



FILE NO: A14/0004093

COMPLAINANT: [REDACTED]

LICENSED PREMISES: Canterbury League Club Ltd – LIQC300226174

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 (OLGR) a delegate of the Secretary, Department of Justice, in relation to the complaint made in respect to Canterbury League Club Ltd, Belmore (the licensed premises) have decided to take no further action.

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 by two 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 21 July 2014, [REDACTED] (the complainant) of [REDACTED] lodged a disturbance complaint under section 79 the Act concerning the licensed premises. The complainant alleged peak undue disturbance on a weekly basis but particularly on Friday, Saturday and Sunday nights from amplified entertainment and noise from patrons after they have left the licensed premises. The complainant lodged the complaint as a resident authorised by seven 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 21 July 2014.
 - b. Email from Mr Peter Whittle, an Associate Director of Cerno Management Pty Ltd, acting for the licensed premises dated 12 August 2014.
 - c. File note of conversation between an OLGR case officer and the complainant dated 13 August 2014.
 - d. Letter from Mr Marcelo Occhiuzzi Director Planning, City of Canterbury dated 29 August 2014.
 - e. Email responses from Senior Constable Michael Kynezos, Campsie Local Area Command Licensing Unit dated 28 July 2014 and 26 May 2015.
 - f. Submission by Mr David Brace Secretary dated 25 August 2014.
 - g. File notes of OLGR case officer attendances at the licensed premises on 30 August 2014 and 21 April 2015.

- h. Email from an OLGR case officer to the complainant dated 2 September 2014.
- i. Email from the complainant to an OLGR case officer dated 23 September 2014 and 29 September 2014.
- j. Emails from Mr Dave Brace, Secretary dated 2 October 2014, 9 October 2014, and 9 December 2014.
- k. Email from the complainant to an OLGR case officer dated 9 December 2014.
- l. Email from [REDACTED], Executive Assistant to Mr Brace, dated 14 July 2015 providing an acoustic compliance report prepared by Koikas Acoustics Pty Ltd.

Background

7. The licensed premises is a registered club and operates from 26 Bridge Road, Belmore. It is bounded by residential properties in Gladstone Street, Bridge Road and Marie Street and has operated from the current location since 1960. Over the many years of trading the licensed premises has developed to the large and significant establishment that presently occupies the site. The current secretary, Mr David Brace, was appointed to the position on 7 May 2013.
8. On 21 July 2014 the complainant, on behalf of seven other residents, lodged a disturbance complaint under section 79(3)(a) of the Act and assert they are adversely affected by undue disturbance from the licensed premises. The complainants allege disturbance occurs mostly on Friday, Saturday and Sunday nights from amplified music and noise from patrons when leaving the premises.
9. On 12 August 2014 an OLGR case officer was advised in an email from Mr Peter Whittle, representing Cerno Management Pty Limited, that this company had been engaged to assist the licensed premises in the management of the disturbance complaint. Mr Whittle also advised an acoustic consultant had been engaged to conduct monitoring. A request had been made to the complainant seeking access to undertake noise monitoring from within his residence and the request had been denied. In respect to this matter, an OLGR case officer contacted the complainant who advised that he did not want persons entering either his or his parent's residence and suggested the licensed premises undertake readings from residential premises that belong to them. The complainant also declined a further suggestion that acoustic monitoring be undertaken from one of the authorising resident premises.

10. On 29 August 2014 in a submission Mr Marcelo Occhiuzzi, Director City Planning, City of Canterbury advised that council files concerning the licensed premises are extensive and on that basis only development consents from the year 2006 were provided. The submission confirmed that between the years 2006 and 2013 the licensed premises had made six development applications for major refurbishments to the building, construction of a four level car park, loading dock and children's play area. Since April 2002, the council had received 20 complaints from residents reporting disturbance, five of the matters concerned disturbance from amplified entertainment and patron noise and 15 matters related to plant and equipment noise and alleged non-compliance with development consents.

