



Mr Kim Stapleton
JDK Legal
Level 5
1 Castlereagh Street
SYDNEY NSW 2000

k.stapleton@jdklegal.com.au

Dear Mr Stapleton

**Review under section 36A *Gaming and Liquor Administration Act 2007*
Balmain Hotel, Balmain**

The Independent Liquor and Gaming Authority has completed its consideration of an application for review made to the Authority under section 36A of the *Gaming and Liquor Administration Act 2007* dated 24 July 2014 (Review Application) in relation to the licensed premises known as the "Balmain Hotel", located at 74 Mullens Street, Balmain (Premises).

Applications for review were initially made by the licensee and business owner of the premises, Balmain Hotel Operations Pty Limited and the then premises owner, Truebolt Pty Limited, but the premises owner's separate application was later withdrawn as the business owner acquired the freehold in the Premises.

The Review Application concerns a decision dated 3 July 2014 (Reviewable Decision) made by a delegate of the (then) Secretary of NSW Trade and Investment to impose four new conditions upon the licence for the Premises under section 81 of the *Liquor Act 2007* (Act).

As notified by email dated 1 May 2015, the Authority decided to take the following action under section 36A(4) of the *Gaming and Liquor Administration Act 2007*:

- (a) *Note that Condition 1 of the Reviewable Decision continues in effect;*
- (b) *Vary Condition 2 of the Reviewable Decision so that this Condition instead reads as follows (with effect from 1 May 2015):*

From 8:00pm on any trading day use of the upper and lower courtyard and the beer garden is regulated as follows:

- i. The beer garden will not be used for functions;*
 - ii. The upper courtyard will not be used after 9:00pm, other than as a thoroughfare between the internal Hotel and the lower courtyard to the beer garden;*
 - iii. The beer garden will not be used after 10:00pm;*
 - iv. The lower courtyard will not have in excess of 40 patrons at any one time.*
- (c) *Note that Condition 3 of the Reviewable Decision continues in effect;*
 - (d) *Note that Condition 4 of the Reviewable Decision continues in effect.*

This action commenced effect on 1 May 2015.

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.

Yours faithfully



Micheil Brodie
Chief Executive

30 JUL 2015

STATEMENT OF REASONS

INTRODUCTION

1. Two concurrent applications for review under section 36A of the *Gaming and Liquor Administration Act 2007* were received by the Independent Liquor and Gaming Authority (Authority) on 24 July 2014.
2. The applications for review concern the hotel licensed venue known as "Balmain Hotel" located at 74 Mullens Street, Balmain (Premises). The applications were initially made by both the licensee and business owner of the Premises, Balmain Hotel Operations Pty Limited (Licensee) and the then owner of the Premises, Truebolt Pty Limited (Premises Owner).
3. Following acquisition of the freehold in the Premises by the corporate business owner, the only review application that remains on foot is the application dated 24 July 2014 (Review Application) filed by the Licensee and business owner of the Premises, Balmain Hotel Operations Pty Limited (Review Applicant).
4. The Review Application concerns a decision dated 3 July 2014 (Reviewable Decision) made by a delegate (Delegate) of the (then) Secretary of NSW Trade and Investment (Secretary) to impose four (4) new conditions upon the licence for the Premises under section 81 of the *Liquor Act 2007* (Act), to commence effect from 11 July 2015.
5. The Reviewable Decision arose in response to a disturbance complaint (Complaint) made on 25 October 2013 under section 79 of the Act by Mr Raymond O'Keefe (Complainant), a close neighbour of the Premises.
6. At its meeting on 28 November 2014, the Authority gave preliminary consideration to the Review Application and resolved to require the Hotel to perform another round of acoustic testing between mid-January and mid-February on two occasions on a Friday or Saturday night and without notice to the Licensee. The Authority also resolved to seek comment on a late submission made by Leichhardt Council (Council) on 28 November 2014.
7. The Authority next considered the Review Applications and the subsequent submissions from Council and the parties at the Authority meeting on 17 December 2014. Consideration of the review was then deferred until 30 April 2015 while a further round of acoustic testing at the Premises was to be arranged and conducted at the Licensee's expense but under the monitoring of an independent expert appointed by the Office of Liquor, Gaming and Racing (OLGR) to enable the Authority to better understand the impact of the operation of the Premises upon the quiet and good order of the neighbourhood.
8. On 17 December 2014, as discussed below, the Authority directed under section 36A(3) of the *Gaming and Liquor Administration Act 2007* that part of the Reviewable Decision be stayed in a manner that would permit use, subject to maximum patron limits, of the courtyard during the summer.
9. Further submissions were received by the Authority from the parties during early 2015 and the Authority completed its consideration of the substantive review at its meeting on 30 April 2015.

