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| <b>FILE NO:</b>           | A16/0007616   |
| <b>COMPLAINANT:</b>       | Superintendent Paul McDonald, NSW Police  |
| <b>LICENSEE:</b>          | Carol Isabelle Margaret Negline   |
| <b>LICENSED PREMISES:</b> | Post Office Hotel, Moree – LIQH400115970  |
| <b>ISSUES:</b>            | Whether the quiet and good order of the neighbourhood of the licensed premises is being unduly disturbed. |
| <b>LEGISLATION:</b>       | <i>Liquor Act 2007</i>  |

## 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 Post Office Hotel (the hotel), Moree have decided to **impose two conditions** on the liquor licence.

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

1. Security guard patrols.
2. No open alcohol containers to be taken off the premises.

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

## 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 the Commissioner of Police. The delegate of the Secretary has accepted the complaint on that basis.
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 14 June 2016, L&GNSW received a disturbance complaint lodged under section 79 of the Act by Superintendent Paul McDonald of NSW Police (the complainant) concerning the hotel. Police allege the manner in which the business of the licensed premises is conducted and behaviour of patrons after leaving the hotel has caused undue disturbance to the quiet and good order of the neighbourhood. Police rely on a number of COPS events wherein large numbers of patrons gathered in front of the hotel and caused disturbance, as well as multiple instances of violent and anti-social behaviour by intoxicated patrons inside the premises and on the street and footpath after leaving the hotel.
6. Police propose the licensee enter into a Local Licencing Agreement (LLA) with Police, and that a number of conditions be imposed on the licence of the hotel. These conditions include: the licensee, security and staff actively move patrons on in an orderly manner with signage to request patrons leave quietly; a minimum of two uniformed security guards are present when entertainment is provided; the licensee, security and staff ensure no patrons linger within 50 metres of the front of the hotel after leaving; the licensee and staff ensure no rubbish is left in the vicinity of the hotel; luminaries are to be installed in front of the hotel; the licensee is to provide a courtesy bus for patrons when entertainment is provided; and CCTV cameras shall be installed at the front of the hotel.

7. Between 14 June 2016 and 7 February 2017, various submissions were lodged by all parties. A list of the material that is before the delegate of the Secretary is set out in Annexure B.

**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* – as the complaint was lodged by Police, the order of occupancy is not at issue. The hotel has been in operation since 1960.
10. *Any changes in the licensed premises and the premises occupied by the complainant, including any structural changes to the premises* – there is no evidence of any structural changes to the hotel's premises.
11. *Any changes in the activities conducted on the licensed premises over a period of time* – there is no evidence of any changes in the activities conducted on the licensed premises.

**Consideration of *undue* disturbance**

12. I have considered the submissions of the complainant, licensee, and Moree Plains Shire Council. I have also had regard to the particular context in which the hotel operates, including statutory considerations mentioned above. I am satisfied that on the material before me there is sufficient evidence to support a finding that the hotel has caused undue disturbance to the neighbourhood and there remains a risk for future undue disturbance. This disturbance has been caused primarily by violent and anti-social behaviour of patrons after they leave the hotel.
13. A person may complain to the Secretary that the quiet and good order of the neighbourhood of licensed premises are being *unduly* disturbed because of:
  - a) the manner in which the business of the licensed premises is conducted, or
  - b) 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).

14. The test implies that there is a certain level of disturbance that is expected from the operation of a licenced premises but it is only when that disturbance is *undue* are there grounds to prove a complaint. Effectively, there is a threshold test that must be met under the legislation that the level of disturbance must be *undue* for action to be taken under the disturbance provisions of the Act.
15. Considering what amounts to undue disturbance necessarily involves consideration of a broad range of factors including the nature and environs of the neighbourhood and the nature of the subject premises. The hotel is located in Moree in a largely commercial district and is the only venue of its kind in the near vicinity. The hotel hosts music and dancing and sees large crowds after local racing events. The hotel has an extended trading authorisation from 5:00am to 3:00am from Monday to Saturday, and trades from 10:00am to 10:00pm on Sunday.
16. The complainant alleges the disturbance relates primarily to patron behaviour after leaving the venue, predominantly on Thursday, Friday and Saturday, when entertainment is provided and after local racing events. The complainant refers to a number of instances of alcohol-fuelled violence and anti-social behaviour caused by patrons at the hotel or patrons as they congregate and loiter on the footpath and in the street in front of the hotel.