11. In a submission dated 4 August 2014, and received by OLGR on 1 September 2014, Senior Constable Michael Kynezos from Campsie Local Area Command Licensing Unit acknowledged receipt of the disturbance complaint and advised he had attempted to convene a meeting with representatives of the licensed premises and the complainants to mediate the issues set out in the complaint. Whilst the licensed premises supported this initiative, the complainant declined the invitation.

12. The submission also advised that NSW Police investigated a number of noise complaints concerning the licensed premises from amplified music, noise from patrons and vehicles and mechanical plant and construction noise. In respect to amplified music and patron noise, the submission advised that the licensed premises when informed of the complaints were proactive in their approach to resolve such issues. The submission also advised that after conferring with the complainants the investigating officers were of the view that the issues raised in the complaint should be dealt with by way of mediation.

13. On 26 August 2014 in a submission Mr Dave Brace, Secretary and Chief Executive Officer, advised that the licensed premises commenced operation at the current site in 1960 and has operated on a 24 hour basis since January 1994. The licensed premises has a high volume of patrons (approximately 25,000) attending each week and management is fully aware of their obligations and responsibilities of patrons and residents who are located within the close vicinity. On receipt of the complaint the licensed premises advised of the following preventative actions:
 - Issued a memo to security staff to be vigilant in reinforcing licensed premises policies and obligations to preserve the quiet and good order of the neighbourhood, in particular directly addressing the areas of complaint. The issues set out in the complaint were raised at management and supervisor meetings.

- Engaged Koikas Acoustics Pty Ltd to undertake acoustic monitoring to assess compliance with the standard LA10 noise criteria guidelines.
- Advised the licensed premises carparks are patrolled by security guards on a 24 hour basis in conjunction with CCTV coverage of all areas to ensure patron safety and to prevent persons in the outdoor areas from causing undue disturbance to the amenity of the neighbourhood.
- Management maintains an open line of communication with residents and responds to matters that are within its control.
- Manager duties include monitoring internal noise levels when functions are conducted. Attending DJ's are required to use the in-house amplification system and the glass doors adjacent to the level 1 Terrace Bar are to remain closed when functions are in progress. Entertainment provided at the licensed premises does not include nightclub style entertainment as a measure to eliminate undesirable liquor affected crowds.
- Conducted a review with managers and supervisors of existing operational procedures and policies to ensure members and their guests are admitted into the licensed premises in compliance with existing legislation.
- Following a community consultation meeting that was instigated by a previous Development Application the licensed premises and the complainant entered into negotiations concerning the proposed purchase of residential properties owned by the complainant and his parents as both reside within close proximity of the licensed premises. The offers to purchase were subsequently withdrawn.

14. Acoustic monitoring was undertaken at the licensed premises and from the boundary of the complainant's residence during peak trading on 15 August 2014 between the hours of 11.30pm and 1:00am during a 21st birthday function with amplified entertainment. The function was conducted in a room nominated in the complaint as being an area where music noise is audible outside of the licensed premises. The acoustic report identified that during the monitoring low frequency and people noise prior to midnight was audible on occasions, however the noise levels did not exceed the LA10 noise criteria, an industry accepted standard.

15. The acoustic report also advised that the acoustic consultant was not permitted by the complainant to conduct any noise monitoring from within the complainant's residence or any other affected residential premises. This action prevented an actual noise assessment of post mid-night noise levels being taken from within an affected residence, to ascertain compliance with the LA10 noise criteria.

