



10 May 2024

<p>MKTK PTY LIMITED Licensee Gladstone Hotel</p> <p>[REDACTED]</p>	<p>[REDACTED] Resident & Review Applicant</p> <p>[REDACTED]</p>	<p>Mr Jeremy Bath Chief Executive Officer Newcastle City Council</p> <p>[REDACTED]</p>
<p>S/Sgt Steve Carroll Region Co-ordinator Northern Region - Newcastle Police District</p> <p>[REDACTED]</p>	<p>Mr John Coady Manager, Regulatory Interventions Team Liquor & Gaming NSW</p> <p>[REDACTED]</p>	<p>Ms Jane Lin Executive Director, Regulatory Operations & Enforcement Liquor & Gaming NSW</p> <p>[REDACTED]</p>

Dear Sir/Madam

Reference no. DOC24/069383
Licensee MKTK PTY LIMITED
Licence name Gladstone Hotel
Licence no. LIQH400117523
Licence type Hotel liquor licence
Premises 36 Mitchell Street, Stockton NSW 2295
Legislation Section 53 of the *Liquor Act 2007*
 Section 36A of the *Gaming and Liquor Administration Act 2007*

Decision on application to review delegate decision and proposed imposition of licence conditions - Gladstone Hotel, Stockton (LIQH400117523)

Our decision

At a meeting held on 20 March 2024, we decided to take the following action:

- **Confirm** the delegates decision, made under section 81 of the *Liquor Act 2007* (the Act), for the Gladstone Hotel (the venue), dated 4 November 2023
- **Impose** a closed-circuit television and plan of management condition (see schedule 1 attached) as proposed by Ms Jane Lin, Executive Director, Regulatory Operations & Enforcement, as a delegate of the Secretary, Department of Enterprise, Investment and Trade, and
- **Not impose** a security condition as proposed by Ms Jane Lin, Executive Director, Regulatory Operations & Enforcement, as a delegate of the Secretary, Department of Enterprise, Investment and Trade.

Background

On 17 April 2023, we received an application (the review application) under section 36A of the *Gaming and Liquor Administration Act 2007* (the GALA Act) to review a decision made under section 81 of the Act, by Mr Dimitri Argeres, Director, Compliance & Enforcement, as a delegate of the Secretary, Department of Enterprise, Investment and Trade (DEIT). The decision was the result of a noise disturbance complaint lodged on 2 December 2021 regarding the Gladstone Hotel, Stockton (the venue). The decision determined to take no action in response to the complaint, due to finding that the operation of the venue did not unduly disturb the neighbourhood. The application to review the decision was made by a complainant who was a party to the noise complaint concerning the venue (the review applicant).

The review applicant submitted that noise disturbance and antisocial behaviour was ongoing at the venue and had been for at least five years. They submitted that, in determining the decision under section 81 of the Act, Mr Argeres placed more weight on the unsubstantiated claims of the venue, rather than the evidence provide by the complainants. The review applicant also submitted that the submissions made by Police misrepresent the situation at the venue and did not include all relevant incidents or evidence and that evidence presented by Council was incomplete.

On 20 September 2023, we received an application under section 53 of the Act (the section 53 application) from Ms Jane Lin, Executive Director, Regulatory Operations & Enforcement, as a delegate of the Secretary, DEIT (the section 53 applicant), to impose conditions on the liquor licence of the venue. The section 53 application proposed the imposition of three conditions relating to CCTV, plan of management and security patrols.

The section 53 applicant submitted that the venue is subject to ongoing complaints made to Liquor & Gaming NSW (L&GNSW), primarily regarding noise disturbance, intoxication, and anti-social behaviour and that the imposition of conditions are necessary to improve hotel operations and mitigate future disturbance.

The following conditions were proposed by the section 53 applicant:

- CCTV – the retention period of CCTV footage has caused issues for previous investigations. The imposition of the condition will ensure the venues CCTV system is operated in accordance with current standards.
- Plan of Management – a large portion of complaints received by L&GNSW relate to patron behaviour, including intoxication and anti-social behaviour. A plan of management condition will ensure agreed procedures and practices are in place to aid in the overall operation and management of the venue.
- Security Patrols – recommended to require security patrols on Friday and Saturday nights and when entertainment is provided, to manage disturbance due to poor patron behaviours. Recommended in line with security patrols previously utilised by the venue.

