

FILE NO: A17/0010012

COMPLAINANT: [REDACTED]

LICENSED PREMISES: Palm Beach Golf Club Limited – LIQC300229378

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

LEGISLATION: *Liquor Act 2007*

SECTION 81 DECISION

Under Section 81 of the *Liquor Act 2007* (the Act) I, Sean Goodchild, Director Compliance Operations, Liquor & Gaming NSW a delegate of the Secretary, Department of Industry, in relation to the disturbance complaint made against the Palm Beach Golf Club Limited (the venue) have decided to **issue a warning** to the club secretary.

The warning is detailed in the following terms:

'Under Section 81(d) of the Liquor Act 2007 I, Sean Goodchild, Director Compliance Operations, Liquor & Gaming, a delegate of the Secretary, NSW Department of Industry warn John McLean, club secretary of Palm Beach Golf Club, that he must ensure no future undue disturbance is caused by live entertainment in the alfresco area of the venue.'

REASONS FOR DECISION

Legislative framework

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:
 - the need to minimise harm associated with the misuse and abuse of liquor;
 - the need to encourage responsible attitudes and practices towards the promotion, sale, supply, services and consumption of liquor; and,
 - 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 27 March 2017, [REDACTED] of [REDACTED] Palm Beach, lodged a disturbance complaint with L&GNSW, alleging undue disturbance from live entertainment and other noise associated with the operation of the licensed premises. The complainant lodged the complaint as a resident authorised by three other residents.
6. The complaint detailed 16 specific instances of disturbance including dates, times, and descriptions of events occurring at the venue. The complainant asserts that disturbance occurs on Friday and Saturday nights occasionally (every two to three weeks) and on Sunday afternoons from the alfresco area. The complainant seeks the venue take action to mitigate disturbance by installing sound proofing to the areas where live entertainment is provided, comply with noise restrictions and be prohibited from providing entertainment in the alfresco area.
7. Between 17 July 2017 and 2 February 2018, various submissions were lodged by all parties. A list of the material before the delegate is set out in Annexure 1.

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

8. The Act requires that the Secretary have regard to the following statutory considerations.

9. *The order of occupancy between the licensed premises and the complainant* – the venue has operated under the current licence at its present site since 27 October 1955. The venue predates the complainant's occupation of their residence. This fact is not in dispute and I consider the order of occupancy is in favour of the venue.
10. *Any changes in the licensed premises and the premises occupied by the complainant, including structural changes to the premises* – there is no evidence that there have been any structural changes to the complainant's residence. The venue renovated its alfresco area in early 2016 to accommodate patrons and live music. These works were initially completed without Council approval. On 5 December 2017, Council approved the works, subject to conditions. The complainant asserts that the venue trades outside the licensed premises, however this is unsubstantiated as the alfresco area is within the approved boundaries for the premises.
11. *Any changes in the activities conducted on the licensed premises over a period of time* – the complainant alleges that in early 2016 the venue introduced live entertainment in the alfresco area on Sundays from 1:00pm to 5:00pm. Since the complaint, the venue has ceased these performances on 30 July 2017. It appears the venue remains focused on an offering of food and beverage accompanied by entertainment primarily for the purpose of functions and events.

Other Considerations

Undue disturbance

12. I am satisfied there is sufficient material to support a finding the venue has, at times, caused undue disturbance to the neighbourhood. In making this finding, I have balanced the submissions made by the secretary of the venue, the complainant, and Council. NSW Police were invited to make a submission, however no submission was received.
13. The venue is located in a mixed commercial and residential area, approximately 40 metres from the complainant's residence. Its immediate neighbours are a commercial property (14 metres) and a residential property (17 metres), neither of which are a party to the complaint. The venue has unrestricted trading hours for the consumption of liquor on the premises and a club functions authorisation.
14. I have considered the complainant's allegations of repeated undue disturbance from live entertainment at the venue and noise associated with the operation of the premises. The complainant provided 16 specific examples of disturbance, primarily caused by live entertainment on Sunday afternoons.

15. Although NSW Police did not provide a submission in relation to this complaint, information provided by the club secretary indicates Police had contacted the venue after receiving complaints about disturbance from local residents.
16. Council advised that between 12 September 2016 and 27 June 2017, the complainant made four noise complaints against the venue in relation to live entertainment on Sunday afternoons in the alfresco area. Records provided by the club secretary also indicate Council had contacted the venue in response to disturbance complaints they had received from local residents.
17. In 2017 the club lodged a development application with Council to approve alterations to the outdoor alfresco area and its use.
18. As part of the Development Approval (DA) process, the venue engaged Noise and Sound Services to conduct a noise impact assessment for the alfresco area's use as a place of public entertainment. The assessment made several recommendations to ensure noise levels emanating from the alfresco area complied with the LA10 noise criteria, including the construction of an acoustic fence, noise limiters for amplifiers, and prohibiting the use of bass and drum instruments. The assessment further notes that normal speech from patrons (maximum capacity of 50 persons) using the existing alfresco area would not be considered a noise issue.
19. On 5 December 2017, Council approved development application N1044/99/S96/2. The development consent requires the venue's compliance with the LA10 noise criteria between 1:00pm and 4:00pm on Saturday and Sunday, and restricts patron capacity for the alfresco area to 50 persons. It also notes that a separate application must be lodged to use the alfresco area for live entertainment or amplified music.
20. A level of disturbance from the normal operation of the venue is to be expected, including noise from live entertainment, patrons, and pedestrian traffic generated by the venue.
21. There is evidence however, particularly in the form of the noise impact assessment recommendations, which suggests that the changes made to the alfresco area in early 2016 were undertaken without adequate assessment of the potential noise impact on neighbouring properties, and without implementation of appropriate noise mitigation strategies. There is therefore a high likelihood that instances of undue disturbance occurred during the period that live entertainment was provided in this area.

