

FILE NO: A22/0022429

COMPLAINANT: [REDACTED]

LICENSED PREMISES: Adamstown Bowling Club Co-op Ltd, Adamstown –
LIQC300240290

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

LEGISLATION: *Liquor Act 2007*

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 Adamstown Bowling Club Co-op Ltd, Adamstown - LIQC300240290 (the Club) have decided to **take no further action**.

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 6 May 2022, [REDACTED] (the complainant) of [REDACTED] lodged a complaint with Liquor & Gaming NSW (L&GNSW) alleging undue disturbance from the operation of the Club. The complainant lodged the complaint as a resident authorised by two other residents.
6. The complainant alleges excessive noise can be heard every week from live music at the Club. This music lasts for around three hours on Fridays, six hours on Saturdays and three hours on Sundays. On long weekends the disturbance is extended, with the music lasting for around six hours each day, including the public holiday Monday. The complainant claims excessive noise can be heard on occasion until 11:45pm and acknowledges acoustic, single-performer music can be acceptable, but states the amplified outdoor music in addition to the patron noise emanating from the Club is disturbing the quiet enjoyment of their home every weekend.
7. The complainant submits that on 18 March 2022 they contacted Newcastle City Police due to excessive noise from patrons yelling and music playing at the Club. Police advised

the complainant they would visit the Club. The complainant stated they do not wish to engage with the Club directly.

8. On 29 April 2022, the complainant raised a complaint with Newcastle City Council (**Council**). The matter before Council was not determined as, at the time, an open development application (DA2022/01028) was under review. This development application is discussed further below.
9. The complainant submits that during COVID-19 restrictions there were no music events or disturbance at the Club. It has only been since the restrictions were lifted that the complainant has noted excessive noise. The complainant states that since the COVID-19 restrictions were lifted the Club has also introduced boxing events, and these boxing events are always accompanied by excessive noise from music being played at the Club.
10. The complainant submits their desired outcome from this complaint is a dramatic decrease in the volume and frequency of amplified music emanating from the Club, or in the alternative, significant soundproofing to prevent the music from disturbing neighbours. The complainant submits they would like music events moved indoors and to finish at the advertised time, and for parking rules to be enforced.

The club, licence details, compliance history

11. The Club is located at 504 Glebe Road, Adamstown and ADAMSTOWN ROSEBUD SPORT AND RECREATION CO-OPERATIVE CLUB LTD has been the licensee since 15 October 1956. Mr Paul Francis Martin has been the Club Secretary (**Club Secretary**) and Manager since 29 August 2017. The Club holds a club licence with unrestricted trading hours for consumption on premises. Trading hours for take away sales are from 5:00am until midnight, Monday to Saturday, and 10:00am until 10:00pm on Sundays. The Club holds a non-restricted area authorisation and is subject to a licence condition stating liquor must not be sold or supplied between midnight and 5:00am on more than twelve occasions within any 12-month period.
12. On 2 May 2022, L&GNSW received a complaint from an individual unrelated to the current section 79 complaint, alleging the Club had changed its business model and now operates as a live music venue. The complaint alleged this has resulted in noise disturbance from patrons leaving the Club and associated anti-social behaviour in the locality of the Club. A L&GNSW compliance officer engaged with the Club Secretary who confirmed the Club had removed one of the three bowling greens and converted it to an outdoor area for drinking and live music, but asserted the Club still operates within its liquor licence. The compliance officer determined there was insufficient evidence to substantiate the

complaint and no further enquiries were made. However, the Club Secretary was reminded of his obligations under the Act and in particular the need to ensure the Club is operating in a way that is consistent with the expectations, needs and aspirations of the community.

Submissions

13. Between 19 July 2022 and 15 December 2023, various submissions were received from the parties to the complaint, including the complainant, the Club's Solicitor, Police and the Council. The material before the delegate is set out in **Annexure 1** and is summarised below.

