



FILE NO: A16/0008187

COMPLAINANT: [REDACTED]

LICENSED PREMISES: Warilla Bowls and Recreation Club Limited – LIQC300238431

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 (L&GNSW), a delegate of the Secretary, Department of Industry, in relation to the complaint made against the Warilla Bowls and Recreation Club, Barrack Heights have decided to **impose two conditions** on the club's liquor licence relating to the following:

1. LA10 noise condition
2. Noise limiter condition

Details of the conditions, including the dates on which they become effective, are outlined in **Annexure 1**.

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(3)(a) 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 further 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 September 2016, [REDACTED] (the complainant) made a disturbance complaint under section 79 of the Act against the Warilla Bowls and Recreation Club, 63 Jackson Avenue, Barrack Heights (the club). The complainant alleges the manner in which the business of the licensed premises is being conducted has caused, and continues to cause, undue disturbance in the neighbourhood.
6. The complainant submits they have spoken with, and written to, the club's representatives on numerous occasions over the six months preceding the complaint; however the issues raised have not been resolved.
7. Submissions were lodged by all parties to the complaint, including the licensee, the local Council and NSW police. A list of the material that is before the delegate of the Secretary is set out in **Annexure 2**.

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

8. The Act requires the Secretary have regard to following three statutory considerations.
9. *The order of occupancy between the licensed premises and the complainant* – the club has operated in one form or another from the licensed premises since 11 January 1966. The complainant has lived in her residence since January 2015. I consider the order of occupancy to be in favour of the club.
10. *Any change in the licensed premises and the premises occupied by the complainant, including any structural changes to the premises* – the complainant's residence was treated with, amongst other works, acoustically designed double glazed windows installed in the main bedroom for \$2,985.00. Between 1986 and 1988, the club undertook works to construct the eastern facing single glazed facade of the main lounge and a live entertainment stage at the lounge's western end. In 1996, the live entertainment stage was moved to the eastern end of the lounge. In 2013, a children's playground is constructed at the south eastern corner of the club and an automatic door was installed in the single glazed facade.
11. *Any changes in the activities conducted on the licensed premises over a period of time* – the club commenced providing live entertainment for special events only from 1976 and from 1988 began providing regular live entertainment on Fridays and Saturdays. The club also provides additional performances on Thursdays and Sundays during peak periods such as school and Christmas holidays between 8:00pm and 12:00am. The children's playground has continued to operate between 10:00am and 10:00pm Monday to Sunday since construction was completed.

Other Considerations

Undue Disturbance

12. I am satisfied the material before me is sufficient to support a finding that the club has, at times, caused an undue disturbance to the neighbourhood as a result of amplified live entertainment. In making this finding, I have balanced the submissions made by the licensee, complainant, NSW Police and the local Council.
13. The statutory test to determine whether an *undue* disturbance has occurred implies there is a level of disturbance expected from the operation of a licensed premises. It is only when the disturbance becomes more than expected that there may be grounds to make a complaint.

14. To consider what amounts to undue disturbance involves considering a broad range of factors that includes the surrounding environment and neighbourhood, the nature of the club's operations, and the club's interactions with Police and the local Council.
15. In this instance, the club is a large-sized venue offering restaurant/bistro food, take-away alcohol sales, function room hire, amplified live entertainment and child care/play facilities. It is noted live entertainment appears to have been provided for approximately 29 years. The club has unrestricted trading hours while take away sales are restricted until 10pm.
16. The club is located in a coastal area that is close to residential homes on the western and eastern sides, and is separated from the complainant's residence by a small lake. There are also various recreational areas close by including temporary accommodation, and beach and lake water activities. The ambient noise, according to the complainant's August 2016 acoustic report, includes distant traffic, patrons outside the club and noise from the club's mechanical services.
17. The complainant submits the club frequently emits intrusive noise from amplified live entertainment, including live bands, and noise from a children's playground attached to the premises since March 2015. It is submitted this occurs every weekend on Friday and Saturday nights from 8:30pm to 12:00am. The material also indicates noise disturbances have occurred after 10:00pm throughout the week when there are events/functions being held at the club.
18. The complainant's initial chronology indicates there were approximately 41 separate instances of noise disturbance, predominately caused by amplified live entertainment, between 26 March 2015 and 7 February 2016 that included weekdays and weekends. Out of these occasions the complainant telephoned the club approximately 26 times to report the disturbance. Other causes of noise recorded during the above period included, club grounds maintenance, club plant machinery, and screaming from the children's playground. A complaint chronology was also provided by another Headland Parade resident detailing their contact with the club from 5 December 2015 to 19 December 2015 in relation to noise disturbance. The noise disturbance issues referred by the second resident are predominately the same as those raised by the complainant.
19. The complainant engaged an acoustic consultant, Acoustic Directions, which measured noise levels against L&GNSW noise criteria (LA10) on 14 May 2016. The August 2016

report found the club was emitting substantial low frequency sound (bass) that exceeded the L&GNSW noise criteria.

