the receipt of these submissions the Hotel was provided an opportunity to respond and provide an update regarding its current operations.

#### *Submission from Council – 2022*

39. On 11 March 2022, Council advised it had no record of any complaints concerning excessive noise at the Hotel from February 2020 onwards. Council advised the Hotel was subject to several historical development applications that did not place restrictions on the operations of the Hotel.
40. Council advised a new development application was currently being assessed for the Hotel. The development application sought to extend the Hotel into two adjoining tenancies, change the use of the tenancies and relocate the gaming room. The development application DA-2022/79 was subsequently approved by Council on 26 September 2022.

#### *Complainant final submission – 2022*

41. On 31 March 2022, a final submission was received from the complainant. They outline residents' concerns around the complaint process being heavily in favour of the Hotel. The complainant submits noise testing conducted and paid for by the Hotel is unlikely to

show non-compliance, given the Hotel would take steps to comply on that night, with noise limits likely to be exceeded once testing is completed.

42. The complainant also raises concerns that testing has not been undertaken by L&GNSW Inspectors. They submit residents have attended the Hotel after midnight and found the volume of noise to be excessive. They believe the Hotel is not compliant with its post-midnight conditions.
43. The complainant acknowledges the attempts undertaken by the Hotel to reduce noise from music inside the Hotel and notes the Hotel has been very transparent in its interactions with the complainant. They acknowledge the Hotel representatives have shown real concern for the issues raised by the complainants.
44. The complainant further acknowledges the popularity of the Hotel, particularly with younger community members. They submit many of the nearby residents are older community members as well as medical professionals who are not getting enough sleep due to the Hotel's operations.
45. The complainant submits the residents they represent feel let down that a licence to trade until 3:00am was granted to a venue operating in the middle of a residential area.

#### *Submission from Police – 2022*

46. On 19 April 2022, a second submission was received from Wollongong Police District. Police submit the Hotel's current busiest trading nights are Friday and Saturday. On these nights the Hotel trades until 3:00am and can reach a capacity of 800-900 patrons on Saturday nights. The Hotel's demographic is largely patrons between 18-35 years, with the younger ages in this range frequenting the Hotel mostly on Friday and Saturday nights.
47. Police raise concerns that, despite extensive closures between 2020 and 2021 and restricted trade for further time during this period, 153 alcohol-related crime incidents were recorded by Police in connection with the Hotel between 2019 and March 2022. Heavy migration between the Hotel and transport options occurs between 10:00pm and 2:00am and Saturday nights can see as many as 100 patrons queuing to enter the premises.
48. During the period of December 2021 and February 2022, Police conducted 52 business inspections at the Hotel. During these inspections, two breaches by the licensee were identified, one offence by a minor and seven instances of a banned person failing to leave the vicinity. Police, however, were mostly concerned that there were 59 reported alcohol-related incidents during this period, including 14 assaults and five serious affray incidents.



49. Police submit they have engaged heavily with the Hotel to implement strategies to prevent crime at the Hotel. On 30 August 2021, the Hotel signed a local licensing agreement in which they voluntarily agreed to the following requirements (effective from 10 August 2021):
- a) Crime scene preservation.
  - b) Sale of certain drinks prohibited after midnight (shots greater than 30ml, drinks containing more than 50% spirit or liqueur, ready-to-drink beverages with alcohol content greater than 5%, any drink prepared on premises that contains more than 3ml of spirits or liqueur.
  - c) Sale of more than 4 drinks or the contents of one bottle of wine to one person prohibited after midnight.
50. On 29 March 2022, the Hotel signed an additional local licensing agreement, in which the licensee voluntarily agreed to the following requirements (effective from 21 March 2022):
- a) Patron numbers to be recorded in a system or database that can be reviewed by Police at any time.
  - b) Security and RSA Marshals to wear high visibility vests.
  - c) Plan of Management and House Policy to be updated and provided to Police by end of March 2022.
  - d) On Saturday nights, at least one security guard to be provided to roam queue and manage patrons waiting to enter or exit the Hotel. After close security are to roam and remain outside to manage patrons leaving the Hotel.
51. Following discussions with Police, the Hotel also determined to introduce ID scanners at the Hotel in April 2022. The introduction of ID scanners was undertaken voluntarily by the Hotel and is not subject to a local licensing agreement. L&GNSW Inspectors visited the Hotel in May 2022 and were advised the ID scanners were in operation.
52. In conclusion, Police recommend the implementation of formalised liquor licence conditions requiring roaming security to reduce the volume of patrons congregating in the Hotel's vicinity. Police submit the introduction of such a condition and subsequent reduction of patrons in the area would also assist in reducing the number of alcohol-related violent incidents in and around the Hotel, as well as assisting to significantly reduce noise emanating from the area.

