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| FILE NO: | A19/0015869 |
| COMPLAINANT: | Wingecarribee Shire Council |
| LICENSED PREMISES: | Hopewood House, Bowral – LIQO660032466 |
| ISSUES: | Whether the quiet and good order of the neighbourhood of the licensed premises is being unduly disturbed. |
| LEGISLATION: | <i>Section 79, 80 and 81 Liquor Act 2007</i> |

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 of the Department of Customer Service, in relation to the complaint made in respect to Hopewood House, Bowral – LIQO660032466 (the venue) have decided to take **no further action** in 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 authorised by the local consent authority in relation to the licensed premises.
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:
 - the need to minimise harm associated with the misuse and abuse of liquor;
 - the need to encourage responsible attitudes and practices towards the promotion, sale, supply, services and consumption of liquor; and
 - the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.

The Complaint

5. On 29 August 2019, L&GNSW received a complaint in relation to Hopewood House, Bowral (the venue) alleging undue disturbance from excessive noise from activities held inside the venue and patron noise when departing the venue. [REDACTED] on behalf of Wingecarribee Shire Council (the complainant) lodged the complaint as a person authorised by the local consent authority in relation to the licensed premises.
6. After a review of the complaint, a request was sent to the complainant for further information concerning the alleged disturbances. On 2 October 2019, copies of complaints received by the complaint from a neighbouring resident of the venue, [REDACTED] (the neighbouring resident) were supplied to L&GNSW. [REDACTED] had consented to her complaints being provided to L&GNSW for the purposes of the complaint, other names in [REDACTED] complaints were redacted. No copy of correspondence between the complainant and the venue was provided. It is also noted that [REDACTED] had previously lodged a general complaint with L&GNSW concerning disturbance and other matters at the venue in February 2019.
7. The complainant submits that the desired outcome to resolve the complaint is the imposition of a LA10 condition on the venue's licence.
8. Between 2 September 2019 and 30 October 2019, various submissions were lodged by all parties, including the complainant, NSW Police and [REDACTED] (the solicitor) on behalf of the venue. A list of the material before the delegate is set out in **Annexure 1**.

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

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

10. *The order of occupancy between the licensed premises and the complainant* – Section 81(4) of the Act provides that I need not consider this issue in the event that a complaint is lodged by a local consent authority. Therefore, by virtue of section 81(4) I will not take the order of occupancy into account. I note by way of context however that a review of L&GNSW records reveal that on 21 November 2014, a new liquor licence application was lodged on behalf of the licensee to obtain an on-premise liquor licence for the venue. On 10 July 2015, the venue's liquor licence was granted, with the licensee commencing in the role the same date. Based on the material provided, there is no clear information available as to how long the neighbouring resident has resided at the premises at [REDACTED] Bowral.

11. *Any changes in the licensed premises and the premises occupied by the complainant, including structural changes to the premises* – The venue submits several measures have been implemented on a voluntary basis in order to ensure compliance with acoustic conditions contained within the venue's Development Approval (DA). As above, in respect of the complainant's premises, consideration of this is not required due to section 81(4) of the Act.

12. *Any changes in the activities conducted on the licensed premises over a period of time* – The liquor licence for the venue was granted on 10 July 2015, permitting the sale and supply of liquor on Saturdays only, for a maximum of 30 functions per year. Based on the material provided, there have been no further relevant changes to the venue.

Other Considerations

Undue disturbance

13. The venue holds an on-premises liquor licence with a catering service business type, which commenced on 10 July 2015. The venue's liquor licence is not subject to any noise or entertainment conditions and holds a sale on other premises authorisation. The venue's authorised trading hours for consumption on premises is 10:00am to 11:30pm on Saturdays only, and is permitted to host a maximum of 30 functions and wedding receptions at the venue per year.

14. The venue is located at 201 Centennial Road, Bowral. There are nine surrounding residential lots, including the neighbouring resident's property at [REDACTED]. The venue sits on an 11-acre estate, comprised of the main residence, accommodation, gardens, the pavilion and more.

