
FILE NO:	A21/0018748
COMPLAINANT:	██████████
LICENSED PREMISES:	Royal Hotel, Paddington – LIQH400105223
ISSUES:	Whether the quiet and good order of the neighbourhood of the licensed premises is being unduly disturbed.
LEGISLATION:	<i>Liquor Act 2007</i>

SECTION 81 DECISION

Under Section 81 of the *Liquor Act 2007* (the Act) I, John Coady, Manager Regulatory Interventions Team, a delegate of the Secretary, Department of Customer Service, in relation to the complaint made in respect to the Royal Hotel, Paddington have decided to **impose a plan of management condition**.

Details of this condition, including the date it becomes effective, is set out 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;
 - 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; and
 - d) the need to support employment and other opportunities in the –
 - (i) live music industry, and
 - (ii) arts, tourism, community and cultural sectors.

The complaint and background information

The complaint

5. On 21 April 2021, [REDACTED] (the complainant) lodged a complaint with Liquor & Gaming NSW (L&GNSW) alleging undue disturbance from the operation of Royal Hotel (the Hotel). The complainant lodged this complaint as a resident authorised by nine other residents.
6. The complainant alleges disturbance due to patron noise both from inside the Hotel and whilst patrons are leaving the Hotel. Disturbances from inside the Hotel are exacerbated by doors and windows remaining open until close, a recently renovated balcony being overcrowded and excessive patron noise, loud music being played frequently, and patrons yelling and screaming inside the Hotel. The complainant alleges there is excessive noise from patrons leaving the Hotel in large groups, and patrons loitering outside the Hotel after operating hours, speaking, shouting and drinking.
7. The complainant further indicates there has been a substantial increase in taxi and ride-share usage with poor behaviour of patrons being exhibited outside the Hotel, including urinating in gardens and on footpaths and empty bottles being littered. Additionally, the complainant describes noise from delivery trucks arriving before 6am, and rubbish and glass collection before 6am contributing to the disturbance. Disturbance allegedly occurs

daily, particularly noting Monday to Saturday mornings before 6:00am, Friday, Saturday and Sunday evenings up to and after midnight, and on Sunday afternoons from 3:00pm.

8. The complainant indicates that a meeting with the former licensee Mr Regan Shepherd (the former licensee), the current licensee Miss Eleanor Banfield, hotel management staff and a councillor from Woollahra Municipal Council took place on 13 February 2021 with a number of local residents present, where assurances were made by the Hotel to improve the disturbance. The complainant submits the former licensee assured residents that a plan of management would be sent to the residents, which they have not received. The complainant states that despite trying to resolve the issues directly with the Hotel, there has been little if any improvement observed with many of the issues raised since worsening.
9. The complainant seeks that there be no waste collection or delivery prior to 6am, the balcony area be decreased to 50% of current capacity, windows and doors to be closed on levels above the ground floor at all times and that the balcony is not used from 10:00pm. The complainant requests that the Hotel's operating hours be reduced to close at 10:00pm and security cameras be installed on the ground and first floors to cover Glenmore Road, Broughton Street and White Lane. Additionally, the complainant seeks to have music played only when the doors, windows and roof are closed, that security is employed during operating hours and that Taxi and ride-share collections are limited to Glenmore Road.
10. The complaint attaches email correspondence from the complainant and authorising residents with the former licensee of the Hotel outlining their concerns and incidents of disturbance occurring at the Hotel in January 2021 and February 2021. Also attached is correspondence with Woollahra Municipal Council regarding complaints from authorising residents concerning alleged disturbance from the Hotel in November 2020, January 2021, February 2021 and March 2021. The complaint also details truck movements, food deliveries and rubbish collection on Broughton Street over seven separate dates in March 2021, with five of the documented entries recorded before 6:00am. The document also lists four occasions of alleged disturbance from the Hotel in March 2021, primarily relating to patron noise and behaviour after 10:00pm.

The Hotel, licence details, compliance history

11. The Hotel is located at 237 Glenmore Road, Paddington on the intersection known as the 'Five Ways', specifically the corner of Glenmore Road and Broughton Street. The Hotel backs onto White Lane, which is the shared laneway with residential properties facing Duxford Street. The Hotel holds a full hotel liquor licence with permissible trading hours

for consumption on premises between 5:00am and 12:00 midnight Monday to Saturday and 10:00am to 10:00pm Sunday.

12. The Hotel is comprised of four levels. The ground floor of the Hotel contains the Royal bar, gaming room, TAB and bottle shop. The first floor consists of the Verandah bar and dining room; the second floor houses the Elephant bar and balcony area, and the top floor contains the rooftop area, toilets and offices.
13. Mr Regan James Shepherd was the licensee of the Hotel from 15 October 2020 to 19 May 2021. The current licensee is Miss Eleanor Rose Banfield who commenced in the role on 20 May 2021.

Submissions

14. Between 21 April 2021 and 10 February 2022, various material was received from parties to the complaint, including the complainant, the Hotel, NSW Police (Police) and Woollahra Municipal Council (Council). The material that is before the delegate is set out in **Annexure 2** and summarised below.

