

**FILE NO:** A23/0026220

**COMPLAINANT:** ██████████

**LICENSED PREMISES:** Shoal Bay Country Club Hotel, Shoal Bay – LIQH400119267

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

**LEGISLATION:** *Liquor Act 2007*

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## SECTION 81 DECISION

Under Section 81 of the *Liquor Act 2007* (the Act) I, Jane Line, Executive Director, Regulatory Operations & Enforcement, Liquor & Gaming, a delegate of the Secretary, Department of Enterprise, Investment and Trade (Delegate), in relation to the complaint made in respect to Shoal Bay Country Club Hotel (the Hotel) have decided to **take no further action**.

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## REASONS FOR DECISION

### Legislative framework

1. Section 79 of the Act provides that a prescribed person may complain to the Secretary, that the quiet and good order of the neighbourhood of the licensed premises is being unduly disturbed because of the manner in which the business of the licensed premises is conducted, or the behaviour of persons after they leave the licensed premises (including, but not limited to, the incidence of anti-social behaviour or alcohol-related violence).
2. For the purpose of section 79 of the Act, a person who has standing to make a complaint includes a person who is a resident in the neighbourhood of the licensed premises and is authorised in writing by two or more other residents.

3. Section 80 of the Act enables the Secretary to deal with a complaint by way of written submissions from the licensee and any other person the Secretary considers appropriate. After dealing with the complaint, section 81 of the Act provides that the Secretary may decide to impose, vary or revoke licence conditions, issue a warning, or take no action.
4. In exercising functions under the Act, the Secretary must have regard to the Objects set out in section 3 of the Act and must have regard to the matters set out in section 3(2) which are:
  - a) the need to minimise harm associated with the misuse and abuse of liquor;
  - 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 11 June 2023, [REDACTED] (the complainant) of [REDACTED] [REDACTED] lodged a complaint with Liquor & Gaming NSW (L&GNSW) alleging undue disturbance from the operation of the Hotel. The complainant lodged the complaint as a resident authorised by six other residents.
6. The complainant stated that the Hotel has extremely loud live music and singing by patrons seven nights a week, commencing from around 4:00 – 5:00pm. This music previously stopped around 9:00pm, but for the last six months has been regularly continuing until and after midnight. The complainant alleged that the Hotel's loud music, including having a DJ, now often lasts until 2:00am. The complainant also noted they can hear loud yelling and singing from intoxicated patrons as they leave the Hotel. The complainant stated it is impossible to sit on their balcony and have a conversation or watch television in their lounge. When they go to bed they need to close all windows and doors to block the noise.
7. The complainant stated the Hotel has no walls, roof, or soundproofing to stop noise spreading to the surrounding neighbourhood and patrons continue to litter the streets with bottles, glasses and broken glass.

8. The complainant noted they contacted the (now former) licensee on several occasions in 2021 when the noise reached “ridiculous levels”, particularly after midnight. Noise from live music would often stop for the night after the licensee had been contacted, but there was no long-term reduction in disturbance. The complaint alleged there has been no attempt to address the issue in the last three years, with the noise getting notably worse in the six months before the complaint was lodged.
9. The complainant’s desired outcome is for the licensee to comply with their noise related licence conditions. They want the licensee to install structural noise insulation, and to control the behaviour and noise of patrons both inside and outside the Hotel.

