
FILE NO: A22/0021918

COMPLAINANT: [REDACTED]

LICENSED PREMISES: Kahibah Bowling Club Co-operative Limited, Kahibah –
LIQC300240657

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, Liquor & Gaming, a delegate of the Secretary, Department of Enterprise, Investment and Trade, in relation to the complaint made in respect of Kahibah Bowling Club Co-operative Limited – LIQC300240657 (the Club) 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, a delegate of the Secretary, Department of Enterprise, Investment and Trade, warn Mr Adam Kluft, the Secretary of Kahibah Bowling Club Co-operative Limited, that he must ensure no future undue disturbance is caused by the operation of the club, including but not limited to the provision of live entertainment and patron noise.

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) of the Act which are:
 - a) the need to minimise harm associated with 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, and the operation of licensed premises, 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 22 March 2022, [REDACTED] (**the complainant**) lodged a complaint with Liquor & Gaming NSW (**L&GNSW**) alleging undue disturbance from the operation of Kahibah Bowling Club Co-operative Limited (**the Club**). The complainant lodged this complaint as a resident authorised by five other residents.

6. The complainant has provided a large volume of material regarding a development application dated April 2013, DA/1046/2013 which concerns a proposed outdoor extension to the Club and new roof area over the Club's bowling green. The material provided includes an objection letter issued to Lake Macquarie City Council (**Council**) dated 5 August 2013, Council Preliminary Assessment dated 26 August 2013, Council Development Assessment, and a Council Environmental Assessment dated 26 July 2013. The complainant submits that DA/1046/2013 identified potential noise disturbance should certain structural changes take place. The complainant submits that as a result the proposed roof for the bowling green area was not approved, and that it was noted no amplified entertainment is permitted to occur on the bowling greens.
7. The complainant alleges disturbance occurs weekly on Friday, Saturday, and Sunday evenings until 10:00pm and is caused by excessive noise from activities at the Club including live and amplified music from events located outside on the bowling green area. The complainant also states that the disturbance occurs when the entertainment is located inside the Club, and the doors are left open. These practices were alleged to have commenced from November 2021. Previously, the outdoor bowling green area was used primarily for lawn bowls with other events rarely being held.
8. The complainant submits that the noise from the Club interferes unreasonably with the comfort and ability to carry out activities within their residence. The noise can be heard over ambient noise from traffic, and it is excessive even while the complainant's doors are closed, and TV is operating. The complainant also states that the disturbance affects their ability to work from their residence. The complainant submits they have called the Club on several occasions between 2 November 2021 and 20 February 2022 with differing results from the Club depending on which staff member is rostered on duty. The complainant also submits that they have used their mobile phone to record the decibel level of noise from the disturbance inside their residence. On one occasion, they provided the recording to the Club, however the club staff member they engaged with dismissed the claim and no action was taken.
9. The complainant submits there have been several incidents where the Public Address System (PA) speakers have been switched on, broadcasting across the greens with no patrons outside and audible inside their residence. On these occasions, the Club was phoned and staff immediately switched off the PA system. The complainant submits that they have spent a significant amount of finance on renovations to the outdoor entertainment area of their residence, including installing a swimming pool, which was

completed in 2017 and are not able to utilise the area due to the disturbance from the Club.

10. The complainant submits that they called NSW Police on one occasion, however no Police arrived at the club.
11. The complainant submitted email correspondence between themselves and Council wherein Council staff state they have spoken with the Manager of the Club who advised there is sound monitoring equipment to ensure it is within its legal requirements and that the Manager is willing to discuss any concerns with those affected. The complainant states that Council advised them to contact L&GNSW to address their concerns.
12. The complainant seeks a remedy whereby the noise generated from the Club is limited so that it does not interfere with their ability to enjoy their private residence. The complainant also states they have not had any reason to complain about the Club prior to the issues noted in this complaint, starting in November 2021.

