
FILE NO: A19/0015853

COMPLAINANT: [REDACTED]

LICENSED PREMISES: Harbord Diggers – Mounties Group – LIQC300227642

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, John Coady, Manager Regulatory Interventions Team, a delegate of the Secretary, Department of Customer Service, in relation to the complaint made in respect to Harbord Diggers – Mounties Group (the venue) have decided to **take no further action** in relation to this matter.

REASONS FOR DECISION

Legislative framework

1. Section 79 of the Act provides that a prescribed person may complain to the Secretary, that the quiet and good order of the neighbourhood of the licensed premises is being unduly disturbed because of the manner in which the business of the licensed premises is conducted, or the behaviour of persons after they leave the licensed premises (including, but not limited to, the incidence of anti-social behaviour or alcohol-related violence).
2. For the purpose of section 79 of the Act, a person who has standing to make a complaint includes a person who is a resident in the neighbourhood of the licensed premises and is authorised in writing by two or more other residents.
3. Section 80 of the Act enables the Secretary to deal with a complaint by way of written submissions from the licensee and any other person the Secretary considers appropriate.

After dealing with the complaint, section 81 of the Act provides that the Secretary may decide to impose, vary or revoke licence conditions, issue a warning, or take no action.

4. In exercising functions under the Act, the Secretary must have regard to the Objects set out in section 3 of the Act and must have regard to the matters set out in section 3(2) which are:
 - a) the need to minimise harm associated with the misuse and abuse of liquor;
 - b) the need to encourage responsible attitudes and practices towards the promotion, sale, supply, services and consumption of liquor;
 - c) the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life; and,
 - d) the need to support employment and other opportunities in the –
 - (i) live music industry, and
 - (ii) arts, tourism, community and cultural sectors.

The complaint and background information

The complaint

5. On 28 August 2019, [REDACTED] [REDACTED] [REDACTED] lodged a complaint with Liquor & Gaming NSW (L&GNSW) alleging undue disturbance from the operation of the venue. The complainant lodged this complaint as a resident authorised by 15 residents.
6. The complainant alleges disturbance is a result of noise emanating from the outdoor area of the venue. This consists of noise from patrons, children and outdoor functions such as live bands, DJs and movie nights. Disturbance also arises from patrons leaving the venue and from music played inside the venue. Disturbance allegedly occurs most days, particularly in the afternoon and evenings from Friday to Sunday and on public holidays.
7. The complainant contends that when the residents moved into their residence in June 2018, the outdoor area, described by the complainant as a beer garden, did not exist. The complainant submits that since the venue recommenced trade significant changes have been made to the outdoor area, which has progressively transformed to cater to over 200 patrons in addition to outdoor functions.
8. Complaints were made to the venue management for several months without resolution. Consequently, the complaint has been lodged with L&GNSW. The complainant seeks a reduction in noise to a specified quantitative level and provides noise readings taken over several months. Alternatively, the complainant seeks closure of the outdoor beer garden.

The venue, licence details, compliance history

9. The venue is located at 88 Evans Street, Freshwater and Mount Pritchard & District Community Club Ltd (Mounties Group) is the licensee. The venue underwent a significant redevelopment before reopening in June 2018. The redevelopment introduced new facilities on site including a childcare centre, health and wellbeing facilities as well as a retirement village for seniors living, known as Watermark Freshwater. The authorising residents to the complaint reside at Watermark Freshwater with majority moving in around June 2018.
10. Within the licensed area on the ground floor of the venue there are several restaurants, dining areas, a gaming room, functions room and a main bar area. The indoor area leads to the outdoor area via two separate bi-fold doors and consists of tables, chairs, umbrellas and green space.
11. Watermark Freshwater is located on the upper floor and encompasses six multi-level residential apartment buildings. The upper level also features a bowling green and an unoccupied cafe. The two closest apartment buildings to the outdoor area are set back and face the coastline. The upper levels have a direct line of sight to the outdoor area.
12. The venue is a registered club and has unrestricted on-premises trading hours and holds a functions authorisation and non-restricted area authorisation. The venue's licence has two conditions relating to the club functions authorisation and a condition prohibiting drinks from being taken between the lower ground floor and the upper floor. There are no conditions relating to noise and the venue has no relevant compliance history.