Council submission

14. On 19 July 2022, Council advised that in the previous 12-month period it had received five requests from three residents regarding concerns of excessive noise from the Club. Council advised it had also received two submissions in support of the Club, with the residents in support advising Council they had received an anonymous mail drop encouraging residents to make complaints about the Club. Council noted the two residents in support do not reside in close proximity to the Club.
15. Council advised an investigation into the Club's provision of outdoor entertainment was underway. Council noted that while the Club's solicitor had claimed the Club has "existing use rights" to provide outdoor entertainment, correspondence indicated that the Club was willing to explore options to address the concerns raised by Council and appeared to have restricted amplified music to indoors. Council noted it had placed regulatory action on hold to provide the Club an opportunity to submit a development application for the use of the outdoor area to provide entertainment including amplified music. Council stated an acoustic report would be requested as part of any development application.
16. Council provided a list of all the development consents relating to the operation of the Club. This included DA2021/00450 - consent to construct a patio cover in the Club's outdoor recreational area. This DA made no mention of the outdoor area being used for entertainment involving amplified music and contained no noise related conditions.
17. On 21 September 2022, the Club lodged development application DA2022/01028 - Recreational facility (outdoor) additional use (live and amplified entertainment) with Council. The purpose of this was to seek approval for live and amplified musical performances at the Club, and stated the performances would typically occur on Friday, Saturday, and Sunday evenings from 2:00pm until 10:00pm. Material before Council as part of this process included an Acoustic Report (discussed further below), Statement of

Environmental Effects, Proposed Plans, and 20 public submissions from 12 separate residences, the majority of which expressed concerns around the effect DA2022/01028 would have on the amenity of the community.

18. On 6 July 2023, Council requested additional information be provided by the Club before a determination was made, including that it submit a venue management plan that demonstrates adequate patron management is to be undertaken in order to mitigate impacts on the amenity of nearby residences. On 15 December 2023 Council determined to approve the application; this approval and its related conditions are discussed below.

Police submission

19. A submission was received from the Newcastle City Police District on 21 July 2022. Police advised that during the 12-month period between July 2021 and July 2022 they attended the Club on about 28 occasions. Police outlined the following events where specific comments relating to disturbance were made, and noted all other attendances identified no issues or offensive noise emanating from the Club:

- Wednesday 13 April 2022 Business Inspection

Police attended the Club at about 1:30pm in relation to a complaint made by a local resident regarding the Club undertaking extensive renovations during COVID-19, changing its business model, parking issues, anti-social behaviour, lighting, and lack of security patrolling the Club. Police spoke to the manager on duty (the Duty Manager) who advised the Club was aware of the complaints and was doing its best to appease all residents. The Duty Manager stated the Club's live music ceases at 9:00pm on Saturdays and 5:00pm on Sundays and it has purchased a noise monitoring system to ensure the noise from live music stays below the allowed levels. The Duty Manager advised that the Club employs two to four security guards on weekends who conduct checks around the Club every 30 minutes, patrolling to observe any potential antisocial behaviour. The Duty Manager stated the Club was aware of the parking complaints but noted the vehicles are often from neighbouring sporting fields, and further stated the Club has cut its lighting so outside lights do not face residential properties. The complaining resident was informed of this conversation.

- Sunday 22 May 2022 Business Inspection

Police attended the Club at about 4:20pm in relation to a noise complaint. The Club informed Police that due to recent noise complaints it was now required to use a decibel gauge at the perimeter of the Club. The Council restriction was

90Db and the Club recorded 86Db at the time of the inspection. The complainant was informed the Club was operating within Council noise restrictions and was advised to contact Council with any further complaints.

- Saturday 11 June 2022 Business Inspection

Police attended the Club at 5:55pm and found there were about 200 patrons in the outside area with one security guard and one RSA marshal working. There was a soloist playing until 6:00pm with another scheduled to play from 6:30pm to 9:30pm. Police spoke to the manager regarding the recent noise complaints and were informed the Club now monitors noise in front of where the soloist is playing, about five metres away from the speakers, and ensures the noise does not exceed 65-70Db on the Club's sound monitoring device.

- Saturday 25 June 2022 Business Inspection

Police attended the Club at about 9:50pm and conducted an external observation along Belmore Street. Patron noise could be heard, but there was no music being played. The lights from the bowling green lit up the front of houses on Belmore Street. There were about 20-30 patrons outside waiting for transport, with no staff or security monitoring them, and about 25 patrons inside while the Club was in the process of closing. Police raised the lighting and lack of patron management with the manager.

- Saturday 2 July 2022 Business Inspection

Police attended the Club in response to a noise complaint and attempted contacting the complainant with no response. Police then spoke with the manager who advised music had ceased at 9:15pm and the lights covering the bowling green had been turned off. No offensive noise was being emitted at the time of the inspection.