53. On 24 May 2022, Hatzis Cusack Lawyers provided a final submission in response to the complaint on behalf of the Hotel. The submission argues the essence of the complaint appears to be that it is inappropriate to have a late trading hotel within what is alleged to be a residential area.
54. The submission contains a copy of the zoning certificate for a nearby apartment building, located approximately 75 metres east of the Hotel, on the opposite side of Crown Street. The submission argues the Hotel and this apartment building are located in an area with “B3 – Commercial Core” zoning. As such, a wide range of commercial and recreational activities are permitted within the zone including entertainment facilities.
55. The Hotel further submits the B3 Commercial Core precinct also contains, in addition to the Hotel, two registered clubs, nine hotels, seven on-premises entertainment venues and eight small bars.
56. Further, the zoning certificate contains advice from Council in relation to the use of the area. The statement by Council indicates the area plays a key role in accommodation, cultural, sporting and business uses, and future residents should be aware that such uses are likely to generate noise, odour and traffic and businesses may operate extended trading hours.
57. The development consent issued by Council for the construction of a nearby apartment building was also provided. The consent required the external sliding doors and windows be double glazed to reduce the impact of surrounding noise on residents. It also required an air gap to be included, as Council considers this effective in reducing traffic noise or other low frequency noise, such as music from surrounding nightclubs. The licensee’s submission argues Council has provided residents with an abundance of notice regarding the nature of the precinct in which this residence sits and expecting venues in the precinct to change their nature is unreasonable. It further argues residents should reasonably expect to experience noise from patrons and patron migration, which go hand-in-hand with the operation of venues in the precinct.
58. A current copy of the Hotel’s Safety Management Plan was provided. The Hotel Safety Management Plan, last updated in March 2022, outlines all the policies and procedures undertaken by the Hotel to reduce violence and maintain the safety of patrons. Key objective (b) from the plan is to *“form part of the local environment through minimal disturbance caused by patrons arriving and departing the venue”*. To achieve this, the Hotel security, among other security provisions, will conduct patrols in the vicinity of Crown Street, Kembla Street and Coombe Lane, every 30 minutes. This includes

requirements for security to move patrons from the immediate vicinity of the Hotel after closing, to maintain the quiet and good order of the neighbourhood.

59. The submission advises the Hotel has offered to arrange acoustic testing from the complainant's balcony, or that of any other resident, but this has been declined by the complainant. The Hotel remains willing to arrange acoustic testing.
60. The submission refers to the 153 alcohol-related incidents linked to the Hotel, as raised by Police. The submission argues that over a three-year period this equates to approximately one incident each week and notes the Hotel serves more than 130,000 patrons over a given year.
61. The submission argues the evidence provided would not establish a level of disturbance that meets the threshold of undue or going beyond a level that would be reasonably expected by persons living in this area. The Hotel has had the benefit of trading until 4:00am for the last 20 years and submits persons who choose to live in the CBD area must accept a level of noise.

*L&GNSW Inspection - 12 August 2022*

62. On 13 August 2022, L&GNSW Inspectors attended the Hotel to make observations of the external operations of the Hotel. Inspectors observed various queue sizes throughout the night, with as few as three queuing at around 8:20pm, and as many as 80 at around 11:20pm.
63. Inspectors observed between three and four security guards stationed at the Hotel's entrance throughout the course of their observations and an ID scanner in use. At 10:50pm Inspectors observed an additional security guard walking along Crown Street and moving people away from the Hotel. Two further security guards were also monitoring the queue, advising patrons not to be loud. Inspectors observed patrons being evicted from the Hotel, as well as patrons being denied entry.
64. Inspectors observed music coming from the Hotel from their position on Crown Street. While Inspectors could hear music being played, they observed the music was not loud. Inspectors also observed a six-person bike transportation vehicle (or tuk-tuk) ferrying patrons along Crown Street. Inspectors also observed a two-person bike transportation vehicle in the vicinity and noted both vehicles were playing very loud music.
65. Inspectors observed groups of people on either side of Crown Street who were shouting, with a large group on the corner of Crown and Kembla Streets heard screaming and shouting, cheering on a male who was inside the pond/fountain in this area.

