



**FILE NO:** A18/0013580  
**COMPLAINANT:** [REDACTED]  
**LICENSED PREMISES:** Hotel Harry, Surry Hills - LIQH400103654  
**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, Sean Goodchild, Director Compliance Operations, Liquor & Gaming NSW, being a delegate of the Secretary, Department of Industry, in relation to the disturbance complaint made against Hotel Harry (the hotel) have decided to **issue a warning** to the licensee.

The warning is detailed in the following terms:

*'Under Section 81(1)(d) of the Liquor Act 2007 I, Sean Goodchild, Director Compliance Operations, Liquor & Gaming NSW, a delegate of the Secretary, Department of Industry, warn Mr Andrew Condon, licensee of Hotel Harry, that he must ensure no future undue disturbance is caused by entertainment at the hotel.'*

## REASONS FOR DECISION

### Legislative framework

1. Section 79 of the Act provides that a prescribed person may complain to the Secretary, that the quiet and good order of the neighbourhood of the licensed premises is being unduly disturbed because of the manner in which the business of the licensed premises is conducted, or the behaviour of persons after they leave the licensed premises (including, but not limited to, the incidence of anti-social behaviour or alcohol-related violence).

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

### **The Complaint**

5. On 6 August 2018, [REDACTED] (a residential complex known as the [REDACTED]) lodged a disturbance complaint against the hotel. The complainant lodged the complaint as a resident authorised by four other residents who also live at the [REDACTED]
6. The complainant alleges that the disturbance occurs predominantly on Friday and Saturday nights after 12:00 midnight into the early hours of the next morning. The disturbance is caused by excessively loud music, patrons and staff gathering outside the hotel and noise from the keg lift being used.
7. The complainant would like the hotel to restrict the use of DJs until adequately insulated for sound, hire additional security to manage patrons outside the hotel, lock the Goulburn Street doors after midnight, and restrict the hours the keg lift is operated.
8. Between 17 August 2018 and 12 October 2018, various submissions were lodged by all parties. A list of the material before the delegate is set out in Annexure 1.

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

9. The Act requires that the Secretary have regard to the following statutory considerations.
10. *The order of occupancy between the licensed premises and the complainant* – the hotel has operated at its present site since 28 September 1959. The complainant has resided at the [REDACTED] for approximately 9 years. This fact is not in dispute and I consider the order of occupancy to be in favour of the hotel.
11. *Any changes in the licensed premises and the premises occupied by the complainant, including structural changes to the premises* – Council advised the hotel was granted development consent D/2013/1677 on 22 May 2014 which permitted internal and external alterations to the hotel, including the creation of an open terrace on the first floor. The first floor terrace is permitted to trade from 8:00pm to 12:00 midnight every day until 7 February 2020 under a trial period.

There is no evidence that there have been any structural changes to the complainant's residence.

12. *Any changes in the activities conducted on the licensed premises over a period of time* – The complainant alleges there has been a steady escalation of noise and disturbance over the last two to three years and argues the hotel has evolved from a neighbourhood pub to a venue that is heavily promoted as a live music venue and nightclub.

### **Other Considerations**

#### *Undue disturbance*

13. I am satisfied on the material before me there is sufficient evidence to support a finding that the hotel has, at times, caused undue disturbance to the neighbourhood. In making this finding, I have balanced the submissions made by the licensee, the complainant, NSW Police and Council.
14. The hotel is located on the corner of Wentworth Avenue and Goulburn Street, Surry Hills, in close proximity to a number of commercial and residential developments. The complainant's residence is located directly across from the hotel.
15. The hotel has an Extended Trading Authorisation. Consumption on the ground floor of the premises and first floor bar, dining area and bistro is permitted from 5:00am to 5:00am Monday to Saturday, and 5:00am to 12:00 midnight on Sundays. Consumption in other areas of the hotel is permitted from 5:00am to 12:00 midnight every day. The

located within the Sydney CBD Entertainment precinct and is subject to the special licence conditions relevant to this precinct.

