



FILE NO:	A17/0011004
COMPLAINANT:	[REDACTED]
LICENSED PREMISES:	Narrabeen RSL Memorial and Recreation Club Ltd – LIQC300228886
ISSUES:	Whether the quiet and good order of the neighbourhood of the licensed premises is being unduly disturbed.
LEGISLATION:	<i>Liquor Act 2007</i>

SECTION 81 DECISION

Under Section 81 of the *Liquor Act 2007* (the Act) I, Dimitri Argeres, A/Director Compliance Operations, Liquor & Gaming NSW a delegate of the Secretary, Department of Industry, in relation to the complaint made in respect to Narrabeen RSL Memorial and Recreation Club Ltd (the Club) have decided to **impose three conditions** on the liquor licence:

1. **LA10 Noise Condition**
2. **Noise limiter**
3. **Security patrols**

The details of the proposed conditions, including the dates in which they become effective, are outlined in **Annexure 1**.

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; and,
 - 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.

The Complaint

5. On 16 November 2017, [REDACTED], of [REDACTED] North Narrabeen (the complainant) lodged a complaint with Liquor and Gaming NSW (L&GNSW) alleging undue disturbance from the operation of the Club. The complainant lodged this complaint as a resident authorised by three other residents.
6. The complainant alleges disturbance is caused by live bands performing in the Club's auditorium, as well as patrons exiting the Club at the conclusion of the performances. Although bands play on various nights, the complainant is mostly concerned with weeknight events.
7. Between 19 December 2017 and 6 June 2018, various submissions were lodged by all parties. A list of the material that is before the delegate is set out in **Annexure 2**.

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

8. The Act requires that the Secretary have regard to the following statutory considerations.
9. *The order of occupancy between the licensed premises and the complainant* – the Club has operated at its present site since 26 March 1956 and predates the complainant's occupation of the residence. This fact is not in dispute and I consider the order of occupancy is in favour of the Club.
10. *Any changes in the licensed premises and the premises occupied by the complainant, including structural changes to the premises* – there is no evidence before me that indicates any changes to either the Club's premises or the complainant's residence.
11. *Any changes in the activities conducted on the licensed premises over a period of time* – the complainant alleges the Club has altered their live music operations by introducing bands on weeknights, in addition to providing live entertainment on weekends.

Other Considerations

Undue disturbance

12. I am satisfied, based on the material before me, that there is sufficient evidence to support a finding that the Club has, at times, caused undue disturbance to the neighbourhood. In making this finding, I have balanced the submissions made by the Club's Secretary, the complainant, NSW Police and Council.
13. The Club is situated at the end of Nareen Parade, North Narrabeen. The Club operates over three levels and includes; a bar and outdoor area on the ground floor; a function space, restaurant and bar on the first floor; and an auditorium on the top floor. The Club is surrounded by bushland and residential homes. The Club's trading hours are restricted, and does not permit the sale or supply liquor between 12.00am midnight and 5.00am, with the exception of 12 occasions in any 12 month period.
14. The complainants' residences are located at the rear of the Club, approximately 50 metres away. The auditorium, located on the Club's top floor, is positioned higher than the residences.
15. The complaint alleges disturbance is caused by a number of factors, including:
 - a) live bands playing in the Club's auditorium, which appears to have inadequate sound proofing;

- b) the recent introduction of live music on Thursday nights, in addition to live music on Friday and Saturday nights, and;
 - c) minimal control of patrons outside the Club, who generate significant disturbance until well after the Club closes, most significantly on nights when live entertainment is conducted.
16. Northern Beaches Council advise that three complaints have been received in relation to the Club:
- a) 22 September 2017 – a live band had played at the Club the night before and patrons had congregated in the carpark until approximately 12.15am, generating noise that was disturbing local residents.
 - b) 30 March 2015 – music from an outdoor music festival was disturbing local residents and crowds were poorly managed.
 - c) 2 March 2015 – patron and music noise from the outside bar area was disturbing local residents, preventing them from sleeping.
17. Northern Beaches Police Area Command recorded six separate incidents involving the Club over the past two years. Two incidents relate to patron offences for driving with unlawful prescribed concentration of alcohol and two were inspections by Police officers. The remaining incidents involved a patron who was urinating in the Club carpark and an assault which resulted in a patron receiving a penalty for offensive behaviour.
18. During their inspections and interactions with the Club, Police holdings record incidents where patrons were permitted to drink without being challenged until they displayed signs of intoxication and that staff failed to prevent patrons from driving vehicles after they had consumed liquor. Patrons were also permitted to exit and create a disturbance outside the Club, without being challenged by staff.
19. In making the above observations, Police also recommended the following conditions be imposed on the Club:
- a) An RSA marshal be employed to monitor patrons, particularly in instances when bands are playing or functions are held.
 - b) Regular security patrols by guards of the carpark and surrounding areas to monitor patrons exiting the Club, to ensure noise levels are kept low, limiting the impact on surrounding neighbours.
 - c) A shuttle service be provided to take patrons home, ensuring patrons leave the area quickly.
 - d) All doors at the Club are to be closed when bands are playing.

