

**FILE NO:** A23/0026732

**COMPLAINANT:** [REDACTED]

**LICENSED PREMISES:** Budgewoi Hotel, Budgewoi – LIQH400117701

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

**LEGISLATION:** *Liquor Act 2007*

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## SECTION 81 DECISION

Under Section 81 of the *Liquor Act 2007* (the Act) I, Jane Lin, Executive Director Regulatory Operations & Enforcement, a delegate of the Secretary, Department of Enterprise, Investment and Trade, in relation to the complaint made in respect to Budgewoi Hotel, Budgewoi – LIQH400117701 (the Hotel) have decided to **issue a warning** to the Licensee in the following terms:

*Under section 81(d) of the Liquor Act 2007, I, Jane Lin, Executive Director Regulatory Operations & Enforcement, a delegate of the Secretary, Department of Enterprise, Investment and Trade, warn Mr Andrew Carson, the Licensee of the Hotel, that he must ensure no future undue disturbance is caused by the Hotel's operation, including but not limited to the provision of live entertainment and patron noise.*

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## REASONS FOR DECISION

### Legislative framework

1. Section 79 of the Act provides that a prescribed person may complain to the Secretary, that the quiet and good order of the neighbourhood of the licensed premises is being unduly disturbed because of the manner in which the business of the licensed premises is conducted, or the behaviour of persons after they leave the licensed premises

(including, but not limited to, the incidence of anti-social behaviour or alcohol-related violence).

2. For the purpose of section 79 of the Act, a person who has standing to make a complaint includes a person who is a resident in the neighbourhood of the licensed premises and is authorised in writing by two or more other residents.
3. Section 80 of the Act enables the Secretary to deal with a complaint by way of written submissions from the licensee and any other person the Secretary considers appropriate. After dealing with the complaint, section 81 of the Act provides that the Secretary may decide to impose, vary or revoke licence conditions, issue a warning, or take no action.
4. In exercising functions under the Act, the Secretary must have regard to the Objects set out in section 3 of the Act and must have regard to the matters set out in section 3(2) which are:
  - a) the need to minimise harm associated with the misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),
  - b) the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service 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 8 August 2023, [REDACTED] (the Complainant) of [REDACTED] lodged a complaint with Liquor & Gaming NSW (L&GNSW) alleging undue disturbance from the operation of the Hotel. The Complainant lodged the complaint as a resident authorised by two other residents.
6. The Complainant alleges that following a change in ownership in January 2022 and a subsequent renovation of the Hotel, excessive noise can regularly be heard emanating from the smoking area which faces residences in Ocean Street. It is also stated that this area was expanded, going from a very small space with two stools to an area with tables and seating for 12 to 14 people, as well as a large television set up. What was a small

break out area for smokers has 'turned into a sports bar' with patrons staying in this area until close who also become rowdy and yell.

7. The complaint also alleges that there has been an increase in noise and anti-social behaviour particularly around closing time. Due to a lack of security presence, patrons regularly linger in the immediate area after leaving the Hotel. Further, it is alleged that live performances at the Hotel regularly play until midnight as opposed to the 11:30pm cut-off required by the Hotel's licence, and that the volume of these performances is excessive.
8. The Complainant submits that they have contacted the Hotel on numerous occasions beginning in June 2022, initially regarding construction noise and subsequently regarding noise from the newly renovated outdoor smoking area and live music on weekends. The Complainant, however, did not keep a running record of any complaints until 29 September 2022 when they contacted the Central Coast Council (Council) to query the recent renovations of the Hotel.
9. The Complainant documented numerous instances of excessive noise/anti-social behaviour between the period from 1 December 2022 to 16 July 2023. These complaints are noted as resulting from incidents occurring between the hours of 7:29pm and 12:40am and primarily regard excessive noise from the outdoor smoking area.
10. The Complainant states that as time went on and their phone calls to the Hotel resulted in no action on the part of the licensee or managers, that they ceased to contact the Hotel regarding excessive noise.
11. The Complainant provides details of a fight which they state occurred at 11:30pm on 23 December 2022 in the Hotel's carpark. The Complainant claims they called Police after witnessing approximately 30 people in a circle around the fight, and hearing yelling, swearing, and screaming. The Complainant states that when the fight died down the participants dispersed into Ocean Street where noise continued until approximately 1:30am. The Complainant called the Hotel and spoke to the manager who allegedly stated that they were unable to do anything about noise and behaviour once patrons had left the property.
12. The Complainant detailed a further incident on Sunday 26 March 2023. The Complainant called the Hotel at 9:24pm to complain about a group of men in the outdoor area who they allege were yelling and swearing loudly. The staff member informed the Complainant that the men were leaving. The Complainant then called back at 9:36pm as the men had not left nor ceased yelling. The Complainant alleges they were told by the staff member that he had talked to his boss, and they could make noise until the Hotel's 10pm closing time.

