

FILE NO: A21/0020716

COMPLAINANT: [REDACTED]

LICENSED PREMISES: Newcastle Hotel, Islington – LIQH400117361

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, Manager, Regulatory Interventions, Liquor & Gaming NSW, a delegate of the Secretary, Department of Enterprise, Investment and Trade, in relation to the complaint made in respect to Newcastle Hotel, Islington – LIQH400117361 have decided to **issue a warning** to the licensee in the following terms:

Under section 81(d) of the Liquor Act 2007, I, John Coady, Manager, Regulatory Interventions, Liquor & Gaming NSW, a delegate of the Secretary, Department of Enterprise, Investment and Trade, warn Mr Paul John Curtis, the licensee of Newcastle Hotel that he must ensure that no future undue disturbance is caused by the operation of the Newcastle Hotel, Islington.

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;
 - 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 –
 - (i) live music industry, and
 - (ii) arts, tourism, community and cultural sectors.

The complaint and background information

The complaint

5. On 27 July 2021, [REDACTED] (the complainant) of [REDACTED] lodged a complaint with Liquor & Gaming NSW (L&GNSW) alleging undue disturbance from the operation of the Newcastle Hotel (the Hotel). The complainant lodged the complaint as a resident authorised by two other residents.
6. The complainant alleges disturbance is caused by loud and constant music, particularly bass music at low frequencies, which is audible inside their residence until the Hotel closes between 2:00am and 3:30am. Disturbance allegedly occurs several times a week and is most frequent on Friday and Saturday nights but also occurs on weeknights, particularly Wednesday and Thursday nights when the nightclub is open. The complainant submits disturbance is also caused by excessive noise from patrons leaving the Hotel, with littering, urination and anti-social behaviour, including shouting and arguments, an issue.

7. The complainant states there have been changes in the operation of the Hotel since it rebranded from the Gateway Hotel to the current name of Newcastle Hotel in 2018, undertaking a new marketing strategy attracting a younger patronage. It is submitted the Hotel now trades under extended hours until 3:30am on Wednesday, Friday and Saturday nights and all other times when the nightclub is open.
8. The complainant states that a meeting with the general manager of the Hotel, [REDACTED] (the general manager), took place on 23 April 2021 to discuss the ongoing noise issues that have remained unresolved for 18 months. The complainant submits that assurances were made by the general manager outlining capital works to improve sound proofing and an intention that rubbish collection would occur at the end of each trading day. The complainant raised their concerns with the general manager that the proposed sound proofing measures would not decrease bass and additional strategies would need to be implemented to isolate bass from the Hotel.
9. The complainant's desired outcome is that low frequency bass noise be isolated and not be audible inside neighbouring properties. The complainant seeks that security personnel at the Hotel commence duties earlier in the evening and include regular routine patrols along [REDACTED] to move patrons along and to ensure that frequent rubbish collection be carried out by the Hotel.
10. Included with the complaint is a log of events detailing incidents of alleged disturbance attributed to the Hotel from 19 December 2020 until 11 July 2021. The log contains 45 entries and references dates when the complainant was impacted by disturbance, dates when the complainant contacted the general manager of the Hotel to report disturbance, dates when the complainant lodged complaints with L&GNSW concerning noise, dates when the complainant contacted NSW Police (Police) regarding disturbance and the date of an L&GNSW inspection at the complainant's residence on 18 April 2021. The complainant notes they have repeatedly attempted to resolve the issue directly with the Hotel, but disturbance is continuing to occur.

The Hotel, licence details, compliance history

11. The Hotel is located at 139 Maitland Road, Islington and backs onto residential properties on [REDACTED]. The Hotel holds a full hotel liquor licence with authorisations relating to extended trading, minors area and minors functions. The Hotel's permissible trading hours for consumption on premises are 5:00am until 5:00am Monday to Saturday and 10:00am until midnight on Sundays. The Hotel's authorised trading hours for takeaway sales are 5:00am until 10:00pm Friday and Saturday, with the remaining days being 5:00am until midnight.