The Club, licence details, compliance history

13. The Club is located at 63 Kenibea Avenue, Kahibah and The Kahibah Bowling Club Co-Op Ltd ABN 52 069 232 319 has been the licensee since 22 December 1960. The current Secretary and Manager is Mr Adam Kluft (**Club Secretary**), who has held the position since 10 September 2021. The Club holds a club liquor licence and consists of a clubhouse and two bowling greens that are situated across the road from residential dwellings.
14. The Club's authorised trading hours for consumption of liquor are unrestricted on the premises. Take-away sales are limited to between 5:00am and midnight, Monday to Saturday and 10:00am and 10:00pm on Sundays. The Club's licence holds a non-restricted area authorisation and club functions authorisation. The Club's liquor licence is subject to numerous conditions relating to the club function authorisation. It is also subject to condition 3030 which reads "*No amplified entertainment permitted in the south outdoor deck area*" which has been imposed on the Club's licence since 22 October 2015.
15. The Club is also subject to an occasional extended trading condition that limits trade between midnight and 5:00am to no more than 12 occasions within a 12-month period, not including from midnight until 2:00am on 1 January each year or any other relevant period subject to Section 13 of the Act. The condition also requires that NSW Police, the local consent authority and the Secretary be notified 14 days prior to the extended trade.

16. L&GNSW records show there have been no previous noise complaints received in connection to the Club and the Club does not have an adverse compliance history.

The Club's temporary alfresco measures

17. The *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (the Code), sets out types of development that may be carried out without the need for development consent. Under Subdivision 20C Outdoor dining – registered clubs of the Code, the use of the premises of a registered club as an outdoor dining area associated with lawful food and drink premises is development specified for the Code if the premises are located on community land within the meaning of the *Local Government Act 1993*, or private land.
18. Under the NSW Government's emergency temporary alfresco measures implemented as part of the NSW COVID-19 economic recovery, licensed premises including registered clubs can temporarily operate outdoor dining on private or public land, and land associated with a registered club, such as bowling greens, and are development exempt. These temporary measures are in place until 31 December 2023 and after this date the measures will cease to operate.
19. On 5 August 2022, the Independent Liquor & Gaming Authority (ILGA) approved a temporary change of boundary application for the Club that included the bowling greens area. In this process ILGA imposed a condition on the Club's licence relating to temporary outdoor dining. The condition required that:
- food must be available to patrons within the outdoor dining area when it is operating,
 - a copy of the approved plan of the licensed boundary must be made immediately available for inspection by Police, Council and L&GNSW,
 - patron capacity must not exceed the approved limit of patrons at the Club,
 - trading hours of the area are limited to 10:00pm on Sunday to Thursday or 12:00am Friday and Saturday,
 - the temporary change to boundary will automatically lapse on 31 December 2023 and may be revoked earlier by L&GNSW, and
 - the licensee may sell alcohol from the indoor area of the premises to patrons using the temporary outdoor dining area provided that the Licensee ensures drinks are only consumed within the licensed areas, and gaming machines are not permitted in the temporary outdoor area.

Submissions

20. Between 22 March 2022 and 21 September 2022, various material was received from parties to the complaint, including the complainant, the Club, Police and Council. The material that is before the delegate is set out in **Annexure 1** and summarised below.

Council submission

21. On 2 May 2022, Council provided a submission in response to the complaint with material including three formal complaints lodged between 16 November 2020 and 24 February 2022 regarding noise from the Club and Development Application Notice of Determination DA/1046/2013. The complaints referenced disruptive noise from the Darby Ross Green, generated by events, live bands and amplified music occurring on weekends between 11:00am and 8:00pm.
22. The DA/1046/2013 states the hours of operation on the bowling greens and BBQ area are 8:30am to 8:30pm every day of the week, including Public Holidays and that the operating noise level of functions and entertainment provided is subject to a LA10 noise condition.
23. On 14 July 2022, Council provided further information and advised that there is no restriction on the consent of amplified entertainment on DA/1046/2013.