16. The external areas of the licensed premises which include the front and rear car parks, driveway and driveway entrance are not part of the defined licensed area, and are not bound by the LA10 noise criteria.
17. Between the hours of 12.20am and 1.00am on 30 August 2014 OLGR inspectors attended the licensed premises and conducted observations in respect to the issues set out in the complaint. Observations were also conducted from outside of the complainant's residence at [REDACTED] to assess noise attenuation from the licensed premises. The assessing officers noted that noise from vehicles moving along the concrete driveway from the rear carpark of licensed premises to the entrance onto Bridge Road, although audible from outside of the complainant's residence, was not considered to be loud or intrusive. During the period of observations there was no audible amplified music or noise from patrons entering or leaving the club.
18. On 29 September 2014 an OLGR case officer received an email submission from the complainant responding to the licensed premises submission and raised the following issues:
- During acoustic monitoring on 15 August 2014 the function room was fully enclosed and the function finished at midnight. Previous functions in this room especially in the summer months had the doors fully open with music blaring on most occasions past midnight, and patrons attending the function talked loudly on the veranda.
 - The complainant requests the same parameters that occurred during the acoustic test be applied to future functions.
 - A noise limiting device be installed in the function room to control amplified music levels, and the existing glass doors in the function room be replaced with doors that prevent noise transmission when amplified entertainment is conducted.
19. On 2 October 2014 Mr Brace, in an email submission to an OLGR case officer, advised that to prevent noise transmission to the outside of the premises the glass barrier in the level 1 function room was permanently sealed. Mr Brace also advised security procedures would be further examined to ensure proactive interaction with patrons in the carpark areas to prevent loitering.
20. Mr Brace advised that construction of a below ground level building project to provide a new delivery dock and parking for 500 cars was about to commence at the licensed premises. The outcome is to reduce the size of the open air carpark and to relocate the driveway entrance away from existing residences. The project will allow for the majority of vehicles movements to be underground and this will alleviate noise or perceived

privacy issues for residents. The proposed work was scheduled to commence on 15 March 2015 and take approximately 18 months to complete.

21. On 21 November 2014 an OLGR case officer contacted the complainant and advised of the proposed renovations to be undertaken at the licensed premises. The complainant was also asked to provide an update as to the status of disturbance from the licensed premises and if there were further issues.
22. On 9 December 2014 the complainant in an email to an OLGR case officer advised that he had been subject to an issue of music noise intrusion on 30 November 2014 and had attended the licensed premises at 10.00pm on that night and when reporting the matter to a duty manager requested advice as to whether the amplified music had come from an attending DJ. The complainant contacted the licensed premises the following day and was advised that the amplified music had come from a festival conducted at Homebush and was not from the licensed premises. The complainant reiterated that residents continue to hear loud music playing from car radios and on speaking to a carpark attendant was advised that licensed premises staff continue to face challenges in having patrons comply with directions to reduce noise from car radios.
23. The complainant also advised of light spillage from the level 1 gaming room and intermittent noise from gaming machines that is audible when attending his parent's residence at [REDACTED].
24. In an email to the complainant on 9 December 2014 an OLGR case officer advised that whilst the licensed premises carpark, driveway and outdoor area are not part of the licensed area the licensed premises was working on changes to the outside security guard patrols to ensure that persons do not loiter or linger and leave the area quietly.
25. On 9 December 2014 the issues raised by the complainant was forwarded to Mr Brace at the licensed premises. Mr Brace in a return email to an OLGR case officer advised that amplified music noise reported by the complainant on 30 November 2014 was not attributed to the licensed premises. In respect to the issues of alleged light spillage the licensed premises and carpark noise, Mr Brace advised the licensed premises was compliant with its Development Consent. The licensed premises has 24 hour carpark attendants who respond to all issues. In respect to noise from gaming machines, Mr Brace advised gaming machines are obscured by screening and are not visible unless approached from the outdoor area.
26. Since receiving the information on 9 December 2014 OLGR case officers have received no further communication from the complainant.

