
FILE NO:	A22/0021852
COMPLAINANT:	██████████
LICENSED PREMISES:	Warringah Bowling Club Limited, MOSMAN - LIQC300230805
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, Jane Lin, Executive Director, Regulatory Operations and Enforcement, Liquor & Gaming NSW, a delegate of the Secretary of the Department of Enterprise, Investment and Trade in relation to the complaint made in respect to Warringah Bowling Club Limited, Mosman – LIQC300230805 have decided to **issue a warning** to the Club Secretary in the following terms:

Under section 81(d) of the *Liquor Act 2007*, I Jane Lin, Executive Director, Regulatory Operations & Enforcement, Liquor & Gaming NSW, a delegate of the Secretary, NSW Department of Enterprise, Investment and Trade, warn Ms Liarne Maree Peek, the Club Secretary of the Warringah Bowling Club Limited, that she must ensure no future undue disturbance is caused by the operation of the club, including but not limited to the use of the outdoor areas.

REASONS FOR DECISION

Legislative framework

1. Section 79 of the Act provides that a prescribed person may complain to the Secretary, that the quiet and good order of the neighbourhood of the licensed premises is being unduly disturbed because of the manner in which the business of the licensed premises is conducted, or the behaviour of persons after they leave the licensed premises (including, but not limited to, the incidence of anti-social behaviour or alcohol-related violence).

2. For the purpose of section 79 of the Act, a person who has standing to make a complaint includes a person who is a resident in the neighbourhood of the licensed premises and is authorised in writing by two or more other residents.
3. Section 80 of the Act enables the Secretary to deal with a complaint by way of written submissions from the licensee and any other person the Secretary considers appropriate. After dealing with the complaint, section 81 of the Act provides that the Secretary may decide to impose, vary or revoke licence conditions, issue a warning, or take no action.
4. In exercising functions under the Act, the Secretary must have regard to the Objects set out in section 3 of the Act and must have regard to the matters set out in section 3(2) which are:
 - a) the need to minimise harm associated with the misuse and abuse of liquor;
 - b) the need to encourage responsible attitudes and practices towards the promotion, sale, supply, services and consumption of liquor;
 - c) the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life; and
 - d) the need to support employment and other opportunities in the live music industry and arts, tourism, community and cultural sectors.

The Complaint and background information

The complaint

5. On 28 March 2022, [REDACTED] (the complainant) lodged a section 79 disturbance complaint with Liquor & Gaming NSW (L&GNSW) alleging undue disturbance to the quiet and good order of the neighbourhood caused by the Warringah Bowling Club Limited (the Club). The complainant lodged the complaint as a resident authorised by two other residents.
6. The complainant alleges disturbance occurs several times a week, on most weekends, and is caused by noise emanating from inside and outside the Club. The complainant submits that approximately two years ago the Club reinvented itself as a function centre and moved away from traditional bowling activities. It is alleged that an increase in large outdoor functions at the Club has resulted in disturbance and 'the scene resembles a noisy beer garden'.
7. The complainant submits that disturbance is also attributed to patron noise and anti-social behaviour including yelling, cheering, drinking contests and sometimes foul language. The complainant states that the Club is located in a high-density residential neighbourhood, surrounded by blocks of apartments, and there is an amphitheatre effect as the sound bounces off neighbouring properties.
8. The complainant submits that the most serious issue concerns the recently built outdoor pavilion and its use leads to extreme nuisance noise and anti-social behaviour. The

complainant describes the pavilion as a big awning structure with concertina doors to the main club house that is open on its sides and is used to host large outdoor functions. The complainant alleges that the pavilion may not have been constructed legally, referencing a Development Control Order issued by Mosman Council (Council) directing the Club demolish the free-standing retractable awning structure. A copy of the Development Control Order, dated 7 April 2021, was provided with the complaint.

9. The complainant attributes disturbance to noise from within the Club due to the concertina doors to the club house being open, which converts an indoor setting to an outdoor setting. As a result, it is alleged that noise from trivia nights and live bands is broadcast to surrounding neighbours, with some residents able to understand the trivia questions. The complainant submits that disturbance is also attributed to noisy and intoxicated patrons who loiter in the car park after the Club has closed, with patrons talking loudly, yelling and swearing. The complainant further states there have been instances of public urination, providing a photograph alleged to be taken on 26 March 2022 showing two patrons urinating in the Club's childcare centre car park.
10. The complainant contends that the Club has no intention of reducing its noise impact and states that a development application lodged with Council in September 2021 to expand its outdoor activities to include an outdoor smoking lounge supports this claim. The complainant notes that over 50 neighbours submitted objections to the development application. A copy of the Development Application Assessment Report was provided with the complaint which outlines that the application was refused on grounds that the proposal would have a detrimental impact on residential amenity.
11. The complainant submits that many complaints have been made to NSW Police, Council and the Club to no effect. After a meeting with management from the Club in November 2021, it is alleged that the Club promised to trial sound-reducing screens in the outdoor pavilion, however it is submitted that the screens have made almost no difference to noise levels. The complainant further states that in a letter written on behalf of the Club's board, a promise was made to install gates to prevent children from playing in the car park, however it is alleged that no action has been taken. The complainant advises that they have written to Mosman Councillors and the Mayor however no action has resulted and although State and Federal local members have responded to written correspondence, no assistance has been offered.
12. The complainant submits that they have exhausted all reasonable avenues and seek a number of conditions be imposed on the Club's liquor licence as the desired outcome, including:
 - Removal of the pavilion and if not possible, restrictions be placed to limit its use.
 - The Club to hold most functions indoors.
 - The Club to keep windows and doors shut during noisy indoor events such as trivia nights and live bands.

