

DOC16/014517

**FILE NO:** A15/0005378

**COMPLAINANT:** [Name and address withheld]

**LICENSED PREMISES:** Beachcomber Resort & Conference Centre, Toukley –  
LIQH400117116

**ISSUES:** Whether the quiet and good order of the neighbourhood of  
the licensed premises is being unduly disturbed.

**LEGISLATION:** *Liquor Act 2007*

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## SECTION 81 DECISION

Under Section 81 of the *Liquor Act 2007* (the Act) I, Anthony Keon, Director Compliance & Enforcement, Office of Liquor, Gaming & Racing as delegate of the Secretary, Department of Justice, in relation to the complaint made in respect to the Beachcomber Resort & Conference Centre, 200 Main Road, Toukley (the hotel) have decided to impose three conditions on the liquor licence, as follows:

1. A requirement for all amplified entertainment to be under the control of a noise limiter.
2. A requirement for a security guard to constantly patrol the hotel's western boundary to prevent patrons entering White Sails residential complex and to ensure that persons do not loiter or linger at any time in the hotel's carpark during the provision of amplified DJ entertainment or ticketed events at the hotel.
3. A requirement for CCTV surveillance of the emergency exit located between the hotel and White Sails, and entrance to the hotel carpark.

The details of the proposed conditions and variation of an existing condition, including the dates in which they become effective, are outlined in Annexure 1.

## **REASONS FOR DECISION**

### **Legislation**

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 14 May 2015 [Name and address withheld] (the complainant) lodged a disturbance complaint under section 79 the Act concerning the hotel. The complainant alleged undue disturbance on a weekly basis but particularly on Friday, Saturday and Sunday from live amplified entertainment and from patrons frequenting the hotel carpark and entering the property of the White Sails complex causing damage, removing and

damaging resident property and leaving rubbish. The complainant lodged the complaint as a person residing in the neighbourhood who is authorised by three other residents who are affected by the disturbance detailed in the complaint.

6. The complainant alleged that they had engaged with the then licensee about the on-going disturbance and was assured that the hotel was responding. The residents were provided with both the licensee's and security manager's mobile contact numbers for the complainant to report issues directly. It was alleged that phone calls and texts made to these numbers to report such matters were not answered. The residents are of the opinion that many of the issues raised in the complaint were not resolved due to the constant change of management at the hotel.
7. Between 11 June 2015 and 12 November 2015 various submissions were lodged by all affected parties. A list of the material that is before the delegate of the Secretary is set out in Annexure 2. A summary of the key information obtained during the submission period is set out in Annexure 3.

## **Considerations and findings**

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

8. The Act requires that 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.
9. *The order of occupancy between the licensed premises and the complainant*  
The hotel has operated at its present site since April 1959. The complainant advised that White Sails is a residential complex comprising 31 apartments that are all occupied by their respective owners. The complainant has resided within the White Sails complex for the past six years. Additional information provided by Mr David Kingston (a Director and owner of the hotel) submitted that White Sails was constructed in approximately 1990 on property previously owned by him and which adjoins the side boundary of the hotel. This fact is not in dispute and I consider that the order of occupancy consideration is in favour of the hotel.
10. *Any changes in the licensed premises and the premises occupied by the complainant, including structural changes to the premises*

No evidence has been provided in respect to any further structural changes to either the complainant's premises or the hotel. The complainant advised that the Strata Management of White Sales is obtaining quotations to construct a security fence on the western boundary of the complex to prevent hotel patrons from entering the property.

11. *Any changes in the activities conducted on the licensed premises over a period of time*  
The complainant advised that noise intrusion from both amplified and live entertainment and large functions have become more prevalent, and large groups of hotel patrons regularly trespass onto the enclosed grounds of the White Sails complex causing disturbance, leaving rubbish and damaging and or removing property.