12. The Hotel is subject to a number of licence conditions including a LA10 noise condition, plan of management condition, local liquor accord condition, RSA marshal condition, drink restriction conditions, orderly precinct strategy condition, pre-closure procedures condition, rubbish collection condition, and dispersal of patron condition.
13. Mr Paul John Curtis (the licensee) has been the licensee of the Hotel since 18 August 2017. The business owner is [REDACTED] commencing on 4 September 2015.
14. A review of L&GNSW records indicate that 19 complaints have been received in respect of noise emanating from the Hotel since 2015, alleging excessive noise from amplified music and anti-social patron behaviour. Over the past four years, seven complaints were received in 2019, one complaint was received in 2020, six complaints were received in 2021 and three complaints were received in 2022 to date. The complaints were all dealt with either by engagement with the licensee or no further action taken due to insufficient evidence, except for a complaint received in February 2017 which resulted in enforcement action due to non-compliance with the LA10 noise condition. It is noted the complainant has lodged 11 complaints to L&GNSW regarding the Hotel.
15. On 29 May 2019, the licensee attended a meeting at the L&GNSW office in Haymarket, Sydney to discuss the noise and disturbance complaints received concerning the Hotel. The licensee advised the Hotel had changed its name and business model in 2018 and now attracts a younger demographic of largely 18 to 25-year-olds. The licensee stated the change in business model was not well received by a few local residents. It was further advised the Hotel was taking the complaints very seriously and has implemented a number of controls since January 2019 to curb noise and any other impacts on the community.
16. The licensee provided information on measures implemented by the Hotel which included:
 - Increased security on Friday and Saturday nights, including patrols of surrounding streets to move along loiterers and collect rubbish;
 - A community meeting where local residents were encouraged to raise any concerns and were given a complaint contact number;
 - Information signs and additional security lighting installed around the Hotel;
 - Sound-proofed roof and walls built around the Hotel's courtyard;
 - Monitoring and recording sound levels in the surrounding streets;
 - Engagement with a sound engineer and installation of a noise limiter;
 - Continued training for Hotel staff around Responsible Service of Alcohol and harm minimisation, and

- Intention to hold another community meeting to outline steps implemented at the Hotel and confirm the ongoing commitment to the quiet enjoyment of the community.

17. On 6 June 2019, L&GNSW Inspectors attended a community meeting at the Hotel, which was also attended by the licensee, the Hotel's management team and head of security, Sergeant [REDACTED] from Newcastle Licensing Police, and approximately 12 residents. The licensee presented the Hotel's actions to address the issues since January 2019. Inspectors reported the reception was positive with many residents stating there had been a clear improvement at the Hotel. Inspectors also noted the residents seemed genuinely pleased with the attention and action their complaints had received. There was also discussion that the Islington area had long been prone to anti-social behaviour and not every incident could be reasonably attributed to the Hotel.

Submissions

18. Between 27 July 2021 and 12 April 2022, various material was received from parties to the complaint, including the complainant, the Hotel, and NSW Police. On 7 March 2022, the City of Newcastle (Council) advised they have no findings to assist L&GNSW. The material that is before the delegate is set out in Annexure 1 and is summarised below.

NSW Police

19. A submission was received from Police on 29 December 2021 in response to the complaint. Police confirm that during the previous twelve months from December 2020 until December 2021, 48 business inspections have been conducted at the Hotel, during which no breach of the Hotel's liquor licence has been detected.
20. Police provide details of nine incidents where they attended the Hotel between March 2021 and October 2021. The incidents relate to an intoxicated patron outside the Hotel, two assaults inside the Hotel, concerns over liquor promotions at the Hotel, an altercation at a nearby service station involving patrons of the Hotel and routine business inspections.
21. Police advise the Hotel is the only licensed premises within the broader Newcastle area that can operate until 5:00am. All other licensed premises must cease operation by 3:30am.

Licensee response to complaint

22. In response to the complaint, the licensee provided a submission on 18 January 2022. Included with the submission is an Acoustic Advice report from RAPT Consulting dated 20 April 2021 (the Acoustic Advice Report), Noise Measurements report from RAPT

Consulting dated 14 December 2021 (Noise Measurement Report), tax invoices from RAPT Consulting totalling \$5,148, Entertainment Operations Plan for the Hotel dated February 2021, tax invoices outlining capital works completed at the Hotel between February 2021 and May 2021 totalling \$16,827.19, a copy of the disturbance complaint register form to replace the current communication log, screen shots of text messages between the complainant and the general manager dated between October 2020 and December 2021, and a letter from the general manager to L&GNSW dated 14 January 2022 outlining engagements with the complainant to address noise disturbance.