*The Hotel, licence details, compliance history*

10. The Hotel is located at 35-45 Shoal Bay Road, Shoal Bay and operates under a full hotel licence. A review of the location and surrounding environment of the Hotel utilising open-source internet searches shows that the Hotel is located on a waterfront that is lined with both commercial and residential properties, in an area of dense residential development.
11. The Hotel has held its licence since 29 December 1954. Mr Beau James Wilson has been the licensee since 31 October 2022. PDA HOLDINGS PTY LTD has been the business owner since 28 November 2016 and premises owner since 29 May 2017. Trading hours for consumption on premises in the Sports Bar, Beach Bar and Mermaids Bar, and first floor Bar & Bistro are 5:00am to 2:00am Monday to Saturday and 10:00am to 12 midnight on Sunday. Trading hours for consumption within other areas of the licensed premises are 5:00am to 12 midnight Monday to Saturday and 10:00am to 12 midnight on Sunday.
12. The Hotel’s licence is subject to several disturbance related conditions including an LA10 noise condition and conditions relating to security, plan of management, and incident register.
13. According to L&GNSW records, the Hotel has been subject to 16 complaints since 2014. The complaints include incidents of glassings, intoxication, violent conduct, anti-social behaviour, and seven complaints specifically in relation to noise since 2019.

**Submissions**

14. Between 21 July 2023 and 3 January 2024, various material was received from parties to the complaint, NSW Police and Port Stephens Council (Council). The material that is before the delegate is set out in Annexure 1 and is summarised below.

### *Council*

15. A submission was received from Port Stephens Council on 21 July 2023. Council advised that its compliance team had received no recent disturbance complaints regarding the Hotel, with the exception of one complaint in December 2021. This complaint was anonymous and provided little detail. Hotel management refuted the complaint and Council determined to take no further action.
16. Council noted that several approvals have been granted for the Hotel in recent years, with none of these approvals including conditions restricting the operational hours of the Hotel. However, the recent approvals numbered 16-2023-168-1, 16-2021-117-1, 16-2019-441-1, and 9-2019-195-1 all include an 'amenity' condition regarding the ongoing use of the premises that states, "the business must be conducted, and customers controlled at all times so that no interference occurs to the amenity of the area, the footpath, adjoining occupations and residential or business premises."
17. Council advised there are no pending development applications for the Hotel.

### *Police*

18. A submission was received from Port Stephens – Hunter Police District on 30 July 2023. Police provided information regarding 56 COPS entries dated between November 2020 and the time of the submission. These entries noted incidents at the Hotel including sell liquor to minor, minors on premises, public urination, malicious damage, assault, fail to quit, intoxication, affray, drug possession, drug supply, assaulting a police officer, sexual assault, offensive behaviour, move on directions, and noise disturbance. The information provided shows that the patrons involved in the majority of these incidents were affected by alcohol, with many instances of severe intoxication.
19. Of note, Police advised that on 31 December 2022 licensing police spent a considerable amount of time and resources at the Hotel due to its New Years Eve celebrations where over 1,000 patrons were in attendance. While Police were present there was an assault that resulted in the hospitalisation of a patron, and a separate incident where a security guard was assaulted while ejecting a patron. Fifteen patrons were ejected from the Hotel for intoxication and four infringement notices were issued to patrons for failure to quit. Police also noted their concern with an incident in May 2023 where a security guard working at the Hotel was charged with assaulting a patron.
20. At 10:30pm on 28 July 2023, covert licensing police attended the Hotel. At the time of Police attendance there were about 100 patrons inside, which Police note is well short of the Hotel's usual patronage of around 300 to 500 people.

21. At 12:30am on 29 July 2023, following their attendance at the Hotel, licensing police attended the complainant's address. When Police stood on the complainant's open balcony, they could clearly hear patrons talking inside the Hotel. When inside the residence with all doors closed Police could still hear patrons talking inside the Hotel. Police noted the noise was not 'excessive' at this time but could be heard.
22. Police noted that the issues contained in their submission, including criminal and anti-social behaviour, have been ongoing for many years. Police stated the frequency of their attendance at the Hotel over the years for this conduct "is very disturbing." Police argued the incidents are directly attributable to the operation of the Hotel. The offences that occur at the Hotel are said to be often vicious, involve many patrons, and have led to hospitalisations.
23. Police stated the community are the people who face the day-to-day issues, and they must be listened to. Police note the actual number of incidents is likely higher than the reported number, as people often don't report crimes for a variety of reasons.
24. Police submitted that the conduct of the Hotel has been occurring far too frequently and has been negatively affecting the surrounding community. Police stated the statistics confirm the criminal and anti-social behaviour is fuelled by excessive consumption of alcohol.
25. Police noted their support of the community in this matter and that the Hotel is situated in a unique location attended by many families year-round. Concerted efforts are being made by Police to reduce the harms of alcohol and general disturbance to the quiet and good order of the neighbourhood. Police stated that this is an opportunity for authorities to take preventative action to a problem rather than waiting to react to a situation.

