

FILE NO: A15/0006302

COMPLAINANT: [REDACTED]

LICENSED PREMISES: Metropolitan Hotel, Maitland – LIQH400115342

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 (L&G NSW), a delegate of the Secretary, Department of Justice, in relation to the disturbance complaint made against the Metropolitan Hotel, have decided to impose three conditions on the liquor licence relating to the following:

1. LA10 noise condition.
2. A requirement for the hotel to install a noise limiter to control all amplified entertainment.
3. All amplified entertainment conducted at the hotel is prohibited until such time as an acoustic report prepared by a qualified acoustic consultant confirms compliance with the LA10 noise criteria. A copy of the acoustic report must be provided to L&G NSW.

The details of the conditions, including the dates in which they become effective, are outlined in Annexure 1. It is noted that conditions relating to installation of a noise limiter and the completion of an acoustic report confirming compliance with the LA10 condition have been given a future effective date.

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 satisfies the Secretary that their interests (financial or otherwise) are adversely affected by the disturbance detailed in the complaint.
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 21 September 2015, [REDACTED], Maitland, lodged a disturbance complaint under section 79 of the Act concerning the hotel. They alleged that the hotel had live bands in the open areas at the back of the hotel on Friday and Saturday nights and Sunday afternoons.
6. The complainants alleged that they had engaged with the licensee on numerous occasions over the previous 12 months and asserted that at first the licensee would

reduce the noise level but after time the volume would increase. The complainants lodged the complaint as residents authorised by two other residents.

7. Between 3 November 2015 and 19 May 2016, various submissions were lodged by the parties. A list of the material that is before the delegate of the Secretary is set out in Annexure 2.

Considerations and findings

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

8. The Act requires that in certain cases the Secretary have regard to three statutory considerations being the order of occupancy between the licensed premises and the complainant; any changes in the hotel and the premises occupied by the complainant, including structural changes to the premises; and, any changes in the activities conducted on the licensed premises over a period of time.
9. *The order of occupancy between the licensed premises and the complainant* – The hotel's liquor licence indicates that the hotel has operated under the current licence at its present site since 1 July 1946. Information from Maitland City Council suggests that the original DA for the property dates back to 1940. The present licensee commenced operation at the hotel on 2 November 2007. The hotel predates the complainant who has lived at her residence since April 2014. This fact is not in dispute and I consider that the order of occupancy consideration is in favour of the hotel.
10. *Any changes in the licensed premises and the premises occupied by the complainant, including structural changes to the premises* – Since the complaint was lodged the licensee has conducted some remedial noise mitigation works, including an acoustic window, laying acoustic carpet and construction of a partial roof over the open area where bands perform. There is no evidence before me that there have been any changes to the complainant's residence.
11. *Any changes in the activities conducted on the licensed premises over a period of time* – The complainants allege that in the months prior to the complaint the frequency of live bands has increased along with the volume of live bands.

Submissions:

12. On 3 November 2015 L&G NSW received a short submission in response to the complaint, from Maitland City Council. The submission advised that the original DA for the hotel dated back to 1940 and the limited information, including further DAs, held by council did not contain details about any consents limiting the manner of operation of the hotel. The submission also advised that no disturbances had been recorded in relation to the hotel with council in the last twenty years.
13. The licensee, Mr Christopher Tucker, lodged a submission in response to the complaint dated 2 November 2015, enclosing an acoustic report from Spectrum Acoustics dated 30 September 2015. The submission advised that the hotel had been putting on live music for many years and up till recently had not had any complaints. Live music occurs on Fridays and Saturdays between 8.00pm to 11.00pm at night and on Sundays between 2.00pm and 5.00pm for some eight months of the year. There had been recent discussions to have soundproofing undertaken and a design and products had been agreed upon. The licensee advised they were in a financial position to begin work. Carpet had been installed in the back area and further work was planned. This included installation of Roofliner soundproofing, Trend Soundmizer Windows if required, soundproof curtain in back stairwell and other soundproofing barriers as required. The licensee's position was explained to the complainants at a meeting on 2 November 2015.
14. The acoustic report summarised testing conducted on Saturday 26 September 2015 between about 8.30pm and 10.00pm. Measurements were taken while a band was playing between 8.30pm and 9.30pm at the residential boundaries at the front of the potentially most affected residence at [REDACTED]. These measurements showed that the noise exceeded the LA10 noise criteria in all octave bands. On the basis that the licensee had indicated an intention to enclose the courtyard with a combination roof including a 75% solid section and a 25% operable section to be made of insulated roof panels, an estimate was made of whether or not the LA10 noise criteria would be satisfied if the roof was installed. The report indicated that it would, with the rider that the insulated panels are only suggested for 75% of the roof, with the remainder to be an operable system. The report concludes with a recommendation that the operable section of the roof be reviewed and that initial construction be completed and further acoustic testing conducted to identify any additional recommendations to achieve compliance.