Police submission

24. On 25 May 2022, a submission was received from the Lake Macquarie Police District. Police submit that they have no concerns with the Club and that a search of their records showed no adverse incidents occurring at the Club.

Club submission in response to complaint

25. On 4 May 2022, the Club Secretary contacted L&GNSW to request an extension of time to provide a submission and discuss an acoustic report (referred to from paragraph 28 below) with the complainant. An extension was granted until 13 May 2022. The Club Secretary also stated that the Club was not operating any further live music events on the bowling green area until spring.
26. On 12 May 2022, L&GNSW received a submission from the Club. The submission states that an outdoor activation of one of its bowling greens was initiated on 2 November 2021 to revive the Club after the financial impact of the COVID-19 pandemic and subsequent temporary closure of businesses. The Club submits that there was a minimum financial loss of \$500,000 and without the events held on the bowling green area during the spring

and summer months the business would not have been able to financially recover, essentially being forced to permanently close. The Club noted this would affect the livelihood of its 20 staff members. The Club also submits that it supports several local organisations including charities, schools and community sporting groups and that the events have attracted a large amount of support from the community.

27. The Club submits that the live music being performed was 'modified along the way' to include a soloist performing between 4:30pm and 7:30pm on Fridays, and between 3:00pm and 6:00pm on Sundays. The Club states that it has never provided live entertainment beyond 8:30pm any day of the week and does not intend to due to the proximity of residential dwellings. The Club submits that during summer, the Friday evening entertainment was removed, and the Sunday entertainment was altered to include a trio every Sunday and a signature band every four to six weeks in response to the community support and high demand. The Club also submitted that from May 2022 until September 2022 all events were to be relocated inside the Club due to the cooler months, before recommencing for the summer.
28. The Club engaged an acoustic engineer from Muller Acoustic Consulting who conducted acoustic testing on 24 April 2022 while a live band was performing on the bowling greens. The Club submitted a copy of the acoustic report prepared by Muller Acoustic Consulting, dated 28 April 2022 (**the Acoustic Report**). The Club submits that a copy of the Acoustic Report was provided to the complainant for review.
29. The Acoustic Report outlines that attended noise monitoring was undertaken on Sunday 24 April 2022 between approximately 2:00pm and 2:40pm with receivers placed at [REDACTED] and [REDACTED] Kahibah. The Acoustic Report advises that the noise measurements were taken during clear and calm weather conditions for a duration of 15 minutes while the band was performing on the southern green of the Club. The Acoustic Report adopted historic noise data from 2018, where testing had been conducted approximately 300 metres east of the Club, at the intersection of Wallsend Street and Kenibea Avenue, Kahibah, to establish the ambient noise level of the suburban residential environment.
30. The Acoustic Report notes that the noise levels were measured against the standard LA10 criteria issued by the ILGA and the noise levels recorded at both monitoring locations on Sunday 24 April 2022, were above the ILGA criteria. The Acoustic Report further states that the sound power levels for the band were calculated at 121dBA, which is approximately 27dB higher than a soloist/duet that averages 94dB.

31. The Acoustic Report recommends additional measures be included in the operation of performances at the Club. These measures include not allowing bands that are louder than 100dBA to perform in any external areas and restricting any external live performances to a soloist or duet as long as they are properly managed or oriented to minimise noise emissions.
32. The Club submitted that it intended to comply with the recommendations made in the Acoustic Report including only having soloists or duet performances on the bowling greens with a restriction in the amplifiers to ensure compliance is met. The Club also submitted that it would not host any live entertainment on the bowling greens beyond 8:30pm any day of the week and would keep a register with complainant details for any noise disturbance issues to ensure the Club acts appropriately.