### **Complainant Submission**

17. Police rely on 24 COPS events detailing a number of incidents that took place at the hotel between July 2014 and December 2016. The incidents generally relate either to assaults that occurred inside the hotel or brawls and other anti-social behaviour committed by persons congregating on the footpath and in the street in front of the hotel. A representative sample of relevant incidents is discussed below.
18. In the early morning hours of Sunday 21 February 2016, Police were called to assist due to a large crowd of intoxicated persons congregating on the footpath and on the road outside the hotel. Police observed a crowd of 100 to 150 patrons as they moved from the hotel outside. Additional Police responded, as approximately 50 patrons remained on the roadway yelling and causing disturbance. In Police's assessment, nearly 70% of the crowd was well to heavily intoxicated. (COPS event E290151190)
19. Police were present at the hotel during closing time on Thursday 24 December 2015. Police witnessed two males on the footpath outside the hotel preparing to fight, and noted a crowd of approximately 100 patrons watching the incident. Police assessed the POI

(Person of Interest) to be intoxicated and directed him to move on so others could use the footpath. (COPS event E59638527)

20. On Saturday 12 December 2015, Police witnessed an assault in the street in front of the hotel involving two males. After stopping the fight, Police learned the fight involved an off-duty staff member of the hotel who was attempting to stop a patron from taking a drink outside the hotel. Police concluded both males were well affected by alcohol. (COPS event E60570308)
21. On Sunday 22 November 2015 at 12:10am, Police observed a fight break out on the dancefloor at the hotel. Among the five to six persons involved in the brawl was the hotel's DJ, who was also serving as the RSA marshal for the night. Due to the fight, hotel staff cleared all patrons out of the hotel. As a result, there were approximately 250 people outside the hotel blocking the road. Once outside, another fight broke out near the front entrance of the hotel. Eventually hotel security guards came outside to assist Police in moving patrons on. (COPS event 60392608)
22. On Saturday 29 August 2015, a large crowd attended the hotel after a grand final Rugby Union match. Police attended and noted hotel security did not effectively move patrons on after they left the hotel and instead approximately 100 patrons remained in front of the venue with 20 people standing in the road. Police further observed that a number of patrons were well to seriously affected by alcohol. (Cops event E58791175)
23. Police were advised of a fight occurring in front of the hotel on Tuesday 23 June 2015. Police stopped the fight and found all three males to be well affected by alcohol. After speaking with the manager, Police learned the men had been drinking at the hotel prior to the fight. (COPS event E23949195)
24. On Sunday 5 April 2015, at 12:10am, Police witnessed a male screaming in the street in front of the hotel and found he was intoxicated. Police learned the male had been assaulted inside the hotel by the POI. Police approached the POI who was leaving the hotel along with approximately 20 other patrons. While speaking to the POI in front of the hotel, Police witnessed him punch a second victim in the face. Police assessed the POI as intoxicated. (COPS event 58095843)

25. Police further submit that the hotel's poor RSA practices lead to patrons becoming intoxicated which contributes to anti-social and violent behaviour of patrons and disturbance in the neighbourhood. COPS Event E58646258 is reflective of this. On Thursday 18 June 2015, Police conducted extensive covert observations at the hotel. Police noted a large number of empty glasses stockpiled on tables, patrons throwing empty bottles and cans into a log fire in the beer garden, and a patron they considered intoxicated talking to bar staff while consuming alcohol. Just before midnight, Police witnessed a staff member cleaning up empty bottles and cans from the front of the hotel. Approximately 20 patrons left yet remained on the footpath in front of the hotel. They loitered in front of the hotel and were loud and boisterous. Police submit that at no point did staff or security request this group move on to avoid causing disturbance.
26. On Thursday 24 July 2014 into the early morning hours of 25 July, Police attended the premises and over the course of a number of hours, observed approximately 10 patrons exit the hotel while carrying open containers of alcohol. These patrons were observed drinking whilst milling around in front of the hotel. Police later located numerous empty alcohol containers in the street and on the footpath in front of the hotel, as well as in the yards of neighbouring businesses. (COPS event E55124005)
27. Regarding the effect the disturbance of hotel patrons has on members of the community, Police have included statements made in July and August 2014 by four individuals who are employed at businesses located on Frome Street near the hotel. These individuals indicate that they often find rubbish in the form of empty alcohol containers in the yards of their respective businesses. One individual submits that he has spoken to the licensee and it is her position that much of the rubbish is caused by people who are not patrons of the hotel.
28. Police provided a final submission on 21 December 2016 that details 10 COPS events that have occurred at the hotel between April and December 2016. In reviewing the information provided, it appears that three assaults occurred during this period, with one assault occurring after the victim left the hotel. Further, one incident relates to Police issuing a move on direction in front of the hotel due to intoxication. The remaining events relate to meetings with the licensee, prohibited drugs, offensive behaviour inside the hotel, and a large crowd at the hotel with no security on duty.
29. Police and the licensee met on 13 July 2016 to discuss issues of disturbance. Police submit that the licensee agreed to the voluntary measures suggested by Police and signed a document reflecting this consent.

