
FILE NO:	A21/0020731
COMPLAINANT:	██████████
LICENSED PREMISES:	Gladstone Hotel, Stockton – LIQH400117523
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, Dimitri Argeres, Director Compliance & Enforcement, a delegate of the Secretary, Department of Enterprise, Investment and Trade, in relation to the complaint made in respect of the Gladstone Hotel, Stockton have decided to **take no further action** in relation to this matter.

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 due to 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 purposes 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 live music industry and arts, tourism, community and cultural sectors.

The complaint and background information

The complaint

5. On 2 December 2021, [REDACTED] (the Complainant) of [REDACTED] lodged a complaint with Liquor & Gaming NSW (L&GNSW) alleging undue disturbance from the operation of the Gladstone Hotel (the Hotel). The Complainant lodged the complaint as a resident authorised by seven other residents, with all but the Complainant and one other authorising resident wishing to remain anonymous.
6. The Complainant alleges noise disturbance emanates from patrons in the beer garden, live amplified music in the beer garden and amplified music inside the Hotel when the rear, side and front doors are left open. The Complainant alleges the disturbance occurs several times a week on Wednesday, Friday and Saturday nights, and during the day on weekends.
7. The complaint contains eight statements written by each of the Complainant and authorising residents detailing issues experienced with the Hotel including drunkenness, littering, fighting, property damage, threats and violence from patrons, and patrons urinating on resident's homes and cars. The Complainant submits most of the authorising residents have chosen to remain anonymous as they fear retribution from the Hotel or its patrons. The Complainant submits this is the reason why [REDACTED] has been, in the past, the only complainant about the operations of the Hotel.
8. The Complainant submits that on the morning of 31 October 2021 the Hotel hosted an event in the beer garden. Live music was set up in the north-eastern corner of the beer garden and was heard from 11:00am until approximately 4:00pm. The Complainant submits the volume of the music was so loud it could be heard clearly by numerous residents within their homes and echoed through the surrounding streets. The Complainant alleges three residents stated the music was so loud they left their homes to seek reprieve. The Complainant alleges the Hotel has an LA10 condition on its liquor licence and numerous acoustic reports show they cannot meet compliance with this condition if they have outdoor amplified music.

9. The Complainant submits complaints to the Hotel go unanswered and are not addressed by the owners or the licensee. [REDACTED] submits the last time [REDACTED] had a response from [REDACTED] (former licensee) was 2019, and the last time [REDACTED] complained to owner [REDACTED], he assaulted [REDACTED]
10. The Complainant has corresponded with NSW Police (Police). The Complainant submits Police attended on 31 October 2021 regarding noise disturbance and an alleged assault. The Complainant submits Police took details from [REDACTED] and knocked on [REDACTED] neighbour's doors regarding the noise disturbance. Police then contacted the Complainant a week later to say they would not be investigating the matter and would not be taking any statements from the Complainant's neighbours.
11. The Complainant submits [REDACTED] filed a noise abatement application with the Local Court in 2020 after numerous failed attempts to have L&GNSW conduct acoustic testing or take regulatory action against the Hotel. The Complainant submits [REDACTED] has spent nearly \$50,000 in legal fees and on acoustic testing. The Complainant submits [REDACTED] has experienced undue stress and anxiety over the last four years while trying to resolve ongoing issues with the Hotel, and [REDACTED] has previously asked neighbouring residents to support a section 79 complaint, however alleges that no resident would agree for fear of retribution from the Hotel.
12. The Complainant submits additional seating in the beer garden has increased the frequency of live music, jam sessions, happy hours and functions. The Complainant submits the Hotel's weekly trivia night has only been problematic when it was hosted with the external doors open and had the volume up to allow patrons to sit in the beer garden.
13. The Complainant's desired outcomes include:
 - L&GNSW to conduct/order acoustic testing.
 - The Hotel to implement all recommendations made in the Noise Impact Report.
 - A plan of management be implemented.
 - A restriction be placed on the number of patrons allowed in the beer garden.
 - Seating in the beer garden is to be provided in accordance with approved plans.
 - There is a restriction on amplified music in the beer garden.
 - The [REDACTED] of the beer garden is reinstated to its original position prior to the extension in 2015.
 - External security cameras be installed on Queen Street.
 - All signage incorrectly identifying [REDACTED] as licensee be removed.
 - Similar conditions be imposed on the Hotel to those imposed on the General Washington Hotel in Stockton.

