

FILE NO: A17/0011212

COMPLAINANT: [REDACTED]

LICENSED PREMISES: Queens Wharf Brewery Hotel - LIQH400118147

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, Sarah Green, A/Director Compliance Operations, Liquor & Gaming NSW a delegate of the Secretary, Department of Industry, in relation to the complaint made in respect to the Queens Wharf Brewery Hotel (the hotel) have decided to **impose two conditions** on the liquor licence relating to the following:

1. LA10 noise condition
2. Noise limiter

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

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 15 December 2017, [REDACTED] lodged a complaint in relation to the hotel, alleging undue disturbance from amplified music being played in the wharf area outside the hotel. The complainant lodged the complaint as a resident authorised by six other residents.
6. The complainant alleges that disturbance occurs predominately on Thursday, Friday and Saturday nights until 11.30pm and on Sundays from 2.00pm until 10.00pm. He claims noise is audible within his home, even when doors and windows are closed.
7. The complainant seeks the imposition of the following condition on the licence of the hotel:

"No live or amplified music for patron entertainment purposes (other than low level background music which is inaudible within nearby residential habitable area) is to be provided at the premises."

He submits this would be in line with similar restrictions placed on nearby licensed premises within Newcastle CBD. By way of example, the complainant notes that the Squires Maiden, a licensed premises similarly located to the hotel on Newcastle Harbour, is subject to the above restriction on live or amplified music. He submits that

residents located near the hotel are entitled to be afforded the same protection from disturbance.

8. Between 12 February 2018 and 23 May 2018, various submissions were lodged by all parties. Since the lodgement of the complaint, L&GNSW has received 23 complaints alleging further instances of undue disturbance experienced by residents.

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

9. The Act requires that the Secretary must have regard to the following statutory considerations.
10. *The order of occupancy between the licensed premises and the complainant* – the hotel has operated at its present site since 10 November 1959. The present licensee commenced at the hotel on 13 April 2017. The hotel predates the complainant's occupation of his residence. This fact is not in dispute and I consider the order of occupancy is in favour of the hotel.
11. *Any changes in the licensed premises and the premises occupied by the complainant, including structural changes to the premises* – L&GNSW records indicate that an authorisation to sell and supply liquor for consumption on premises in the outdoor wharf area was granted on 23 December 2016. There is no evidence in the material supplied indicating any relevant structural changes to either the hotel or the complainant's residence.
12. *Any changes in the activities conducted on the licensed premises over a period of time* – the complainant asserts that there has been a change in operation of the venue over a number of years. In December 2014, the licensee at the time converted the upstairs bar area from a nightclub operation to a function area, and live entertainment was shifted to the ground level of the hotel. Since August 2017, it appears the majority, if not all entertainment has been conducted in the outdoor wharf area. Entertainment includes DJs, singers and bands. The complainant further submits that outdoor entertainment at the hotel has gradually increased in volume and frequency. While the hotel has a history of offering musical entertainment, I am satisfied on the material before me that the hotel has, in recent times, altered its operations by increasing the provision of entertainment in the outdoor wharf area.