Complainant final submission and further complaint material

33. In response to the Club's submission, the complainant provided a final submission on 10 June 2022. Supporting documents provided with the submission included a Statement of Environmental Effects Report dated April 2013, a Noise Impact Assessment dated 25 October 2013, and a Letter issued by the Club to residents promoting the outdoor entertainment.
34. The complainant submits the initial complaints were lodged under the assumption that there was a Council Development Application and Determination in place that prohibited amplified outdoor entertainment on the bowling greens, and that noise levels emanating from the Club do not reach a level above 5dB of the ambient level in the area. It was noted the supporting documents from 2013 relevantly supported this point. The complainant also submits that several authorising residents within proximity to the Club are not able to enjoy their private entertainment areas including inside the dwellings and outdoor pool recreation areas due to the level of noise emanating from the Club.
35. The complainant submits that a local childcare centre located across the road to the Club and a primary school in the area also have noise restrictions imposed on them to limit their noise levels. The complainant states that the authorising residents' wellbeing has been significantly impacted by the noise disturbance, which has caused vibrations that resulted in shaking of walls, windows and floors during performances. The complainant stated that noise levels are at times so loud that normal conversation is not possible in the outdoor areas of their residences, and residents are unable to work from within their private residences and are having to alter their daily activities to attempt to prevent being disturbed by the noise.

36. The complainant submits they generally accept the results of the Acoustic Report; that the noise levels from the Club are excessive of the ILGA criteria. However, they dispute the Club's claim that the band performing during the noise testing was the loudest band that performs on the bowling greens, stating other bands have been notably louder.
37. The complainant submits that the recommendations within the Acoustic Report do not guarantee to mitigate the noise disturbance, but merely suggest how compliance may be achieved. They are concerned that if amplified speakers are situated outside facing residential dwellings then the noise level will remain excessive of the ILGA criteria.
38. The complainant submits that they participated in a meeting with the Club Secretary on 25 May 2022 to discuss the complaint and described these discussions as amicable and productive. The Club Secretary noted he wished for open lines of communication between the Club and its neighbours, including directly contacting him if required. The complainant states that the Club accepted the outcome of the Acoustic Report which outlined improvement was required for the management of complaints at the Club and live entertainment events. The complainant also submits that they do not wish the Club to be forced to close and believe that a solution can be agreed upon where the financial viability of the Club is successful without causing undue disturbance to residents. The complainant raised several concerns during the meeting which the Club has accepted and stated its intention to put measures in place to address. This included the Club previously misunderstanding the noise levels at which it was permitted to operate, that complaints made had sometimes not been passed on by individual staff, that the Club was looking into purchasing a handheld sound monitor to ensure operations are within noise level limits, that notice would be provided of larger events to be held on the bowling greens, and the bar and entertainment in the outside area will finish no later than 8:30pm, and 6:00pm on Sunday.
39. The complainant submits that upon further reflection of the meeting and Club's submission, the complainant and authorising residents continue to have concerns that should amplified entertainment continue to be provided on the bowling greens, there will be an impact on both the wellbeing and financial interests of the residents. The complainant submits the stated intent of the Club to increase external operations to eight months of the year, rather than just during summer, means there is a permanent change to the business model of the Club rather than a temporary measure to recoup Covid-19 related financial loss.
40. The complainant submits that it is their strong preference for no outdoor amplified entertainment to take place on the bowling greens. However, if the entertainment is

permitted, the complainant requests that it be managed appropriately and not cause any undue disturbance with additional measures put in place including limitation of operating hours, limitation of days on which amplified entertainment is permitted, limitation on the type of performances to those that produce less noise, speakers to face away from residences, the Club utilising a noise meter, setting up an appropriate complaints process for residents, and additional staff located outside to measure noise levels and conduct patron management.

41. Between 2 February 2023 and 7 March 2023, the complainant provided further material including copies of video and audio recordings of music levels recorded on their mobile phone from live performances held at the Club on 26 January 2023 during the Club's Australia Day event. The complainant submits the Club continues to create undue disturbance from the music levels of the bands performing at the Club and maintains their position that no outdoor amplified entertainment should take place on the bowling greens.

