

**FILE NO:** A16/0007584

**COMPLAINANT:** [REDACTED]

**LICENSEE:** Mr Martyn Colin Phillips

**LICENSED PREMISES:** Coffs Harbour Hotel – LIQH400109113

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

**LEGISLATION:** *Liquor Act 2007*

**DECISION MAKER:** Sean Goodchild, Director Compliance Operations, Liquor & Gaming NSW

## SECTION 81 DECISION

Under Section 81 of the *Liquor Act 2007* (the Act) I, Sean Goodchild, Director Compliance Operations, Liquor & Gaming NSW (L&GNSW), a delegate of the Secretary, Department of Industry, in relation to the disturbance complaint made against the Coffs Harbour Hotel, have decided to **impose two conditions** on the liquor licence.

The conditions imposed on the liquor licence relate to the following:

1. A requirement for the hotel to maintain a noise limiter to control all amplified entertainment.
2. From 10:00pm until cease of trade, the eastern bi-fold doors between the auditorium and the beer garden must remain closed.

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

## REASONS FOR DECISION

### Legislation

1. Section 79 of the Act permits a person to 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 15 June 2016, [REDACTED] of [REDACTED], Coffs Harbour, lodged a complaint in relation to the premises, alleging undue disturbance from loud music, patron and other noise associated with the operation of the premises. The complainant lodged the complaint as a resident authorised by five other residents.
6. The complaint also alleges undue disturbance from another licensed premises, the Plantation Hotel. On 14 August 2016, the complainant withdrew the application made against the Plantation Hotel.
7. The complaint asserts that disturbance occurs predominately on Wednesday through Saturday nights and can be so loud it disturbs residents when all the windows and doors of their homes are closed.
8. The complainants submit they are experiencing adverse health consequences from lack of sleep from noise and restricted clean air flow into their homes, because they need to close all doors and windows.
9. The complainants seek that the hotel take action to mitigate disturbance by installing sound proofing to the areas where amplified music is provided and a retractable roof in the beer garden.

10. Between 13 July 2016 and 16 December 2016, various submissions were lodged by all parties. A list of the material before the delegate of the Secretary is set out in Annexure 2.

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

11. The Act requires that the Secretary have regard to the following statutory considerations.
12. *The order of occupancy between the licensed premises and the complainant* – the hotel has operated under the current licence at its present site since 16 June 1960. According to the licensee the hotel has been operated on the site since 1937. The present licensee commenced at the hotel on 4 March 1996. The hotel predates the complainant's occupation of their residence. These facts are not in dispute and I consider the order of occupancy is in favour of the hotel.
13. *Any changes in the licensed premises and the premises occupied by the complainant, including structural changes to the premises* – there is no evidence before me that there have been any changes to the complainant's residence. Structural changes were made to the hotel in 2005 following a fire. Alterations and an extension were made to the existing building including the addition of an outdoor beer garden.
14. *Any changes in the activities conducted on the licensed premises over a period of time* – the complainants allege that amplified noise levels have become louder and that the hotel has increased its trading hours from 12:00am (midnight) to after 2:00am. On the available material, there has been no change to the authorised trading hours for the hotel. The hotel remains focused on a traditional pub style offering of food and beverage accompanied by entertainment on busier trading nights. Since the complaint, the main source of entertainment has changed to feature DJ style entertainment with less reliance on live music.

### **Other considerations**

#### *Undue disturbance*

15. I am satisfied the material before me is sufficient to support a finding the premises has, at times, caused undue disturbance to the neighbourhood. In making this finding, I have balanced the submissions made by the licensee, complainant, NSW Police and council.
16. The hotel is a late trading venue in the commercial core of Coffs Harbour and is located on the corner of West High Street and the Pacific Highway with a number of other licensed premises in close proximity.
17. The complainant's residence is situated at the rear of the hotel, opposite the hotel carpark. The hotel has a beer garden, which is on the side of the hotel directly adjacent to the

complainant's residence. The hotel and the complainant's residence are separated by a single laneway.