The Hotel, licence details, compliance history

14. The Hotel is located at 36 Mitchell Street, Stockton and the Hotel's liquor licence commenced on 5 July 1956. Since 7 March 2022, the licensee is a corporate entity, MKTK PTY LIMITED, and the approved

manager is [REDACTED] (the Approved Manager). Prior to this, the licensee was [REDACTED] [REDACTED] from 17 May 2013 until 6 March 2022. The Hotel holds a hotel liquor licence and has authorised trading hours for consumption on premises as follows:

- Monday to Saturday – 5:00am until 12:00am midnight.
- Sunday – 10:00am until 10:00pm.
- Good Friday – 12:00pm until 10:00pm.
- Christmas Day – 12:00pm until 10:00pm.
- December 31st - Normal opening time until normal closing time or 2:00am on New Year's Day, whichever is later.

15. The Hotel has four licence conditions, including one condition relating to noise. This condition is a requirement to adhere to the LA10 noise criteria. L&GNSW records indicate since 15 March 2018 the Hotel has received eight complaints concerning noise and non-compliance with noise-related conditions, excluding this formal disturbance complaint. All complaints were dealt with either by engagement with the Hotel licensee, referral to another agency, or no further action taken due to insufficient evidence.

Submissions

16. Between 17 December 2021 and 3 June 2022, various material was received from the parties to the complaint, including Police, the Approved Manager, the Complainant and Council. The material before the delegate is set out in **Annexure 1** and is summarised below.

Police

17. On 17 December 2021, Police provided a submission to the complaint. Police submit during the period from December 2020 to December 2021, Police have conducted 26 business inspections at the Hotel, during which no breach of liquor licence or any disturbance issues have been identified.

18. Police have provided nine COPS events highlighting their interaction with the Hotel over a 15-month period. These events are summarised below:

E73931518 - 29 February 2020 (Noise complaint)

The Complainant contacted Police regarding noise coming from a band at the Hotel. Police attended and spoke to the Complainant, but the noise had ceased prior to Police arrival. The Complainant requested an event number for record purposes.

E75589020 - 12 November 2020 (Noise complaint)

Police attended the Hotel in relation to a noise complaint, however there was no noise being omitted from the Hotel, except for trivia, which Police deemed not to be offensive.

E286955798 - 19 November 2020 (Noise complaint)

At 7:20pm the Complainant contacted Police to complain about the noise of a trivia announcer coming from the Hotel. Police spoke to staff at the Hotel who advised they would turn the PA system down. Police attended the Hotel about 7:45pm and the noise was minimal.

E79656916 - 20 December 2020 (Business inspection)

Police conducted a business inspection at the Hotel with no issues detected. Police made specific observations as to noise and nothing adverse was detected.

E78288306 - 26 February 2021 (Business inspection)

Police conducted a business inspection and spoke to a security guard who had been doing patrols on the footpath outside the Hotel to ensure noise levels weren't too loud. Police did not detect any issues at the Hotel.

E79340928 - 7 March 2021 (Noise complaint)

At 12:05pm the Complainant contacted Police and advised the Hotel had breached its noise limit. The Complainant advised [REDACTED] was currently in court with the Hotel over noise and other ongoing issues, and in the Hotel's affidavit, it was stated the Hotel does regular noise monitoring. The Complainant also stated a male was ejected from the premises about 7:00pm the previous evening for intoxication. The Complainant stated [REDACTED] was provided information about the ejection of the intoxicated male by a neighbour, however this neighbour did not wish to provide a statement or disclose their details. A form of demand was issued to the licensee for CCTV footage in relation to the intoxicated male. Letters were provided to Police by the licensee and two staff members stating the male was not intoxicated. A review of CCTV footage showed the male collapse to the ground and appear unresponsive. He was then assisted into a vehicle and left the Hotel. Police contacted the male person on 10 March 2021 who advised he suffers from sugar level issues and sometimes collapses as a result. Based on the CCTV footage and the diagnosed medical condition, no further action was taken against the male person or the Hotel.¹

E82419478 - 28 May 2021 (Alleged assault)

The Complainant contacted the Hotel by phone after witnessing a male person jump on top of [REDACTED] hedge. The Hotel did not answer the phone, so [REDACTED] attended the Hotel and a staff member accompanied her to look at the damage to [REDACTED] hedge. Upon returning to the Hotel, the owner of the Hotel arrived. The Complainant and owner had a conversation and the Complainant followed the owner to the Hotel. The owner attempted to close the front door, however the Complainant put [REDACTED] foot in the door to stop this occurring. The Complainant then alleges the owner placed his hand on [REDACTED] throat to stop [REDACTED] from entering. The owner then walked inside the Hotel and the Complainant followed. The owner advised the Complainant [REDACTED] was banned from the Hotel. The Complainant stayed at the Hotel for a further few minutes before leaving. The owner of the Hotel was charged, however these charges were later withdrawn by Police.