23. The licensee states he has been the licensee of the Hotel for the past 5 years and his family has owned the Hotel since 1998. He submits the Hotel's operations and trading hours have remained the same during this time and include bar and bistro trade as well as bands and nightclub entertainment. The licensee further states the Hotel has been in its current location since 1890.
24. The licensee submits the Hotel has been engaging with the complainant for more than two years in a genuine attempt to resolve the matter however the complainant is the one resident for whom the alleged noise disturbance has been a constant issue. The licensee advised that the Hotel has taken numerous actions during this period in an attempt to satisfy the complainant including direct communication with the complainant and other residents to initiate corrective actions, commissioning acoustic testing and undertaking capital works as recommended by the acoustic engineer.
25. The licensee advises that all residents have a direct line of communication to the general manager, with an afterhours mobile phone number provided at a community meeting at the Hotel and by letter box drops. Residents are encouraged to contact the general manager to report any issues or problems so the Hotel can provide an immediate response. The licensee submits that all complaints are responded to.
26. The licensee submits that he has made consistent efforts, at great expense to the Hotel, to address the complainant's concerns and notes these efforts were made before the Hotel was made aware of the current complaint to L&GNSW. The licensee advises that Reverb Acoustics was engaged to adjust the sound system at the Hotel to reduce audio outputs. In an email dated 6 December 2019 a sound technician confirmed the Hotel's sound system had been adjusted, removing the ability for bass levels to be adjusted. In conducting external sound testing for bass levels, the technician spoke with the complainant who allowed the technician to listen to the music from within their residence.

The technician advised they could not hear any bass from inside the complainant's residence following the updated sound system settings.

27. The Hotel also engaged the services of RAPT Consulting to prepare the Acoustic Advice Report following a site visit on 15 February 2021. The Acoustic Advice Report outlined a number of measures that could be adopted to reduce noise emanating from the Hotel. Based on this advice the Hotel carried out various capital works as set out below with future works to include replacing glass windows and doors with sound resistant glass:

- Installing soundproof insulation batts in the courtyard roof;
- Installing louvers on the courtyard windows;
- Installing soundproof window frames;
- Installing soundproof glazed glass doors between the bistro and nightclub areas;
- Replacing the double fire doors with higher quality doors better suited to preventing noise from escaping;
- Boarding up the base of the Hotel chimney with soundproof sheeting and sound insulation batons, and
- Removing redundant air conditioning vents from the roof to reduce sound escaping.

28. The Hotel further engaged RAPT consulting to conduct a site visit and undertake environmental noise measurements to ensure compliance with its LA10 noise condition following the capital works. The Noise Measurement Report stated its purpose was to provide results of the site measurements and compare against current noise objectives. Attended noise measurements were conducted adjacent to the south-east corner of [REDACTED] in direct line of sight to the Hotel on 6 and 7 December 2021. The noise surveys were conducted with consideration to the procedures described in Australian Standard "Acoustics – Description and Measurement of Environmental Noise" and the NSW Noise Policy for Industry.

29. Following the environmental noise measurements being obtained RAPT Consulting worked with the Hotel's sound engineers to adjust the octave band noise levels of the sound system to a point where adherence with the LA10 noise condition was achieved. The sound system setting was saved for future use to ensure ongoing compliance. The licensee submits that the Hotel's sound system and outputs have been set at this level with no adjustments able to be made.

30. In response to the issues raised regarding poor patron behaviour, the licensee submits the Hotel employs security personnel to patrol [REDACTED], up to the corner of [REDACTED], as a proactive and voluntary measure to maintain a safe environment for patrons and neighbours. The licensee further states that 99% of communication received from the complainant relates to bass frequency and not patron behaviour. Patron signage is displayed advising patrons to keep quiet and be mindful of neighbours and additional signage is displayed directing patrons to use [REDACTED] rather than [REDACTED] to exit the Hotel. Door guards are also stationed on exit reminding patrons to be quiet and respectful in surrounding areas.
31. In response to issues raised concerning the littering of fast-food wrappers and empty bottles, the licensee submits the Hotel does not sell fast food nor sell takeaway cans or bottles of alcohol. The licensee states not all litter can be attributed to the Hotel and notes the proximity of a 24hr service station and bottle shop. The licensee submits the Hotel cleans litter and rubbish around the building and surrounding areas as per its licence condition however does not extend all the way down [REDACTED]. The licensee advises additional resources will be added and a dedicated staff member will collect rubbish at the specific location on [REDACTED] on Friday and Saturday nights.
32. In response to concerns relating to excessive patron noise the licensee reiterates the strategies implemented involving the deployment of security and signage and further advises the Hotel has worked with Council to move the Pick-up/Drop-off zone of ride share companies away from [REDACTED] to avoid the congregation of patrons in this area.
33. The licensee states that since receiving the disturbance complaint, an attempt was made to contact the complainant however the call went unanswered and not returned. The licensee submits they contacted the two authorising residents and installed security lighting at one of the residents' properties to deter patrons congregating in the area. The licensee further advised that the second authorising resident no longer resides at the provided address and alleges they had no issues with music from the Hotel and only had concerns with patrons loitering outside their property.
34. The licensee submits that, despite COVID-19 hardships, they have maintained open communication to address concerns and committed to continuous improvements to find a solution for the complainant. The Hotel has spent considerable time and finances on investing in a capital works program including sound proofing, sound engineering and acoustic testing to maintain its policy of addressing and resolving concerns. The licensee