### **Summary and conclusion**

12. I have considered the submissions of the complainant, the hotel owner (as the licensee's services were terminated on 9 June 2015), NSW Police and the local council. I have also had regard to the particular context in which the hotel operates (including statutory considerations mentioned above).
13. I am satisfied the material before me is sufficient to support a finding that the hotel has caused undue disturbance to the neighbourhood. I have balanced the submissions on behalf of the hotel, the complainant and the material supplied by NSW Police.
14. On 4 June 2015 NSW Police in a submission advised that between the dates 1 May 2014 and 26 May 2015 a total of 309 recorded incidents were linked to the hotel. Police provided a number of COPS events relating to issues of violence, anti-social behaviour and assaults that occurred both at the hotel and in the vicinity. Police also submit they compared incidents linked to the hotel in 2014 in respect to a previous complaint and noted the number of incidents have doubled. In the period July 2013 to June 2014, 157 assaults were reported to have occurred at the front of the hotel which has affected the amenity of nearby residents. The hotel is currently listed as a level 2 declared premises under the Violent Venues Scheme, conducting a nightclub with DJ style entertainment on Friday nights until 1.00 am when incidents of intoxication, violence and anti-social behaviour regularly occur.
15. The submission advised that Tuggerah Lakes Local Area Command licensing officers engaged with the former licensee in respect to:
- inadequate numbers of security staff to control patrons.
  - levels of violence.
  - risks of staging of large music events.

- inadequate CCTV coverage and lighting, and that most of these issues were not resolved.
16. COPS event E57430933 provided with the submission detailed that a 'Sunbay' music event was held on 5 April 2015 where 1600 persons were in attendance at the hotel. At the conclusion of the event many patrons were permitted to remain and were causing disturbance. COPS event 57222717 relates to a homicide and stabbing that occurred about 12.10 am on Monday 6 April 2015 outside a Pizza shop on Main Road, Toukley opposite the Hotel. During the investigation police established that the persons interviewed in connection with this matter had been patrons of the hotel attending the 'Sunbay' music event. For a number of hours following this incident, and whilst preserving the crime scene police officers were able to assess patron behaviour and noted that a number of patrons were occupying hotel balconies that overlook the White Sails complex consuming alcohol, yelling out offensive language and causing undue disturbance.
  17. At this time police had cause to speak to a number of persons requesting they keep their noise down. Police also noted that alcohol affected people were occupying the hotel foyer area throughout the morning consuming alcohol and skylarking and hotel management was not present to address this behaviour which continued unabated.
  18. On 11 June 2015, following an application by NSW Police, a delegate of the Secretary, for the purposes of section 54(1) of the Act, imposed five conditions on the hotel liquor licence requiring the installation of CCTV cameras, a ban of dance party events, a requirement for Crime Scene Preservation and a Plan of Management to be submitted to the Commander, Tuggerah Lakes Local Area Command for approval.
  19. In an email dated 17 June 2015 to Liquor & Gaming NSW case officers, Mr David Kingston the hotel's owner advised that he had only become aware of the complaint when he was advised and provided with a copy at a meeting with NSW Police on 11 June 2015. Mr Kingston also advised the employment of [name withheld] (licensee) was terminated on 9 June 2015 and was not aware of whether [name withheld] had received a copy of the complaint.
  20. In an email dated 9 July 2015 Mr Kingston advised of a meeting convened between the residents and hotel management to discuss the issues raised in the complaint. In a further detailed email submission dated 23 November 2015 Mr Kingston advised that the hotel's business model had changed to one of a more balanced demographic representation of the overall community and of an agreement to not undertake large scale 'Sunbay' dance parties. He also confirmed that he has been the owner of the hotel

for 18 years and during most of that period management has maintained a cordial relationship with nearby neighbours. He accepts that in part of 2014 and the first half of 2015 management at the hotel was not of the appropriate calibre. Accordingly, there have been changes to practises including a new business model that NSW Police are satisfied with.