Hotel response to complaint

15. In response to the complaint, the former licensee provided a submission on 18 May 2021. The former licensee advises that since receipt of the complaint strategies have been implemented to minimise noise emanating from the Hotel, in an effort to willing work with the community. However, the former licensee believes that the enforced shutdown due to COVID-19 has resulted in the hypersensitivity of neighbouring residents and that not all claims are warranted.
16. In regard to delivery and rubbish removal, the former licensee submits that all suppliers have been notified to deliver to the Hotel after 6:00am and to turn off their engines when parked in the loading bay. Additionally, there is only one loading dock area in the Five Ways, which is located directly outside the Hotel on Broughton Street, and all other restaurants and premises in the precinct utilise this specific loading bay. The former licensee states the Hotel contracts Council for rubbish removal and believes this is conducted within correct guidelines. Attached to the submission is delivery receipts from Duotank dated 4 February 2021, 15 April 2021 and 22 April 2021 outlining the delivery of beer at the Hotel after 10:00am, which the former licensee states emits the most noise.
17. The former licensee submits the Hotel now closes all windows and doors at 9:00pm from Sunday to Thursday, and at 10:00pm on Friday and Saturday nights. The Hotel has also started lowering the outside blinds at the corresponding times to further reduce noise from

the first-floor balcony. Further, regular noise checks are performed by a manager on duty on the corner of White Lane and Duxford Street to ensure no music is heard at these points and internal security guards are tasked with ensuring that Hotel patrons are not yelling from the balcony.

18. The former licensee submits the Hotel has hired additional security on Friday and Saturday nights to be stationed outside the Hotel in high visibility vests to disperse crowds. The former licensee also details that a new three-person system of clearing crowds upon closing, consisting of two security guards and one manager, all in high visibility vests has been employed. Additionally, the main entrance and exit to the Hotel has since been moved to Glenmore Road on Fridays and Saturdays to avoid congestion occurring on Broughton Street. Security have also commenced a 'block check' along White Lane and Duxford Street on Friday and Saturday nights to ensure patrons do not loiter in the vicinity of the Hotel after closing.
19. The former licensee submits that anyone remaining in the vicinity of the Hotel after 1:30am must be coming from other late-night trading venues along Oxford Street. Further, it is submitted that the Hotel rarely sells takeaway alcohol over the on-premises bar and all patrons are checked to ensure alcohol is not taken off the Hotel premises. The former licensee contends that the only safe taxi and ride-share pick up and drop off point for all restaurants and shops on the Five Ways is on Broughton Street outside the Hotel and limiting such services to Glenmore Road would be unreasonable and dangerous.
20. The former licensee submits that having windows closed at all times, as requested by the complainant, is not conducive to airflow, especially in the current COVID-19 climate. Further, it is submitted that decreasing the patron capacity of the Hotel's balcony area by 50% is unreasonable, as would be closing the Hotel at 10:00pm, which would be debilitating to the Hotel and local community. The former licensee states the Hotel has been subject to inspections by Council and Police on numerous occasions and has never received a fine or breach relating to excessive noise.
21. Attached with the Hotel's submission is an updated 'Royal Hotel House Policy' (the House Policy) dated 2021. The House Policy mirrors the stated changes to security patrols and noise measures implemented at the Hotel as well as a neighbourhood amenity policy.

Council submissions

22. On 19 May 2021, Council provided a submission in response to the disturbance complaint. Council advises that between 23 November 2020 and 12 April 2021, they received 20 complaints from eight different residents, predominantly residing on Duxford

Street, Paddington. These complaints were made regarding patron noise from inside the Hotel and on the balcony, music from speakers on the roof, anti-social behaviour of patrons leaving the Hotel and lack of security.

23. Council also provided details of numerous development consents regarding the Hotel. Council notes that DA 326/2019 was approved on 10 October 2019 for the restoration of the balcony on the first floor of the Hotel. Council submits that there are no development consent conditions limiting the use of the first-floor balcony or any management practices pertaining to the use of the first-floor balcony in the House Policy.
24. Council note that DA 131/2011 was approved on 5 December 2011 for the reconfiguration of layouts on the ground, first and second floors of the Hotel, with a new internal terrace on the first floor including a retractable awning at roof level and new windows on the first floor on the Broughton Street facade. Council draws attention to the relevant conditions of consent that must be satisfied during the ongoing use of the development which include:
 - The operable roof to the internal terrace on Level 1 shall be closed from 10:00pm Monday to Sunday.
 - The three existing windows and two proposed new windows adjoining the internal terrace shall be closed from 10:00pm Monday to Sunday.
 - In order to comply with D.1.13 of the Building Code of Australia, the maximum number of patrons permitted at the Hotel at any one time is limited to 600, with specific limits for each floor. The ground floor maximum is 235 patrons, the first floor maximum is 180 patrons, the second floor maximum is 140 patrons and the third floor maximum is 45 patrons.
25. Council provide that DA 661/2006 was approved on 20 November 2006 for alterations and additions to the existing roof top deck area. Condition 2(c) specifies that no tables, chairs, or moveable furniture are allowed on the rooftop terrace area. Attached to the submission was copies of development consents DA 131/2011 and DA 661/2006.
26. Council note that a meeting occurred on 21 April 2021 between Council, Eastern Suburbs Licensing Police, the former licensee and the current licensee. The meeting focused on complaints of residents, observations of Police from an inspection conducted on 17 April 2021, the Hotel's management measures to address concerns of residents and Police and an upcoming ANZAC Day event.

