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**FILE NO:** A20/0017675

**COMPLAINANT:** [REDACTED]

**LICENSED PREMISES:** Balgowlah Bowling Club Ltd – LIQC300225410

**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* I, Dimitri Argeres, Director Compliance & Enforcement, a delegate of the Secretary, Department of Enterprise, Investment and Trade, in relation to the complaint made in respect to the Balgowlah Bowling Club Ltd, have decided to take **no further action** in relation to this matter.

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## REASONS FOR DECISION

### Legislative framework

1. Section 79 of the *Liquor Act 2007* (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 purposes 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 29 October 2020, [REDACTED] of [REDACTED], Balgowlah Heights (the complainant) lodged a complaint with Liquor & Gaming NSW (L&GNSW) alleging undue disturbance from the operation of the Balgowlah Bowling Club Ltd (the Club). The complainant lodged this complaint as a resident authorised by 14 other residents.
6. The complainant alleges disturbance is from offensive and intrusive noise caused by children playing on the outdoor bowling greens, with yelling, shouting and whistles blowing as well as rocks being thrown into residents' back yards and swimming pools. Further, noise is also caused by activities such as a soccer games, kids' birthday parties and awards ceremonies on the bowling greens, and from loud patrons playing barefoot bowls and consuming liquor. The disturbance allegedly occurs several times a week, most frequently on Friday, Saturday and Sunday afternoons from midday up until 8:30pm in the evening.
7. The complainant states numerous phone calls have been made to the Club concerning children playing on the bowling greens unsupervised after dark causing offensive noise which have either gone unanswered by the Club or residents informed there is no supervisor on duty to respond to resident's concerns. The complainant asserts that a

formal offensive noise complaint was lodged with Northern Beaches Council (Council) along with a 'Neighbours Noise' petition.

8. The complainant submits the Club has transformed from a traditional bowling club catering to 60 playing members to now accommodating hundreds of patrons utilising the Club as a 'drinking venue' and permitting children to utilise the bowling greens as a recreational facility. The complainant alleges the noise pollution from the Club restricts local residents from utilising and enjoying the outdoor areas of their homes such as decks, BBQ areas and swimming pools. It is further alleged that even with doors and windows closed, noise emanating from the Club still penetrates into residences causing disturbance.
9. The complainant seeks external intervention regarding offensive and intrusive noise and requests the Club adopt a management plan, introduce a Code of Conduct for all patrons, children to be removed from the bowling greens and all children's activities to be held inside the Club, catering and bookings of all parties on the bowling greens to cease, the operating hours of Carly May's Kitchen (a restaurant within the Club) be reduced, all consumption of liquor on the bowling greens and within the carpark to cease and patrons not to cause general disturbance when leaving the Club.
10. Attached to the complaint was supporting material including email correspondence between local residents and [REDACTED], the Chairman of the Club dated between 7 and 16 September 2020, maps of the Club and associated bowling greens including a zoning map of the area, community impact statements from three of the authorising residents, and images and audio recordings of noise and disturbance emanating from the Club and bowling greens.

*The venue, licence details, compliance history*

11. The Club is located at Bareena Drive, Balgowlah Heights and holds a club liquor licence. The Club consists of a club house and three bowling greens that borders onto residential dwellings.
12. The Club's authorised trading hours for consumption of liquor is unrestricted on the premises. Take-away sales are limited to between 5:00am and midnight, Monday to Saturday and 10:00am and 10:00pm on Sundays. The Club's licence holds a club functions authorisation and non-restricted area authorisation. The Club's liquor licence is subject to several conditions relating to the club function authorisation and non-restricted area authorisation.

13. The Club licence is also subject to an occasional extended trading condition that limits trade between midnight and 5:00am to no more than 12 occasions within a 12-month period, not including from midnight until 2:00am on 1 January each year or any other relevant period subject to section 13 of the Act. The condition also requires that NSW Police, the local consent authority and the Secretary be notified 14 days prior to the extended trade.
14. [REDACTED] was the Secretary and Manager of the Club from 11 February 2020 to 17 December 2020. The current Secretary and Manager is [REDACTED] [REDACTED] who has held this position since 26 February 2021. The corporate licensee is The Balgowlah Bowling Club Ltd since 19 December 1955.
15. L&GNSW records show there have been no previous noise complaints received in connection to the Club and the Club does not have an adverse compliance history.