Club's response to complaint

20. In response to the complaint, the Club engaged a solicitor, [REDACTED] from MBM Legal + Conveyancing, to provide a submission on its behalf. The submission was received on 21 July 2022. The submission notes the Club takes all complaints very seriously and advised the Club has taken the following actions to mitigate any disturbance since the complaint was received:

- The Club has engaged Muller Acoustic Consulting (MAC) to assist with noise management. MAC has installed noise monitoring equipment in proximity to

residential receivers and the Club expected to receive a report shortly, and noted that further submissions would be provided once the Club had received the report from MAC.

- On Sundays the Club now only engages soloists or duos to perform between 2:00pm and 5:00pm.
- Performances involving amplified music only take place between 5:00pm and 8:00pm on Fridays, and between 3:00pm and 9:00pm on Saturdays with a break around 6:00pm.
- Depending on the weather, performances take place inside the club house or in a roofed, but otherwise open, area adjacent to the club house.
- All performers have been instructed they must not exceed a noise level of 80Db on the dancefloor, and the Club monitors this with its own equipment. The Club expects (pending the MAC report) this restriction will eliminate any adverse noise impacts at sensitive receivers near the Club.

21. The submission advised that the Club was in the process of preparing a development application to submit to Council regarding live music performances at the Club. It submitted that the Club has operated from the current site since 1928 and has historically provided live music entertainment to its members and will therefore likely have the benefit of existing use rights to do so. [REDACTED] submitted that notwithstanding this argument, the Club is committed to working with Council and L&GNSW to ensure its operations and live music performances do not cause unreasonable noise impacts on neighbouring residents.

Complainant's further submission

22. The complainant provided their further submission on 12 August 2022. The complainant submitted that despite Council's submission that the Club appears to have ceased outdoor entertainment and restricted amplified music to indoors, they had noted an increase in outdoor music and the volume of music in recent weeks. The complainant submitted that Sunday outdoor performances in particular had recommenced with amplified music.

23. The complainant also submitted that on Saturday 6 August 2022, music at the Club continued until 9:40pm despite the Club's submission that music on Saturdays would cease by 9:00pm and noted that on Sunday 7 August 2022 at around 2:20pm they observed amplified music being played outdoors at the Club.

24. The complainant noted the Club's submissions that depending on weather, performances may take place inside the club house or in a roofed but otherwise open area adjacent to the club house, and pointed out that the Club is acknowledging the provision of outdoor music. Regarding the music being played outdoors at that time the complainant states "if the music got any louder it would cause disturbance."
25. Regarding the Club's submission that it is likely to enjoy existing use rights regarding the provision of live entertainment, the complainant submits that any use rights from the Club's establishment in 1928 could not have contemplated amplified music.
26. The complainant submits that other than the issues noted, the noise from the Club had diminished considerably.

Club's second submission

27. On 5 September 2022, the Club's solicitor, [REDACTED] provided the Club's final comments on the matter. The Club confirmed the acoustic consultant MAC had completed noise monitoring at appropriate locations and had advised the Club it is compliant with noise restrictions set by the Department.
28. The Club submitted that since the complaint was received, the Club has made serious efforts to address the issues of concern and be considerate of neighbours. Its final submission advises the Club is strictly adhering to advertised live performance times and is only hosting:
- soloists on Fridays between 5:00pm and 8:00pm;
 - soloists on Saturdays between 3:00pm and 6:00pm;
 - soloists and, rarely, duos on Saturdays between 6:00pm and 9:30pm (but only for three hours total within that time); and
 - duos on Sundays between 2:00pm and 5:00pm.
29. It was submitted the Club has its own sound reader, and based on the advice of MAC, has set levels to be adhered to at all times.
30. The Club has placed signs at the exits asking patrons to "respect their neighbours" while leaving the club. The Club has arranged for security to undertake regular walks through the streets and car parks, as well as arranging cleaners to pick up rubbish first thing of a morning.

31. As mentioned above, the Club has lodged a development application with Council regarding the provision of entertainment by way of outdoor amplified music without prejudice to its claim to have an existing use to do so. It submits that if approved, the application will result in a continuation of the restrictions and other measures which have been adopted in recent months to address the concerns which have been raised.
32. The submission states the Club will continue to work with Police to address any concerns raised with regards to the operations of the Club.

