



**FILE NO:** A14/0004000

**COMPLAINANT:** [REDACTED]

**LICENSED PREMISES:** Northies - Cronulla Hotel – LIQH400101635

**ISSUES:** Whether the quiet and good order of the neighbourhood of the licensed premises is being unduly disturbed.

**LEGISLATION:** *Liquor Act 2007* - Part 5, Division 3 - Disturbance Complaints

**DECISION MAKER:** Anthony Keon, Director Compliance & Enforcement,  
Office of Liquor, Gaming & Racing,  
a delegate of the Secretary of NSW Trade & Investment.

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## SECTION 81 DECISION

Under Section 81 of the *Liquor Act 2007* I, Anthony Keon, Director Compliance & Enforcement, Office of Liquor, Gaming & Racing as a delegate of the Secretary, NSW Trade & Investment, have decided to take no further action in relation to the complaint made in respect to Northies - Cronulla Hotel.

## REASONS FOR DECISION

### Legislation

1. Section 79 of the *Liquor Act 2007* 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 his or her interests, financial or other, are adversely affected by the undue disturbance to which the person's complaint relates.
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 further 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 the need to minimise harm associated with the misuse and abuse of liquor; the need to encourage responsible attitudes and practices towards the promotion, sale, supply, services and consumption of liquor; and 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 6 June 2014, [REDACTED] Quest Cronulla Beach serviced apartments at 1 Kingsway, Cronulla lodged a disturbance complaint with the Office of Liquor, Gaming & Racing (OLGR) under section 79 of the Act in respect to "Northies - Cronulla Hotel". The complaint asserts that the causes of undue disturbance are due to the manner in which the business of the licensed premises is conducted and that persons occupying the serviced apartments located above the Hotel are affected by noise intrusion from the operation of amplified entertainment and noise from persons smoking in the outdoor areas. Further details on the complaint are set out in the *Background* section below.

## **Material before the Secretary**

6. The material before the Secretary's delegate in making this decision comprise:
  - a) Complaint lodged by [REDACTED] dated 6 June 2014.
  - b) Letter formally accepting the complaint from a Manager Investigations, OLGR to the complainant dated 30 June 2014.
  - c) Letter from C Gersling on behalf of the General Manager, Sutherland Shire Council dated 8 July 2014.

- d) Letter from Detective Superintendent Antonjuk, Local Area Commander, Miranda Local Area Command dated 8 July 2014.
- e) Email letter from [REDACTED] Licensee, dated 8 August 2014, enclosing an acoustic report prepared by Acoustic Logic.
- f) Email from the complainant dated 28 August 2014.
- g) OLGR case officers file notes dated 20 October 2014 and 9 February 2015.
- h) Letter from Jarrod Kennedy of Laundry Hotels dated 9 February 2015.
- i) Further file note from OLGR case officer dated 20 February 2015.

## Background

7. The hotel operates under a full hotel licence with authorisation for extended trading until 1.30 am, Thursday, Friday and Saturday nights. Nine of the hotel's 15 licence conditions were taken to be imposed by the Independent Liquor and Gaming Authority. The conditions comprise enforceable controls for minimising neighbourhood disturbance. The hotel is located across the road from the North Cronulla Beach on the corner of Kingsway and Elouera Road. The hotel has operated at its present site since 1956. Formerly, the hotel was a stand-alone building but was redeveloped in 2001. The hotel now occupies the ground floor of a 12 floor residential and tourist apartment complex. The Quest Apartments are situated on the floor directly above the hotel. The hotel possesses four bars, including a sports bar and beer garden with a verandah. At the time of the complaint, nightclub style amplified entertainment was also offered in two of the bar areas. In November 2014, Laundry Hotels purchased the Hotel and the licence was transferred to a new licensee.
8. On 6 June 2014, [REDACTED] lodged a disturbance complaint under section 79(3)(d) of the Act who assert they are adversely affected by undue disturbance from the hotel. The complainants allege that guests occupying the Quest Cronulla Beach Serviced Apartments are disturbed on both weekdays and weekends from amplified music noise emanating from the hotel and noise from patrons who go outside to smoke. The complaint asserts the hotel's failure to act on the issues has led to numerous complaints by guests at Quest Apartments; subsequent loss of revenue by Quest Apartments due to refunds; and, has resulted in adverse information posted on travel websites such as "Trip Advisor" about noise from the hotel.
9. On 8 July 2014, a submission was provided by Sutherland Shire Council advising that on 21 August 2009 the Council had dealt with a modified application (MA09/0035) of the development consent and had imposed DA conditions in respect to the following:

- limiting operating hours
- LA10 noise criteria
- control of amplified entertainment and requirement to engage an acoustic consultant to determine noise levels and attenuation measures
- implementation of a security management plan and requirement for security guards
- prohibiting persons entering the hotel after midnight on Friday, Saturday and Sunday nights
- prohibiting persons from taking glass or open containers of liquor off the premises when leaving, or from consuming liquor on the footpath in Elouera Road or Kingsway outside of the hotel
- hotel cleaning staff prohibited from starting work before 7:00am.

The Council submission also confirmed that since 2005, Council had not received any noise complaints relating to the operation of the hotel.

10. In a submission dated 8 July 2014 from Superintendent Antonjuk, Miranda Local Area Commander, OLGR was advised that for the preceding 12 month period since the lodgement of the complaint, Miranda Local Area Command had not received any disturbance complaints by residents or businesses in relation to the operation of the hotel.

11. On 8 August 2014, OLGR received a submission from the former licensee about the complaint. He submitted that Acoustic Logic Consultancy Pty Ltd had been engaged to conduct acoustic monitoring and prepare an acoustic report. The submission also referenced a meeting on 6 August 2014 between the former licensee and the complainants. Discussion topics at the meeting included acoustic testing and implementation of additional safeguards to ensure Quest Apartment's guests were not negatively impacted by the hotel's operation. Agreed disturbance reduction measures for implementation at the hotel were as follows:

- entertainers not to be permitted to bring in any additional speakers/amplification equipment and must play through the in-house music system
- all in-house amplification is to be run through compressor limiters
- a log book is to be maintained by the duty manager confirming that entertainers are connected to the in-house music system

- compressor limiters to be set by the acoustic consultant in compliance with the LA10 noise criteria
- the pre-limiter settings are unable to be altered by musicians/DJ's or hotel staff as levels are controlled by external audio technicians using password protected software
- patrons are to be discouraged from using the sports bar smoking area to prevent noise disturbance from 11:00pm and
- the requirement for continuous patrols of the hotel and surrounds by four security guards is to be maintained.

12. Noise monitoring was undertaken on 2 August 2014 at the hotel and Quest Apartments during peak trading periods. An acoustic report was provided with the former licensee's submission. The report asserted that the hotel was compliant with the LA10 noise criteria.

13. On 20 October 2014, an OLGR case officer contacted the complainant and was advised that the hotel had been sold and a meeting with the new owners had taken place. The new owners advised that the hotel's current operation would change away from amplified entertainment to more of a restaurant style with emphasis on food and beverage.

14. On 9 February 2015, OLGR received a letter from Mr Jarrod Kennedy, legal assistant, Laundry Hotels confirming the purchase of the hotel on 10 November 2014. In response to the disturbance complaint, Mr Kennedy advised that the new owners had put in place various measures to satisfy the complaint and ensure noise emissions from the hotel would not be an issue in the future. These measures were identified as:

- employment of a new licensee
- redirection of the hotel's business model away from amplified entertainment towards quality food and dining atmosphere
- substantial renovations to the internal layout of the hotel (including existing and additional noise reduction measures)
- continued liaison with the Building Management Committee (strata) including the lodgement of building plans for comment and approval prior to lodgement with council.

15. On 20 February 2015, an OLGR case officer contacted the complainant about the disturbance complaint. The complainant advised that they had met with representatives

of Laundry Hotels and were now agreeable to the complaint being closed. At the meeting they learned of Laundry Hotels' undertakings to change the business model away from nightclub style entertainment to one focussing on food and beverage, and the appointment of a new licensee. On that basis, the complainants indicated that they were satisfied that no further action was needed.