66. Overall, Inspectors observed security were effectively managing the noise being generated by hotel patrons queuing. They observed persons unrelated to the Hotel who were responsible for loud shouting and screaming. Inspectors noted they believed staff were aware of their presence in making observations at the Hotel, despite their efforts to conduct covert observations.

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

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

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

68. The licensed premises has operated under the current liquor licence since 5 May 1953. Wollongong Dayspots Pty Limited has been the licensee since 16 May 2011. The complaint submits that they had lived at their residence for two years at the time of the complaint in February 2020. I consider the order of occupancy to be in favour of the Hotel and note this is not in dispute.

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

69. As outlined above, the Hotel submits it has undertaken works to reduce noise emissions. This has included the installation of acoustic sound panelling and the installation of sound systems without sub-woofers.

70. Council submitted that a development application was recently lodged to extend the operational space of the Hotel and make additional internal relocations. While this development application has been approved, it is not known if the Hotel has made these changes or what effect these changes will have in relation to noise emissions.

71. No changes to the premises occupied by the complainant, including structural changes, were raised in the complaint material.

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

72. The complainant submits the Hotel's operation until 3:00am was approved without consultation with residents. However, the Hotel's liquor licence indicates it has been permitted to operate until 4:00am, Monday to Saturday from at least 1 July 2008, when the Act came into force. On this point, the Hotel's solicitors state the Hotel has had the benefit of 4:00am trading for at least 20 years. The Hotel has consistently operated as a late-night trading venue. No evidence has been presented to indicate any changes to this operating model, outside of COVID- 19 affected trading. Information provided by the Hotel

indicates the Hotel updated its marketing and target demographic when it re-opened in 2015, though its status as a late-night trading venue has remained consistent.

73. The approval for the Hotel to operate under extended hours pre-dates the complainant's occupation of their residence, and as such any concerns regarding consultation are not relevant to this matter.

## **Findings and Decision**

### *Undue disturbance*

74. In deciding whether the Hotel has unduly disturbed the quiet and good order of neighbourhood, I have balanced the submissions made by the complainant, the Hotel, NSW Police and Wollongong City Council.
75. A level of disturbance from the normal operation of the Hotel is to be expected, including noise from live entertainment, patrons and pedestrian traffic generated by the Hotel and by other venues nearby. Noteworthy in this matter is the fact the order of occupancy is strongly in favour of the Hotel, along with its general setting in a busy commercial area amongst several other late-trading venues – as noted by Police and solicitors for the Hotel. In these circumstances, it is reasonable to set a higher threshold for what should be considered 'undue' disturbance. It also presents difficulties in isolating the source of disturbance to a particular venue. Strong objective evidence is required in this regard.
76. In relation to the alleged disturbance arising from music within the Hotel, I do not consider there to be sufficient evidence to make a finding this has unduly disturbed the neighbourhood. I note the lack of objective evidence suggesting this to be the case and have placed weight on the 2019 acoustic report, which concluded the Hotel was operating in an acoustically compliant manner. I have also considered the fact Police and L&GNSW Inspectors have found the Hotel to be compliant with all four noise-related licence conditions across multiple inspections. Overall, I am satisfied the Hotel's internal noise attenuation works and compliance with relevant licence conditions have resulted in minimal disturbance from the Hotel's internal operations.
77. Regarding the alleged disturbance generated from patrons in the vicinity of the Hotel, I also do not consider there to be sufficient evidence to make a finding the Hotel has unduly disturbed the neighbourhood. The 2019 acoustic report sets out that, while patron noise was 'slightly audible' inside the residence from which testing was conducted (albeit a different location to the complainant), the exact location of a noise source could not be determined. The report illustrates, along with comments from Police and the Hotel's

solicitors, that the Hotel is situated amongst several other late trading venues in a busy mixed-commercial and residential district.

78. I acknowledge the submissions of Police which note concerns in relation to alcohol-related violence associated with the Hotel, and a belief that noise disturbance can arise from patrons leaving the Hotel and queuing to enter. I note Police have negotiated several measures with the Hotel including the use of ID scanners, an RSA marshal, high visibility security vests, no shots after midnight and roaming security patrols. In August 2022, L&GNSW Inspectors observed Hotel security managing patrons outside the Hotel effectively. Inspectors also observed several other sources of noise unrelated to the Hotel.
79. I am encouraged by the dialogue between Police and the Hotel in managing the risks associated with late-night trading, including disturbance issues. While I find it likely the Hotel has contributed to disturbance arising from patron noise in the area due to its popularity as a late-trading venue, I do not consider the objective evidence to be strong enough to find the Hotel has unduly disturbed the neighbourhood. I make this finding having placed weight on the 2019 acoustic report, the saturation of other venues in the area, the comments of L&GNSW Inspectors, the measures the Hotel has taken to reduce its impact on the amenity of the neighbourhood, and finally, the level of noise that can be reasonably expected to be generated from the area.