15. The complainant contends that 'numerous' complaints were received alleging noise disturbance to the residents of three houses located at [REDACTED], Bowral. The alleged disturbance included music and patron noise from wedding functions held inside the pavilion, music and patron noise from post-ceremony drinks in the garden, and noise from patrons leaving the venue. The complainant states that weddings are typically held on Saturday nights from September to May, with most weddings causing a disturbance.
16. On 5 April 2019, the complainant submits council sent a letter to the licensee urging her to take measures to ensure outdoor weddings and functions held inside the pavilion do not cause unreasonable disturbance to the amenity of residents on adjoining lands. The complainant submits that the licensee replied by email on 17 April 2019 and disagreed that any excessive noise had emanated from the venue. No record of this correspondence was supplied to L&GNSW.
17. The complainant provided two complaints lodged by the neighbouring resident dated 29 November 2018 and 27 March 2019 in support of the complaint.
18. The neighbouring resident also provided material to the complainant in the form of Noise Nuisance Recording Logs dated 6 April 2019 and 13 April 2019, which referred to the following incidents:
- On 6 April 2019, the resident detailed a wedding held at the venue where disturbance due to patron noise and music commenced at 3:45pm and continued with the last session starting at 9:10pm. The resident alleges that an unnamed person at a different address struggled to sleep due to the noise but notes that it didn't stop her from sleeping at her property; and
 - On 13 April 2019, the resident detailed disturbance by music and patron noise beginning at 2:50pm due to a wedding held at the venue. The resident refers to checking a 'recording metre' every hour and taking it inside due to rain at approximately 10:50pm. The resident alleged the disturbance continued through to 11:15pm, where she was woken up by patrons clapping and cheering at the end of the wedding reception through closed windows and doors.
19. On 29 October 2019, NSW Police provided a submission in relation to the complaint. Police submit that on 28 December 2018, Hume Police District Licensing Officers attended [REDACTED], Bowral to meet with the resident's family regarding issues of excessive noise emanating from the venue. Police submit that a [REDACTED]

[REDACTED]. Further, the functions subject to the resident's complaint are typically held in the gardens adjacent to this [REDACTED].

20. Police submit that the residents have the following concerns:

- noise is generated by guests singing along to music throughout functions;
- around 11:30pm, which is normally towards the end of wedding functions, noise is generated by guests yelling and using their car horns on departure; and
- ceremonies with drinks and canapes conducted adjacent to the boundary have amplified music which is alleged to be audible within habitable rooms of the neighbouring residential buildings.

21. Police holds no records of noise complaints in relation to the venue. Police also request that L&GNSW impose the LA10 condition on the venue to mitigate the risk of negative social impacts on the neighbouring residents due to the proximity of the venue.

22. On 30 October 2019, a response was received from the solicitor acting on behalf of the licensee of the venue. The solicitor states that the resident submitted an objection to a modification to the venue's DA. Despite the objection, the complainant approved the modification on 21 February 2019. Further, the solicitor submits that this complaint via Council to L&GNSW is 'clearly an attempt to frustrate' the operation and benefits recognised by this DA modification.

23. The solicitor submits that despite several complaints made by the resident to the complainant, aside from a Notice of Proposed Order issued in November 2018 relating to the keeping of peacocks on the premises, no direction, notice, or order has been considered justified by the complainant. The solicitor submits that all acoustic conditions and hours of operation have been strictly complied with by the venue, and no action has been requested or taken by the complainant to date. The solicitor also refers to a suite of conditions within the DA, specifically conditions 4 and 5, which allow the complainant to readily detect any breaches of noise under relevant acoustic regulations.

24. Additionally, the solicitor submits that the licensee has attempted to resolve many of the complaints received from the residents by agreement. The solicitor references as recently as August 2019 and September 2019, correspondence between the parties concerning the height of a [REDACTED] which was resolved by mutual agreement.

25. The submission further states that all allegations in relation to noise have only ever been made from a single family, without any evidence from an acoustic expert. The acoustic

conditions existing within the venue's DA, at the heart of the complaints from the resident, were approved on 3 March 2009.

26. The venue's submission also questions development on the neighbouring resident's land and its bearing on the relationship between the parties and the disturbance experienced by the neighbouring resident. These issues primarily concern adherence to environmental planning legislation.
27. Further, the solicitor submits that staff of the venue have reported feeling intimidated by the actions of the resident. The resident is alleged to have previously verbally abused staff across the boundary, including racially abusing one staff member, and entering the property. A [REDACTED] was erected in 2018 to restrict this behaviour.
28. On the available evidence I am not satisfied that the venue has caused undue disturbance to the neighbourhood. In making this finding, I have considered the complaint and submissions as set out above. I note the neighbouring resident's evidence, as provided by the complainant and have balance that with the submission of the venue and the paucity of other evidence to illustrate undue disturbance. I note that NSW Police report no records of disturbance complaints and no enforcement action previously taken in respect of these issues.

