

FILE NO: A23/0025276

COMPLAINANT: [REDACTED]

LICENSED PREMISES: Eltham Hotel, Eltham – LIQH400114575

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, Jane Lin, Executive Director, Regulatory Operations & Enforcement, a delegate of the Secretary, Department of Enterprise, Investment and Trade, in relation to the complaint made in respect of the Eltham Hotel, Eltham - LIQH400114575 have decided to **impose three conditions** on the licence in relation to:

1. **LA10 noise criteria**
2. **Noise limiter**
3. **Enclosed beer garden**

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

REASONS FOR DECISION

Legislative framework

1. Section 79 of the Act provides that a prescribed person may complain to the Secretary, that the quiet and good order of the neighbourhood of the licensed premises is being unduly disturbed because of the manner in which the business of the licensed premises is conducted, or the behaviour of persons after they leave the licensed premises

(including, but not limited to, the incidence of anti-social behaviour or alcohol-related violence).

2. For the purpose of section 79 of the Act, a person who has standing to make a complaint includes a person who is a resident in the neighbourhood of the licensed premises and is authorised in writing by two or more other residents.
3. Section 80 of the Act enables the Secretary to deal with a complaint by way of written submissions from the licensee and any other person the Secretary considers appropriate. After dealing with the complaint, section 81 of the Act provides that the Secretary may decide to impose, vary or revoke licence conditions, issue a warning, or take no action.
4. In exercising functions under the Act, the Secretary must have regard to the Objects set out in section 3 of the Act and is required to have due regard to the matters set out in section 3(2) of the Act which are:
 - (a) *the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),*
 - (b) *the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,*
 - (c) *the need to ensure that the sale, supply and consumption of liquor, and the operation of licensed premises, contributes to, and does not detract from, the amenity of community life,*
 - (d) *the need to support employment and other opportunities in the—*
 - i. *live music industry, and*
 - ii. *arts, tourism, community and cultural sectors.*

The complaint and background information

The complaint

5. On 11 March 2023, [REDACTED] (the Complainant) of [REDACTED] Eltham lodged a section 79 noise disturbance complaint with Liquor & Gaming NSW (L&GNSW) alleging undue disturbance to the quiet and good order of the neighbourhood caused by the Eltham Hotel (the Hotel). The Complainant lodged the complaint as a resident authorised by two other residents, in accordance with section 79(3)(a) of the Act.
6. The complaint alleges that the disturbance consists of extreme noise coming from the Hotel whenever it has live bands, which is said to occur up to four times a week during the summer and spring months, but less frequently during the cooler winter and autumn

months. The Hotel is also said to host “mini music festivals” with headline bands, which are often sold out and attract massive crowds, resulting in “constant thumps and humming” resonating throughout the Complainant’s home and impacting their quality of life.

7. The Complainant states they and other residents have lived in the Eltham area for decades within close proximity to the Hotel, which has always “been a great source of fun and entertainment” for their families and have never had noise issues under the management of previous publicans, even when they had live music or events. It was only after the current publicans took over approximately three years ago that the noise issues commenced, coinciding with the expansion of the beer garden, a significant increase in outdoor seating and live bands being relocated outside. The complaint also indicates that the style of music has changed under the current management to extremely loud amplified music.
8. The Complainant submits that they have had numerous face-to-face meetings with current management, as well as phone calls and text message exchanges where they have aired their frustrations and grievances, however no resolution has ever been met. The Complainant submits the publicans continuously state “thanks for working with us, we’re working on the problem”, however the level of noise emanating from the Hotel appears to be getting worse over time, and the bands are becoming more frequent. The Complainant does acknowledge and appreciate the self-imposed curfew of 9:30pm as issued by the Hotel, however states that between 7:00pm and 9:30pm on weekdays, and on weekends from lunch well into the evening, the noise from music is to the point where they cannot enjoy their homes and has severely impacted their lifestyle.
9. The Complainant advised that they have had to reluctantly involve Lismore City Council (Council) in the matter, as the promises from the Hotel management that they were working on the issue have never led to an outcome. Whilst they acknowledge the Hotel has put up sliding doors in an attempt to minimise the noise, they claim they have had no effect. The Complainant states that during the spring and summer months, they “cannot have a window open, enjoy a BBQ outside, or listen to our own music”, and that even watching a movie or the news is interrupted by the thumping of the music from the Hotel.
10. The Complainant’s desired outcome is the elimination or minimisation of noise from the Hotel to the affected residents of Eltham and for the Hotel not to cause a disturbance by its manner of operation. The complaint stresses that residents do not wish for the Hotel to stop having live music or events but wants these events to no longer negatively impact on their lives or homes.