At closing time, the Complainant alleges that the men exited the Hotel via the carpark and proceeded to yell and swear whilst walking down Ocean Street before urinating on the Complainant's neighbour's caravan.

13. The Complainant submits that prior to the Hotel changing owners and being renovated, they had not been disturbed by any excessive noise. The Complainant notes that they have lived at their current address for 21 years and have not had cause to complain prior to 2022.
14. The Complainant submits their desired outcome from this complaint is the enforcement of the current licence conditions placed on the Hotel regarding noise levels, reducing the noise of patrons leaving the Hotel at closing time, the Hotel to move people on and away from the Hotel without disturbance, live music to conclude 30 minutes prior to closing time, and any music played on the front deck of the Hotel to comply with the current LA10 noise restriction on the licence. Additionally, they request independent acoustic monitoring, and the outdoor smoking area returned to its prior limited use and space.

*The Hotel licence details, compliance history*

15. The Hotel is located at the corner of Ocean Street & Norah Road, Budgewoi. The licensee is Andrew Carson, commencing from 19 February 2024. Mr Carson is also the General Manager of the Hotel. The former licensees are [REDACTED] (from 25 August 2023 to 18 February 2024) and [REDACTED] (from 12 January 2022 to 24 August 2023).
16. The Hotel holds a full hotel licence with trading hours for consumption on premises from 5:00am until midnight, Monday to Saturday, and 10:00am until 10:00pm on Sundays. Trading hours for take away sales are from 5:00am until midnight, Monday to Saturday, and 10:00am until 10:00pm on Sundays.
17. The Hotel is currently subject to 13 licence conditions. The following conditions relate to security or noise mitigation and were imposed by the Independent Liquor & Gaming Authority (the Authority):
  - Condition 200 relating to an LA10 noise limit.
  - Condition 230 requiring one security personnel to patrol the area in the vicinity of the premises from 9pm until the last person has left the vicinity of the Hotel on Thursday, Friday and Saturday nights.
  - Condition 260 that requires an announcement to be made prior to closing to the effect that patrons should leave the premises and vicinity quickly and quietly to avoid disturbance.

- Condition 410 that requires the door facing Ocean Street to be closed from 7pm when the jukebox is in use.
- Condition 3010 requiring that all live entertainment and or amplified music is to conclude 30 minutes prior to closure.

18. According to L&GNSW records, 21 noise complaints were lodged during 2023 regarding the Hotel. Of the 21 complaints, 19 were made by residents who are a party to this disturbance complaint with one complaint being anonymous. L&GNSW managed these complaints by engaging with the Hotel on multiple occasions, holding a stakeholder meeting and conducting an inspection of the Hotel.

### **Submissions**

19. Between 8 September 2023 and 6 May 2024, various material was received from the parties to the complaint, including the Complainant, the licensee, Police and the Council. The material before the delegate is set out in **Annexure 1** and is summarised below.