### **Submissions**

16. Between 29 October 2020 and 29 March 2021, various material was received from parties to the complaint, including the complainant, the Club, NSW Police (Police) and Council. The material that is before the delegate is set out in **Annexure 1** and summarised below.

#### *Council submission*

17. On 25 November 2020 Council provided a submission in response to the complaint. Council advised they have received three formal complaints in 2020 regarding noise from the Club. The complaints referenced loud and disruptive noise, particularly from bowling green 2, generated by unsupervised children playing on the greens, kids' parties, sporting games, sports training sessions and sport award parties. One formal complaint included a petition from 22 local residents requesting that the Club's social only members reduce noise on the weekends.
18. The submission states the Club is a tenant of Council and the lease prescribes that *"the land will not be used or suffered or permitted to be used for any purposes other than a club house and bowling greens except with Council approval"*. Council submits it is aware of and do not object to the Club's intention to expand its activities to increase the Clubs usability and ensure its longevity. These activities include hosting functions such as birthday parties and other events. Council states the approach is consistent with what has been offered to other clubs in the Northern Beaches area to ensure their survival and the continued provision of community recreation. Council further advises the Club's operations are consistent with the land zoning (RE2 Private Recreation) and its objectives.

19. Council confirms that neither the lease agreement nor the Club's Development Application and Building Application have any specific operating hour restrictions. Council further advises there are no pending Development Applications in respect of the Club.
20. Council submits it had been informed by the Club that following a noise complaint from a local resident, a number of mitigation measures will be voluntarily implemented. These measures include temporarily ceasing all future Sunday bookings on bowling green 2, posting signage regarding noise reduction and banning dogs off lead on bowling green 2, attempting to fill gaps in the hedging along the eastern side of bowling green 2 and entering into discussions with Council, as landlord, regarding noise mitigation. In addition, Council states the Club is also investigating the possible installation of safety fencing and privacy screens along the eastern boundary to reduce any impact on residents.

#### *Police submission*

21. In response to the complaint, Police provided a submission on 3 December 2020. Police submit that following a review of video footage provided with the complaint, unsupervised children were observed playing and congregating on bowling green 2 at the Club on three separate occasions, in contravention of section 22 of the Act. Further, a review of photographs provided with the complaint displays adult patrons standing on bowling green 2 consuming liquor, in breach of the Public Health Orders relating to COVID-19.
22. On 14 November 2020 at 5:30pm, Police attended the Club and identified multiple breaches of the *Registered Clubs Act 1976*, *Liquor Regulation 2018* and Public Health Orders relating to COVID-19. Unsupervised minors were observed inside a room within the Club and also on the bowling greens, contravening the Club's non-restricted area authorisation. Additionally, patrons failed to sign in or record their details when entering the Club, the Club's liquor licence could not be produced, and required signage was not displayed.
23. On Monday 23 November 2020, Police attended the Club and engaged with the Club Secretary. Police were advised that a pathway from the front of the Club on Bareena Drive, which extends along the bowling greens and leads through to tennis courts and a public park on Curban Street, is regularly used as a public thoroughfare. Police spoke to a member of the public whose children were playing on bowling green 2 who advised that the bowling greens are regularly used by local residents and are seen as a public space. Police ascertained the Club allows the use of bowling green 2 as a children's play area for patrons of the Club and had also recently been utilised for a local sporting club presentation function.