## **Council Submission**

30. The Moree Plains Shire Council submits that they have received no complaints regarding disturbance, noise or anti-social behaviour at the hotel.

## **Licensee Submission**

31. The licensee provided an initial response to the complaint on 29 July 2016. The licensee argues that a number of the instances of disturbance relied upon by Police occurred in 2014 and, are no longer relevant given that since that time the majority of issues have been resolved as the hotel has implemented a Premises Management Plan. Furthermore, in April 2016, the hotel adopted additional voluntary measures to minimise the risk of disturbance to the neighbourhood. The licensee submits these measures have been successful in reducing alcohol-related violence and anti-social behaviour at the hotel, as is indicated by the low number of incidents that have occurred since April 2016. In the final response to Police submitted on 7 February 2017, the licensee insists that of the 10 COPS events referenced by Police in their final submission, only two incidents can properly be recorded against the hotel. Both of these incidents relate to assaults which resulted in the responsible parties being removed from the hotel.
32. Regarding the request for a rubbish condition, the licensee is amenable to a measure requiring the hotel remove rubbish from the vicinity, but suggests that the problem is not caused by patrons of the hotel, but rather by individuals who have not yet entered the hotel, and those who are refused entry, including minors. On this basis, the licensee suggests that it is these individuals, not hotel patrons, who are responsible for the undue disturbance to the neighbourhood. The licensee further suggests that attendance and assistance by Police at the hotel at closing time would assist with the orderly and efficient dispersal of patrons.
33. The licensee disagrees with the Police assessment of the 13 July 2016 meeting in which recommendations were discussed to address the disturbance complaint. The parties did not reach an agreement on the voluntary undertakings, but rather signed the document to memorialise the meeting. The licensee further submits that there is no need for an additional condition relating to CCTV, as this has no effect on the issues relating to undue disturbance. Finally, the licensee proposes the establishment of an Alcohol Free Zone near the hotel, as this would deter persons who were not patrons of the hotel from drinking

in the vicinity and would further deter people from lingering and pre-loading before entering the premises.

### **Action Taken to Mitigate Disturbance**

34. The licensee submits that a number of policies and procedures were adopted in April 2016 in order to minimise disturbance caused by the hotel. These measures include targeting different customers, refusing entry to patrons with a history of anti-social behaviour, promoting the local taxi service, increasing signage to promote social responsibility and minimising disturbances, increasing lighting at the hotel and restricting the volume and nature of liquor served after 10:00pm. The hotel's house policy appears to support this approach and includes measures relating to RSA, anti-social behaviour, and reduced volume and type of liquor served after 10:00pm.
35. In addition to what is established in the house policy, the licensee has adopted the following voluntary measures to minimise disturbance:
- a. Ensure no less than five staff members (including one RSA marshal) are on duty when live entertainment is provided;
  - b. Ensure two licensed security guards are on duty when live entertainment is provided and there are 150 patrons present;
  - c. Ensure staff (and security when employed) actively seek to move patrons quickly and quietly from the immediate vicinity of the hotel;
  - d. Discuss with the Local Liquor Accord the provision of a jointly-funded courtesy bus to convey patrons from the licensed premises;
  - e. Remove all drinking vessels from the immediate vicinity of the hotel;
  - f. Leave hotel awning lights on until all patrons have left the immediate vicinity of the hotel;
  - g. Support the re-introduction of an Alcohol Free Zone in the hotel vicinity to reduce pre-loading, receptacle waste and anti-social behaviour.

### **Findings and Conclusion**

36. I have considered the submissions of the complainant, the licensee and the local Council. I have also had regard to the particular context in which the hotel operates (including the statutory considerations above). On the material before me, I find that the hotel has at times caused undue disturbance to the quiet and good order of the neighbourhood and there exists a risk that this will continue in the future. This has been caused by unruly and intoxicated patrons as they are leaving the premises and as they remain in the vicinity on the roadway and the footpath.