Action taken to mitigate disturbance

29. While I have concluded that there is insufficient evidence of undue disturbance, I will also have specific regard to any action taken by the venue in response to the allegations of disturbance, and the effectiveness of any measures implemented to address any such disturbance when considering whether to impose conditions on the liquor licence.
30. In terms of action that has already been undertaken by the venue to mitigate the allegations and to comply with existing conditions, the venue submits the following mitigation strategies:
- limiting use of the venue, with 21 total weddings held in 2018 and 16 total events to be held in 2019;
 - removing garbage from the venue during daylight hours and all bins located within the pavilion during events to avoid any disturbance during these times;
 - working with one caterer only, whose team is aware of noise concerns and take steps to keep the kitchen door closed to mitigate any noise from the kitchen area. The team avoids opening and closing vehicle doors as much as possible and load equipment in and out quietly;

- construction of a ramp in April 2019 at the rear of the pavilion to ensure the easy transport of large equipment into the venue and assist disabled or elderly guests into the reception area. All entry doors into this area are routinely kept closed;
- contacting musicians prior to events to discuss noise restrictions;
- all bookings are to sign an agreement outlining the terms relating to entertainment (including decibel limits and strict timing);
- engaging third party supplier, [REDACTED], to monitor noise levels and read decibels during events. All associated costs are paid by the venue and all AV equipment used has been purchased or hired through the same supplier;
- ensuring ceremonies on the lawn have an average duration of 30 minutes and are held mid-afternoon. Only acoustic musicians are permitted;
- permitting evening entertainment in the downstairs pavilion which has been enforced to appease the venue's neighbours since 2015. All audio is played via the in-house speaker system with noise limiters installed. Entertainers are not permitted to provide own speakers;
- strict enforcement of evening entertainment between the hours of 8:30pm and 11:15pm only; and
- strongly encouraging couples to hire coaches to transport their guests to and from the property to limit vehicular movements on-site. Parking for any vehicles that do arrive is near the entrance to the estate, far from the resident's property residence. The venue submits that they have not heard car horns as alleged by the complainant.

31. In this instance, it appears that the venue has indeed undertaken measures to mitigate potential disturbance to its neighbours, primarily in the form of the measures highlighted above. I consider this to be a reasonable attempt to address the ongoing allegations of disturbance emanating from the venue and further goes to my conclusion that there is insufficient evidence of undue disturbance.

Decision

32. In making my decision, I have considered the submissions of the complainant, NSW Police, and the venue. I have also had regard to the context in which the venue operates and the close proximity of the resident's property to the venue. In deciding whether to impose conditions on the licence relating to disturbance, I have considered the following points.

33. I have taken the statutory considerations into account and acknowledge that section 81(4) excludes council as a complainant for the purposes of determining the order of occupancy and for considering alterations to the complainant's premises. I have considered the other statutory matters under section 81(3) of the Act.
34. I also take into account the location of the venue and its operation. I also note that a level of disturbance is to be expected from the operation of a licensed premises. While various planning controls have been raised in the submissions, these are a matter for council to consider.
35. On the material before me, it can reasonably be concluded that the licensee has been responsive to the complaint and has voluntarily implemented measures which have effectively reduced noise generated by the venue to acceptable levels. In this regard, I have considered the mitigating measures willingly implemented by the venue to address raised concerns, particularly regarding amplified entertainment during wedding receptions. This includes the venue voluntarily installing noise limiters on their house speaker system. I accept the actions taken by the venue to be collectively positive efforts and encourage the venue to continue to approach voluntary alternative measures should any further issues arise.
36. As such, as I am satisfied that there is insufficient evidence of undue disturbance and in considering the other statutory considerations, I am of the view that it is not necessary to impose conditions on the venue's liquor licence at this time. I am not satisfied that the imposition of the LA10 condition is warranted or justified based on my considerations of the available evidence.
37. I have determined to take no further action in this matter. This decision reflects my conclusion that there is insufficient evidence of undue disturbance emanating from the venue. I am encouraged that the mitigating measures the venue is taking to improve the management of disturbance are appropriate and effective.
38. I would recommend that the neighbouring resident continue to work collaboratively with the venue to address any concerns about disturbance. It remains open to the neighbouring resident to lodge a further complaint should there be fresh and compelling evidence.
39. Finally, I am satisfied that this decision is a proportionate, measured, and appropriate regulatory response to the identified risks of undue disturbance in this case. I firmly encourage the venue to continue its proactive management of disturbance. The venue should be aware that if fresh and direct evidence be presented demonstrating undue

disturbance, it is open for the matter to be reconsidered and for formal regulatory action to be taken.

Decision Date: 18 February 2021



John Coady
Manager Regulatory Interventions Team
Liquor & Gaming NSW
Delegate of the Secretary

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 **18 March 2021**. A \$500 application fee applies. Further information can be obtained from Authority Guideline 2 published at www.liquorandgaming.nsw.gov.au

In accordance with section 36C of the Gaming and Liquor Administration Act 2007 this decision will be published on the Liquor & Gaming NSW website at www.liquorandgaming.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 5 February 2021.
2. Section 79 Noise Disturbance Complaint lodged by [REDACTED] on behalf of Wingecarribee Shire Council dated 29 August 2019.
3. Additional material for complaint as requested received 2 October 2019.
4. Submission from NSW Police dated 29 October 2019.
5. Submission from [REDACTED] on behalf of the venue dated 30 October 2019.