Club final submission

42. On 29 June 2022, a final submission was provided by the Secretary of the Club. The Club reiterates that it accepts the findings of the Acoustic Report and states that by implementing the Acoustic Report's recommendations its noise levels will be effectively managed. The Club also states that during the meeting with the complainant, the Club advised it would purchase its own sound measuring device to accurately record the decibel levels during amplified entertainment to ensure compliance.
43. The Club submits that it has proposed to cease amplified entertainment on the bowling green area by 8:30pm at the latest and does not agree that it is appropriate or necessary to restrict the entertainment on specific days of the week, noting the LA10 criteria permits activity between 7:00am and 12:00 midnight daily. The Club also submits that it does not intend to consistently operate amplified entertainment until 8:30pm on the bowling green, with the intended schedule to include Friday, Saturday, and Sunday evenings. The Club states that the intended period during Sunday evenings is between 3:00pm and 6:00pm, however for specific events and public holiday periods this may be extended until 8:30pm.
44. The Club reiterates that to be financially viable and continue to support the community it needs to be able to provide entertainment on the bowling greens. It submits there is a large amount of support from the local community, evident by the number of patrons that attend its events. The Club submits that any additional restriction of its trade would be

detrimental to the business. It was noted the upkeep of the land and facilities includes rates and taxes and costs the Club a considerable amount of money. The Club acknowledges the position of the complainant and states it has a duty to ensure the business is utilised in the best interest of all stakeholders while ensuring compliance with all legislative provisions. The Club submits that implementing the recommendations within the Acoustic Report and complying with legislation will provide it with an opportunity to continue to provide live entertainment for the local community and mitigate the disturbance caused to the complainant.

45. On 21 September 2022, the Club submitted that it is in the process of organising for an automated sound adjustment meter to be installed which will automatically turn the music down should the noise level hit above a pre-determined level. The Club stated that the installation of the equipment will cost approximately \$20,000 at its own expense.

Further complaint material

46. On 11 August 2022, Council advised that it had not received any further complaints in relation to the operation of the Club and noted it would not be in Council's best interest to take any action against the Club in relation to noise complaints on hand until the current L&GNSW disturbance complaint has been determined.
47. Following their final submission, the complainant contacted L&GNSW on numerous occasions to advise of further instances of alleged disturbance. The complainant provided written accounts, noise measurements, and video footage of various instances of bands performing at the Club. The complainant submitted that the frequency of large bands performing at the Club had increased, indicating a clear escalation in the disturbance. This is despite the complainant making ongoing complaints to the Club.
48. On 9 February 2023, the Club contacted L&GNSW and advised it has held several meetings with all complainants and it is taking action to attempt to find a solution for the complainants. The Club hosted a live band performance on 26 January 2023 to test sound levels at the boundary of the affected residences. The location of the stage and speakers were being moved in an attempt to direct noise toward the childcare centre which is not open on weekends. The Club also undertook to investigate the viability of alternative stage construction and speaker stands to further mitigate the bass being felt by the residents. The Club alleged that all complainants except for the lead complainant in this matter were willing to work with the Club to find a solution.

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

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

The order of occupancy between the licensed premises and the complainant

50. The Club has operated under its current liquor licence since 22 December 1960. According to Council records the Club building had alterations completed as early as 1983. This predates the complainant who has resided at their address for approximately seven years and seven months. This fact is not in dispute, 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

51. The material submitted by the Complainant and Council indicates that there have been minor changes and extensions made to the Club over the last 50 years. The complainant submits that they completed structural changes to their residence in 2017 including an alfresco area with a swimming pool.

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

52. In November 2021, the Club commenced holding events on the bowling greens area with amplified music from live entertainment. The Club alleges it implemented the activity to revive the Club after the financial impact of the COVID-19 pandemic and subsequent temporary closure of business. The bowling greens were also utilised to ensure compliance with COVID-19 safe practices. The implementation of these events has attracted numerous patrons and received support from the local community. Prior to November 2021, the Club only provided live amplified entertainment from within the internal areas of the premises.

