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Dear Mr Hatzis

**Review under section 36A of the *Gaming and Liquor Administration Act 2007*
CBD Hotel – Newcastle**

The Independent Liquor and Gaming Authority (Authority) has completed its consideration of an application for review (Review Application) made to the Authority under section 36A of the *Gaming and Liquor Administration Act 2007* dated 19 March 2015 by Mr Stephen Hunt, the licensee of the "full" hotel licensed venue known as "CBD Hotel", currently trading at 471 Hunter Street, Newcastle (Premises).

The Review Application concerns a decision dated 26 February 2015 (Reviewable Decision) made by a delegate of the (then) Secretary of NSW Trade and Investment to impose three (3) new conditions upon the licence for the Premises under section 81 of the *Liquor Act 2007*, to commence effect from 19 March 2015.

The Authority has decided, pursuant to section 36A(4) of the *Gaming and Liquor Administration Act 2007*, to note that Condition 1 (which was not subject to review) remains in effect. Condition 2 of the Reviewable Decision was **confirmed** by the Authority and Condition 3 has been **varied** by the Authority.

Under section 36C of the *Gaming and Liquor Administration Act 2007*, the Authority is required to publish statements of reasons with respect to those types of decisions prescribed by clause 6 of the Gaming and Liquor Administration Regulation 2008. The attached statement of reasons has been prepared in the context of a high volume liquor jurisdiction that requires the publication of statements of reasons as soon as practicable.

If you have any enquiries about this decision, please contact the Authority's General Counsel, Mr Bryce Wilson via email at bryce.wilson@ilga.nsw.gov.au.

Yours faithfully

Micheil Brodie - 1 SEP 2015
Chief Executive

STATEMENT OF REASONS

INTRODUCTION

1. An application for review under section 36A of the *Gaming and Liquor Administration Act 2007* (Review Application) was received by the Independent Liquor and Gaming Authority (Authority) on 19 March 2015.
2. The Review Application concerns the "full" hotel licensed venue known as "CBD Hotel" currently trading at 471 Hunter Street, Newcastle (Premises). The Review Application was made by the licensee of the Premises, Mr Stephen John Hunt (Review Applicant).

BACKGROUND

3. The Review Application seeks the variation of a decision dated 26 February 2015 (Reviewable Decision) made by Mr Anthony Keon, Director Compliance and Enforcement of the Office of Liquor, Gaming and Racing (OLGR) in his capacity as a delegate (Delegate) of the (then) Secretary of NSW Trade and Investment (Secretary) to impose three (3) new conditions on the liquor licence for the Premises under section 81 of the *Liquor Act 2007* (Act).
4. The Reviewable Decision arose in response to a noise disturbance complaint dated 14 April 2014 (Complaint) made to OLGR under section 79 of the Act by Ms Lauren Cruz (Complainant), whose residence (at the time of making the Complaint) on King Street, Newcastle is within the Civic Square apartment complex and neighbours and overlooks the outdoor courtyard area of the Premises.
5. On 8 May 2014, Mr Sean Goodchild, OLGR Manager of Investigations, in his capacity as a delegate of the Secretary, advised the parties that the Complaint would be dealt with by way of written submissions and invited the parties, including NSW Police, Newcastle City Local Area Command (Police) and Newcastle City Council (Council) to make submissions in relation to the Complaint.
6. Following the receipt of several rounds of submissions from the Complainant, the legal representative of the Licensee and Police, the Delegate imposed three (3) new conditions on the licence for the Premises under section 81 of the Act, to commence effect from 19 March 2015.
7. The Review Application was lodged with the Authority on 19 March 2015.
8. Further submissions were received on behalf of the Complainant and the Review Applicant and the Authority gave consideration to the substantive review at its ordinary monthly meeting on 27 May 2015. This letter records the formal decision made in relation to the review.

SUMMARY OF THE REVIEWABLE DECISION

9. The Reviewable Decision imposed three new conditions on the Premises' liquor licence number LIQH400117248 under section 81 of the Act, to commence effect from 19 March 2015, in the following terms:
 1. *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. *At any time amplified music is conducted on the licensed premises, all amplifiers or noise generating equipment must be under the control of a noise limiter and the following controls applied:*
 - (a) *The noise limiter levels must be set and locked by an acoustic engineer*
 - (b) *The noise limiter levels must only be varied by an acoustic engineer in compliance with the LA10 noise criteria*
 - (c) *The noise limiter must be contained within a locked container or a secure area that is only accessible by venue management.*
 3. *On any trading day, the licensee must ensure that no patron is in the outdoor courtyard area of the hotel after 10:00pm.*
10. Briefly, the Delegate noted that the Complaint made by Ms Cruz alleged undue disturbance in relation to the manner in which the licensed premises is conducted, in that noise emanates from the outdoor courtyard area of the Premises due to disc jockeys (DJ) playing amplified music and the broadcast of sporting events on large outdoor screens. The Complaint alleges that this noise disturbance occurs primarily on Friday and Saturday nights between 5:00pm and 10:00pm, but may occur at other times as well.
11. The Delegate noted that he had the following material before him in making the Reviewable Decision:
- (a) Section 79 disturbance complaint material dated 14 April 2014
 - (b) Various email correspondence from the Complainant to OLGR Compliance and Enforcement Division staff dated between 14 May 2014 and 16 December 2014
 - (c) Submission from NSW Police, Newcastle City Local Area Command dated 29 May 2014
 - (d) Submission from Newcastle City Council dated 7 July 2014
 - (e) Further submission from Police dated 15 July 2014
 - (f) Submissions from the Complainant dated 25 July 2014 and 1 August 2014
 - (g) Submissions from the licensee's legal representative, Mr Tony Hatzis of Hatzis Cusack Lawyers dated 17 June 2014, 2 July 2014, 23 July 2014, 25 September 2014 and 17 October 2014.
12. With regard to the statutory consideration prescribed by section 81(3)(a) of the Act, the Delegate noted that at the time of lodging the Complaint, the Complainant had lived at her residence for seven years, while the hotel business has operated on the site of the Premises since 1958. In that respect, the Delegate was satisfied that the order of occupancy consideration is in favour of the Premises.
13. With regard to the statutory consideration prescribed by section 81(3)(b) of the Act, the Delegate noted that there had been *no significant structural changes* to the Complainant's residence during the relevant period.
14. However, the Delegate notes that the licensee of the Hotel, Mr Stephen Hunt (Licensee) indicated in his submission dated 2 July 2014 that the internal areas of the Premises had been refurbished (without providing any information as to the exact timing of the works or

any details concerning any refurbishment to the outdoor courtyard area). The Delegate noted that photographs provided as part of that Licensee submission suggest that the outside area was refurbished with *appropriate facilities* in order to promote its use by patrons.

15. With regard to the statutory consideration prescribed by section 81(3)(c) of the Act, the Delegate noted that the Complainant alleges that there had been an increase in disturbance from amplified music, patron noise and functions from the outdoor courtyard area since late 2013.
16. On this issue, the Delegate notes the Licensee's submission that the hotel business operating on the Premises has been licensed for many years and while its use includes the provision of entertainment, no DJ (or other musical entertainment) takes place beyond 9:00pm on any night in the outdoor courtyard area of the Premises any longer.
17. The Delegate was satisfied, on the basis of the material before him, that the Premises had, at times, caused undue disturbance to the quiet and good order of the neighbourhood, particularly from live amplified DJ music from the outdoor courtyard area.
18. The Delegate noted that a certain level of disturbance is to be expected from any licensed premises, however the Delegate was satisfied that the level of disturbance from amplified entertainment in this case was "...beyond what would normally be expected from an outdoor courtyard area".
19. The Delegate noted that an acoustic assessment report dated 26 June 2014 found non-compliance with the LA10 noise criteria in all but one octave band before noise amelioration works were completed at the Premises during July and August 2014.
20. The Delegate noted that the Licensee had implemented certain noise amelioration measures, including the reduction of the volume levels of the outdoor speakers. However, noting that *appropriate controls* are required to ensure that these levels cannot be varied, the Delegate was satisfied that the imposition of a condition requiring all amplified entertainment to be played through a noise limiter was an appropriate response to better ensure ongoing compliance with the LA10 condition.
21. While the Delegate found that it was clear that the completed noise amelioration works had reduced the level of undue disturbance emanating from the Premises, the Delegate was nevertheless satisfied that the imposition of the LA10 noise condition is an appropriate safeguard to prevent future disturbance occurring and represents an appropriate response to the issues raised in the Complaint.
22. The Delegate also noted that the Licensee had implemented strategies to reduce the levels of disturbance from the use of the outdoor courtyard area when amplified entertainment is provided, including no DJ or musical entertainment past 9:00pm, and that staff progressively move patrons inside after 9:00pm when entertainment is provided.
23. However, as a further safeguard to ensure that residents are not disturbed by patron noise later at night in the future, the Delegate was satisfied that it is appropriate to impose a condition restricting use of the outdoor courtyard area of the Premises after 10:00pm.