#### *Hotel response*

26. In response to the complaint and the submissions from Police and Council, the Hotel engaged solicitors, Hatzis Cusack Lawyers, to provide a submission on its behalf. The submission was received on 11 September 2023.
27. The Hotel's solicitors describe the Hotel's business and operations as follows:
  - It is a coastal hotel which offers a variety of facilities including bars, dining spaces, function rooms, conference facilities, entertainment, and lounge areas.
  - Since acquiring the Hotel in 2016, the current owners have spent around \$17 million on renovations and upgrades to the Hotel. Published articles which reported on this remodelling of the Hotel were enclosed.

- As a result of this remodelling the Hotel attracts considerable patronage with around 5,500 to 6,000 patrons a week, averaged over the year. These patrons are comprised of locals, people in the wider region, and many domestic and international tourists.
  - The Hotel offers ‘penthouse accommodation’ and there is accommodation available at the adjoining Ramada hotel.
  - The Hotel is busiest during the summer period and operates according to its Plan of Management and Security Management Plan.
  - The Hotel is held in high regard by members of the local community, and 80 letters of support were included with the submission.
  - Averaged across the seasons, the Hotel employs around 150 staff.
28. The submission noted that the subject complaint was made by an anonymous person who has resided in Shoal Bay for approximately three years; that is, after the renovations by the current owner were completed. The submission argues the complaints expressed are general and do not refer to specific times, dates, events, or incidents. The submission states that the complainant only contacted the Hotel once, in 2021, at which time they spoke to the former licensee. It is stated that the former licensee has confirmed they received a complaint in 2021 on one occasion, at which time they acted immediately by adjusting the music volume. The former licensee then discussed the complaint with the Hotel’s management and security teams to require they monitor noise and minimise noise emissions. According to the submission no further complaints have been received by the Hotel.
29. The Hotel submitted it invites co-operation with its neighbours. A copy of a letter issued by the current licensee to neighbours by way of a letter box drop was included in the submission. This letter provided a contact number that can be called with any issues regarding the Hotel’s operations, and a statement that the Hotel will try to find a swift resolution to any issue.
30. The Hotel voluntarily operates a courtesy bus service on “busier nights”, a measure designed to minimise noise from departing patrons.
31. The submission noted a security contingent is employed on Friday and Saturday nights, which includes patrols of surrounding streets. Responsible Service of Alcohol (RSA) marshals are also regularly deployed on busier nights. On nights when entertainment is held, ‘door hosts’ are deployed to help monitor patron behaviour. Noise checks by security

and managers are regularly undertaken in the surrounding area. Copies of incident register entries were provided, evidencing these noise checks.

32. The submission argued the Hotel is in a tourist area with many short-term rentals that attract a number of house parties. These parties are unregulated and may be mistaken for noise emanating from the Hotel. This occurrence was noted both in the report of Mr Purcell (discussed below) and in the incident register entries.

33. Mr Adam Purcell, former Police Officer and independent consultant, was engaged to undertake covert surveillance of the Hotel. Mr Purcell undertook this surveillance over two nights in late August and early September, on a Friday and Saturday night. Observations made by Mr Purcell, as highlighted by the Hotel, include:

- Four security guards were on duty on the Friday night, and six on the Saturday, with the licensee being present on both evenings.
- Outdoor entertainment in the courtyard was only conducted until 9:00pm on both nights, with a DJ or live entertainment then continuing in the internal part of the Hotel until 1:30am. The outdoor courtyard has a retractable roof.
- Drink restrictions were noted to apply in the Hotel.
- The Courtesy bus was noted to pick up patrons at the front of the Hotel, away from residences.
- It was noted that the Hotel is the main tourist facility in the wider area, with few alternatives available for young people to socialise and be entertained.
- Patrons appeared well behaved and overall Mr Purcell concluded the Hotel deploys effective strategies to reduce the risk of adverse community impact.