Consultation and submissions

The review application was accompanied with submissions by the review applicant. The submissions are detailed below:

Submission by the review applicant:

- The original section 79 complaint related to noise from the venue, as well as frequent and consistent anti-social behaviour in the immediate vicinity of the venue.

- The review applicant has attempted over a five-year period, to resolve the issue with the venue to no avail. Following this, attempts were made to engage Police and L&GNSW, however, no effective regulatory action was taken. Requests for more detailed noise testing were denied by L&GNSW and more weight was placed on the limited venue evidence, rather than the detailed evidence of the review applicant. The applicant seeks a review of all the submissions in the complaint.
- L&GNSW failed to keep the identities of some of the authorising residents anonymous, per their request.
- The submissions and material submitted by Police were incorrect or incomplete. In instances where Police failed to identify noise issues, the venue had a noise management plan in place. If the registers required by the plan were being completed by the venue, Police would have been able to identify that there were ongoing noise issues.
- The summary provided by L&GNSW in their decision regarding the review applicant's interactions with the venue were not accurate. The review applicant disputes the Police statements regarding these interactions and reaffirms they has sought Police intervention on many occasions in relation to the venue.
- In response to boundary fence construction, the review applicant submits that the construction related to a fence that was not meant to fully mitigate noise but provide some mitigation and privacy that the existing fence did not. Noise mitigation is the responsibility of the venue, and the review applicant should not be responsible for the cost of such an item.
- The venue was already subject to the LA10 noise condition when the review applicant moved in. The venue should have been monitoring noise prior to the change of fencing. The venue approved the construction of the fence and made no reference to compliance with the LA10 condition during the process.
- Significant breaches were identified in the acoustic testing and while the approved manager submitted that numerous noise attenuation measures were taken, including implementing a noise management plan and noise monitoring, no evidence of this was provided by the approved manager. As no direct evidence was provided by the approved manager, no weight should be placed on his submissions.
- The issue of unauthorised building works should have been addressed by L&GNSW, as these contribute to the disturbance from the venue.
- The conclusion that there was insufficient evidence that the amplified entertainment at the venue on 31 October 2021 was undue was based on the approved manager's submissions and Police assessment after music had ceased. As Police were not present, their submission or evidence gained after the event should not hold weight in the determination. More weight should have been placed on the submissions of residents and the findings from acoustic testing.
- The review applicant disputes the venue's claim's that other businesses in the area are responsible for the anti-social behaviour in the vicinity of the venue, noting that local residents have seen no examples of this.
- The review applicant seeks more regulatory action from L&GNSW to address and prevent undue disturbance generated from the venue.

On 4 September 2023, the Office of ILGA (the OILGA) invited submissions in response to the review application. Submissions on behalf of L&GNSW and the venue, and further submissions from the review applicant were received between 20 September 2023 and 17 November 2023.

NSW Police and City of Newcastle Council did not provide a submission. The submissions are detailed below:

Submission on behalf of L&GNSW:

- The delegate's decision was the appropriate regulatory response at the time and in consideration of the material available. However, further information has become available since the decision was made, including an acoustic report commissioned by L&GNSW, conducted on Friday 24 February 2023 between 8:00pm and 11:00pm. The report indicated the venue was exceeding the LA10 noise condition and subsequently L&GNSW issued the venue with a penalty notice for breach of licence condition. The penalty notice was paid and finalised on 27 April 2023.
- There was also an additional complaint regarding intoxication recorded against the venue after the delegate's decision. On 1 September 2022 patrons of the venue were identified via CCTV as exhibiting signs of intoxication while being supplied liquor at the venue. Penalty notices were issued after the incident, though these were not enforced by Revenue NSW due to the statute of limitations expiring.
- Further conditions are required to address the ongoing complaints and disturbance at the venue. L&GNSW recommended:
 - Variation to the LA10 condition, with the inclusion of a 50-metre exclusion zone, in recognition that the venue cannot comply with the LA10 condition currently in place due to the close proximity of the affected residence.
 - Imposition of conditions to mitigate the risk of disturbance and provide practical mechanisms to reduce the overall noise and disturbance from the venue:
 - No amplified sound in the beer garden
 - All amplified sound to be held inside the premises
 - Doors and windows to be closed when amplified sound is in operation
 - Noise limiter (with variation to prohibit venue staff accessing)
 - No patrons in beer garden after 9:30pm.