- Limiting the hours for outdoor events (e.g. finish by sunset), reduced trading hours for the Club, lower the cap on attendee numbers and restricting the types of events that can be held outdoors, such as no bucks parties or other events likely to be rowdy.
- The Club to enforce Responsible Service of Alcohol (RSA) practices.
- The Club to be put on probation pending monitoring by L&GNSW.
- Installation of CCTV, including sound recording, to monitor activities especially outdoors and in the car park.
- Minimum number of security staff to be mandated for functions based on the number of attendees.

13. Also included with the complaint is marketing material from the Club featured in North Shore Living May 2021, a copy of the Club's newsletter promoting live entertainment and the Great Southern Nights 2022 event and video footage of a function held at the Club on Saturday 19 February 2022.

The club, licence details, compliance history

14. The Club is located at 74-82 Bradleys Head Road, Mosman and holds a club licence, which commenced on 10 October 1947. At the time of the complaint being lodged with L&GNSW, [REDACTED] was the Club Secretary and had held this position since 1 November 2012. On 26 April 2022, [REDACTED] the Chairman of the Club, advised L&GNSW that [REDACTED] ceased in [REDACTED] role of Club Secretary on 8 April 2022.

15. On 28 April 2022, [REDACTED] further advised that [REDACTED] was acting Secretary of the Club. On 19 July 2022, [REDACTED] was formally approved by L&GNSW to be the Club Secretary and remained in the role until 25 October 2022. [REDACTED] then commenced as the Club Secretary on 26 October 2022 and remained in the role until 30 April 2023.

16. Ms Liarne Maree Peek is the current Club Secretary, commencing in the role on 1 May 2023.

17. Warringah Bowling Club Ltd is the current licensee, appointed at grant of the Club's liquor licence. The premises owner is [REDACTED] since 1 July 2008.

18. The Club holds unrestricted on premises trading hours for consumption on premises and takeaway sales are permitted between 5:00am to midnight, Monday to Saturday and from 10:00am to 10:00pm on a Sunday. The Club holds a club functions authorisation and under a related licence condition, this authorisation applies to the whole of the licensed premises, excluding the car park. There are no other licence conditions or authorisation listed on the Club's licence.

19. L&GNSW records indicate that three complaints have been lodged against the Club since December 2020, with two complaints relating to noise and disturbance. On 8 October 2021,

the complainant lodged a complaint in relation to a jumping castle regularly placed in the Club's car park during functions. It was alleged that the jumping castle creates noise nuisance for up to eight hours on Sundays, and that the Club has placed picnic tables and umbrellas in the car park. L&GNSW determined to take no further action in respect to the complaint and confirmed that the licensed boundaries of the Club include the car park area. A second complaint was lodged on 22 March 2023 from a member of the public alleging disturbance from patron noise on the bowling greens at the Club, stating patrons were observed to be intoxicated, yelling, cheering, and using explicit language. In addition, the complaint noted that unsupervised children were regularly observed to be dropping rubbish and beer glasses over the fence into neighbouring properties. L&GNSW determined to take no further action in respect to the complaint and reminded the Club of its responsibilities in relation to the responsible service of alcohol.

Submissions

20. Between 28 March 2022 and 16 June 2023, various material was received from parties to the complaint, the Club, Council and Police. The material that is before the delegate is set out in **Annexure 1** and is summarised below.

Police submission

21. On 22 April 2022, a submission was received from Police in relation to the complaint. Police advise that no specific noise conditions exist on the Club's liquor licence or development consent.
22. Police submit that in 2019 a number of complaints were received from neighbours concerning the Club and in January 2020, Police met with [REDACTED] where an agreement was entered into to mitigate offensive noise. Police submit that the Club agreed to operate a noise register, comply with a Plan of Management and implement noise mitigation measures, as set out below:
- Acoustic blinds to be installed near the bi fold door.
 - Replace rear fencing to reduce noise from the Club impacting on residential premises (subject to Council approval).
 - Sound proofing of the roof.
 - Signage to be displayed at all entrances requesting patrons leave the area quietly.
 - Signage to be displayed outside the Club with a phone number to call for complaints.
 - Implement noise limiters on the band's sound system.
23. Police submit that complaints have continued to be received in relation to noise disturbance emanating from the Club. Police advise that over an 18-month period between November 2020 to April 2022, 22 incidents were recorded on the Computer Dispatch Jobs requesting Police

attend the Club. A review of the list provided by Police identifies that 13 incidents relate to noise complaints from loud music, patron noise including screaming and yelling, intoxicated patrons, and noise from children and patrons on the bowling greens.

