

FILE NO: A16/0006989

COMPLAINANT: [REDACTED]

LICENSED PREMISES: Bar Beach Bowling and Sporting Club Limited –
LIQC300240940

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, Sean Goodchild, Director Compliance Operations, Liquor & Gaming NSW (L&GNSW), a delegate of the Secretary, Department of Justice, in relation to the disturbance complaint made against the licensee of Bar Beach Bowling and Sporting Club Limited (the club), have decided to impose the following conditions on the liquor licence:

1. A condition to comply with the LA10 noise criteria.
2. A condition for the use of noise limiters at the licensed premises.

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

REASONS FOR DECISION

Legislation

1. Section 79 of the Act permits a person to 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 resides in the neighbourhood of the subject premises and who has the support of at least two 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 further 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 the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.

The complaint

5. On 11 February 2016, [REDACTED] lodged a disturbance complaint under section 79 of the Act concerning the club. The complainant lodged the complaint as a person residing in the neighbourhood authorised by two other residents.
6. The complainant alleged the club regularly played high volume amplified music until 10:00 pm on Fridays, Saturdays and Sundays.
7. The complainant further alleged she had contacted the club on many occasions; however the phone was often not answered on weekend nights. When the phone was answered, the complainant's concerns were dismissed by club staff.
8. Submissions were provided by the club, council and NSW Police in response to the complaint. A list of the material that is before the delegate of the Secretary is set out in Annexure 2.

Considerations and findings

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

9. The Act require in certain cases the Secretary have regard to three statutory considerations being the order of occupancy between the licensed premises and the complainant; any changes in the licensed premises and the premises occupied by the complainant, including structural changes to the premises; and, any changes in the activities conducted on the licensed premises over a period of time.
10. *The order of occupancy between the licensed premises and the complainant* – The liquor licence indicates the club has operated under the current licence at its present site since 1 July 1955, which predates the complainant's occupation of their residence. This fact is not in dispute and I consider the order of occupancy consideration is in favour of the club.
11. *Any changes in the licensed premises and the premises occupied by the complainant, including structural changes to the premises* – There is no evidence to indicate the complainant has made any changes, including structural changes, to their residential premises. Council advised their records of development history for the premises date back to 1962 (for alterations and additions to an existing club). An approved development application (DA1997/0365) dated 17 November 1997, indicates a structural change at the club involving the installation of a nine-hole putting green with ancillary greenhouse and green keeping machinery storage shed, as well as an outdoor dining area. Other structural changes include the erection of a metal frame patio cover over the external dining area and addition of a patio awning.
12. *Any changes in the activities conducted on the licensed premises over a period of time* – The complaint does not assert that that there have been any significant changes to the operation of the premises. There is no evidence to suggest that the current business model which includes the hire of club facilities for functions is a recent change and it is likely that the club has offered its facilities for venue hire for many years.

Summary and conclusion

13. I have considered the submissions provided by the complainant, club, NSW Police and Council. I have also had regard to the particular context in which the club operates (including the statutory considerations mentioned above).
14. I am satisfied the material before me is sufficient to support a finding that the club has, at times, caused undue disturbance to the neighbourhood due to amplified music being

played at the club and particularly in relation to private functions on the club premises and outdoor areas.

