



**FILE NO:** A17/0009982  
**COMPLAINANT:** [REDACTED]  
**LICENSED PREMISES:** Commercial Hotel Motel, Lithgow - LIQH400113552  
**ISSUES:** Whether the quiet and good order of the neighbourhood of the licensed premises is being unduly disturbed.  
**LEGISLATION:** *Liquor Act 2007*

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## SECTION 81 DECISION

Under Section 81 of the *Liquor Act 2007* (the Act) I, Sean Goodchild, Director Compliance Operations, Liquor & Gaming NSW a delegate of the Secretary, Department of Industry, in relation to the complaint made in respect of the Commercial Hotel Motel, Lithgow, have decided to **issue a warning** to the licensee in the following terms:

*Under section 81(d) of the Liquor Act 2007 I, Sean Goodchild, Director Compliance Operations, Liquor & Gaming NSW, a delegate of the Secretary, Department of Industry warn John Thomas, licensee of the Commercial Hotel, Lithgow that he must ensure that no future undue disturbance is caused by amplified entertainment at the Commercial Hotel, Lithgow.*

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## 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 10 July 2017, the principal complainant, [REDACTED] of [REDACTED] [REDACTED] lodged a complaint in relation to the Commercial Hotel (the hotel), a licensed premises located at 198 Main Street, Lithgow. He lodged the complaint as a resident authorised by three other residents.
6. The complainant alleged disturbance is caused by excessive noise from the hotel when live bands perform.
7. Between 10 July 2017 and 3 September 2017, various submissions were lodged by all parties.

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

8. The Act requires that the Secretary have regard to the following statutory considerations.
9. *The order of occupancy between the licensed premises and the complainant* – the licensed premises has operated at its present site since 1960 and predates the

complainant's occupation of the residence dating back to 1994. This fact is not in dispute and I consider the order of occupancy is in favour of the premises.

10. *Any changes in the licensed premises and the premises occupied by the complainant, including structural changes to the premises* – There is no evidence in the material supplied indicating that any relevant structural changes to the licensed premises or the premises occupied by the complainant have occurred recently relevant to this complaint.
11. *Any changes in the activities conducted on the licensed premises over a period of time* – There is no evidence in the material supplied to indicate that there have been significant changes in the activities on the licensed premises over a period of time. The premises has a long history, dating back to at least the year 2000 of offering amplified entertainment in the form of live bands.

#### **Other Considerations**

12. *History of disturbance complaints* – *The hotel has a long history of being subject to disturbance complaints dating back to at least the year 2000. The complainant has been the primary driver of these complaints. The complaints and their outcome are summarised briefly as follows:*
  - 2000 – Disturbance complaint to the Liquor Administration Board on 24 September 2001 by imposing six noise mitigation conditions on the licence. Acoustic testing was conducted by Mr Stephen Cooper, a qualified acoustic engineer and consultant, which underpinned the decision to impose the conditions.
  - 2008 – A further disturbance complaint was made to the Liquor Administration Board which imposed a temporary condition relating to noise disturbance complaint handling by the licensee, which is still on the licence. On 1 June 2009 a condition relating to sound levels in the hotel bar was imposed. It is worth noting that the then licensee appears to have provided an undertaking that only solo or duo performers would be engaged to provide amplified entertainment. Also, further noise remediation measures were conducted by the licensee by double glazing a hotel window and relocating the position of performers in the bar. It is unclear whether windows in the residences opposite the hotel were ever replaced as discussed in Mr Cooper's acoustic report.
  - 2013 – Two general disturbance complaints. Complaints assessed as not requiring further action at this time.
  - 2014 – Two general disturbance complaints. Complaints assessed as not requiring further action at this time.

- 2017 – Two general disturbance complaints. Rolled into current section 79 disturbance complaint.