24. Police also provided a list of 26 COPS Events relating to inspections conducted at the Club between June 2020 and March 2022 and an outcome summary. On two occasions, namely 6 December 2020 and 13 October 2021, Police identified issues with patron noise at the Club, resulting in Police engaging with patrons on the latter occasion. For all other COPS Events listed in the submission, Police record nil issues identified at the Club or minimal to negligible noise observed, including on three occasions where they attended in response to a noise complaint.

25. Police provided a summary of the noise mitigating measures outlined in the Club's Noise Management Plan as submitted for Development Application (DA) 8.2020.106.1, which include the following:

- Background music to be played between 900-2300hrs only (65dB).
- Patron limits for certain areas within the Club that are applicable during regular trade (not functions).
- Noise is kept to a reasonable level during functions - When applicable, after 2100hrs keep function attendees inside the Club House.
- Front Courtyard to be closed at sunset.
- All windows, doors & retractable roof to be closed after 2100hrs.
- Ensure patrons depart the Club in a prompt, orderly and quiet manner.
- After midnight no noise should be heard from the Club from nearby residents.
- Garbage to be removed from premises before 2200hrs.
- All complaints (with details) are to be logged into Noise Complaint Diary - Take reading with noise meter, record in diary any noise not from the Club - Inform Secretary Manager of complaints.
- Complete Daily Noise Reading log.
- Any large groups (including unexpected function attendees) that are deemed unmanageable can be refused entry to the Club.

26. Police also comment on an acoustic report completed by Koikas Acoustics in April 2020 (the Acoustic Report), submitted for DA 8.2020.106.1. A copy of the Acoustic Report was not included in the Police submission. Police note that the Acoustic Report suggests the Club is operating as per requirements, however, acknowledges that the lower acoustic readings were due to COVID-19 restrictions in place at the time. Police advise that the Acoustic Report recommended noise controls be put in place including that the outdoor balcony area should not be occupied after 10pm and doors should be closed after 10pm.

27. Police note that an additional acoustic report completed in 2009 (no further details provided) recommended that noise limiters be installed on sound equipment at the Club and sound absorption measures be installed in the ceiling and vents. Further, Police state that the report indicated that live bands or amplified music were not suitable to be played from the Club without the implementation of the recommendations. Police note that they had been advised by the Club that sound reduction implementation in the ceiling had occurred in late 2020, however it is not known if all recommendations as set out in the report were adhered to. Police also note that discussions with the Club in 2019 identified that the use of noise limiters had not been implemented.
28. Police advise that they have engaged with Council and confirm that the new structure adjacent to the lower bowling greens is 'lawful' and that the Club has installed and utilises sound blinds/curtains to reduce noise. Police acknowledge that many of the complaints received mention young persons being a concern at the Club and note that closer engagement with the Club will be undertaken to ensure that minors attending the Club are better managed.

Council submission

29. On 29 April 2022, Council provided a submission in response to the disturbance complaint.
30. Council advised that it is aware of residents' concerns with the operation of the Club and complaints have been received about the behaviour and noise pertaining to the use of the outdoor areas for events and gatherings. Council further noted that representations have also been made regarding the safety of children attending the Club, particularly children not being supervised when using outdoor areas and the car park. Council stated that a review of customer requests in its internal record system indicated that the issues raised appeared to have escalated in line with the easing of restrictions under public health orders.
31. It is submitted that since 2021 Council has met with a resident's group, engaged with management of the Club, and met with Police on numerous occasions. Council advises that as part of an ongoing investigation, plain clothed staff have attended the Club for a meal and to monitor the daytime operations of the Club. Council submits that based on its limited observations to date, no anti-social behaviour or noise has been observed that is considered offensive. However, observations were made of children using the Club facilities unsupervised or not accompanied by an adult, which have been raised with Police. Council further notes that night-time operations at the Club have not been undertaken.
32. Council submitted that it had an active investigation regarding noise complaints concerning the Club and its next step was to meet with the Club along with Police to raise the issues and look at solutions that could be implemented to minimise the impacts on nearby residents. Council advised that previous meetings with the former General Manager of the Club had been positive

and although noise mitigating measures were implemented to address concerns, this has not satisfied the residents' concerns.

33. Council stated there were no pending planning applications before Council for determination. With regards to planning approvals that are in place, conditions controlling the permitted hours of operation or a plan of management for the Club, Council provided that owing to the historic nature of the Club, the approvals issued some 40 years ago have no specific or extraordinary conditions imposed around noise control, patron numbers or limitations on events or activities able to be held at the Club.
34. Council submitted that following its observations and the response received from the Club to date, formal enforcement action taken by Council through the issuance of orders or court action was not warranted. Although Council acknowledged the noise concerns raised by nearby residents, it advised that a determination had not been made on whether the noise is deemed offensive. Further, Council did not have enforcement action against the Club at the time of its submission.