states the Hotel is a small hotel that needs the support of its neighbours and the community.

Complainant final submission and further complaint material

35. On 5 March 2022, the complainant provided a final submission in response. Included with the submission is a screen shot of an article from the Newcastle Herald dated 6 February 2018 and multiple screen shots of the Hotel's website and social media highlighting the Hotel's rebranding, a screen shot of the Hotel's Facebook events page showing past and upcoming events dated between February 2021 and March 2022, screen shots of text messages and a log of text messages between the complainant and the general manager dated between February 2021 and December 2021 and a quote from Newcastle Renovation Services dated 25 June 2021 regarding the installation of new windows at the complainant's residence.
36. The complainant disputes the licensee's submission that there have been no operational changes by the Hotel in the past 24 years and submits that the disturbance only commenced after the Hotel changed its name and business model in 2018. The complainant refers to a Newcastle Herald article dated 6 February 2018 where the licensee is quoted as stating "For the last four or five years it's just been a Saturday night venue ...That's not sustainable."
37. The complainant submits the operational changes resulted in a change in the Hotel's operations from being a Saturday night only venue to now attracting larger and more frequent crowds with regular late events on weeknights (e.g., student nights), and themed electronic/house music nights where the Hotel often remains open until around 3:30am.
38. The complainant acknowledges that the Hotel has maintained regular communication for over two years, however, notes all contact has been through the general manager. The complainant submits that, despite this communication, there has been little to no progress by the Hotel in implementing a permanent solution to the ongoing disturbance and all avenues have been exhausted.
39. The complainant refers to the complete log of the 221 text messages with the general manager from the period of February 2021 and December 2021 as evidence that the acoustic impact allegedly attributed to the Hotel is regular and constant. The complainant notes that only on one occasion was noise impact incorrectly attributed to the Hotel. The complainant reiterates the long-term acoustic impact has led to anxiety, sleep deprivation and negative well-being.

40. Regarding the capital works carried out by the Hotel, the complainant argues that while they welcome the improvements made, no information has been provided on the suitability of various materials used to reduce the noise impact. In particular, the complainant states the acoustic capability of the installed fireboard, gyprock and aluminium shutters at the Hotel to act as an acoustic barrier to reduce noise is not known and not provided. Further, the complainant notes that any remediation of replacing the glass of windows and doors at the Hotel with a more suitable sound resistant material, as recommended in the Acoustic Advice Report, has not occurred.
41. The complainant states the age of the Hotel, being over 100 years old as noted by the licensee, highlights that the construction methods and materials used were not selected with modern sound systems in mind. The complainant submits they have undertaken capital works to their residence by replacing two windows at the rear of the house containing glass specifically designed to minimise external noise penetration. The complainant notes that, despite this, the disturbance can still regularly be heard inside their residence.
42. The complainant submits the acoustic testing arranged by the Hotel does not confirm that the Hotel is complying with its LA10 noise condition. The complainant notes that while the sound technician from Reverb Acoustics did listen to the music from inside their residence in December 2019, no acoustic measurements were taken with certified equipment, and it was undertaken during the day which is not when the disturbance is occurring.
43. The complainant further submits the Noise Measurement Report measured the sound from the southeast border of their property, even though they had previously advised the Hotel that the disturbance primarily impacts the northwest side of the residence, and no measurements were taken from inside the residence. The complainant notes an inspection was carried out at their residence by L&GNSW inspectors on 18 April 2021 after midnight, where noise from the Hotel was audible inside multiple rooms, in breach of the LA10 noise condition on the Hotel's licence.
44. The complainant proposed four recommendations to resolve the ongoing disturbance at the Hotel, outlined below.
- a) A comprehensive and independent audit of the sound system at the Hotel be undertaken and provided to the complainant and L&GNSW. If any changes are made to the Hotel's current sound system, further acoustic testing be conducted at the Hotel's expense to ensure compliance with the LA10 noise condition;

