

NSW Independent Liquor & Gaming Authority

Local Resident	OSCARS HOTELS PTY LTD Licensee Towradgi Beach Hotel	Wollongong Council
Liquor & Gaming NSW	Wollongong Licensing Unit NSW Police	

29 May 2024

Dear Sir/Madam

Reference No.	DOC24/121854
Applicant	Local resident
Application for	Review of a decision made under section 81 of the <i>Liquor Act 2007</i> by a delegate of the Secretary of the NSW Department of Enterprise, Investment and Trade
Licence Name	Towradgi Beach Hotel
Licensee	OSCARS HOTELS PTY LTD
Licence no.	LIQH400106866
Licence type	Liquor - hotel licence
Premises	Great Western Highway & Hewitt Street, Colyton NSW 2760
Date of reviewable decision	17 January 2023
Legislation	Section 36A of the <i>Gaming and Liquor Administration Act 2007</i>

Decision on application to review delegated decision of the Secretary Towradgi Beach Hotel, Colyton

Our decision

We have decided to **confirm** the delegate's decision.

Noise Disturbance Complaint

On 31 March 2021, Liquor & Gaming NSW (L&GNSW) received a noise disturbance complaint from a local resident in relation to Towradgi Beach Hotel (the hotel). The complainant alleged undue disturbance to the quiet and good order of the neighbourhood due to loud music being played from approximately 12 amplified speakers in the outdoor beer garden.

The complainant alleged that:

- the music continued into the early hours of the morning on most days of the week with Friday, Saturday and Sunday being the worst times.
- patrons leaving the hotel shout, argue, damage property and that there had been operational changes to the hotel.
- the beer garden was operating as an entertainment area and the construction of the facilities in the beer garden were completed without Council approval.

The complainant sought the removal of the speakers and TV screen from the beer garden area and a review of the hotel's trading hours.

A second complaint was lodged by another nearby resident on 26 April 2021 which raised similar allegations regarding disturbance from the hotel. On 28 April 2021, the complainants consented to the two disturbance complaints being merged as one, with the first complainant remaining as the principal complainant.

The delegate's decision

On 17 January 2023, a delegate of the Secretary of the NSW Department of Enterprise, Investment and Trade determined to take no further action in response to the noise disturbance complaint, as the risk of undue disturbance was mitigated through interim measures imposed on the hotel by the Land and Environment Court. The delegate did not consider it appropriate to take additional regulatory action while the hotel was in the process of obtaining relevant approvals to complete acoustic works with the purpose of achieving ongoing compliance with the LA10 noise condition.

The decision by the Land and Environment Court, dated 14 April 2022, relates to six appeals by the hotel relating to non-compliance with a noise condition imposed under an existing development consent and the construction and use of two timber decks and a pergola in the beer garden. In the decision, the Land and Environment Court accepts that the amenity of the residents in proximity of the hotel was adversely affected and determined that interim measures were required to improve their residential and acoustic amenity.

The Land and Environment Court decision imposed a number of conditions consented to by the hotel which included no live music or DJs (with limited exceptions), background music to cease at 11:30pm on Friday and Saturday; and 10:30pm all other days, all speakers in the beer garden to be connected to a noise limiter calibrated by an acoustic consultant and limiting the hours of operation for the beer garden to midnight and to 9:00pm for the children's playground.

The delegate noted the consent conditions restricting the use of the beer garden and children's playground area were intended to be temporary measures imposed until the hotel implements longer term acoustic measures to ensure the hotel operates the outdoor areas in accordance with L&GNSW noise criteria. The hotel was also required to lodge a development application with Council within eight months from the date of the orders that would propose building works as acoustic measures with the purpose of meeting the LA10 noise criteria in respect to noise from the beer garden. If development consent is granted for acoustic works and the works are implemented, the development consents for DA-2021/693 and DA-2021/695 will be subject of a modification to remove the temporary restrictions.

The delegate acknowledged that the hotel had lodged a development application with Council outlining proposed building works including the construction of a glasshouse structure enclosing the southern part of the beer garden and a 3.5 metre wall enclosure around the northern part of the beer garden. The delegate noted that the acoustic works are intended to provide a permanent solution to the concerns of residents and that the

assessment and approval of the development application relating to the construction of any acoustic works will be dealt with and determined by Council.

The delegate was also encouraged by the proactive steps taken by the hotel to reduce its noise impact. This included commissioning acoustic testing, the cessation of DJ entertainment in the outdoor area, removing a number of speakers in the beer garden, installing a new sound system with a built-in noise limiter and increasing security patrols in the car park area during peak periods while longer term acoustic solutions were being addressed. However, the delegate strongly reminded the hotel of its obligation to proactively manage and minimise any potential disturbance cause by the hotel, both from internal and external areas, and strongly encouraged the hotel to continually monitor and assess the use of the outdoor area to minimise levels of disturbance.

Application for review

On 22 February 2023, we received an application to review the decision made by the delegate to take no further action. The application for review was made by the principal complainant of the noise disturbance complaint on the grounds that:

- one of the authorising residents has occupied their residence since 1983 and some of the 60 petitioners would be even longer so the order of occupancy is arguable.
- residents surrounding the hotel understand that there will be some form of disturbance, however they don't consider it reasonable to occur 6 days per week between midnight and 3am in a residential area. They note that the venue is not located in an entertainment precinct but that it is instead located in the centre of a residential space.
- the acoustic report found that the hotel did not meet the LA10 noise condition requirements.
- the Police submissions, petition, statutory declaration, enquiries by Wollongong Council and resident's complaints going back 13 years did not appear to carry significant weight in the L&GNSW decision and that significant weight was instead placed on acoustic testing that was limited to two dates and a small sample size during a pandemic.
- there are concerns around the process followed for the hotel's Extended Trading Authorisation (ETA) application that was granted in 2008. The review applicant advised that no documentation has been found through searches or GIPA applications they have submitted.
- the review applicant also has concerns regarding the hotel's return to full capacity following Covid.
- the review applicants petition seeks alteration to the hotel's ability to play live and amplified music and serve alcohol until 3am.