Club response to complaint

35. On 12 May 2022, the Chairman of the Club, [REDACTED] provided a submission in response to the complaint.
36. The submission advises that the Development Control Order as set out in the complaint was rescinded by Council and the Club is in receipt of a Building Information Certificate issued by Council regarding the pavilion. A copy of the Building Information Certificate dated 8 April 2022 was provided with the submission. In relation to the photograph provided by the complainant showing two males urinating outside the childcare centre, the Club contends there is no evidence to show they were patrons of the Club.
37. It is advised that the return of live music at the Club was assisted by the Great Southern Nights, a NSW Government initiative to encourage the return of live music to licensed premises throughout the state. It is submitted that since this initiative commenced, bands playing at the Club have done so indoors with all windows closed to minimise noise.
38. The submission concedes that the video footage provided by the complainant of a function held at the Club on Saturday 19 February 2022 does show rowdy behaviour and the Club acknowledges that improvements are needed in its procedures relating to noisy gatherings. One improvement made is that function staff have been advised not to book any 21st birthday parties or similar events in the pavilion area but rather in the Club function room instead, which is indoors where noise and behaviour can be better managed.

39. The submission advises that after a meeting between the Club and the complainant on 4 May 2022, several undertakings were implemented in relation to the pavilion and the operation of the Club, including:

- Installation of a better “acoustic blind” on the neighbour’s side of the pavilion and on the south side of the pavilion which is very close to another block of units.
- Closure of the pavilion at 6 pm in winter, 8 pm on Friday and Saturdays in summer, and 7 pm on Sundays in summer. Any patrons remaining in the pavilion after the nominated time will be moved inside the Club.
- Exercise better control of patron behaviour at all times and engage experienced staff to ensure RSA practices.
- Children to stop playing on the lower bowling green and be confined to a small area to allow for adult supervision.
- Installation of more signs reminding patrons that excessive noise and bad behaviour isn't tolerated. These will become the Club rules so that staff can point to them as "club policy" that all must abide by.
- Employment of a more effective "security guard", or more than one, to enforce patron behaviour standards.
- The Club may consider building an indoor extension into the car park similar to the recent DA while closing down the pavilion.
- The Club will make better use of the function room inside the Club as mentioned above.

Complainant final submission and further complaint material

40. On 22 June 2022, the complainant provided a final submission in response to the submissions from the Club, Police and Council. Included with the submission was a photo of children playing in the Club’s driveway alleged to have been taken on 11 June 2022.

41. The complainant asserts the Police submission clearly documents the extent of neighbours’ complaints and alleges that Police attending the Club on 40 occasions in less than two years shows that the Club has ignored the concerns and complaints of residents. The complainant states that Police recording ‘nil issues identified’ as an outcome is likely due to the time elapsing between the complaint being made and Police arriving at the Club. Further the complainant contends that it is not possible to fully assess the noise experienced by neighbours from the Club, as noise is heightened inside surrounding homes due to an ‘amphitheatre’ effect.

42. The complainant advised that although the undertakings provided by the Club following the meeting on 4 May 2022 have merit, there were concerns as to whether noise would be abated moving forward. Additionally, the complainant submitted that some of the undertakings were

'impossible to assess in advance' while others were not specific in nature, such as those that provide for improvements in the management of the Club and its patrons.

43. The complainant contended that there had been instances of non-compliance with the undertakings provided by the Club, referencing two dates in June 2022. The complainant noted that on 11 June 2022, children were observed playing unsupervised in the car park and driveway of the Club and on the complainant's front lawn, and on 18 June 2022 patrons were observed drinking and creating disturbance in the pavilion until approximately 7.30pm, after the 6pm restriction for winter.
44. It is submitted that the incidents set out above demonstrate that the Club cannot be relied upon to follow its own undertakings and therefore the imposition of licence conditions is necessary to ensure the undertakings are implemented. The complainant recommends that as many of the Club's own undertakings as possible be imposed as conditions on the Club's licence, including the reduced operating times of the pavilion dependent on the season. Additionally, licence conditions should be imposed requiring the pavilion close at 7pm Sunday to Thursday during summer, acoustic blinds to be used at all times when the pavilion is in use and children should not be permitted to play on the lower bowling green or in the car park.
45. The complainant also requests additional conditions be imposed on the Club's liquor licence that are summarised below:
- The Club complies with the *Environment Planning and Assessment Act 1979* and the *Protection of Environment Operations Act 1997* which are relevant to noise limitation requirements.
 - A limit on the number of outdoor functions hosted by the Club per month with each function limited to three-hours in duration. It is suggested that no more than two outdoor functions per month in winter and four outdoor functions in summer be permitted, with other functions to be held indoors.
 - The Club to cease operating at 10.00pm each night.
 - Staff to ensure patrons leave the Club upon closing, including the car park, with staff to remain on site until patrons have left.
 - The Club to engage suitably experienced staff and security guards.
 - One security guard to be deployed for every 40 patrons to ensure adequate crowd management.
 - CCTV with sound recording to be installed to monitor the pavilion, lower bowling green and car park areas. Recordings are to continue for two hours after the Club has closed and are to be kept for at least three months.
 - Sound level monitors to be installed along the Club perimeter to assess compliance with NSW Environment Protection Authority noise limits.
 - The Club's complaints register to be produced by staff when requested.