27. Council submit that the Hotel has developed the House Policy which they regard as a loose Plan of Management (PoM). As no operational PoM is mentioned in DA 131/2011, they advise that the House Policy is not enforceable by Council. However, Council submit that if the House Policy is followed, it could address many of the residents' concerns. Council submit that following Police observations, the former licensee agreed to be more diligent in ensuring that management practices are adhered to, including briefing Hotel staff and ensuring doors and windows around the first-floor balcony are closed in line with the House Policy.
28. Council advises that consent conditions for DA 131/2011 were highlighted to the current and former licensees and that the patron numbers for the first-floor balcony are included in the total maximum patrons permitted on the first floor of the Hotel.
29. Council further submits that observations made by Police during a covert inspection on 24 April 2021 indicate that undertakings made by the former licensee during the meeting held in April were not being followed, nor were a number of management practices as outlined in the House Policy. A penalty infringement notice was issued to the former licensee by Council Rangers for failing to comply with an Activity Approval for the ANZAC Day event, by exceeding the maximum number of patrons permitted within a designated area. Council notes this is despite the event being included in discussions at the meeting on 21 April 2021.
30. On 9 June 2021, Council forwarded three noise disturbance complaints from residents concerning the Hotel dated 4 and 5 June 2021. The complaints detailed patron noise originating from the first-floor balcony of the Hotel, and music from external speakers on the balcony. The complaints also noted that no security was evident at any doors to the Hotel and large crowds were gathered around the exterior of the Hotel, blocking footpaths and spilling onto the road. Additionally, the Broughton Street entrance was again being used and no patrons were observed to be using the front entrance on Glenmore Road.
31. Council submit that the complaints demonstrate that a number of the management practices and voluntary undertakings made by the former licensee to Council and Police on 21 April 2021 were not being followed. This includes reverting back to using the principal entrance to the Hotel on Broughton Street.
32. Council proposes the following conditions be considered to ameliorate the on-going disturbances:

- The maximum number of persons permitted on the first-floor balcony at any one time is 20 persons, with prominent signage displayed. This is in accordance with the *Building Code of Australia* where 1m² of floor area is required per person.
- The first-floor balcony is to close by 10:00pm, Monday to Sunday and no patrons are to remain on the balcony after this time.
- The doors on Broughton Street are to be closed from 5:00pm Monday to Sunday, with the doors on Glenmore Road being the principal entry from 5:00pm. All doors and windows on the ground and first floor must be kept closed after 10:00pm Monday to Sunday.
- All electronically generated music used/played on the premises must be played through the in-house system and not via any other amplification/speakers. The music must be controlled by a root mean square (RMS) noise limiter and calibrated by an acoustic engineer. The in-house music equipment must be tamper proof and only be operable by the management or their nominee.
- There will be no speakers or external amplification provided on, or directed towards, the first-floor balcony or roof terrace.
- A detailed Plan of Management must be lodged with L&GNSW and kept on the premises and made available for inspection immediately upon request by Council, NSW Police or L&GNSW authorised officers.
- At least two licensed security guards shall continually patrol in the vicinity of the premises from 8:00pm until 30 minutes after closing on Friday, Saturday and Sunday nights to maintain the amenity of the locality and ensure the orderly and quiet dispersal of patrons. Security staff must ensure patrons entering and leaving the premises do not crowd or loiter in the vicinity of the premises in such a manner that pedestrian movement is obstructed or hindered, and that the behaviour of patrons entering and leaving the premises does not cause undue disturbance to the amenity of the neighbourhood.

NSW Police submission

33. On 20 May 2021, Police provided a submission in relation to the disturbance complaint. Police advise that in the week prior to 16 April 2021, the complainant contacted Police indicating [REDACTED] intention to lodge a complaint with L&GNSW against the Hotel on behalf of several residents. On 16 April 2021 Police received an email that this complaint had been lodged. Attached was an account of the complaint and several measures the Hotel had volunteered to undertake following a meeting with local residents on 13 February 2021.

34. Police submit that they are satisfied that undue disturbance is occurring due to actions of Hotel management and from the behaviour of patrons leaving the Hotel. This is evidenced by covert observations detailed by Police in their submissions.
35. On 27 February 2021, at around 6:30pm, Police attended the Hotel for an unrelated Police operation. Police submit that they parked their vehicle on the corner of Duxford Street and Broughton Street, approximately 50 metres from the Broughton Street entrance to the Hotel. Police advise that there was a significant level of noise coming from the Hotel and noted that the double doors on Broughton Street were open. Police submit that whilst outside the Hotel, they had difficulty hearing each other speak.
36. Police engaged with the manager on duty, the current licensee, and expressed concern about the noise levels coming from the Hotel with the doors open. The doors were subsequently closed and Police submit that there was a significant reduction in noise.
37. On 17 April 2021, at around 11:50pm, Police attended the vicinity of the Hotel to conduct covert observations. They observed large crowds of patrons, approximately 46 people, loitering around the vicinity of the Hotel on Glenmore Road and Broughton Street, laughing loudly and shouting. One security guard was observed standing amongst the crowd, who was not wearing any distinguishing vest or clothing. Police submit they did not see the security guard engage with patrons to make attempts to minimise disturbance. Police state that patrons on the first-floor balcony were heard to be shouting, the balcony doors and windows were open and amplified music from the internal area of the Hotel clearly heard at street level.
38. At the cessation of trade at midnight, Police submit that patrons exited the Hotel in a large crowd, being ushered onto Glenmore Road and in the recessed area immediately in front of the Hotel, causing congestion and a partial traffic obstruction. Contributing to this traffic obstruction were transport options such as taxi, ride-share and other vehicles who were stopped blocking the roundabout. Police observed little interaction by security to move persons on or minimise the noise and behaviour of patrons. At 12:14am the manager on duty was observed outside the Hotel, however Police did not observe any interaction with patrons. At 12:28am Police observed the manager on duty and two security guards patrolling the outside of the Hotel, however by this time patron numbers had significantly reduced with one small group of 3-4 persons remaining.
39. Police submit that on 21 April 2021, they attended a meeting with the current and former licensees, and representatives from Council. Police highlighted observations made during the covert inspection on 17 April 2021, namely the behaviour of patrons on the balcony which contributed significantly to the noise generated from the Hotel. In response to Police