27. Between the hours of 12.01 am and 12.30 am on Saturday 18 April 2015 OLGR inspectors conducted observations in the external areas of the licensed premises and from outside of the complainant's residence at [REDACTED]. The observations noted a number of the vehicle movements from the rear carpark, and numbers of persons arriving and departing the licensed premises via the main entrance and walking to and from the carpark. Two security guards were actively patrolling at the front of the licensed premises and engaging with persons approaching the main entrance. Observations from outside [REDACTED] noted that the upper levels of the carpark were within view and noise from vehicles moving along the driveway whilst being audible was not considered intrusive. Operational noise from the licensed premises including noise from persons both entering and leaving was not audible.
28. On 26 May 2015 in an email Senior Constable Michael Kynezos from Campsie Local Area Command Licensing Unit advised officers attached to the Alcohol and Licensing Enforcement Command were in attendance at the licensed premises during an '80s Groove Function' held in the terrace function rooms and attended by approximately 600 persons. The submission also advised that attending officers conducted external observations between 10.00 pm to 12.30 am in respect of the issues set out in the disturbance complaint. During the observations officers observed a staff member taking noise measurements with a hand held device at the front of the licensed premises and noted that the most predominate audible sound was from water cascading down the waterfall located within a large landscaped garden adjacent to the carpark at the front of the licensed premises. The officers also reported that amplified music from the function was not audible from the driveway at the side of the licensed premises, and near to the complainant's residence. Police also reported that whilst the officers and staff member were conducting observations the licensed premises received a telephone call from the complainant who called to register a noise complaint form amplified music noise intrusion. NSW Police also advised that at the conclusion of the function persons left the vicinity without incident.
29. On 3 June 2015 an OLGR case officer contacted the licensed premises to ascertain if a noise limiter could be installed to control volume levels of amplified music in the function rooms. The OLGR case officer was advised that as a noise limiter is not installed, the officer's request would be submitted to the Mr Brace for consideration.
30. On 10 June 2015 in an email submission to an OLGR case officer, [REDACTED] Executive Assistant to the Chief Executive Officer, advised that the licensed premises had agreed to purchase an RMS noise limiter and that Koikas Acoustics Pty Limited had

been engaged to conduct further external acoustic monitoring to assist in the calibration of appropriate noise levels.

31. On 14 June 2015 in an email [REDACTED] advised a noise limiter had been installed and the RMS levels had been set and locked in accordance with the recommendations of Koikas Acoustics Pty Ltd. A copy of the acoustic report prepared by Koikas Acoustics Pty Limited in respect to the compliance testing was also provided.

Considerations and findings

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

32. 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.
33. *The order of occupancy between the licensed premises and the complainant* – The licensed premises has operated at its present site for nearly 55 years and predates the occupation of the complainant's residence. This fact is not in dispute and I consider that the order of occupancy consideration is in favour of the licensed premises. Residents moving into the immediate area would have been aware they were moving into residential premises that are close in proximity to an existing licensed premises and that they would be subject to a certain level of disturbance from its operation.
34. *Any changes in the licensed premises and the premises occupied by the complainant, including structural changes to the premises* – From its commencement of trading in 1960 the licensed premises commenced trading as a small enterprise which has been substantially re-developed and refurbishment into the large and imposing establishment that currently occupies the site. The City of Canterbury in its submission advised that since 2006 the licensed premises has undertaken six major developments that include refurbishment and reconfiguration of the existing building, construction of a four level basement carpark, enclosed balconies and administration area. In its submission, the licensed premises advised of its current proposal of a \$100 million investment to upgrade and improve the venue's existing infrastructure and to include a new underground carpark and loading dock which is proposed to be completed by late 2018.

35. *Any changes in the activities conducted on the licensed premises over a period of time –*
There have been no significant changes to the activities conducted at the licensed premises.