24. Police submit that only a small proportion of the Club, predominantly bowling green 2, is associated with disturbance to the neighbourhood. Police provide that noise from children using bowling green 2 as a play area is causing a nuisance to the residents neighbouring the Club's boundary. Further, Police are of the opinion that overall the Club is poorly managed and lacks leadership and structure.
25. Police submit that the Club has undergone a significant shift in structure and business focus in an attempt to regain profit and memberships. However, Police contend that it is not in the spirit of a bowling club to use the bowling greens for any other purpose but recreational bowls.
26. Police request that several conditions be imposed on the Club's licence to ensure the quiet and good order of the neighbourhood. The proposed conditions relate to neighbourhood amenity, plan of management, prohibiting persons other than members or guests from entering the Club premises, restricting the use of the bowling greens for bowling activities only, restricting the consumption of alcohol on the bowling greens to persons participating in bowling activities only, and patrons must be seated while consuming alcohol on the bowling greens. Police also seek a condition that requires the non-restricted area authorisation and Club functions authorisation only apply to the indoor areas of the Club premises and not the bowling greens.

*Inspection by L&GNSW – 12 December 2020*

27. At 4:15pm on 12 December 2020 L&GNSW Inspectors conducted external observations by car of the surrounding streets to the Club, including Bareena Drive, Vista Avenue and Woodland Street. Inspectors did not observe any significant noise other than traffic noise with no other licensed premises in the vicinity of the Club.
28. At 4:45pm Inspectors entered the Club grounds through the front carpark on Bareena Drive conducting a walkthrough of the three bowling greens. Inspectors observed all three bowling greens to be empty, with no patrons or children sighted. Inspectors could hear general chatter from patrons inside the Club and faint noise from a backyard of a property on Vista Avenue.
29. Inspectors then proceeded to walk between the bowling greens through to the Bareena Park tennis courts, situated behind the Club. Inspectors noted the pathway from the Club premises continued through to Bareena Park and towards Vista Avenue, allowing another access point to the Club.

30. Inspectors then walked back to the bowling greens making observations of the external areas, observing two signs on bowling green 1 and 3 advising patrons to keep noise to a minimum. Inspectors then proceeded to drive around the surrounding streets and did not identify any noise that would cause a disturbance to residents and observed no noise to be audible before leaving the area.
31. At 6:45pm, Inspectors returned to the Club and conducted an external patrol of the bowling greens, observing no patrons or children on the bowling greens. Approximately 15 patrons were observed on the balcony of the Club with general chatter audible, however it was not considered to be loud or excessive. Inspectors then walked to the rear of the complainant's residence which backs onto bowling green ■ and observed no patron noise from the Club to be audible at this location. Inspectors then proceeded by car to Woodland Street and observed no significant noise to be audible other than road traffic.

*Club submission in response to complaint*

32. On 24 November 2020, ■■■■■, Director, Creative Planning Solutions Pty Limited (CPS) contacted L&GNSW to request an extension of time to provide a submission on behalf of the Club and conduct acoustic testing. An extension was granted until 22 December 2020. ■■■■■ submitted that as an interim measure the Club would restrict all activity on the bowling greens beyond 7:30pm, ensure all children playing on the bowling greens are supervised by an adult, and actively monitor the bowling greens with a focus on noise. On 21 December 2020, ■■■■■ requested a further extension due to the Club board being unable to meet to provide a decision regarding the acoustic mitigation measures recommended by the acoustic consultant as a result of the COVID-19 lockdown and forced closure of licensed premises. An extension was granted until 5 January 2021.
33. On 5 January 2021 L&GNSW received a submission from ■■■■■ and ■■■■■ ■■■■■, Town Planner, CPS on behalf of the Club. The submission states the original development consent applying to the construction and use of the Club are not available on Council records, however all development consents applicable to the site do not contain any conditions which limits the operation of the Club. It is also submitted that the Club intends to renew the lease on the land with Council.
34. The submission states a 'Family Community Membership' was created to revive the Club and its financial situation following a decrease in Club membership in recent years due to the older demographic of its members. The Club now has close to 200 family members. The Club acknowledges that bowling green 2 has been used as an ancillary area for

children for many years. This area is outside the licensed area as shown in the extract of the Club's approved licensed boundary plan as provided with the submission, which only pertains to the Club house.

