

FILE NO: A15/0006251

COMPLAINANT: [REDACTED]

LICENSED PREMISES: Bodalla Arms Hotel, Bodalla – LIQH400116020

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, Paul Irving, A/Director Compliance & Enforcement, Office of Liquor, Gaming & Racing (OLGR), a delegate of the Secretary, Department of Justice, in relation to the complaint made against the Bodalla Arms Hotel (the Hotel), Princess Highway, Bodalla have decided to impose three conditions on the liquor licence relating to the following:

1. LA10 noise condition.
2. A requirement for the Hotel to install a noise limiter to control all amplified entertainment.
3. All amplified entertainment conducted at the Hotel is prohibited until such time as an acoustic report prepared by a qualified acoustic consultant advises that the Hotel complies with the LA10 noise criteria. A copy of the acoustic report must be provided to Liquor & Gaming NSW.

The details of the conditions, including the dates 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 is so prescribed to make a complaint includes a person who satisfies the Secretary that their interests (financial or otherwise) are adversely affected by the disturbance detailed within the complaint.
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 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 including the following matters set out in section 3(2):
 - 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, service 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 17 September 2015, [REDACTED] Bodalla (the Complainant) lodged a disturbance complaint under section 79 of the Act concerning the Hotel. The Complainant alleged the Hotel conducted live bands on a bi-monthly basis, and has now increased amplified entertainment to every weekend.

6. It is also alleged that the Complainant engaged with the licensee on several occasions requesting noise levels be reduced and these requests have been ignored. The Complainant lodged the complaint as a resident authorised by two other residents.
7. Between 9 November 2015 and 26 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 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 Hotel 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 11 July 1952. The present owner and licensee commenced operation at the Hotel on the 16 December 2014. The Hotel predates the Complainant who has lived at her residence for one and a half years. 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* – An extension of a glass sunroom was added to the Hotel in the 1970/80's. There have been no changes to the Complainant's residence.
11. *Any changes in the activities conducted on the licensed premises over a period of time* – The Complainant alleges that since the change of licensee in December 2014 there has been a significant increase in amplified music and that the glass sunroom extension is frequently open which projects the music noise in the direction of nearby residences. I have considered this change in activities in this decision.

Summary and conclusion

12. I have considered the submissions from the Complainant, licensee, 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 that the material before me is sufficient to support a finding that the Hotel, at times, has caused and continues to cause undue disturbance to the neighbourhood. I have balanced the submissions on behalf of the Hotel, the submissions made on behalf of the Complainant, the material provided by the Far South Coast Local Area Command and Eurobodalla Shire Council.
14. Notwithstanding that formal notification of the complaint was provided to the licensee, ongoing issues of disturbance from the operation of amplified entertainment at the Hotel continue to be reported to NSW Police and Liquor & Gaming NSW by nearby residents and these issues remain unresolved. I also acknowledge that the licensee has not, during the process of dealing with the complaint, engaged the services of an acoustic consultant to test and ensure that the Hotel's noise emissions from amplified entertainment comply with the LA10 noise criteria, nor received appropriate advice to prevent undue disturbance to nearby residents from such entertainment.
15. Both the licensee's submission and material sourced on Facebook promotes the Hotel as a live/amplified entertainment venue with up to five-piece instrumental bands. Whilst hotels can be expected to provide amplified entertainment, they must do so in a way that does not unduly disturb the quiet and good order of their neighbourhood.
16. I also accept that social media sites such as Facebook allow users to post information of their liking and choice on any subject matter, and users are free to make comment. I note that the Hotel's Facebook administrator has used the social media site to unnecessarily degrade the complainants by referring them to as "dickheads" for making a complaint against the Hotel. I find this conduct inappropriate and offensive.
17. I note that the licensee hosted a three-day outdoor music festival in an apparent attempt to demonstrate against the complaint. I also note that the licensee posted the comment "Lets stick it to em" on Facebook. The licensee in her submission apologised to the residents of [REDACTED] for posting the comment citing that she was upset at the time. Whilst acknowledging this apology, the evidence provided by the Complainants and NSW Police suggests that there has been no change in the manner live entertainment is presented at the Hotel.

