



**FILE NO:** A17/0010562

**COMPLAINANT:** [REDACTED]

**LICENSED PREMISES:** Thanon Khao San, Haymarket - LIQO624014322

**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 to Thanon Khao San (the restaurant) have decided to take **no further action** in regards to the complaint.

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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 22 September 2017, [REDACTED] of [REDACTED] [REDACTED] lodged a disturbance complaint alleging undue disturbance from the operation of the restaurant. He claims that disturbance occurs predominately on Friday and Saturday nights from live music and noise associated patrons exiting the restaurant. The complainant lodged the complaint as a resident authorised by two other residents.
6. Between 13 October 2017 and 8 February 2018, various submissions were lodged by all parties. A list of the material before the delegate is set out in Annexure 1.

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

7. The Act requires that the Secretary have regard to the following statutory considerations.
8. *The order of occupancy between the licensed premises and the complainant* – the restaurant has operated at its present site since 3 July 2006, and predates the complainant's occupation of his residence. This fact is not in dispute and I consider the order of occupancy to be in favour of the restaurant.
9. *Any changes in the licensed premises and the premises occupied by the complainant, including structural changes to the premises* – there is no evidence of any changes to either the restaurant or the complainant's residence.

10. *Any changes in the activities conducted on the licensed premises over a period of time –*  
On the available material, the restaurant remains focused on an offering of food and beverages accompanied by live Thai music on busier trading nights.

## **Other Considerations**

### *Undue disturbance*

11. I am not satisfied on the material before me there is sufficient evidence to support a finding that the restaurant has 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.
12. The restaurant operates within the central business district of Sydney on Pitt Street, in close proximity to a number of commercial and residential developments. The restaurant's liquor licence authorises it to trade as a restaurant with consumption on premises ancillary to a meal, Monday to Saturday 5:00am to 12:00 midnight and from 10:00am to 10:00pm on Sunday.
13. The complainant's residence is located within a multi-storey residential building directly opposite the restaurant.
14. I have considered the complainant's allegations of excessive noise from live music and from patrons leaving the restaurant predominately on Friday and Saturday nights.
15. Council advise that no amenity or noise complaints have been received in relation to the restaurant. Council indicate that the front door to the restaurant is left open during live entertainment resulting in some noise escape from the premises. The restaurant's development consent includes the following noise related restrictions and conditions:
- LA10 noise condition
  - maximum patron capacity of 60 persons
  - wind down procedures must be adopted 30 minutes before close to ensure all patrons have left by closing time
  - management must ensure the behaviour of patrons does not detract from the amenity of the neighbourhood, including clearly posted signage requesting patrons leave quietly.
16. On 30 November 2017 at 11:45pm, Police attended the restaurant in relation to a business and compliance inspection. Police records indicate that whilst music could be heard from outside the restaurant, it was not deemed to be excessive. Police note that alternate sources of noise including road and pedestrian traffic, as well as live

entertainment coming from nearby venues such as Mr B's could be heard. Police then entered the foyer of the complainant's apartment building and observed that music could not be heard once the doors had closed.

17. There is limited direct evidence to support a finding that the restaurant has caused undue disturbance. In this regard, I have been persuaded by the observations from Police.
18. A level of disturbance from the normal operation of a restaurant is to be expected, including noise from live entertainment, patrons, and pedestrian traffic generated by the restaurant and other nearby venues. I do not regard this type of disturbance taking into account the environs of the local neighbourhood in conjunction with the nature and operation of the subject premises.

#### *Action taken to mitigate disturbance*

19. 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.
20. The licensee acknowledged disturbance concerns raised and implemented the following measures to control disturbance including:
  - installing acoustic foam panels to mitigate noise;
  - prohibiting the use of drums during live entertainment; and
  - engaging with patrons as they exit the restaurant.
21. On 10 January 2018, the complainant advised that they were happy with the action taken by the licensee, submitting that the noise levels from the restaurant were now acceptable.

#### **Findings and conclusion**

22. I have considered the submissions of the complainant, licensee, Police and Council. I have also had regard to the particular context in which the restaurant operates. I have taken the statutory considerations into account and acknowledge the order of occupancy in favour of the premises and that it is reasonable to expect some form of noise will be generated from its ongoing operations.

23. In the absence of a finding there has been undue disturbance from the available material, the appropriate response in this context of a disturbance complaint is to take no further action.
24. Furthermore, I am satisfied that the voluntary measures implemented by the licensee are a balanced and proportionate response to the issues raised in the complaint.
25. I note the licensee has an ongoing obligation to manage and minimise levels of disturbance cause by the restaurant. I strongly encourage the licensee to proactively manage the issue to ensure that the restaurant contributes to, and does not detract from, the amenity of the neighbourhood.

**Decision Date:** 26/4/18



**Sean Goodchild**

**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 *24 May 2018*. 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)

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

1. Section 79 Noise Disturbance Complaint lodged by [REDACTED] dated 1 September 2017.
2. Submission from [REDACTED] Licensed Premises Coordinator, City of Sydney Council dated 13 October 2017.
3. Submission from the licensee dated 11 August 2017.
4. Submission from [REDACTED] Sydney City Police Area Command dated 5 December 2017.
5. Response to the licensee's submission from complainant dated 10 January 2018.
6. Final submission from licensee dated 10 January 2018.