Submission on behalf of the venue:

- The lodgement of the review application is vexatious in nature, and the issues raised by the review applicant are historical and unrelated to the review. The section 79 disturbance complaint was a result of one incident.
- The venue has minimal impact on the neighbourhood and the venue submits that Police and Council would be able to substantiate this. The venue is supported by the local community and included letters of support with their submission.
- The venue's beer garden has been permanently closed.
- The venue has reduced its operating hours and gaming machine entitlements have been sold.

Submission by the review applicant in response:

- The approved manager has taken no responsibility for the operations of the venue and has failed to recognise that its operations has impacted greatly on the neighbourhood. The approved manager was aware of his obligations in relation to noise and made various changes to the venue and its operations with no regard for the disturbance it would create.
- The approved manager is involved with the operations of another similar licensed venue in the vicinity, who operates in a similar environment, under similar conditions. The review applicant submits that this venue can operate successfully under strict noise related conditions and as such the approved manager should be able to ensure successful operations at the venue also.

- The section 79 disturbance complaint was a result of a long history of disturbance from the venue, including disturbance from noise, property damage, intoxication and various other forms of anti-social behaviour.
- Local court recognised, via the outcome in a noise abatement matter, that the review applicant has attempted to work with the venue and rejects the venue's submission that the review applicant is vexatious.
- Council failed to provide all relevant information to L&GNSW in their section 79 submission, noting council failed to disclose unauthorised works.
- Disputes L&GNSW's claim that all evidence was considered, as well as their finding of no undue disturbance, and considers L&GNSW as showing apparent bias towards the venue. L&GNSW are attempting to portray them as an unreasonable neighbour, despite the review applicants desire to co-exist with the venue.
- L&GNSW is the most appropriate body to take regulatory action and the review applicant submits that L&GNSW has failed in this regard. L&GNSW have failed to enforce the licensee's obligations under the Act and as such have failed to prevent undue disturbance.
- L&GNSW has misrepresented the findings of the 2023 acoustic testing when using it to justify the recommended change of boundaries in the LA10 condition. The report findings in 2020 and 2021 showed similar breaches and recommendations and L&GNSW took no action in those instances.
- Attributes continued breaches to the LA10 condition to be related to the venue's failure to implement recommended work by the acoustic consultants and that the suggested changes to the condition will not protect residents.
- Notes the venue has applied, then withdrawn two applications to have the LA10 condition revoked. Should the Authority consider change to the LA10 condition, the review applicant is concerned no consultation will be made with residents. The review applicant raised concerns that the recommended change is a means to reduce further complaints against the venue.
- Seeks that the noise barrier proposed by sound consultants be implemented to enable the reopening of the beer garden. This is an agreed option by two acoustic consultants, and its introduction will allow the venue to co-exist with the neighbours, as well as comply with the existing LA10 condition. The review applicant further seeks that the venue address the anti-social behaviours of its patrons, particularly in reference to issues of intoxication.

On 3 November 2023, the OILGA invited submissions in response to the section 53 applicant's (delegate of the Secretary, DEIT) proposed conditions. Submissions on behalf of the venue, City of Newcastle Council, and a local resident were received between 24 November 2023 and 15 December 2023. The submissions are detailed below:

Submission on behalf of the venue:

- They do not consent to the imposition of conditions and submit that their operations do not disturb the community.
- The 28 complaints referred to in the L&GNSW application were from one complainant. The venue has not received a complaint from any other member of the public.
- A ground relied upon by L&GNSW in its application, that the venue permitted intoxication, is in the venue's view no longer valid as that intoxication matter was not pursued by Revenue NSW.
- They do not believe that the operation of the hotel is the problem. They are of the view that the complainant's allegations are unsubstantiated and that imposing conditions will not satisfy the complainant.

- They have reduced offerings at the venue, including closing the beer garden, cancelling karaoke, reduced function and events and reduced trading hours, in an attempt to address the issues raised by the complainant.
- They have spent a significant sum defending the business against complaints, and the imposition of conditions would be too much for the business to endure, likely forcing the venue to close permanently.
- The cost of installing a new or upgraded CCTV system is onerous and the ongoing wages for a security guard would make it unviable to continue the business.
- Noise plan of management and alcohol plan of management are in place and attached to the submission.
- Staff and owners allege abuse from the complainant.
- CCTV is not an appropriate manner to determine intoxication and dispute the intoxication claims by L&GNSW.