Submissions

13. Between 27 September 2019 and 14 April 2021, various material was received from the parties to the complaint, NSW Police and Northern Beaches Council (Council). The venue was initially granted a number of extensions to provide a submission for the purpose of engaging with the complainant. Further extensions were granted until 29 February 2020 and then until 28 August 2020 to provide the parties additional time to facilitate continuing consultation and discussions to address the complaint. The extensions granted to the venue were agreed to by the complainant.
14. The material before the delegate is set out in **Annexure 1** and summarised below.

Council

15. Council provided a submission on 27 September 2019 and advise there was no recent history of complaints concerning noise from the venue. Council further submit there are no pending Development Applications for the venue.
16. Council note the venue's Development Consent DA2014/00875 granted in December 2014, is subject to conditions regarding noise. Council references condition nine of DA2014/00875 which places an obligation on the venue to ensure people within the neighbourhood and the surrounding area are not adversely affected from noise and other emissions.
17. Council advise DA2014/00875 requires compliance with the recommendations and requirements of the Noise Impact Assessment report dated 1 August 2014, prepared by Acoustic Logic (the 2014 Report). Relevant extracts of the 2014 Report are provided and states the venue will comply with a range of policies, each specific to the type of noise associated with the redevelopment. The 2014 Report notes the venue can comply with requirements of noise criteria established by L&GNSW, referencing the standard LA10 noise condition levels, and acoustic treatments have been provided in principle to ensure compliance.
18. Council further advise DA2014/00875 refers to compliance with recommendations and requirements of the *Management Plan Harbord Diggers Not Dated, Harbord Diggers Mounties Group* (the Management Plan). Extracts of the Management Plan are provided and details internal processes and procedures to manage and monitor noise at the venue. The Management Plan addresses live entertainment and amplified music, stipulating that amplified external live entertainment will be restricted to daylight hours and live entertainment inside the venue will be controlled by the venue in accordance with the Noise Management Plan.

NSW Police

19. Police provided a submission on 3 October 2019 and advise that since the venue reopened in July 2018, records show that Police have not been called to attend the venue in relation to a disturbance or noise complaint. Police provide a summary of four inspections conducted at the venue between 25 April 2019 and 28 September 2019, relating to general business inspections and covert and overt licensing inspections.
20. Police attended the venue on Thursday 25 April 2019 (ANZAC Day) at 1:15pm, in which the venue also utilised a limited licence. Police observed empty glass bottles on the front

walls of the residential complex and a queue of approximately 200 patrons on the footpath waiting to enter the venue. These issues were raised with the venue and addressed.

21. On Saturday 14 September 2019, Police attended the venue at about 4.30pm and while stationed at a garden area near the apartment buildings, patron noise from the outdoor beer garden area and music from a two-piece band playing inside the venue was audible. Police note the bi-fold doors leading to the beer garden were open and while they were in the beer garden area described the noise levels as reasonable. Police then engaged with residents of the complex who described the noise levels as moderate but some noise could be heard in their bedroom. Police returned to the venue at 10.45pm and noted all doors leading to the outdoor beer garden on the northern side of the venue were closed. Police observed a DJ playing inside the venue however no noise could be heard from the outdoor area.
22. During evening inspections on Saturday 27 September 2019 at 11pm and Sunday 28 September 2019 at 10pm, Police observed the outdoor beer garden area to be closed with the lights turned off and no patrons in the area. No noise from activities inside the venue was audible. Police did not identify any other issues that would be expected to cause disturbances to nearby residents.
23. The Police summary notes that the venue operates the outdoor area as a beer garden where patrons gather to socialise, consume food and beverages. Police state this area appears to close by 10pm, with patrons moved inside the venue and the bi-fold doors closed.