35. Included with the submission is an acoustic report prepared by GHD Pty Ltd, dated 5 January 2021 (the Acoustic Report). Attended noise monitoring was undertaken on 4 December 2020 and 13 December 2020 between approximately 3:00pm and 8:00pm with receivers placed along the boundary of the Club and closest resident locations on Vista Avenue and Woodland Street.
36. The Acoustic Report advises that as there are no NSW Environment Protection Authority noise guidelines or policies that relate directly to children's play, noise recorded was appropriately measured against the Guideline for Child Care Centre Acoustic Assessment which is published by the Association of Australasian Acoustical Consultants (AAAC). The Acoustic Report submits that the AAAC noise criteria is appropriate for outdoor children's play on the bowling greens and if complied with should not disturb the quiet and good order of the neighbourhood.
37. The Acoustic Report further submits the bowling greens are not within the licensed premises boundary and children's play on the bowling green is not an approved use. The Acoustic Report states it is expected that the use of the bowling greens should be regulated by Council and noise impacts associated with bowling activities should also be managed by Council.
38. The Acoustic Report states noise levels from the licensed area of the Club is predicted to comply with LA10 noise criteria. However, to ensure compliance with relevant acoustic criteria is maintained and the acoustic amenity of local residents is protected, the Acoustic Report recommends the erection of signage at the entry and exit of the Club advising patrons that they must not generate excessive noise. It is further recommended that emptying glass bottles into bins should be restricted to daytime hours only.
39. The Acoustic Report notes that noise from children playing on bowling green 2 is likely to be disturbing the neighbours and the predicted noise levels are shown to exceed the AAAC noise criteria. The Acoustic Report recommends the implementation of a management plan/code of conduct be established that requires the Club to monitor patron behaviour on the bowling greens, with patrons advised there is to be no unnecessary shouting, cheering, whistling or offensive language. The management plan or code of conduct is to include additional mitigation measures such as signage informing parents that children must not play on the bowling green unsupervised, no children's play on the

bowling greens after 7.30pm and that children's behaviour be actively managed by staff, members and parents/guardians at all times. The Acoustic Report also suggests consideration be given to the construction of a 2.4 metre noise wall along the eastern boundary to minimise disturbance.

40. The Acoustic Report recommends additional measures be included into a management plan to minimise disturbance caused by events attributed by members of the public who are not members of the Club. These measures include signage to be displayed informing members of the public that activities such as people exercising dogs on the bowling greens, people hosting exercise classes, soccer and sporting games and the riding of bikes are not permitted on the Club premises and individuals should be requested by staff members to leave the Club grounds.
41. The Club submits that due to the pedestrian connection from Bareena Drive to the tennis courts and public park behind the Club, signage has been erected advising the public that access to the bowling greens is prohibited. A fence has also been erected along the western edge of the Club to restrict public access via this route, and additional signage displayed advising that use of the bowling greens for soccer games, training and dog exercise is prohibited.
42. The Club states that since becoming aware of the disturbance complaint, proactive steps have been implemented to respond to the issues raised, including engagement of an acoustic engineer, restricting all activity on the bowling greens to 7.30pm and Club staff monitoring the bowling greens. The Club advised a Plan of Management will be adopted which will include all strict noise control measures as recommended in the Acoustic Report.
43. The Club submits they intend to lodge a separate application to modify the liquor licence boundary to allow patrons to consume alcohol on selected perimeters on the bowling greens. Further, the Club state an intention to lodge a development application with Council seeking consent for the construction of an acoustic wall as recommended in the Acoustic Report. Additional action items have also been considered by the Club board and progress on those will be reported to L&GNSW.

*Inspection by L&GNSW – 7 February 2021*

44. At 4:20pm on 7 February 2021, L&GNSW Inspectors proceeded to drive along the surrounding streets in the vicinity of the Club, including Bareena Drive, Vista Avenue and Woodland Street, to conduct external observations. Inspectors observed no significant noise or disturbance to be audible.