E80401812 - 28 May 2021 (Excluded person fail to leave premises when required)

A group of three persons walked past the Complainant's residence and one of the group dove into a bush in front of the Complainant's house. The Complainant attended the Hotel on two separate occasions in relation to damage to this bush. As a result of this incident, the Complainant has been charged with remain on enclosed lands not prescribed premises without lawful excuse, excluded person fail to leave premises when required, excluded person attempt to re-enter premises and enter enclosed land not prescribed premises without lawful excuse. Police have obtained CCTV footage of the incident, and the Complainant is due to appear in Newcastle Local Court. Seven statements have been obtained from

¹ L&GNSW subsequently investigated this incident and commenced disciplinary complaint action against the Hotel, pursuant to section 139 of the *Liquor Act 2007*, as a result.

[REDACTED]
[REDACTED].

23. The Approved Manager submits a [REDACTED]
[REDACTED]
[REDACTED]. The Approved Manager asserts the Complainant's real agenda is not whether the quiet and good order of the neighbourhood of the licensed premises is being unduly disturbed, but to force the Hotel to comply with [REDACTED] interpretation of the LA10 condition and the responsible service of alcohol.
24. The Approved Manager submits the Complainant has complained incessantly to L&GNSW [REDACTED] when [REDACTED] took residence at the property [REDACTED]. The Approved Manager notes the Hotel has been investigated many times due to the Complainant's allegations, by way of desk audit, site inspection and via covert surveillance. The Approved Manager submits there is a large trail of correspondence between L&GNSW and the Hotel, with all investigations conducted by numerous officers of L&GNSW resulting in "no further action". The Approved Manager submits from the first contact with L&GNSW regarding complaints, the Hotel has been extremely proactive in resolving any problems with its neighbour. The Approved Manager submits it is unfortunate there has been no acknowledgement from the Complainant of any improvement or reduction in noise. By contrast, the barrage of complaints has increased in intensity, and the Approved Manager alleges the Complainant is vexatious and vindictive.
25. The Approved Manager submits the Hotel engaged [REDACTED] from Mac Acoustics on 18 June 2018 to prepare an acoustic report at the recommendation of L&GNSW. Mac Acoustics undertook acoustic monitoring and minimal breaches of the LA10 noise criteria were found. Mac Acoustics were then engaged to recommend practical solutions to minimise noise disturbance. The Approved Manager notes a noise plan of management has been implemented. He notes there has been extensive sound remediation applied to the rear area of the Hotel by way of products such as wave bar, acoustic sheeting, acoustic wool & insulation, carpeting of timber floors, drop down vinyl blinds, rubber stoppers placed on pool cues and a new pool table with soft fall pockets. He also notes the Hotel has pre-set the jukebox at a maximum low volume, repositioned the single jukebox speaker and removed all jukebox speakers from the beer garden area.
26. The Approved Manager submits there has also been a significant change in the trading patterns of the Hotel. Any entertainment is conducted indoors in the main bar, in the extreme [REDACTED] corner so as to be as far away from the Complainant as possible, doors and windows are closed at all times and there are regular sound checks conducted by staff at the boundary of the Hotel.
27. The Approved Manager submits after these measures were implemented, [REDACTED] of Mac Acoustics revisited the site and tested the effectiveness of the completed works. He was satisfied a

significant reduction in noise transmission from the Hotel had been achieved. The Approved Manager submits there has been no acknowledgement from the Complainant of any improvement, and instead the frequency of complaints has increased. He submits the Complainant continued to complain about noise from outdoor speakers for some months after the speakers were disconnected and emitting no sound. The Approved Manager submits this is representative of the Complainant's fixation with compliance and not being genuinely concerned about being disturbed.