MATERIAL BEFORE THE AUTHORITY

24. In summary, the entire bundle of material before the Delegate at the time of making the Reviewable Decision (OLGR File), which has been provided to the Review Applicant and Complainant for comment, comprises the following:
25. Briefing memo to the Delegate dated 26 February 2015 (OLGR Memo). The OLGR Memo provides a brief background of the matter, noting that on 14 April 2014, the Complainant lodged the Complaint under section 79 of the Act which alleged that *peak undue disturbance* occurs every Friday and Saturday evening until about 10:00pm.
26. On 26 June 2014 and 23 September 2014, two acoustic assessments were undertaken by Global Acoustics Pty Limited on behalf of the Licensee. The initial assessment of 26 June 2014 found that the Premises was "non-compliant" with the LA10 noise criteria in eight out of the nine octave bands tested.
27. Following this assessment, the Licensee sought further acoustic advice in order to reduce the level of noise emissions, with an acoustic consultant recommending that the outdoor speaker system be changed to accommodate an increased number of low volume speakers and that the speakers be repositioned.
28. On 1 August 2014, the Complainant (who had since moved out from her residence overlooking the outdoor courtyard area of the Premises) provided video footage taken from within an authorising resident's dwelling. The OLGR Memo noted that while the quality of the footage is "poor", amplified music emanating from the Premises "...appears to be clearly audible from within those premises".
29. On 25 September 2014, following the completion of noise amelioration works, the Licensee's legal representative, Mr Tony Hatzis of Hatzis Cusack Lawyers, advised that a follow-up acoustic assessment had been conducted on 4 September 2014 and that a report dated 8 October 2014 found that the Premises was compliant with the LA10 noise criteria in "...all but one octave band where it exceeded the criterion by 5dB".
30. On 16 December 2014, OLGR case officers contacted the Complainant. She advised that she was no longer residing in the vicinity of the Premises but that other residents, including an authorising resident, were still experiencing a level of "hit and miss" disturbance arising from the operation of the hotel business on the Premises.
31. Noting that the latter acoustic assessment undertaken on 4 September 2014 indicated compliance with all but one of the octave bands of the LA10 pre-midnight noise criteria, the OLGR Memo submits that the strategies proposed by the Licensee "...do not specifically address" noise from patrons who are "...permitted to congregate in the outdoor area at times when entertainment is not provided".
32. The OLGR Memo observes that the acoustic report provided by the Licensee stated that "...all reasonable, practical steps" had been taken to reduce noise from entertainment. However, the OLGR Memo submits that the acoustic report made no reference to the installation and calibration of a noise limiter to ensure that the volume levels of amplified entertainment are properly controlled.
33. The OLGR Memo recommends that the imposition of the LA10 noise criteria, in conjunction with the use of a noise limiter and restricting patrons from using the outdoor courtyard from 10:00pm on trading nights, will provide adequate safeguards to prevent future disturbance to nearby residents. The OLGR Memo recommends that the imposition of these three conditions is "...unlikely to place undue hardship upon the

licensee or operation of the business" and recommends that these conditions be placed upon the licence for the Premises.

34. Attached to the OLGR Memo are a copy of the Reviewable Decision and letters dated 8 May 2014 from Mr Sean Goodchild, OLGR Manager Investigations, sent to the Licensee, the Licensee's legal representative, the Complainant, the Local Area Commander of NSW Police, and the General Manager of Newcastle City Council inviting submissions in relation to the proposed imposition of the three conditions.
35. Section 79 Complaint dated 14 April 2014. The Complaint material comprises a brief covering email from the Complainant dated 14 April 2014 which submits that the noise emanating from the Hotel is having a "significant affect"[sic] on neighbouring residents.
36. The Complaint Form dated 14 April 2014 notes that the Complainant, Ms Lauren Cruz, is a person residing in the neighbourhood and authorised in writing by two other residents, Ms Valda McMahon and Mrs Desleigh Mazzoni (Authorising Residents), all of whom are residents of the Civic Square apartment complex situated at 328 King Street, Newcastle.
37. With regard to Part C of the Complaint Form in relation to the disturbance, the Complainant alleges that there is an "...established pattern of excessive noise" in the outdoor courtyard area of the Premises, which is within metres of the Complainant's residence. The Complainant alleges that the Premises has "...DJs and excessively loud music" playing in this open courtyard on most Friday and Saturday afternoons and evenings and that the hotel business also uses this area to host functions and to broadcast sporting events on a large outdoor screen, which encourages large groups of people to gather.
38. The Complainant submits that *50 per cent* of the apartments in the Civic Square apartment complex face onto this courtyard area and that when music is playing and there are people in the courtyard talking and yelling, the noise reverberates through the apartments, "...making it virtually impossible to be in our homes". The Complainant submits that "...the way the noise is projected it seems like the music and people are right outside our windows". The Complainant submits that "he noise is so bad that it can even be heard in the hallway of this apartment building and in apartments facing north and east (which do not overlook the courtyard area).
39. The Complainant notes that a large number of residents whose apartments face the outdoor courtyard area of the Premises have provided their details to "...register their concern with the noise levels and to support this application". The Complainant submits on behalf of this group of residents that "...our lives and ability to feel comfortable in our own homes on the weekend is severely impacted" by the operations of the hotel business and that the noise disturbance from the Premises is "...beginning to impact on people's mental health". The Complainant submits that these residents have conducted a significant amount of research and there does not appear to be any other licensed venues in Newcastle that are allowed to produce comparable levels of noise in outdoor areas.
40. Attached as further information to Part C of the Complaint is a list of 19 residents of the Civic Square apartment complex who made complaints regarding the noise from the outdoor courtyard area of the Premises. The Complainant submits that this list is not exhaustive and that all the residents who were contacted unanimously agreed that the noise was an increasing concern.
41. With regard to Part D of the Complaint Form in relation to frequency and patterns, the Complainant alleges that the noise occurs every weekend on both Friday and Saturday

afternoons and evenings from around 5:00pm to 10:00pm; however this timing can vary. The Complainant alleges that on occasions the noise has extended until 12:00 midnight, and that there are also "...occasions mid-week where there is excessive noise in the courtyard of an evening".