Venue response to complaint

24. The venue submits the complaint should not be considered under section 79 of the Act as the retirement village is located on the licensed premises and not within the neighbourhood. Accordingly, the complainant and authorising residents to the complaint reside in apartments which are located on the actual licensed premises and not in the neighbourhood and do not meet the requirements set out in section 79(3)(a) of the Act to lodge a complaint. Further, the retirement village is located on a single land title owned by Mounties Group and can be considered a premises related to a licence, meeting the definition of a licensed premises.
25. The venue asserts the complaint is from a relatively small group of residents who reside in 11 apartments in the retirement village, out of a total of 96 apartments in the entire complex. In response to the complainant's assertion that apartments were purchased with the understanding that the outside area would only be gardens, the venue submits this to

be incorrect and disingenuous. In support the venue provides a marketing brochure for Watermark Freshwater issued in October 2015. The brochure displays the proposed site plan marked with an outdoor 'club dining' space and further lifestyle images of the outdoor area marketing it as a hospitality space complete with umbrellas and dining options. The venue states the sales agents engaged in handling the contracts for prospective buyers confirmed that all plans and models of the retirement village and surrounding precinct clearly depicted the outdoor 'club dining' space and all prospective buyers were explained that the intended use was as an outdoor hospitality area.

26. The venue refutes allegations that noise from the outdoor area is unreasonable and states that no evidence has been provided regarding excessive noise from children. The venue contests the accuracy of the sound readings provided by the complainant, submitting they were taken using an app on a mobile phone and lacks further information such as the dates and times of the testing. The venue also submits the benchmark noise level provided by the complainant in the data is based on noise levels for the childcare centre and not referable to the outdoor area or the relevant development application.
27. The venue submits professionally measured noise levels are significantly lower than those reported by the complainant. Included with the submission are copies of the 2014 Report, a report prepared by WSP Acoustics dated 16 June 2015 relevant to a modification to DA2014/00875 and a report prepared by Acoustic Logic, dated 9 July 2019 (the 2019 Report).
28. The 2019 Report details a review of noise emissions at the venue over a two-week period between 3 and 18 June 2019, with noise monitoring conducted at 10 locations including internally and externally at the two apartment buildings closest to the outdoor dining area. The timing of the acoustic testing coincided with a special event, being the Craft Beer Festival on Saturday 15 June 2019, where outdoor live amplified entertainment was offered.
29. The 2019 Report notes noise emitted from the venue was primarily from patron noise and music from the outdoor area. When activities were conducted indoors, external noise levels from the venue was typically only faintly audible. The report further states that *'with windows and doors closed noise from the venue operation was generally faintly audible to inaudible within apartments, except during live music performances.'*
30. The 2019 Report notes live music was the loudest measured activity. During the Craft Beer Festival, noise from live music in the outdoor area was clearly audible inside each of the four apartments tested, regardless if doors and windows were closed. On all other days

of monitoring, including on weekends during the daytime and evening up until 10pm, noise was generally not audible inside the apartments.

31. The venue acknowledges noise levels were higher than the average weekend during the Craft Beer Festival where live amplified entertainment was held outside. Due to the 2019 Report and data provided, the venue has modified its outdoor special events plan to limit the number of events scheduled, however contends that although noise will be louder than usual during special events, it is not unreasonable or unacceptable.

32. The venue maintains noise levels are acceptable and further measures have been taken since the complaint was received including;

- Glass bi-fold doors leading to the outside area continue to be closed at 10pm each evening.
- Live amplified music or entertainment (other than background music) will not be conducted in the outdoor area, except during limited special events.
- Speakers located in the venue and undercroft have been adjusted after the 2019 Report and are now set in line with recommended levels as outlined in the 2014 Report. This has resulted in a substantial reduction of noise with the complainant acknowledging improvement.
- The creation of an online solution to capture communication and complaints from residents regarding the source of noise concerns.
- The preparation of a Noise Control Operational Management Plan that contains further operational measures such as the removal and rearrangement of furniture to limit the number of patrons in the outdoor area and placing larger groups of patrons in the undercroft area.
- The cladding of a large wall in the outdoor area with sound proofing material to reduce sound reflection.
- Mounties Group has arranged for the checking of seals in apartments including inspection, improvement, or replacement of glazing seals if necessary.
- The termination of a Bar Management Agreement allowing management to have greater oversight.
- Future planning of a supervised children's indoor play area that has factored in acoustic requirements including sound proofing. The venue also agreed to not

install an outdoor children's play area despite original brochures marketing for such an area.