Summary and conclusion

36. I have considered the submissions of the complainant, the licensee, NSW Police and the local council. While there is no doubt that the licensed premises may cause disturbance to some residents I must come to a finding on whether that disturbance is *undue*. In considering this issue I have had regard to the particular context in which the licensed premises operates (including statutory considerations mentioned above) and I have considered what a reasonable person might consider to be undue in this particular context.
37. I am not satisfied that the material before me is sufficient to support a finding that the licensed premises caused undue disturbance to the neighbourhood. I have balanced the submissions of the licensed premises, acoustic reports prepared by Koikas Acoustics Pty Ltd, and the material supplied by NSW Police, City of Canterbury Council and OLGR inspectors. I have placed significant weight on the findings of the acoustic report which advised that acoustic monitoring was undertaken on 15 August 2014 during a 21st birthday function with amplified music and the outcome of such monitoring found that the licensed premises was compliant with 7.00 am to 12.00 midnight criteria of the LA10 noise condition.
38. I have also taken into account the observations of OLGR inspectors who conducted observations at the licensed premises and from outside of the complainant's residence during the evening on 30 August 2014 and 21 April 2015. The evidence of the inspectors did not support the claims set out in the complaint that the quiet and good order of the neighbourhood is being disturbed by either amplified music or from disorderly patrons when leaving the licensed premises.
39. I have also taken into account the submissions of NSW Police which advised that officers were in attendance at a music event at the licensed premises on 23 May 2015 and that during the event officers conducted external observations that noted amplified music from the function rooms was inaudible from the open areas at the front of the licensed premises.
40. NSW Police also submitted that the licensed premises is proactive in its approach to resolve disturbance complaints. Whilst the majority of issues reported by residents relate

to disturbance from mechanical plant and equipment, residents have reported other issues concerning noise from intoxicated persons walking in Bridge Lane and from amplified music during functions at the licensed premises. However there was insufficient evidence to link the alleged intoxicated this matter to the licensed premises. In respect to amplified music noise intrusion the resident advised that the particular issues had not been reported to the licensed premises. Other issues of disturbance concerned traffic congestion caused by vehicles when leaving the licensed premises on busy trading days and the impact on the neighbourhood from ongoing development works at the licensed premises.

41. I also note the decision of the complainant in not permitting an independent acoustic consultant to undertake noise monitoring from within complainants residence. A request to conduct such monitoring was made to investigate an allegation that amplified music noise from the licensed premises function rooms was audible on a regular basis from within the complainant's residence after midnight. I am of the view that such a request to allow an independent acoustic consultant to conduct such noise monitoring from within such a residence is reasonable and appropriate.
42. Notwithstanding, the complainant in a conversation with an OLGR case officer concerning the refusal advised that he would not consent to any such monitoring from either his or any other authorising resident premises. The complainant maintained his view that such testing should be undertaken from within a property that is owned by the licensed premises. I consider the complainant's response has no relevance to the issues raised in the complaint and did not provide any assistance to the acoustic consultant who was engaged to assess allegations of noise intrusion from amplified entertainment conducted at the licensed premises. Notwithstanding, acoustic monitoring was conducted at the licensed premises and from the boundary of the complainant's residence that ascertained amplified music noise levels from the licensed premises was compliant with pre-midnight requirement of the LA10 noise criteria.
43. I have also noted that a significant number of the complaints made to the Council related to alleged non-compliance with development consent conditions, and issues of disturbance from mechanical and plant noise. These matters are outside of the jurisdiction of the Secretary, Department of Justice.
44. I have also taken into account the positive actions of the licensed premises which has permanently sealed the glass barrier in the level 1 function area to prevent noise escape, installed an RMS noise limiter and conducted additional acoustic monitoring to ensure amplification levels comply with the LA10 noise criteria, and that amplified entertainment

in the function rooms now ceases at midnight. I consider these positive actions will prevent future disturbance from amplified entertainment occurring.

45. Accordingly, I have decided to take no further action in relation to this complaint.

Date of decision: 17 August 2015.



Anthony Keon
Director Compliance & Enforcement
Delegate of the Secretary, Department of Justice

NOTES

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 07/09/2015. 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 Office of Liquor, Gaming & Racing website at www.olgr.nsw.gov.au.