observations, the former licensee stated that the first-floor windows and balcony doors were to be closed at 9:00pm Sunday to Thursday and from 10:00pm Friday and Saturdays. Police submit that at this meeting, the former licensee also stated that the Broughton Street doors would be closed to mitigate noise from the ground floor, that security guards would wear high visibility reflective vests and security would proactively engage with patrons while conducting their duties outside the Hotel. The manager on duty would also assist with these activities at close of business.

40. On 24 April 2021 at 11:30pm, Police submit that they conducted covert patrols in the vicinity of the Hotel. Police state they observed the doors and windows of the balcony to be closed, but the entry doors on Broughton Street were open and music and voices emanating from the doorway were audible as they drove past. At about 11:40pm, Police observed a security guard outside the Broughton Street entrance, using his mobile phone, smoking and not engaging with patrons outside the Hotel on the intersection of Glenmore Road. Police submit that the security guard was not wearing any distinguishing clothing. A short time later the security guard was observed to move to the Glenmore Road entrance to the Hotel and remained in a static position when a group of patrons upon exiting the Hotel became loud and disorderly while waiting outside the Hotel for transport.
41. Police submit that disturbance is principally occurring through the use of the first-floor balcony, open windows and doors, Hotel staff not following procedures and security guards not intervening with patrons loitering outside the Hotel. Police contend that the former licensee has been afforded every opportunity to rectify the issues raised and has committed to voluntary undertakings to mitigate these disturbances however has failed to act on them.
42. Police propose that a number of licence conditions be considered to ameliorate the disturbance reported by the complainant and local residents. Furthermore, Police submit that a comprehensive PoM would rectify the lack of awareness by Hotel staff to new procedures. Police propose the following licence conditions:
 - The operation and management of the Hotel shall be in accordance with a detailed PoM to be lodged with L&GNSW. The PoM should include the use of entry and exit points to the Hotel, use of the first-floor balcony, including capacity limits and trading hours, closure of windows and the management of security.
 - The Hotel shall have a complaints phone line with signage on the exterior of the building. Calls should be answered by the licensee, manager on duty or security manager.

- The Hotel shall record all disturbance complaints in a register and actions taken by management to resolve complaints.
- An announcement is to be made 15 minutes prior to the cessation of trade for patrons to arrange pickup or transport to occur from Glenmore Road.
- From 5:00pm each night, the doors on Broughton Street are not to be left open.
- All windows and doors are not to be left open after 9:00pm.
- The use of the first-floor balcony is to cease by 10:00pm and no patrons are to remain on the balcony after this time.
- All licensed security personnel conducting duties outside the Hotel are to be wearing bright reflective vests with 'Security' clearly visible. A security register is to be kept with the name of security personnel and security licence number recorded at the start of each shift.
- The licensee will ensure that there is a ratio of one licensed security guard per 150 patrons on each day the Hotel trades.
- From 6:00pm, the Hotel is to utilise at least one security guard in a static position at each entry/exit point in operation (excluding Monday and Tuesday nights). The security is to ensure liquor is not removed from the Hotel, that patrons are asked to leave the vicinity quickly and quietly to avoid disturbances and advise that transport pickup location is from Glenmore Road. This duty is to continue until the last patron has left the Hotel.
- From 10:00pm, each night the Hotel trades beyond this time, at least one security guard is to be positioned on Broughton Street to actively discourage patrons from travelling east along Broughton Street unless a legitimate reason exists for such travel. This duty is to continue until the last patron has left the vicinity.
- From 8:00pm on Friday, Saturday and Sunday nights, at least one security guard is to constantly patrol the environs of the Hotel ensuring liquor is not removed from the premises and patrons are asked to leave quickly and quietly to avoid disturbance to the neighbourhood. This duty is to continue until the last patron has left the Hotel and the immediate vicinity.
- No collection or delivery of goods is to occur between 8:00pm and 6:00am on any day.

Complainant Final Submission

43. On 7 June 2021, the complainant provided a final submission in response. The complainant is supportive of the submissions from Police and Council and believe these to corroborate facts detailed in the original complaint.

44. The complainant submits that there is a pattern of behaviour from the Hotel where the licensee provides assurances and undertakings to mitigate future disturbance, as were provided to residents in a meeting in February 2021, but no change in the Hotel operations results. Additionally, a PoM as similarly proposed by the Hotel, has also never been provided to residents. The complainant asserts that there has been little to no effort by the Hotel to engage with residents other than the meeting held in February 2021.
45. The complainant rejects the former licensee's opinion that concerns expressed regarding the operation of the Hotel are only from a small group of residents. The complainant details that those complaining are not small in number and represent a wide demographic, including those that have lived in Duxford Street for more than 40 years. Concerns about the Hotel have never been as high since the change in ownership and in the activities conducted at the Hotel. The complainant considers the change in the target demographic of people aged between 18-30 years to be a driving factor in the change in activities at the Hotel and warrants the need of security personnel to be employed.
46. The complainant states that the upgrade to the first-floor balcony has had a serious impact on the local community, with noise no longer just confined to the interior of the Hotel. The complainant submits that the doors and windows to the first-floor balcony should be closed at 5:00pm, in line with the doors and windows on Broughton Street. The complainant further suggests that self-closing doors should also be required in line with other licensed premises in the area.
47. The complainant states that a warning, in circumstances where previous undertakings and assurances have been flouted by the Hotel, would not be appropriate. It is submitted that imposing conditions on the Hotel's licence is appropriate and reasonable given the clear evidence of undue disturbance which is supported by the significant number of complaints reported to Council and Police, the failure of the Hotel to adhere to voluntary undertakings to mitigate disturbance, and the observations made by Police during convert inspections at the Hotel.