18. In a submission dated 26 November 2015 Sergeant Robert Moore, Licensing Co-ordinator, Far South Coast Local Area Command, advised that recommendations and advice to reduce the impact of noise to the neighbours was provided to the licensee on two occasions and it would appear that advice was not acted upon or did not assist in resolving the issues of undue disturbance from the Hotel. Sergeant Moore also advised that due to the close proximity of the affected residences to the Hotel it is likely that continuing complaints will be received when entertainment is provided, and that prior attempts to conciliate similar noise complaints have been unsuccessful.

19. In an email dated 27 January 2016 to Liquor & Gaming NSW, Sergeant Moore advised that following further complaints of noise disturbance on 26 January 2016, he conducted a one-hour assessment of music noise intrusion from within each residence that is nominated in the complaint. Sergeant Moore determined that the amplified music emanating from the Hotel was clearly audible, excessive, and he formed the view that the resident complaints of undue disturbance from live/amplified entertainment at the Hotel are justified. He further advised that following the assessment he attended the Hotel and engaged the licensee who stopped the amplified entertainment that was being provided by a live band. Sergeant Moore also advised that there were approximately 30 patrons in attendance at the Hotel during that assessment.

20. I have also taken into consideration the following comments made by Sergeant Moore to describe the nature and extent of noise heard during his assessment of amplified music from the Hotel on 26 January 2016:

“The continued “thump” of the bass that was being used was repetitious, constant and rhythmical and the only respite from the music was between songs”.

“The music was clearly audible in the police vehicle despite the fact the window was wound up”.

“In one of the affected premises the occupant had the television turned up to almost the maximum level so televised cricket could be heard but the music from the Hotel was clearly able to be heard above the television level”.

21. In response to these observations, Sergeant Moore served a Noise Abatement Direction on the licensee under section 276 of the *Protection of the Environment Operations Act 1997* directing the licensee to cease the offensive noise. The direction was issued for a 10-day period commencing on 28 January 2016 and ceasing at 10:20pm on Friday 5 February 2016.

22. In order to ensure appropriate safeguards are in place for the future operation of the Hotel, I consider the imposition of the LA10 noise criteria, and a requirement for the installation and calibration of a noise limiter in accordance with the LA10 noise criteria as appropriate conditions for the control of all amplified entertainment conducted at the Hotel. I also consider that these two conditions do not place undue burden on the Hotel's operation and will ensure regulatory certainty against future instances of disturbance.
23. I have also taken into account that despite lodgement of the complaint the Hotel has continued to provide live amplified entertainment and has caused continuing issues of noise intrusion and disturbance to the affected residents. The licensee has not committed to accepting professional advice or undertaken acoustic monitoring to ensure emitted noise levels comply with the LA10 noise criteria.
24. The evidence of the NSW Police clearly supports the resident's claims that amplified entertainment conducted at the Hotel is causing undue disturbance to the quiet and good order of the neighbourhood. Accordingly, I consider it appropriate to impose a further condition that prohibits all amplified entertainment until such time as an acoustic report prepared by a qualified acoustic consultant advises that the Hotel's amplified entertainment is compliant with the LA10 noise criteria.
25. I consider the conditions imposed to be appropriate safeguards to prevent issues of disturbance from occurring in the future.

Date of decision: 12 February 2016.



Paul Irving
A/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 **04/03/2016**. A \$500 application fee applies. Further information can be obtained from Authority Guideline 2 published at www.ilga.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:

Bodalla Arms Hotel – Bodalla (LIQH400116020)

LA10

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 07:00am 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 07:00am 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 07:00am.

Date condition effective: 29 February 2016

Noise Limiter

The Hotel must install a noise limiter to control all amplified entertainment. All amplifiers or noise generating equipment must be under the control of the noise limiter that has been calibrated by a qualified acoustic consultant to ensure compliance with the LA10 noise criteria consultant.