### *Regulatory Outcome*

80. In deciding the appropriate regulatory outcome is in this instance, I have considered the statutory considerations, the material set out in Annexure 1, and the above finding regarding undue disturbance. I have also had regard to the particular context in which the Hotel operates – a commercial zone where various commercial activities are permitted and encouraged by Council as a means of city revitalisation.
81. I have also considered the actions taken by the Hotel to reduce the noise being emitted from within the Hotel. I am encouraged by the work undertaken in installing acoustic panelling inside the Hotel and note the complainant has indicated they have experienced no noise disturbance arising from the internal operations of the Hotel in recent times.
82. I am also encouraged by the collaboration between NSW Police and the Hotel in implementing an array of voluntary measures to reduce risks associated with late trading, including disturbance issues. I see this as evidence of the Hotel's willingness to work with the community to operate in a cohesive manner. On this point I also note the complainant's positive comments in relation to the Hotel's transparency and legitimate attempts to mitigate noise. Police have raised broader concerns in their submission,

particularly around alcohol-related violence at the Hotel. I note it is an option for Police to make submissions under other legislative provisions of the Act should they consider the voluntary undertakings of the Hotel insufficient in curtailing these concerns.

83. Having considered the nature of the Hotel, its location within Wollongong's CBD and proximity to the Complainant's residence, I find it reasonable to expect some level of noise and disturbance at times from its general operation, including from patrons. This is particularly so given the order of occupancy is strongly in the Hotel's favour.

84. As such, I have determined to take no further action in this matter. In doing so, however, I remind the Hotel of its ongoing obligation to comply with its noise-related licence conditions and work with the local community, including Police and residents, to minimise levels of disturbance to the community. The Hotel should be aware that if fresh and direct evidence is presented demonstrating undue disturbance, it is open for Police, Council or local residents to initiate a new complaint under section 79 of the Act, which may lead to regulatory action.

**Decision Date:** 22 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 22 March 2022. A \$500 application fee applies. Further information can be obtained from Authority Guideline 2 published at

In accordance with section 36C of the Gaming and Liquor Administration Act 2007 this decision will be published on the Liquor & Gaming NSW website at [www.liquorandgamingsw.nsw.gov.au](http://www.liquorandgamingsw.nsw.gov.au)

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

1. Section 79 Disturbance Complaint lodged by the complainant on 7 February 2020.
2. Hotel submission received 4 March 2020.
3. Response from Wollongong City Council received on 6 April 2020.
4. Submission from NSW Police received on 8 April 2020.
5. Second submission from the complainant, email in two parts, received 4 May 2020.
6. Hotel second submission and offer to undertake acoustic testing, received 19 May 2020.
7. Email to the Complainant advising matter to be placed on hold due to restricted/cease in trade, sent on 20 May 2020.
8. Email from Complainant on 21 May 2020 consenting to acoustic testing.
9. Email from Complainant on 21 March 2021 advising not withdrawing complaint.
10. L&GNSW Inspector file notes from inspection on 18 April 2021.
11. Email from Hotel on 30 April 2021 advising acoustic testing booked for 8 May 2021.
12. Email from Hotel received on 11 May 2021 advising acoustic testing cancelled.
13. L&GNSW Inspector comments from inspection on 16 May 2021.
14. Email from Hotel advising acoustic testing proposed for 19 June 2021, email received on 2 June 2021.
15. Email from Hotel advising acoustic testing cancelled, email received on 21 June 2021.
16. Email from complainant providing an update, received on 16 December 2021.
17. Notice to restrict activities under section 102 of the Liquor Act 2007, issued on 19 November 2021.
18. Email from Complainant advising noise issues, received on 1 March 2022.
19. Second submission from Wollongong City Council received on 11 March 2022.
20. Final submission from Complainant received on 31 March 2022.
21. Second submission from NSW Police received on 19 April 2022.
22. Final submission from Hotel received on 24 May 2022.
23. L&GNSW Inspector file notes from Inspection on 13 August 2022.
24. Copy of the liquor licence for Mr Crown dated 10 February 2023.