15. In a submission dated 17 November 2015 NSW Police provided details of ten complaints to Police about noise disturbance from the hotel over the period 16 August 2014 to 25 October 2015. I note that on three of these occasions Police did not arrive at the hotel until after it was closed and on two occasions Police attended the hotel but did not detect excessive noise. However on the remaining five occasions Police attended the hotel they did detect excessive noise from live bands playing and on two of those occasions Police issued the licensee Noise Abatement Directions.
16. The Police submission alleges that when engaging with the licensee in relation to addressing noise disturbance complaints, the licensee has not fully co-operated with Police. Police submit that when they have identified excessive noise from live bands, it is at a level loud enough to have an adverse effect on the neighbourhood. Police are also of the view that a standard LA10 noise criteria condition be imposed on the licence of the hotel.
17. I have also considered the results of an inspection undertaken by two L&G NSW inspectors conducted on Friday 18 March 2016. The inspectors initially attended the rear lane behind the hotel situated between the hotel and the principal complaints' residence at [REDACTED] about 9.00pm. Inspectors identified a live band playing at the hotel. They then attended the front of [REDACTED] and noted they could clearly hear the music from the live band at the hotel. The inspectors returned to the hotel and engaged with the licensee. Inspectors noted some renovations had occurred including construction of a roof partially covering a previously open area. Inspectors pointed out to the licensee that the roof did not entirely cover the area and that the uncovered area was a source of sound escaping and causing disturbance. The licensee indicated he had a quote from a builder to seal this area and was liaising with his acoustic consultant to address this problem.

Summary and conclusion

18. I have considered the submissions from the complainant, licensee, NSW Police and the local council. I have also had regard to the particular context in which the hotel operates (including the statutory considerations mentioned above).
19. Notwithstanding that the order of occupancy is in favour of the Hotel, I am satisfied the material before me is sufficient to support a finding that the hotel, at times, has caused undue disturbance to the neighbourhood. I have balanced the submissions on behalf of the hotel, the submissions made on behalf of the complainant, the material provided by the Central Hunter Local Area Command and the Maitland City Council. I have been

particularly persuaded by the independent evidence provided by NSW Police which substantiates allegations of noise from live bands being unduly disturbing to the point that police considered it necessary to issue noise abatement orders on two occasions. I also note that the acoustic testing showed the venue did not meet the LA10 criteria which is an established industry standard for noise from licensed premises.

20. Whilst a certain level of disturbance should be expected from the operation of a hotel, including noise from live bands, where an operator chooses to use a semi-outdoor space for the provision of live music it is expected that measures are in place to reduce the risk of undue disturbance to the neighbourhood. Based on the material before me I consider that the level of noise is unwarranted and that insufficient steps have been taken to mitigate undue disturbance.
21. I am satisfied that the licensee has conducted some works at the hotel in an effort to mitigate noise disturbance from amplified music. However, I am also satisfied that the licensee had ample opportunity to complete all works necessary to achieve compliance with the LA10 noise criteria condition and the acoustic report confirms this. The licensee has regularly advised in emails to L&G NSW that this would happen in the near future. On 17 December 2015 the licensee advised that soundproofing works would be completed by 23 January 2016 and an acoustic report demonstrating compliance with the LA10 condition would be supplied by February 2016. On 18 January 2016 he advised that soundproofing works were 85% complete and would be 95% complete in a few days. On 19 February 2016 he advised construction works were running a few weeks behind. On 29 February 2016 he advised that a further problem had been detected with noise bouncing back and deflecting off the hotel's second story which would require installation of acoustic carpet and sound absorbers. On 12 May 2016 he advised that another \$5,000 needed to be spent, including construction of another roof area which is partly open space. Acoustic testing would be delayed another month.
22. I am concerned that over most of the above period, live bands continued to play amplified music at the hotel and L&G NSW continued to receive advice from the principal complainants that undue disturbance from this noise continued, despite the soundproofing works conducted by the licensee. The latest advice to this effect came in the form of emails received on 19 May 2016 and 7 July 2016. In the latter email the principal complainants advised that, 'The music can still be heard in every room of our house, with the windows closed and television on.'
23. After considering the material before me, I am satisfied that despite the noise mitigation works conducted by the licensee, undue disturbance continues to occur at the hotel

caused by amplified music from live bands. I note that the licensee has yet to provide an acoustic report from a qualified acoustic consultant to demonstrate compliance with the LA10 noise criteria condition. Accordingly I am of the view that regulatory intervention by way of imposing conditions on the hotel's liquor licence is required and is appropriate.