## Considerations and Findings

### Statutory Considerations of section 81 (3) of the Act:

16. 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 licensed premises 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.
17. *The order of occupancy between the licensed premises and the complainant* – the hotel has operated at its present site for nearly 58 years and predates the construction of the apartments constructed above the hotel. This fact is not in dispute and I consider that the order of occupancy consideration is in favour of the hotel. Residents moving into the apartments and the business franchise would have been aware they were purchasing or moving into premises that are in close proximity to an existing licensed premises and that they would be subject to a certain level of disturbance from its operation.
18. *Any changes in the licensed premises and the premises occupied by the complainant, including structural changes to the premises* – the hotel was originally a free standing building until the site was re-developed in January 2001 into to a multi-level building consisting of 12 levels with both commercial and residential apartments. The hotel occupies the ground floor level of the building and residential accommodation is above. Quest Apartments occupy the levels in closest proximity to the hotel. The business franchise was purchased by the complainants in 2007.
19. *Any changes in the activities conducted on the licensed premises over a period of time* – The hotel's business model at the time the complaint included the provision of nightclub style amplified entertainment in bar areas known as "Old Joe's" and "Sports Bar". I am satisfied that over a period of time the hotel's business changed from being a traditional hotel to a venue with a focus on nightclub style amplified entertainment and activities.

20. I also note that even though the hotel's former business model included the provision of nightclub style entertainment, the Commander, Miranda Local Area Command and the Council advised in their submissions, that no disturbance complaints had been received in relation to the hotel.
21. Currently there are nine enforceable conditions imposed on the hotel's liquor licence relevant to noise disturbance. I consider that these existing controls, along with the Council imposed DA conditions, are sufficient and appropriate for managing any disturbance issues that might arise in the future.

## **Summary and conclusion**

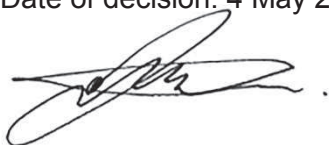
22. I am satisfied, on balance, that there is sufficient evidence to support a finding that the hotel has caused undue disturbance to the neighbourhood. Whilst a certain level of disturbance should be expected by the operation of any hotel, I have formed the view that amplified music played in the previous nightclub style operation within the hotel was at such a level as to cause significant impact to persons staying at Quest Apartments, and beyond what should be reasonably expected.
23. However, I am also satisfied, based on the material provided, that the hotel has responded appropriately to the issues raised in the complaint. Actions taken to better manage noise disturbance include acoustic monitoring to ensure amplified music levels operate in compliance with the LA10 noise criteria imposed on the hotel's licence. Additionally, as soon as the hotel's new owners became aware of the complaint, they engaged with the complainants and committed to changing the business from a nightclub style operation to a business which promotes quality food and a dining environment to reduce risk.
24. I have also taken into account that since the change of ownership of the hotel, the complainant has advised OLGR case officers that there have been no further issues of noise intrusion to Quest Apartments from amplified entertainment.
25. As there has been a change in business owners, employment of a new licensee, submissions that hotel renovations are being conducted in accordance with acoustic advice and representations from the new business owners that signal there will be a significant shift in the business model of the hotel to facilitate an establishment focused

on dining, any risk of nightclub-style amplified entertainment disturbing the surrounding neighbourhood appears to be mitigated.

26. I also note the hotel's licence contains a suite of conditions that provide enforceable restrictions on the level of noise and type of entertainment that can be conducted on the licensed premises. These conditions are intended to ensure that any future issues of disturbance, should it occur, has the ability to be dealt with promptly and in accordance with appropriate regulatory consequences.

27. Accordingly, I have decided to take no further action in relation to this complaint.

Date of decision: 4 May 2015



**Anthony Keon**

Director Compliance & Enforcement

Office Liquor, Gaming & Racing, NSW Trade & Investment

**NOTES**

**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 21 days of the date of this decision, that is, by no later than 25 May 2015. A \$500 application fee applies. Further information can be obtained from Authority Guideline No 2 published at [www.ilga.nsw.gov.au](http://www.ilga.nsw.gov.au)**

**In accordance with section 36C of the *Gaming and Liquor Administration Act 2007* this decision will be published on the Office of Liquor Gaming and Racing website at [olgr.nsw.gov.au](http://olgr.nsw.gov.au).**