21. On 10 February 2016 a Liquor and Gaming NSW case officer contacted the complainant to ascertain the status of noise disturbance from the hotel. The complainant advised, *"The issues of disturbance had progressively become less frequent since changes were made at the hotel not to have large music events such as 'Sunbay' which attracted over a thousand young people. There are occasions when noise from the hotel enters our residences however these issues are not anyway as frequent or intrusive as before"*.
22. In determination of this complaint, I have also taken into consideration the following comments by Superintendent Swilks Commander, Tuggerah Lakes LAC in relation to the complaint, *"Despite collaborative efforts by police to work with the licensee/s, conditions continue to present a risk to patrons, attending police (drain on resources) and disruptive to the community. There appears to be a degree of 'lip service' from licensees to sincerely seek to address these issues. It is also apparent that a combination of structural change and improved security needs to be employed to remedy the issues these premises present to the safety and peace of the community."*
23. In order to ensure appropriate safeguards are in place for the future operation of the hotel I consider the installation and calibration of a noise limiter in accordance with the existing LA10 noise condition, as appropriate conditions to control all amplified entertainment at the hotel.
24. I have also noted that a major concern of the residents of 'White Sails' is the continual entry by hotel patrons onto their property via an emergency exit gate located on the hotel's western boundary. Residents have reported hotel patrons after gaining entry have also removed or damaged their property and leave rubbish on the grounds. In this respect, I consider it appropriate for a security guard to constantly patrol the hotel's western boundary to prevent persons from entering the residential complex, and also to ensure that persons do not loiter or linger at any time in the hotel's carpark when amplified DJ entertainment or a ticketed event is conducted at the hotel. I also intend to impose a condition to ensure that there is appropriate CCTV coverage of this emergency exit and also the entrance to the hotel carpark.

25. I am of the view that the imposition of these conditions does not place undue burden on the hotels operation and will ensure regulatory certainty against future instances of disturbance should the business model change again.
26. I have taken into account that the hotel will continue to provide live amplified entertainment within its nightclub area, albeit, with a much lower level of patron numbers than previously reported by NSW Police. I also note that despite resident complaints of disturbance from amplified music and patron noise levels acoustic monitoring was not undertaken from any affected residence within the White Sails complex.
27. In making this decision, I have placed particular emphasis on the NSW Police submission, in particular the supporting COPS events detailing a significant number of violent and anti-social incidents. I have accordingly formed the view that the information provided by NSW Police clearly supports the issues raised in the complaint that the hotel has caused undue disturbance to the quiet and good order of the neighbourhood.
28. In this regard I am satisfied the proposed conditions will prevent undue disturbance from amplified entertainment and undue disturbance by patrons unlawfully entering the 'White Sails' residential complex. I consider these conditions to be appropriate safeguards to prevent issues of disturbance from occurring in the future.

Date of decision: 21 March 2016.



**Anthony Keon**  
Director Compliance & Enforcement  
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 21 days of the date of this decision, that is, by no later than **11/04/2016**. A \$500 application fee applies. Further information can be obtained from Authority Guideline 2 published at [www.liquorandgaming.justice.nsw.gov.au](http://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 and Gaming NSW website.

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:

**Beachcomber Resort and Conference Centre – Toukley (LIQH400117116)**

**Noise Limiter**

The hotel must install a noise limiter to control all amplified entertainment.

The noise limiter must be calibrated by a qualified acoustic consultant by 30 June of each calendar year to ensure that the hotels amplified noise levels comply with the LA10 noise criteria.

Written confirmation that the hotel's noise limiting equipment meets the criteria that is set out in this condition must be kept at the hotel and be available on request by inspectors, NSW Police and the local council.

**Date condition effective: 18 April 2016**

**Additional security guard patrol**

A security guard must constantly patrol the hotel's western boundary in the vicinity of the emergency exit to prevent patrons entering White Sails residential complex and the entrance to the hotel's carpark at any time when amplified DJ entertainment or a ticketed event is conducted at the hotel.