46. The complainant suggested that the disturbance complaint should not be 'considered finalised' via the disturbance complaint submission process and instead asked that a review be conducted by L&GNSW in the early months of 2023 to assess whether the Club had complied with its undertakings and whether noise levels have returned to the 'pre-pavilion state'. The complainant submits this approach will avoid the need to re-submit another statutory disturbance complaint at a later stage should there be an unsatisfactory outcome. The complainant states that if there is still excessive noise or disturbance attributed to the Club, it is requested that L&GNSW prohibit the use of the pavilion other than for sheltering bowlers with all functions and social activities to be held indoors.

47. In concluding, the complainant advised that their intention is not to shut the Club down. It is submitted that the recent strategy by the Club to focus on hosting functions, with little bowling activity, is an 'over intensification of the use' and is not the intended role of the Club as a recreational and community facility. The complainant submits that the Club's contention that it has been part of the community for 118 years is in no way validation of the recent changes to the types of activities that are hosted at the Club, and its incarnation as a noisy function centre is in no way comparable to its long and valued history.

48. The complainant reiterates that the introduction of the pavilion and the hosting of outdoor functions catering to hundreds of patrons has adversely impacted the neighbourhood and the right to peace and quiet supersedes the interest of any commercial or sporting entity.

Club final submission and other material

49. On 18 July 2022, [REDACTED] the then Club Secretary, provided a submission in response to the submissions from Police, Council and the complainant's final submission.

50. The submission advised that the Club is committed to understanding and listening to the neighbours' complaints and is committed to take action in response to issues in a respectful manner. In relation to the complainant's assertion that the Club has not actioned its voluntary undertakings, the Club Secretary advises that there is a transparent process the Club must follow when obtaining quotes for various undertakings and once obtained, they have to be considered by the Club board.

51. The Club Secretary submitted that the Club had expedited many of the undertakings to maintain a positive relationship with the complainant and to address their concerns. It is noted that an additional hi-density, heavy-duty acoustic screen has been installed in the lower pavilion which is 18 metres in length. The rear screens of the pavilion are permanently lowered, providing three acoustic barriers, with air gaps between them to diffuse the reflections. It was submitted that with the new measures in place, the Club expected noise in the pavilion to be reduced by approximately 50% for frequencies above 500Hz. A photograph of the installed screens was included with the submission. The Club Secretary acknowledged that the

previous acoustic solution did not meet the complainant's expectations, however, contended that the complainant's claims that it has no acoustic properties is 'spurious and misleading at best'. Further, the complainant's claim of an 'amphitheatre effect' from noise is also misleading.

52. The Club Secretary acknowledged that noise levels attributed to the normal operation of the Club since resuming pre-pandemic trading are more than what would have been experienced by neighbours during the COVID-19 lockdowns in 2020 and 2021, however it is noted that the Club was closed for an extended period. It is submitted that the current noise levels are exaggerated when compared to trading during the COVID-19 pandemic and closures.
53. The Club Secretary contends that following discussions with the complainant, the Club voluntarily agreed to temporarily curtail trading activities to reduce noise until a mitigating and mutually agreed solution could be established. One of the measures implemented was to close the pavilion at various times during the year and staff have been advised to strictly adhere to these times.
54. It is submitted that the Club was in the process of obtaining additional signage to advise patrons that they are responsible for minors in their control and children are to always be accompanied by an adult. The Club is of the opinion that the additional signage will improve the behaviour of parents and their children.
55. The Club Secretary contended that the complainant's suggested licence conditions have the potential to permanently close the Club which has been in existence since 1903, well before the complainant became [REDACTED] neighbour. The submission asserted that the Club is one of the few local venues where patrons can enjoy being outdoors, and to impose a condition limiting the number of outdoor events, such as barefoot bowls, to only four per month during summer is 'unreasonably draconian'. The Club Secretary advised that many of the Club members are older and vulnerable adults who prefer to sit outdoors where there is less risk of COVID-19 transmission. As such, it was submitted that the complainant's request that this be limited to four groups per month is unreasonable and unfair.
56. Regarding the complainant's concerns over the accessibility of the car park, the Club Secretary submitted that following a discussion with the complainant in November 2021, the Club immediately began concreting and preparing the area around the car park so a fence could be installed to allow managed access to the car park. It was noted that the fence would also extend around the lower bowling green, enabling sole access to bowlers.
57. Regarding the complainant's comments in response to the Police submission, the Club Secretary disputed any suggestion by the complainant that the 40 inspections conducted by Police were all attributed to noise complaints. It is submitted that the Police submission contains records of 13 noise complaints over an 18-month period and many of the inspections conducted by Police were 'normal inspections' by licensing Police on Friday and Saturday

nights. In addition, the Club Secretary advised that a noise complaint register had been created at the request of Police and can only be shown to Police as it contains information of a personal nature and should not be accessed by the general public.