Hotel final submission and other material

48. On 26 August 2021, Mr Don McDougall, solicitor, on behalf of the former licensee, current licensee and the business owner of the Hotel, provided a submission in response. The Hotel proposes to adopt and adhere to a proposed PoM, dated August 2021, which they believe comprehensively responds to and rectifies the alleged disturbance taking place and acknowledges that this is recommended by both Council and Police. Mr McDougall submits that this will achieve the objects of the legislative framework, and consents to a

Plan of Management condition being imposed on the Hotel's licence. Mr McDougall submits that the Hotel's current PoM is dated December 2018 and was prepared by a prior licensee and not passed on to the current licensee. He advises that only after this complaint had been initiated, did his client locate the PoM.

49. Mr McDougall states the Hotel's locality at the Five Ways is a heavily trafficked road system with a significant amount of pedestrian traffic. It is a high-density urban area where residential use sits next to long term retail, commercial and light industrial usages. He submits that there is frequent pedestrian flow and migration between licensed premises through this intersection and not all of this can be attributed to the Hotel.
50. In response to the recommendation of acoustic testing, it is submitted that due to the Hotel being closed from late June 2021 as a result of the forced closure of licensed premises due to COVID-19, it has been impractical to undertake an acoustic report at this time. However, Mr McDougall acknowledges that the LA10 noise condition exists as part of the Hotel's Development Approval requirement and is included in the proposed PoM.
51. Regarding the first-floor balcony, Mr McDougall submits that the balcony was replaced in 2019 to enhance its structural integrity in order to allow patrons to continue to use it as has been done for over 100 years. Due to the heritage listing of the building, the replacement balcony is visually and in size, exactly like for like with the original. Mr McDougall states that entertainment can be provided on the ground floor, first floor and second floor with entertainment comprising of DJs or at maximum a three-piece ensemble. He states that the Hotel has been conducting these activities and trading in this physical format from at least early 2000, with only cosmetic refurbishments over that period to date.
52. With respect to the complainant's desired outcomes, Mr McDougall asserts that the Hotel does not agree to the reduction of patron numbers on the first-floor balcony. The Hotel has limited the number to 50 patrons for some time previous to the complaint and has agreed to close the doors to the balcony at 10:00pm. Similarly, the Hotel has also agreed to close the windows and doors on the ground floor from 10:00pm. The Hotel does not agree with Police or Council's proposed condition to cease using the first-floor balcony from 10:00pm as they submit that it is a distinctive and historic feature of the trading operation of the Hotel. In response to the proposed condition from Council regarding limiting the numbers on the first-floor balcony, the Hotel also do not agree. Mr McDougall notes that the development application for the balcony was approved by Council in 2019 without limitation.

53. Mr McDougall submits that when music is being played at the Hotel, doors will be closed, and when amplification is occurring or speakers being used which are external to the in-house system, the windows and doors will be closed on the level where the music is occurring.
54. Included in the Hotel's final submission is the proposed PoM dated August 2021. The proposed PoM seeks to implement the Hotel's previous PoM which had the following strategies included:
- Regular perimeter checks conducted throughout evening trade periods along Broughton Street (up to Duxford Street) and Heeley Lane to ensure no glass containers or waste associated with the Hotel is present, or that patrons are not congregating in those areas causing disturbance to the neighbourhood.
 - After close, patrons are directed by management and security to vacate the area quickly and quietly.
 - Regular noise checks are conducted along Broughton Street and Heeley Lane to monitor noise emissions.
 - The retractable roof above the dining room and all windows on the southern side of the dining area on the first floor are closed from 10:00pm in accordance with the Hotel's development consent.
 - No more than 50 people are permitted on the first-floor balcony at any one time.
 - Management will ensure all employees and security are trained to assist patrons to minimise noise, particularly patrons leaving the Hotel after midnight.
 - Proposed entertainment provided at the Hotel to be up to a maximum of a three piece ensemble and no live music permitted on the rooftop at any time.
 - Any amplification equipment shall be controlled by a RMS noise limiter, which is calibrated annually by an acoustic engineer, tamperproof and only operable by a qualified person.
 - In accordance with the approved Development Consent, the LA10 noise condition applies to the Hotel.
 - Management will immediately address complaints relating to noise and where possible act immediately to satisfy the complaint. Complaints will be recorded in the Complaints Register, and if required the licensee shall meet with neighbours and Police to address ongoing matters as they arise.
 - Any recurring complaints will be dealt with by new management procedures in consultation with residents, Police and Council and if required will be incorporated into this plan.
 - All security personnel are to wear a uniform identifying them as security guards.

- Signage erected in a clear and prominent position adjacent to all points of egress, requesting patrons depart the Hotel in a respectful manner.