Acoustic report (3 August 2022)

33. On 5 September 2022, the Club provided a copy of the Noise Assessment report, dated 3 August 2022, prepared by MAC. The report states it was prepared to address the disturbance complaint, that MAC has undertaken noise monitoring and quantified potential emissions from a live music performance and recommends reasonable and feasible noise controls where required.
34. During testing, MAC placed six residential receivers in proximity to the club. One receiver was placed at [REDACTED] Glebe Road while the other five receivers were placed outside residences on Belmore Street. One unattended noise monitor was installed at [REDACTED] Glebe Road to quantify road noise levels. Receiver number R02 was located on the boundary of a residential property situated between the Club and the complainant's residence, whilst receiver number R03 was also located closer to the Club than the complainant's residence.
35. Observations on-site identified the surrounding locality was typical of a suburban environment, with traffic noise, birds and recreational noise as the dominant noise sources.
36. The report noted live music performances typically occur on Fridays, Saturdays, and Sundays between the hours of 2:00pm and 10:00pm. Therefore, the periods between 2:00pm to 10:00pm, Monday to Thursday from 18 to 28 July 2022 were analysed to establish the background noise levels and compared against readings of the same time periods on Friday to Sunday. With respect to the LA10 noise criteria (the standard commonly applied to licensed venues in NSW, though it is not a condition on the Club's licence), results indicated a live music performance with a sound power level of 98dBA may lead to minor exceedances (above 5dBA) at receivers in the 4kHz frequency band. Negligible exceedances (1 to 3dBA) were predicted in the 1kHz and 8kHz frequency bands at receivers.

37. The report stated, following analysis of results, future options for the Club with consideration of the LA10 criteria could include:

- louder bands over 98dBA (Lw) not performing in external spaces;
- any live performances external to the Club could include smaller acts such as a soloist, duet, trio or DJ as long as they are properly managed or orientated to minimise sound emissions; and
- consultation with the nearest receivers should be conducted to establish some reasonable and feasible noise management and mitigation measures that can be agreed upon by both the Club and the residents.

38. The report also provided a table of recommendations to further limit the impact on the surrounding noise receivers, including pre-event site inductions, notifications, complaint handling, hours of operation, event layout, behavioural practises, and noise monitoring. An email received by L&GNSW from the Club's solicitor on 6 September 2022 advised the Club was adopting and implementing all the strategies recommended.

Complainant submissions regarding acoustic report

39. On 19 September 2022, the complainant provided their submission regarding the 3 August 2022 acoustic report. The complainant submitted that around the time the Club provided its first submission in response to the complaint, music at the Club was either indoors or acoustic only outdoors and no disturbance was noted during this time. The complainant also noted this was the period during which the acoustic testing was conducted. However, it was alleged that since that time the noise from music performances at the Club had been increasing.

40. The complainant noted specific times and performances when the music was causing a disturbance, and when they allege the Club was not following its self-imposed restrictions on the number and type of performances in the outdoor area. The submission noted Council's earlier submission that "outdoor entertainment appears to have ceased" is not the case. The complainant states amplified music performed underneath the outside awning cannot be considered "indoors" and therefore such performances are in contradiction to Council's statement.

41. The complainant submits that the timing of the acoustic report does not reflect the Club's typical operations. They stated that the acts performing at the time of their submission were much louder than they had been during the monitoring period and there was no sign of any ongoing noise monitoring. The complainant was concerned the disturbance was

only going to get worse and stated they seek a remedy whereby all amplified music is held indoors.

Acoustic report (14 December 2022)

42. As part of the Club's application to Council to provide outdoor live and amplified music (DA2022/01028), MAC provided an updated acoustic report dated 14 December 2022. This report was essentially on the same terms as the 3 August 2022 report, however included the following proposed physical noise attenuation measures to the outdoor stage area:

- the addition of solid 'wing walls' with internal acoustic treatments;
- the addition of an absorptive lining material to the internal facades;
- dampening to the stage floor;
- the addition of an absorptive lining material to the overhead structure/ceiling.

43. MAC indicated that the Club's ability to comply with the LA10 criteria when hosting amplified entertainment in the outdoor stage area at a sound power level of 98dBA, is contingent on the above physical noise attenuation measures being in place.