11. The complainants, at their own expense, employed the services of Ambience Audio Services on two occasions, being Sunday 29 May 2022 and Sunday 12 June 2022, to conduct acoustic measurements in relation to noise from the Hotel. Measurements were taken at the Complainant's residence and assessed against the LA10 noise criteria, a benchmark preferred by L&GNSW to assess disturbance from a licensed premises.
12. Included with the complaint was a Live Music Noise Impact Assessment report prepared by Ambience Audio Services and dated 29 June 2022 (Acoustic Report 1). Acoustic Report 1 outlines the results obtained from testing on Sunday 29 May 2022 and Sunday 12 June 2022.
13. Acoustic Report 1 notes that Hotel ceases live music at 9:30pm and the area surrounding the Hotel is mainly agriculture and rural residential, with low background noise levels. Acoustic Report 1 outlines that noise monitoring was conducted 15 metres from the Complainant's residential dwelling while observations were also conducted at other nearby residential dwellings. Acoustic Report 1 outlines that on both dates of testing, live music levels exceeded the LA10 noise criteria and stated that the "exceedances are quite significant." Further, "live music was observed to be quite intrusive outside several residential dwellings in [REDACTED]."
14. Acoustic Report 1 outlined several noise management options including the installation of a noise limiter, relocating the stage so that it is not in the open, enclosing the beer garden, the installation of soundproofing and selecting music genres that do not require loud amplification. Acoustic Report 1 also recommended the Hotel investigate the excessively noisy kitchen exhaust fan. Noted options for reducing this noise include a new fan, new bearings, acoustic hood or a combination thereof.

The venue, licence details and compliance history

15. The Hotel operates under a full hotel licence and is located at 441 Eltham Road, Eltham. On 14 February 2020, Mr Matterson Rabbidge commenced as the licensee and [REDACTED] commenced as the business owner.
16. The Hotel holds a minors area authorisation and has trading hours for both "Consumption on Premises" and "Take Away Sales" from 5:00am to midnight Monday to Saturday, and 10:00am to 10:00pm on Sundays.
17. The only condition currently listed on the Hotel's licence is in relation to the minors area authorisation, which commenced on 1 July 2008 and applies to the "Restaurant/Dining Room, Covered Beer Garden/Dining Area and Outdoor Beer Garden/Eating Area".

18. L&GNSW records indicate that two other complaints have been received since the current licensee commenced at the Hotel. The first was received on 1 October 2021 and was in relation to the Hotel not complying with public health orders regarding Covid-19. The complaint was dealt with by remedial engagement and no further action was taken. The second was a noise complaint received on 7 October 2022 from the Complainant. The complaint was initially directed to L&GNSW from Council, with a response issued by L&GNSW to Council on 15 November 2022 informing Council that the Hotel had no noise restriction conditions on its licence, and suggesting Council consider actioning the complaint under the development consent or the *Protection of the Environment Operations Act 1999*.

Submissions

19. Between 11 March 2023 and 25 July 2023, various material was received from parties to the complaint, including the Hotel, Council, Police and the Complainant. The material that is before the delegate is set out in **Annexure 2** and is summarised below.