#### *Police submission*

20. A submission was received from Tuggerah Lakes Police District on 8 September 2023. The contents of this submission include the following:

- A copy of the Hotel's liquor licence.
- 11 Computerised Operational Policing System (COPS) event narratives relating to incidents at the Hotel between 6 May 2022 and 2 September 2023.
- A graph overview of Computer Aided Dispatch (CAD) incidents relating to the Hotel sorted by incident type.
- A list of twenty CAD events relating to incidents reported to Police concerning noise, violence or anti-social behaviour at the Hotel between 1 April 2022 and 4 August 2023.

21. The following COPS events are relevant to this complaint and relate to noise at the Hotel.

- Tuesday 25 April 2023 - Business Inspection

Police attended the Hotel at 10:30pm after being made aware that neighbours of the Hotel had lodged a formal disturbance complaint with L&GNSW. The theme of these complaints related to intoxicated patrons entering and exiting the Hotel and patrons loitering around the front of houses and cars of neighbouring premises at close of business, yelling and swearing.

Police conducted a covert inspection, parking in a carpark directly across from the main entry to the Hotel. The music was audible from there. Police entered the Hotel through the front main entry door. Directly to the left was the stage which had a live band playing. The music was excessively loud. Police remained in the Hotel for a period of time. Police returned to their unmarked vehicle and commenced a video recording. Police believe the noise being projected out towards the front of the Hotel would certainly have interfered with the quiet and good order of the neighbourhood. Police are aware the Hotel has a condition on the liquor licence regarding noise. However, Police do not have the capabilities to measure the decibel noise levels emitting from the Hotel.

- Saturday 29 April 2023 - Business Inspection

Police attended the Hotel around 10:30pm and conducted a covert inspection, parking in a carpark directly across from the front main entry to the Hotel. The music was audible from there. Police entered the Hotel through the front main entry door and considered the music from a live band to be excessively loud. Police returned to their unmarked vehicle and considered the noise being projected out towards the front of the Hotel to interfere with the quiet and good order of the neighbourhood.

- Tuesday 8 August 2023 - Business Inspection

At 10:00am Police met with Mr Andrew Carson in relation several incidents that recently occurred at the Hotel. Police were informed that the then licensee [REDACTED] no longer worked for the Hotel. Further, Mr Carson would be taking over as licensee and was in the process of making an application to L&GNSW. In the previous two weeks several changes had also occurred at the Hotel, including to management and operating procedures.

Regarding the ongoing disturbance complaint, Mr Carson stated that he was not aware that the complaint was with L&GNSW, as he had received no handover from the licensee, however stated that he had met with a resident and put a couple of measures in place to mitigate any undue noise.

Mr Carson stated that the outdoor smoking area would be closed from 9:00pm weekdays and 10:00pm weekends. In addition, they would have a staff manager walk around the Hotel monitoring noise and the impact upon residents. Police formed the view that unlike the previous licensee Mr Carson appeared to be willing to work with Police and residents.

- Saturday 2 September 2023 Business Inspection

About 10:30pm Police conducted a covert inspection of the Hotel. Police parked in a carpark directly across from the main entry to the Hotel. The music was audible from there and a live band was playing.

Police advise the noise being projected out towards the front of the Hotel would certainly interfere with the quiet and good order of the neighbourhood.

22. Records from the CAD system which relate to the Hotel were also provided for the period from 1 April 2022 to 4 August 2023. Those relating to noise/patron behaviour include:

- 5 June 2023, 21:49  
A party bus has arrived at the Hotel with a large amount of people getting off the bus, making a racket, vomiting etc. The patrons have entered the Hotel and the informant believes they will perform in the same manner when exiting the Hotel.
- 31 March 2023, 00:24  
Informant wishes Police to attend in regard to a disturbance out the front of the Hotel – people yelling and shouting, congregating in the streets.
- 4 March 2023, 00:54  
Informant states that Hotel is closed but intoxicated persons are hanging around the carpark arguing and ‘yahooing’.
- 23 December 2022, 23:55  
Informant reported a brawl involving 20 people that just occurred in carpark, all parties are dispersing.