Other considerations

Undue disturbance

13. I am satisfied on the material before me that there is sufficient evidence 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 Wharf Road, Newcastle, which is situated on the southern side of Newcastle Harbour. The northern aspect of the hotel opens onto the open air public wharf area of the harbour. With the Hunter River to one side, the hotel's surrounding area includes retail and business stores, light rail construction, and residential housing.
15. The hotel is authorised for consumption on premises Monday to Saturday from 5:00am until 3.30am and from 10:00am until 12:00 midnight on Sundays. The outdoor wharf area has reduced hours for consumption and is authorised Sunday to Wednesday from 10:00am until 10:00pm and from 10:00am until 12:00 midnight Thursday to Saturday.
16. The complainants' residences are located to the south and south west of the hotel and face towards the harbour. The complainant along with four of the supporting residents reside in the same apartment building around 188 metres from the hotel. Two supporting residents are located along the same roadway on Scott Street, 125 metres and 164 metres respectively away from the hotel.
17. I have considered the complainant's allegations of repeated undue disturbance from entertainment in the outdoor wharf area of the hotel. The complainant has provided specific examples of disturbance including dates and approximate times.
18. NSW Police indicated that no complaints had been received in relation to the hotel.
19. In the last 12 months, Council has received two noise complaints in relation to the hotel. Notably, this complainant resides in Stockton, a suburb of Newcastle located across the harbour from the hotel. The resident in this matter alleges disturbance from entertainment in the outdoor wharf area of the hotel.
20. Development consent permits the conduct of live or musical entertainment in the outdoor wharf area between 6.00pm to 11.00pm Friday and Saturday, and on Sunday from 12:00pm to 9:00pm.
21. The complainant provided copies of the hotel's entertainment schedule from December 2014 to April 2018, which indicates musical entertainment on the wharf area frequently occurs outside the approved hours of the development consent.
22. Council advise that an application has been submitted by the owner of the hotel requesting an amendment to these hours of operation.

23. In response to the disturbance complaint, the licensee provided a copy of an acoustic report prepared by Spectrum Acoustics Pty Ltd as part of the development application to Council. The acoustic test was carried out in February 2015 while a DJ was playing in the outdoor wharf area. The report concluded that the hotel was in compliance with the LA10 criteria and further recommended a limiting sound pressure level at five metres to maintain acceptable noise levels.
24. On 25 March 2018, L&GNSW Inspectors covertly assessed noise levels emanating from entertainment in the outdoor wharf area of the hotel. Inspectors advised they could clearly discern music coming from the hotel at the external boundaries of the complainants' residences. After further investigation, Inspectors determined that music from the hotel could be heard at Customs House, a licensed premises located 400 metres away from the hotel on Bond Street, Newcastle.
25. While a certain level of disturbance is expected due to the nature of the operation of the premises as a hotel, there is evidence to suggest the disturbance is excessive and unwarranted in the context of the current development consent requirements, proximity of the hotel to the complainants' residences and what appears to be little control over the levels of amplified sound in the outdoor wharf area.

Action taken to mitigate disturbance

26. 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.
27. The licensee acknowledged complaints have been received in relation to noise and engaged in an informal telephone conference with the complainant on 26 February 2018.
28. The licensee conceded disturbance could be addressed by imposing the following conditions of their licence:
 - LA10 condition;
 - a designated phone number for the purpose of disturbance complaints;
 - the ongoing maintenance of a noise complaint register; and
 - entertainment in the outdoor wharf area is conducted in accordance with the development consent.
29. The licensee suggests that once complete, the nearby light rail station under construction may assist in mitigating noise received at the complainants' residences.

30. Since the initiation of this matter, L&GNSW has received correspondence from the complainant, who continues to express concerns that the measures proposed by the licensee will not be sufficient in mitigating disturbance.

Findings and conclusion

31. I have considered the submissions of the complainant, licensee, Police and Council. I have also had regard to the particular context in which the hotel operates. In deciding whether to impose conditions on the licence relating to disturbance, I have considered the following points.
32. I have taken the statutory considerations into account and acknowledge the order of occupancy is in favour of the hotel. It is reasonable to expect some form of noise will be generated from its ongoing operations.
33. There is no evidence before me to demonstrate that the licensee has voluntarily undertaken any of the measures that he has proposed to address disturbance issues associated with the hotel's operations. Additionally, the material indicates that entertainment is conducted in the outdoor wharf area outside of the authorised hours permitted by Council. Disturbance clearly becomes undue when noise is not adequately controlled in this environment.
34. I am satisfied there is a need to manage disturbance generated by the increased provision of entertainment in the outdoor wharf area. As such, I have decided to impose a condition for a noise limiter to be maintained at the hotel to control all amplified entertainment. The installation of a noise limiter alongside the LA10 condition voluntarily agreed upon by the licensee will provide better regulatory certainty of compliance and assist to reduce and manage disturbance generated by amplified music at the hotel.
35. On the material before me, I am not convinced the circumstances warrant a condition as restrictive as the condition proposed by the complainant, which would require music to be inaudible within any residential habitable area. This condition relates to a specific set of circumstances and notably applies to a venue subject to an on-premises restaurant licence. Community expectations as to the mode of operation and level of noise generally associated with a restaurant compared to a hotel would understandably differ. A certain level of disturbance can reasonably be expected from a hotel, particularly one with significant outdoor operations. In deciding not to impose this more onerous condition, I have also been persuaded by the order of occupancy, which is in favour of the hotel.