Findings and Decision

Undue disturbance

53. In deciding whether the club has unduly disturbed the quiet and good order of the neighbourhood, I have balanced the submissions made by the complainant, the Club, Police and Council. I have also had regard to the context in which the Club operates and the close proximity of the Club and neighbouring residents.

54. The material provided by the complainant outlines causes of disturbance including patrons smoking on the boundary line to adjoining residential dwellings and noise from the PA system, however, focuses significantly on the noise from the live amplified entertainment on the bowling greens.

55. It is reasonable to expect some level of noise will be generated from the normal operation of the Club, including noise from amplified entertainment and patrons. Additionally, it is clear that the unique location of the Club's bowling greens and the proximity of the complainant and authorising residents' dwellings is a significant factor to any potential disturbance that arises. Based on the available material before me, 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. In making this decision I have given weight to the Acoustic Report that states noise levels from the bowling greens have, at times, failed to comply with the LA10 noise criteria. I note this data is a lot more reliable, and therefore given much more weight, than noise readings taken on mobile phones.
56. I note the submission by Police that they have no issues or records of any adverse incidents occurring at the Club. I have also considered Council records that state the hours of operation for the bowling greens and outdoor BBQ area are 8:30am to 8:30pm daily, including Public Holidays, and the current licence condition 3030 which states that no amplified entertainment is permitted in the south outdoor deck area.
57. It is apparent that the Club's expanded use of the bowling greens beyond recreational bowling activities has resulted in additional noise to the neighbourhood. The disturbance identified in this complaint emanates from the live amplified entertainment situated on the bowling greens, which is supported by the Acoustic Report. Consideration should be given to numerous factors including the surrounding environment, the Club's operation, and the permissible use of the bowling greens.
58. I have considered Council's submission advising that the Club is not identified as an exempt development under the relevant code and does require Council approval for ongoing use of the bowling greens for amplified entertainment. However, I have also considered Subdivision 20C Outdoor dining – registered clubs under the Code, and that the Club operates on private land. I have further considered that there are no restrictions on the Club's DA/1046/2013 relating to amplified entertainment being provided on the bowling greens and that Council submits it has provided no approval or objection to the Club broadening its activities to increase the Club's usability for its members and the local community. Council's submission makes it evident that should the entertainment provided on the bowling greens demonstrate compliance with the LA10 noise criteria, there is no requirement to restrict the Club's expanded use of its bowling greens.
59. The Club is located on a corner block and consists of a clubhouse and two bowling greens which are within the Club's licensed boundary. On the boundary of one of the

bowling greens and across the road are several residential dwellings. Council have not provided an objection to the use of the bowling greens as described and as the bowling greens are situated within the licensed boundary, the Club is permitted to offer outdoor dining and entertainment in accordance with the Alfresco Restart Package under the NSW COVID-19 economic recovery (at least until 31 December 2023). I do note the Acoustic Report stating noise levels exceeded the LA10 criteria on some occasions and am satisfied that the Club has accepted the recommendations contained in the Acoustic Report, has taken on feedback from the complainants and as a result implemented measures to mitigate the disturbance.

Regulatory Outcome

60. 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 have had particular regard to the context in which the Club operates and Council's submissions.
61. I acknowledge that the order of occupancy is in favour of the Club and note that given the proximity of the complainant and authorising residents' residential dwellings to the Club, the complainants and local residents should understand that a certain level of noise and disturbance is to be expected given the usage of the Club by the local community.
62. I accept that the Club's activities have changed in the last two years to provide services in addition to recreational bowling activities, to revive the Club financially and ensure it continues to provide support to numerous local organisations and charities. I note the activity of providing outdoor dining and amplified entertainment on the bowling greens has seen an increase in patron numbers during its operation. Regarding the additional activities, particularly the provision of amplified entertainment, I note Council's submission that there are no current conditions in place to restrict this type of activity occurring and there are no objections for its continued use.
63. I acknowledge the Club has been responsive to the complainant in an attempt to address and resolve their concerns. The Club Secretary commissioned the acoustic assessment, submitted their intention to implement all recommendations outlined in the Acoustic Report, proposed additional remedies to the complainant in the form of ensuring an open line of communication should further disturbance occur, and undertaking to task Club staff members with taking noise level measurements during amplified entertainment events using the Club's sound monitoring device. I have considered the Club's actions

to install an automated sound adjustment meter at its own expense, which will automatically turn the music down should the noise level rise above a pre-determined level. I have also considered the overall efforts made by the Club in addressing disturbance and accept the actions taken to be collectively positive efforts. I encourage the Club to continue to undertake additional voluntary measures where appropriate should it be advised of or become aware of any further issues.