#### *Council submission*

23. On 13 September 2023, Council provided a submission outlining the following.

24. Three noise complaints had been lodged against the Hotel in the past three years. One on 14 January 2020 related to the use of speakers in an outdoor area. This resulted in a verbal warning, however Council notes that due to the warning being issued in terms of non-compliance with Place of Public Entertainment consent conditions, that the warning may have been invalid and issued in error.

25. A second complaint was made on 17 January 2023 regarding music being played in an outdoor area. The complainant was referred to L&GNSW regarding the disturbance complaint process.
26. A third complaint was made on 27 March 2023 regarding increased noise from the outdoor smoking area adjacent to the Hotel carpark. The complainant was also referred to L&GNSW.
27. Council provided a list of the development consents relating to the operation of the Hotel. This included DA/1768/2007 – Place of Public Entertainment (POPE). Council submit condition seven of this DA outlines the number of persons permitted in the Hotel and divides them in the categories of bistro/bar (350 persons) and restaurant/bar (160 persons).
28. Council notes that on 26 October 2009, the NSW Government removed the requirement for POPE licenses/consents therefore it is likely that this consent condition is no longer valid.
29. Council mentions the other development consent DA/1727/2006A – Alterations and Additions to Budgewoi Hotel, noting that consent condition 99 limits the hours of operation ‘For the purposes of preserving the amenity of neighbouring occupants and residents’ to between 10:00am and midnight Monday to Thursday, 8:00am and midnight Friday and Saturday, and 8:00am and 10:00pm Sundays.
30. Council also submits that on 29 September 2022, it received representations regarding construction works occurring at the Hotel. Its investigations identified that the Hotel was undergoing renovation works. While the majority of these were considered “exempt development” under the NSW State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, there were elements that were considered to have required development consent, including the reconstruction of the commercial kitchen, alterations to the smoking area adjacent to the carpark, and the enclosure of an outdoor service area adjacent to Ocean Street.
31. On 14 November 2022 a notice of intent to serve an order was issued by Council on the property owner to cease works. The owner complied and the matter did not proceed.
32. Council further advised that on 17 April 2023, an application for a Building Information Certificate (BIC) was lodged with Council to attempt to regularise the unauthorised works. This application was under assessment at the time of Council’s submission.



33. Council provided an updated submission on 30 April 2024 in relation to the status of the BIC and advised it was still under assessment. Further, that the BIC is being assessed in regard to the whole building and not only the unauthorised works, as works completed in relation to a previous development consent are not compliant with development approval conditions. On 6 May 2024, Council advised a timeframe for the outcome of the BIC could not be provided.

*L&GNSW stakeholder meeting and inspection*

34. On 15 September 2023, a stakeholder meeting was held between the Hotel, the complainants and three L&GNSW inspectors in response to the previous complaints received. Representing the Hotel at this meeting were the Hotel's then licensee, [REDACTED], [REDACTED], Mr Carson, and the Hotel's business owner, [REDACTED].

35. During the meeting the complainants raised their concerns regarding disturbance from the Hotel, in particular the extension of the outdoor smoking terrace. Hotel management responded and advised the smoking area would close earlier (9:00pm on weekdays and 10:00pm on weekends), guards would be reminded of their duties, the western entrance would shut before close and that the Hotel would pursue renovations in an effort to minimise noise.

36. On Friday 29 September 2023 at 9:35pm, a covert inspection was carried out by L&GNSW inspectors. Prior to entering the Hotel, the inspectors stood outside and made observations regarding noise emanating from the Hotel. They observed that the outdoor smoking area was empty, and that music of a non-offensive volume was emanating from the Hotel.