45. At 4:35pm, Inspectors then attended a property on [REDACTED] and met with three authorising residents. While at the residence, Inspectors made observations of the location and layout of the Club. No patrons were observed to be on the bowling greens and no noise was audible from the Club whilst at the residence. Inspectors were then guided to an area behind the bowling greens and shown access points to the Club from Bareena Park, including the pathway used by children to run between the bowling greens and the park.
46. At 5:15pm Inspectors then continued to make external observations of the Club grounds and noted a sign erected between the two bowling greens at the rear of the grounds stating the bowling greens are private property, minors must be supervised and no access after 7:30pm. Inspectors observed the two bowling greens to be unoccupied and no noise audible from the Club. Inspectors then observed two unsupervised children running down between the bowling greens towards Bareena Park.
47. At 5:25pm, Inspectors entered the Club signing in with the QR code and observed the kitchen to be open with no patrons present inside the main area of the Club. Approximately four patrons were observed on the outdoor balcony area of the Club. Inspectors then engaged with [REDACTED], who identified himself as the manager on duty. Inspectors discussed the noise complaint with [REDACTED] before conducting a walkthrough of the Club and external areas, including the bowling greens. [REDACTED] then showed Inspectors the new games room inside the Club, which consisted of a lounge, Lego and ping pong table. [REDACTED] indicated to Inspectors the signs advising private property located at the front and back of the Club. While at the rear of the Club and viewing the sign, two females walked past and advised they were looking for their children. Inspectors observed patron numbers to be low and all bowling greens were unoccupied. Inspectors then left the Club at 5:50pm.

*Complainant final submission and further complaint material*

48. In response to the Club's submission, the complainant provided a final submission on 23 February 2021. Provided with the submission was an additional two authorising residents, who have been added to the original complaint, bringing the total number of authorising residents to 16. Various images and videos recordings were also submitted as supporting material along with email correspondence between the Club and residents concerning noise complaints, impact statements from two authorising residents and noise logs taken from residences between September 2020 to February 2021.

49. The complainant disputes claims that the Club takes noise complaints seriously and wishes to have a good relationship with its neighbours. The complainant submits the management of the Club have a disrespectful and hostile attitude towards neighbours and believes that the submissions made to L&GNSW on behalf of the Club are disingenuous.
50. The complainant submits that there are numerous local parks and recreational areas which should be utilised as a play area for children. As such, bowling green 2 which is located just metres from neighbouring residences is not an appropriate place for the Club to permit and encourage children to play. The complainant believes the Club's business model is based on parents enjoying a drink and meal inside the Club whilst their children play outside on the bowling greens unsupervised for a number of hours. The complainant and authorising residents have witnessed inappropriate and disturbing behaviour as a result of children being unsupervised.
51. The complainant submits that other licensed premises in the local area are situated away from residential properties, however all authorising residents are direct neighbours to the Club, which is positioned deep in a residential community. It is also submitted that noise emanating from the Club reverberates into neighbouring properties and the topography creates a natural amphitheatre amplifying the noise. The complainant states that all residents occupied their properties prior to the shift towards a community club model and prior to this change, the noise produced by the Club was reasonable and any disturbance caused was occasional in nature. The complainant also alleges the activities at the Club, including barefoot bowls, business bowls and social members have led to a dramatic increase in footfall and vehicle traffic in a quiet residential suburb.
52. The complainant has witnessed patrons drinking in areas perceived to be outside the licensed boundary as supplied within the Club's submission. Patrons consuming alcohol on the bowling greens and partaking in barefoot bowling often generate noise and create disturbance. Prior to COVID-19, live bands performed at the Club with residents experiencing loud music late into the evening. Further, patrons attending these events would often cause disturbance when leaving, using foul language, yelling, slamming doors and leaving the carpark at speed. Despite complaining to the Club, it is alleged no action was taken.
53. The complainant reiterates that since the Community Club Membership drive and the opening of Carly May's Kitchen, noise and disturbance from patrons and activities on Friday, Saturday and Sundays commences at 11:00am on some occasions and persists until 9:00pm. The complainant and residents are of the view the Club should modify its membership to preserve its purpose and character.