20. The complainant also provided recordings taken on a downloaded phone app (Faber Acoustics acoustical measurement application) which was calibrated by Acoustic Directions and indicated that amplified entertainment noise coming from the club also exceeded L&GNSW noise criteria. These recordings were taken on 25 November 2015, 6 February 2016, 16 July and 30 July 2016, however they are disputed by the club as having been conducted without supervision from an alleged unknown location.
21. Information provided by the Council indicates the club was previously reported for offensive noise due to plant, patrons and amplified music on 19 October 2015 by 23 residents under a single complaint, and again on 11 January 2016. Council advised the complaints relating to plant noise were resolved after the club undertook extensive works at a cost of \$100,000.
22. A single complaint signed by 23 residents was also made to L&GNSW on 11 January 2016. This complaint referred to noise disturbances from loud band music on weeknights, plant noise, screaming from the children's playground and noise occurring outside of alleged legal curfew times. No further action was taken at this time after the club advised on 26 February 2016 that it was engaged in planning and capital expenditure to resolve the noise disturbance issues.
23. Information provided by Police indicates the noise levels inside the venue, when officers have conducted routine business inspections, were unacceptable. Police have advised business inspections at the licensed premises deemed noise levels from amplified music "totally unacceptable...loud to the point where it is difficult to have a conversation with another person". To address the issue of "offensive noise" Police have recommended imposing a noise limiter condition on the club's licence.
24. In response, the club submits no resident complaints had been received since the completion of the 2013 refurbishment works until the complainant raised issues in March 2015. This appears to be inconsistent with the club's phone complaint chronology which indicates a resident complaint was received on 7 February 2015 in relation to amplified music. The club has also indicated a formalised process for receiving and documenting noise complaints was only introduced by the club board on 24 October 2016.

25. The club also submits bands currently performing at the premises also performed there during the 18 months prior to the complainant's issues and for many years before that without complaint. However, during the 2013 renovations live entertainment was temporarily moved to the indoor bowling complex on the western side of the club. During this time, the club received noise complaints from affected western-side residents relating to amplified live entertainment.
26. The club disputes the Police submission, stating the observations made by attending officers referred to amplified music inside the club premises and not the effects of that music on the quiet and good order of the neighbourhood. The club also submits it is not aware of any police officer attending the club premises to request the volume for live bands be lowered.
27. In relation to the children's playground, the club advised two separate acoustic reports concluded the noise levels complied with the standard LA10 noise criteria. However, in response to neighbour concerns, the club has included proposed noise mitigation measures for this area in the current DA lodged with the local Council.
28. Overall, it is the club's view extensive measures have been implemented to resolve the noise disturbance issues, and that every attempt to progressively address each of the complainant's concerns has been made at all times. The club has indicated that it will soon commence extensive noise mitigation works, costing \$800,000, which it submits are a demonstration of the club's intention and commitment to resolve the matter.
29. The complainant has disputed the club's view and submits the venue has not undertaken the minimum measures recommended in the 10 September 2015 Renzo Tonin acoustic report while continuing providing regular amplified live entertainment. In further comment, the complainant states the club has ignored legal requirements for noise limits and has continued to deny an issue exists.

Actions Taken to Mitigate Disturbance

30. In response to noise complaints, the club engaged acoustic consultant, Renzo Tonin & Associates, to measure sound levels against L&GNSW noise criteria. The 10 September 2015 report indicated instances where amplified live entertainment exceeded the LA10 noise criteria, and further identified acoustic deficiencies in the building envelope. The report also predicted the noise levels from the children's playground were within LA10 noise criteria requirements; though it was noted there were not enough children present to properly conduct the measurement.

31. The material indicates the club has undertaken a number of noise mitigating measures including directing duty managers to check decibel levels during live entertainment to ensure compliance and reduce bass noise, circulating a revised 'Live Entertainment Policy and Procedures' document to performing bands, decommissioning/replacing refrigeration and extractor fan plant machinery, and installing signage in the children's playground requesting respect for neighbours.
32. On 2 October 2015, the club engaged Renzo Tonin to install and calibrate a sound monitoring system, as recommended, for non-in-house sound systems and to avoid the significant capital costs required to improve the building's envelope. This system was to be monitored by duty managers who would advise bands to lower noise volumes. On 14 January 2016, the club also deployed an operable wall across 20 metres of the main lounge eastern facade and closed the eastern terrace during live entertainment to mitigate noise.
33. On Saturday 5 November 2016, L&GNSW inspectors attended the complainant's residence to make on-site observations. The inspectors observed a continuous drum beat, bass thumping and vocals could be heard and felt in the complainant's residence while a live band was playing at the club premises. Inspectors then made observations within the club premises, noting the entertainment stage area did not appear to be acoustically treated, shouting was required to have a conversation within the venue, and the 'traffic light' sound monitoring system (which turned red at approximately 86dB, as verbally advised by management) flashed red on every note the band played at the time observations were made, indicating noise limits were repeatedly exceeded on the evening. The club has conceded these observations indicate the flaws in the noise monitor system and have agreed to install a noise limiter to control amplified entertainment in the future.

