



FILE NO: A14/0004107

COMPLAINANT: [REDACTED]

LICENSED PREMISES: Bundeena Bowling & Sports Club Co-Operative Limited,
Bundeena – LIQC300231526

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, Anthony Keon, Director Compliance & Enforcement, Office of Liquor Gaming & Racing as a delegate of the Secretary, NSW Department of Justice, have in relation to the complaint decided to impose the following conditions on the liquor licence of the Bundeena Bowling & Sports Club Co-Operative Limited:

Effective From 24 July 2015

1) LA10 Noise Condition

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 Centre 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.

2) Noise Limiter Condition

The club must install a noise limiter to control all amplified entertainment in the licensed premises. The noise limiter must be calibrated by a qualified acoustic consultant.

- a) All amplifiers or noise generating equipment must be under the control of a noise limiter;
- b) The noise limiter must switch off power to all audio amplifier equipment if the sound levels at any point in the internal and external areas of the club exceed the levels recommended by the acoustic consultant;
- c) The noise limiter must be contained within a locked container or secure area and only accessible by club management.

3) No music or PA to be operated in the outdoor beer garden Condition

From 6:00pm on any trading day the playing of amplified music or the public address system must not be operated in the outdoor beer garden area.

4) Closure of beer garden and outdoor areas Condition

On any trading day, the club must ensure that no patron is in the outdoor areas located at the front of the Club (Liverpool Street) after 9:30pm.

For the purposes of conditions #3 and #4 the Director Compliance & Enforcement Office of Liquor, Gaming & Racing as a delegate of the Secretary may consider varying or revoking the conditions on application by the club on the basis that the club has completed the noise amelioration work recommended in the report of Rodney Stevens Acoustics Pty Limited dated 18 March 2015.

Further, upon completion of the acoustic amelioration work the club will undertake acoustic compliance testing and within 21 days of such testing will provide OLGR with an acoustic report which evidences that the club's external outdoor beer garden and PA amplification system complies with the LA10 noise criteria.

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 resident and is authorised in writing by 2 or more other such 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 22 July 2014, [REDACTED] ("the Complainant") submitted a disturbance complaint under section 79 of the *Liquor Act 2007* ("the Act") concerning the Bundeena Bowling & Sports Club Co-Operative limited, Bundeena ("the Licensed Premises"). The Complainant alleged peak undue disturbance on a weekly basis but particularly on Thursday, Friday, Saturday and Sunday nights from amplified music noise and from patrons using the outside entertainment area and car park area, as well as anti-social behaviour in the near vicinity of the licensed premises. The Complainant lodged the complaint as a resident and was authorised by four other residents.

Material before the Secretary

6. The material before the Secretary in making this decision comprises:
 - a) Section 79 Disturbance Complaint lodged by [REDACTED] on 22 July 2014.
 - b) Submission from Ms Carly Gersling, Sutherland Shire Council on 18 August 2014.
 - c) Sutherland Shire Council Development Application DA09/0290 dated 29 May 2009.

- d) Various submissions from Sharon Hodges, Secretary Bundeena Bowling Club dated 20 August 2014, 28 October 2014, 25 November 2014, 2 January 2015 and 20 February 2015.
- e) Submission from Sergeant Robinson, Sutherland Local Area Command Licensing Unit dated 8 September 2014.
- f) Various submissions from the complainant dated 21 August 2014, 10 October 2014, 23 January 2015, 15 February 2015, 19 April 2015.
- g) Observations conducted by OLGR case Officers on 20 November 2015.
- h) Minutes taken at meeting by OLGR case Officers on 23 February 2015.
- i) Acoustic report prepared by Rodney Stevens Acoustics on 3 March 2015, and revised version dated 18 March 2015.