Police submission

20. On 17 April 2023, a submission was received from NSW Police in relation to the disturbance complaint. The submission outlined details of the Hotel and its location, the Hotel's liquor licence and the current licensee.
21. Police submitted that they conducted 17 business inspections between 30 March 2020 and 16 March 2023, whilst the Hotel has been under the management of the current owner. Police have received one noise complaint during this period which was received on 5 March 2023.
22. Out of the 17 business inspections, Police reported that on seven occasions it was recorded that there was some form of entertainment being held at the Hotel. These were summarised as follows:
- 11 May 2022 at 7:20pm – Approximately 80 patrons and live band performing.
 - 26 January 2022 at 8:30pm – Approximately 70 patrons and live band performing.
 - 17 June 2021 at 7:25pm – Approximately 20 patrons and music amplified from speakers.
 - 19 March 2021 at 9:05pm – Approximately 50 patrons and music playing.
 - 7 January 2021 at 8:00pm – Approximately 130 patrons and live band performing.
 - 18 June 2020 at 6:45pm – Approximately 25 patrons and music playing.

- 7 June 2020 at 3:05pm – Approximately 40 patrons and solo artist singing.

Police note they have not recorded anything in relation to excessive noise on any of these occasions.

23. Regarding the noise complaint received by Police, Police submit that at approximately 7:35pm on 5 March 2023, they received a request for assistance at the Hotel in relation to music being too loud. The complainant was spoken to by Police at 9:32pm where it was reported that the music had ceased and as such no action by local Police was required.
24. Within their submission, Police state social media run by the Hotel frequently shows advertisements of bands and posts relating to sold out ticketed shows, supporting the fact that the Hotel does indeed have live entertainment on a frequent basis. Police advise only a small number of community complaints have been received in relation to noise from the Hotel and Police are not in a position to either support or not support the disturbance complaint.

Further material from the Complainant – second acoustic report

25. On 26 April 2023, the Complainant advised that the Hotel was now having live bands two to four nights per week, and that the noise levels were increasing. In addition, they indicated that a resident of the area was selling their home due to the noise, and that residents in a nearby suburb were also being affected by the noise coming from the Hotel.
26. On 27 April 2023, the Complainant provided a second acoustic report, a Live Music Noise Impact Assessment report prepared by Ambiance Audio Services and dated 27 April 2023 (Acoustic Report 2). Acoustic Report 2 details the results of noise monitoring at the Complainant's residence on Wednesday 19 April 2023 and against the LA10 noise criteria. Acoustic Report 2 noted that live music was observed to be the dominant noise and was "quite intrusive outside several residential dwellings in [REDACTED]."
27. Similar to Acoustic Report 1, Acoustic Report 2 identified "quite significant" noise exceedances. Acoustic Report 2 stated that insect noise made it difficult to accurately assess live music levels in the higher octave bands. It also stated that "based on the measured live music noise levels and the background noise levels, the exceedances in all octave bands below 2kHz are quite significant and are similar to results measured at the same premises in May and June 2022." The same recommendations were made as in Acoustic Report 1.

28. The Complainant also indicated that they had organised for additional noise assessments in the future to further demonstrate how the Hotel was affecting their ability to enjoy their homes.

Council submission

29. On 27 April 2023, a submission was received from Council in relation to the disturbance complaint. Council submitted that it had received a formal complaint on 27 September 2022 in relation to the Hotel, in response to which it formed the view that L&GNSW was the appropriate regulatory authority to deal with the complaint. Council noted it made formal representations to L&GNSW on 7 October 2022 and provided a copy of the original complaint and Acoustic Report 1.
30. Council further advised that L&GNSW, following a review, referred the matter back to Council on 15 November 2022 and on 17 November 2022 provided Council with information about lodging a formal noise disturbance complaint under section 79 of the Act.
31. Provided within the submission was information that Council was investigating a customer complaint from a resident of Eltham, and as such was looking into compliance with development consents and whether any unapproved works in relation to the Hotel had been conducted.
32. On 2 May 2023, L&GNSW requested further information from Council. A request was made for a copy of any of the Hotel's development applications and a progress report regarding the customer complaint Council was investigating.
33. On 11 May 2023, Council responded and advised that as the Hotel is 120 years old, Council does not have a development application for the Hotel. Council advised it had only received one development application from the Hotel which related to an outdoor awning that was determined in 1999. This was provided to L&GNSW.
34. Council further advised a site inspection of the Hotel occurred on 10 May 2023 where Council observed "a number of unapproved building works have been undertaken, which would significantly increase the capacity of the Hotel as a music / function venue." Council advised it "has commenced enforcement action on these and will require development and building information certificate applications to be lodged to formally recognise the use of these areas."
35. Council also provided an aerial image of the Hotel to indicate the unapproved works. The image indicated the unapproved works include three outdoor areas each with additional