34. Mr Purcell also made three recommendations:

- A security guard should be positioned at the entrance to the rear carpark on Tomaree Road prior to closing.
- The use of glassware should be limited to daylight hours only.
- An acoustic consultant should be engaged to determine the merits of closing the retractable roof after dark.

35. The Hotel stated that it would comply with the recommendations made by Mr Purcell.

36. The submission stated that outside of holiday periods and special event days, the Hotel only provides entertainment on Friday, Saturday, and Sunday nights. This entertainment is comprised of:

Friday

- Soloist in the courtyard from 6:00pm to 9:00pm
- DJ inside (enclosed area) from 8:30pm to 1:30am

Saturday

- Soloist in the courtyard from 2:30pm to 5:30pm and 6:00pm to 9:00pm
- Live band inside (enclosed area) from 8:30pm to 12:00 midnight and DJ from 12 midnight to 1:30am

Sunday

- Soloist in the courtyard from 2:30pm to 5:30pm and 6:00pm to 9:00pm

37. The submission argued that the complainant's statement that loud music, including having a DJ, until 2:00am is untrue. It is also argued that the complainant's statement regarding loud yelling and singing from intoxicated patrons leaving the Hotel is contradicted by Mr Purcell's observations that the perimeter of the Hotel is effectively managed with patrons being quickly transported away. The submission also notes several of the supporting letters the Hotel has received from local residents who live in close proximity to the Hotel, which are said to highlight the significant improvement to the management of the area surrounding the Hotel since the current owner acquired the Hotel.

38. Regarding the complainant's claim that there has been no effort to soundproof the Hotel, it was submitted that soundproofing works were undertaken as part of the renovations. The ground floor ceiling was sprayed with a sound dampening material and sound dampening panels have been installed at the rear of the stage area.

39. The submission noted that Council has not received any recent disturbance complaint, other than one anonymous complaint in 2021 that was dismissed by Council for lack of detail. The Hotel argued the lack of complaints is consistent with the observations made by Mr Purcell of a well-run licensed premises. It is submitted that if the complainant's allegations were true, Council would be receiving complaints from multiple local residents.

40. Regarding the Police submission, the Hotel stated a that highly selective summary of all COPS events that in any way relate to the Hotel was provided, and that these events



span a 33-month period. It is noted that copies of the COPS events themselves, which would have provided full details, were not provided. It is submitted that the evidence provided by Police must be considered in the context of the Hotel. That is, over the 33-month period for which the Police have provided information, the Hotel would have served approximately 800,000 patrons. In other words, there were on average fewer than two COPS events a month for a venue attracting around 24,000 patrons a month.