Date condition effective: 29 February 2016

Amplified Entertainment

No amplified entertainment is to be conducted at the hotel until such time as an acoustic report prepared by a qualified acoustic consultant advises that all amplified entertainment to be conducted at the hotel complies with the LA10 noise criteria. A copy of the acoustic report must be provided to the Liquor & Gaming NSW within 7 days from the date of issue.

Date condition effective: 29 February 2016

Annexure 2

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

1. Section 79 Noise Disturbance Complaint lodge by [REDACTED] September 2015.
2. Submission from Mr Bruce Young, Environmental Officer, Eurobodalla Shire Council dated 4 November 2015.
3. Submission from Mrs Michelle Coric, Licensee at Bodalla Arms Hotel, Bodalla dated 9 November 2015.
4. Submission from [REDACTED] responding to the licensee's submission dated 15 November 2015.
5. Submission from Sergeant Robert Moore, Licensing, Far South Coast Local Area Command dated 26 November 2015.
6. Material printed from the Hotel's Facebook Page, various dates.
7. Emails to the licensee by a Liquor & Gaming NSW case officer dated 17 November 2015, 27 November 2015, 1 December 2015, 18 December 2015, 5 January 2016, and 15 January 2016 requesting information about the hotel's licensed boundary, engagement of an acoustic consultant and ongoing reports of disturbance.
8. Email from the complainant advising of disturbance dated 6 December 2015.
9. Email from the complainant advising of disturbance dated 14 December 2015.
10. Email from the complainant advising of disturbance 22 December 2015.
11. Email the complainant advising of disturbance dated 4 January 2016.
12. Email from the complainant dated 18 January 2016 advising the Hotel had used a soloist and there were no issues of disturbance.
13. Email from the complainant advising of disturbance dated 25 January 2016.
14. Email from the complainant advising of disturbance dated 27 January 2016.
15. Email from Sergeant Bob Moore dated 27 January 2016 advising of excessive noise on 26 January 2016.
16. Noise Abatement Direction served by the Police to the licensee dated 28 January 2016.

Annexure 3

Summary of key submissions

Submission from Mr Bruce Young, Eurobodalla Shire Council dated 4 November 2015.

The council submission advised that three complaints concerning the hotel were received in 2007 and 2012. A customer service enquiry was also received on 16 October 2015 regarding noise issues from the hotel.

On 12 October 1995 the then licensee sought permission to have live entertainment in the beer garden. This request was approved with the LA10 condition attached. This approval did not permit public entertainment within the building structure.

On 13 November 2007 the Council wrote to the licensee requiring the removal of speakers from the beer garden.

Submission from licensee Ms Michelle Coric

A submission was received from Ms Michelle Coric current licensee that advised the following:

Ms Coric purchased the Bodalla Arms Hotel in December 2014 and has presented entertainment including bands since taking over.

The complaint is inconsistent with incorrect information. It is unnecessary, baseless and an unfounded attack on the licensee's livelihood and is detrimental to the future development of Bodalla and the hotel.

The hotel has been operating for more than 100 years, well before most of the houses in [REDACTED] were built, and has always conducted live music and dancing and has never experienced any problems with noise complaints until [REDACTED] began complaining to previous publicans who were as dumbfounded as the current licensee because bands always stopped playing well before midnight. The licensee also refutes the accuracy of noise readings that were taken by the residents

The hotel's entertainment is conducted in an area described as the sunroom which overlooks the beer garden. During fine weather the French doors are opened so patrons can enjoy the entertainment from the beer garden. At other times, a band or entertainment is set up at the rear of the beer garden with the music projecting towards the hotel.

The hotel conducted a three day music festival which was well supported by the local community. The licensee in her submission admitted to posting a statement on Facebook with the comment "Let's stick it to 'em" (a reference to the complainants) and apologised to the residents of Wiltshire Lane if this statement offended them.

Further submission from the Complainant 15 November 2015.