54. The complainant engaged Acoustic Dynamics to commission a peer review of the Acoustic Report, which was dated 22 February 2021. The review raises issues with the methodology used, particularly in relation to the use of the AAAC Guideline for Childcare Centre Acoustic Assessment which they view to be inappropriate as the Club is not a commercial childcare centre. Further issues are raised regarding the topography and the building/receiver heights of the model relied upon to conduct the acoustic testing. Additionally, concerns regarding the proposed acoustic wall are raised and it is put forward that the implementation of a 2.4 metre noise wall will not adequately protect residents along Vista Avenue. It is submitted that the Acoustic Report was crafted to produce a conservative outcome that reflects the minimum disturbance rather than the actual disturbance.
55. The complainant contends the interim measures implemented by the Club have been ineffective. The signage erected has not resulted in reduced noise levels, adults supervising children playing are often not paying attention and when complaints are raised with the Club, residents feel they are dismissed and ignored. The complainant states the imposition of conditions on the Club's liquor licence is warranted; including prohibiting children on the bowling greens unless they are playing an organised games of bowls and requiring children to always be accompanied by their parent/guardian. Additionally, it is proposed that all consumption of alcohol on the bowling greens is to cease, all children's activities and parties are to be held within the Club building, take-away sales be removed, restricted trading hours of the Club be imposed, the operation of Carly May's Kitchen be reduced, a cap on Community Club membership be imposed, a Plan of Management and Code of Conduct be introduced and enforced, and the proposed licence boundary change be denied.
56. Between 24 March 2021 and 26 April 2021, the complainant contacted L&GNSW and supplied various material to evidence the ongoing disturbance at the Club, primarily from activities taking place on the bowling greens and relating to unsupervised children. This also included email correspondence to the Club from authorising residents outlining the noise concerns and disturbance.

#### *Club final submission*

57. On 29 March 2021, a final submission was provided by [REDACTED] from CPS on behalf of the Club. The submission included a copy of a Plan of Management, dated March 2021, which has been formally adopted by the Club, and includes all policies and measures voluntarily proposed by the Club concerning noise management and the recommendations as set out in the Acoustic Report. Also covered in the Plan of

Management is a complaint management process, which includes the recording and actioning of noise complaints via an auditor program.

58. In response to Council's submission concerning the receipt of noise complaints, the Club submits several voluntary measures have been taken to reduce noise impacts, including no longer holding events on bowling green 2 (including sports games, training activities or parties), children not permitted to play on bowling green 2 beyond 7:30pm and requiring a responsible adult to supervise children on bowling green 2.
59. The Club appreciates further work is required in attenuating potential noise impacts from the use of bowling green 2 and has met with Council to discuss noise mitigation measures, including an acoustic fence along the eastern side of the bowling greens. The Club has prepared a briefing note that includes a draft Development Application relating to the proposed acoustic fence and seeks consent from Council as landlord, to lodge the Development Application. A copy of the draft Development Application plans was provided with the submission.
60. The Club agrees with Police's assertion that the primary source of the complaint is the use of bowling green 2 and reiterates the voluntary measures implemented to date to moderate activity on the bowling green and mitigate noise. The Club submits it has implemented changes in response to the management issues raised by Police. This includes a newly elected board, the appointment of a new approved manager for the Club, and the creation and adoption of a Noise Management Plan and Plan of Management.
61. In relation to the licence conditions sought by Police, the Club agrees to the imposition of conditions relating to the neighbourhood amenity, Plan of Management and that no persons other than club members or guest will enter the club premises. However, the Club objects to the imposition of conditions relating to the restriction of alcohol consumption on the bowling greens, the bowling greens being used for bowling purposes only and the non-restricted area authorisation and club functions authorisation being restricted to the indoor areas of the club premises. The Club considers these conditions to be onerous and restrictive, and inconsistent with how other bowling clubs in NSW operate.
62. The submission also raises the bowling greens and existing rear balcony of the Club house were mistakenly omitted from the Club's licensed boundary plan when modified in 2007. The Club submits this was only recently identified and as such a request has been lodged with L&GNSW Licensing unit to expand the Club's licensed boundary.
63. The Club's submission goes on to refute many claims and statements made in the complainants' final submission. In response to the Acoustic Dynamics peer review as

commissioned by the complainant, the Club retained GHD to prepare a formal response, which was dated 24 March 2021. The GHD response refutes the findings of the peer review and states the AAAC guideline in relation to the assessment of noise associated with childcare centres is relevant as outdoor children's play is the dominant noise source associated with commercial childcare centres. The GHD response maintains that with the incorporation of the acoustic wall and management measures as recommended in the original Acoustic Report, noise from children playing would be acceptable and should not give rise to offensive noise or disturb the quiet and good order of the neighbourhood.