Submission on behalf of City of Newcastle Council:

- Four complaints from one resident have been received in relation to noise at the venue, with all complaints referred to L&GNSW.
- They support the imposition of the plan of management and CCTV conditions as these would bring the venue in line with other entertainment venues and licensed premises within the local government area.
- They have insufficient information to provide comment on the imposition of a security condition.

Submission from local resident:

- Supports the imposition of conditions proposed by L&GNSW in relation to CCTV, plan of management and security patrols.
- Believes these conditions were proposed to address the needs of residents by preventing ongoing disturbances.
- The Authority should consider the imposition of additional conditions in line with recommendations from acoustic consultants.

Submission on behalf of the section 53 applicant (delegate of the Secretary, DEIT) in response:

- The submission from Council demonstrates that council rely on L&GNSW as the regulator in this instance and the CCTV and plan of management conditions are standard compliance tools.
- The submission from a resident supports the imposition of the three proposed conditions and seeks that the Authority impose further conditions. The proposed conditions regarding the barrier and fence have lost relevance due to the venue's voluntary actions to close the beer garden.
- Regarding the submission from the venue, L&GNSW clarified that the intoxication matters were not pursued by Revenue NSW due to a statute of limitations issues and L&GNSW did not determine that the matters were not worth pursuing.
- L&GNSW acknowledges the relationship between the parties has deteriorated and that it is likely that no mutually satisfactory solution will be found. L&GNSW acknowledges that the Hotel has made substantial concessions in an attempt to accommodate the resident's issues. L&GNSW takes the resident's complaints seriously, however a measured approach must be considered, including facilitating the balanced development of the liquor industry,

in line with the objects of the Act. An outcome from this application that results in the closure of the venue would be an unacceptable failure of the regulatory system. However, L&GNSW considers that some regulatory intervention is required to improve the practices at the venue which appear to be leading to disturbance.

- L&GNSW maintains that it is appropriate for the three conditions requested to be imposed. L&GNSW acknowledges the significant impact a security patrol condition may have on the venue and that voluntary measures (including alcohol and noise management plans, reduced hours, closing beer garden and cessation of karaoke) implemented by the venue has addressed the risks the security patrol condition aimed to mitigate.
- Formalising voluntary plans through a plan of management condition would ensure regulatory certainty.

Our findings

In accordance with the powers under section 36A(4) of the GALA Act, we confirm the delegate's decision, dated 4 November 2022. In confirming the delegate's decision, we note the more recent actions taken by the venue to mitigate concerns raised in the review application.

We acknowledged the additional conditions proposed by the delegate in their submission to the review application, concerning adjustments to the noise parameters and further noise mitigation measures as well as the proposal from the review applicant regarding a noise barrier condition. In consideration of the actions taken by the venue, however, as well as our decision to impose CCTV and Plan of Management conditions on the venue's liquor licence under section 53 of the Act, we formed the view that further conditions were not warranted at this time.

We determined that the imposition of CCTV and Plan of Management conditions are sufficient to address the concerns raised in the section 53 application. In consideration of the potential financial impact on the venue, as well as actions taken by the venue to address the issues, we determined that the imposition of the security or other noise related conditions, is not warranted at this time.

Relevant legislation

We are satisfied that the decision to confirm the delegate's decision has been made in accordance with the Authority's powers under section 36A of the GALA Act.

We are satisfied that the section 81 decision, to which the review application relates, is a reviewable decision for the purposes of section 36A(1) of the GALA Act and that the review applicant is able to lodge the review application in accordance with section 36A(2) of the GALA Act.

We are satisfied that the decision to impose conditions on the venue's liquor licence has been made in accordance with the provisions of section 53 of the Act, following the receipt of a valid application by a delegate of the Secretary of the Department of Enterprise, Investment and Trade, in accordance with section 53(1)(a) of the Act.

The material we considered

In determining the review application, the following material was considered:

- Material before the delegate:
 - Gladstone Hotel Liquor Licence LIQH400117523, dated 8 December 2021
 - Section 79 Disturbance Complaint, received by L&GNSW on 2 December 2021

- Submission from NSW Police in response to the complaint, dated 17 December 2021
- Submission from the venue Approved Manager in response to the complaint, dated 13 March 2022
- Final submission from the complainant, dated 11 April 2022
- Final submission from the venue, dated 19 May 2022
- Review application from the review applicant and supporting submissions, dated 17 April 2023.
- Submission from L&GNSW in response to the application for review, dated 20 September 2023.
- Submission from the venue in response to the application for review, dated 27 October 2023.
- Submission from the review applicant in response to submissions, dated 13, 15 and 17 December 2023.