42. With regard to Part E of the Complaint Form in relation to action to-date, the Complainant submits that numerous complaints have been made directly to the venue by residents. The Complainant submits that a formal discussion between the licensee/general manager Elle and the Executive Committee Chairman of the Civic Square apartment complex was held on Wednesday 26 March 2014, but that "...no suitable outcome was reached".
43. The Complainant contends that a number of discussions took place between residents and Detective Craig Staniland of Waratah Police Station in November and December 2013, with a more recent discussion taking place on 4 April 2014. According to the Complainant, Detective Staniland advised that he would discuss the situation with the venue and that if there was "...no change or commitment to engage with residents", then an official complaint should be lodged with OLGR.
44. The Complainant notes that a complaint was made to Newcastle City Council in late 2013, in response to which Council staff advised that noise from licensed premises was not under Council's jurisdiction and that a complaint should be lodged with OLGR.
45. Attached as further information to Part E of the Complaint Form is a summary of complaints made by residents to the venue within the months preceding the filing of the section 79 Complaint dated 14 April 2014. The Complainant submits that on many occasions, the phone line to the venue goes unanswered and it is impossible to make a complaint or alternatively, a member of staff at the Premises answers who is "...unwilling or does not have the experience to deal with complaints".
46. Briefly, the summary of complaints indicates that residents experienced disturbance due to noise emanating from the Premises on 12 occasions between December 2013 and April 2014, some of which prompted the making of telephone or face to face complaints to the venue and/or telephone complaints to Newcastle Police Station.
47. With regard to Part F of the Complaint Form in relation to "your residence" (that is, a complainant's residence), the Complainant notes that she has resided at her address in King Street, Newcastle for "7 years". The Complainant submits that all residents of the Civic Square apartment complex are "...forced to keep windows and doors closed" every Friday and Saturday night between at least 5:00pm to 10:00pm due to the noise and that residents are "...unable to use our balconies at all" during those times. The Complainant also submits that some residents "...have resorted to using air conditioning and pedestal fans" to try to drown out the noise.
48. With regard to Part G of the Complaint Form in relation to "changes to the licensed premises", the Complainant submits that the management of the venue has changed a number of times. The Complainant notes that she has had discussions with management staff at the Premises, most recently with "General Manager Elle", who advised that the hotel business has not been profitable in previous years. The Complainant submits that the goal of the hotel business now appears to be solely increasing patronage and profits, hence the increased activity and use of the outdoor courtyard area for DJs, loud music, sporting broadcasts and functions.
49. The Complainant submits that the Premises has "...undergone a significant internal refurbishment in the last few months" but that it is unclear what measures have been put

into place to manage noise levels and that there does not appear to be any effort made to reduce the noise levels in the outdoor courtyard area.

50. With regard to Part H of the Complaint Form in relation to resolution of the Complaint, the Complainant requests on behalf of the residents of the Civic Square apartment complex that the volume of the noise in the outdoor courtyard area be limited.
51. The Complainant states that the venue claims that the "...DV[*sic* - an apparent reference to dB] readings" of the music played outdoors are acceptable according to the OLGR noise criteria – however the Complainant submits that the hotel is not taking into consideration the way the music played is "projected" back up into the apartment building.
52. The Complainant submits that she and her fellow residents are aware of the noise restrictions placed on other hotels around Newcastle, particularly where licensed premises and residential apartments share the same space, and requests that the same consideration be given to the residents of this apartment complex.
53. The Complainant states that the residents "...would have liked to resolve this amicably", but submits that venue management have not been willing to make any compromises on the noise levels on weekends and have not been able to acknowledge the distress that this causes their neighbours, despite repeated complaints.
54. The Complainant submits that she and her fellow residents "...are willing to accept some reasonable levels of noise", but that the existing noise levels are in no way reasonable. The Complainant understands the need for a business to be profitable, but requests that any pursuit of business be done "...within the confines and limitation of operation in a residential area" – which is particularly pertinent given the amount of residential development taking place in Newcastle.
55. Email from Complainant to OLGR Compliance and Enforcement Division dated 14 May 2014. Briefly, this email alleges that there has been no change to the original issues raised in the Complaint and that the situation seems to be worsening with music being played in the outdoor courtyard not only on a Friday evening but throughout the week, including some days where it is played from around 11:00am until 9:00pm.
56. The Complainant contends that despite repeated attempts to make complaints and to discuss concerns with venue management, staff at the Premises are unresponsive and there has been absolutely no follow up at all from management regarding ongoing concerns about the noise.
57. The Complainant contends that the venue is unwilling to follow up on noise complaints and unwilling to listen or work with residents to address the concerns, which is "really unfortunate" as the residents "...would have been very willing to work together to come up with a solution that suits everyone".
58. The Complainant then provides a summary of additional noise issues arising from the use of the outdoor courtyard area of the Premises on 25 April, 29 April, 2 May and 6 May 2014 in relation to, *inter alia*:
 - (a) loud talking and yelling
 - (b) very loud music/DJ
 - (c) a group of approximately 50 extremely loud (and visibly drunk) patrons partaking in some kind of pub crawl

- (d) a sports broadcast in the outdoor courtyard area of the Premises which attracted large, loud groups of people who were making so much noise that it was as if they were outside our windows yelling.
59. Email from Complainant to OLGR Compliance and Enforcement Division dated 16 May 2014. Briefly, this email alleges that in a telephone conversation with the Complainant at 6:14pm on 15 May 2014, the Licensee of the hotel business, Mr Stephen Hunt, advised that he "...had been asking around" about the Complainant and had been told that Ms Cruz had been making complaints within her apartment building in an "...attempt to damage his reputation and his business". The Complainant alleges that the Licensee threatened to take Ms Cruz to Court, stating, "...I've done it to other people before, and I'll do it again to you". The Complainant alleges that the Licensee called her a "liar" and stated that Ms Cruz was "...blowing [the matter] out of proportion".
 60. The Complainant stated that this telephone call was "very intimidating" and that she no longer felt able to make complaints about noise disturbance directly to the venue. The Complainant advised that she would continue to remain in contact with OLGR staff and that she would log the telephone call with Police.
 61. Submission from NSW Police, Newcastle City Local Area Command dated 29 May 2014. Briefly, this submission notes that Police have reviewed reports sourced from the NSW Police Computerised Operational Policing System (COPS) database relating to the Premises and have not found any evidence that would assist in this disturbance complaint.
 62. Police note that business inspections of the Premises were conducted on 21 December 2013 (COPS event number E53306933) and 17 January 2014 (COPS event number E53636747), but that these two occasions are not mentioned in the Complaint.
 63. The Police submission notes the Complainant's statement that she rang Police on 29 December 2014, however checks of the Computerised Aid Despatch (CAD) system do not show any record of Police being asked to attend the hotel in relation to a noise complaint. The submission notes that Police attended the Premises at 11:00pm on 21 March 2014 in response to a telephone call from the Complainant alleging noise disturbance, but the attending Police reported no noise detected.
 64. The Police submission states that licensing Police met with the Licensee, Mr Stephen Hunt, at Waratah Police Station in late 2013 after receiving a complaint from the Complainant. Police discussed these complaints with the Licensee and the Licensee provided his mobile number so that the Complainant could call him directly to discuss her issues.
 65. Attached to the Police submission is a printout from the NSW Police CAD system dated 21 March 2014 indicating "no noise detected" when Police attended the Premises on that evening in response to a noise disturbance complaint.
 66. Also attached to that Police submission are the narratives of COPS event numbers E53306933 and E53636747, indicating that business inspections of the Premises conducted on those occasions did not reveal any issues pertinent to these noise disturbance complaints.