41. It is submitted that Police are seeking to paint a “disturbing” picture and wrongly characterise the Hotel as being associated with unacceptable levels of assault, disturbance, and anti-social behaviour. The number of COPS entries in itself does not suggest the Hotel is particularly problematic in the context of its patronage. Regarding these COPS events, Mr Purcell, a former Local Area Commander of Police, stated; “Whilst some of these events relate to anti-social behaviour directly attributable to the Hotel, a significant amount rely on untested linking to the venue due to proximity and hearsay ... the events produced by Police (both direct and ambiguous) seem commensurate and consistent with the normal operation of a large but well managed hotel over the time period sourced.”
42. It is noted that of the 56 COPS events, 13 relate to staff removing patrons from the Hotel due to beginning to show potential signs of intoxication or becoming argumentative, as they are legally required to do. If such people refuse to leave when asked, Police are called. In some cases, patrons resist being excluded and make claims of assault against staff or security who use reasonable force to exclude them. Sometimes staff or security are themselves assaulted by such people. The Hotel submits that these actions should be seen to reflect positively on the Hotel, as it is taking action to maintain a safe and pleasant environment, and should not be seen as somehow reflecting adversely on the Hotel as submitted by Police.
43. Supporting the claim that the Hotel does not have an unacceptable level of assaults, disturbance, or anti-social behaviour, the submission noted that while under the previous owners the Hotel had been on the State’s ‘violent venues’ list three times, it did not appear on any of the six violent venues lists that were published after the current owners took over (prior to the scheme being abolished). Furthermore, the submission noted the Hotel does not appear to be in a hotspot for alcohol-related assault on the hotspot map published on the BOCSAR website. Further, no penalty infringement notices or court attendance notices have been issued at any time alleging that the licensee has permitted intoxication at the Hotel.

44. In response to the Police statement that 'the community must be listened to', the Hotel submitted that, as shown in its 80 letters of support, the community has overwhelmingly thrown its support behind the Hotel, and regards it as a professionally run, well managed premises which is a substantial social and economic asset to its local community.
45. The Hotel's submission discussed the concept of 'undue disturbance', citing the Western Australian Court of Appeal decision *OSB Operations Pty Limited v Jansen* [2006] WA SCA 270 where it was stated: "While it is true that, in considering whether a disturbance etc is "undue", regard may be had to the circumstances of the complainant and the nature of the complaint, the test remains objective, in the sense that the disturbance etc must be one that would be regarded by a reasonable person as "undue", having regard for all of the relevant circumstances and taking into account what might reasonably be expected from premises of the kind licensed."
46. It is submitted that, in determining at what point noise amounts to "undue" disturbance, it must be borne in mind that the Hotel has traded from its existing premises for many years, and that the complainant has only recently moved in and must have been aware of the presence of the Hotel. The provision of entertainment (including live entertainment) is an ancillary use to the conduct of a hotel and is to be regarded as part of the normal activity of a hotel.
47. The Hotel's submission noted that the Act requires weight be given to the fact of prior occupancy by the Hotel. In the present case the order of occupancy favours the Hotel. The complainant has occupied their premises for three years while the Hotel licence has been in place since 1954. The submission noted historical documents suggest the Hotel was trading earlier than this, including during World War II. It appears that all of the surrounding development, in particular the development of surrounding units, has occurred with the Hotel in situ, and people moving into such developments should expect some level of patron and entertainment activity emanating from the Hotel.
48. It is submitted that, when balancing the benefits of the Hotel against its impact, it is clear that there is an overwhelming positive impact in this local community from the operation of the Hotel.

#### *Acoustic Report*

49. On 31 October 2023, the Hotel's solicitors provided the acoustic report prepared by Muller Acoustic Consulting, dated 27 October 2023.
50. Testing was undertaken at the boundary of the premises [REDACTED]  
[REDACTED] During the testing period, live music was performed in the

unenclosed courtyard area of the Hotel and DJs/bands played in the main room within the Hotel. These musical performances all took place over the course of weekends. The pre-midnight noise emission from the Hotel were estimated to exceed the LA10 noise criteria by 7 to 8dB. The post-midnight noise emissions were estimated to exceed the LA10 noise criteria by 12dB. Significant sources of noise from the Hotel, in ranked order, are live performances in the courtyard area, patron noise in the courtyard area, and music from the main room.