Submissions and consultation

On 19 October 2023, we invited further submissions in response to the application for review. A submission from the delegate was received on 26 October 2023. No submissions were received from the licensee, NSW Police, Local Council or the review applicant.

Submission on behalf of L&GNSW

In summary:

- L&GNSW maintains that, based on the material available at the time, the decision of the delegate was the appropriate regulatory response.
- L&GNSW has conducted a review of its compliance holdings in relation to the hotel and advises that since the decision, no further noise complaints have been received.

Order of occupancy

- while the review applicant argues that the second complainant (who became an 'authorising resident' when the complaints were merged) has lived in the area since 1983, this would not have shifted the finding that the order of occupancy was in favour of the hotel, which has operated under the current liquor licence since 29 October 1982.
- the applicant also indicated that some of the 60 residents who signed a petition forming part of the complaint material would have been residents for even longer than the second complainant, however only the complainant's occupancy must be considered under section 81(3)(a) of the *Liquor Act 2007*.
- despite the above, it is stated in the decision that no significant weight was placed on the order of occupancy, that is, it was not a determinative factor in the decision.

Objections to statement made in the decision

- L&GNSW notes that the applicant has raised objections to statements made in the decision and has provided the following response:
 - **Paragraph 105: It is reasonable to expect some level of noise will be generated from the normal operation of the Hotel, including noise from live and amplified entertainment and patrons both inside and outside.** This quote must be read in its context; later in the same paragraph the decision states that there is sufficient evidence to reasonably conclude that the hotel has, at times, unduly disturbed the quiet and good order of the neighbourhood. The decision does not state, in this paragraph or anywhere, that noise from amplified music, drunk, disorderly and reckless patrons from the hotel between midnight and 3:00am is reasonable.
 - **Paragraph 106: I have placed significant weight on the findings of the Acoustic Report.** Similarly, this partial quote was intended to refer to the weight placed on two acoustic reports which supported the decision-maker's finding that the quiet and good order of the neighbourhood had been unduly disturbed by the hotel.
 - **The lack of weight apparently placed on submissions from NSW Police.** Paragraph 104 of the decision makes it clear that the decision-maker balanced the submissions made by the complainant, the hotel, Police and Council, as well as a relevant decision of the Land and Environment Court. While specific evidence provided by Police is not then detailed in relation to this finding, the decision does specifically note that significant weight was placed on the two acoustic reports and the Land and Environment Court decision. These findings were highlighted because they provided objective evidence to support a finding of undue disturbance.
- each of the above statements underpinned a finding that the hotel caused undue disturbance to the neighbourhood (i.e. a finding that L&GNSW assume the applicant does not seek to be overturned).

Concerns about the Hotel's Extended Trading Authority (ETA)

- a primary focus of the review application relates to the hotel's approval for an ETA and the ability to trade until 3am.
- the review applicant seeks to restrict the hotel's entertainment offerings and liquor service during the ETA period.
- while the trading hours or entertainment offerings of a venue can be restricted in dealing with a disturbance complaint, this was not considered the appropriate regulatory outcome in this case.

- the review applicant raises questions relating to the documentation associated with the ETA which the delegate considers outside the scope of this review. As such, they have not provided a response.

Action taken in response to disturbance

- the decision notes a significant factor in the delegate's decision to take no further action was that the risk of further undue disturbance to residents was mitigated through orders made by the Land and Environment Court.
- this included temporary requirements imposed on the hotel, such as live music restrictions, and in force until such time as building works were to be carried out with the purpose of ensuring the hotel's compliance with its LA10 noise condition.
- L&GNSW maintains that it was not appropriate to take any additional regulatory action while the hotel was in the process of obtaining relevant approvals to complete acoustic works and disturbance to resident.

Our findings

We confirm the delegate's decision in respect of the disturbance complaint and agree that taking no further action was the appropriate regulatory response.

We agree with the delegate that appropriate mitigation measures are in place as a result of the Land and Environment Court's decision and that no further action is warranted while the hotel is in the process of obtaining relevant approvals from Council to complete acoustic works with the purpose of achieve ongoing compliance with the LA10 noise condition.

We note that no additional noise disturbance complaints have been lodged since the original complaint and no further submissions were provided by the review applicant in response to the Authority's invitation to make submissions.

Relevant legislation

We are satisfied that the decision to confirm the delegate's decision has been made in accordance with the Authority's powers under section 36A of the *Gaming and Liquor Administration Act 2007* (GALA Act).

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

The material we considered

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

Material before the delegate:

- section 79 disturbance complaint lodged on 31 March 2021
- submission from NSW Police received on 11 May 2021
- submission from Wollongong Council received on 18 May 2021
- submission from Towradgi Beach Hotel received on 11 June 2021 and 25 November 2021
- further submission from Wollongong Council received on 10 December 2021
- final submissions from complainant received on 16 February 2022
- final submission from Towradgi Beach Hotel received on 16 March 2022 and 20 April 2022

- decision by Land and Environment Court dated 14 April 2022
- liquor licence for Towradgi Beach Hotel (LIQH400106866) dated 6 January 2023
- Delegate's decision dated 17 January 2023

Review application and submissions:

- review application dated 22 February 2023
- submission from the delegate dated 26 October 2023

This decision will be published on the ILGA website in accordance with section 36C of the *Gaming and Liquor Administration Act 2007*.

If you have any questions

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

Yours sincerely



Sarah Dinning

Deputy Chairperson

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