

FILE NO: A23/0027020

COMPLAINANT: Muswellbrook Shire Council

LICENSED PREMISES: Royal Hotel, Denman – LIQH400116624

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, John Coady, Acting Director, Intelligence Assessments and Coordination, a delegate of the Secretary, Department of Enterprise, Investment and Trade, in relation to the complaint made in respect to the Royal Hotel, Denman - LIQH400116624 have decided to take **no further action**.

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 authorised by the local consent authority in relation to the licensed

premises. Section 4 of the Act defines 'local consent authority' as the local council in whose area the licensed premises are situated.

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 8 September 2023, [REDACTED], [REDACTED] Muswellbrook Shire Council (the Council), lodged a section 79 noise disturbance complaint with Liquor & Gaming NSW (L&GNSW) in relation to the Royal Hotel (the Hotel).
6. On 27 September 2023, [REDACTED] provided additional information in support of the application.
7. [REDACTED] lodged the complaint as a person authorised by Muswellbrook Shire Council as the local consent authority, in accordance with section 79(3)(c) of the Act.
8. The complaint application provides that the Council had received complaints from the public regarding noise disturbance caused from outdoor entertainment provided by the Hotel, namely through an outdoor speaker playing music late at night. While the application refers to the Council having received complaints from 'members of the public',

the material indicates the complaints came from one local resident whose details were redacted by the Council (Council's Complainant).

9. The complaint material does not indicate Council has obtained any evidence of noise-related breaches by the Hotel other than being advised of the alleged disturbance by Council's Complainant. Instead, the Council submitted it is seeking an 'alignment' of the Hotel's liquor licence with its development consent to which the Hotel is subject. Specifically, the Council's application requests that L&GNSW impose two noise related conditions on the Hotel's liquor licence to mirror those contained in the Hotel's development consent DA2019/6. Council stated it does not have the resources to enforce these conditions and indicated the above alignment would improve enforceability with local licensing Police.

10. The two noise-related conditions in the development consent DA2019/6 read as follows:

10.1. Condition 19: Quiet & Good Order

'Entertainment (including, though not limited to, live performers, bands, musicians, disc jockeys or amplified music) shall not occur within open aired and/or outdoor areas of the licensed premises before 10:00am and shall not exceed 10:00pm daily unless otherwise approved by NSW Liquor and Gaming or the relevant regulatory authority'; and

10.2. Condition 20: Noise Emission

'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.*

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 12:00am midnight and 07:00am.'

11. In support of the Council's complaint, the Council supplied email correspondence between the Council and Council's Complainant, and email correspondence between the Council and the Hotel's licensee Mr Mark Zizza (the Licensee) regarding the allegations of noise disturbance caused by the Hotel.
12. In summary, the email correspondence indicates Council's Complainant had lodged two complaints with the Council on 25 February 2023 and 5 July 2023.

13. In the first complaint, it was alleged the Hotel caused noise disturbance by playing loud live music outdoors which could be *'heard in every single room of our home, including our bedrooms'*.
14. In the second complaint, Council's Complainant alleged that their partner had to walk to the Hotel at 1:00am on 8 June 2023 to ask staff to turn off their outdoor music. Council's Complainant was of the view they had been reasonable in dealing with the Hotel but was dissatisfied with the Hotel's lack of response. Council's Complainant expressed their wish for the Hotel to not play any live music outdoors at night and to keep their outdoor music speaker to a reasonable volume and to turn it off at a reasonable time.
15. The email correspondence supplied by the Council indicates the Council had informed the Licensee of the noise complaints and reminded the Licensee of his obligations to comply with the noise-related conditions contained in development consent DA6/2019. In response, the Licensee refuted the allegation that the Hotel had caused disturbance at approximately 1:00am on 8 June 2023 and asserted that the Hotel had been closed on that occasion and had not been playing any music. The Licensee further stated he was of the view the alleged noise disturbance could be coming from other venues in the local area, noting he had observed the nearby Denman Hotel offering live music outdoors in the evenings.

The venue, licence details and compliance history

16. The Hotel is located on Ogilvie Street Denman, NSW. On 6 February 2019, Mr Zizza commenced as the Hotel's licensee. ZIZOOM PTY LTD commenced as the premises owner and business owner on 1 July 2009 and 6 February 2019 respectively.
17. The Hotel operates under a full hotel licence. The only condition listed on the Hotel's licence is in relation to its minors area authorisation. Trading hours for consumption on premises and takeaway sales are from 5:00am to midnight from Mondays to Saturdays, and 10:00am to 10:00pm on Sundays.
18. L&GNSW's records indicate that the Hotel's compliance history consists of three previous complaints:
 - 18.1. Two complaints made on separate occasions by a local resident on 1 May 2023 and 3 April 2024; and
 - 18.2. One complaint made by the Council on 31 July 2023, prior to lodging the formal disturbance complaint.