51. It was noted that measurements were taken from [REDACTED] and internal noise levels are likely to be 5-10dB lower than external levels.
52. The report made the following recommendations to reduce noise from the following areas:
  - For the courtyard area:
    - increase the bulkhead height of the entrance area behind the stage;
    - addition of an absorptive lining material to the internal facades of the stage area;
    - dampening to be added to the stage floor;
    - addition of an absorptive lining material to the overhead structure/cover; and
    - addition of an absorptive roof lining or louvres.
  - For the main room:
    - addition of an absorptive lining material and insulation to the underside of the stage floor;
    - re-mounting of the speaker to stack to isolate them from the floor, removing a potential transmission path;
    - additional absorptive material added to the rear of the stage;
    - additional absorption within the room itself; and
    - utilise additional speakers (at lower levels) throughout the main room to create the sound level required in lieu of generating a very high sound level at the front of the stage.
53. The Hotel's solicitors, noting the sound measurements were taken [REDACTED] and noting the background noise levels were established based on weekday activity, stated the objective level of sound affectation inside the complainant's residence is likely to be lower than the raw figures stated in the report. However, they also stated the Hotel acknowledges action should be taken to reduce the level of noise emissions.
54. The Hotel noted that some of the recommendations made in the acoustic report would require development approval from Council, may be objected to by other neighbours, and would potentially take months to implement. In the interest of implementing a more

immediate solution, the Hotel obtained a quote from sound engineering firm AVx Technologies Pty Limited for works regarding the installation of technology likely to reduce entertainment noise, lower volumes, and reduce external noise being emitted through the Hotel's sound system. The Hotel proposed further acoustic testing be conducted upon completion of the works to measure their efficacy. The complainant agreed to this further testing.

### *Second Acoustic Report*

55. On 20 December 2023, the Hotel's solicitors provided a second acoustic report by Muller Acoustic Consulting, dated 19 December 2023.
56. Noise monitoring was conducted on Friday 1 December 2023 between 6:00pm and 12:00 midnight and on Saturday 2 December 2023 between 12:00 midnight and 2:00am to coincide with entertainment being provided at the Hotel. The report found that the overall LA10 noise emission from the Hotel complies with L&GNSW noise criteria, with minor exceedances (5dB or less) in low frequencies. The report noted that noise emissions from the Hotel were generally masked by extraneous noise sources and noise emission from the Hotel was estimated to be below the ambient background noise levels.
57. Significant sources of noise from the Hotel remain unchanged, being live performances in the courtyard area, patron noise in the courtyard area, and music from the main room inside the Hotel. It was observed that all patrons were moved inside at 12:00 midnight.
58. The report noted that the following noise mitigation measures had been implemented to reduce noise emissions from the main room:
  - re-mounting of the speaker to stack to isolate them from the floor, removing a potential transmission path;
  - utilisation of additional speakers (at lower levels) throughout the main room to create the sound level required in lieu of generating a very high sound level at the front of the stage; and
  - all windows and doors along the northern and eastern façade of the building to be kept closed once live entertainment commences inside.
59. According to the report the noise mitigation measures implemented by the Hotel have resulted in a reduction of 8dB to 12dB of noise emission from the Hotel.
60. The Hotel's solicitors advised that the Hotel intends to maintain the noise mitigation measures that have been implemented. It is submitted that the noise amelioration

measures put in place by the Hotel in relation to entertainment have been effective in substantially reducing potential noise impacts, measured at the complainant's residence. It is further submitted that it is a sufficient and adequate regulatory outcome for the [Delegate] to accept the undertaking of the licensee and owners to act in accordance with the recommendations made in the Muller Acoustics report dated 19 December 2023 and to otherwise dismiss the complaint.

*Complainant comments following second acoustic report*

61. On 3 January 2024, the complainant provided comments on their observations of noise from the Hotel following the completion of the works and the second acoustic report. The complainant noted that there has been a small improvement which they believe is the result of the Hotel getting the live music to play at a lower level. The complainant states that any works have made minimal difference, and as soon as the band plays louder or the crowd starts singing the noise reaches the same levels as it previously did.
62. When music is not playing, the complainant states that patrons speaking loudly, yelling, and singing can still be clearly heard inside the complainant's residence after midnight. The complainant states they are not able to leave windows or doors open when trying to watch TV or sleep.
63. The complainant stated that on New Years Eve the Hotel set up a bar and DJ in the rear car park area which made the noise worse than usual. Police were called in large numbers on this night to deal with intoxicated patrons fighting and damaging property. The complainant states this demonstrates the new licensee has no respect for neighbouring residents or fear of action from L&GNSW despite their promises to address the issues.