15. Council advised they had received six complaints about the club between 2009 and 2015. The complaints related to development issues and noise resulting from use of the outdoor area. The Council investigated the complaints and then referred, or advised referral to L&GNSW in relation to noise and patron behaviour.
16. Council also noted condition 6.3 of DA1997/0365, which requires that high volume amplified music should not be used in association with the outdoor dining terrace during evening hours. Council submits that this condition cannot be enforced due to the lack of any legal definition of what constitutes 'high volume' and 'evening hours'.
17. In their submission, Police advised that a check of their systems identified the following relevant incidents:
 - a. Police attended the premises at 8:45 pm on Saturday 24 January 2015 in relation to a noise complaint. When they arrived, there was a party in the outdoor entertainment area without 80 persons and a DJ playing. Police deemed the noise offensive and told the manager to turn the music down. The manager turned the volume down and informed Police the function would end at 10:00 pm.
 - b. Police attended the premises at 9:35 pm on Sunday 25 October 2015 in relation to a brawl. Police located about 20 persons in the car park and about 20 persons in the outdoor area at the rear of the club. They observed a female who was showing signs of intoxication and there was no security at the venue.
 - c. Police attended the premises at 9:55 pm on Saturday 27 February 2016 and 9:15 pm on Sunday 13 March 2016 and observed that the gate in Kilgour Avenue was open after 9:00 pm, which is in breach of Council Development Application 08/1654.
18. A letter addressed to the complainant from the Chairman of the club was provided to L&GNSW, which I have considered as part of the club's submission. Key points from the Chairman's correspondence are provided below.
 - a. The club's 'function contract' restricts the volume and direction of music towards the ocean and away from nearby residents on the Western side of the club in Kilgour Avenue. A copy of the function contract has been reviewed and it is noted one of the clauses requires that 'functions using the Terrace area must not use highly amplified music of any kind and all music must be turned off at 9:30 pm. ALL patrons are then to either move inside the Club or depart the premises by 10:00 pm'.

- b. They are not a night club and while they are licensed to hold functions that allow people to bring their own entertainment, it is on the proviso they obey all of the rules set out in the function contract.
 - c. They take their responsibilities to local residents seriously and will ensure that all rules and regulations relating to the peace of near neighbours are strictly adhered to.
 - d. The taxi stand has been moved from Kilgour Avenue to the club's car park on Memorial Drive.
 - e. The main gate is now manually closed and locked at 9:00 pm daily and patrons leave by the carpark gate or through Empire Park.
 - f. The club Chairman will personally remind club staff all restrictions and rules regarding noise and behaviour must be followed and the Chairman will be available to all residents if they feel these options are not being regulated to their satisfaction.
19. In their direct submission to L&GNSW, the club advised a decibel cut off device from Custom Audio had been installed, which was calibrated by ACA Acoustics to 'A109 Standards'. The club also advised an automatic gate had been installed which will close electronically at 9:00 pm every night.
20. The club had made an effort to informally resolve the matter, including meeting with the complainant and providing assurances the club board would implement measures to reduce disturbance in the neighbourhood caused by the club.
21. On 19 July 2016, L&GNSW staff made inquiries with the club and confirmed the licensee had implemented the following practical measures:
- a. Installation of an automatic gate in Kilgour Avenue, which closes automatically at 9:00 pm every night to reduce noise from patrons leaving the premises in that area
 - b. A policy that all patrons be removed from the terrace function area by 10:00 pm
 - c. Installation of PVC blinds in the terrace function area, and
 - d. Installation of a noise limiter, calibrated by an acoustic engineer.
22. On 22 July 2016, L&GNSW staff made inquiries with RCA Acoustics, who confirmed they had been engaged by the club to adjust the settings for noise limits and to program the club's existing noise monitor system in the outside pergola area. RCA Acoustics advised they were not engaged by the club to test compliance with the LA10 noise condition, however they calibrated the noise monitoring system to make sure the noise level at the nearest residence does not exceed 46dB(A).