37. While in this position the inspectors observed security guards stationed at the doors leading to the carpark on Ocean Street and witnessed a group of approximately 10 patrons leave the Hotel and wait for a courtesy bus. During this time a patron attempted to leave the Hotel with a beverage in a can but was prevented by security from exiting before finishing the drink and giving the can to the guards.

38. Upon entering the Hotel at 9:45pm, inspectors observed around 50 patrons dispersed through the Hotel and a band playing in the main bar area. They deemed this area to be extremely loud when the band was playing but noted that this volume was not audible outside the Hotel. The inspectors also noted that access to the outdoor area had been blocked with a large sign.

39. The inspectors identified themselves to staff and met with [REDACTED]. [REDACTED] reported that she had not had further contact with the complainants that the Hotel had met

with but had received a call from a different complainant that night regarding the band's volume which had resulted in the Hotel decreasing the volume.

40. [REDACTED] reported that the Hotel had instigated an earlier cutoff time for the outdoor smoking area and had been policing guests lingering in the carpark on Ocean Street.

*Hotel's response to complaint*

41. In response to the complaint, Mr Carson provided a submission on 4 October 2023. The submission notes the Hotel aims to work with the local community to be a business that 'does the right thing'.

42. In response to the complaint, the Hotel is committed to the following:

- The TAB smoking area will be closed at 9:00pm from Sunday to Thursday and at 10:00pm on Fridays & Saturdays.
- All acoustic artists must connect to the Hotel's speaker system which is to face down to the deck and the volume of which can be controlled by Hotel staff via mobile devices.
- Managers and security are doing walk-arounds of local streets to make sure that noise levels are appropriate whenever live music or DJs are active.
- The licensee and general manager have provided their mobile numbers to some of the local residents to establish a direct line of contact.
- The outdoor terrace would have an acoustic wall constructed to mitigate noise. A builder had been engaged to have this done.
- For the exhaust fan, the Hotel would also be installing an acoustic screen to mitigate noise.

43. On 1 December 2023, Mr Carson responded to a request from L&GNSW regarding the construction status of the acoustic wall. Mr Carson confirmed that construction had been completed and provided L&GNSW with images of the final works. The images depict a wall that is of ceiling height around the outdoor smoking area, enclosing this space, with an open slatted roof allowing for ventilation.

*Additional information from the Complainant and authorising resident*

44. On 12 December 2023, in response to a request from L&GNSW following the Hotel's completion of works enclosing the outdoor smoking area, the Complainant confirmed that modifications had led to a reduction in noise from this source.
45. Despite this, the Complainant stated that live music performances held on the western deck area are at times disruptive and audible within their home.
46. The Complainant also voiced concern that live music performances would be increased, stating that on Thursday 7 December 2023, live music was performed, resulting in four nights of performances. The Complainant claims that at the meeting held on 15 September 2023, they were advised of the Hotel's intention to increase the live music offerings at the Hotel.
47. The Complainant claims this represents a significant change in entertainment offerings as previously live music had only been performed on Sunday afternoons and was completed by 6:30pm.
48. On 18 December 2023, in response to the outcome of a concurrent noise complaint regarding the Hotel of which the L&GNSW Compliance Operations team had carriage, the complainant, who is an authorising resident in this matter, reported that the issues with noise from the smoking area had been resolved following its enclosure. This was described as a significant improvement. Further, noise from exiting patrons was said to be minimal and noise from live music had "returned to what we would consider acceptable levels, more in line with what we have been used to living with in the past."

*Hotel's final submission*

49. On 22 December 2023, in response to a request by L&GNSW to clarify the Hotel's live entertainment offerings, Mr Carson stated that the following entertainment would be provided:
- Deck/Beer Garden (acoustic music):
    - Friday 6:00pm – 10:00pm
    - Saturday 2:30pm – 9:00pm
    - Sunday 2:30pm – 5:30pm
  - Interior stage (Bands & DJs)
    - Friday 9:00pm – 11:30pm
    - Saturday 9:00pm – 11:30pm

50. Mr Carson stated that sound levels are monitored closely with managers expected to walk around neighbouring streets to check volume. When bands are playing on the interior stage, all doors are closed. Further, with acoustic music on the deck area, performers are required to use the Hotel's speakers giving management control over volume levels.