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

64. The Act requires that the Secretary or Delegate have regard to the following statutory considerations:

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

65. The Hotel has operated under its current licence since 29 December 1954, and historical records suggest the Hotel traded in its existing location for some years before that. The complainant had occupied their residence for around three years at the time the complaint was lodged. Therefore, I consider the order of occupancy is in favour of the Hotel.

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

66. The submissions did not note any significant changes made to the complainant's residence. The Hotel has detailed substantial renovations costing approximately \$17 million that were carried out following the current owner's acquisition of the Hotel in 2016. The Hotel submitted that the improvement to the Hotel's appeal as a result of these renovations has caused significantly increased patronage and made the Hotel a tourist destination in itself. It is noted that these changes occurred prior to the complainant moving into their current residence.

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

67. The complainant submitted that noise from the Hotel had been getting worse in the six months prior to the complaint being lodged, with live music continuing until after 9:00pm and amplified/DJ music continuing past 12:00 midnight.

68. The Hotel's submission states that following the substantial renovations in 2016 the Hotel saw increased patronage, becoming a tourist destination. This change to the Hotel's operations would likely have caused the Hotel to increase the level of noise it was creating. However, it is noted that the complainant has resided in the current residence for only the past three years and moved in once these changes had already occurred.

69. It is noted the Hotel has implemented several noise mitigation measures as a result of recommendations contained in the acoustic report by Muller Acoustic Consulting dated 19 December 2023, including:

- re-mounting of the speaker stack to isolate them from the floor, removing a potential transmission path;
- utilisation of additional speakers (at lower levels) throughout the main room to create the sound level required in lieu of generating a very high sound level at the front of the stage; and
- all windows and doors along the northern and eastern façade of the building to be kept closed once live entertainment commences inside.

## **Findings and Decision**

*Undue disturbance*

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

71. A level of disturbance from the normal operation of the Hotel is to be expected, including noise from music entertainment, patrons, and pedestrian traffic. I do not regard this type of disturbance as undue in a general sense. It is also notable that the Hotel is situated on a commercial strip in Shoal Bay, a popular tourist destination. It is reasonable to conclude that a level of noise from people and entertainment, during reasonable hours, will be audible in this area.
72. Noteworthy in this matter is the order of occupancy being strongly in favour of the Hotel, along with the Hotel's general setting in a busy, mixed commercial and residential area. In these circumstances, I consider it reasonable to set a higher threshold for what should be considered 'undue' disturbance.
73. The first acoustic report identified notable breaches of the LA10 noise condition both before and after midnight. I also note that evidence provided by Police also suggested breaches of the LA10 condition post-midnight prior to the Hotel's acoustic testing. It is encouraging that the Hotel sought to undertake works and implement noise mitigation measures following this report. The second acoustic report noted a substantial reduction in noise emissions, with only minor breaches of the LA10 noise condition.
74. While acknowledging there had been a slight improvement in sound following the implementation of noise mitigation measures, the complainant maintains the Hotel still occasionally reaches the same noise levels as they did prior to this implementation, and specifically notes that when music stops patrons speaking loudly, yelling, and singing can still be clearly heard inside their residence after midnight.
75. I am satisfied that there is sufficient evidence before me to reasonably conclude that the Hotel has, prior to implementing noise mitigation measures, unduly disturbed the quiet and good order of the neighbourhood. In my opinion, however, the material does not suggest the Hotel continues to do so on an ongoing basis. On this point, I refer to my above comments that, given the specific context of this matter, the threshold for undue disturbance is high.