18. A level of disturbance from the normal operation of the hotel is to be expected, including noise from live entertainment, patrons, pedestrian traffic generated by the hotel and other nearby venues. I do not regard this type of disturbance as undue in a general sense, taking into account the nature of the local environment and associated traffic noise.
19. Council's submission included the hotel's development consent and a report titled, 'Acoustic Assessment Coffs Harbour Hotel Extension', dated 1 June 2004. All recommendations of the report were determined by Council to be implemented at the hotel. These include:
  - bi-fold doors to the beer garden and rear exit doors remain closed when entertainment is occurring, and
  - approved noise management plan to be carried out at all times during hotel operation.
20. Police note patron migration patterns between the Coffs Harbour Hotel and Plantation Hotel, with an analysis of incidents occurring in the vicinity of both venues. Police indicate that disturbance from the premises is primarily noise transmission from the bi-fold doors separating the auditorium and the beer garden.
21. Police also submit the fire-exit doors on the western-wall of the auditorium have caused disturbance. Patrons open the fire-exit doors and in effect allow intermittent bursts of amplified music to escape.
22. In response to the complaint, the licensee engaged Matrix Thornton Consulting Engineers to conduct an acoustic test of the hotel's compliance with the LA10 noise condition on Friday, 9 September 2016. The test was carried during the evening both before and after midnight, while amplified music was playing.
23. Following the test, an acoustic report was provided to L&GNSW. The report found that the premises did not comply with the LA10 noise criteria before midnight, which is in breach of the existing LA10 condition imposed on the hotel's licence.
24. The acoustic report makes two primary recommendations to address non-compliance with the LA10 at the venue, including closing the eastern side glass doors and installing a noise limiter to limit amplified music levels.
25. While a certain level of disturbance is expected due to the nature of the premises operation as a hotel, there is evidence, particularly in the form of an acoustic report which demonstrates non-compliance with the LA10 criteria, to suggest the disturbance is excessive and unwarranted in the context of the proximity of the venue to the complainants

residence and what appears to be little control over the levels of amplified sound at the venue.

*Action taken to mitigate disturbance*

26. In considering whether to impose conditions on the 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.
27. The licensee submits that after a major fire in the hotel in 2005, the dining room was built to accommodate functions as well as entertainment. Acoustic ceiling was installed as part of this process and the polished floor was carpeted to assist in absorbing sound. The licensee claims that they had a generally good relationship with their neighbours up until recently.
28. The hotel is one of a number of sources of noise that contribute to overall disturbance in the neighbourhood, including heavy traffic from the Pacific Highway and motors on the rooftops of all surrounding buildings.
29. Regardless, the licensee acknowledged the concerns raised by residents and expressed an intention to take the complaint seriously.
30. The licensee did not dispute the complainant's allegation of noise disturbance on one particular occasion, acknowledging that the DJ they were hosting at the time had not complied with the requested volume level.
31. Since the complaint was lodged the licensee advised the following measures have been implemented to control disturbance, including:
  - engaging with Police, industry and the complainants
  - using a graphic equaliser to condition sound
  - additional sound proofing to the auditorium ceiling, western walls, and emergency exit doors located on the western side
  - introducing a noise complaint register
  - entering into a Local Licensing Agreement (LLA) with Police to cease entertainment by 1.30am
  - limiting amplified music to the beer garden area, and
  - relocating some of the entertainment in the front bar area to allow for a staggered bar closing strategy.

32. Complete Liquor Services, a consultancy engaged by the licensee, advised in a submission dated 11 December 2016, that the licensee has undertaken further noise mitigation works to those outlined above, including:

- installing a noise limiter
- closing the bi-fold doors between the beer garden and auditorium
- limiting the amplified noise in the beer garden area and cease by 12:00am (midnight)
- amendment of the hotel's security management plan to include a requirement for security guards to monitor patron noise and behaviour in the beer garden and to move noisy patrons inside
- limiting the number of live bands performing at the hotel
- placing static security guards by the fire doors to make sure doors are closed, as well as signage to re-inforce this requirement
- signage has been placed throughout the hotel to advise patrons there is no exit from the hotel into Cox Lane
- voluntary lockout commencing from 12:00am (midnight)
- staggered bar closing strategy at 20 minute intervals with the last alcohol service to cease trade 20 minutes prior to the end of entertainment at 1:10am, and
- entering into a Local Licensing Agreement (LLA) with Police to operate and train staff in accordance with the 'Alcohol Plan of Management and Security Management Plan' signed 12 July 2016.

33. Since the initiation of this matter, L&GNSW has received correspondence from the complainant about disturbance from the hotel. The complainant concedes that while the changes outlined above have led to a drop in the volume of amplified music, patron noise continues to be a concern.

34. Specifically, the complainant notes that patron noise outside in the beer garden is a major problem and seeks the installation of a retractable roof over the beer garden as a means of resolving their complaint.

### **Findings and conclusion**

35. I have considered the submissions of the complainant, licensee, Police and council. I have also had regard to the particular context in which the venue operates. In deciding whether

to impose conditions on the licence relating to disturbance, I have considered the following points.