seating, an increased smoking area and an unapproved roof extension. Council suggested that consideration be given by L&GNSW in the interim to restrict the patron numbers to the floor space associated with the approved areas via conditions on the Hotel's licence while the assessment of any development applications is being undertaken. This process would, Council submitted, address all of the issues of concern being expressed by residents about noise impacts, vehicle numbers and the general amenity of the area.

Further material from Complainant – third acoustic report

36. On 10 June 2023, the Complainant provided a third acoustic report, a Live Music Noise Impact Assessment report conducted by Ambiance Audio Services and dated 9 June 2023 (Acoustic Report 3). The noise monitoring was conducted on the night of Friday 2 June 2023 and at the same location and conditions as the previous live music noise monitoring in May and June 2022 and April 2023.
37. Acoustic Report 3 indicated that the exceedance of the background noise levels was similar to the measurements outlined in Acoustic Report 1 and Acoustic Report 2. Observations were also conducted in some of the living areas of the residential dwelling. Live music was considered intrusive when the television volume was turned down and it was noted that all external windows and doors were closed. With windows open, the live music was noted to be quite intrusive even with the television at a comfortable listening level.
38. Acoustic Report 3 outlined the same recommendations detailed in Acoustic Report 1 and Acoustic Report 2.

Hotel response to complaint

39. On 14 July 2023, Paul O'Sullivan of Shotters Lawyers, acting on behalf of the Hotel, provided a submission in response to the disturbance complaint.
40. The submission states that the Hotel has been operational for 121 years and as such, the order of occupancy is clearly in favour of the Hotel as property data discloses the purchase dates of the three affected residencies attributable to the complaint are from 2002 onwards.
41. The Hotel submitted that it holds one amplified light music event per week and receives noise complaints from the complainants when the Hotel is closed or has ceased operations for the night.

42. The submission states the Hotel cleaners and onsite manager alternate daily clean ups of the immediate hotel area including street frontages and the tennis courts across the road to ensure no rubbish is present, as has been daily practise since 2019.
43. Regarding the submission received from Council, the Hotel stated Council had not been in contact with the licensee to discuss the customer complaint lodged against the Hotel. Regarding the submission from Police, the Hotel noted that Police stated they had only received one noise complaint and upon investigation, music had ceased by 9:32pm and no action was required, leading to their indication that they are not in a position to support or not support the complaint.
44. The submission concludes by stating the licensee of the Hotel remains willing to meet with the complainants to discuss their complaint.
45. Provided with the submission was a Noise Management Plan prepared by Tim Fitzroy & Associates in collaboration with Noise Measurement Services, dated 14 July 2023 (the NMP). The NMP endeavours to address the impacts on residential neighbours described in the complaint and provides noise controls and monitoring techniques. The NMP includes an Entertainment Noise Assessment report prepared by Noise Measurement Services, dated 12 July 2023 (the ENA). The ENA relates to the modelling and assessment of entertainment noise emanating from the outdoor area of the Hotel.