28. The Approved Manager submits a second acoustic report was completed on 13 May 2021 by [REDACTED] [REDACTED] of The Acoustic Group Pty Ltd in relation to a matter before the Local Court. [REDACTED] acoustic report indicates the provision of lightweight acrylic panels as an upper section of the [REDACTED] [REDACTED] results in poor performance as the material is inadequate for use as a sound barrier. [REDACTED] report also indicates from measurements undertaken, and the observation of additional controls being carried out in the internal areas of the Hotel, there would not appear to be an acoustic issue concerning noise from the Hotel itself. Finally, [REDACTED] report notes he was unable to identify the extent and magnitude of noise as a result of additional patrons in the beer garden due to the inadequate performance of the [REDACTED] [REDACTED].
29. The Approved Manager submits the Complainant has complained to numerous government bodies, including NSW Health, Newcastle City Council, the Land and Environment Court, Local Court, NSW Police and L&GNSW. The Approved Manager alleges these complaints have been aggressive and persistent, and have been designed to cause the Hotel inconvenience, cost and a loss of trade. The Approved Manager submits his wife was removed as licensee in March 2022 for health reasons, due to stress resulting from the Complainant's abusive and harassing conduct.
30. The Approved Manager denies assaulting the Complainant and notes the Complainant is facing four charges as a result of the incident which occurred on 28 May 2021. The Approved Manager submits at no time have his staff divulged the identity of any complainant to patrons of the Hotel or members of the public.
31. The Approved Manager submits with the exception of the event on 31 October 2021, there has been no amplified music or karaoke in the beer garden since 2018. The Approved Manager notes the beer garden is a licensed area of the Hotel used primarily for alfresco dining and is voluntarily closed at 9:30pm every night. Signage has been placed in the beer garden to remind customers to respect the Hotel's neighbours, staff regularly patrol the beer garden, and no patrons play music in the beer garden. The Approved Manager submits they have cancelled their annual Anzac Day two up event, rugby league post-game celebrations and refused requests from patrons for birthday parties and social gatherings. The Approved Manager notes any trivia conducted in the beer garden only occurred during COVID restrictions to ensure social distancing requirements were met.
32. In relation to the event on 31 October 2021, the Approved Manager submits it was the Hotel's first function in the beer garden since January 2018. The Approved Manager submits it was a female vocalist

with an acoustic guitar, who had one speaker which faced away from the Complainant's property. The Approved Manager submits the fact this function was the catalyst for the section 79 complaint shows the intolerance and hostility of the Complainant towards the Hotel. The Approved Manager alleges the Complainant lobbied and recruited the surrounding neighbours on this day to gain support and have them lodge complaints.

33. The Approved Manager submits in relation to extensions at the rear of the Hotel, all areas now comply. The Approved Manager submits the Complainant refused an offer by the Hotel to install acoustic insulation and double glaze windows at the Complainant's residence, claiming ■■■ did not want ■■■ house turned into a prison.
34. The Approved Manager submits there is a late trading kebab shop opposite the Hotel which attracts customers from all licensed premises in Stockton and people returning from entertainment venues in Newcastle City. The Approved Manager notes Mitchell Street is the main thoroughfare to the Stockton foreshore, the skate park, Stockton caravan park, cycleways, and the Stockton ferry wharf. The Approved Manager submits people regularly return from Newcastle on the last ferry at 12:05am and continue their journey on foot up Mitchell Street past the Hotel as there is no taxi or Uber service available and no bus service after hours. The Approved Manager contends not every incident of crime committed in proximity to the Hotel can be attributed to patrons or lack of supervision by Hotel staff.
35. The Approved Manager submits all staff are aware of the Complainant's intolerance to any noise and notes closing the beer garden at 9:30pm was a voluntary undertaking by the Hotel in an unsuccessful endeavour to placate the Complainant. The Approved Manager submits on the rare occasion a late diner is finishing their meal after 9:30pm, the Complainant immediately phones or texts to abusively assert the Hotel is not practising compliance. The Approved Manager alleges the Complainant is infatuated with compliance and deliberately seeks ways in which to be disturbed (such as leaving ■■■ doors and windows open until 11:00pm or 12:00am when the Hotel is closed or spending time in ■■■ front and rear yards once ■■■ hears patrons in the beer garden). The Approved Manager also alleges the Complainant has audio surveillance in place which targets the Hotel's beer garden.
36. The Approved Manager submits due to the number of complaints and Court action taken by the Complainant, the Hotel has become an expert in responding to complaints. He notes staff collect litter every morning and monitor noise on the boundary of the Hotel regularly. The Approved Manager submits the Hotel has found it unnecessary to have security guards in place to monitor disturbance as trade has been quiet. Instead, the Hotel has employed an additional staff member to fulfill this role and has found employing staff who know regular patrons tends to be more effective in moderating anti-social behaviour.
37. The Approved Manager disputes many of the allegations made by the Complainant and submits the Complainant is both vexatious and unreasonable. The Approved Manager submits he is a second-generation hotelier and has held numerous liquor licences since the age of 22. He notes he has never

been breached or received a fine or sanction regarding conduct of the venues he has been responsible for.