As required under section 53(4) of the Act, the following material was considered in our decision to impose conditions under section 53 of the Act:

- The application letter by Ms Jane Lin, including proposed conditions, dated 20 September 2023.
- Submission on behalf of City of Newcastle Council, in response to the application, dated 24 November 2023.
- Submission from the venue in response to the section 53 application, dated 4 December 2023.
- Submission from a local resident, in response to the section 53 application, dated 4 December 2023.
- Submission from L&GNSW in response to submissions, dated 15 December 2023.


Decision to be published

This decision will be published on the [Liquor & Gaming NSW website](#) in accordance with section 36C of the GALA Act.

If you have any questions

Please contact the Office of ILGA at office@ilga.nsw.gov.au if you have any questions.

Yours sincerely



Caroline Lamb

Chairperson

For and on behalf of the **Independent Liquor & Gaming Authority**

**Schedule 1 – Licence conditions to be imposed
Gladstone Hotel, Stockton (LIQH400117523)**

No.	Condition to be imposed	Description
1.	Closed-Circuit Television (CCTV)	<p>1) The licensee must maintain a closed-circuit television system on the premises in accordance with the following requirements:</p> <ul style="list-style-type: none"> a) the system must record continuously from opening time until one hour after the premises is required to close (or, in the case of premises that is not required to cease trading, continuously at all times), b) recordings must be in digital format and at a minimum of ten (10) frames per second, c) any recorded image must specify the time and date of the recorded image, d) the system's cameras must cover the following areas: <ul style="list-style-type: none"> i. all entry and exit points on the premises, ii. the footpath immediately adjacent to the premises, and iii. all publicly accessible areas (other than toilets) within the premises. <p>2) The licensee must also:</p> <ul style="list-style-type: none"> a) keep all recordings made by the CCTV system for at least 30 days, b) ensure that at least one person is on the premises at all times the system is operating who is able to access and fully operate the system, including downloading and producing recordings of CCTV footage, and c) provide any recordings made by the system to a Police officer or Liquor & Gaming NSW inspector within 24 hours of any request by a Police officer or Liquor & Gaming NSW inspector to provide such recordings.
2.	Plan of Management	<p>1) The licensee must engage a person who holds a current class 2A security licence, or is otherwise suitably qualified, to prepare a plan of management for the licensed premises.</p> <p>2) The plan should be systems based and adopt a continuing approach to address:</p> <ul style="list-style-type: none"> a) Compliance with licence conditions and liquor laws. b) The responsible service of alcohol. c) Minimising disturbance to the neighbourhood particularly addressing effective management of patrons: <ul style="list-style-type: none"> i. Who are intoxicated, violent, quarrelsome and disorderly, ii. Queuing to gain entry to the premises, and iii. Within and departing the premises. d) Effective management and deployment of venue staff particularly addressing:

		<ul style="list-style-type: none"> i. Maintaining an incident register, ii. Security and patron safety, iii. Crime scene management procedures, and iv. Induction and training. <p>e) Appropriate responses to concerns as they arise from the Police Area Commander (of the relevant Police Area Command in which the premises is situated) or residents affected by the operation of the licensed premises.</p> <p>f) Procedures to manage the outdoor smoking area.</p> <p>g) Liquor supply in the 'VIP' booth area, including the service of shots.</p> <p>3) The plan should be updated from time to time as required but only: a) With the agreement of the Police Area Commander (of the relevant Police Area Command in which the premises is situated), or b) On the advice of a person who holds a current 2A security licence or is otherwise suitably qualified.</p> <p>4) A copy of the plan must be served on the Police Area Commander (of the relevant Police Area Command in which the premises is situated) within 14 days of the implementation of, or any variation to, the plan.</p> <p>5) A copy of the current plan must be maintained at the licensed premises and made available for inspection on the request of a Police officer, council officer, Liquor & Gaming NSW inspector, or any other person authorised by the Independent Liquor and Gaming Authority.</p> <p>6) The licensee must comply with the terms and requirements as set out in the plan.</p>
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