37. The majority of relevant COPS events relating to disturbance in the neighbourhood concern patrons congregating in the street and on the footpath engaging in anti-social behaviour or alcohol-fuelled violence. As the incidents on 21 February 2016, 24 December 2015, 22 November 2015 and 29 August 2015 demonstrate, patrons loiter in front of the hotel on the footpath and the street after leaving the hotel. Police observe that oftentimes these patrons are affected by alcohol and conduct themselves in a boisterous, violent and quarrelsome manner. Crowds such as these of up to 250 patrons blocking the road and the footpath detract from the amenity of community life.
38. Therefore, I find that a condition relating to security guards actively patrolling the vicinity of the hotel on nights live entertainment is provided and encouraging patrons to move on will reduce the risk of violent and intoxicated crowds congregating in front of the hotel and causing disturbance. The condition will only apply on nights when entertainment is provided, thereby targeting only the higher risk times.
39. I am further satisfied that the COPS events provided, as well as the statements from affected employees of neighbouring businesses, demonstrate a problem with patrons removing open containers of alcohol from the hotel and creating rubbish in the surrounding areas. As demonstrated by COPS event E55124005, Police observed approximately 10 patrons remove open alcohol from the hotel. While I have considered the licensee's position that the majority of the rubbish is created not by patrons but rather by pre-loaders and persons who are not allowed to enter the venue, I find the evidence does demonstrate that at times patrons have removed alcohol and deposited the empty containers in the area as rubbish.
40. In view of this, a condition prohibiting patrons from removing open alcohol containers from the premises is appropriate and will limit the risk that patrons deposit rubbish in the area after leaving the hotel. This will assist the licensee with the voluntary undertaking to remove drinking vessels from the immediate vicinity of the hotel.
41. I am persuaded by the licensee's position that the hotel's existing CCTV system comprising 13 cameras is sufficient for the purposes of assisting Police and the hotel's staff when instances of alcohol-related violence and anti-social behaviour arise. I do not find that a CCTV condition requiring an additional camera in front of the hotel is necessary to reduce the risk of undue disturbance in the future. I further find that while a courtesy bus for patron transport may assist with moving patrons quickly out of the area, the evidence provided does not justify the significant cost to the licensee if this condition were imposed.

42. Whilst the conditions sought by Police relating to security guards, hotel staff actively encouraging patrons to leave the area, and the posting of signage to encourage patrons leave quietly, are sensible measures to reduce the risk of disturbance, I do not find these are necessary to impose as conditions at this time. I further note that the security guard condition imposed should effectively combat loitering patrons. Finally, I am satisfied that the licensee has voluntarily undertaken to improve the lighting at the exterior of the hotel and a condition relating to luminaries is not necessary.
43. It is clear from the material before me that the licensee has undertaken a number of voluntary measures and has adopted new policies that are having a positive impact on the manner in which patrons conduct themselves at the venue and after they leave. However, given the significant number and nature of disturbance issues that have occurred in front of the hotel since July 2014, I do find that the imposed conditions are necessary to mitigate the risk of future disturbance. I consider this to be an evidence-based, proportionate regulatory response.

Date of decision: 24 April 2017



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

**NOTE**

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 23 May 2017. A \$500 application fee applies. Further information can be obtained from Authority Guideline No 2 published at [www.liquorandgaming.justice.nsw.gov.au](http://www.liquorandgaming.justice.nsw.gov.au). Please ensure you also send a copy of your application to [review.lgnsw@justice.nsw.gov.au](mailto:review.lgnsw@justice.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.justice.nsw.gov.au](http://www.liquorandgaming.justice.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:

**Post Office Hotel – Moree (LIQH400115970)**

**Security Patrol**

1. On any day live entertainment is provided, from 9:00pm until the last patron has left the vicinity of the premises, a minimum of two uniformed security guards are to continually patrol on Frome Street between Albert Street and Herber Street.
2. Security guards are to encourage patrons not to loiter or linger in the area or cause nuisance or annoyance to the neighbourhood. Such patrols are to continue until the last patron has left the licensed premises and vicinity of the licensed premises.

**Date condition effective: 8 May 2017**

**Open Alcohol Containers**

1. The licensee must ensure no open alcohol containers are taken off the premises.

**Date condition effective: 8 May 2017**

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

1. Section 79 Disturbance Complaint lodged by Superintendent Paul McDonald, Barwon Local Area Command, received on 14 June 2016 (including COPS Events recorded between 24 July 2014 and 20 April 2016; Unsigned Local Licensing Agreement submitted to licensee by NSW Police and Unsigned (revised) Local Licensing Agreement submitted to NSW Police by licensee).
2. Letter from NSW Police to L&GNSW re Disturbance Complaint for the Post Office Hotel, Moree, dated 15 July 2016.
3. Submission from Moree Plains Shire Council dated 26 July 2016.
4. Submission from Yardy Legal, on behalf of licensee, received 29 July 2016 (including attached House Policy, Venue Safety Plan and Closing Procedure).
5. Further submission from complainant received 21 December 2016 (including summary of COPS events recorded between 4 April 2016 and 17 December 2016).
6. Final submission from Yardy Legal, on behalf of licensee, received 7 February 2017.