Complainant final submission and further complaint material

38. On 11 April 2022, the Complainant provided [REDACTED] final submission in this matter. Included with the submission were numerous acoustic reports, screenshots of text messages, copies of emails between the Complainant and the Approved Manager, photographs, meeting minutes and a letter from Newcastle City Council. Also included were copies of emails from L&GNSW, a noise abatement order, a list of Police event numbers relating to incidents at the Hotel, video footage from the Hotel, Land & Environment Court orders, audio recordings, screenshots of Facebook posts, affidavits, still shots of camera footage from the Hotel, and google earth images.
39. The Complainant submits [REDACTED] first became aware of noise and anti-social issues at the Hotel on 2 December 2014 when [REDACTED] received a text message from [REDACTED] tenant. The Complainant submits [REDACTED] tenant wanted to break their lease due to ongoing concerns with noise and anti-social behaviour at the Hotel. The Complainant submits [REDACTED] emailed the Approved Manager to complain about excessive noise and to request he disconnect or relocate the [REDACTED] speakers on 1 April 2015. The Complainant alleges the [REDACTED] speakers were not removed until 8 February 2018 after [REDACTED] had a meeting with the licensee to discuss issues. The Complainant submits [REDACTED] made [REDACTED] first complaint to L&GNSW when the licensee failed to honour agreements made in this meeting.
40. The Complainant submits [REDACTED] has made 21 complaints to L&GNSW since March 2018, and [REDACTED] has only ever complained when [REDACTED] has experienced disturbance from the Hotel. The Complainant submits all complaints relate to excessive noise and anti-social behaviour emanating from the Hotel.
41. The Complainant submits the Approved Manager has not provided any evidence to indicate the Hotel has an appropriate complaint handling process in place. [REDACTED] alleges the Approved Manager rarely responds to complaints made directly to the Hotel on their mobile number and notes the responses [REDACTED] has received all deny there is an issue, even when proof is provided.
42. The Complainant submits the Approved Manager has not provided any evidence to demonstrate he has implemented techniques to better manage anti-social behaviour from patrons leaving the Hotel. [REDACTED] alleges patrons often leave the Hotel with glasses, bottles and cans and patrons are not moved on by staff or security after closing time. Instead, the doors are closed and patrons are allowed to linger. The Complainant alleges when fights have broken out or patrons are rowdy, staff do not intervene or contact Police.
43. The Complainant submits doors at the Hotel are inconsistently closed during live music or when the Hotel is busy. The Complainant submits the closing of the beer garden at 9:30pm and the closing of the bistro

blinds over the pool room are both inconsistently applied and no consideration is given for the noise emission prior to this hour despite the LA10 being applicable from 7:00am until midnight.

44. The Complainant submits it is beyond comprehension L&GNSW have not approved acoustic testing or taken any regulatory action against the Hotel given the ongoing nature of the complaint, the number of complaints and the proximity of the Hotel to the Complainant's residence. The Complainant submits five acoustic reports have been completed which indicate the Hotel is in breach of the LA10 pre-midnight criteria, even in the absence of live or amplified music being played in the beer garden (with 5-10 people in the beer garden at the time of testing one occasion). The Complainant submits it is clear from acoustic testing the Hotel is unable to meet compliance with the LA10 noise condition without a physical barrier being constructed. The Complainant submits given limitations of development legislation of fence height [REDACTED], it appears an independent structure located inside the beer garden is the only viable solution.
45. The Complainant has consulted with authorising residents to the complaint, and they agree to have noise modelling completed using the established noise criteria as per [REDACTED] acoustic report. The Complainant submits acoustic noise testing should be conducted to establish noise criteria for the front of the Hotel, and should occur over a three-day period, including at least one day where the Hotel hosts live music. The Complainant submits the noise modelling from both the established noise criteria and the noise criteria for the front of the Hotel should be used to identify all sensitive receivers. The Complainant submits all receivers should then be notified of outcome, criteria, resolution and complaints procedure with evidence of this provided to L&GNSW.
46. The Complainant submits the Hotel only employed security guards to include in submissions for the noise abatement matter, rather than to implement real change. The Complainant submits the Hotel decided to rely on its own staff to manage patron behaviour and noise disturbances, despite three significant events being logged by Tier One Security during the time they were engaged at the Hotel.
47. The Complainant submits the Approved Manager's offer to apply noise mitigation to [REDACTED] home was in place of the recommended works being completed at the Hotel. The Complainant submits noise attenuation to [REDACTED] home should only be considered after recommendations for the Hotel have been completed and validated. The Complainant submits [REDACTED] desire not to have to close [REDACTED] home up is reasonable and [REDACTED] is under no obligation to complete any works to [REDACTED] home to mitigate noise emanating from the Hotel.
48. The Complainant disputes the Approved Manager's claim Stockton is a thriving metropolis. Instead, the Complainant submits Stockton is a quiet residential suburb unaffected by noise from industry, heavy car or pedestrian traffic or late-night trade from businesses other than the Hotel in the immediate area. The Complainant submits the only other late trading businesses within 500m are a takeaway pizza shop, a takeaway kebab shop and the General Washington Hotel, which has very strict licence conditions relating

to noise and patron behaviour, and no beer garden. The Complainant submits [REDACTED] is disturbed by the operations and patrons of the Hotel.