In conjunction with this, the Hotel proposes to implement the following new initiatives to the proposed PoM:

- From 5:00pm doors to Broughton Street are not to be left open.
- From 10:00pm each night, no windows or doors on the ground floor are to be left open.
- From 10:00pm the doors to the first-floor balcony are not to be left open.
- Rubbish and glass collection will not occur after 8:00pm or before 6:00am on any day.
- Delivery of goods will not occur after 8:00pm or before 6:00am on any day.
- An announcement is to be made 15 minutes prior to closure to the effect that patrons should arrange pickup location for transport on Glenmore Road.
- When any amplifier or speaker is used, but not through the house sound system, the windows and doors on that level will be closed.
- When the external speakers are used through the house sound system, a cut-off timer will be in use and set to cut-off at 10:00pm.
- Two security guards are to be employed between 8:00pm and midnight on Friday and Saturday nights.
- From 10:00pm on Friday and Saturday nights, one of these security guards is to monitor and regularly patrol Broughton Street, to the intersection of Duxford Street, to deter anti-social behaviour of departing patrons.
- Security will be present until midnight or until the last patron has left the Hotel and its' vicinity, whichever is the later time.
- The Hotel shall display a complaints telephone number on the exterior of the building.

Police response to proposed POM

55. On 19 September 2021, Police provided L&GNSW a response regarding the proposed PoM supplied by the Hotel.

56. Police submit they are not satisfied with the proposed changes to the PoM as they believe they would not prevent further incidents of undue disturbance. Police provide that the proposed changes are not dissimilar to measures the former licensee and management stated to have already implemented following a meeting with residents in February 2021.

Additionally, Police note that observations of disturbance emanating from the Hotel were made some time after these changes were meant to have been already implemented.

57. Police propose that all windows and doors on all floors are to be closed after 9:00pm. They also hold concerns that no strategies or controls have been implemented by the Hotel in the proposed PoM to reduce noise emitted from patrons on the first-floor balcony. As such, Police reiterate the proposed condition that the use of the first-floor balcony is to cease by 10:00pm, with no patrons to remain on the balcony after this time.
58. Regarding security, Police submit that in order for the measures stated by the Hotel in the proposed PoM to be carried out, all security personnel must be clearly identifiable and are to wear bright, reflective vests with the word 'Security' clearly visible. Police again assert that the licensee should ensure a ratio of one security guard per 150 patrons. In addition, from 6:00pm each night (excluding Monday and Tuesday) until the last patron has left the premises, the Hotel is to utilise one security guard in a static position at each entry/exit point in operation. From 10:00pm each night the Hotel trades beyond this time, one security guard is to be positioned on Broughton Street to discourage patrons from travelling in that direction unless a legitimate reason exists. From 8:00pm, on Friday, Saturday and Sunday nights, until the last patron has left the Hotel and the immediate vicinity, at least one security guard is to constantly patrol the environs of the Hotel to ensure liquor is not removed from the premises and ensure patrons leave quickly and quietly to avoid disturbance to the neighbourhood.

Final Hotel response to proposed POM

59. On 1 October 2021, Mr McDougall provided a final response regarding the proposed PoM and Police comments. Mr McDougall submits that the proposed PoM goes well beyond the proposal discussed by the former licensee with residents, Council and Police. In response to Police comments that these proposals had not been implemented by the Hotel or had achieved an improvement in the amenity of the neighbourhood, Mr McDougall asserts that Police observations were based on one night and cannot be said to show a pattern of behaviour. Further, the assertion that doors and windows on the first-floor balcony were open on the night Police conducted observations is denied by the licensee.
60. Mr McDougall submits that the Hotel wishes to resolve the matter and provides further amendments to the proposed PoM, dated October 2021, which was attached to the submission. The Hotel will not agree to closing the doors and windows on all floors at 9:00pm but will however agree to the 10:00pm they propose. The Hotel also does not

agree to ceasing the use of the first-floor balcony at 10:00pm. However, as a conciliatory concession, they propose to lower and secure the existing external screens each evening at 9:00pm, enclosing the area. Mr McDougall submits that this, combined with the reduction of patron numbers at any one time to 50 patrons and closing the doors to the balcony at 10:00pm will significantly reduce the noise generated on the first-floor balcony.

61. Mr McDougall presents that the PoM, amended to incorporate security measures identified by Police is a balanced response to their submission. Additional measures in the PoM are:

- From 10:00pm on each night the Hotel trades beyond that time, the doors to the 'Verandah' (first-floor balcony) are not to be left open.
- From 9:00pm on Friday, Saturday and Sunday nights, the external blinds on the 'Verandah' will be lowered and secured.
- From 11:00pm on Friday and Saturday nights, no new patrons will be permitted on to the 'Verandah'.
- External speakers on the 'Verandah' will be cut off no later than 9:00pm.
- All licensed security personnel who conduct duties outside the Hotel, in addition to being clearly identifiable, are to be wearing bright reflective vests with the word 'Security' clearly visible.
- The name of security personnel and their licence number are to be entered into a book by the licensee or duty manager at the start of the shift and made available at Police request.
- Two security guards are to be employed between the hours of 6:00pm and midnight, or until the last patron has left the Hotel and the vicinity of the Hotel on Friday and Saturday nights.
- Two security guards are to be employed between the hours of 6:00pm and 10:00pm or until the last patron has left the Hotel and the vicinity of the Hotel on Sunday nights when the Hotel features a promoted event.
- The Hotel is to utilise one of the security guards in a static position at the Glenmore Road entry/exit point to the Hotel to ensure liquor is not removed from the premises, that patrons are asked to leave the vicinity quickly and quietly to avoid disturbance to the neighbourhood, and that patrons are advised to arrange transport pick up from Glenmore Road.
- From 8:00pm on Friday and Saturday and on Sundays when the Hotel features a promoted event, one security guard is to patrol the vicinity of the Hotel to ensure liquor is not removed from the premises and that patrons are asked to leave the vicinity quickly and quietly to avoid disturbance to the neighbourhood.