58. It was submitted that for any function with 100 guests or more, two independent and qualified security staff are employed and remain on site until the Club closes. The Club Secretary provided comments on the complainant's proposed security to patron ratio of 1:40 and contended that it is impractical and would place an inordinate impost on the Club making several activities hosted by the Club financially unviable. To demonstrate the complainant's proposed security to patron ratio, examples were provided which would require the Club to employ two security guards for an evening yoga class (50 persons), two security guards for trivia (50 persons), one to two security guards for afternoon Bridge, Mahjong and Tai Chi sessions (30-50 persons) and one security guard for an evening language and art class run by Northern Beaches and Mosman Community College (20 persons). The Club Secretary submitted that for the complainant to believe this to be a reasonable suggestion demonstrates an unwillingness to seek a mutually agreed solution with the Club.
59. The Club Secretary advises the Club has high-definition CCTV covering the north end of the pavilion, the car park, and many other parts of the Club. The current system is motion activated and CCTV footage is stored for three months. The Club Secretary stated that following discussions with the complainant, the Club was considering updating the current CCTV system to install more cameras with sound on the lower bowling green and the south end of the pavilion, however, raised some potential constraints such as the distance required for cabling and power as well as signal transmission issues.
60. The Club Secretary stated that the Club's trading hours allow a workable and sensible arrangement with staff able to close earlier if patronage is not viable. It is contended that the complainant's proposed restricted trading time of 10:00pm ignores the ability for patrons to continue watching the live broadcast of sports in the Club's function room, celebrate an important milestone event or for the Club to host business conferences with international online partners. Further, it is submitted that the complainant is not acting in good faith by proposing the permanent imposition of the trading restrictions.
61. The Club Secretary submitted that the Club recognises the concerns of neighbours and was actively working on mitigation strategies to manage noise emanating from the Club.

Further information provided by the complainant

62. On 14 August 2022, the complainant advised L&GNSW that despite the Club installing fences around the pavilion, children were observed playing in the car park. The complainant alleged the Club failed to take any action and expressed concerns over the safety of children playing

unsupervised in the car park. Two photographs of children playing in the car park, alleged to have been taken on 14 August 2022, were provided.

63. The complainant submitted that reporting of the incident shows that the issue is ongoing. The complainant reiterated that adequate CCTV is required at the Club to monitor and assess compliance with licence conditions.
64. On 30 May 2023 the complainant provided an update in relation to the operation of the Club as requested by L&GNSW. While the complainant acknowledged there has been an improvement at the Club, it is submitted that the recommended actions as set out in the submission of June 2022 are still valid.
65. The complainant contends that the Club continues to host noisy functions with the nature of these functions depending on the managerial and club board discretion. Concerns were raised over the frequency of changes to Club management in the past 12 months, with the complainant submitting that without tangible permanent mechanisms in place, any temporary improvement at the Club may not be sustained.
66. In relation to the issue of children playing in the Club's car park, the complainant advised that the instances of this occurring may have reduced but notes that they have given up making observations. The complainant submits that there were a few incidents of loud parties and patron noise around Christmas 2022 and reiterates that it is outdoor functions that cause the most disturbance.
67. The complainant concludes that any improvement at the Club is not guaranteed to be sustained unless L&GNSW places new supportive mechanisms in place.

Further information provided by Council

68. On 24 April 2023, L&GNSW sent an email to Council requesting information regarding the status and outcome of the investigation led by Council into noise disturbance at the Club. On 19 May 2023 Council provided a response.
69. Council advises that new customer requests relating to noise from the Club's activities have been received and notes that a change to the Club Secretary has potentially resulted in a loss of confidence by the local residents concerning the management of the Club.
70. Council submits that rangers monitored the Club with particular regard to audibility with inspections conducted around peak times in late December 2022 and January 2023. It was noted that while noise was audible it was not deemed to be offensive noise, based on the audibility level, the type of noise and the time of day being late afternoon. Further, Council submits that the "noise wasn't unreasonable noise that residents could expect from the approved use as a Club with outdoor areas".

71. On 16 June 2023, Council provided further information relating to the original investigation led by Council concerning noise disturbance at the Club. Council advised that as noted in the original submission of 29 April 2022, it met with Police in relation to complaints received about noise and anti-social behaviour at the Club. It is submitted that feedback from Police was that they would discuss RSA practices with the Club and remind Club staff to ensure that children are to always be accompanied by a responsible adult when on Club grounds. Council submit that Police raised no significant issues with patron behaviour, noise or activities at the Club during the meeting.
72. Council further advised that as a remediation step during the investigation it also met with the then Club Secretary to discuss the issues raised in the complaints and ways to mitigate disturbance moving forward. Since that meeting, a new Club Secretary has been appointed, with Council advising that it will not be seeking further meetings with the Club regarding the matter.
73. Council states that the original investigation was finalised and no action was taken, other than the agreed actions to meet with Police and the Club as set out above.
74. Council further advise that the recent complaints received by residents will be finalised and closed following Council's finding that noise at the Club is not deemed to be offensive or unreasonable.