36. I also do not consider there is a need for conditions requiring maintenance of a designated phone number and register for receiving and recording disturbance complaints. However, I strongly encourage the licensee to adopt these measures on a voluntary basis.
37. A noise limiter and LA10 condition do not unduly burden the licensee and will serve as appropriate safeguards to prevent disturbance as it relates to the liquor licence. I consider this to be a balanced and proportionate regulatory response to the issues raised in the complaint.
38. Finally, I note that the hotel will be subject to ongoing monitoring and inspections by L&GNSW to ensure that the hotel is compliant with conditions and that the risk of undue disturbance is being effectively managed. Should further undue noise disturbance be reported, then this matter may be revisited, resulting in further regulatory intervention.

Decision Date: 21 September 2018



Sarah Green

A/Director Compliance Operations

Liquor & Gaming NSW

Delegate of the Secretary of the 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 *19 October 2018*. A \$500 application fee applies. Further information can be obtained from Authority Guideline 2 published at 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.liquorandgamingsw.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:

Queens Wharf Brewery Hotel (LIQH400118147)

LA10 Noise Condition

The LA10* noise level emitted from the licensed premises shall not exceed the background noise level in any octave band frequency (centred on 31.5 Hz-8 kHz inclusive) by more than 5dB between 7:00am and 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 (centred on 31.5 Hz-8 kHz inclusive) between 12:00 midnight and 7:00am at the boundary of any affected residence.

Notwithstanding compliance with the above, 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 7:00am

** For the purpose of this condition, the LA10 can be taken as the average maximum deflection on a sound level meter of noise emitted from the licensed premises.*

Date condition effective: 21 September 2018

Noise Limiter

At all times when amplified music is conducted, the licensee must ensure all amplifiers or noise generating equipment is under the control of a noise limiter.

- a) The noise limiter levels must be set by an acoustic engineer to ensure compliance with the LA10 noise criteria; and,
- b) The noise limiter controller must be contained within a locked container or secure area and is to be only accessible by venue management.

Date condition effective: 21 October 2018

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

1. Section 79 Noise Disturbance Complaint lodged by [REDACTED] on 15 December 2017.
2. Submission from Sergeant [REDACTED], Newcastle City Police Area Command received 12 February 2018.
3. Submission from [REDACTED], Senior Environment Protection Officer, Newcastle City Council received 15 February 2018.
4. Submission from [REDACTED], Bale Boshev Lawyers on behalf of the licensee dated 28 February 2018.
5. File note from Inspector [REDACTED], Liquor & Gaming NSW dated 25 March 2018.
6. File note from Compliance Officer [REDACTED], Liquor & Gaming NSW dated 25 March 2018.
7. Video footage from the complainant dated 25 March 2018.
8. Submission from [REDACTED], Planning Investigations Officer, Newcastle City Council dated 4 April 2018.
9. Email from the complainant received on 13 April 2018.
10. Final submission from the complainant received on 13 April 2018.
11. Email from the complainant received 15 April 2018.
12. Email from the complainant received 16 April 2018.
13. Second email from the complainant received 16 April 2018.
14. Email from the complainant received 18 April 2018.
15. Final submission from [REDACTED], Bale Boshev Lawyers on behalf of the licensee dated 23 May 2018.