*Undue disturbance*

13. I am satisfied the material before me is sufficient 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 Main Street, Lithgow and is surrounded predominately by other commercial premises. However, two of the authorising residents to the complaint reside in very close proximity to the hotel on the same side of Main Street, directly across Gray Street. The complainant and the final authorising resident live some distance from the rear of the hotel across a rail line, however the gap between the hotel and that residence is open ground with no barrier to prevent the passage of noise.
15. The complainant claims that the disturbance from the hotel is caused by excessive noise when the hotel hosts live bands. He notes the hotel is already subject to noise restrictions, however, is not adhering to them. He alleges that the hotel does not answer the phone or hangs up when he calls to complain about disturbance. He also claims that imposed conditions are not enforced and requests that amplified music remain banned until the hotel has noise limiters installed. I note there is no condition requiring noise limiters currently imposed on the liquor licence.
16. On 1 August 2017, the complainant forwarded two emails dated 18 July 2017. He referred to the hotel proposing to have live bands on 28 and 29 July 2017 and a decision of a Licensing Court magistrate banning live bands at the hotel until noise eliminators were installed. In emails to L&GNSW dated 16 and 17 August 2017, the complainant alleged further disturbance on 5 August 2017 caused by four live bands. He also refers to a number of noise readings he conducted himself at his residence and other locations, including some within the immediate vicinity of the hotel. He notes that one of the authorising residents living across from the hotel came out of her residence and enquired why the noise was so loud as the hotel doors were closed.
17. In response to the instigating disturbance complaint, Mr Robert Lang, Manager, submitted that acting managers of the hotel attended the residences of the complainants to assure them that *'the hotel will adhere to the conditions of the license in future'* and *'that compliance was to be put in place asap'*. He goes on to indicate that there have been *'hiccups'* in the transitional period (referring to the new ownership of the hotel) and

that efforts were being made to 'create a stable, well balanced community minded venue'.

18. On 8 September 2017, the complainant provided a number of photographs, most of which demonstrates the relative locations of the hotel, his residence and the residences of the authorising residents. He also provided one photograph of a sign on the outside of the hotel advertising live music on Saturday 23 September 2017 by the band Side Car. The sign contained the words 'Live & Loud'.
19. On 4 August 2017, Lithgow City Council provided a submission to L&GNSW. Council notes it has received no noise complaints about the hotel over the last few years. The last notification Council received regarding noise complaints was in 2000. An annual approval to conduct entertainment was granted on 7 June 2002, which included noise conditions imposed by the Liquor Administration Board. During 2000 to 2002 noise mitigation measures were conducted at the premises to reduce noise impacts, including sound proof glass, trims and rollers being fitted to doors. Council has no other information relating to this matter.
20. On 9 August 2017, Police provided a submission to L&GNSW. Police note that there has only been one recorded noise disturbance complaint recently relating to an incident in March 2017 where occupants of hotel accommodation were making excessive noise on a balcony. Police advise that there is currently no specific issue in relation to noise at the hotel.
21. A certain level of disturbance is expected due to the nature of the premises operation as a hotel. While there is limited direct evidence to support a finding that the hotel has caused undue disturbance, on balance, there is a likelihood the hotel has at times caused undue disturbance. In this regard, I have been persuaded by the comments of Mr Lang in his submission, which suggest historical non-compliance, and the context of the very close proximity of the residences of two of the authorising residents to the complaint. These residences are located approximately 13 metres from the hotel across Gray Street, a narrow side street off Main Street.

*Action taken to mitigate disturbance*

22. 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.

23. In response to the complaint, the licensee provided two submissions, one on 29 July 2017 from Mr Robert Lang (referenced above) and the other from Mr John Thomas, licensee, on 7 September 2017. Mr Lang submits that hotel management has engaged with the complainant and authorising residents to affirm that the hotel's licence conditions will be complied with. He also provides an undertaking to review performances that are proposed to be engaged as to their suitability for the venue and compliance with existing noise conditions.
24. The licensee Mr Thomas comments on the issues raised by the complainant about noise levels on Saturday 5 August 2017. He advises no complaints were received from the neighbours. Mr Lang claimed that one of the authorising residents also queried the complainant's claim that she looked outside her door to see why the music was so loud. Mr Thomas questions the complainant's noise readings and claims they highlight gross inconsistencies. He also submits that on 7 September 2017 representatives from the hotel attended the complainant's residence and attempted to engage him in a discussion about the complaint. This effort failed and they left his residence. Finally Mr Thomas argues that the fact that people living right next door to the hotel have said they could not hear the band one can conclude that the noise complaints are unfounded.
25. There is no evidence of a technical nature e.g. acoustic reports, that there has been an improvement in reducing the level of disturbance. There is however some evidence from the complainants that the level of disturbance has reduced at times. In particular the principal complainant noted in an email on 3 September 2017 *'I give credit where due the Commercial Hotel has been abiding by their conditions on their licence for the past few Saturdays.'*