67. Also attached to that Police submission is the letter originally sent to Police dated 8 May 2014 inviting submissions in response to the Complaint and annexing a Schedule of Parties to the Complaint.
68. Email from Complainant to OLGR Compliance and Enforcement Division dated 2 June 2014. Briefly, this email contends that despite the venue being made aware of the Complaint, "...there has been very little change to noise levels". The Complainant states that "...there was some improvement two weeks ago" when a sound engineer was testing noise levels, but submits that since then, the volume seemed to go up, not down and that patrons are permitted to stay in the outdoor courtyard area until late into the evening, disrupting residents.
69. The Complainant also states that the venue held a screening of the State of Origin game on Wednesday 28 May 2014 and that the volume was really loud and continued until the conclusion of the game at 10:30pm.
70. The Complainant submits that it has also been heard that the venue has applied for a special licence to open outside of its normal licensed hours to show [Cricket] World Cup games, presumably in the "...wee hours of the morning or before 10:00am". The Complainant "flags" this concern as part of the ongoing noise and disturbance issues.
71. Submission from Mr Tony Hatzis of Hatzis Cusack Lawyers on behalf of the Licensee dated 17 June 2014. Briefly, the Licensee submits that the Complainant's version of the telephone conversation between herself and the Licensee on 15 May 2014 is very different from Mr Hunt's recollection. The submission attaches the contemporaneous notes of the conversation as recorded by the Licensee.
72. The Licensee contends that there is no reasonable basis for the Complainant to cease communicating with the venue, nor was there any attempt to intimidate the Complainant. The Licensee submits that he (Mr Hunt) initiated contact with the Complainant and that it was the Complainant who became belligerent toward the Licensee. The submission advises that if the Complainant does not wish to communicate directly with the Licensee, then she may contact either Tiffanii, Samwise or Elle, who are each managers of the hotel business operating on the Premises.
73. Submission from Mr Tony Hatzis of Hatzis Cusack Lawyers on behalf of the Licensee dated 2 July 2014. Briefly, the Licensee submits that the hotel business has been established in its present location for many years and that internal refurbishment works were undertaken in 2012 to make the Premises more visually appealing to patrons. The Licensee attaches three photographs depicting the interior and exterior of the Premises following this refurbishment and showing the particular internal and external use of space within the Premises.
74. The Licensee submits that the Complainant resides in an apartment complex that was completed in or around 2004 and which has a direct line of sight onto the courtyard area of the Premises.
75. The Licensee then discusses the concept of *undue disturbance*, submitting that any noise generated by the ordinary activities of a hotel use would not ordinarily be considered to be undue. The Licensee refers to *Planning Circular No PS09-028* issued by the NSW Department of Planning on 26 October 2009 and submits that the provision of entertainment (including live entertainment) is considered to be an ancillary use to the conduct of a hotel and is regarded as part of the normal activity of a hotel.

[The Authority notes that this submission is apparently made from a planning law perspective.]

76. The Licensee refers to *OSB Operations Pty Limited v Jansen* [2006] WASCA 270, [67] and *Hackney Tavern Nominees Pty Limited v McLeod* (1983) 34 SASR 207 and submits that the concept of noise or conduct that is unduly disturbing "...necessarily conveys an objective test of what could be reasonably expected to be tolerated by neighbours" and that in determining what is *undue*, one must have regard to the particular context.
77. The Licensee submits that all of the noise complaints made relate to the use of the outdoor area, which is "...not used beyond [12:00] midnight on any night", nor is any DJ or other musical entertainment provided beyond 9:00pm on any night – and when musical entertainment is conducted, patrons are progressively moved inside the [Premises] after 9:00pm.
78. With regard to the diary notes kept by the venue since March 2014, the Licensee submits that the venue has repeatedly engaged in dialogue with the Complainant and repeatedly acted to reduce noise in response to the Complainant's requests.
79. The Licensee submits that the Complainant gives the hotel no credit for these actions and contends that the Complainant's diary notes are "...self-serving and calculated to create the impression that the hotel is non-responsive, or even dismissive" of her complaints.
80. The Licensee submits that "...nothing could be further from the truth" and points to a number of alleged inconsistencies between the Complainant's diary entries and the venue's diary entries. The Licensee submits that little weight should be given to the Complainant's subjective account of events in her diary entries by reason that her records are "...coloured by her own misperceptions" of the Premises and are "...exaggerated, enhanced and/or coloured to present the hotel in an unfavourable light".
81. The Licensee submits that "reasonably early in the course of these events", the venue consulted with Newcastle OLGR Compliance Officer Mr Jamie Paras, whose email dated 27 March 2014 is attached to the venue's diary notes. The Licensee submits that after consulting Mr Paras, the venue met with the Chairman of the Body Corporate of the Civic Square apartment complex and later commissioned a short report from Centauri Audio about various further options that might be undertaken to reduce noise levels. That report, which is attached to the diary notes, suggests that there is *no magic bullet fix* and recommends that a number of options be trialled.
82. The Licensee submits that following the receipt of the Complaint, Global Acoustics Pty Limited conducted an acoustic assessment of the Premises against the LA10 noise criteria between 18 and 23 June 2014. In a report dated 26 June 2014, Global Acoustics concluded that there was "...noise exceedance recorded above the LA10 criteria" in most octave bands, on both nights concerned (being a State of Origin live football broadcast and a DJ event in the courtyard).
83. The Licensee submits that the measurements recorded by the acoustic engineers were taken during two peak periods of noise generation and that they reflect a worst case scenario.
84. The Licensee notes that the measurements were taken from the balconies of two apartments in the Civic Square complex, and contends that it is likely that "...if noise measurements were taken from a habitable room inside the apartments, then there would have been no noise exceedance".

85. However, the Licensee submits that the venue will, within 14 days, meet onsite with an acoustic engineer, Mr Tony Welbourne, to discuss Mr Welbourne's recommendations for reducing noise emissions.
86. Attachment 1 to this Licensee submission is three photographs depicting the Premises following internal refurbishment works in 2012.
87. Attachment 2 to this Licensee submission is *Planning Circular No PS09-028* issued by the NSW Department of Planning on 26 October 2009 which advises councils of changes that have been introduced to the regulation of public entertainment under the *Environmental Planning and Assessment Act 1979*.
88. Attachment 3 to this Licensee submission is a record of notes kept by the venue between 7 March and 31 May 2014 which document any complaints made in relation to noise disturbance and the action taken by hotel staff.
89. Also part of Attachment 3 to this Licensee submission is an email from Newcastle OLGR Compliance Officer Mr Jamie Paras dated 27 March 2014, which states that there is "nothing on the licence" that prohibits music being played in the King Street car park, but that the venue "...is encouraged to go beyond the standard requirement to ensure they are good neighbours".
90. Also part of Attachment 3 to this Licensee submission is a short report from Centauri Audio dated 16 May 2014 which makes some recommendations as to reducing noise propagation at the Premises and states that there is *no real magic bullet fix* to the current issue – it is a matter of trialling a few of the suggested options to better manage the situation.
91. Also part of Attachment 3 to this Licensee submission is a copy of the contemporaneous notes recorded by the Licensee in relation to his telephone conversation with the Complainant on 15 May 2014.
92. Attachment 4 to this Licensee submission is a noise complaint assessment prepared by Global Acoustics dated 26 June 2014. Briefly, this report noted that unattended background monitoring was conducted from 18 to 23 June 2014. Attended measurements were undertaken from the balconies of two apartments within the Civic Square complex on 18 June 2014 during the broadcast of a State of Origin game between 8:00pm and 10:00pm where patrons were watching the game on a big screen; and on 20 June 2014 during an event where a DJ was playing in the outdoor courtyard area between 7:30pm and 9:00pm, where no patrons were visible in the courtyard area during monitoring. The report concludes that the noise emanating from the operation of the hotel business during the attended measurements exceeded the OLGR criteria in eight out of nine of the octave band centre frequencies measured.
93. Submission from Newcastle City Council dated 7 July 2014 advising that Council has received one complaint in relation to noise from the Premises on 17 August 2013 (which was made by the Complainant). Council notes that there are no current outstanding development applications for the property, and there are no conditions limiting the hours of operation of the hotel business.
94. Further submission from NSW Police, Newcastle City Local Area Command dated 15 July 2014 advising that Police have conducted a check on the COPS database and have no further evidence since the original submission dated 29 May 2014 which would assist in the resolution of the Complaint.