Club's final submission

44. On 13 September 2023, L&GNSW contacted the Club and asked for an update on what physical noise attenuation works and other measures the Club had undertaken as a result of the process for development application DA2022/01028. On 2 October 2023, the Club provided a submission with this information.

45. The Club submits it conducts regular sounds checks and that if they exceed 55 decibels on the Club's border immediate action is taken.

46. In the Club's outdoor area only acoustic solo or duo music is provided, with instructions for all entertainment in this area to be soft background music. These performances, in agreement with Council, have been limited to 5:00pm to 8:00pm on Fridays, 3:00pm to 9:00pm on Saturdays, and 2:00pm to 5:00pm on Sundays. Acoustic musicians are strategically positioned to minimise their impact on neighbouring areas.

47. A dedicated feedback phone line was established so the Club can promptly address any noise-related concerns. Letters are also sent to neighbours, keeping them informed about upcoming events and any changes to Club operations that may affect them. These letters

include the feedback phone number. The Club states it also hosts community consultation meetings to listen to concerns, gather feedback, and discuss potential solutions.

48. The Club noted the following measures would soon be implemented to mitigate noise transmission from the beer garden stage area:

- The installation of loaded vinyl material with an appropriate floor covering on the beer garden stage area floor.
- The construction of a wall on the right wing using materials recommended in the acoustic report, and a wall on the left wing using solid construction methods, such as masonry or insulated timber frame with an internal lining using materials specified in the acoustic report.
- A loaded vinyl insulation layer and absorptive lining will be applied to the ceiling.

49. The Club has appointed a sound engineer/acoustic consultant, Trevor Cronin, to ensure compliance with noise regulations and address any issues promptly. Following the recommendations of Mr Cronin, the following measures were to be undertaken by the Club:

- Sand-filled besser bricks or rubber soundproofing mats on the rear wall of the Green Room.
- External wood panels by the door facing the bowling area are to be re-sealed to eliminate wall vibration.
- Roof cavity treatment for the area above the stage and speaker system.
- Additional mass and a self-closer to be added to the door to the staff changing area .
- Entry doors to the locker room to be replaced with double high-mass self-closing doors quipped with seals.
- The top sections of external walls in the locker room to be re-sealed to eliminate vibration.
- Draping the wall at the rear of each stage with thick woollen theatre-type curtains to improve acoustics.
- Ensuring all external doors and windows are closed when internal sound systems are in operation.

50. The Club submits that by addressing these acoustic recommendations it aims to create a more comfortable and enjoyable environment for both patrons and neighbouring residents.

Determination to Approve DA2022/01028

51. On 15 December 2023, Council approved DA2022/01028 for 'Recreational facility (outdoor) and Registered Club - additional uses (outdoor dining & live and amplified entertainment) including alterations and additions and car parking.'
52. The determination states that the development is to be implemented in accordance with the approved plans set out in the determination, which include all the proposed acoustic mitigation measures detailed in the 14 December 2022 acoustic report. These measures are noted at paragraph [42] of this decision. The determination also includes a condition stating that no occupation certificate for the development will be issued until written certification confirming all measures have been implemented in accordance with the requirements of the above report has been submitted to the principal certifier and Council.
53. The determination also imposed the following relevant conditions:
- All live performers and all associated amplified sound are to be confined within the live entertainment area (where the mitigation measures are to be implemented).
 - Signage is to be erected in a prominent position near the entry/exit point to the Club stating *Upon leaving please respect local residents by minimising noise*.
 - The Club must engage an appropriately qualified consultant to monitor and assess the noise emissions from a live music performance in the entertainment area and produce a report confirming the recommended acoustic measures have been implemented and meet projected noise goals in accordance with the requirements of the 14 December 2022 acoustic report. This report is to be prepared and submitted within six months of the commencement of live music performances at the Club.
 - The use of any area outside of the registered club building is prohibited and no patrons are permitted in outdoor spaces of the premises after 10:00pm on any night.
 - During occupation and ongoing use of the premises, all plant and equipment installed thereon, is not to give rise to any offensive noise, as defined under the *Protection of the Environment Operations Act 1997*. Should Newcastle City

Council consider that offensive noise has emanated from the premises, the owner/occupier of the premises will be required to submit an acoustic assessment prepared by a suitably qualified acoustical consultant recommending acoustic measures necessary to ensure future compliance with this condition and will be required to implement such measures within a nominated period. Furthermore, written certification from the said consultant, verifying that the recommended acoustic measures have been satisfactorily implemented, will be required to be submitted to Newcastle City Council prior to the expiration of the nominated period.