Background

7. The club operates under a club licence and commenced operation at the current site on 10 January 1974. The club's liquor licence is unrestricted and is not endorsed with trading hours. The liquor licence is endorsed with trading hours for take away liquor sales. The club operates from a large parcel of land at 49-53 Liverpool Street, Bundeena. The club premises is a single storey building, set well back from the street and has native bush, sports fields and parkland on three sides. Two bowling greens, an outdoor undercover beer garden and a children's play area are located between the club and Liverpool Street. The Complainant and the authorising residents to the complaint all reside in Liverpool Street in close proximity to the club and outdoor beer garden.
8. On 22 July 2014, [REDACTED], on behalf of four other residents, lodged a disturbance complaint under section 79 (3)(a) of the Act and assert they are affected by undue disturbance from the club. The complainants allege they are being affected by loud amplified music and patron noise from the outdoor entertainment/beer garden areas, disturbance and anti-social behaviour from patrons leaving the licensed premises and the area via the car park and adjacent streets.
9. On 18 August 2014 a submission was provided by Sutherland Shire Council advising the Council had dealt with six noise related complaints, three of which being received between December 2013 and July 2014. In respect to the complaints the council undertook noise monitoring over a three day period which provided inconclusive results as amplified music was not being conducted during the monitoring period.

10. On 3 September 2014 a submission was received from Ms Sharon Hodges, Secretary of Bundeena Bowling & Sports Club, in response to the disturbance complaint. Ms Hodges stated that the club was established in 1973 and commenced trading at the current site in 1975. The club's liquor licence has unrestricted trading hours and caters to residents of Bundeena and Maianbar. In 2009 an outdoor gaming area was established and in recent years an external beer garden and children's play area were built. In previous years the club regularly hosted amplified entertainment by the way of live bands from the club's outdoor area. The club is of the view that the complaints alleging undue disturbance are grossly exaggerated and are vexatious. The submission advised that the majority of long term residents who reside opposite the club in Liverpool Street have no issue with the club's operation.

11. The club submits that on occasions during functions the club trades well past midnight. The installation of CCTV surveillance in 2008 has been a significant factor in reducing issues of anti-social behaviour when patrons leave the club premises. In response to repeated complaints from the complainant the club has implemented the following practices:
 - music in the beer garden is turned off by 10:00pm
 - patrons discouraged from being outside during the night, patrons only go outside to smoke
 - only acoustic music is authorised to be played outside in the beer garden at night and all music in the beer garden must cease by 10:00pm
 - internal music must cease by 11:30pm unless there is a function when the music is turned down and only audible from inside of the premises
 - poker machine volume levels are set to minimum.

12. On 8 September 2014 a submission was provided by Sergeant Robinson from Sutherland Local Area Command Licensing Unit advising that, following a noise complaint made to NSW Police on 5 May 2014, officers had attended the club and provided five COPS events relating to their observations.

13. COPS Event 4919176 detailed that officers conducted surveillance of club activities over a 30 minute period on 2 June 2014 between 9:30pm and 10:00pm when the club was in the process of closing. Despite being positioned more than 60 metres from the premises, police clearly heard noise from a television, gaming machines and furniture being moved about in the outdoor gaming area. Police considered that the outdoor room was a major contributor of noise escape.