51. Mr Carson stated that to the best of his knowledge, the abovementioned entertainment offerings did not differ from those previously in place and that there were no plans for these offerings to change.

*Further complaint made by the complainant*

52. On 7 April 2024, the Complainant advised they were disturbed the previous night due to aggressive behaviour from patrons of the Hotel in the carpark and Ocean Street following closure of the Hotel at midnight. [REDACTED] was contacted who advised the Complainant that she had resigned as the licensee. The Complainant submits no security guard was sighted, in breach of the Hotel's licence.

53. The Complainant also advised of a disturbance on 4 April 2023 which required Police attendance due to aggressive language and behaviour of patrons heard and observed from Ocean Street.

**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 8 October 1930. The Complainant has resided at their current address for approximately 21 years before making the disturbance complaint. These facts are not disputed, 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*

56. There is no indication that changes have been made to the Complainant's residence.

57. The material submitted by Council indicates there have been renovations made to the Hotel in 2022. This includes the demolition and re-construction of the ground floor commercial kitchen, the enclosure of an outdoor service area adjacent to Ocean Street and alterations to the outdoor smoking area adjacent to the rear carpark. The disturbance appears to coincide with works to the outdoor smoking area.

58. Since the lodgement of this complaint, the Hotel has also enclosed the outdoor smoking area by erecting an acoustic wall around its boundary.

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

59. The Hotel has made amendments to its outdoor smoking space and this has been a source of noise complaints. The complaint submits the use of this area had intensified following renovations to this area that increased its size, resulting in excessive noise from patrons.

## **Findings and Decision**

### *Undue disturbance*

60. In deciding whether the Hotel has unduly disturbed the quiet and good order of neighbourhood, I have balanced the submissions made by the Complainant, the Hotel, Police, and Council.

61. A level of disturbance from the normal operation of the Hotel is to be expected, including noise from live entertainment, patrons, and pedestrian traffic. I do not regard this type of disturbance as undue in a general sense. However, I am satisfied there is sufficient evidence before me to reasonably conclude the Hotel has, at times, unduly disturbed the quiet and good order of the neighbourhood.

62. In making this finding, I have considered the complaint material and the submissions from Police and Council. Inspections by Police identified excessive noise on several occasions and this was attributed to live bands playing inside the Hotel. Police were of the opinion the level of noise from live music on these occasions would interfere with the amenity of the neighbourhood.

63. In addition, Council advised the Hotel undertook renovation works that required development consent, including to the outdoor smoking area. As works to the outdoor smoking area had not been approved by Council but were required to be, an increase in noise from this area as a result of increased usage lends weight to the disturbance being considered undue. I note Council is in the process of determining the Hotel's application for a building information certificate in relation to works completed to the outdoor smoking area as well as other areas of the Hotel.

### *Regulatory Outcome*

64. 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 of undue disturbance.