- Implemented a policy whereby children are to be removed from the venue by 9:30pm and denied entry from 9pm. Parent information cards are also handed out to patrons to encourage appropriate behaviour.
- Engaging Chrofi Architects to consult with acoustic engineers to determine if further commercially viable works are required to improve acoustic levels, including the possibility of installing a canopy awning over part of the outdoor area.

33. Regarding special events, the venue submits they have reduced and modified its list of special events proposed to be held in the outdoor area and outline measures taken to manage noise, including replacing amplified speakers at outdoor cinema events with headphones for patrons. Residents will also be notified 14 days prior to the event and provided a contact number to call during the event. Resident feedback will also be sought following each special event, including feedback on noise emanating from the event.

34. The venue submits there have been numerous meetings with the complainant and residents between 9 October 2019 and 26 February 2020. The complainant insists that no noise should emanate from the beer garden, which the venue maintains would not be commercially viable. The venue states Mounties Group offered to extend the rescission rights of the lease contracts entered by the complainants beyond the initial three-month period in the event that the operational changes and undertakings implemented did not satisfy the complainants. The venue contends that no one approached Mounties Group in relation to this.

35. The venue submits the closure of the outdoor area will be detrimental to the 50,000 members and result in a financial loss. The venue has already been significantly financially affected due to COVID-19 and the subsequent three-month closure in 2020. The venue argues the professionally obtained acoustic report shows noise levels are not unreasonable and substantial efforts have been made to improve upon noise emissions that have been positively recognised by the complainant. The venue states they will continue to explore options through ongoing consultation with the complainant and residents.

Inspection by L&GNSW

36. On Sunday 7 February 2021 at approximately 2:20pm, L&GNSW Inspectors attended the venue to make observations of the venue's operation. Live entertainment was provided in

the form of a soloist, followed by a duo with guitars and other musical instruments. The musicians were stationed inside the venue next to open bi-fold doors which lead to the outdoor area. Inspectors observed there was approximately 100 -150 patrons in the outdoor area, who were all predominantly seated, consuming meals and beverages.

37. Noise in the outdoor area consisted of live music and patron noise, including general chatter, laughter and noise from children. Inspectors sat outside approximately 20 metres from the musicians, and considered noise levels to be moderate. The level of music did not overpower conversations or require raised voices.
38. Music and patron noise was audible on the upper level near the residential apartment building located closest to the outdoor area. The noise levels ranged from low to moderate and were at a level where conversations could be easily had. Further observations were made opposite the venue on Lumsdaine Drive, with a direct view of the outdoor area, and noise levels were considered low.

Complainant final submission

39. In response to the venue's submission, the complainant provided a final submission on 2 March 2021. The complainant acknowledges some improvements were introduced by the venue to reduce noise levels and notes that although current noise levels are lower, it is still audible inside some apartments with doors closed. The complainant contends that while the noise is not considered overbearing, no noise should be audible within the apartments with windows and doors closed.
40. The complainant confirms that since the complaint was lodged, regular meetings with the venue and representatives of the residents have occurred over the following 18 months. In August 2020, the affected residents received a draft Deed of Settlement and Release (the Deed) from Mounties Group that offered the construction of a canopy roof in the outdoor area. Due to the terms and conditions provided, the Deed was not agreed to by the complainant and residents. After receiving legal advice, an amended Deed was submitted to the venue in early November 2020 requesting that a professional acoustic diagnosis be provided to give a definitive basis for a reduction in noise. On 13 January 2021 Mounties Group rescinded any existing or previous offers made.
41. The complainant accepts noise will be generated from the outdoor area as initially marketed however not from 250 patrons. The complainant contends the outdoor area was originally promoted as gardens and once the venue reopened, gradually increased in patron capacity and noise. In the six months since the venue reopened, the outdoor area

increased from having a small number of tables to now capable of having over 250 adults and children with an outside bar, resembling a beer garden.