**Date condition effective: 25 March 2016**

**CCTV surveillance**

CCTV surveillance cameras must capture the emergency exit between the hotel and White Sails, and the entrance to the hotel carpark. The surveillance footage and technical data must be of the same standard as that described in existing condition 10500.

**Date condition effective: 18 April 2016**



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

1. Section 79 Noise Disturbance Complaint lodge by [name withheld] on 14 May 2015 and associated emails dated 6 October 2015, 18 October 2015 and 12 November 2015.
2. File note of observations by Liquor Inspectors dated 10 June 2015.
3. Submission by Tuggerah Lakes LAC dated 11 June 2015.
4. Email responses by Mr David Kingston hotel owner dated 17 June 2015, 9 July 2015, 29 October 2015, 23 November 2015.
5. Email response by Mr Brian Jones Section Manager Compliance & Health Wyong Shire Council dated 23 June 2015.
6. File note of a conversation with an authorising resident on 10 February 2016 regarding the current status of disturbance emanating from the hotel.

## Annexure 3

### Summary of key submissions

#### Submission from Tuggerah Lakes Local Area Command dated 11 June 2015

Police submitted that between the dates 1 May 2014 and 26 May 2015 a total of 309 recorded incidents were linked to the hotel. In respect to these matters police provided a number of COPS events relating to issues of violence, anti-social behaviour and assaults that occurred at the hotel and in the vicinity. Police also submit they compared incidents linked to the hotel in 2014 in respect to a previous disturbance complaint and noted the number of incidents have doubled.

For the period July 2013 to June 2014, 157 assaults were reported to have occurred at the front of the hotel which has affected the amenity of nearby residents. The hotel is currently listed as a level 2 declared premises under the Violent Venues Scheme, and conducts a nightclub with DJ style entertainment on Friday nights until 1.00 am when incidents of intoxication, violence and anti-social behaviour regularly occur.

COPS event E57430933 provided with the submission detailed that a 'Sunbay' music event was held on 5 April 2015 where 1600 persons were in attendance at the hotel. At the conclusion of the event a number of patrons were permitted to remain and were causing disturbance. COPS event 57222717 relates to a homicide and stabbing that occurred about 12.10 am on Monday 6 April 2015 outside a pizza shop on Main Road, Toukley opposite and in close proximity of the Hotel.

Police established that all persons interviewed in connection with this matter had been patrons of the hotel attending a 'Sunbay' music event. For a number of hours whilst preserving the crime scene police officers were able to assess patron behaviour and noted patrons were occupying hotel balconies which overlook the White Sails complex consuming alcohol, yelling out offensive language and causing undue disturbance.

To preserve the crime scene, police remained at the location where they observed many patrons in the early hours of the following morning occupying hotel balconies consuming alcohol, yelling out offensive language and causing undue disturbance.

A number of the Hotel's balconies overlook the White Sails complex and police had cause to speak to a number of persons requesting they keep their noise down. Police also noted that alcohol affected people also occupied the hotel foyer area throughout the morning consuming alcohol and skylarking, and hotel management was not present to address this behaviour which continued unabated.

On 11 June 2015, following an application by NSW Police, a delegate of the Secretary, for the purposes of section 54(1) of the Act, imposed five conditions on the hotel liquor licence that required the installation of CCTV cameras, a ban of dance party events, a requirement

for Crime Scene Preservation and a Plan of Management to be submitted to the Commander, Tuggerah Lakes Local Area Command for approval.

The submission advised that Tuggerah Lakes Local Area Command licensing officers engaged with the former licensee on many occasions in respect to inadequate numbers of security staff to control patrons, levels of violence, risks of staging of large music events, and inadequate CCTV coverage and lighting, and that most of these issues were not resolved.