#### *Regulatory Outcome*

76. A significant cause of disturbance, as identified by the complainant and Police, was from the yelling and singing of patrons within the Hotel throughout the night, and loud noise from patrons leaving the Hotel and engaging in anti-social behaviour. The Police noted that during their inspection of the complainant's residence it was patron noise, and not music, that could be heard. Following his inspections, Mr Purcell recommended a security guard be positioned at the entrance to the rear car park on Tomaree Road prior to closing

and until the streets are clear to assist in deterring any behaviour that may impact on the community. The Hotel stated that it would comply with the recommendations made by Mr Purcell and I strongly encourage it to do so.

77. The Hotel is already subject to condition 3010 which requires that on Friday and Saturday nights when live entertainment is offered one licenced uniformed security personnel will regularly patrol the vicinity of those parts of the premises that are open for trade from 9.00pm onwards until the last patron has left the environs of the Hotel to ensure patrons of the premises do not loiter in the area or cause nuisance or annoyance to the neighbourhood. I acknowledge that the Hotel regularly provides more security than is legally required and I encourage it to continue to do so.
78. 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 historical undue disturbance. The Hotel is a large waterfront venue in a tourist area and attracts significant patronage. A level of resultant noise is to be expected from the operations of the Hotel. I also acknowledge that the order of occupancy is strongly in favour of the Hotel, and the significant renovations that led to the Hotel becoming a tourist destination occurred prior to the complainant moving into their residence. In this context the threshold for undue disturbance is high. However, responsibility lies with the Hotel to ensure it does not unduly disturb the quiet and good order of the neighbourhood.
79. The Hotel has demonstrated that it has taken this complaint seriously by obtaining an acoustic report and engaging a consultant to covertly inspect the premises, acting on the respective recommendations, and conducting further acoustic testing to ensure the mitigation measures implemented were effective. I note the evidence that these mitigation measures have resulted in the Hotel reducing its exceedances of the LA10 criteria from significant to minor. On this point I would remind the licensee that while minor exceedances of the LA10 criteria may not equate to 'undue' disturbance in the context of this matter (as discussed above), it is an enforceable condition on the Hotel's licence and the Hotel should implement all measures necessary to ensure compliance.
80. In acknowledgement of the Hotel's response to this complaint and the above finding that its noise mitigation efforts are proving effective, I have decided to take no formal regulatory action on this occasion. I do, however, remind the Hotel of its obligations in relation to ensuring the amenity of the neighbourhood, and encourage both Hotel and local residents to maintain a constructive relationship. I further encourage the Hotel to embed the recommendations made by Adam Purcell into its practises, and implement the noise measures contained in the acoustic report to further lower its sound output.



81. I am satisfied that this decision is a proportionate and appropriate regulatory response to the identified risks of undue disturbance. The Hotel should be aware that if fresh and direct evidence is presented demonstrating undue disturbance, particularly if this is due to it ceasing to implement the measures it has undertaken to apply to mitigate noise, it is open for a new disturbance complaint to be accepted by L&GNSW and for regulatory action to be taken. It is also possible at any time for L&GNSW or Police to take regulatory action against the Hotel if evidence is obtained of a breach of its LA10 noise condition.

**Decision Date:** 2 April 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 **30 April 2024**. A \$500 application fee applies. Further information can be obtained from Authority Guideline 2 published at <https://www.liquorandgaming.nsw.gov.au/resources/ilga-guidelines>

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

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

1. Section 79 Disturbance Complaint lodged by the complainant on 11 June 2023.
2. Copy of the liquor licence for the Shoal Bay Country Club Hotel dated 2 April 2024.
3. Submission from Port Stephens Council received on 21 July 2023.
4. Submission from NSW Police received on 30 July 2023.
5. Submission from the Hotel's solicitor in response to complaint, dated 11 September 2023.
6. Acoustic Report dated 27 October 2023 and accompanying letter from Hotel's solicitors dated 31 October 2023.
7. Acoustic Report dated 19 December 2023 and accompanying letter from Hotel's solicitors dated 20 December 2023.
8. Submission from Complainant, received on 3 January 2024.