42. The complainant submits that projected noise levels in the 2014 Report and relevant to the venue's development approval, was based on a small number of 33 patrons outside with one in three people speaking. The 2014 Report states noise levels would comply with L&GNSW criteria for external receivers to the site but slightly exceed L&GNSW criteria for receivers on site and further investigation into acoustic treatments and management conditions is required. The complainant compares these findings to the venue's current operations of the outdoor area and associated noise readings taken by both independent acoustic consultants and residents.
43. The complainant objects to the venue's claim their acoustic readings should be disregarded. The complainant acknowledges that although readings were 5dB higher than recorded by professional equipment, allowance for this variance still records noise levels over acceptable limits inside some apartments.
44. The complainant also disagrees with claims that the 2019 report shows that noise affected residents have not been unduly disturbed. The complainant submits the 2019 Report was commissioned during winter with poor weather conditions raised in the report and recorded noise levels show at times to be above acceptable levels. Further, the 2019 report states *residents would be required to close windows and doors to achieve a noticeable reduction to internal noise levels*. The complainant submits that it is inconceivable to a resident or proposed purchaser to have to implement such a practice due to noise emanating from the venue.
45. The complainant provides average and maximum monthly readings taken from apartment ■ for majority of the months between February 2019 and January 2021 to demonstrate noise exceeds their requested level and those referenced in the acoustic reports. The readings included adjusted totals to correctly reflect the variance recorded with the professional recordings. The complainant acknowledges that noise levels have reduced, which is reflected in the readings from July 2020 to January 2021, however, contends that acceptable noise levels were only a result of the COVID-19 pandemic and associated restrictions.
46. The complainant asserts that in the two years of ongoing negotiations with the venue, no material improvements or measures implemented have resulted in the significant reduction in noise to acceptable levels prior to the COVID-19 pandemic. The complainant clarifies they never requested the outdoor area be closed, however sought the area be

enclosed to assist in reducing noise. The complainant reiterated the desired outcome is for noise levels be reduced to comply with a LA10 noise condition.

Venue final submission and other material

47. The venue provided a final submission on 14 April 2021. The venue maintains the complaint should not be accepted as the allegations of undue disturbance would be occurring on the premises, not in the neighbourhood of the premises and is a misuse of the statutory disturbance complaint provisions. The venue notes that of the 94 apartments occupied, seven apartments now form the complaint. This observes a material reduction in aggrieved residents, which previously stood at 11 residences.
48. The venue challenges the veracity and integrity of the complainant's noise readings, reiterating they were taken from a mobile phone app and lacks information regarding the methodology. The venue contends these readings are inherently unreliable and overinflated and any acoustic testing should be conducted by qualified personnel with appropriately calibrated equipment.
49. The venue submits the mitigating measures undertaken in addition to the acoustic report obtained by independent acoustic experts show noise levels are not unreasonable and are lower than reported by the complainant.
50. The venue confirms lengthy discussions were had with the complainant and residents in the hope of reaching a workable resolution. The Deed provided to the remaining residents to the complaint proposed the construction of an awning over the outdoor area, conditional upon construction costs not exceeding \$2 million and withdrawal of the complaint. The residents rejected the proposal and requested additional measures to the outdoor area including restricting patron numbers and seating capacity, installation of noise measuring devices, limiting table bookings to four people only with a two-hour sitting period and the installation of noise absorbing umbrellas. The venue contends the requested measures are extensive and not proportionate and would unduly affect the ongoing commercial viability and operational control of the venue. Consequently, Mounties Group rescinded any offers made.
51. Despite not reaching any commercial resolution with the complainant, the venue confirms they have taken significant mitigating steps in response to the complaint as outlined in their first submission. The venue further submits they have completed the construction of the indoor children's play area at a cost of \$1.6 million, which was done at considerable expense to Mounties Group to ensure more children remain inside the venue.