64. The Club submits there has been resounding feedback from the local community in its expanded function as a community club and highlights that the Club was presented with the Outstanding Community Service Award from the Council Mayor in January 2021. While the Club acknowledges some residents have raised concerns regarding its operations, the Club contends it has received positive feedback from local residents and provides a letter of support signed by 19 adjacent residents dated 26 March 2021.

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

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

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

66. The Club has operated under its current liquor licence since 19 December 1955, and according to Council records the Club building was constructed between 1959-1960. This predates the complainant who has resided at their address for five years. This fact is not in dispute, and I consider the order of occupancy is in favour of the Club.

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

67. Council's submission indicates that minor changes and extensions have been made to the Club building over the last 60 years. There is no indication that major structural changes have been made to the complainant's residence.

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

68. The Club underwent a significant change in late 2019, with the Club moving to a community club model rather than remaining as a traditional bowling club. A Family Community Membership drive took place targeting the community at large and the new business model led to an increase in membership numbers and a shift in the demographic of members. In addition, in March 2020 Carly May's Kitchen commenced operations at the Club, providing catering and kiosk facilities, including take away. The Club contends

that its core business is bowling activities, however, acknowledges that children's play occurs on the bowling greens.

## **Findings and Decision**

### *Undue disturbance*

69. In deciding whether the Club has unduly disturbed the quiet and good order of the neighbourhood, I have balanced the submissions made by the Club, the complainant, Police and Council. I have also had regard to the context in which the Club operates and the close proximity of the Club and neighbouring residents. I find a certain level of noise and disturbance is to be expected from the normal operation of the Club.
70. The complainants' submissions list club events and patrons consuming liquor on the bowling greens as concerns, however focus significantly on the noise arising from children and children's activities on the bowling greens.
71. The evidence before me does not allow me to reasonably conclude that activities from within the Club, patrons playing bowls or consuming liquor on the bowling greens or patron noise and behaviour when leaving the club have caused undue disturbance. In this regard, I note there is a lack of objective evidence from Police and Council indicating undue disturbance. I have also considered the Acoustic Report that states noise levels from within the licensed area of the Club are predicted to comply with the LA10 noise criteria and the findings of the two inspections undertaken by L&GNSW.
72. Having regard to the above considerations, I am not satisfied the Club has unduly disturbed the quiet and good order of the neighbourhood due to the manner in which the business of the Club is conducted or from behaviour of persons after they leave the Club.
73. I acknowledge that the findings of the Acoustic Report and the submission by Police indicate that noise from children and children's activities on the bowling greens is creating noise and disturbance to residents.
74. It is apparent that the Club's expanded use of the bowling greens beyond recreational bowling has resulted in additional noise to the neighbourhood. With the disturbance primarily identified in this complaint to be largely confined to noise generated by children and children's activities on the bowling greens of the Club, I have had to consider whether this meets the threshold test of undue disturbance under the liquor legislation.
75. While as a general proposition I would not consider noise from children and children's activities to be excessive or undue for the purposes of the Act, particularly during daytime

hours, consideration should also be given to a broad range of factors including the nature of a venue's operation, the permissible use of the bowling greens and the surrounding environment.

76. I have considered Council's submission advising that any use of the land other than for the purposes of a club house and bowling greens requires Council approval. Further, Council submits it has provided no objection to the Club broadening its activities to increase the Club's usability by its members and the community and its operations are consistent with land zoning. Council's submission makes it evident that the children's activities on the bowling greens correspond with the indicative approval by Council for the Club to expand its use of the bowling greens.
77. The Club consists of a club house and three bowling greens. Next to and across the Club are residential dwellings and behind the Club is Bareena Park. The bowling greens are not within the Club's licensed boundary. I find there is limited correlation between children's activities on the bowling greens and the sale and supply of liquor. Instead, the use of the bowling greens for purposes other than recreational bowling is determined by Council and as such ought to be regulated by Council.