95. Further submission from Mr Tony Hatzis of Hatzis Cusack Lawyers on behalf of the Licensee dated 23 July 2014. Briefly, the Licensee submits that on 17 July 2014, the venue met with its acoustic engineer, Mr Tony Welbourne, on site. Mr Welbourne recommended that the existing mobile outdoor speaker system be changed to provide for a greater number of lower volume speakers in place of the higher volume speakers presently employed at the Hotel. Mr Welbourne also made recommendations regarding the positioning of speakers and their orientation. The Licensee states that the venue undertakes to carry out those works within the next 14 days and to provide the Authority with an updated acoustic assessment after those works have been carried out, within the next 35 days.
96. Further submission from Complainant dated 25 July 2014 in response to submissions from the Licensee, Council and Police. Briefly, the Complainant notes that "...things have really improved a lot" with regard to the noise from the Premises and it is hoped that this will be an ongoing arrangement. The Complainant submits that she was disappointed to read the negative and defensive response provided by the Licensee and that the venue has tried to portray her as a "...trouble maker, who has manufactured the information to make [the hotel] look bad".
97. The Complainant submits that making a formal complaint to OLGR was not something she had any enjoyment doing and that she consulted with Police, Council and other residents before taking this course of action.
98. With regard to the notes recorded by the venue in relation to noise disturbance complaints, the Complainant submits that "...very little of the content is factually correct and in some cases has been exaggerated" or certain comments have been misattributed. The Complainant provides a few examples of where she argues that the venue's notes are incorrect or confused and questions why these records are so hazy in detail if the hotel is serious about addressing complaints.
99. With regard to the actions taken by the venue, the Complainant submits that any measures implemented to reduce the noise levels had little or no impact on the residents' concerns. The Complainant notes that the acoustic assessment report prepared by Global Acoustics suggests that the level of noise was unacceptable on most of the readings. The Complainant submits that the attended assessment conducted while DJ entertainment was provided at the Premises does not represent a worst case scenario as the Licensee contends, but a regular weekend occurrence. The Complainant submits that it is disappointing that the readings were taken on the *outside balconies* of the building rather than *from within the apartments*.
100. The Complainant submits that the Department of Planning circular attached to the venue's submission dated 2 July 2014 and advice contained in Newcastle OLGR Compliance officer Mr Jamie Paras's email dated 27 March 2014 have not been considered by the venue in that management staff have not continued to "...ensure that they do not cause undue disturbance to the quiet and good order of their neighbourhood".
101. The Complainant also questions why the venue has not actively engaged with those who complained about noise disturbance and submits that the actions taken by the hotel as detailed in the Licensee's submission dated 2 July 2014 are the first she has heard of any attempts to address the concerns raised.
102. With regard to the contemporaneous notes recorded by the Licensee in relation to the telephone conversation he had with the Complainant on 15 May 2014, the Complainant

submits that she could not decipher much of that document, but that the part that was legible is not factual.

103. The Complainant submits that the telephone conversation with the Licensee was "...not at all productive and has unfortunately only inflamed the situation". The Complainant reiterates that she is not interested in presenting the venue in an unfavourable light and that all that the residents of the Civic Square apartment complex want is for the venue to acknowledge their concerns and "...modify the type and volume of entertainment provided in the outdoor courtyard area so that the noise within residents' apartments is minimised".
104. Further submission from Complainant to OLGR Compliance and Enforcement Division dated 1 August 2014. Briefly, the Complainant notes that she has posted a copy of six video files that were recorded by Mrs Desleigh Mazzoni, one of the Authorising Residents listed on the Complaint Form.
105. The Complainant submits that while these videos are by no means quality productions (taken on an iPhone) they nevertheless give a very good indication of what the residents have been exposed to and why they decided to lodge a formal complaint.
106. The Complainant contends that Mrs Mazzoni had tried to make contact with the venue on Saturday 26 July 2014 to complain about loud music being played late into the evening, but that the phone lines went unanswered.

Description of Video Files on the OLGR File

107. Quicktime file named "IMG_2218.mov" (duration 00:00:10). This video appears to be taken from the outside balcony of Mrs Mazzoni's apartment during the day, with the balcony door open. Loud music is clearly audible in the background, both from within the apartment (with the balcony doors open) and from outside on the balcony.
108. Quicktime file named "IMG_2219.mov" (duration 00:00:09). This video appears to be taken from inside Mrs Mazzoni's apartment during the evening. Music is clearly audible in the background.
109. Quicktime file named "IMG_2220.mov" (duration 00:00:16). This video appears to be taken from inside Mrs Mazzoni's apartment during the day, with the doors and windows closed. Music is audible in the background.
110. Quicktime file named "IMG_2226.mov" (duration 00:00:11). This video appears to be taken from the outside balcony of Mrs Mazzoni's apartment, overlooking the outdoor courtyard area of the Premises, during the day. Loud music is clearly audible in the background. Four patrons are seen to walk out of the Premises and into the courtyard area. Also visible are several patrons drinking in the courtyard area.
111. Quicktime file named "IMG_2523.mov" (duration 00:00:15). This video appears to be taken from the outside balcony of Mrs Mazzoni's apartment, during the evening. Loud music is clearly audible in the background. A female voice (likely the person recording the media) notes that there is "...no one in the courtyard as the music plays".
112. Quicktime file named "IMG_2524.mov" (duration 00:00:23). This video appears to be taken from the outside balcony of Mrs Mazzoni's apartment, during the evening. A DJ playing in the courtyard area is visible and loud music is clearly audible in the background. Several patrons are also visible in the courtyard area of the Premises.

113. Further submission from Mr Tony Hatzis of Hatzis Cusack Lawyers on behalf of the Licensee dated 25 September 2014. The Licensee submits that the rearrangement of the Premises' speaker system appears to have had highly satisfactory results, save that one octave band (125Hz) is still showing an exceedance. The Licensee contends that the measurements were undertaken at the balcony of the Complainant's residence and that readings inside the apartment would be expected to be lower; however the Licensee submits that the venue is seeking the advice of the acoustic consultant as to what action can be taken to eliminate the exceedance in that octave band.
114. Attached to the submission is the acoustic assessment report prepared by Global Acoustics Pty Limited dated 23 September 2014. Briefly, this report noted that unattended background monitoring was conducted from 18 to 23 June 2014; while attended measurements were undertaken from the balcony of an apartment within the Civic Square complex on 4 September 2014 during an event where a DJ was playing in the outdoor courtyard area between 6:00pm and 7:00pm. No patrons were visible in the courtyard area during the monitoring. The report concludes that the venue complied with the OLGR noise criteria at all octave band frequencies except the 125Hz band where it exceeded the criterion by 5dB and that the changes made by the venue to courtyard speaker placement and volume significantly reduced entertainment noise impacts on the Civic Square apartment complex.
115. Further submission from Mr Tony Hatzis of Hatzis Cusack Lawyers on behalf of the Licensee dated 17 October 2014. The Licensee attaches an updated report received from the acoustic expert and submits that the report concludes that "...all reasonable practical steps have been taken to reduce entertainment noise from the [Premises'] courtyard" and that the situation reflects significant improvement on the circumstances pertaining at the time of the original Complaint.
116. Attached to the submission is the acoustic assessment report prepared by Global Acoustics Pty Limited dated 23 September 2014.
117. Email from Complainant to OLGR Compliance and Enforcement Division dated 16 December 2014. Briefly, this email notes that the Complainant no longer resides in the Civic Square apartment complex due to unrelated personal reasons and nominates one of the Authorising Residents, Mrs Desleigh Mazzoni, to take carriage of the matter from that point forward. The Complainant states that she would "...hate to see the work done to date wasted" and that the residents of the apartment building will be "...happy to have a resolution and understand the outcome".

APPLICATION FOR REVIEW

118. The Review Application material comprises the Review Application Form signed by Mr Stephen Hunt dated 19 March 2015.
119. Briefly, the Review Application Form notes that the Review Applicant is aggrieved by the decision to impose a condition restricting the use of the outdoor courtyard area of the Premises after 10:00pm (Condition 3).
120. The Review Applicant is also aggrieved by the decision to impose a condition which requires that all amplifiers or noise generating equipment in the licensed premises be under the control of a noise limiter (Condition 2).
121. Briefly, the Review Applicant seeks to vary the Reviewable Decision, arguing that since use of the DJ in the courtyard area of the Premises has now ceased, the prohibition in Condition 3 against "all" use of the courtyard after 10:00pm is not reasonably necessary

– that is, the Review Applicant proposes that some use of the outdoor courtyard area by patrons be permitted after 10:00pm.