14. COPS Event 5556419 states that during an inspection of the club at 1:25am on 27 July 2014 NSW Police observed 15 persons in the club that were deemed to be displaying high levels of intoxication. Police engaged with the club's then manager, [REDACTED], and these persons were refused further service and were asked to leave. Whilst the patrons were leaving the club police warned them to leave quietly as they were talking loudly, yelling and the opinion of the attending officers were disturbing the quiet and good order of the neighbourhood. Police remained in the area to ensure these persons left the immediate area. Following the initial COPS event Senior Constable John Slatter prepared a statement in respect to police observations concerning an alleged group of intoxicated persons seated at a table and conversations with the club's then manager [REDACTED], and further observations by the officers concerning the actions of the intoxicated persons when they had been asked to leave the club.
15. COPS Event 55642859 states that on arrival at the club at 1:20am on 10 August 2014 officers noted that loud amplified music was audible in the carpark and four males could be heard talking in the outdoor area. On entering the club a live band was playing and patrons were dancing to the music. Officers estimated that between 50 and 70 persons were in the club attending a 50th birthday party. The club's secretary was on duty and advised in respect to a question concerning the club's trading hours that the club had 24 hour licence and the function was expected to cease at 2:30am. The secretary complied with a request to reduce music volume levels. The submission notes that noise complaints were received at 2:20am and 2:30am respectively from nearby residents concerning the volume levels of amplified entertainment and patron noise from the club. Following the initial COPS event Senior Constable Paul Dietrich from Sutherland LAC provided a statement in respect to police observations at the club on 10 August 2014.
16. COPS Event 58027883 states that at 11:30pm on 14 August 2014 officers attended the club in response to a noise complaint. The responding officers noted that on arrival at the club the only music being played was from a juke box and the volume levels was considered to be excessive. The officers were informed by the club manager that live music had been conducted earlier in the evening and concluded at 11:30pm.
17. COPS Event 55601154 dated 20 August 2014 advised that Sergeant Robinson had initiated a Local Licensing Agreement which was accepted by the club for the development of a Plan of Management, and its agreement to adopt regular trading hours to reflect industry standards, staff restrictions of consumption of liquor whilst on

duty, CCTV controls, crime scene preservation and recording, advisory signage installed at exits reminding departing patrons to leave quietly. The local licensing agreement was signed by the secretary on 20 August 2014 and effective from 1 September 2014.

18. On 20 October 2014 a further submission was received from the secretary of the club refuting the complainant's allegations which included video footage and photographs of outdoor speakers, noise from poker machines and patrons occupying the outdoor gaming room beyond 3:30am and screeching tyre noise from departing vehicles and noise from intoxicated patrons leaving the club. The secretary submits that the complainant was taking such video footage from within the club's property and denies that any noise from the club was audible from within his residence.
19. On 20 November 2014 OLGR Officers conducted observations at the club between 8:45pm and 10:45pm from the boundary of a complainant's residence. During the observations amplified music was clearly audible and volume levels varied from low to loud. A significant increase in noise levels was caused by the continual opening and closing of the entrance door as persons entered and left the premises. At 10:30pm four patrons were observed in the outdoor area talking and smoking. The noise from these patrons could be clearly heard from the boundary of the residence. The Officers concluded there was no disparity between music styles or instruments used and all were clearly heard at the residential boundary.
20. In an email to an OLGR case officer on 26 November 2015, the club secretary advised the club has willingly listened to the concerns of the complainants and has made changes to address those issues. The club entered into a licensing agreement with NSW Police, and since 20 August 2014 reduced its trading hours, and outdoor amplified music ceases at 10:00pm. When functions are held within the club premises trading hours extend past normal closing times. In response to the disturbance complaint the secretary initiated a community petition in which local residents signed a petition to demonstrate their support for the club. The petition was forwarded with the previous submission. The submission also advised at this time that the club was unable to fund an acoustic assessment.
21. On 2 January 2015 the club's secretary advised an OLGR case officer that the club's board had agreed to the following actions:
 - undertake acoustic testing
 - no persons to occupy outdoor areas beyond 10:00pm
 - no amplified music to be played outside of the club premises from 10:00pm