Approved Manager's final submission

49. On 19 May 2022, the Approved Manager provided a final submission in the matter. The Approved Manager reiterates the catalyst for the Complainant lodging the disturbance complaint was a function held on Sunday 31 October 2021. The Approved Manager firmly believes in no way was this function a disturbance to the neighbourhood, as it was a one-off outdoor event with a female soloist held between 12:00pm and 3:00pm. The Approved Manager submits this clearly shows the intolerance and hostility the Complainant has towards the Hotel and the Approved Manager.
50. The Approved Manager concludes he is satisfied with his initial response to the complaint and the Police submission, and has nothing further to add.

Council

51. On 3 June 2022, Council provided a submission to the complaint and apologised for their delayed response to a request for submission from L&GNSW on 16 February 2022. The submission noted Council had received prior disturbance complaints regarding the Hotel and had referred these complaints to L&GNSW. The submission did not contain anything else materially relevant to this decision.

Noise Abatement Order Appeal

52. On 1 July 2022 an appeal relating to the previously issued noise abatement orders was heard in the NSW Land and Environment Court. The Court heard the parties to the orders had reached an agreement as to the terms of a decision acceptable to both parties. The Court ordered the appeal to be upheld and the noise abatement order issued by the Local Court of NSW in respect to [REDACTED] was revoked. The noise abatement order issued by the Local Court of NSW in respect to [REDACTED] was varied to remain on foot whilst [REDACTED] retains legal ownership of the land and business of the Hotel.

Proposed Sale of the Hotel

53. On 27 July 2022, the Approved Manager provided an update on developments at the Hotel. The Approved Manager advised all 14 poker machine entitlements had been sold. The Approved Manager also advised the Hotel, complete with land, licence and buildings was currently on the market for sale by way of a tender process.

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

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

The order of occupancy between the licensed premises and the Complainant

55. The Hotel has operated under the current liquor licence since 5 July 1956. The Complainant purchased the property [REDACTED] in April 2014 and it was leased for a period until the Complainant moved into the property in 2018.

56. I consider the order of occupancy to be in favour of the Hotel and note this fact is not in dispute.

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

57. The Complainant alleges the Hotel has completed numerous unauthorised building works, including the pool room and outdoor dining area. The Complainant also alleges the beer garden has been extended to the south by six metres, and the Hotel has not sought approval from Council for this. The Complainant submits a large deck was constructed to host live bands in the beer garden, again without Council approval. The Approved Manager submits in relation to extensions at the rear of the Hotel, all areas now comply with Council requirements.

58. The Approved Manager notes extensive sound remediation measures have been applied to the [REDACTED] area of the Hotel by way of products such as wave bar, acoustic sheeting, acoustic wool & insulation, carpeting of timber floors, drop down vinyl blinds, rubber stoppers placed on pool cues, a new pool table with soft fall pockets. He also notes the jukebox volume and speakers have been reconfigured.

59. The Complainant submits [REDACTED] has made numerous changes to [REDACTED] residence including installing an acoustic window in bedroom 3 [REDACTED], installing acoustic roof insulation, installing acoustic insulation in the [REDACTED] and [REDACTED] walls, reducing the bathroom window size by half a [REDACTED] [REDACTED], changing the internal layout of the home, installing security cameras to monitor the front of the home and installing a new [REDACTED] fence [REDACTED] [REDACTED]

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

60. The Complainant submits additional seating in the beer garden has increased the frequency of live music, jam sessions, happy hours and functions.

61. The Approved Manager submits there has been a significant change in the trading patterns of the Hotel. Any entertainment is now conducted indoors in the main bar, in the extreme northwest corner so as to be as far away from the Complainant as possible. The Approved Manager submits doors and windows are closed at all times and there are regular sound checks conducted by staff at the boundary of the Hotel.

Findings and Decision

Undue disturbance

62. In deciding whether the Hotel has unduly disturbed the quiet and good order of the neighbourhood, I have balanced the submissions made by the Complainant, the Approved Manager and Police.
63. I have also broken the alleged noise disturbance into three categories. The first category, and primary instigator of the complaint, is amplified entertainment at the Hotel on 31 October 2021. Second is the anti-social behaviour of patrons in close proximity to the Hotel, particularly at closing time. Third is noise generated from the general operation of the Hotel, particularly noise from patrons in the beer garden.
64. Before addressing each category, I note the legislative pre-requisite for making a complaint to the Secretary under section 79(1) of the Act is that the quiet and good order of the *neighbourhood* of a licensed premises is being unduly disturbed by the operation of the premises or persons leaving the premises. This notion of the 'neighbourhood' being unduly disturbed is reinforced by section 79(3)(a) of the Act, under which the current complaint was lodged, which states the Complainant needs to be authorised by two or more persons residing in the neighbourhood of the licensed premises.