122. The Review Applicant also argues that Condition 2 is too broad in that it requires the use of noise limiters on *all* sound amplification equipment – including music played from indoor speakers or PA equipment in internal areas such as accommodation rooms.
123. The Review Applicant contends that the hotel business is suffering pecuniary loss as a result of its inability to use the courtyard area after 10:00pm under Condition 3 of the Reviewable Decision.
124. The Authority notes that the Review Applicant does not seek any review of Condition 1, which requires that the Premises comply with the LA10 noise control requirement.
125. The Review Applicant argues that the LA10 requirement in Condition 1 and the Review Applicant's proposal for a modified version of the noise limiter requirement in Condition 2 (that would require only exterior speakers to be fitted with a noise limiter) will adequately preserve local amenity.
126. As part of the Review Application, the Review Applicant sought a stay of the operation of Condition 2 and Condition 3 of the Reviewable Decision until such time as the Authority finalises this review (Stay Application).

DETERMINATION ON STAY APPLICATION

127. On 31 March 2015, the Authority considered the Stay Application and directed, under section 36A(3) of the *Gaming and Liquor Administration Act 2007*, that only Condition 2 of the Reviewable Decision be stayed until the Authority finalises the Review, but only to the extent that Condition 2 applies to speakers or sound generation equipment:
 - (a) located in the accommodation rooms of the Premises, or
 - (b) located elsewhere inside the Premises that cannot be heard outside the Premises.
128. The Authority has decided *not* to direct any stay of Condition 3 – that is, the total prohibition on use of the outdoor area after 10:00pm remains in force.
129. As no review of Condition 1 has been sought, the LA10 requirement has continued to remain in force since it commenced effect on 19 March 2015.

RESPONSE TO CONSULTATION

Submission on behalf of the Complainant dated 11 May 2015

130. On 26 April 2015, the Complainant was provided with a copy of the Review Application and the complete bundle of material that was before the Delegate in making the Reviewable Decision (the OLGR File) and invited to make a submission in reply by 4:00pm on 11 May 2015.
131. At 10:24am on 11 May 2015, the Complainant provided a short email submission noting that she no longer resides within the Civic Square apartment complex and requesting an extension of time for one of the authorising residents, Mrs Desleigh Mazzoni, to file a submission. The full text of that email states as follows:

Dear Bryce

Thank you for this information and I'm sorry I have only just seen it as I have had trouble accessing my emails at the address you sent it to. Given the date for submission is today, would it be possible to request an extension until tomorrow so there is time to compile something?

Given I no longer live at the address, I don't know if it is fair that I submit something personally, but I do know that one of the supporters of the original application, Desleigh Mison[sic], is very keen to submit something. Is this possible? I am still happy to coordinate it and send it through to you, but it would be great if we could have an extension until tomorrow.

Please advise if this is ok.

132. On 11 May 2015, Mrs Desleigh Mazzoni, in her capacity as Authorising Resident of the original Complaint, provided a submission to the Authority. Briefly, Mrs Mazzoni submits that she has significant concerns if the Conditions are revoked, mainly with regard to how the hotel business will guarantee that noise from patrons in the courtyard past 10:00pm will be minimised. Mrs Mazzoni submits that all residents "...have a right to expect quiet and good order of their surrounds" and that revoking these conditions will again "...expose [the residents] to excessive noise levels well into the small hours".
133. Mrs Mazzoni argues that if the venue is of the belief that the Conditions are impacting on their financial bottom line, this would indicate that they plan to allow a significant number of people, and not just a handful, to occupy the courtyard area past 10:00pm.
134. Mrs Mazzoni also notes her concern that the revocation of these Conditions would result in residents being in the same position that they were in one year ago, where they were constantly at battle with the venue to find a reasonable middle ground.
135. Mrs Mazzoni contends that the hotel did not deal with residents' complaints effectively until an official complaint was lodged with OLG, and that revoking the conditions would mean that the work involved in lodging and assessing the Complaint "...would have been in vain".

Submission in reply from Review Applicant dated 14 May 2015

136. On 14 May 2015, Mr Tony Hatzis of Hatzis Cusack Lawyers provided a submission on behalf of the Review Applicant. Briefly, the Review Applicant submits that it seeks to vary the Reviewable Decision in the following respects:
 - (a) The hotel does not seek to vary or revoke the LA10 noise condition. The hotel is *content* for that condition (Condition 1) to remain
 - (b) The hotel accepts Condition 2 imposed by the Delegate (which relates to the fitting of noise limiters) but seeks to amend the condition so that it applies only to speakers that can be heard in the areas external to the hotel building. The amended condition would read as follows [the venue's proposed amendments are underlined]:

At any time amplified music is conducted on the licensed premises, all amplifiers or noise generating equipment (otherwise than in the accommodation rooms of the Hotel) which can be heard in the outdoor courtyard area of the Hotel must be under the control of a noise limiter and the following controls applied:

- i. The noise limiter levels must be set and locked by an acoustic engineer.*
- ii. The noise limiter levels must only be varied by an acoustic engineer in compliance with the LA10 noise criteria.*
- iii. The noise limiter must be contained within a locked container or a secure area that is only accessible by venue management.*

- (c) The hotel opposes the imposition of Condition 3 (which prohibits the use of the outdoor courtyard area by patrons after 10:00pm on any day). However, the hotel is prepared to accept a condition in lieu that no live music be played in the external courtyard area after 9:00pm.
137. With regard to the background to the Complaint, the Review Applicant submits, on the basis of the information contained in the Police submission dated 29 May 2014, that Police attended the Premises for only two business inspections between December 2013 and April 2014, and noise was not identified by Police as being an issue on either occasion; Police have no record of a noise complaint that the Complainant alleges that she made to Police on 29 November 2013; Police attended the Premises after receiving a complaint from the Complainant on 21 March 2014, but found no noise detected and Police provided the personal mobile phone number of the Licensee, Mr Stephen Hunt, to the Complainant in late 2013.
138. The Review Applicant contends that the "...objective evidence must cast doubt on the reliability" of the Complainant's claims that the hotel was non-responsive or was otherwise unconcerned about its neighbours.
139. The Review Applicant also refers to the Council submission dated 7 July 2014 which states that Council only ever received one complaint in relation to the operation of the hotel business on the Premises (being received from the Complainant herself in August 2013) and submits that if noise disturbances were as "...intense or as widely felt as suggested" by the Complainant, one would expect this to have been corroborated by Council or Police.
140. The Review Applicant notes that following receipt of the Complaint, the hotel engaged an acoustic expert to undertake acoustic testing on 18 and 20 June 2014 during a popular sporting broadcast (State of Origin) and an evening of DJ entertainment, in order to determine a worst case impact.
141. The Review Applicant submits that the acoustic report identified breaches of the LA10 noise criteria on the nights measured, but that certain noise amelioration measures were subsequently adopted and implemented by the hotel.
142. The Review Applicant submits that a follow-up acoustic assessment conducted on 4 September 2014 found that these measures were largely successful, with the hotel demonstrating compliance with the LA10 noise criteria in all but one octave band.
143. The Review Applicant notes the video footage provided by the Complainant to OLGR on 1 August 2014 (which the Review Applicant had not previously seen). The Review Applicant notes that the video footage appears to depict some noise audible from the balcony, but submits that little weight should be given to this video footage as *inaudibility* is not the relevant criterion for measuring whether the LA10 noise criteria are met or whether noise amounts to undue disturbance.
144. With regard to the order of occupancy consideration prescribed by section 81(3)(a) of the Act, the Review Applicant submits that this factor heavily favours the venue, which has been trading from its present location since August 1958.
145. The Review Applicant refers to an attached photograph which depicts several of the apartments within the Civic Square apartment complex whose balconies face out onto the courtyard of the Premises and submits that residents in such a development "...must reasonably expect noise to emanate from the continued use of that courtyard area".