19. The May 2023 complaint by a local resident centred on loud music being played at the Hotel from live performances or an outdoor speaker. The complaint included a log sheet which sought to outline 16 instances of alleged disturbance experienced by the local resident between 1 February 2023 to 12 June 2023, at times that ranged from 6:30pm to 12:45am.
20. The April 2024 complaint alleged the Hotel was playing excessively loud music from its outdoor speaker for extended periods of time, and alleged this was a recurring problem over several weeks.
21. The Council's complaint in July 2023 formed the basis for its formal disturbance complaint which it submitted in the following weeks under the disturbance provisions of the Act.

Submissions and other material obtained by L&GNSW

22. Between 27 September 2023 and 31 May 2024, various material was obtained from parties considered appropriate, including NSW Police, the local resident referred to in paragraph [18.1] above, and the Licensee.
23. The material that is before the delegate is set out in **Annexure 1** and is summarised below.

NSW Police submission

24. On 15 March 2024, NSW Police provided a submission in relation to the disturbance complaint.
25. Police submitted there is limited information available regarding disturbance issues at the Hotel. Police stated that due to the Hotel's proximity to another licensed premises (the Denman Hotel), Police are unable to determine which venue is responsible for the alleged disturbances particularly as both venues have outdoor beer gardens with speakers that could play amplified music.
26. Police concluded by suggesting the Hotel may nevertheless benefit from better complaint management practices, including recording complaints when advised of them.

Updated log sheet from a local resident (previous L&GNSW complainant)

27. L&GNSW's records include a log sheet of alleged disturbances by the Hotel (referred to in paragraph [19] above), supplied by a local resident who had previously lodged a complaint to L&GNSW in May 2023.

28. For the purposes of the disturbance provisions of the Act, L&GNSW contacted the local resident to seek their consent to release the contents of the log sheet to the Licensee for a response.
29. On 1 November 2023, the local resident supplied L&GNSW with an amended copy of the log sheet and provided their consent to release the information. The updated log sheet outlined a brief description of 16 occasions of alleged disturbance by the Hotel from 1 February 2023 to 12 June 2023.
30. Notably, the local resident had amended the log sheet to acknowledge they were aware that the nearby Denman Hotel also offers live music outdoors on the weekend. The local resident further acknowledged efforts made by the Hotel – *‘recently the Royal Hotel has been quite respectful with their noise at night time and it’s very appreciated’*.

Licensee’s submission

31. On 20 May 2024, L&GNSW invited the Licensee to make written submissions in response to the Council’s complaint. The Licensee was provided with the complaint detail, relevant information held by L&GNSW including the updated log sheet, and the submissions from Police.
32. On 31 May 2024, the Licensee provided written submissions to L&GNSW regarding the matter. In summary, the Licensee provided the following information:
 - a) The Hotel is in a zoned village in the main central business district of Denman which consists predominantly of small businesses and some residential buildings.
 - b) As Denman is in a rural area, there is no traffic noise. It is very quiet and so any noise coming from the Hotel no matter how great or small is transmitted through the empty streets of Denman.
 - c) The Hotel is a food/family orientated business. Any outdoor music is only to accompany dining and general enjoyment of a seated clientele.
 - d) The Hotel endeavours to follow all rules and laws applicable to its licence.
 - e) The Hotel consistently educates its staff to be vigilant of all neighbours regarding noise pollution.
 - f) Denman has two local hotels (the Royal Hotel and the Denman Hotel), one bowling club and an RSL club. An unofficial agreement has existed for many years that the Hotel hosts live bands on Friday nights while the Denman Hotel hosts live bands on Saturday nights. The Licensee states he is of the view the alleged noise disturbance is being incorrectly attributed to the Hotel.