16. Council advise that the hotel's development consent is subject to a number of noise related restrictions, including:
  - LA10 noise condition;
  - Restriction on outdoor music;
  - Compliance with acoustic report;
  - Use of noise limiters; and
  - Management must ensure the behaviour of patrons does not detract from the amenity of the neighbourhood, including clearly posted signage requesting patrons leave quietly.
17. Between 12 September 2016 and 12 June 2018, Council records indicate four noise complaints were recorded against the hotel. Council issued the hotel with warning notices on two separate occasions where noise from the hotel was clearly audible within residential premises after midnight, breaching the LA10 noise condition. In relation to the other two complaints, Council determined to take no further action as, in the first instance, music had stopped by the time rangers attempted to conduct a noise assessment and, in the second instance, the relevant complainant declined Council's assistance.
18. Police submit that on a recent inspection they observed patrons loitering outside the hotel who did not appear to be properly monitored by security. Police also advised they received three noise complaints regarding excessive noise generated by the hotel, but conceded excessive noise was not observed in each instance (despite patrolling the area within 30 minutes). Nevertheless, Police support the imposition of a licence condition addressing excessive noise from the hotel after midnight on Saturdays and Sundays.
19. While a level of disturbance from the normal operation of the hotel is to be expected, I am satisfied that there is sufficient evidence to demonstrate that the hotel has, at times, caused undue disturbance to the neighbourhood as a result of music emanating from the hotel after midnight and patrons loitering outside the premises. In making this finding, I have considered the noise complaints mentioned in the Police and Council submissions, and placed significant weight on the two complaints made to Council which resulted in warning notices being issued as result of music being clearly audible in residential premises after midnight. I also note the partial concession contained in the licensee's final submission around the potential for disturbance to occur if patrons on the

footpath outside the hotel are not monitored by security. Finally, there is insufficient evidence before me to make a finding of undue disturbance in relation to the operation of the keg lift.

*Action taken to mitigate disturbance*

20. In considering whether to impose conditions on the liquor licence, I have balanced the submissions of all parties, having specific regard to any action taken by the licensee in response to the complaint and the effectiveness of any measures that have been implemented to address disturbance.
21. Since the complaint, the licensee has implemented the following measures to control disturbance, including:
  - Requiring management to check all amplified equipment are connected to the hotel's audio control system to limit noise (only managers have access and therefore performers cannot circumvent the system); and
  - Security personnel have been instructed to ensure patrons do not gather or dwell outside the hotel when they leave.
22. To ascertain the level of noise being generated by the hotel, the licensee attempted to organise acoustic testing, however access to the complainant's residential premises was declined by the complainant, who noted that noise levels generated by the hotel had improved and acoustic testing would not benefit the complaint. He also advised other residents agreed that noise levels from the hotel had improved.
23. Notably, L&GNSW has not received any further noise complaints against the hotel since the receipt of this complaint.

**Regulatory Response**

24. In making my decision, I have considered the submissions of the complainant, licensee, Police and Council. I have also had regard to the particular context in which the hotel operates and the close proximity of the complainant's home to the hotel. In deciding whether to impose conditions on the licence relating to disturbance, I have considered the following points.
25. I have taken the statutory considerations into account and acknowledge the order of occupancy is in favour of the hotel. It is reasonable to expect some form of noise will be generated from the hotel's ongoing operations, particularly given its licence type and location within the Sydney CBD Entertainment precinct.

26. I also note that, while the hotel has undergone structural changes, including the creation of an open terrace on the first floor, there is no information which points to this being a source of disturbance.
27. On the material before me, it can reasonably be concluded that the licensee has been responsive to the complaint and implemented measures which have effectively reduced noise generated by the hotel to acceptable levels. In this regard, I acknowledge the licensee's willingness to arrange acoustic testing and the complainant's concession that noise levels have improved and that acoustic testing would not be beneficial. I also note the lack of further disturbance complaints to L&GNSW. As such, I have formed the opinion that it would be overly burdensome at this point to manage historical disturbance issues via the imposition of the licence conditions proposed by the complainant. In deciding not to impose conditions I have also been persuaded by the order of occupancy, which is in favour of the hotel.
28. I have determined it is appropriate to issue the licensee with a warning in relation to the historical instances of undue disturbance caused by music emanating from the hotel after midnight and patron noise. I strongly encourage the licensee to continue to proactively manage these potential disturbance issues. In the event there is an escalation of disturbance or fresh evidence presented which demonstrates poor management of disturbance issues, then it is open for the matter to be reconsidered and for regulatory intervention to occur.

Decision Date: *12 February 2019*



**Sean Goodchild**

**Director Compliance Operations**

Liquor & Gaming NSW

Delegate of the Secretary of the Department of Industry

**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 *12 March 2019*. A \$500 application fee applies. Further information can be obtained from Authority Guideline 2 published at [www.liquorandgaming.nsw.gov.au](http://www.liquorandgaming.nsw.gov.au)

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



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

1. Section 79 Noise Disturbance Complaint lodged by [REDACTED] on 5 August 2018.
2. Acknowledgment of complaint by Mr Kim Stapleton of JDK Legal on behalf of the licensee dated 14 August 2018 and further letter regarding possible acoustic testing dated 22 August 2018.
3. Submission from Mr Nick Pitchuev, Licensed Premises Coordinator, City of Sydney Council dated 17 August 2018.
4. Submission from Constable Thomas Spowart of Surry Hills Police Area Command dated 6 September 2018.
5. Emails from complainant indicating improvements and declining acoustic testing dated 3 September 2018 and 25 September 2018.
6. Final submission from Mr Kim Stapleton of JDK Legal dated 12 October 2018.