64. I acknowledge the complainant has concerns regarding the effectiveness of the recommendations in the Acoustic Report and would prefer that restrictions are imposed to not allow amplified entertainment on the bowling greens. However, I do not consider the conditions proposed by the complainant that restrict the use of the bowling greens to be appropriate at this time.
65. I note that condition 3030 on the Club's liquor licence ensures no amplified entertainment is permitted in the south outdoor deck area, and that the measures implemented by the Club in response to this complaint will assist in mitigating future noise disturbance issues.
66. I have given consideration to the fact that the Club is governed by legislation administered by both L&GNSW and Council. In respect of this, I am of the view that where practicable any licence conditions relating to the use of the bowling greens are to be as consistent as possible with current development consents to ensure a balanced regulatory approach. It is not appropriate for me to consider imposing conditions that restrict the use of the bowling greens in circumstances where these conditions would act in opposition to the Council approval and thus create contradictory outcomes. This is an outcome which is particularly not warranted where the Club has demonstrated mitigating measures.
67. Accordingly, I have determined to issue a warning to the Club Secretary in this matter. This decision reflects my conclusion that while there have been instances of undue disturbance emanating from the Club, the Club Secretary has undertaken mitigating measures to address and improve the management of any future disturbance. I am satisfied the Club Secretary has been cooperative and active in addressing the complaint. This has been demonstrated by effectively communicating with all parties, commissioning an acoustic consultant, resulting in an acoustic assessment and acoustic report being completed, and organising a meeting to discuss the issues with the complainant and residents concerned.

68. In issuing a warning to the Club Secretary, I provide the Club Secretary an opportunity to implement the recommendations in the Acoustic Report and remind the Club to remain vigilant in ensuring no further undue disturbance is caused by the operation of the Club, proactively managing any disturbance, as well as continuing a direct line of communication with the complainant.
69. I am satisfied that this decision is a proportionate, measured, and appropriate regulatory response to the identified risks of undue disturbance. The Club should be advised that in the event further evidence is presented demonstrating undue disturbance or disregard for its responsibility in relation to mitigating noise, it is open for the matter to be reconsidered and further regulatory action to be taken.

Decision Date: 26 May 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 **23 June 2023**. A \$500 application fee applies. Further information can be obtained from Authority Guideline 2 published at

In accordance with section 36C of the Gaming and Liquor Administration Act 2007 this decision will be published on the Liquor & Gaming NSW website at www.liquorandgamingnsw.nsw.gov.au

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

1. Copy of the liquor licence dated 8 August 2022.
2. Section 79 Disturbance Complaint lodged by the complainant on 22 March 2022.
3. Material received from Lake Macquarie City Council received on 2 May 2022 and 14 July 2022.
4. Submission from NSW Police received on 25 May 2022.
5. Venue submission in response to the complaint received on 12 May 2022 and further material received on 29 June 2022 and 21 September 2022.
6. Final submission from complainant received on 10 June 2022.
7. File note from L&GNSW Inspector [REDACTED] regarding telephone call with Senior Environmental Health Officer [REDACTED] from Lake Macquarie City Council on 11 August 2022.
8. *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 - Subdivision 20C Outdoor dining—registered clubs* accessed on 16 August 2022.
9. *State Environmental Planning Policy (Exempt and Complying Development Codes) Further Amendment (Outdoor Dining) 2021* – Published 8 October 2021.