- g) There are three residential cottages approximately 100 metres from the rear of the Hotel, built within the last ten years. The Licensee has been in contact with one of these residents who complained about the Hotel on several occasions. The Licensee supplied a copy of email correspondence with the resident as part of his submission. Notably, the resident emailed the Licensee on at 7:37pm on Wednesday 26 April 2023 asking for the music to be turned down as they were trying to put their children to sleep, which the Licensee considered to be unreasonable. The email correspondence indicates that after the Licensee explained to the resident the Hotel had been hosting a Junior Athletics annual meeting, the resident submitted they would have been more understanding if they had known it was an event for children as they had incorrectly thought the noise was due to the Hotel's outdoor speaker. The same resident emailed the Licensee on Saturday 9 September 2023, alleging excessive noise from the Hotel's outdoor speaker once more. In his submission, the Licensee disputed the allegation and submitted the noise must have come from the nearby Denman Hotel which hosts live music on Saturday nights.
- h) Regarding the updated log sheet:
- The Licensee disputes the allegation of noise disturbance arising from a live band performing on Saturday 25 February 2023. Mr Zizza states the Hotel did not have any live music that night and therefore the incident should not be attributed to the Hotel.
 - The Licensee disputes the allegation of noise disturbance arising from an outdoor speaker on Wednesday 26 April 2023, noting that the Hotel was hosting a Little Athletics annual presentation and the resident subsequently admitted they had mistakenly believed it was due to the Hotel's outdoor speaker.
 - The Licensee acknowledged the rest of the log sheet appeared to be complaints regarding one speaker in the Hotel's outdoor beer garden and submits he has since moved the position of the speaker in question.

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

33. Section 81(3) of the Act requires the Secretary or delegate to have regard to certain statutory considerations, being:

- a) The order of occupancy between the licensed premises and the complainant;
- b) Any changes in the licensed premises and the premises occupied by the complainant, including structural changes to the premises; and
- c) Any changes in the activities conducted by the licensed premises over a period of time.

34. Section 81(4) of the Act provides that for the purposes of section 81(3), a complainant does not include one who is the Commissioner or Police or a person authorised by the local consent authority (i.e. the local council). Accordingly, the considerations contained in subsections 81(3)(a) and (b) do not apply in relation to the Council as the complainant.

The order of occupancy between the licensed premises and the complainant

35. In light of the above, it is not an express statutory consideration to consider the order of occupancy where the complainant is the Council. Nevertheless, it is noted that the Hotel's liquor licence commenced on 21 February 1960 and that the material before me indicates the local resident experiencing the alleged disturbance moved into the area in November 2022.

Any changes in the licensed premises, including structural changes to the premises

36. The complaint from the Council has not provided any observations regarding whether there have been any changes in the Hotel, including any structural changes.
37. In addition, the submissions from Police and the Licensee do not refer to any structural changes to the Hotel.

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

38. The complaint from the Council does not provide any information pertaining to its own observations or investigations regarding any changes in the activities conducted at the Hotel. The submissions from Police and the Licensee also do not refer to how the activities at the Hotel have changed over time.
39. The following extract from the updated log sheet alleges that the Hotel increased the volume of music played through its outdoor speaker from time to time, since February 2023:

39.1. *'We moved into the area in November 2022 and had no issue with the outdoor speaker until February 2023 when all of a sudden the volume became constantly excessive.'*

40. Although the resident had updated the log sheet in November 2023 to indicate the Hotel had in recent times been quite respectful with their noise at night, the same resident lodged another complaint to L&GNSW in April 2024 alleging the Hotel continues to play loud music via its outdoor speaker late at night on a regular basis.

Findings and Decision

Undue disturbance

41. In deciding whether the Hotel has unduly disturbed the quiet and good order of the neighbourhood, I have balanced the material provided by the Council and the submissions made by Police and the Licensee. In addition, I have considered material from L&GNSW complaint records.
42. A level of disturbance from the normal operation of a licensed premises trading as a hotel is to be expected, including noise from music entertainment, whether through live music or played through outdoor speakers. I do not regard this type of disturbance as undue in a general sense.
43. It is noteworthy that the Council acknowledges its application is not based on its own inspections or investigations, but instead based on complaints it received. I also note that while the Council's application referred to having received complaints from 'members' of the public, a review of the material indicates the complaints were made by one individual.
44. Further, I consider it significant that Police have submitted it is difficult to attribute any disturbance to the Hotel given there is another hotel (the Denman Hotel) nearby that also offers outdoor music entertainment. The Police submission indicates they have very limited holdings concerning noise complaints received against the Hotel. Notably, one complaint resulted in Police attending the Hotel to find no one present at the premises, and another complaint was a general complaint about both the Hotel and the Denman Hotel being too loud.
45. I have also considered the Licensee's submissions that there have been instances where allegations of noise disturbance have been incorrectly attributed to the Hotel's live music and/or its outdoor speaker. On this point, I note the Denman Hotel is located less than 90 metres from the Hotel. This assertion by the Licensee is reflective of the above Police position that it is difficult to attribute disturbance issues to the Hotel.
46. I further note that the updated log sheet provided to L&GNSW provides limited detail about each instance of alleged noise disturbance. Of the 16 reported instances of alleged disturbance, the resident's partner attended the Hotel twice. In light of the Police and Licensee submissions, concerns remain as to whether the 14 remaining instances of alleged disturbance are correctly attributed to the Hotel.
47. On the whole, I note there is a distinct lack of corroborating evidence to suggest the Hotel has unduly disturbed the neighbourhood. On balance, it is reasonable to say that the Hotel