#### *Regulatory outcome*

78. In deciding whether regulatory intervention is required in this instance, I have considered the statutory considerations and the material set out in Annexure 1. I have had particular regard to the absence of a finding of undue disturbance in this instance.
79. I acknowledge that the order of occupancy is in favour of the Club and note that given the proximity of the complainants' residences to the Club, the complainants should understand a certain level of noise and disturbance is to be expected given the usage of the Club by members of the community.
80. I also acknowledge the Club's activities have changed in recent years and there has been a shift away from a traditional recreational bowling club towards an integrated community club model. On this point, I have had regard to Council's submission noting that these activities, including hosting functions such as birthday parties and other events, are consistent to what has been offered at other clubs in the Northern Beaches area to ensure their survival and continued provision of community recreation.
81. Since the initiation of the disturbance complaint the Club has demonstrated a willingness to engage and implement measures to mitigate disturbances and reduce its noise impact. This includes the development of a Plan of Management that has been provided to

L&GNSW. The Plan of Management incorporates many of the measures recommended in the Acoustic Report, in addition to supervision of the bowling greens and a restriction on events on the bowling greens.

82. I also note the ongoing engagement between the Club and Council. The Club submits it has entered into discussions with Council regarding noise mitigation measures relating to activities on the bowling greens, including the construction of an acoustic wall. The Club has indicated they are progressing plans and discussions with Council for the construction of the acoustic wall, as detailed in the Acoustic Report, and seek Council's consent to lodge a development application.
83. I acknowledge the complainant is not satisfied with the voluntary measures adopted by the Club and would prefer that conditions or restrictions be imposed. I do not however consider the conditions proposed by the complainant and Police that restrict the use of the bowling greens to be appropriate at this time.
84. While the liquor legislation operates separately to that administered by Council, I am of the view that it is preferable where practicable to ensure that any licence conditions relating to the use of the bowling greens be as consistent as possible with development consents and planning controls to ensure a balanced regulatory approach from regulatory agencies.
85. Noting that Council, as the landowner, lessor, and local consent authority has provided endorsement for the Club to broaden its activities and to increase the usability of the Club, it is not appropriate for me to consider imposing conditions that restrict the use of the bowling greens strictly to bowling activities. These conditions would act in opposition to the Council approval, an outcome which is not warranted in the absence of clear and significant evidence that argues for such an intervention in a manner appropriate (and linked directly) to the Act.
86. Having considered the material before me and the absence of a finding of undue disturbance, I have determined to take no further action in this matter. This decision also acknowledges the mitigating measures the Club has implemented and is further seeking to implement to improve the management of noise.
87. I am satisfied that this decision is a proportionate, measured, and appropriate regulatory response. Noting the residential area in which the Club is located, I again remind the Club that there is a strong obligation to take all disturbance complaints seriously and proactively manage any potential disturbance that may be caused by the Club.

**Decision Date:** 8 June 2022



**Dimitri Argeres**

Director, Compliance & 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 **6 July 2022**. A \$500 application fee applies. Further information can be obtained from Authority Guideline 2 published on the Liquor & Gaming NSW website.

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 29 October 2020.
2. Submission received from Northern Beaches Council on 25 November 2020.
3. Submission from NSW Police received on 3 December 2020.
4. File Note and observations for Balgowlah Bowling Club by L&GNSW Inspector Roberts dated 15 December 2020.
5. Balgowlah Bowling Club submission in response to complaint, including GHD Acoustic Report, received on 5 January 2021.
6. File Note and observations for Balgowlah Bowling Club by L&GNSW Inspector Roberts and Turner dated 9 February 2021.
7. Complainant submission in response and supporting material received on 23 February 2021.
8. Balgowlah Bowling Club final submission, including a Plan of Management, received on 29 March 2021.