36. I have taken the statutory considerations into account and acknowledge that the order of occupancy is in favour of the hotel. It is reasonable to expect some noise will be generated by its ongoing operation.
37. I acknowledge the licensee has implemented a range of measures to mitigate disturbance, including installation of a noise limiter to control the volume of amplified music at the venue, installation of additional noise abatement material, and other operational measures.
38. However, the fact remains that the venue operates in close proximity to residential properties and has been found to be non-compliant with the existing LA10 condition. When noise is not adequately controlled in this environment, disturbance clearly becomes undue.
39. There is a need to manage the risk of disturbance escalating to levels identified in the acoustic report, and so I have decided to impose a condition for a noise limiter to be maintained at the premises to control amplified entertainment.
40. The licensee has voluntarily agreed to close the bi-fold doors between the beer garden and the auditorium to reduce noise transmission in accordance with the observations and recommendations of the acoustic report. This is important as the acoustic report provides that only when the eastern bi-fold doors are closed is the venue compliant with the LA10 noise criteria, regardless of the installation of a noise limiter. The imposition of the condition will provide better regulatory certainty of compliance and will likely reduce the frequency of complaints from the residents.
41. Without any substantial evidence to the contrary, I am not persuaded there is a need for further regulatory intervention in respect of patron management. The hotel's liquor licence is subject to a security licence condition that requires on days when extended trading hours are exercised, an appropriate level of licensed security officers are present to adequately supervise patrons at the premises and when they leave.
42. On the material before me, I do not consider a condition requiring the installation of a retractable roof over the beer garden is reasonable. Notwithstanding the contribution of noise from the hotel, the acoustic report found the dominant external noise to be traffic. I have taken into account the significant effort and financial cost sustained by the licensee in addressing the complaint, and the subsequent improvement in disturbance. There is no evidence to support the imposition of such a condition.
43. I consider the conditions imposed to be appropriate safeguards to prevent disturbance as it relates to the liquor licence. These conditions do not unduly burden the licensee and mandate what is already in place voluntarily. I am satisfied these preventative measures in

operation with the voluntary measures implemented by the licensee are a balanced and proportionate regulatory response to the issues raised in the complaint.

44. Finally, I note that the venue will be subject to monitoring and inspections by Liquor & Gaming NSW compliance officers to ensure that conditions are being complied with and that the risk of undue disturbance is being effectively mitigated.

Date of decision: 27 July 2017.



**Sean Goodchild**  
Director Compliance Operations  
Liquor & Gaming NSW  
Delegate of the Secretary, Department of Industry

**IMPORTANT NOTES**

**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 24 August 2017. A \$500 application fee applies. Further information can be obtained from Authority Guideline No 2 published at [www.liquorandgaming.nsw.gov.au](http://www.liquorandgaming.nsw.gov.au).**

**You should also note that in accordance with the provisions of 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](http://www.liquorandgaming.nsw.gov.au).**



Under section 81 of the *Liquor Act 2007* a delegate of the Secretary of the Department of Industry has imposed the following conditions on the liquor licence of:

**Coffs Harbour Hotel (LIQH400109113)**

**Noise Limiter**

The licensee must ensure that a noise limiter is maintained to control all amplified entertainment at the licensed premises. All amplifiers or noise generating equipment must be under the control of the noise limiter that has been calibrated by a qualified acoustic consultant to ensure compliance with the LA10 noise criteria. The noise limiter controller must be contained within a locked container or secure area and is to be only accessible by venue management and qualified acoustic consultants.

**Date condition effective:** 31 July 2017

**Closure of doors**

From 10pm until cease of trade, the eastern bi-fold doors between the auditorium and the beer garden must remain closed.

**Date condition effective:** 31 July 2017

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

1. Section 79 Noise Disturbance Complaint lodged by [REDACTED] on 15 June 2016.
2. Submission from [REDACTED], Compliance Officer, Coffs Harbour City Council dated 13 July 2016.
3. Email from [REDACTED], Gleasons Hotels (North Coast) Pty Ltd dated 15 July 2017.
4. Submission from [REDACTED], Licensing – Coffs/Clarence Local Area Command dated 9 August 2016.
5. Email from complainant re further disturbances dated 13 October 2016.
6. Submission from licensee dated 25 October 2016 and attached acoustic report prepared by Matrix Thornton Consulting Engineers dated 20 October 2016.
7. Email from complainant re licensee submission dated 5 November 2016.
8. Email from complainant re licensee making contact dated 30 November 2016.
9. Email from complainant re further disturbances dated 1 December 2016.
10. Submission from licensee dated 16 December 2016.
11. Email from complainant re further disturbance dated 24 January 2016.