52. The venue disagrees with the complainant's assertion that no noise should be audible inside their apartments and submits it is reasonable to expect some level of external noise, such as from traffic or people. The venue submits they have been operating at the site since 1957 and the residents were aware of the intergenerational concept and community atmosphere of the precinct surrounding Watermark Freshwater before making an informed decision to buy into the retirement village.
53. The venue contends the outdoor area has always been a part of the club and its intended use was clearly disclosed to prospective purchasers. The venue submits after the reopening in June 2018, there were delays in the setup of the outdoor area but rejects any proposition that the area evolved from a garden space to an outdoor dining area. The venue maintains the outdoor dining area has not increased in size and clarifies that the outside bar as referenced in the complainant's final submission is a mobile bar cart. The venue acknowledges at times there are large groups of people utilising the outdoor area, however there is no patron limit for the outdoor area and any suggestion that this area is limited to 33 patrons is misleading.
54. Included in the venue's submission is a copy of a Noise Control Operational MGT Plan (v2.0) (the Noise Control Plan) which outlines a series of actions and processes implemented following a review of the operation of the outdoor area. The venue submits the Noise Control Plan remains in place and includes a redesign of the outdoor seating floor plan reducing patron capacity from 250 pax to 125 pax, the introduction of a new booking system and two-hour sitting period from July 2020, increased security presence, new guidelines pertaining to children on the premises and a review of the outdoor noise complaint handling process.
55. The venue asserts they have taken the complaint seriously and have implemented active and positive steps to improve noise conditions to ameliorate any disturbance experienced by the complainant. Although the forced closure for extended periods in 2020 and 2021 due to COVID-19 has had a significant impact on the business, the venue submits they will continue to make all reasonable and commercially viable efforts to improve the venue and surrounding precinct to ensure the amenity of all residents. Additionally, the venue submits Mounties Group is committed to providing the remaining residents to the complaint the ability to rescind their contracts as outlined in their submission.

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 venue has operated under the current liquor licence since 16 October 1957 and this predates the complainant. This fact is not in dispute and I consider the order of occupancy is in favour of the venue.

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

58. The venue underwent a significant redevelopment before reopening in June 2018. Prior to the redevelopment, the venue consisted of the club building and bowling greens. The redevelopment also included the development of new facilities on site, including Watermark Freshwater, the retirement village in which the complainant resides. There is no indication additional structural changes have been made to the venue or the complainant's residence since the redevelopment.

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

59. The venue contends there have been no significant changes to the activities conducted on the licensed premises and there has always been an outdoor area designed for hospitality and events since reopening. The complainant argues the outdoor area has gradually evolved to now operate as a large beer garden with outdoor events and hosting up to 250 patrons.

Findings and Decision

Undue disturbance

60. I acknowledge the venue disagrees with the acceptance of the complaint under the disturbance complaint provisions and I recognise the residents to the complaint reside, or at the time of the complaint resided, at Watermark Freshwater, the retirement village developed by Mounties Group on site. However, I am not persuaded to the view that Watermark Freshwater is located on the licensed premises and the complainant resides on the licensed premises. In my view, I do not consider Watermark Freshwater to be related to the venue's liquor licence, with regard to the manner and operation of that licence. Further, I note the residential apartments of the retirement village are outside of the venue's licensed boundary. Therefore, I deem the complainant and authorising residents to the complaint to be residing in the neighbourhood of the licensed premises, and as such the legislative considerations in making a complaint pursuant to section 79 of the Act have been met.

61. In deciding whether the venue has unduly disturbed the quiet and good order of the neighbourhood, I have balanced the submissions made by the venue, the complainant, NSW Police and Council. I have also considered the observations of L&GNSW Inspectors during the inspection conducted on 7 February 2021.
62. It is reasonable to expect some level of noise will be generated from the normal operation of the venue and it is clear the close proximity of the retirement village to the outdoor area is a significant factor to any potential disturbance that arises. Based on the available material before me, I am not satisfied there is sufficient evidence to reasonably conclude that the venue has unduly disturbed the quiet and good order of the neighbourhood.
63. While I have given consideration to the number of residents to the complaint, there is a lack of objective evidence from regulatory agencies. I have also given weight to the findings of the 2019 Report along with the mitigating measures and practices the venue has implemented and adopted.
64. Noting that the outdoor area does operate past 10pm, the 2019 Report found external noise levels were typically only faintly audible when venue activities were wholly contained indoors. Prior to 10pm, the report notes noise from the venue was generally not audible or faintly audible inside apartments, with one occurrence during the special event where noise was clearly audible. While this may be indicative of a disturbance, the 2019 Report lacks assessment with the LA10 noise condition. However, I note the inaudibility criteria of the LA10 noise condition is not applicable until after midnight and prior to midnight, a measurable noise level above background noise is permitted at a residential boundary.
65. In making my finding I have also been persuaded by the observations of NSW Police and L&GNSW Inspectors during their respective inspections at the venue, albeit a small sample size. I find the operation of the outdoor area on these occasions to be generally consistent with the normal operation of a licensed venue and noise from patrons, music and entertainment in the outdoor area was not deemed to be undue or excessive.