Action taken to mitigate disturbance

22. In considering whether to impose conditions on the liquor licence in relation to disturbance in the alfresco area, I have balanced the submissions of all parties having specific regard to the action taken by the club secretary in response to the complaint and the effectiveness of any measures that have been implemented to address disturbance.
23. Since the complaint, the venue has implemented the following measures to control disturbance, including:
- engaging with Police, Council and the complainant
 - construction of a fixed wall on the balcony to mitigate noise (Barrenjoey road side)
 - cessation of live entertainment in the alfresco area from 30 July 2017 to present, and
 - undertaking to implement recommendations made in the noise impact assessment should entertainment in the alfresco area recommence.
24. The club secretary disputes the accuracy of the complainant's assertions that there are bands playing at the venue every two to three weeks, and provides a list of functions held at the venue. Over a two-year period from 2016 to 2017, the venue hosted 27 functions with only seven events in that period employing the use of live entertainment. He submits that the venue relies on income generated by functions in order to remain financially viable.
25. On 9 August 2017, the club secretary offered to meet with the complainants to resolve their concerns. The complainant did not accept, stating in their submission that the invitation was too late and "the fight for our quiet neighbourhood goes on."

Findings and conclusion

26. I have considered the submissions of the club secretary, the complainant, and Council. I have also had regard to the particular context in which the venue operates. I have taken the statutory considerations into account and acknowledge the order of occupancy is in favour of the venue and that it is reasonable to expect some form of noise will be generated from its ongoing operation.
27. Considering the material presented by the parties to the complaint, I conclude that the measures sought by the complainant, which are to impose noise restrictions and prohibit entertainment in the alfresco area, to be unduly burdensome on the venue given the fact live entertainment in this area has ceased and the venue has undertaken to implement the recommendations made in the noise impact assessment should it recommence. I

have taken into account the efforts made by the club secretary in addressing disturbance, and apparent subsequent improvement, reflected by the fact that since 3 September 2017, L&GNSW has received no further reports of disturbance.

28. The noise impact assessment found that the venue could comply with the LA10 noise criteria and made practical recommendations to assist the venue in complying with the standard. On 26 September 2017, the club secretary voluntarily agreed to implement the recommendations made by Noise and Sound Services prior to Council's requirement under the development consent on 5 December 2017. The LA10 condition imposed on the DA by Council goes some way to mitigating future disturbance at the venue. Furthermore, there is a current restriction on live music in the alfresco area, which is not permitted until such time as a separate DA is lodged and approved by Council.
29. I have determined that it is appropriate to issue the licensee with a warning in relation to the undue disturbance caused by live entertainment in the alfresco area. Should fresh and direct evidence be presented demonstrating undue disturbance, it is open for the matter to be reconsidered and for further regulatory action to be taken. I strongly encourage the venue to proactively manage noise at the venue, uphold their good neighbour policy and implement the recommendations set out in the noise impact assessment.

Decision Date: 26 April 2018



Sean Goodchild

Director Compliance Operations

Liquor & Gaming NSW

Delegate of the Secretary of the Department of Industry

Application for review:

Should you be aggrieved by this decision, you may seek a review by the Independent Liquor & Gaming Authority by an application which must be lodged within 28 days of the date of this decision, that is, by no later than 24 May 2018. A \$500 application fee applies. Further information can be obtained from Authority Guideline 2 published at www.liquorandgaming.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.liquorandgamingnsw.nsw.gov.au

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

1. Section 79 Noise Disturbance Complaint lodged by [REDACTED] dated 23 March 2017.
2. Submission from [REDACTED], Environmental Health Officer, Northern Beaches Council dated 7 August 2017.
3. Submission from the club secretary dated 11 August 2017.
4. Submission from the complainant re club secretary submission dated 4 September 2017.
5. Submission from the club secretary re complainant submission dated 26 September 2017 and attached noise impact assessment prepared by Noise and Sound Services dated August 2017.
6. Copy of Development Consent No. N1044/99 provided by [REDACTED] on 2 February 2018.