has caused some level of disturbance to one resident in the community through the provision of music via its outdoor speaker and/or provision of live music outdoors at a volume subjectively considered offensive by that resident. However, the material falls well short of demonstrating that the concerns regarding disturbance generated by the Hotel are widely held by the community, or that Police or Council objectively consider the volume or frequency of the noise to be undue.

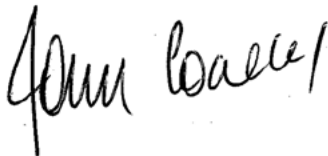
48. As such, I am **not satisfied** there is sufficient evidence before me to reasonably conclude that the Hotel operates in a matter which unduly disturbs the quiet and good order of the neighbourhood.

Regulatory Outcome

49. In deciding the appropriate regulatory outcome in this instance, I have considered the statutory considerations (where relevant), the material set out in Annexure 1, and the above finding of no undue disturbance. I have also had regard to the context in which the Hotel operates, noting that its entertainment offerings include live music on Fridays and music played through its outdoor speakers for the general enjoyment of seated customers who dine at the Hotel.
50. I note the Council's application was made in the context that it viewed it appropriate to replicate the noise-related conditions found in the Hotel's development consent on its liquor licence. However, any regulatory outcome under section 81 of the Act must be evidence based and have reference to the statutory considerations and primary question of whether the neighbourhood is being unduly disturbed. In the context of this matter and the disturbance provisions set out in the Act, it is not a reasonable or appropriate outcome to impose conditions on the Hotel's licence purely for regulatory convenience.
51. Based on the above, I have determined to take no formal regulatory action against the Hotel on this occasion. This decision reflects my view that the outcome proposed by the Council would not be appropriate in the absence of a finding of undue disturbance.
52. While the Hotel's liquor licence is not currently subject to any noise-related licence conditions, I remind the Hotel and the Licensee that there remains a responsibility to ensure the Hotel's operations do not unduly disturb the quiet and good order of the neighbourhood. Licensees and venue operators must ensure that the operation of licensed premises contribute to, and do not detract from, the amenity community life. I am encouraged by the Licensee's submission that he has since moved the position of the outdoor speaker in question in response to the complaint, and that the Hotel endeavours to comply with relevant legislation at all times.

53. While I have determined to take no further action in this matter, I strongly remind the Hotel of its obligation to proactively manage any potential disturbance caused by the Hotel, and encourage both Hotel and local residents to maintain a constructive relationship.
54. The Hotel should be aware that if fresh and direct evidence is presented demonstrating an escalation of disturbance or poor management of disturbance issues, it is open for a new disturbance complaint to be accepted by L&GNSW and for regulatory action to be taken.
55. Finally, I am satisfied this decision is a proportionate and regulatory response to the complaint made by the Council.

Decision Date: 26 June 2024



John Coady

Acting Director, Intelligence Assessments and Coordination

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 24 July 2024. 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

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

1. Liquor licence LIQH400116624 dated 4 June 2024.
2. Section 79 Disturbance Complaint lodged by the Council on 8 September 2023.
3. Additional material received from the Council on 27 September 2023:
 - a. Email cover letter;
 - b. Council instrument of appointment;
 - c. Part 9 declaration;
 - d. Email correspondence between the Council and a local resident;
 - e. Email correspondence between the Council and Police;
 - f. Email correspondence between the Council and the Licensee; and
 - g. Council development consent DA6/2019.
4. Submission from NSW Police received on 15 March 2024.
5. Relevant information held by L&GNSW:
 - a. Updated log sheet from a previous complainant, received on 1 November 2023;
 - b. Complaints received against the Hotel.
6. Submission from Licensee received on 31 May 2024.