- Before the issue of an occupation certificate for the development, a consolidated venue management plan is to be prepared and submitted to Newcastle City Council and the Principal Certifier. The consolidated venue management plan is to incorporate the various plans of management applicable to the site, namely: Liquor Plan of Management, Security Management Plan, and Parking Management Plan.
- The maximum number of patrons permitted in the Club, including the outdoor recreation facility, is 600 persons on Fridays and Saturdays between 4:30pm and 7:30pm, and 550 persons at all other times.

54. The hours of operation or trading for the following specific areas of the Club are to be not more than:

- For live outdoor entertainment; 2:00pm to 10:00pm on Fridays and Saturdays and 2:00pm to 7:00pm on Sundays and Public Holidays.
- For outdoor dining; 10:00am to 7:00pm on Mondays and Tuesdays, 10:00am to 9:00pm on Wednesdays, 10:00am to 10:00pm on Thursdays, Fridays, Saturdays, and Sundays, and 10:00am to 8:00pm on Public Holidays.

Further Complaints

55. L&GNSW has received a further three complaints since the subject disturbance complaint was lodged. These complaints relate to intoxication and indecent conduct, permit violence or quarrelsome conduct, and noise disturbance. None of these complaints resulted in action being taken by L&GNSW, though it is worth noting that in making the decision not to take action in the first two complaints, L&GNSW gave weight to the fact that the incidents had already been addressed by Police.

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

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

The order of occupancy between the licensed premises and the complainant

57. The Club has operated under the current liquor licence since 15 October 1956 and ADAMSTOWN ROSEBUD SPORT AND RECREATION CO-OPERATIVE CLUB LTD has been the corporate licensee since the same date. The current Club Secretary, Mr Paul Francis Martin commenced in his role on 29 August 2017. The complainant resided at their current address for approximately 9 to 10 months before making the disturbance complaint. These facts are not disputed, and I consider the order of occupancy is in favour of the Club.

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

58. There is no indication that changes have been made to the complainant's residence.
59. The material submitted by Council indicates there have been minor changes and extensions made to the Club over the last 60 years. The Club has constructed an outdoor deck on one of the bowling greens, which has been converted for use as a beer garden. The disturbance seems to be focused on noise from music being played in this outdoor setting.

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

60. The complainant submits since COVID-19 restrictions were lifted the Club has introduced boxing events that are always accompanied by excessive noise from music being played. It is worth noting due to the relatively short time the complainant has resided at their current residence, they would not have a first-hand reference point of how the Club's current activities compare with its pre-COVID-19 operations. However, submissions provided to Council regarding the development application state that prior to the COVID-19 shutdown the Club operated principally as a bowling club, rarely provided entertainment, and did not provide outdoor entertainment. The material indicates that since then, the Club has transitioned into more of a live-music focused venue. It is alleged the Club no longer operates principally as a bowling club with one of its three bowling greens being converted to outdoor dining with tables and umbrellas.
61. The previously mentioned construction of an outdoor deck has led to an increase in the provision of outdoor music. This appears to be the primary change in business activity that has led to noise complaints against the Club.

Findings and Decision

Undue disturbance

62. In deciding whether the Club has unduly disturbed the quiet and good order of neighbourhood, I have balanced the submissions made by the complainant, the Club, Police and Council.
63. A level of disturbance from the normal operation of the Club 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 Club has, at times, unduly disturbed the quiet and good order of the neighbourhood.
64. In making this finding, I have placed weight on the acoustic reports of 3 August 2022 and 14 December 2022, which demonstrate that the Club's outdoor entertainment area required acoustic modifications in order to comply with the LA10 criteria. I have also had regard to the development application process, which has been met with concerns from both the public and Council and, in my opinion, demonstrates the Club made significant alterations to its premises and business operations without adequate approvals in place nor regard to the effect this would have on the amenity of the surrounding community. Submissions to Council as part of this process indicate that the disturbance associated with the venue includes patron behaviour after consumption of alcohol, including when leaving the Club. I am, however, encouraged that the Club went through this process with Council and is adopting suitable measures to mitigate disturbance.
65. The complainant also raised issues related to parking, but this is outside the scope of issues that can be addressed by L&GNSW.