Further information provided by the Club

75. On 7 June 2023, Ms Liarne Peek, the Club Secretary, provided an update on undertakings implemented by the Club as requested by L&GNSW. It was confirmed that the Club has installed fencing around the car park, which also encompasses the lower bowling green to ensure that access to these areas is controlled. The Club Secretary advised that significant signage requesting children be supervised by a guardian has been installed on all entrances to the Club, including the entrance to the lower bowling green. Further, it was confirmed that two security guards are hired for all functions that exceed 100 guests.

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

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

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

77. At the time of lodging the complaint with L&GNSW, the complainant had resided at their residence for six years. The Club has operated under the current liquor licence since 10 October 1947 and predates the complainant's occupancy of their residence. I consider the order of occupancy to be in favour of the Club.

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

78. It is the complainant's assertion that the Club constructed an outdoor pavilion in 2020 which at the time was not approved by Council. The complainant provided a copy of a Demolish Order, dated 7 April 2021, issued by Council directing the Club demolish a 'free standing steel framed retractable awning structure constructed adjacent to the western bowling green'. In response, the Club contends that the Demolish Order was rescinded by Council and provided a Building Information Certificate for the awning issued by Council. It is further noted that Council raised no issues relating to the construction of the awning or pavilion and Police in their submission advise that from their contact with Council, the structure is 'lawful'.

79. Other than the above, there is no indication of any other changes to the Club, nor of any changes to the complainant's residence.

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

80. The complainant submits that following the construction of the pavilion and awning, there has been an increase in the use of the outdoor area of the Club, including for functions and events. The Club does not dispute this fact, however, also attributes the increase in outdoor use to the COVID-19 pandemic and patrons' preference for outdoor seating.

Findings and Decision

Undue disturbance

81. In deciding whether the Club has unduly disturbed the quiet and good order of the neighbourhood, I have balanced the submissions made by the Club, the complainant, NSW Police and Council. I have also had regard to the particular context in which the Club operates and considered its proximity to neighbouring residences.

82. It is reasonable to expect some level of noise will be generated from the normal operation of the Club, including noise from music, activities, and patrons both inside and outside. I do not find this type of disturbance as undue in a general sense. While I acknowledge that there has been a recent increase in patronage and noise at the Club aligning with the return to normal trade post pandemic, it is evident that the construction of the pavilion and its associated use coincide with elements of the disturbance as alleged by the complainant. I am satisfied that there is sufficient evidence to reasonably conclude that the Club has, at times, unduly disturbed the quiet and good order of the neighbourhood.

83. I acknowledge that Council has finalised its original investigation into the Club and did not report any findings of offensive noise during observations made at the Club, however I note that these observations have been limited to the daylight operations of the Club. Further, I also acknowledge that Police largely report of either no issues being identified or minimal to

negligible noise observed during inspections conducted at the Club, however, note that Police have observed patrons in the outdoor pavilion area to be noisy on some occasions. I also acknowledge the engagement by Police with the Club in 2020 in response to noise complaints which led to the undertaking of noise mitigation strategies by the Club.

84. In making a finding of undue disturbance, I have had regard to the layout of the Club, specifically the outdoor pavilion area, its proximity to residences, the complaint material and Police observations of patrons in the outdoor area. The includes the video footage provided by the complainant showing patrons in the lower pavilion area during a function held on 19 February 2022 collectively singing, shouting, and cheering. I note that the pavilion is not an enclosed structure, and noise from its use has on occasion likely amounted to undue disturbance beyond general or ambient patron noise that I would consider acceptable in the circumstances. Additionally, there has been some acknowledgement from the Club conceding that “improvements are needed in its procedures relating to noisy gatherings”.

85. Having regard to the above considerations, I am not satisfied that there is sufficient evidence to conclude that the above finding of undue disturbance extends to noise from music, activities and patrons inside the Club, or from patrons departing the Club and from children playing on the grounds of the Club.

Regulatory Outcome

86. In deciding the appropriate regulatory outcome is in this instance, I have considered the statutory considerations, the material set out in Annexure 1, and the above finding regarding undue disturbance. I also acknowledge that the Club is located in a high-density residential area.

87. I acknowledge that the order of occupancy is in favour of the Club and note there has been an increase in the use of outdoor areas for dining and functions at the Club since the construction of the outdoor pavilion awning. In this context, it is reasonable to expect that significant responsibility lies with the Club to ensure it does not disturb the quiet and good order of the neighbourhood. I note that the focus of the complaint is centred around the outdoor pavilion area and its use by patrons. While I acknowledge that the order of occupancy is in favour of the Club, this does not relieve the Club of the obligation to minimise noise and disturbance.

88. Having considered the submissions provided by Police and Council, it is apparent that the construction and use of the outdoor pavilion is permitted. Further, Council does not advise of any limitations on the use of the outdoor pavilion and states that there are no limitations on events or activities able to be held at the Club, owing to the historic nature of the Club. I also note that under the Club’s liquor licence and licensed boundary, functions are allowed in the clubhouse and the outdoor dining area. In this regard, the complainant should also be aware

that it is reasonable to expect some level of noise will be generated from the operation of the Club, including from the use of the outdoor pavilion.