### **Findings and conclusion**

26. 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.
27. The issue of disturbance at the hotel has been ongoing for some 18 years or more. The current licensee, Mr Thomas, who was appointed licensee on 3 April 2017, has inherited the ongoing issue. I also accept that he has taken some steps to mitigate the risk of disturbance, by engaging with some authorising residents, undertaking to comply with existing noise conditions and to review entertainment for suitability for the venue.
28. I place particular weight on the comments of Mr Lang in his submission, which are suggestive of historical non-compliance, and the proximity of two of the authorising residents' residences to the hotel, being only approximately 13 metres across Gray

Street. I also note the provision of full live bands on occasion as amplified entertainment, and the absence of any recent acoustic evidence confirming that the hotel is complying with the LA10 noise condition.

29. On 8 September 2017 the complainant provided L&GNSW with a photograph of a sign on the hotel advertising the band Side Car on 23 September 2017. Side Car is promoted as a '4 piece original and covers band'. This information supports the case that the hotel provides live bands as amplified entertainment. I note the photograph advertised the band as 'Live and loud'. In the context of an ongoing disturbance complaint, I do not regard this type of advertising as helpful.
30. In the circumstances, and noting particularly the licensee's efforts to mitigate undue disturbance and the complainant's concession that undue disturbance has not occurred on every weekend, I am satisfied that imposing conditions is not warranted at this time and regulatory action by way of a warning to the licensee is sufficient.
31. I have also considered the disturbance conditions currently on the licence. In my view the licensee has the option of seeking a review of the conditions, other than the standard LA10 noise condition by the Authority and the Secretary, due to their age.
32. I recommend that the licensee at a minimum undertake the following noise mitigation measures:
  - Review carefully the amplified entertainment to be provided as to whether it would be likely to cause undue disturbance and breach the existing LA10 noise condition.
  - Ensure all doors and windows are closed at all times amplified entertainment is conducted.
  - Direct staff to conduct regular patrols around the hotel when amplified entertainment is provided to ensure all doors and windows are closed and monitor noise.
  - Consider not conducting amplified entertainment after midnight.
  - Review all noise remediation measures undertaken at the hotel to date.
33. Should fresh and direct evidence be presented which demonstrates poor management of disturbance issues, it is open for the matter to be reconsidered and for further regulatory intervention to occur. This could involve, for example, imposition of a condition prohibiting amplified entertainment until a qualified acoustic consultant provides a report that the LA10 noise condition was being complied with when amplified entertainment was conducted at the hotel. I therefore urge the licensee to proactively manage any noise related issues in the future to minimise the risk that this happen.

34. Finally, I am satisfied that the issuing of a warning to the licensee is a measured and appropriate regulatory intervention.

Decision Date: 22 June 2018



**Sean Goodchild**

Director Compliance Operations

Liquor & Gaming NSW

Delegate of the Secretary, 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 20/7/18. 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.liquorandgamingnsw.nsw.gov.au](http://www.liquorandgamingnsw.nsw.gov.au)





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

1. Section 79 complaint lodged by [REDACTED] on 10 July 2017.
2. Copy of current licence for the Commercial Hotel.
3. Extract from legacy Liquor Administration Board file dated 24 September 2001 confirming imposition of six noise mitigation conditions.
4. Letter from Mr Steven Cooper, acoustic consultant, dated 21 April 2009 to the Department of Liquor and Gaming re acoustic compliance, Commercial Hotel, Lithgow.
5. Letter from [REDACTED] to L&GNSW and received on 1 August 2017 enclosing email dated 18 July 2018.
6. Email to L&GNSW dated 31 July 2017 with licensee's first formal submission in response to the complaint.
7. Email to L&GNSW dated 4 August 2017 with submission from Lithgow City Council.
8. Email to L&GNSW dated 9 August 2017 with submission from Police.
9. Emails to L&GNSW dated 16 and 17 August with [REDACTED] response to licensee submission.
10. Email to L&GNSW dated 3 September 2017 from [REDACTED] restating complaint of disturbance on 5 August 2017.
11. Email to L&GNSW from licensee with final submission in response.
12. Final Email to L&GNSW from [REDACTED] re proposed band on 24 September 2017 with photographs.