20. While a certain level of disturbance is expected due to the nature of the premises operating as a club, I am satisfied that the Club's provision of amplified live entertainment, particularly on weeknights, as well as patron control issues, has resulted in undue disturbance.

Action taken to mitigate disturbance

21. In considering whether to impose conditions on the liquor licence, I have balanced the submissions of all parties, having specific regard to any action taken by the Club in response to the complaint and the effectiveness of any measures that have been implemented to address disturbance.
22. In response to the complaint, the Club submitted that live music has been a part of its operations for many years. The Club and its staff always ensure patrons leave the vicinity of the Club before ceasing duties. Staff call taxis and ensure that other patrons leave on the Club's courtesy bus.
23. The Club raised concerns that, due to its location in a valley, it is often blamed for noise generated from people's homes in the area. This is in addition to the Club receiving complaints regarding live music where the music is a result of a local band practising on weeknights in one of the surrounding residences.
24. In response to the allegations regarding weeknight entertainment, the Club submitted that they tried to limit weeknight performances, however, due to the small size of the Club, they were often only offered popular events on weeknights. Complainants were offered complimentary tickets, beverages and meals to compensate for any disturbance that may result from future live entertainment. The Club's entertainment contractor advised that for the six months that the Club did not accept live entertainment on nights other than Friday and Saturday, the Club missed out on 15 events.
25. A review of the Club's website and Facebook page show that over the past six months two of their last 12 events have occurred on a night other than Friday and Saturday. Information on upcoming events for the remainder of 2018 indicates that there are no events scheduled to occur between Monday and Thursday, however, a further two are scheduled for mid-week performances in January 2019.
26. The Club acknowledges that the frequency of live entertainment has increased since 2016. The auditorium used for live entertainment was built in the 1980's using soundproofing available at the time and that this is now insufficient. The Club indicates that it is working with sound consultants to upgrade the auditorium's soundproofing.

27. The Club advised the following additional measures have been implemented to assist in the mitigation of noise disturbance:
- a) Whenever possible, live bands/entertainment will be restricted to Friday and Saturday nights.
 - b) Security guards are now roaming throughout the Club, rather than remaining stationary.
 - c) The Club's house policy has been amended to include a live music noise curfew of 11.30pm Friday and Saturday and 10.30pm on all other weekdays.
28. The Club's entertainment contractor and sound consultant have advised that work is being conducted in the auditorium to reduce noise emitted from live entertainment. This includes construction of a new stage, relocation of speakers and adjustments to artist entry and exit points from the building.
29. On 26 August 2018 a further complaint was received. The complaint was in relation to a band playing on a Wednesday night. The operation of this band ceased at approximately 11.00pm and noise disturbance from patrons continued until approximately 11.45pm. The complainant further advised that the Club has not had bands perform on a Thursday night in recent times.

Findings and conclusion

30. I have considered the submissions of the complainant, the Club, Police and Council. I have also had regard to the particular context in which the Club operates. In deciding whether to impose conditions on the licence relating to disturbance, I have considered the matters outlined below.
31. I have taken the statutory considerations into account and acknowledge the order of occupancy is in favour of the Club.
32. I acknowledge that the Club has introduced new or amended measures to mitigate the disturbance, which include noise curfews and security patrols. In addition, I note that in recent times, the Club has limited their weeknight performances, and have indicated that they will continue to do so in the future.
33. However, the fact remains that the Club operates in very close proximity to residential properties. I also note that the Club appears to heavily promote live amplified entertainment, most of which are ticketed performances. As the Club operates with a

significant live entertainment focus, and as I have determined that disturbance has at times been undue, regulatory intervention is appropriate.