- From 10:00pm on Friday and Saturday, and on Sundays when the Hotel features a promoted event, one of the security guards is to monitor and regularly patrol Broughton Street to deter anti-social behaviour of patrons, and to discourage patrons from traveling east along Broughton Street unless a legitimate reason is given. Such patrons are to be reminded that they are entering a residential area and should minimise noise.

Inspection by L&GNSW

62. On 19 December 2021 at 8:45pm L&GNSW Inspectors attended the Hotel. On approach to the Hotel along Glenmore Road towards the Five Ways, Inspectors observed there to be minimal pedestrian traffic with some patron noise emanating from the Hotel, at an overall low level. No security guards were observed outside or at the entrance to the Hotel. Inspectors walked along Broughton Street and along Duxford Street and noted that no noise from the Hotel was audible, with overall background noise levels considered low. Inspectors then proceeded to walk along White Lane, which backs onto the Hotel, and observed no noise from the Hotel to be audible.
63. At 8:54pm Inspectors entered the Hotel via the Broughton Street entrance, observing the doors along Broughton Street to be open. No music was playing on the ground floor and approximately 15 patrons were observed sitting at tables. Overall noise levels were low and conversations between Inspectors could easily be had.
64. Inspectors then proceeded to the first floor and observed music to be playing inside on a low volume setting, however Inspectors could easily converse without raised voices. Inspectors observed approximately eight patrons sitting inside at a table before proceeding to the first-floor balcony. Inspectors observed approximately 25 patrons sitting outside on the balcony with minimal patron noise noted. All windows and doors leading to the first-floor balcony were observed open, the external screens on the balcony were not observed to be lowered and secured, and no music was being played through external speakers. Inspectors sat on the balcony over the Five Ways and could easily converse. At 9:14pm, a staff member advised the balcony and first floor area were closing shortly and patrons would need to move to the ground floor as the Hotel was closing at 10:00pm.
65. Inspectors then proceeded to the top floor of the Hotel and observed two rooms to be closed. Inspectors then proceeded outside to the rooftop area and observed approximately 20 patrons sitting at tables. No music was being played and minimal noise was observed. Inspectors then departed the Hotel at 9:30pm.

Additional complaints to L&GNSW

66. It is noted that between November 2021 and February 2022, the complainant and authorising residents to the complaint have repeatedly contacted L&GNSW and Police to advise that the Hotel continues to disturb the neighbourhood with loud music and patron noise emanating from inside the Hotel and on the first-floor balcony, anti-social behaviour from patrons departing the Hotel and lack of security.

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

67. The Act requires that the Secretary have regard to the following statutory considerations.

The order of occupancy between the licensed premises and the complainant –

68. The Hotel has operated under the current liquor licence since 20 June 1960. This predates the complainant, who has resided at [REDACTED] current address for 21 years. The original occupancy of the Hotel predates the complainant and I consider the order of occupancy is in favour of the Hotel.

Any changes in the licensed premises and the premises occupied by the complainant, including structural changes to the premises

69. Structural changes were made to the Hotel as a result of development application DA 326/2019, which was approved by Council in 2019. This saw the restoration of the existing balcony on the first floor. DA 131/2011 was approved in 2011 for the reconfiguration of the internal layout of the Hotel including a new internal terrace with a retractable awning and new windows on the Broughton Street facade. DA 661/2006 was approved in 2006 for alterations and additions to an existing rooftop deck area.

70. On 1 October 2015, RHP Operations Pty Ltd commenced as the business owner of the Hotel. From 15 October 2020 until 19 May 2021, Mr Regan James Shepherd held the position as licensee. On 20 May 2021, Miss Eleanor Banfield commenced as licensee and remains as the current licensee.

71. There is no indication that structural changes have been made to the complainant's residence other than an internal kitchen renovation and a garage addition.

Any changes in the activities conducted on the licensed premises over a period of time

72. The Hotel submit that they have been operating in the same manner and offering the same type of entertainment since early 2000, with only cosmetic alterations completed at the Hotel in that period. Police submit that the in-house DJ newly advertised on the Hotel's Facebook page is attracting a different target demographic of persons between 18-30

years of age. The complainant submits that since the COVID-19 lockdown period in 2021, the first-floor balcony has been refurbished with a bar bench installed wrapping around the balcony, which has resulted in an increase in the number of patrons utilising this area.

Findings and Decision

Undue disturbance

73. In deciding whether the Hotel has unduly disturbed the quiet and good order of the neighbourhood, I have balanced the submissions made by the licensee, the complainant, NSW Police and Council. I have also had regard to the particular context in which the Hotel operates.
74. It is reasonable to expect some level of noise will be generated from the normal operation of the Hotel, including noise from amplified entertainment, patrons, and pedestrian traffic. Based on the available material before me, I am satisfied that there is sufficient evidence to reasonably conclude that the Hotel has, at times, unduly disturbed the quiet and good order of the neighbourhood.
75. In making a finding of undue disturbance, I have also been persuaded by the layout of the Hotel and the close proximity to the complainant and authorising residents. I am persuaded by the number of authorising residents to the complaint and the number of complaints to both Council and Police. I have given weight to the recommendations and observations made by both Police and Council to reduce disturbance. It is evident the renovation of the Hotel's first-floor balcony area coincides with an escalation of noise complaints received by Council. Based on the above factors, I am satisfied that the complainant and authorising residents have been impacted by undue disturbance.