Findings and Conclusion

34. I have considered the submissions of the complainant, the licensee, Police and the local Council. I have also considered the particular context in which the venue operates (including the statutory considerations above). In deciding whether to impose conditions on the licence relating to the disturbance, I have considered the following points.
35. The club has operated from its premises for many years prior to the arrival of the complainant and appears to have consistently provided regular amplified entertainment, including live bands, for a number of those years. In determining whether the

disturbance is *undue*, I have considered that the club has operated in one form or another since 1966, and that it is reasonable to expect that some noise will be generated by its ongoing operation. However, I am required to take into consideration the close proximity of the club premises to surrounding residents, the number of residents that have indicated the club's operations have caused undue disturbance, and the club's intention to continue providing regular amplified live entertainment.

36. I consider the complaint chronologies provided by the complainant and another Headland Parade resident to be relevant as they demonstrate consistency to complaints of noise disturbance as recorded by the complainant.
37. I have considered the acoustic reports from the complainant (August 2016) and club (September 2015). It is relevant that both reports took measurements against the LA10 noise criteria and each found instances of amplified entertainment noise exceeding those criteria. It is also relevant that the September 2015 report specifically indicates deficiencies in the premises building envelope which may be contributing to the noise disturbances. I am satisfied the results are consistent and therefore reliable.
38. I have considered the observations made by L&GNSW inspectors at the complainant's residence and the club's premises. I accept these observations form a reliable contemporaneous record of the club's operations involving amplified live entertainment for the purposes of this decision.
39. I am of the view the club could have adopted and implemented more effective measures as the material indicates the noise monitor was not effective in controlling amplified noise. Examples of these measures include the recommended structural works and internal treatments such as double glazing the eastern façade and relocating the entertainment stage to the north-eastern corner of the club premises. The recommendations were also made in September 2015 while a decision to adopt similar measures did not occur until May 2016. In considering this, I have acknowledged the complainant's concerns that regardless of the measures taken by the club there have been no changes in the regularity of noise disturbance.
40. In order to ensure appropriate controls are in place for the future operation of the club, I have decided to impose a LA10 noise condition, and a condition requiring the installation and calibration of a noise limiter in accordance with the LA10 noise criteria.

41. As the club submits it will install a noise limiter given the observations made by L&GNSW inspectors, I consider that these two conditions do not place an undue burden on the club's operations. Further, these conditions will assist the club in ensuring amplified entertainment is tightly controlled and monitored at all times and ensure a level of regulatory certainty against future instances of disturbance.

Decision Date: 9 June 2017



Sean Goodchild

Director Compliance Operations

Liquor and 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 *7 July 2017* 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



Annexure 1

Under section 81 of the *Liquor Act 2007* a delegate of the Secretary, Department of Industry has imposed the following conditions on the liquor licence of:

Warilla Bowls and Recreation Club Limited, Barrack Heights NSW (LIQC300238431)

Condition – LA10 Noise Criteria

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: 13 July 2017

Condition – Noise Limiter

At all times when amplified music is conducted, the licensee must ensure all amplifiers or noise generating equipment is under the control of a noise limiter.

- a. The noise limiter levels must be set by an acoustic engineer.
- b. The noise limiter controller must be contained within a locked container or secure area and is to be only accessible by venue management.

Date condition effective: 13 July 2017



Annexure 2

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

1. Section 79 Disturbance Complaint lodged by [REDACTED], received on 21 September 2016 (including annexures and August 2016 acoustic report).
2. Submission from Shellharbour City Council, received 1 November 2016.
3. Submission from Warilla Bowls and Recreation Club Limited (including annexures 1 to 64 and September 2015 acoustic report), (four emails received 3 November 2016).
4. L&GNSW Observations File Note (DOC16/151176), dated 5 November 2016.
5. Submission from NSW police, received 23 November 2016.
6. Complainant response to club submission (including annexures 1 to 6), received 20 December 2016.
7. Final submission from Warilla Bowls and Recreation Club Limited (including annexures 1 to 6), received 10 January 2017.