### **Submission from Mr Brian Jones, Wyong Shire Council dated 23 June 2015.**

In an email dated 23 June 2015 Mr Brian Jones Section Manager, Compliance and Health, Wyong Shire Council advised Council records do not indicate any complaints received during the period of January 2015 to 30 April 2015, or of any Development Application limitations restricting use of the hotel as a place of entertainment or any current Development Applications under consideration.

### **Emails by a Liquor & Gaming NSW case officer to the hotel owner**

On 28 October 2015 in an email to the hotel owner a case officer advised of resident reports of disturbance from patrons in the hotel carpark between 11.30 pm and 1.30 am on 17 October 2015, and a report of a hotel patron urinating on a White Sails garden and hotel it appeared there were no hotel security guards on duty.

On 29 October 2015 in an email response to the email sent 28 October 2015 the hotel owner advised he understood relations were generally cordial with White Sails residents and that no issues had been raised with him. He further commented, "*The occupants of White Sails were well aware that there was a large long established pub in that location before they moved into White Sails (the Beachcomber was built around 1950 whereas White Sails was built around 1990 on land that I originally owned)*".

### **Submissions from premises owner Mr David Kingston**

A number of separate submissions were received from the premises owner David Kingston that advised the following:

Email 17 June 2015 advising the services of then licensee [name withheld] was terminated on 9 June 2015.

Email 9 July 2015 advising a resident meeting concerning the issues raised in the complaint was attended by new licensee [name withheld] and the hotel's financial controller Rosemaree Rettenmund.

Email 23 November 2015 advising that since receiving the complaint and taking into account the changing expectations of the community regarding licensed premises, the following changes have been made to the hotel:

- The business model is being changed so that it is far less orientated to youth entertainment and we are generally seeking a more balanced demographic representative of the overall community as patrons of the hotel.
- Noting community concerns we have agreed to not undertake any more large scale 'Sunbay' dance parties.
- Since lodgement of the complaint there have been numerous inspections of the hotel by the NSW Police Alcohol & Licensing (ALEC) Enforcement Command and Local Area Command licensing police.
- Resulting from constructive discussions with ALEC the hotel accepted five new conditions on the hotel's liquor licence.

- Acceptance that management practises in parts of 2014 and the first half of 2015 has not been to the appropriate standard. The hotel did have outstanding management for many years led by Messrs [names withheld]. Unfortunately, [name withheld] was not successful so was removed as licensee and [name withheld] who was assistant manager of the hotel became licensee on an interim basis. Rosemaree Rettenmund has been appointed as licensee from 11 December 2015 following the resignation from the position by [name withheld]. Mr Kingston advised he is optimistic that with Ms Rettenmund's lengthy service (eight years) at the hotel and her maturity that hotel management will again become strong. An additional manager who has strong experience from the ALH group has also been employed.
- Confirmed that Hotel management has discontinued the weekly youth orientated Friday night nightclub and move toward functions and events that generally appeal to a broader age demographic. The hotel is now actively promoting function and motel room patronage.
- Believes new licensee Rosemaree Rettenmund has developed a cordial relationship with residents of White Sails.
- In response to reports of disturbance on 17 October 2015 from a van collecting band equipment Mr Kingston advised as it was not possible to park the van in Main Road it was subsequently parked in the laneway between the hotel and White Sails prompting the complaint. In future, the loading/unloading of band equipment will not be done from the laneway. The licensee Rosemaree Rettenmund will also ensure that security guards are tasked more effectively.

**File note of conversation with Complainant concerning the status of the complaint.**

On 10 February 2016 the case officer contacted the Complainant to ascertain the status of the complaint and was advised that the issues of disturbance had progressively become less frequent since the death of a patron in the street in April 2015 and following lodgement of the disturbance complaint. The hotel is not having large music events such as 'Sunbay' which attracts over 1000 young people. There are occasions when noise from the hotel enters our residences however these issues are not anywhere as frequent or intrusive as before.

Residents have met with the new licensee Rosmaree Rettenmund who appears to be working with the Body Corporate of White Sails in respect to the issues set out in the complaint.