Regulatory Outcome

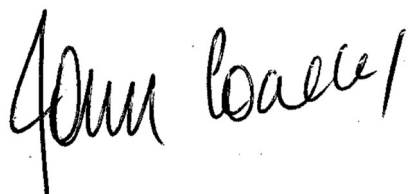
76. In deciding the appropriate regulatory outcome in this instance, I have considered the statutory considerations, the material set out in Annexure 2, and the above finding of undue disturbance. I have also had regard to the particular context in which the Hotel operates, noting its unique location and the practical implications this has. It should be noted that notwithstanding that the Hotel has consented to accept a PoM condition, the decision to impose conditions must be supported by appropriate evidence and represent a proportionate regulatory response.
77. I acknowledge the order of occupancy is in favour of the Hotel. Whilst the Hotel's physical structure has not changed significantly, the renovation to the balcony has increased its capacity limits and usage. In this context, it is reasonable to state that significant

responsibility lies on the Hotel to ensure it does not disturb the quiet and good order of the neighbourhood.

78. On this point, I acknowledge the noise mitigation strategies the Hotel has stated would be adopted to reduce its noise impact, but remain concerned that, as evidenced in Police and Council submissions, these are not effectively being implemented and therefore have failed to have had an impact on noise reduction. I am however, particularly encouraged by the recent development and intended adoption of the PoM and the Hotel's ongoing consultation with Police regarding this.
79. I note that the Hotel has consented to the PoM being imposed as a condition on its license, having been pressed by both Police and Council. Under the proposed Plan of Management, stringent security measures regarding the monitoring of patrons exiting, the closure of doors and windows at particular times, the use of a noise limiter with cut-off times to external speakers and the limiting of patrons to the first-floor balcony are some of the robust measures the Hotel is willing to undertake.
80. Regarding the first-floor balcony, it is of concern that the proposed current capacity remains at 50 patrons. Council submit that this was approved without limitation, however, highlight that it must be compliant with the *Building Code of Australia* which Council states is 1 square meter of floor area per person. While this is outside L&GNSW's jurisdiction, it is however noted that 50 patrons is in great excess of this number and the Hotel should be minded to consider the safety of their patrons as paramount and that this matter is more appropriately addressed by Council.
81. In imposing this condition, I have taken into consideration the voluntary measures currently being undertaken at the Hotel and determined that the imposition of a formal PoM condition will provide regulatory certainty and enforceability, that the Hotel will take measures to ensure patrons do not loiter and cause disturbance and that noise generated from within the Hotel is adequately addressed. I consider this to be a balanced approach, taking into account the number of conditions proposed by both Police and Council, the desired outcomes of the applicant and the need to avail patrons with adequately ventilated indoor and outdoor spaces in the wake of the COVID-19 pandemic.
82. I note the condition being imposed on the Hotel's liquor licence states '*The premises are to be operated at all times in accordance with the Plan of Management dated February 2022 as may be varied from time to time after consultation with NSW Police*'. I have reviewed the Hotel's PoM and the importance of this consultation cannot be overstated. I require the current licensee provide a copy of the Hotel's updated and signed Plan of Management to this office **within 28 days of the date of this decision**.

83. I am satisfied that this decision is a proportionate regulatory response to the identified risks of undue disturbance in the complaint and the strength of the evidence at hand. Noting the area in which the Hotel is located, I again remind the Hotel that it has a strong obligation to take all disturbance complaints seriously and proactively manage any potential disturbance that may be caused by the Hotel. In the event there is an escalation of disturbance or fresh and direct evidence demonstrating poor management of disturbance issues, it is open for the matter to be reconsidered and for further regulatory intervention to occur.

Decision Date: 23 February 2022



John Coady

Manager, Regulatory Interventions Team

Liquor & Gaming NSW

Delegate of the Secretary of the Department of Customer Service

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 23 March 2022. A \$500 application fee applies. Further information can be obtained from Authority Guideline 2 published at

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

Under section 81 of the *Liquor Act 2007* a delegate of the Secretary of the Department of Customer Service has imposed the following condition on the liquor licence of:

Royal Hotel, Paddington – LIQH400105223

Plan of Management

The premises is to be operated at all times in accordance with the Plan of Management dated February 2022 as may be varied from time to time after consultation with NSW Police. A copy of the Plan of Management is to be kept on the 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.

Date condition effective: 28 February 2022



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

1. Section 79 Disturbance Complaint lodged by the complainant on 21 April 2021.
2. Hotel submission in response to complaint received on 18 May 2021.
3. Submission and supporting material from Woollahra Municipal Council received on 19 May 2021, 20 May 2021 and 9 June 2021.
4. Submission from NSW Police received on 20 May 2021.
5. Complainant submission in response received on 7 June 2021.
6. Hotel final submission received on 26 August 2021 including proposed Plan of Management.
7. Email from NSW Police commenting on proposed Plan of Management received 19 September 2021.
8. Hotel submission in response enclosing amended proposed Plan of Management received on 1 October 2021.
9. File Note and observations for the Royal Hotel by L&GNSW Inspectors Pietrantonio and Roberts dated 20 December 2021.