24. In order to ensure appropriate controls are in place for the future operation of the hotel, I have decided to impose a LA10 noise criteria condition, and a condition requiring the installation and calibration of a noise limiter in accordance with the LA10 noise criteria. I consider that these two conditions do not place an undue burden on the hotels operation and will ensure a level of regulatory certainty against future instances of disturbance. These conditions will not prevent the offering of entertainment by live bands, but will restrict the activity to better ensure it does not cause undue disturbance to the surrounding neighbourhood. I have decided to place a future effective date on both the LA10 noise criteria condition and the noise limiter condition in order to give the licensee a period of time to arrange for the installation and calibration of a noise limiter.
25. In light of the drawn out attempts to remedy noise from live bands, I also consider it appropriate to impose a further condition that prohibits all amplified entertainment until such time as an acoustic report prepared by a qualified acoustic consultant confirms that the hotel's amplified entertainment is compliant with the LA10 noise criteria. This will better ensure that any uncompleted remedial works are completed and that a long term solution to minimising noise is achieved. I have decided to give this condition a future effective date to provide the licensee a window of time to arrange for finalisation of remedial works and testing to demonstrate compliance with the LA10 condition.

Date of decision: 3 August 2016.



Sean Goodchild
Director Compliance Operations
Delegate of the Secretary, Department of Justice

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 21 days of the date of this decision, that is, by no later than **24/8/2016**. A \$500 application fee applies. Further information can be obtained from Authority Guideline 2 published at www.liquorandgaming.justice.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.liquorandgaming.justice.nsw.gov.au.



Annexure 1

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

Metropolitan Hotel – Maitland (LIQH400115342)

LA10

The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz-8kHz inclusive) by more than 5db between 07:00am and 12:00 midnight at the boundary of any affected residence.

The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Frequency (31.5Hz-8kHz inclusive) between 12:00 midnight and 07:00am at the boundary of any affected residence.

Notwithstanding compliance with the above, the noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 12:00 midnight and 07:00am.

Date condition effective: 9 September 2016

Noise Limiter

The licensee must ensure that a noise limiter is installed 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: 9 September 2016

Amplified Entertainment

The licensee must ensure that no amplified entertainment is to be conducted at the licensed premises until such time as an acoustic report prepared by a qualified acoustic consultant confirms that all amplified entertainment to be conducted at the licensed premises complies with the LA10 noise criteria. Acoustic testing conducted in order to prepare the acoustic report must include testing at the rear boundary of the premises at [REDACTED] d. A copy of the acoustic report must be provided to Liquor & Gaming NSW within 7 days from the date of issue.

Date condition effective: 9 September 2016

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

1. Section 79 Noise Disturbance Complaint lodged by [REDACTED] on 21 September 2015.
2. Submission from Mr Chris Tucker, Licensee, dated 2 November 2015
3. Submission from Mr George Knezevic, Development Compliance Officer, Maitland City Council dated 3 November 2015.
4. Email from complainants in response to the licensee's submission dated 10 November 2015.
5. Submission from Police Licensing, Central Hunter Local Area Command dated 17 November 2015.
6. Email from licensee re ongoing soundproofing work and further acoustic testing dated 17 December 2015.
7. Email from secondary complainant re ongoing disturbance at hotel dated 20 December 2016.
8. Email from licensee re ongoing soundproofing work and further acoustic testing dated 18 January 2016.
9. Email from principal complainant re ongoing disturbance despite work done at hotel dated 27 January 2016.
10. Email from L & G NSW to the licensee re further report of disturbance on 12 February 2016 from principal complainant dated 15 February 2016.
11. Email from licensee re ongoing soundproofing work and further acoustic testing dated 19 February 2015.
12. Email from principal complainant re ongoing disturbance at hotel dated 25 February 2016.
13. Email from licensee re ongoing soundproofing work and further acoustic testing dated 29 February 2015.
14. File note of inspection of hotel conducted on 18 March 2016 dated 20 March 2016.
15. Email from licensee re ongoing soundproofing work and further acoustic testing dated 12 May 2015.
16. Email from principal complainant re ongoing disturbance at hotel dated 19 May 2016.
17. Email from principal complainant re ongoing disturbance at hotel dated 7 July 2016.