Amplified entertainment – 31 October 2021

65. On review of the material submitted by the Complainant and authorising residents, Approved Manager and Police, I do not consider there to be sufficient evidence to conclude the amplified entertainment by the Hotel on 31 October 2021 meets the threshold of undue disturbance.
66. I note undue disturbance is not defined in the Act, therefore I am to afford the term its ordinary meaning. I further note the following, which has been previously articulated in similar decisions. The standard LA10 noise condition, which was developed many years ago in consultation with the acoustic consultant industry, provides a useful technical benchmark which can assist in any determination as to whether undue disturbance has occurred. While exceedances of the LA10, when properly demonstrated by the assessment of an acoustic expert, can assist in a finding of undue disturbance, it is just one factor among several in determining whether there has been undue disturbance. Exceedances of the LA10 are not the sole defining factor in these matters, and I note the LA10 condition does not arise from legislative requirements.
67. I acknowledge, on balance, the technical acoustic evidence before me suggests amplified entertainment conducted in the Hotel's beer garden is a high risk of exceeding the LA10 noise criteria, particularly in relation to the Complainant's residence. As mentioned above, however, this does not automatically equate to a finding the Hotel has unduly disturbed the neighbourhood. I note while the Complainant and three other authorising residents refer to being disturbed by the 31 October 2021 event, the Police material provides conflicting evidence suggesting other surrounding residents were not disturbed.

68. The timing and frequency of the entertainment also inform whether a finding of undue disturbance is appropriate. In this instance, the entertainment occurred between 11:00am and 3:00pm on a Sunday. I do not consider this to be excessive, unwarranted or undue, particularly in light of the conflicting evidence before me regarding the severity of any disturbance. The previous amplified entertainment conducted in the beer garden of the Hotel occurred either in January 2018 (as suggested by the Approved Manager) or November 2018 (as suggested by the Complainant). In either case, I do not consider the frequency of amplified entertainment in the beer garden of the Hotel to warrant a finding of undue disturbance.

Anti-social behaviour of patrons in close proximity to the Hotel

69. The complaint material references the anti-social behaviour of patrons in close proximity to the Hotel, primarily upon leaving the Hotel. Reference is made by the Complainant and several authorising residents to behaviour including fighting outside the pub, littering, property damage, public urination, vandalism and general drunkenness in close proximity to the Hotel.

70. The Approved Manager submits staff regularly patrol the Hotel and discarded bottles are often brands not sold by the Hotel. He notes there are several other commercial businesses in the area, including a local kebab shop that attracts customers from all licensed premises in Stockton and those returning from Newcastle City. He states people often return from Newcastle on the last ferry (12:05am) and journey on foot up Mitchell Street past the Hotel, given there is no taxi, Uber or after-hours bus service.

71. Police submit from December 2020 to December 2021 they have conducted 26 business inspections at the Hotel with no licence breaches or disturbance issues detected. Police provide summaries of nine COPS events, none of which link anti-social behaviour or alcohol-related violence to patrons of the Hotel.

72. Without corroborating evidence from Police, and given the other commercial premises in the area and location and timing of the ferry service, it is difficult to ascertain the extent to which the alleged disturbance arising from anti-social behaviour is attributable to patrons of the Hotel. In light of this, I am not satisfied there is sufficient evidence to conclude the quiet and good order of the neighbourhood is being unduly disturbed because of anti-social behaviour of patrons in close proximity to the Hotel.

Noise from the general operation of the Hotel

73. The statements of authorising residents to the complaint include scant and non-specific reference to disturbance generated from the general operation of the Hotel. The vast majority of their evidence relates to the two issues addressed above, the amplified entertainment of 31 October 2021, and anti-social behaviour of patrons in close proximity to the Hotel. The bulk of the material before me in relation to disturbance caused by the general operation of the Hotel, particularly the operation of the beer garden, comes from the Complainant. [REDACTED]