89. I acknowledge the noise mitigation strategies the Club has adopted over time to reduce its noise impact, specifically from the use of the outdoor area. Such measures include restricting the type of functions and events booked in the outdoor area, rescheduling loud events such as 21st birthday parties to the Club's function room, limiting the operating hours of the pavilion, installing and permanently lowering hi-density, heavy-duty screening in the lower pavilion and installing fencing around the pavilion and car park areas. The Club has also confirmed that significant signage has been installed around the Club grounds with respect to the supervision of minors and that two security guards are employed for functions with 100 guests or more for effective patron management. The Club has been responsive to the complaint, and I find the proactive measures implemented to be a positive representation that the Club is taking the complaint seriously to address the issues and concerns raised.
90. It is important to address the concerns raised by the complainant and Council regarding unsupervised children at the Club. A review of L&GNSW records identifies the licensed boundary of the Club to encompass the driveway, two bowling greens, outdoor dining area and the clubhouse. Persons under the age of 18 may enter certain areas of registered clubs and must remain in the company of a responsible adult.
91. The Club's licence is subject to a club functions authorisation which commenced in July 2014 and applies to the whole of the licensed premises, excluding the car park. The club functions authorisation allows minors to enter the Club to attend an arranged function in a specified area of the Club's premises under adult supervision and is subject to conditional requirements. I note the Club does not hold a non-restricted area authorisation which is commonly held by registered clubs and allows minors access to approved areas of the registered club while accompanied by a responsible adult.
92. While I acknowledge that minors are permitted in certain areas of the Club, I strongly remind the Club Secretary that minors must be accompanied by a responsible adult at all times while on the Club premises, including the car park. Signage to this effect will not be effective if it is not enforced by Club staff, particularly if there is a history of children being left to play unsupervised in parts of the Club. In the event L&GNSW receive complaints or information relating to minors being left unaccompanied by a responsible adult in areas of the Club without reasonable steps taken by Club staff to intervene, it is open for L&GNSW to consider further regulatory or enforcement action.
93. I acknowledge the complainant's concerns that the voluntary measures implemented by the Club are insufficient to mitigate disturbance. The complainant instead proposes that conditions be imposed on the Club's licence, and restrictions be placed on the trading hours of the Club. On this point, I note that although the Club holds unrestricted on premises trading hours, the

advertised closing time of the Club is 11:00pm Thursday to Saturday and 10:00pm on all remaining days. Further, a review of the function packages booklet on the Club's website sets out the terms and conditions for events and functions hosted at the Club. It is noted that 18th or 21st birthday parties are not hosted at the Club, and any outdoor sound is to cease at 10:00pm with all guests moved inside. On the totality of the evidence before me, I am not persuaded that the imposition of licence conditions and restricted trading hours, as proposed by the complainant, is appropriate in the circumstances. I find these restrictions to be overly burdensome on the Club, both financially and operationally.

94. Having carefully considered the material before me, I have decided to issue the Club Secretary a formal warning under section 81(d) of the Act. This decision reflects my conclusion that while there has been undue disturbance at times from the use of the outdoor pavilion, the Club has implemented a number of mitigating measures to address and improve the management of disturbance. I am encouraged by the voluntary steps adopted by the Club and I am of the view that this has had, and will continue to have, a positive effect in mitigating the Club's noise impact.
95. In issuing a warning, I provide the Club Secretary the opportunity to continue to develop and employ reasonable strategies to minimise undue disturbance, including from the use of the outdoor pavilion area. I note that a new Club Secretary has been recently appointed; I strongly encourage the Club Secretary to be proactive in addressing disturbance and complaints as they arise and to continually monitor and assess the use of the outdoor area to minimise levels of disturbance.
96. I am satisfied that this decision is a proportionate and appropriate regulatory response to the disturbance identified in the complaint and the strength of the evidence at hand. Noting the residential area in which the Club is located, I remind the Club that it has an ongoing obligation to proactively manage any disturbance caused by its operations. The Club should be aware that in the event there is an escalation of disturbance and if direct evidence demonstrating poor management of disturbance issues is presented, it is open for regulatory intervention to occur.

Decision Date: 26 June 2023



Jane Lin

Executive Director, Regulatory Operations and 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 **24 July 2023**. A \$500 application fee applies. Further information can be obtained from Authority Guideline 2 published at www.liquorandgaming.nsw.gov.au

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. Section 79 Disturbance Complaint lodged by the complainant on 28 March 2022.
2. Copy of the liquor licence for Warringah Bowling Club Limited dated 26 June 2023.
3. Submission from NSW Police received on 22 April 2022.
4. Submission from Mosman Municipal Council received on 29 April 2022.
5. Club submission in response to the complaint received on 12 May 2022.
6. Final submission from complainant received on 22 June 2022.
7. Club final submission received on 18 July 2022.
8. Additional information provided by the complainant received on 14 August 2022.
9. Further information provided by Mosman Municipal Council on 19 May 2023.
10. Further information provided by the complainant on 30 May 2023.
11. Further information provided by the Club on 7 June 2023.
12. Further information provided by Mosman Municipal Council on 16 June 2023.