146. The Review Applicant agrees to be bound to the standard LA10 noise condition and contends that the condition prohibiting any use of the outdoor courtyard area after 10:00pm goes much further than the standard LA10 noise condition.
147. The Review Applicant submits that the venue is prepared to accept two secondary controls to the LA10 noise condition – namely, the requirement that all speakers audible from the courtyard area be connected to the controlled noise limiter system, and a prohibition on live music being played in the external courtyard area at any time after 9:00pm.
148. The Review Applicant submits that the hotel is prepared to accept an earlier cessation time for the playing of live music in the outdoor courtyard area, which, in conjunction with the other proposed secondary controls, would "...allow some use of the external courtyard after 10:00pm, but in a way that is unlikely to give rise to undue disturbance of neighbours".
149. The Review Applicant contends that such an excessive measure is likely to have adverse impacts on the hotel and its patrons, as follows:
 - (a) The condition, if retained, is likely to deprive the hotel's patrons of the amenity of the outdoor courtyard area after 10:00pm
 - (b) The condition, if retained, is likely to adversely affect the financial viability of the hotel, given that there have regularly been two to four functions held in the outdoor courtyard area each week (including evening/night functions).
150. The Review Applicant submits that an additional difficulty with Condition 3 as imposed by the Delegate is that the outdoor courtyard area is used as an access-way by people moving between the accommodation areas of the Premises and King Street, Newcastle. The Review Applicant refers to two photographs which depict this access-way and submits that if Condition 3 as imposed by the Delegate were to stand, then the Licensee may well be in breach each time accommodation guests pass through the outdoor courtyard area or if patrons of the Premises were to walk to their cars in the car park.
151. The Review Applicant submits that the controls proffered by the hotel represent a "...balanced, reasonable and effective suite of measures" and requests that the Authority adopt and impose these proffered controls in lieu of those imposed by the Delegate.
152. Photograph 1 attached to this Review Applicant submission depicts several of the apartments within the Civic Square apartment complex whose balconies face out onto the courtyard area of the Premises.
153. Photograph 2 attached to this Review Applicant submission depicts the access-way to King Street from the outdoor courtyard area, the Premises car park and the stairway leading to the accommodation rooms on the first floor of the Premises.
154. Photograph 3 attached to this Review Applicant submission is another photograph depicting the access-way referred to above.

LEGISLATION

155. Section 36A(1)(a)(iv) of the *Gaming and Liquor Administration Act 2007* prescribes a decision made under section 81 of the *Liquor Act 2007* to be a reviewable decision.
156. Section 36A(4) of that Act provides that, in determining an application for review, the Authority may confirm the decision, vary the decision or revoke the decision under review.

157. Division 3 of Part 5 of the *Liquor Act 2007* contains provisions for dealing with disturbance complaints, as follows:

79 *Making of complaint:*

- (1) A person may complain to the Secretary that the quiet and good order of the neighbourhood of licensed premises are being unduly disturbed because of:
 - (a) the manner in which the business of the licensed premises is conducted, or
 - (b) 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) Such a complaint must be made in writing and be made or verified by statutory declaration.
- (3) A complaint under this section may only be made by any of the following persons (referred to in this Division as "the complainant"):
 - (a) a person authorised in writing by 3 or more persons residing in the neighbourhood of the licensed premises or a person who is such a resident and is authorised in writing by 2 or more other such residents,
 - (b) the Commissioner of Police,
 - (c) a person authorised by the local consent authority in relation to the licensed premises,
 - (d) a person who satisfies the Secretary that his or her interests, financial or other, are adversely affected by the undue disturbance to which the person's complaint relates.
- (4) A complaint may relate to more than one licensed premises.
- (5) In the application of this Division to an on-premises licence that relates to a catering service:
 - (a) a reference to licensed premises does not include private domestic premises, and
 - (b) a reference to the business of the licensed premises is a reference to the business of providing catering services on licensed premises (other than private domestic premises) under the licence.

80 *Dealing with complaints*

- (1) The Secretary may, after receiving a complaint under section 79, decide:
 - (a) to deal with the complaint in accordance with this Division, or
 - (b) to take no further action under this Division in relation to the complaint.
- (2) If the Secretary decides to deal with the complaint, the Secretary may:
 - (a) convene a conference to hear submissions in relation to the complaint, or
 - (b) invite written submissions from the licensee for the licensed premises to which the complaint relates, and from such other persons as the Secretary considers appropriate, and make a decision in relation to the complaint without convening a conference.
- (3) A conference, if convened, may deal with more than one complaint.
- (4) A complaint in relation to licensed premises that is being dealt with by the Secretary under this section may be extended to include other licensed premises if the Secretary is satisfied:
 - (a) that the evidence given in support of the complaint would support a complaint against the other licensed premises, or
 - (b) that, assuming that the complaint is shown to be justified, action taken in relation to the licensed premises the subject of the complaint will be ineffective unless similar action is taken in relation to the other licensed premises.
- (5) Any licensed premises in respect of which a complaint is extended as referred to in subsection (4) is, for the purposes of this Division, taken to be the subject of a complaint under this Division.
- (6) If, in relation to any such extended complaint, a conference is not convened, the Secretary must invite written submissions from the licensee for the licensed premises that are the subject of the extended complaint before making a decision in relation to the complaint.
- (7) If a conference is convened in relation to a complaint:
 - (a) notice of the time and place of the conference is to be given to all complainants and the licensee or licensees as specified by the Secretary, and
 - (b) the Secretary is not to make a decision in relation to the complaint unless each complainant and licensee who is present at the conference is given a reasonable opportunity to be heard.

- (8) *A conference under this section is to be presided over by the Secretary and the procedure at the conference is to be determined by the Secretary.*
- (9) *Nothing in this section prevents the Secretary from taking other action in relation to a complaint under this Division or in relation to licensed premises that are the subject of a complaint under this Division.*

81 *Decision by Secretary in relation to complaint*

- (1) *The Secretary may, after dealing with a complaint in accordance with section 80, decide to do any one or more of the following:*
 - (a) *impose a condition on the licence for the licensed premises the subject of the complaint,*
 - (b) *vary or revoke a condition to which the licence is subject,*
 - (c) *if a conference has been convened in relation to the complaint – adjourn the conference subject to implementation and continuation of undertakings given by the licensee,*
 - (d) *issue a warning to the licensee,*
 - (e) *take no further action in relation to the complaint.*
- (2) *The conditions that may be imposed on a licence include, but are not limited to, conditions relating to any one or more of the following:*
 - (a) *noise abatement,*
 - (b) *prohibition of the sale or supply of liquor before 10am and after 11pm,*
 - (c) *prohibition of, or restriction on, activities (such as promotions or discounting) that could encourage misuse or abuse of liquor (such as binge drinking or excessive consumption),*
 - (d) *restricting the trading hours of, and public access to, the licensed premises,*
 - (e) *requiring the licensee to participate in, and to comply with, a liquor accord.*
- (3) *The Secretary is to take the following matters into consideration before making a decision under this section:*
 - (a) *the order of occupancy between the licensed premises and the complainant,*
 - (b) *any changes in the licensed premises and the premises occupied by the complainant, including structural changes to the premises,*
 - (c) *any changes in the activities conducted on the licensed premises over a period of time.*
- (4) *For the purposes of subsection (3), "complainant" does not include a complainant who is the Commissioner of Police or a person authorised by the local consent authority.*

158. When deciding what action to take with regard to the Reviewable Decision, the Authority had regard to the scope of the Secretary's power to make conditions under section 81, which structures the scope of the Authority's powers on review. The considerations under section 81(3) of the Act were also taken into account.