65. I acknowledge the order of occupancy is strongly in favour of the Hotel. I also acknowledge the Hotel's renovation of the outdoor smoking area to increase its size is a change in its operations. I acknowledge the need for some licensed premises to pivot operationally, particularly after having suffered financially throughout the COVID-19 pandemic. However there remains a responsibility to ensure any changes in structure or operation do not lead to undue disturbance of the quiet and good order of the neighbourhood.
66. It is encouraging that the Hotel has taken this disturbance complaint seriously and taken action to address the issues raised. The construction of acoustic dampening walls enclosing the outdoor smoking area and meeting with affected residents to address concerns shows a commitment to minimising the impact of the Hotel on neighbours.
67. The Hotel has submitted it has also implemented several other measures to minimise noise disturbance. This includes ongoing sound monitoring and permitter checks, closing the smoking area at 10pm on a Friday and Saturday, closing doors when live bands perform internally and requiring acoustic performers located on the deck to use the Hotel's speakers so management can control noise levels.
68. The Complainant has submitted that when the Hotel was acting within these restrictions there was a return to previous noise levels, however they have noted the Hotel has not been consistent in applying these restrictions. Subsequent complaints to L&GNSW concerning noise from the Hotel in April 2024 would appear to be consistent with these comments.
69. The inspection by L&GNSW shortly before the Hotel advised of these measures did not identify any concern with noise despite an extremely loud band playing inside. It is also noted that the Complainant and an authorising resident to the complaint have noted improvements in noise levels. Overall, I am satisfied the steps taken by the Hotel has had a positive effect on minimising noise and disturbance.
70. Accordingly, I have determined to issue a warning to the licensee of the Hotel. This decision reflects my conclusion that while there have been instances in the past of undue disturbance, the Hotel has shown it is capable and willing to implement mitigating measures to sufficiently manage disturbances.
71. In issuing a warning to the licensee of the Hotel, I provide the Hotel the opportunity to continue implementing the voluntary measures reached in its meeting with residents and any recommendations or requirements put forward by Council in determining the outcome of the Hotel's application to regularise works completed at the Hotel.

72. Further, I strongly remind the Hotel of its obligation to comply with its licence conditions, in particular condition 230 relating to security patrols outside the Hotel on Thursday, Friday and Saturday nights from 9pm until the last patron has left the vicinity of the premises. This condition, as well as other conditions attached to the Hotel's licence, act as a safeguard to prevent noise and disturbance to the neighbourhood.

73. I also note given the proximity of the Complainant and authorising residents to the Hotel, the complainants and local residents should understand a certain level of noise and disturbance from time to time is to be expected given the usage of the Hotel by the local community.

74. I am satisfied this decision is a proportionate and appropriate regulatory response to the complaint and the strength of evidence on hand. I remind the Hotel of its obligations to ensure it does not unduly disturb the quiet and good order of the neighbourhood. The Hotel should be aware that if fresh and direct evidence is presented demonstrating undue disturbance, it is open for a new disturbance complaint to be accepted by L&GNSW and for regulatory action to be taken.

**Decision Date:** 21 May 2024

A handwritten signature in black ink, appearing to read 'Jane Lin', with a stylized, cursive script.

**Jane Lin**

**Executive Director, Regulatory Operations & 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 & Gaming Authority by an application which must be lodged within 28 days of the date of this decision, that is, by no later than 18 June 2024. 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](http://www.liquorandgamingnsw.nsw.gov.au)



## **Annexure 1**

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

1. Section 79 Disturbance Complaint lodged by the Complainant on 8 August 2023.
2. Submission from NSW Police received on 8 September 2023.
3. Submission from Central Coast Council received on 13 September 2023.
4. Record relating to inspection by L&GNSW Compliance Operations on 29 September 2023.
5. Submission from the Hotel's General Manager and Licensee received on 4 October 2023.
6. L&GNSW Compliance Operations File note outlining running log for 5 complaints regarding the Budgewoi Hotel dated 13 November 2023.
7. Final submission from Complainant received on 12 December 2023.
8. Final submission from the Hotel's General Manager on 22 December 2023.
9. Email from [REDACTED] in response to finalisation of noise complaint dated 19 December 2023.
10. Further information received from Complainant on 7 April 2024.
11. Email from Police on 23 April 2024 in relation to COPS event E791575563.
12. Emails from Central Coast Council on 30 April 2024 and 6 May 2024 regarding the status of the building information certificate application lodged by the Budgewoi Hotel.
13. Copy of the liquor licence for Budgewoi Hotel dated 6 May 2024.