34. I have decided to impose the LA10 noise condition on the Club's liquor licence, as I consider this to be an appropriate safeguard to prevent undue disturbance. I do not consider that this condition will unduly burden the Club. The imposition of this condition strikes a balance between meeting the needs of the neighbouring residents and the Club's aspirations with respect to the entertainment needs of their members and guests.
35. I also consider it appropriate to impose a condition requiring the installation of a noise limiter to aid the Club in its compliance with the LA10 noise criteria. A noise limiter will address any compliance concerns that may result from the introduction of unknown amplified sound equipment by visiting musicians. While I acknowledge that the Club has proposed works to address the location and soundproofing of the stage area, I consider the imposition of this condition to be appropriate considering that the complaints of disturbance result mostly from amplified entertainment.
36. I also consider it necessary to also impose a condition requiring security patrols on nights when live entertainment is conducted. In determining to impose this condition I have taken note of the Police submission which corroborates the complainant's concerns about patrons lingering in the vicinity of the Club. I do not consider that the imposition of this condition will unduly burden the Club, as the Club indicates that security already conduct patrols. The imposition of this condition provides greater certainty regarding security patrols, particularly in respect of patrols outside the Club, and provides further comfort to residents that patrons will be adequately controlled. I consider that the Club's compliance with this condition will assist greatly in the reduction of late-night disturbance generated by Club patrons.
37. The complainants have sought that no live entertainment be permitted at the Club after 10.00pm on weeknights. I have taken into consideration the Club's intention to impose a weeknight curfew of 10.30pm, and as such, I do not consider it reasonable to impose any further restriction in regards to live entertainment. The concerns raised by the complainants will be mitigated by the imposition of the above conditions, and the continuation of voluntary measures currently being undertaken by the Club.
38. I consider the conditions imposed to be appropriate safeguards to prevent disturbance as it relates to the liquor licence. I consider this to be a balanced and proportionate response to the issues raised in the complaint.

39. Finally, I note that the Club will be subject to ongoing monitoring and inspections by L&GNSW to ensure that the hotel is compliant with conditions and that the risk of undue disturbance is being effectively managed. Should further undue noise disturbance be reported, then this matter may be revisited, resulting in further regulatory intervention.

Decision Date: 3 January 2019



Dimitri Argeres

A/Director Compliance Operations

Liquor & Gaming NSW

Delegate of the Secretary of the Department of Industry

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 **31 January 2019**. 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.liquorandgamingnsw.nsw.gov.au

Under section 81 of the *Liquor Act 2007* a delegate of the Secretary of the Department of Industry has imposed the following conditions on the liquor licence of:

Narrabeen RSL Memorial and Recreation Club Ltd (LIQC300228886)

LA10 Noise Condition

The LA10* noise level emitted from the licensed premises shall not exceed the background noise level in any octave band frequency (centred on 31.5 Hz-8 kHz inclusive) by more than 5dB between 7:00am and midnight at the boundary of any affected residence.

The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in any octave band frequency (centred on 31.5 Hz-8 kHz inclusive) between 12:00 midnight and 7:00am at the boundary of any affected residence.

Notwithstanding compliance with the above, noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 12:00 midnight and 7:00am

** For the purpose of this condition, the LA10 can be taken as the average maximum deflection on a sound level meter of noise emitted from the licensed premises.*

Date condition effective: 10 January 2019



Noise limiter

At all times when amplified music is conducted, the licensee must ensure all amplifiers or noise generating equipment is under the control of a noise limiter.

- a. The noise limiter levels must be set by an acoustic engineer; and,
- b. The noise limiter controller must be contained within a locked container or secure area and is to be only accessible by venue management.

Date condition effective: 3 February 2019

Security Patrols

Whenever the licensed premises trades after 10:00PM and live entertainment is provided, uniformed security guards must continually patrol the vicinity of the licensed premises to ensure patrons do not loiter or linger in the area or cause nuisance or annoyance to the neighbourhood. Patrols are to continue until the last patron leaves the licensed premises and the vicinity of the licensed premises.

Date condition effective: 3 February 2019



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

1. Section 79 Noise Disturbance Complaint lodged by [REDACTED] on 16 November 2017.
2. Submission from [REDACTED], General Manager Planning, Place & Community, Northern Beaches Council, received on 19 December 2017.
3. Submission from Tracey Mihajlovic, General Manager, Narrabeen RSL Memorial and Recreation Club Ltd, received on 27 December 2017.
4. Submission from [REDACTED], Northern Beaches Police Area Command, received 9 March 2018.
5. Final submission from the complainant, received on 10 May 2018.
6. Final submission from General Manager, received 6 June 2018.