159. When determining the review, the Authority had regard to the broader statutory objects and considerations prescribed by section 3 of the *Liquor Act 2007*, which states:

3 *Objects of Act*

- (1) *The objects of this Act are as follows:*
 - (a) *to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community,*
 - (b) *to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality,*
 - (c) *to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.*
- (2) *In order to secure the objects of this Act, each person who exercises functions under this Act (including a licensee) is required to have due regard to the following:*
 - (a) *the need to minimise the harm associated with the misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),*
 - (b) *the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,*
 - (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.*

DECISION ON REVIEW AND REASONS

160. The Authority has considered all of the material that was before the Delegate in making the Reviewable Decision and all of the extensive additional material provided over the course of the substantive review.
161. The Authority agrees with the findings of the Delegate in the Reviewable Decision and is satisfied that this licensed Premises has caused undue disturbance to the quiet and good order of the neighbourhood and is likely to continue to do so unless appropriate regulatory measures are in place.
162. The Authority is satisfied that undue disturbance has primarily been caused by entertainment conducted on the Premises, but also from noise from patrons attending the Premises in the external courtyard area of the hotel.
163. This finding is made on the basis of the material provided in the initial Complaint (supported by a statutory declaration), the subsequent submissions from the Complainant to OLGR compliance officers, and the findings of the acoustic assessment report prepared by Global Acoustics Pty Limited dated 26 June 2014 with respect to noise from the Premises exceeding the LA10 requirement in eight out of nine of the octave band centre frequencies measured.
164. With regard to order of occupancy considerations for the purposes of section 81(3)(a) of the Act, the Authority is satisfied that the Complainant has lived at her residence since approximately 2007 and the hotel business has been operating on the Premises since August 1958, as stated by the Delegate in the Reviewable Decision. In that respect, the Authority is satisfied that the order of occupancy consideration is in favour of the Premises.
165. The Authority notes, on the basis of advice provided in December 2014, that the Complainant has since moved from her former place of residence neighbouring the Premises. Nevertheless, the Authority remains concerned as to the potential for the operation of this licensed business and the conduct of its patrons to give rise to undue disturbance to the quiet and good order of the neighbourhood.
166. The Authority notes that the Authorising Residents, Mrs Desleigh Mazzoni and Ms Valda McMahon, have not moved from their residences and there remains a public interest in resolving the demonstrated potential for this licensed business to cause undue disturbance from the operation of the Premises, given that the Premises is in close proximity to high-density residential buildings.
167. The Authority is satisfied that a range of noise amelioration works were performed on the Premises by the Licensee during July and August 2014, as detailed in the Review Applicant's submissions. This is relevant to the Authority's consideration of any changes to the Premises and/or to the Complainant's residence for the purposes of section 81(3)(b) of the Act.
168. With regard to the activities conducted on the Premises, the Authority is satisfied that the CBD Hotel business is a full hotel licensed business with a minors area authorisation, and whose primary purpose is the sale of liquor for consumption on or off the Premises.
169. The Authority accepts that the Licensee has also voluntarily undertaken not to provide live entertainment in the external courtyard area of the Premises after 9:00pm on any trading night.

170. The Authority notes the recent acoustic assessment report prepared by Global Acoustics Pty Limited dated 23 September 2014, which states that "...all reasonable, practical steps have been taken to reduce entertainment noise from the [Premises'] courtyard" and that the situation reflects significant improvement on the circumstances pertaining at the time of the original Complaint.
171. The Authority notes, however, that this acoustic report makes no reference to the installation and calibration of a noise limiter to ensure that the volume levels of amplified entertainment are properly controlled.
172. The Authority further notes that, at the time of acoustic testing, the external courtyard area of the Premises was unattended by patrons, and that measurements could not be taken from the balcony of apartment 107 during the assessment.
173. Nevertheless, the Authority has accepted the acoustic testing conducted by Global Acoustics Pty Limited from alternative locations, noting that the measurements taken from apartment 408 complied with the LA10 noise criteria at all but one of the octave band centre frequencies tested.
174. The Authority notes that the Review Applicant does not seek to vary or revoke Condition 1 of the Reviewable Decision imposing the LA10 noise requirement.
175. The Authority notes that the Review Applicant has proposed to vary Condition 2 of the Reviewable Decision (which relates to the fitting of noise limiters) so that it applies *only* to speakers which can be heard in the outdoor courtyard area of the hotel.
176. The Authority notes that the Review Applicant opposes Condition 3 of the Reviewable Decision (which prohibits the use of the outdoor courtyard area by patrons after 10:00pm on any day). However, the hotel is prepared to accept a condition in lieu, that no live music be played in the external courtyard area after 9:00pm.
177. However, the Authority notes that the Conditions imposed by the Delegate do not only restrict any use of live entertainment in the courtyard area, but submit the operation of the entire hotel business to the LA10 noise requirement.
178. The Authority accepts that the hotel business no longer provides live entertainment in the external courtyard area of the Premises after 9:00pm on any trading night. The Authority is satisfied, on the basis of the initial Complaint and further submissions, that music from the DJ and noise from television speakers has been a *primary* source of concern for residents. However, this is not the *only* source of concern for noise disturbance arising from use of the courtyard area of the Premises.
179. The Review Applicant's submissions on the review seek to unduly confine the scope of the initial Complaint to amplified music or use of external speakers. While the acoustic evidence provided to the Authority focuses on noise disturbance caused by amplified music and live entertainment taking place in the courtyard area, the Authority is satisfied that, in light of the proximity of the neighbouring apartments to this external courtyard area of the Premises, there is scope and likelihood for elevated patron noise (during, for example, a function) to also give rise to noise disturbance exceeding the LA10 requirement, whether or not a DJ or live music is performed there.
180. The Authority has considered whether the restriction on any use of the courtyard area after 10:00pm is a reasonable measure to address undue disturbance, on the material before the Delegate and now before the Authority, and taking into account the order of

occupation consideration in section 81(3) of the Act which favours the Licensee and the objects and considerations in section 3 of the Act.

181. The Authority notes the Licensee's submission that it will lose business revenue and patrons of the hotel will be unfairly deprived of the use of outdoor areas of the Premises if Condition 3 of the Reviewable Decision was imposed upon the licence.
182. However, little quantification or supporting analysis is provided, let alone independent evidence, to enable the Authority to appreciate the extent of that loss to the business. The Review Applicant has not provided a great deal of analysis or evidence that would assist the Authority to identify the extent of prejudice to the business that would arise if no use of the outdoor courtyard area of the Premises is permitted after 10:00pm.
183. The Authority also notes the Review Applicant's submission that the outdoor courtyard area is used as an access-way by people moving between the accommodation areas of the Premises and King Street in Newcastle, and that the Licensee may well be in breach of Condition 3 of the Reviewable Decision each time accommodation guests pass through the outdoor courtyard area or if patrons of the Premises were to walk to their cars in the car park.
184. The Authority accepts the Review Applicant's submission in this regard and has determined to vary Condition 3 of the Reviewable Decision so that after 10:00pm on any trading day, the outdoor courtyard area of the Premises *may only be used by lodgers for passage to and from their accommodation at the hotel.*

CONCLUSION

185. The licence is now subject to a condition requiring compliance with the LA10 noise requirement that will apply to daytime or night time emissions from the Premises. The Licensee will still need to be vigilant in its use of internal speakers and noise emissions from patrons.
186. Noting that the Review Applicant did not oppose Condition 1 of the Reviewable Decision, the Authority has decided to take the following administrative action, with effect from the date of this letter:
 1. Note Condition 1 of the Reviewable Decision remains in effect.
 2. Confirm Condition 2 of the Reviewable Decision.
 3. Vary Condition 3 of the Reviewable Decision so that it instead reads as follows:

On any trading day after 10:00pm, the licensee must ensure that the outdoor courtyard area of the hotel is only used by lodgers for passage to and from their accommodation.
187. In making this decision, the Authority has taken into account all of the objects of the Act under section 3(1) and the considerations in section 3(2) of the Act.



Micheil Brodie
Chief Executive
for and on behalf of the **Independent Liquor and Gaming Authority**

DATED 1 / 19 / 2015