- b) If disturbance remains inside the complainant's residence following adjustments to the Hotel's sound system as outlined in the Noise Measurement Report, further acoustic testing is to be carried out at the expense of the licensee, and should include measurements taken from inside the complainant's residence;
- c) The Hotel must complete the replacement of the glass in the windows and doors as recommended in the Acoustic Advice Report and provide a timeline of the expected completion date to the complainant and L&GNSW;
- d) Hotel staff to undertake a comprehensive sweep of [REDACTED] (to the intersection of [REDACTED] Street) and [REDACTED] Street (up to [REDACTED] to remove all rubbish, including fast food wrappers, bottles, glassware and plastic vape debris after closing. Hotel security guards patrol along [REDACTED] Street and [REDACTED] Street at 60-minute intervals from 9:00pm until closing.

Licensee final submission

- 45. On 12 April 2022, [REDACTED] of [REDACTED] Lawyers provided a final submission on behalf of the licensee. Included with the submission is a copy of the disturbance complaints register containing five entries from March to April 2022.
- 46. Regarding the considerations under section 81(3) of the Act, [REDACTED] states the order of occupancy favours the Hotel. [REDACTED] submits there have been no significant structural changes to the Hotel, however noise attenuation work has been attended to, being that outlined in paragraph [27]. [REDACTED] further advises there have been no significant changes in the activities conducted at the Hotel, however, acknowledges in 2018 the Hotel adopted a different marketing strategy which resulted in increased patronage at the Hotel.
- 47. [REDACTED] submits that the licensee denies the Hotel is breaching its LA10 noise condition. Reference is made to the Police submission which outlines that during the 48 business inspections conducted at the Hotel from December 2020 to December 2021, no evidence of breach of the Hotel's liquor licence conditions was identified. [REDACTED] also refers to the Hotel's disturbance complaints register, noting the complainant advised the general manager that sound from the Hotel had improved since December 2021.
- 48. [REDACTED] reiterates the licensee engaged RAPT Consulting to produce the Acoustic Advice Report which set out recommendations on capital works to assist in noise reduction and ensure compliance with the Hotel's LA10 noise condition. [REDACTED] notes all recommended capital works, with the exception of the replacement of glass windows and doors with soundproof glass, have been completed by the Hotel.

49. [REDACTED] states the Noise Measurement Report confirms compliance with the LA10 noise condition and further notes that the Hotel's engagement of RAPT Consulting took place before the licensee had notice of the current disturbance complaint. It is submitted that RAPT Consulting worked with the Hotel's sound engineers to ensure the Hotel's sound system contained noise limiters to ensure compliance and the sound system has not been changed since testing was conducted in December 2021.
50. [REDACTED] submits that the engagement of RAPT Consulting along with the completion of the recommended noise attenuation work, and the commissioning of additional noise testing reflects a genuine desire on the part of the licensee to address the concerns raised by the complainant.
51. The licensee objects to the complainant's first recommendation that a new independent audit of the Hotel's sound system be conducted. It is submitted that the acoustic testing conducted in December 2021 and the subsequent Noise Measurement Report found the Hotel to be compliant with the LA10 noise criteria and the settings on the Hotel's sound system were adjusted to ensure future compliance. However, it is provided that in the event any changes are made to the sound system, the licensee undertakes to engage an acoustic expert to prepare a report.
52. The licensee objects to the complainant's second recommendation that additional acoustic testing be undertaken inside the complainant's residence. [REDACTED] refers to the acoustic testing undertaken in December 2021 and notes measurements were taken at the boundary of the complainant's residence.
53. Regarding the complainant's third recommendation, [REDACTED] stated that the licensee undertook to complete the replacement of glass windows and doors with soundproof glass within the entertainment area of the Hotel within three months of the date of the submission.
54. It is submitted that the licensee objects to the complainant's fourth recommendation seeking a comprehensive sweep be undertaken to remove rubbish and the requirement outlining security patrols. [REDACTED] refers to the Hotel's current licence condition requiring the collection of rubbish up to a distance of 10 metres from the Hotel and notes the proposed recommendation by the complainant is excessive in the circumstance. It is further submitted that the rubbish collection currently undertaken by staff greatly exceeds the Hotel's licence requirement and includes outside the complainant's residence. It is also alleged that no complaints have been received in relation to rubbish other than from the complainant.