Noise Management Plan

46. The NMP was commissioned in response to the disturbance complaint and its stated objective is to minimise noise generated by entertainment and patrons. The NMP cites the ENA, Acoustic Report 1 and Acoustic Report 2 as being used in its development.
47. The NMP discusses the location and land uses surrounding the Hotel and categorises the Hotel's entertainment programming plan into two tiers:

Tier 1	Twice weekly events – i.e Wednesday evening Folk jam and Sunday afternoon solo artist from 2:30pm-5:30pm. These events include background music, solo and duo artists, and small busker PAs, creating minimal impact and are an important (integral) part of the Hotel's operation.
Tier 2	Single fortnightly events – These are larger scale ticketed events (up to 220 patrons) using the inhouse PA system. The style of music includes folk, country, blues, bluegrass and world, with a duration of up to three hours

	(4:00pm – 7:00pm or 6:30pm – 9:30pm), with all entertainment ceasing by 9:30pm.
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The NMP states all the above entertainment is to occur within the undercover beer garden with the southern sliding doors closed.

48. The NMP states noise emission modelling using SoundPlan v8.0 software was prepared by Noise Measurement Services, which predicts noise impacts onto surrounding sensitive receivers from entertainment at the Hotel.
49. As detailed in the ENA, the modelling results assessed against the L&GNSW noise criteria demonstrate a predicted exceedance of up to 15dB of the relevant noise criteria with a noise level of 95dB(A) within the stage area. The modelling infers that compliance with the relevant noise criteria will be met with a noise level of no more than 80dB(A) within the stage area. The NMP and ENA suggest that 80dB(A) L10 is sufficiently loud to allow for some forms of live entertainment, such as an acoustic duo or trio with light percussion, but it is unlikely to allow for acoustic drum kits or large guitar amplifiers. These predictions assume that the newly installed sliding doors to the south of the stage area are closed and that outdoor live music is the only significant source of noise as received at the receptors.
50. The noise modelling detailed in the ENA concludes by stating that the Hotel can operate within the LA10 noise criteria in relation to the sensitive dwellings to the south providing noise levels within the undercover stage area remain below 80dB(A) L10. It also states that if additional mitigation works are undertaken to improve the walls and roof of the undercover area, the noise levels at the affected residences are predicted to further reduce by a maximum of 7dB.
51. The NMP states the following mitigation measures, broken into separate categories, will be implemented to protect nearby residents:

Entertainment:

- ❖ Entertainment is to be limited to the enclosed beer garden with the newly installed sliding doors to the south of the stage area closed.
- ❖ Entertainment noise within the beer garden (with southern doors closed) is to be limited to remain below 80 dB(A) L10 or 85 dB(C).
- ❖ If additional mitigation works are undertaken to improve the walls and roof of the undercover area, the noise levels at the dwellings to the south are predicted to reduce by a maximum of 7 dB, and any further reductions would require fully enclosing the undercover area.

- ❖ The Hotel is committed to continued sound proofing efforts including upgrades to structure and sound system to minimise noise impacts.

Patron Noise (to minimise noise impacts from patrons):

- ❖ The dining area to the south is to be closed during live entertainment.
 - ❖ There will always be a manager on duty.
 - ❖ The Duty Manager will ensure that patrons do not use the dining area to the south during live entertainment to avoid patron noise impacting on neighbouring residents.
 - ❖ A staff member will be on the door after the final event and on closure of the hotel to thank patrons for their business and politely request they respect the neighbours and are quiet on leaving.
 - ❖ A staff member will undertake a walk around the venue and across to the boundary of the neighbouring residential area after closing to assess and note any potential noise impacts and to advise the duty manager.
 - ❖ Any external crowds or loitering patrons will be swiftly dealt with by door hosts or the management during regular walks around the premises. They will be asked if they need assistance with a journey home and requested politely to respect the neighbours and move on quietly.
52. The mitigation measures also include points from within the Hotel's Responsible Service of Alcohol (RSA) Policy, including, but not limited to, not serving intoxicated patrons, asking unduly intoxicated patrons to leave the premises, not heavily discounting or offering free alcohol and conducting regular staff meetings to ensure staff are kept informed of changes in the industry.
53. The NMP additionally indicated remedial work had been organised regarding the noise contributable to the kitchen exhaust fan, which was indicated within the Complainant's acoustic reports as being excessive. The NMP stated that *Sidney & Hacking* had been commissioned by the Licensee to mitigate noise from the kitchen exhaust as a priority, and works would include:
- ❖ turning down fan speed to reduce noise emission; and
 - ❖ manufacturing then installing a "sound barrier" around the rangehood to minimise noise emissions.