A submission was received from the complainant in response to the licensee's submission advising that the residents do not wish to see an end to live music at the hotel but request noise be contained within the hotel building.

**Submission from Sergeant Robert Moore, Far South Coast Local Area Command
Licensing Co-ordinator 26 November 2015**

The submission advised the following:

The hotel re-opened for trading on 13 December 2015 after having been closed for several months. On 30 June 2015 and 3 July 2015 licensing police were contacted by the complainants concerning the frequency of music events conducted at the hotel which was causing ongoing issues of noise intrusion. The complainants also expressed their concern about Facebook comments made against them due to their complaint against the hotel

A complaint to police on 9 July 2015 reporting that music noise disturbance had not abated, in particular low frequency noise intrusion heard within their residences. Police officers attended the hotel and raised these issues with the licensee. At this meeting, Licensing Police advised the licensee that the hotel had been closed on and off for a number of years and that live music at the hotel was more the exception than the rule for the last 10-15 years.

On 12 September 2015 police officers responding to a noise complaint attended the hotel and reported that a live band was playing inside of the hotel. The music volume was assessed by the officers as not offensive noise. Notwithstanding, as a preventative measure they recommended the closure of the hotel's external doors leading to the beer garden to which face nearby residences.

Police view that the licensee by her own admission in her response to the complaint is that the hotel is providing more entertainment than previous licensees. Police also advised that between the period 1 December 2014 and 26 October 2015 eight messages were recorded on the Computer Aided Dispatch System of which five related to noise complaints originating from the hotel. Sergeant Moore also advised that over the previous months he has spoken to all parties involved in the complaint and the residents all agree that they do not want the hotel to cease entertainment, there only request is for it to be managed so that it does not intrude into their residences.

Email dated 25 January 2016 from the complainant reporting undue disturbance from amplified entertainment

The complainant advised the case officer of further undue disturbance from amplified music from the hotel that resulted in police being called. After police had left the vicinity the complainant reported that a drunken female was yelling at the back of the hotel with words to the effect, "F..ing neighbours, let's go and bang on their doors."

Email submission dated 27 January 2016 from Sergeant Moore

Sergeant Moore advised that in response to resident complaints of excessive noise from live entertainment at the hotel on 26 January 2016 he conducted an assessment over a one hour period from within three residential premises resulting in a finding that the emitted noise was deemed to be offensive noise. Accordingly, Sergeant Moore issued a Noise Abatement under the provisions of the his observations Sergeant Moore served a Noise Abatement Direction on the licensee under section 276 of the Protection of the Environment Operations Act 1997 which directed the licensee to cease offensive noise. The time period of the notice was for 10 days, commencing 28 January 2016 and ceasing at 10:20pm on Friday 5 February 2016.

Summary of emails by a Liquor & Gaming NSW case officer to the licensee

17 November 2015 case officer email to the licensee requesting information about the hotel's defined licensed area. No response received.

27 November 2015 case officer email to licensee seeking advice as to whether an acoustic consultant is to be used. An email response from the licensee advised a quotation had been received from an acoustic consultant and that funds would need to be raised to proceed.

1 December 2015 case officer email to the licensee requesting information as to the status of whether an acoustic consultant has been engaged. No response received.

18 December 2015 case officer email advising licensee that complaints were still being received and vigilance was needed to ensure compliance with the LA10 noise criteria as the hotel remains subject to a disturbance complaint. Licensee again asked whether an acoustic consultant had been engaged. Licensee requested to respond by of 4 January 2016. No response received.

5 January 2016 case officer email to the licensee with a request to acknowledge and respond to previous emails. The email dated 5 January 2015 was responded to on 9 January 2016 outlining a financial loss due to a scam at the hotel prior to Christmas and the intention to hire an acoustic consultant. No indication or time frame for such action was provided.

15 January 2016 case officer email requesting information on the number of bands that have played at the hotel since the complaint was lodged and details of the acoustic engaged. A response received from the licensee on Monday 25 January 2016 advised of a medical condition and a request for additional days to respond.