55. [REDACTED] states the security patrols sought by the complainant are excessive noting the distance from the intersection of [REDACTED] and [REDACTED] to [REDACTED] [REDACTED] is about 250 metres. It is submitted that to carry out the requested patrols would adversely impact upon the ability of security guards to carry out their duties at the Hotel. It is further asserted that the absence of complaints from residents other than the complainant supports there is no justification for the patrols as sought by the complainant.

Additional complaints to L&GNSW

56. The complainant lodged three additional complaints with L&GNSW on 1 May, 22 May and 11 June 2022. The complaints alleged disturbance from low frequency bass emanating from the Hotel to be audible inside their residence post-midnight. The complainant submits they contacted the general manager concerning the disturbance however was advised the Hotel is adhering to its LA10 noise condition. The complainant notes the disturbance is disruptive to sleep with the bass frequency remaining unabated after midnight.

57. On 6 November, 12 November and 13 November 2022, L&GNSW received additional complaints from the complainant alleging disturbance from loud, vibrating bass music emanating from the Hotel. The complainant states they were woken from their sleep and noise was audible inside their residence until 1:00am, in breach of the Hotel's LA10 noise condition.

Inspection by L&GNSW - 2 July 2022

58. On 2 July 2022 L&GNSW Inspectors attended the complainant's residence after midnight to conduct compliance testing of the LA10 noise criteria. However, due to strong winds and heavy rain, Inspectors were unable to undertake a meaningful observation and it was decided a further inspection would be required.

Inspection by L&GNSW - 7 August 2022

59. At approximately 12:05am on 7 August 2022 a L&GNSW Inspector attended the complainant's residence while another Inspector was positioned outside the Hotel to conduct LA10 compliance testing. On entry into the residence, the complainant was asked if noise was audible from the Hotel that evening to which the complainant responded, "yes, but it's the quietest I've heard in ages, its actually really good tonight."
60. The complainant was asked which room was closest to the Hotel and the Inspector was led into a bedroom on the [REDACTED] side of the residence. With the window closed the Inspector could hear faint background sounds from the Hotel. When the window was

opened the Inspector could hear music and singing emanating from the direction of the Hotel, along with a 'wailing' sound. The Inspector noted the wailing sound was very distinct in nature and appeared to be uncoordinated singing.

61. At approximately 12:16am, the Inspector positioned outside the Hotel was contacted and advised of the wailing sounds that were audible inside the complainant's residence. The Inspector outside the Hotel advised there was karaoke being performed at the Hotel and they could also hear the wailing sound, which was identified as emanating primarily from the first window located on and facing [REDACTED]
62. At approximately 12:22am, the Inspectors met outside the Hotel on [REDACTED] and confirmed the wailing sound heard from within the complainant's residence to be coming from the Hotel and sounded like karaoke. The Inspectors noted they could not identify the low bass noise which appears to be the complainant's primary issue. The Inspectors then spoke with the manager on duty outlining their observation and compliance testing of the LA10 noise criteria. The manager advised they were aware of the noise condition on the Hotel's licence and stated they would inform the licensee.
63. On 23 August 2022, L&GNSW Inspectors conducted a record of interview with the general manager in relation to the inspection and observations. The general manager advised it was the first time there had been an issue with noise emanating from karaoke held within the front bar, which has been hosted at the Hotel for three years. The general manager stated previous complaints related to bass noise emanating from the night club within the Hotel and acoustic amelioration work had been completed to reduce acoustic impact.
64. The general manager advised that the volume of the master amplifier had since been lowered and adjusted to resolve the issue. The general manager further stated the Hotel had also received a quote for double glazing as an additional measure for future capital works and reiterated their personal mobile number had also been provided to residents as a contact for any complaints. The general manager stated the last complaint received concerning disturbance relating to music was received on 28 May 2022 at 7:46pm when a band was playing at the Hotel. The general manager concluded by stating the Hotel wants to proactively work to resolve any issues.

Confirmation of remedial works by licensee

65. On 10 November and 29 November 2022, the licensee provided L&GNSW with photos of the sound proofing works that they had undertaken to complete in their submission dated 12 April 2022. While the undertaking had been to replace the doors and glass windows

within the entertainment area of the Hotel with sound resistant glass, the photos provided show the door facing onto [REDACTED] as identified by L&GNSW during the inspection on 7 August 2022 as being a source of noise leakage, and the windows and doors in the entertainment area, have instead been framed and boarded, with Sound Shield Insulation installed.