Implementation of NMP

54. On 3 November 2023, the Hotel confirmed that of the above measures set out in the NMP, music programming, frequency and curfews were adhered to immediately and most other components have since been effectively implemented. It noted further upgrades to the

Hotel's sound system and additional sound proofing measures will be implemented when budget allows.

Further material from Complainant

55. On 19 July 2023, further correspondence was received from the Complainant stating that the Hotel had extremely loud bands on the previous Saturday night and Sunday. It is of note that the weekend in question is the first after the production and implementation of the Hotel's NMP.

Further material from Council

56. On 20 July 2023, L&GNSW contacted Council regarding the status of any development applications lodged by the Hotel in relation to the unapproved works identified by Council.
57. On 25 July 2023, Council advised that no applications for the unapproved areas and increase in capacity had been received, but the owner of the Hotel was working with consultants in preparing the application and associated reports for lodgement. Council also advised an enforcement letter had been served on the owner of the Hotel and the matter referred to Council management for further consideration of the Hotel's activities while a development application was being prepared and lodged by the Hotel for assessment. On 24 October 2023, Council advised that the Hotel had not yet lodged a development application but was permitted to operate on the basis that activities are restricted to an acceptable level. Council stated it will continue to monitor the site and undertake enforcement action where appropriate, noting none had been taken to date.

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

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

The order of occupancy between the licensed premises and the complainant

59. The Hotel has operated under its current hotel liquor licence since 7 August 1956. The Complainant has resided at their address for the previous eight years. These facts are not disputed and while the current approved licensee commenced in February 2020, I consider the order of occupancy is in favour of the Hotel.

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

60. Information provided by the Complainant indicates that since the licensee commenced in this role, the Hotel has expanded its outdoor area, creating substantial outdoor seating areas, and has constructed an outdoor stage to host live bands. Information provided by

Council relating to a site inspection appears to corroborate this, with Council detailing unapproved outdoor areas with additional seating.

61. The Complainant provided details that they have renovated the inside of their residence and created an outdoor entertainment area during the time of their occupancy.

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

62. The Complainant submits that the Hotel has substantially changed its activities over the past three years since the licensee commenced in his role, hosting live bands with amplified music in its newly established outdoor areas several times a week. The provision of this entertainment activity is supported by the programming information provided in the Hotel's NMP. Police submit that the Hotel frequently has live music and this is evidenced by their perusal of the Hotel's social media which showed advertisements of bands and sold-out ticketed shows.

Findings and Decision

Undue disturbance

63. In deciding whether the Hotel has unduly disturbed the quiet and good order of the neighbourhood, I have balanced the submissions made by the Complainant, the Hotel, Police and Council. I have also had regard to the context in which the Hotel operates, its location and proximity to residential dwellings.
64. It is reasonable to expect some level of noise will be generated from the normal operation of the Hotel, including noise from patrons and entertainment. I do not regard this type of disturbance as undue in a general sense, considering the nature of the local environment and the proximity of residential properties to the Hotel. However, it is evident that the Hotel's expansion of its outdoor areas, which are open to the surrounding environment and include the provision of live amplified entertainment, coincides with the disturbance experienced by the Complainant. I am satisfied there is sufficient evidence before me to reasonably conclude that the Hotel has unduly disturbed the quiet and good order of the neighbourhood.
65. In making a finding of undue disturbance, I have placed substantial weight on the three acoustic reports prepared by Ambiance Audio Services. Each report found substantial exceedances of the LA10 noise criteria. The three reports were prepared over a one-year time frame, and show no reduction in noise from the Hotel, rather that noise has increased. I have also considered the results of noise modelling outlined in the ENA that indicates there will likely be exceedances of the LA10 noise criteria during some forms of

live entertainment such as those involving acoustic drum kits and large guitar amplifiers. Further, in addition to the recommendations in the acoustic reports, the Hotel's ENA recommends measures be implemented in order to achieve compliance with the LA10 noise criteria, including limiting entertainment noise emissions from within the beer garden to a certain level.