23. In subsequent contact with L&GNSW, the complainant advised there has been no disturbance from the club since March 2016, however it is often quieter during the cooler months of the year.
24. The club's liquor licence is not currently subject to conditions relating to disturbance. In deciding whether to impose conditions on the licence, I have considered the following points.
25. I have taken into account the efforts made by the club to voluntarily engage with, and provide assurances to, the complainant and the practical measures they have implemented to manage disturbance caused by the club.
26. One of the measures implemented by the club includes installation of a noise limiter. Although the noise limiter has been calibrated by an acoustic consultant, I note it has not been calibrated in accordance with the LA10 noise condition enforced by L&GNSW.
27. Finally, the effectiveness of practical measures implemented by the club will not be realised until the warmer months when there will be increased use of the outdoor areas by patrons.
28. After considering the material before me, I am satisfied that undue disturbance has occurred in the past and there is a likelihood it could occur again in the future. To provide regulatory certainty and to ensure appropriate safeguards are in place to prevent this, I have decided to impose the LA10 noise criteria condition on the club's liquor licence.
29. I also consider it appropriate to impose a condition that a noise limiter is installed and used on the premises to control all outdoor amplified entertainment. As part of this condition, I have included a requirement the noise limiter be calibrated by a qualified acoustic consultant to ensure compliance with the LA10 noise criteria.
30. I consider that these conditions do not place an undue burden on the club's operation and will ensure a level of regulatory certainty against future instances of disturbance.

Date of decision: 7 October 2016.



Sean Goodchild
Director Compliance Operations
Delegate of the Secretary, Department of Justice

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 **3/11/2016**. A \$500 application fee applies. Further information can be obtained from Authority Guideline 2 published at www.liquorandgaming.justice.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.justice.nsw.gov.au.

Annexure 1

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

Bar Beach Bowling and Sporting Club – Merewether (LIQC300240940)

Condition – LA10 Noise Criteria

The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz-8kHz inclusive) by more than 5db between 07:00 am and 12:00 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 (31.5Hz-8kHz inclusive) between 12:00 midnight and 07:00 am at the boundary of any affected residence.

Notwithstanding compliance with the above, the 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 07:00 am.

Date condition effective: 1 November 2016

Condition – Noise Limiter

At any time amplified music is used in the outdoor areas of the premises, all amplifiers or noise generating equipment must be under the control of a noise limiter/s. The noise limiter controller must be contained within a locked container or secure area and is to be only accessible by venue management and qualified acoustic consultants.

The noise limiter must be set by a qualified acoustic consultant to ensure compliance with the LA10 noise criteria and written confirmation that the club's noise limiting equipment meets the criteria set out in this condition must be kept at the club and be made available on request by NSW Government Inspectors, NSW Police, or council officers.

Date condition effective: 1 November 2016

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

1. Section 79 Noise Disturbance Complaint lodged by [REDACTED] on 11 February 2016.
2. Submission from Newcastle City Council dated 15 March 2016.
3. Submission from Newcastle City Local Area Command dated 15 March 2016.
4. Letter from Newcastle City Council to complainant re 'Noise Complaint – Bar Beach Bowling Club – [REDACTED] dated 10 December 2015
5. Letter from Darryl Lowe, Bar Beach Bowling and Sporting Club Ltd, to complainant re 'LA10 Noise Complaint Reference No. 0006989' (Undated).
6. Email from complainant to L&GNSW re Bar Beach Bowling Club Response – Ref A16/0006989 dated 21 March 2016.
7. Email from complainant to L&GNSW re 'Bar Beach Bowling Club complaint' dated 31 March 2016
8. Email from L&GNSW to complainant re 'Bar Beach Bowling Club complaint' dated 31 March 2016
9. Email from complainant to L&GNSW re 'Bar Beach Bowling Club complaint' dated 6 May 2016
10. Email from L&GNSW to complainant re 'Bar Beach Bowling Club complaint' dated 9 May 2016
11. Email from licensee to L&GNSW re Noise complaint A16/0006989 dated 6 June 2016
12. Email from complainant to licensee re Noise complaint A16/0006989 dated 6 June 2016
13. File note of phone call to complainant dated 18 July 2016
14. File note of phone call to licensee dated 19 July 2016
15. Email from RCA Acoustics to L&GNSW re Bar Beach Bowling and Sporting Club Limited – Acoustics Work Enquiry dated 25 July 2016
16. Letter from RCA Acoustics to [REDACTED] re Programming of the Noise Monitoring System and Noise Level Adjustments Bar Beach Bowling Club, dated 31 May 2016
17. Email from licensee to L&G NSW re request for Functions Contract, dated 18 August 2016
18. Licensee Functions Contract