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

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

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

67. The Hotel has been in its current location since approximately 1890 and has operated under the current liquor licence since 3 December 1957. The complainant has resided at their current address for approximately 13 years. These facts are not disputed and while the current licensee commenced in August 2017, 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-

68. The licensee submits sound-proofed roof and walls have been built around the Hotel's courtyard. Capital works have also been carried out to the Hotel as recommended in the Acoustic Advice Report including installing soundproof insulation batts in the courtyard roof, installing louvers on the courtyard windows, installing soundproof window frames, installing soundproof glazed glass doors between the bistro and nightclub areas, replacing the fire doors, boarding up the base of the Hotel chimney with soundproof sheeting and batons, and removing redundant air conditioning vents from the roof to reduce sound escaping. The licensee has also completed sound-proofing works to the door facing onto [REDACTED] and the windows and doors within the entertainment area of the Hotel.

69. The complainant has replaced two windows at the rear of their residence containing glass specifically designed to minimise external noise.

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

70. The complainant has submitted that the Hotel adopted a new business model in 2018 when it rebranded to the Newcastle Hotel. While the licensee has submitted there have been no significant changes to activities conducted at the Hotel, they acknowledged the adoption of a different marketing strategy in 2018 resulted in increased patronage at the

Hotel. It is also noted that during the meeting with L&GNSW in 2019 the licensee stated the change in business model had attracted a younger demographic.

71. In the Newcastle Herald news article in 2018 the licensee was quoted saying the Hotel would no longer operate as “a Saturday night [only] venue”. The complainant alleges the disturbance did not begin until after these operational changes were made at the Hotel. A review of L&GNSW records outlining the Hotel’s compliance history shows the complainant’s first complaint lodged to L&GNSW was in October 2019.
72. The complainant further submits the operational changes at the Hotel now include regular events, such as student nights, trivia nights and themed events, being hosted on both weeknights and weekends with the Hotel trading until 3:00am on nights where this did not previously occur.

Findings and Decision

Undue disturbance

73. 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 licensee, Police and L&GNSW inspections. I have also had regard to the particular context in which the Hotel operates.
74. It is reasonable to expect some level of noise will be generated from the normal operation of the Hotel, including noise from live and amplified entertainment, patrons and pedestrian traffic. I do not regard this type of disturbance as undue in a general sense, considering the nature of the local environment and associated traffic noise. However, it is evident the Hotel’s operational changes in 2018 coincide with the disturbance experienced by the complainant. I am satisfied there is sufficient evidence before me to reasonably conclude the Hotel has, at times, unduly disturbed the quiet and good order of the neighbourhood.
75. In making a finding of undue disturbance, I have placed weight on the observations of the L&GNSW Inspectors on 7 August 2022, where exceedances to the post-midnight LA10 noise criteria was identified. On this occasion the noise was attributed to karaoke at the Hotel, and I note Inspectors did not observe any bass frequency emanating from the Hotel. I acknowledge the corrective action taken by the Hotel to resolve the issue which included lowering the volume of the master amplifier.
76. I acknowledge the Acoustic Advice Report prepared by RAPT Consulting on 20 April 2021, which included recommendations and control strategies to reduce noise impact considered in accordance with the LA10 noise criteria. I am satisfied the

recommendations have been completed and the Hotel has provided additional evidence of sound proofing works to a number of windows and doors utilising a specialist acoustic range insulation product.

77. I also acknowledge that the Noise Measurements Report prepared by RAPT Consulting on 14 December 2021 indicated compliance with the LA10 noise criteria and advised the octave band noise levels of the sound system were adjusted and set to a point where adherence with the LA10 noise condition was achieved. I do not question the integrity of the acoustic assessment; however, I note the complainant's concern that no acoustic measurements were taken from within their residence in the production of this report, or at any other time.
78. Notwithstanding the proactive steps taken by the Hotel, having considered the above factors, I am satisfied the complainant has been impacted by undue disturbance.