66. I have also considered the submissions by Police and Council. Police have confirmed the Hotel regularly has live music or entertainment and often has sold out events. Council advised the Hotel has constructed a number of unapproved buildings works to the outdoor areas of the Hotel allowing for a significant increase in patron capacity and the accommodation of music performances. I find this is likely to exacerbate the level of noise attributed to the Hotel and as these works have not been approved by Council, further lends weight to the disturbance being considered undue. Based on the above factors, I am satisfied the neighbourhood has been unduly disturbed by the Hotel.

Regulatory Outcome

67. In deciding the appropriate regulatory outcome in this instance, I have considered the statutory considerations, the material set out in Annexure 2, and the above finding of undue disturbance. I have also had regard to the particular context in which the Hotel has operated over the past few years, hosting ticketed music events, and noting the unapproved extensions to the outdoor areas are in close proximity to the residences of the Complainant and authorising residents.
68. While the order of occupancy is in favour of the Hotel, this does not relieve the Hotel of its obligation to ensure it does not unduly disturb the quiet and good order of the neighbourhood. Given the unapproved structural changes and expansion of outdoor entertainment at the Hotel, both of which create a much higher risk of disturbing the quiet and good order of the neighbourhood than previous modes of operation, I am inclined to place greater weight on these statutory considerations.
69. I am encouraged that the Hotel commissioned Tim Fitzroy and Associates to formulate the NMP, and I am pleased with the noise mitigating measures that are said to have been implemented under this plan to date. However, due to the ongoing timeframe of the issues the subject of this complaint and the absence of any fruitful outcomes from prior meetings between the parties, I consider all parties would benefit from action to ensure that the Hotel will implement and abide by all measures that it has agreed to or are recommended within the NMP. Given the finding of undue disturbance and the abovementioned unauthorised structural and operational changes at the Hotel, I find the imposition of licence conditions to be a reasonable measure in the circumstances.

70. In my opinion, an LA10 noise condition is appropriate in the circumstances and will help ensure the Hotel does not continue to unduly disturb the neighbourhood. It will provide measurable guidelines to assist any acoustic consultant engaged by the Hotel, using the same standard as that used in the ENA which was used to develop the Hotel's NMP. This condition sets a limit to which background noise at a residential boundary cannot be exceeded. The acoustic reports provided by the Complainant all showed significant exceedances of this limit. The imposition of an LA10 noise condition will provide consequences for future exceedances, with the potential for enforcement action to be taken if the noise limits continue to be breached.
71. I also consider it necessary to impose a noise limiter condition on the licence of the Hotel. This condition requires the installation of a noise limiter by a qualified acoustic engineer and will provide regulatory certainty that any amplified entertainment conducted within the Hotel complies with the LA10 noise criteria. In forming my opinion as to the appropriateness of this condition, I have placed great weight on the NMP compiled for the Hotel under instruction from the licensee, which indicates that the Hotel can operate within relevant noise limits provided noise levels within the undercover stage area remain below a certain level. I also note that with additional mitigation works to the walls and roof of the undercover performance area, this level could be raised without detriment to any of the complainants.
72. A common theme from the Complainant and the acoustic reports is that the primary source of disturbance is generated by live outdoor amplified entertainment. The NMP states that all outdoor entertainment is to occur within the enclosed beer garden, located directly to the west of the physical Hotel structure, and indicates the Hotel has upgraded this area with newly installed sliding doors to the south, as well as closing in a nearby doorway. The NMP also indicates future remedial works of closing an area where the roof is currently open. While these measures are encouraging, in my opinion a condition ensuring the sliding door is closed, as well as any other associated doors or windows within the beer garden area, at any time amplified or acoustic outdoor entertainment is being provided is appropriate. This condition will assist in minimising noise leakage, reduce the potential for noise disturbance, and provide regulatory certainty that the measures noted in the plan will be implemented.
73. I acknowledge Council's original suggestion to impose a temporary condition prohibiting patrons from areas unapproved by Council, until such approval is given. On the material before me, such a measure would be overly onerous on the Hotel. On this point, I am confident the above conditions will sufficiently alleviate noise disturbance generated by

the Hotel and note Council's update on 24 October 2023, which indicates the Hotel is currently using these areas in an acceptable manner.