Regulatory Outcome

66. 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. I acknowledge the order of occupancy is strongly in favour of the Club. I also acknowledge the Club's construction of the outdoor deck is a significant change in its operations and the way it provides live entertainment. 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 operation do not unduly disturb the quiet and good order of the neighbourhood.
67. It is encouraging that the Club has taken this disturbance complaint seriously and taken action to address the issues raised. Restricting the times outdoor live music is provided and limiting the number of performers, often to just a soloist, shows a commitment to

minimising the impact on neighbours. The complainant has submitted that when the Club was acting within these restrictions there was no disturbance, however they have noted the Club has not been consistent in enforcing these restrictions.

68. The Club engaged the services of an acoustic consultant, whose reports recommend several noise attenuation measures. The Club has submitted it is implementing all recommendations to minimise noise disturbance made in the report, including ongoing sound monitoring. The steps taken by the Club around the time of the report appear to have had a positive effect, as the complainant noted noise from the Club had diminished considerably.
69. Notably, the determination of DA2022/01028, regarding the provision of entertainment by way of outdoor amplified music, resulted in Council imposing various noise and patron management related conditions on the Club. Primarily, the Club is required to construct a partially enclosed area using specific acoustic materials, and outdoor live entertainment is now confined to this space. Council also imposed limits on the trading hours of outdoor live music and outdoor dining, maximum patron numbers, a requirement to conduct further testing, and a requirement to prepare and implement a venue management plan. These measures are extensive and, if followed, would appear to allow the Club to provide outdoor entertainment without causing undue disturbance.
70. Further, Council has imposed a condition stating that should it consider offensive noise has emanated from the Club, the Club will be required to submit an acoustic assessment recommending acoustic measures to ensure future compliance and the Club will be required to implement such measures within a nominated period. This clause addresses concerns regarding potential future disturbance.
71. Given the noise mitigation work the Club has committed to complete and the stringency of the conditions attached to Council's positive determination of DA2022/01028, I have determined to take no further action in this matter. This decision reflects my conclusion that while there have been instances of undue disturbance, the Club has shown it is capable and willing to implement mitigating measures to sufficiently manage its noise emissions. The complainant's submission stating the noise had improved, even if this improvement was allegedly not lasting, shows the mitigation strategies and recommendations within the acoustic reports can be effective. Coupled with the requirements now imposed by Council, there is sufficient evidence to conclude that suitable controls are now in place to address the risk of disturbance from the Club and I consider it would be overly burdensome for L&GNSW to impose additional regulatory measures in this context.

72. By taking no further action at this stage, I provide the Club with an opportunity to implement the recommendations in the acoustic reports and the requirements imposed by Council as a result of the development application determination, and to ensure staff are enforcing the previously implemented mitigation measures.
73. I also note given the proximity of the complainant and authorising resident's residential dwellings to the Club, that the complainants and local residents should understand a certain level of noise and disturbance is to be expected given the usage of the Club by the local community.
74. I am satisfied this decision is a proportionate and appropriate regulatory response to the identified risks of undue disturbance. Noting the residential area the Club is located in, I remind the Club of its obligations to ensure it does not unduly disturb the quiet and good order of the neighbourhood. The Club should be aware that if fresh and direct evidence is presented demonstrating an escalation of disturbance or poor management of disturbance issues, it is open for regulatory intervention to occur.

Decision Date: 17 January 2024



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 14 February 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

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 6 May 2022.
2. Copy of the liquor licence for Adamstown Bowling Club Co-op Ltd dated 9 August 2023.
3. Submission from City of Newcastle Council received on 19 July 2022.
4. Submission from NSW Police received on 21 July 2022.
5. Submission from the Club's solicitor in response to complaint, received on 21 July 2022.
6. Final submission from complainant received on 12 August 2022.
7. Final submission from the Club's solicitor received on 5 September 2022.
8. Copy of acoustic report by Muller Acoustic Consulting dated 3 August 2022 received 5 September 2022.
9. Submission from complainant in response to acoustic report dated 19 September 2022.
10. Revised acoustic report by Muller Acoustic Consulting dated 14 December 2022.
11. DA2022/01028 determined on 15 December 2023, and accompanying assessment report and approved plans.