74. On review of the complaint material and L&GNSW records, it is evident the Complainant has had long running disturbance issues with the Hotel. I acknowledge both parties have gone to considerable expense obtaining acoustic reports, implementing acoustic measures and, recently, dealing with the issue in the Local Court. While the reports conflict in their methodology and findings, it appears the acoustic experts agree the [REDACTED] fence, which appears to have been installed without acoustic advice, is inadequate. On balance, it appears noise from the beer garden is capable of exceeding the LA10 noise criteria and has, at times, done so. As mentioned earlier, however, this does not automatically equate to a finding the neighbourhood is being unduly disturbed.
75. Having carefully considered the material before me, I am not satisfied there is sufficient evidence to conclude the neighbourhood is being unduly disturbed by the Hotel's general operation. In reaching this conclusion I have reviewed the material provided by the Complainant, which includes audio recordings of patron noise, and the submissions provided by the Approved Manager, which note the beer garden closes at 9:30pm. I have also placed weight on the submission provided by Police, which notes no disturbance issues have been detected at the Hotel, and L&GNSW compliance records, which have not resulted in enforcement action regarding disturbance issues.
76. I acknowledge the Local Court decision to issue a noise abatement order and its finding that noise generated by patrons in the Hotel's beer garden is 'offensive' for the purpose of section 268 of the *Protection of the Environment Operations Act 1997*. I do not provide any comment on the decision itself, however note this process was governed by different legislative considerations to the current process under the Act. I also note the applicant in the matter was the Complainant, and the witnesses supporting the application were a former tenant who lived at the Complainant's property under a short term lease, and the Complainant's mother and sister, who gave evidence of their experiences visiting the Complainant.
77. In my view, the material in this matter and L&GNSW records strongly indicate the issue of disturbance generated by the general operation of the Hotel, particularly noise generated by patrons in the beer garden, is limited to the Complainant.
78. Considering the above and having reviewed the audio recordings and other material provided by the Complainant, I do not consider the evidence before me is strong enough to conclude the neighbourhood has been unduly disturbed by the Hotel's general operation.

Regulatory Outcome

79. In deciding the appropriate regulatory outcome in this instance, I have considered the statutory considerations, the material set out in Annexure 1, and the above finding in relation to undue disturbance. I have also had regard to the proximity of the Complainant's residence to the Hotel.

80. I acknowledge the statutory considerations which I must have regard to. The order of occupancy is in favour of the Hotel, which has held its current liquor licence at the location for approximately 66 years. The Complainant and Approved Manager have provided conflicting statements as to whether there has been unauthorised building works completed at the Hotel. I consider this to be a matter for Council to resolve and action, if appropriate. I accept the activities conducted at the Hotel have changed in response to the Complainant's historical engagement with the Hotel. That is, there has been a reduction in the frequency of live music, amplified music, and events held in the beer garden since the Complainant moved into [REDACTED] residence in 2018.
81. Both the Complainant and the Approved Manager have raised issues in their submissions relating to unauthorised building works, extension of the beer garden, threats and harassment by both parties, property damage, an alleged assault, and other issues escalated to the Land and Environment Court orders. The Liquor Act is not an appropriate remedy to these issues when considered in their entirety.
82. It is reasonable to expect some level of disturbance will be generated from the normal operation of the Hotel. Having considered all available material before me, the statutory considerations, and the above finding the quiet and good order of the neighbourhood has not been unduly disturbed by the Hotel, I have determined to take no further action in this matter. Nevertheless, I consider there is potential for undue disturbance to arise, particularly in relation to amplified entertainment in the beer garden, given the proximity of the Hotel to nearby residences. As such I strongly encourage the Hotel to employ and adhere to the management and control of noise emission procedures set out in the Hotel's Noise Management Plan, prepared by Mueller Acoustic Consulting.
83. L&GNSW remains committed to ensuring compliance with liquor licence conditions to ensure the operation of licensed premises contributes to and does not detract from the amenity of community life. While on the material before me there is insufficient evidence to suggest the Hotel has unduly disturbed the neighbourhood, I note the acoustic reports, on balance, indicate the hotel is at risk of exceeding the LA10 condition. I take the opportunity to remind the Approved Manager it is incumbent on the Hotel to ensure it does not breach this condition. In my view, to ensure the operation of the Hotel is not overly affected, the [REDACTED] needs to be reviewed, and acoustic advice sought.
84. While I have determined to take no further action in this matter, I strongly remind the Hotel of its obligation to comply with licence conditions and of its ongoing obligation to minimise levels of disturbance to the community. I encourage the Approved Manager of the Hotel to engage in respectful dialogue with nearby residents to address all disturbance concerns. The Hotel should be aware if fresh and direct evidence is presented demonstrating undue disturbance, it is open for Police, Council or local residents to commence another complaint under section 79 of the Act, which may lead to formal regulatory action.

Decision Date: 4 November 2022



Dimitri Argeres

Director, Compliance & Enforcement
Liquor & Gaming NSW

Delegate of the Secretary of the Department of Enterprise, Investment and Trade

Application for review:

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 28 days of the date of this decision, that is, by no later than 2 December 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

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

1. Copy of the liquor licence dated 8 December 2021.
2. Section 79 Disturbance Complaint lodged by the Complainant on 2 December 2021.
3. Submission from NSW Police received on 17 December 2021.
4. Approved Manager submission in response to complaint received on 13 March 2022.
5. Final submission from complainant received on 11 April 2022.
6. Final submission from Approved Manager submission received on 19 May 2022.