74. I note the Hotel's rural setting and resulting low background levels of noise, together with the level of disturbance attributable to its change of business activities in recent years. I further note that, on the material before me, it appears the Hotel has adopted a policy of ceasing amplified entertainment by 9:30pm, a measure captured by its NMP. I agree with this measure in the above context and encourage the Hotel to continue this practice as a means to preserve the amenity of the neighbourhood.
75. The Complainant stressed that the Hotel has provided their family with a source of fun and entertainment over the years, and that the complaint was not an attempt to stop the Hotel from conducting live entertainment or music, rather that they want the noise to be at an acceptable level so as not to negatively impact upon their life and homes. I consider this to be a reasonable request in the context of this disturbance complaint and feel the imposition of the above three conditions will enable this to occur.
76. I am satisfied this decision is a proportionate regulatory response to the identified risks of undue disturbance in the complaint and the strength of the evidence at hand. It protects the Complainant and supporting residents from undue disturbance by managing noise levels emanating from the Hotel without preventing the Hotel from being able to continue to host these types of events.
77. Noting the rural area in which the Hotel is located, I remind its representatives they have an obligation to take all disturbance complaints seriously and proactively manage any potential disturbance caused by the Hotel. In the event there is an escalation of disturbance or fresh and direct evidence demonstrating poor management of disturbance issues, it is open for Police, Council or local residents to commence another complaint under section 79 of the Act, which may lead to further regulatory action.

Decision Date: 10 November 2023



Jane Lin

Executive Director, Regulatory Operations & Enforcement

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 8 December 2023. A \$500 application fee applies. Further information can be obtained from Authority Guideline 2 published at

In accordance with section 36C of the Gaming and Liquor Administration Act 2007 this decision will be published on the Liquor & Gaming NSW website at www.liquorandgaming.nsw.gov.au

Under section 81 of the *Liquor Act 2007* a delegate of the Secretary of the Department of Enterprise, Investment and Trade has imposed the following conditions on the liquor licence of:

Eltham Hotel, Eltham - LIQH400114575

LA10 Noise Criteria

The LA10* noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz – 8kHz inclusive) by more than 5dB between 07:00am and 12:00 midnight at the boundary of any affected residence.

The LA10* noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz – 8kHz inclusive) between 12:00 midnight and 07:00am at the boundary of any affected residence.

*Notwithstanding compliance with the above, the noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 12:00 midnight and 07:00am.

Date condition effective: 10 November 2023

Noise Limiter

At all times when amplified music is conducted, the licensee must ensure all amplifiers or noise generating equipment is under the control of a noise limiter.

- a. The noise limiter levels must be set by an acoustic engineer; and
- b. The noise limiter controller must be contained within a locked container or secure area and is to be only accessible by Hotel management.

Date condition effective: 8 December 2023

Enclosed beer garden

Whenever any live or amplified entertainment is provided within the enclosed beer garden, the sliding door to the south of the stage area is to be kept closed, along with all associated doors or windows within the beer garden area.

Date condition effective: 10 November 2023



Annexure 2

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

1. Copy of the liquor licence dated 28 August 2023.
2. Section 79 Disturbance Complaint lodged by the complainant on 11 March 2023.
3. Submission from Police received on 17 April 2023.
4. Additional material and information received from complainant on 26 April 2023.
5. Additional noise impact reports received from complainant on 27 April 2023
6. Submission from Council received on 27 April 2023.
7. Additional material and information received from Council on 11 May 2023.
8. Additional noise impact reports received from complainant on 10 June 2023.
9. Submission from the Hotel received on 14 July 2023.
10. Additional material and information received from Council on 25 July 2023.