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. I have also had regard to the context in which the venue operates.
67. I acknowledge the order of occupancy is in favour of the venue who have operated from their location for over 60 years. The venue's physical structure has changed significantly as a result of a large redevelopment that included the development of Watermark Freshwater on the upper level. Noting the proximity of the apartment buildings in the

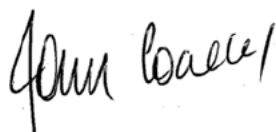
retirement village to the manner of business and activities conducted under the venue's licence, I find that some level of noise from the operation of the venue is to be expected at times.

68. While the complainant raises allegations regarding the marketing of the outdoor area and its promoted use prior to purchasing into the retirement village, this is not a matter I can determine. Whether there have been changes to the activities conducted on the licensed premises is also disputed by the parties.
69. I note a significant focus of the complaint and the complainant's submissions is centred on the number of patrons in the outdoor area and its operation. This is raised in light of the venue's development consent conditional with the findings of the 2014 Report and projected noise levels. While I have considered this material, I believe this matter is more appropriately addressed by Council, noting Council's submission states the venue's development consent requires compliance with recommendations and requirements of the 2014 Report.
70. I am encouraged by the remedial steps taken by both parties over a prolonged period to address the issues and matters raised. I strongly recommend the venue and complainant continue to work collaboratively to address any instances of disturbance or other matters as they arise.
71. While it appears a resolution has not been achieved, it is evident the venue has taken this complaint seriously and implemented a significant number of measures to manage noise from the venue, particularly the outdoor area. This includes closing the doors to the outdoor area by 10pm, restricting external amplified entertainment and reducing the number of patrons in the outdoor area. I am also encouraged by the completed construction of the indoor children's play area, at a considerable expense to the venue, to mitigate noise from children in the outdoor area. I find these steps collectively to be a positive representation of the venue's response to the complaint to mitigate concerns raised by the complainant and authorising residents.
72. Having carefully considered the material before me, I have determined to take no further action in this matter. This decision reflects my findings that there is insufficient evidence of undue disturbance and acknowledges the proactive measures taken by the venue to mitigate noise. Although the complainant attributes reductions in noise levels to the COVID-19 pandemic, I am also satisfied the measures adopted by the venue has had a positive effect in mitigating noise.

73. I remind the venue of their obligation and responsibility to mitigate noise to the community and strongly encourage the venue to continue to proactively manage and minimise levels of disturbance. In my view, there is the potential for undue disturbance to arise, particularly during occasions where external amplified entertainment is provided during special events. While I acknowledge the steps taken by the venue in this regard, I recommend the continued and strict monitoring and assessment of all events held in the outdoor area be conducted. I also note, as referenced in Council's submission, that the venue's development consent refers compliance with the requirements of the Management Plan, which also stipulates that external live amplified entertainment will be limited to daylight hours. While enforcement of this is outside the purview of L&GNSW, I stress that the venue maintain compliance with the Management Plan in accordance with development consent DA2014/0875. I also encourage the venue to continue to adopt and implement processes specific to the outdoor area as outlined in the Noise Control Plan.

74. Finally, I urge the venue and complainants to maintain open communication and continue working toward harmonious coexistence.

Decision Date: 1 October 2021



John Coady

Manager, Regulatory Interventions Team

Liquor & Gaming NSW

Delegate of the Secretary of the Department of Customer Service

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 29 October 2021. 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. Copy of the liquor licence dated 30 September 2021.
2. Section 79 Disturbance Complaint lodged by the complainant on 28 August 2019.
3. Submission received from Northern Beaches Council on 27 September 2019.
4. Submission received from NSW Police on 3 October 2019.
5. Venue submission in response to complaint received on 28 August 2020.
6. File note by L&GNSW Inspectors relating to an inspection on 7 February 2021.
7. Final submission from the complainant received on 2 March 2021.
8. Venue final submission received on 14 April 2021.