Regulatory Outcome

79. 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 of undue disturbance. I have also had regard to the particular context in which the Hotel operates. I also acknowledge that the Hotel is located on a relatively busy thoroughfare in proximity to residential and commercial properties.
80. I note the Hotel has an amplified sound system from which music is played and holds an extended trading authorisation permitting trade until 5:00am. I have also considered the operational change the Hotel underwent in 2018, marketing to a younger demographic and resulting in increased patronage. In this context, it is reasonable to expect significant responsibility lies with the Hotel to ensure its changes in operation do not unduly disturb the quiet and good order of the neighbourhood. While I acknowledge the order of occupancy is in favour of the Hotel, this does not relieve the Hotel of the obligation to minimise noise and disturbance.
81. I acknowledge the noise mitigation strategies the Hotel has adopted over time to reduce its noise impact, including commissioning acoustic testing, completing capital works at the Hotel and calibrating the audio output of the sound system in accordance with LA10 noise criteria. I am encouraged that the Hotel commissioned an acoustic assessment of their own volition and has carried out the recommended acoustic amelioration works. I also note the Hotel has erected signage reminding patrons to be respectful of the neighbourhood when leaving the Hotel, provided an afterhours mobile number to

residents to respond to complaints and concerns effectively, and extended the perimeter of the rubbish collection area to include the complainant's residence. The Hotel has been responsive to the complaint, and I find the proactive measures implemented to be a positive representation that the Hotel is taking the complaint seriously to address the issues and concerns raised.

82. I acknowledge the complainant's concern that the measures implemented by the Hotel to date are insufficient to mitigate disturbance and ensure compliance with the LA10 noise condition. On this point, I have had regard to the L&GNSW inspection on 7 August 2022 where noise from karaoke at the Hotel was audible inside the complainant's residence after midnight. I note however that the complainant's primary issue of low frequency bass noise was not identified by Inspectors and the Hotel implemented corrective actions to resolve the issue. To assist in providing a long-term solution for the Hotel, I strongly encourage acoustic measurements be taken from inside the complainant's residence after midnight, particularly in the [REDACTED] side of the residence where the disturbance is reported to be causing the greatest impact.
83. The complainant has sought a comprehensive rubbish sweep and additional security patrols on [REDACTED] and [REDACTED]. I note the Hotel is currently subject to a rubbish collection condition (Condition 3310) which requires all bottles and drink containers to be collected from the immediate environs of the Hotel up to a distance of 10 metres in all directions. I also note the Hotel is currently subject to a dispersal of patron condition (Condition 3320) requiring security guards on Friday and Saturday nights after midnight to ensure patrons do not linger within the perimeter of the Hotel. I acknowledge the Hotel's submission that it exceeds the requirements of both these conditions.
84. Having carefully reviewed the Hotel's liquor licence, noting that the Hotel is also subject to conditions relating to orderly precinct strategy requirements and pre-closure procedures, I am of the view there are sufficient conditions acting as a safeguard to ensure the quiet and good order of the neighbourhood. I am satisfied compliance with these conditions will minimise noise levels and I do not consider it appropriate at this time to vary or impose further conditions on the Hotel's licence.
85. Having regard to the material before me, I consider the issuing of a warning to be an appropriate regulatory response to address the finding of undue disturbance. This decision reflects my conclusion that while there have been instances of undue disturbance, the Hotel has taken a number mitigating measures to address the disturbance. Further, the complainant's primary issue of low frequency bass noise was not identified by L&GNSW Inspectors.

86. In issuing a warning to the licensee, I provide the Hotel an opportunity to continue to develop and employ reasonable strategies to minimise undue disturbance. I strongly encourage the licensee to be proactive in addressing disturbance and complaints as they arise and engage with residents in a direct, positive and meaningful manner.
87. Should further evidence be presented demonstrating undue disturbance or a disregard for the ongoing responsibility to mitigating noise and disturbance, it is open for the matter to be reconsidered and for further regulatory action to be taken.
88. Finally, I am satisfied this decision is a proportionate regulatory response to the disturbance identified in the complaint.

Decision Date: 13 December 2022



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 and Gaming Authority by an application which must be lodged within 28 days of the date of this decision, that is, by no later than 10 January 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.liquorandgamingnsw.nsw.gov.au



Annexure 1

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

1. Copy of the liquor licence for Newcastle Hotel dated 11 November 2022.
2. Section 79 Disturbance Complaint lodged by the complainant on 27 July 2021.
3. Submission from NSW Police received on 29 December 2021.
4. Submission and supporting material from the licensee received on 18 January 2022.
Enclosed with the submission is the Acoustic Advice Report by RAPT Consulting dated 20 April 2021 and the Noise Measurements Report by RAPT Consulting dated 14 December 2021.
5. Final submission and supporting material from complainant received on 5 March 2022.
6. Final submission from [REDACTED] on behalf of the licensee received on 12 April 2022.
7. L&GNSW Inspector's file note of the inspection conducted at the complainant's residence on 7 August 2022.
8. Additional material from the licensee regarding remedial works dated 10 November 2022 and 29 November 2022.