- club directors to monitor the beer garden to ensure patron noise is kept to a minimum
 - in respect to the provision of outdoor events the club board submits that live music will be played at outdoor events at the club from 2:00pm until 6:00pm or 3:00pm until 7:00pm, with the exception of festivals
 - regular meetings with residents are to be held for feedback, and prior warning of all future live music events to be given to residents.
22. On 20 January 2015 and 23 February 2015 OLGR case officers attended meetings at the club with club officials, the complainants and representatives from NSW Police to provide assistance to the parties and attempt resolution of the issues set out in the disturbance complaint. One recommendation was for the club to engage the services of an acoustic consultant to assess amplified music levels and to obtain professional advice in respect to noise amelioration measures to enable the club to operate its business in compliance with the LA10 noise criteria. The suggestion was initially met with resistance by the club due to a lack of funds. However, at a following meeting the club gave a commitment to undertake acoustic monitoring.
23. On 20 February 2015 the club secretary provided a submission in response to ongoing issues of undue disturbance that were raised by the complainant in an email to OLGR on 15 February 2015. In response, the club submission denied that the club was permitting undue disturbance from its operation and that the complainant's allegations are baseless.
24. On 3 March and 18 March 2015 (revised report) OLGR received two acoustic reports prepared by Rodney Stevens Acoustics Pty Limited who conducted noise monitoring at the club on 19 February 2015 during an "open mic" event and found that operational noise emissions from within the club were not audible, with the exception of low level amplified music from entertainment provided in the bistro. It is also noted that the outdoor/beer garden area was unoccupied throughout the entire sample period.
25. The acoustic report notes that internal noise from the club's operations inclusive of "open mic" promotions achieves the relevant assessment criteria. However operational noise emissions from amplified entertainment from a small band or a DJ operating within the bistro area may potentially exceed the levels that were noted during the site visit. Accordingly the report recommends the installation of a sound limiting system set to a maximum level of 93dBA.

26. The acoustic report also noted that the outdoor gaming area is a reverberant space with a concrete floor and an unlined metal deck roof. To effectively reduce reverberant noise in this area the consultant recommended an absorptive treatment be affixed to the underside of the metal roof. In respect to the outdoor areas of the club the acoustic report made the following recommendations:
- construction of a 2.4 metre height barrier screen around the outdoor beer garden (eastern side and returning approximately midway along the northern and eastern ends). Clear Perspex panels to be used to enable a clear view of the children play area
 - no amplified music or public address system should operate in the outdoor beer garden area beyond 6:00pm
 - time restrictions be placed upon the operation of the outdoor beer garden
 - absorptive lining (75mm minimum thickness) to be fixed to the underside of the sheet metal roof
 - solid covering to be applied between the base of the external barrier wall and the junction with the ground to minimise the build-up of reverberant sound within the outdoor gaming area
 - appropriate signage be displayed in visible locations (entrance/exit) requesting patrons to respect neighbouring residents in respect to noise.

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

27. 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.
28. *The order of occupancy between the licensed premises and the complainant – the licensed premises submits that it has operated at its present site for nearly 41 years and predates the complainant's arrival, who claims to have occupied the residence for 38 years. This fact is not in dispute and I consider that the order of occupancy consideration is in favour of the licensed premises.*
29. *Any changes in the licensed premises and the premises occupied by the complainant, including structural changes to the premises – The club in recent years has constructed an external gaming area, smoking area and BBQ beer garden area*

where external amplified entertainment is conducted. No changes have been made to the complainant's residence.

30. *Any changes in the activities conducted on the licensed premises over a period of time* – The complainant indicates that the introduction of bands has generated significant noise disturbance. Further the congregation of patrons gathering outside the main building (undisclosed reasons) also contributes to the increase in noise disturbance.

Summary and conclusion

31. I have considered the submissions of the complainant, the licensee, NSW Police, and local council. While there is no doubt that the club causes disturbance to some residents the question I must come to is a finding on whether that disturbance is *undue*. In considering this issue I have had regard to the particular context in which the club operates (including statutory considerations mentioned above) and I have considered what a reasonable person might consider to be undue in this particular context.
32. I am satisfied that, on balance, the material before me provides a proper basis to make a finding that the club, at times, causes undue disturbance to the neighbourhood. I have balanced the submissions of the club (including the letters of support from residents), acoustic reports prepared by Rodney Stevens Acoustics Pty Ltd, and the material supplied by NSW Police, Council and OLGR inspectors. I have placed significant weight on the observations of NSW Police who provided COPS events and statements of their inspections at the venue, and file note by OLGR inspectors of their observations that amplified entertainment and patron noise at the club was clearly audible from the boundary of a residential premises. These observations collectively demonstrate that, to varying degrees, the activity of social activities and functions results in amplified music and patron noise emanating from the club premises which disturbs the neighbourhood.
33. To test compliance with the LA10 noise criteria the club engaged Rodney Stevens Acoustics Pty Ltd who subsequently conducted acoustic monitoring and asserted that noise emissions from amplified entertainment within the club's premises and bistro area achieved the relevant assessment criteria. However, the acoustic report advised that increased noise levels from a live band or DJ may well occur and such noise emissions would be audible at residences in Liverpool Street. As a preventative

measure, the acoustic report recommends the use of a noise limiter to control all amplified entertainment within the club.

34. In respect to the club's external areas, the acoustic report recommends a number of noise abatement measures that require the construction of a noise barrier, installation of sound insulation to the underside of the outdoor beer garden roof, sound insulation applied to the outdoor gaming area, restricting use of outdoor amplification/PA equipment beyond 6:00pm, and other measures to ensure that persons in the outdoor facilities do not create excessive noise disturbance.
35. The acoustic report notes that the carpark which is used by the club and adjoins the club's premises is the property of Sutherland Shire Council. Public access to the carpark is unrestricted and it does not form part of the club's defined licensed area. The report notes that as the area is outside of the club's control it was not included in the assessment. Notwithstanding, the club advised that CCTV surveillance of the carpark is in place and if any issues of anti-social behaviour arise then these matters will be referred to NSW Police. The club also advised an OLGR case officer that club staff will monitor patrons using the carpark to ensure they do not cause issues of disturbance to nearby residents when departing.
36. Notwithstanding the intervention of OLGR and NSW Police in response to the issues raised in the complaint, the complainant has continued to notify OLGR and NSW Police of ongoing issues of disturbance from the club's activities, and in particular noise from patrons congregating in the outdoor beer garden area, and when leaving the club after midnight.
37. In order to consider appropriate safeguards, I consider the imposition of the LA10 noise condition as an acceptable industry standard and the preferred benchmark of OLGR for assessing undue disturbance at the licensed premises. I consider imposition of this condition as an appropriate response to the issues presented in the complaint which does not place undue burden on the operation of the licensed premises.
38. As a further safeguard, I have decided to impose a condition that the club install a noise limiting device to control volume levels of amplified entertainment. The use of a noise limiter is an acoustic report recommendation and will ensure that volume levels do not exceed the levels specified in the acoustic report.
39. To ensure compliance with the LA10 noise criteria the acoustic report recommended that amplified music or public address system noise should not operate in the beer

garden from 6:00pm. In order to ensure that the quiet and good order of the neighbourhood is preserved, I propose to impose the acoustic report recommendation as a condition. I consider it is an appropriate regulatory control to provide assurance to the nearby residents that undue disturbance from amplified entertainment or use of a public address does not cause future disturbance to residents.

40. To prevent ongoing issues of disturbance to nearby residents from club patrons using the outdoor beer garden in the later hours on trading nights, I have decided to impose a condition to ensure that the beer garden area must be closed by 9:30pm on any trading day. I believe the nominated time is reasonable and provide a balance to allow patrons to enjoy the amenity of the club's outdoor facility and also to ensure that the amenity to the nearby residents is restored. I am of the view that by closure of the outdoor area from 9:30pm will significantly reduce issues of undue noise disturbance from this area that was raised the complaint.
41. I have determined that the conditions should become effective 21 days from the date of this decision in order to provide sufficient time to ensure business readiness and compliance with the new requirements.
42. Should the club complete noise amelioration works, and be able to demonstrate compliance with the LA10 noise condition through a further acoustic report, then I would be open to reviewing the restriction relating to the use of the outdoor beer garden.

Date of decision:

03 JULY 2015



Anthony Keon
Director Compliance & Enforcement
Office of Liquor, Gaming and Racing
Delegate of the Secretary
NSW Department of Justice

NOTES

Should you be aggrieved by this decision, you may seek a review by the Independent, Liquor and Gaming Authority by an application which must be lodged within 21 days of the date of this decision, that is, by no later than 24 July 2015. A \$500 application fee applies. Further information can be obtained from Authority Guideline No 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 Office of Liquor Gaming and Racing website at olgr.nsw.gov.au.