10. The Authority informally advised the parties of the outcome of this review in a detailed email dated 1 May 2015.

BACKGROUND

11. Briefly, in the Reviewable Decision, the Delegate was satisfied that the operation of the Premises and/or the conduct of its patrons had caused undue disturbance to the quiet and good order of the neighbourhood. The Delegate imposed four new conditions upon the licence of the Premises (Conditions):
- (1) **Condition 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 07:00 am.*
- (2) **Condition 2:** *From 8:00pm on any trading day the licensee must ensure that no patron enters or remains in the outdoor courtyard area until such time that noise amelioration work is completed and a compliant acoustic report has been provided to the Office of Liquor Gaming and Racing confirming operation of the courtyard complies with the LA10 noise criteria.*
- Note: an exemption to this condition applies for the purpose of allowing acoustic testing to be concluded.*
- (3) **Condition 3:** *From 8:00 pm until the close of trade on any Friday, Saturday, and at any other time when patron numbers exceed 100, the licensee must ensure at least two security guard are engaged at the premises whose duties must include:*
- Monitoring patron behaviour within the licensed area to reduce disturbance to the neighbourhood; and*
 - Patrolling the immediate 50 metre vicinity of the premises to ensure persons do not loiter or linger in the vicinity of the premises.*
- (4) **Condition 4:** *From 8:00pm until the close of trade every trading night, the licensee must ensure that all windows and doors to the licensed premises are kept closed except to allow for reasonable access of patrons when entering or leaving the premises.*
12. The Reviewable Decision was made in response to a disturbance complaint (Complaint) made on 25 October 2013 under section 79 of the Act by Mr Raymond O'Keefe (Complainant), a close neighbour of the Premises.
13. The Complaint was authorised by four other neighbours of the Premises – Mr Richard Armitage, Mr Glenn Eley, Ms Tanya Bowes and Mr Dimitri Harsoulas (Authorising Residents).
14. On 14 November 2013, Ms Patricia Jones submitted a similar complaint concerning the Premises, authorised by local resident Ms Susan Carrick. On 28 November 2013, Ms Jones consented to the matter being joined to the complaint lodged by Mr O'Keefe.
15. In the Review Application, the Review Applicant sought that the conditions imposed by the Reviewable Decision be revoked and in lieu thereof, an order be made that the Complaint be referred for a conference under section 80(2)(a) involving the Licensee and Mr O'Keefe. Alternatively, the Licensee sought that conditions 2, 3 and 4 be revoked.

16. The Licensee also sought a stay of the Reviewable Decision, which the Authority declined to grant on 4 August 2014.
17. However, on 17 December 2014, the Authority determined to issue a stay direction under section 36A(3) of the *Gaming and Liquor Administration Act 2007* with regard to Condition 2, so that the courtyard area may be used over the summer until the Authority finalised the review, but subject to the following limitations:

From 8:00pm on any trading day use of the upper and lower courtyard and the beer garden is regulated as follows:

- i. The beer garden will not be used for functions;*
- ii. The upper courtyard will not be used after 9:00pm, other than as a thoroughfare between the internal Hotel and the lower courtyard to the beer garden;*
- iii. The beer garden will not be used after 10:00pm;*
- iv. The lower courtyard will not have in excess of 40 patrons at any one time.*

Note: an exemption to the condition applies for the purpose of allowing acoustic testing to be concluded.

18. In its application for review, the former Premises Owner "objected" to Conditions 2, 3 and 4 and argued that procedural fairness was not afforded by the Delegate in making the Reviewable Decision.
19. However, prior to the Authority meeting on 28 November 2014, the former Premises Owner notified the Authority that it was no longer taking an active role in its review application as the Licensee had exercised an option to purchase the freehold in the Premises.

MATERIAL BEFORE THE AUTHORITY

The OLGR File

20. OLGR have provided the Authority with a bundle of all the material before the Delegate at the time the Reviewable Decision was made (OLGR File).
21. The OLGR File contains two disturbance complaints (Complaints) – the initial disturbance Complaint made under section 79 of the Act by the Complainant dated 25 October 2013, as well as the section 79 disturbance complaint made by Ms Patricia Jones dated 14 November 2013.
22. Both Complaints are in the prescribed form and are verified by statutory declarations signed by the complainants, who were, at the time of their respective complaints, neighbouring residents of the Premises.
23. Mr O'Keefe's Complaint is authorised for the purposes of section 79(3) of the Act by four neighbouring residents – Mr Richard Armitage, Mr Glenn Eley, Ms Tanya Bowes and Mr Dimitri Harsoulas, and Ms Jones' complaint is authorised by one further neighbouring resident, Ms Susan Carrick (Authorising Residents).
24. The further submissions in the OLGR File comprise:
 - Email correspondence from the Complainant dated between 18 November 2013 and 24 April 2014
 - Submission from JDK Legal on behalf of the Licensee dated 9 January 2014
 - Submission from Police dated 18 January 2014
 - Annexures to Police submission dated 18 January 2014
 - Council submission dated 20 January 2014

- Email correspondence from various Authorising Residents dating between 30 January 2014 and 26 April 2014
 - Acoustic report from Mr Steven Cooper dated 24 February 2014
 - Email from Police dated 6 March 2014
 - Email to Don McDougall (solicitor for the then Premises Owner) dated 24 March 2014
 - Further submission from the Licensee dated 24 March 2014
 - Email from Council dated 28 March 2014
 - Email from Complainant dated 11 April 2014
 - File note of observations conducted by OLGR on 25 April 2014.
25. Briefly, Mr O'Keefe's Complaint dated 25 October 2013 states that the ownership of the Hotel changed in February 2013 and within "only a matter of weeks", the Premises was "entirely renovated" with a "fully open air Beer Garden". Mr O'Keefe submits that these renovations have resulted in a "vastly increased patronage" in the outdoor area of the Premises and that as a result, neighbours of the Hotel "have to endure general noise of loud chatter and laughter mostly all weekend" from "lunch time till 10:00pm".
 26. Mr O'Keefe submits that the new owners of the Hotel have also "installed an independent external bar" and "erected two Bali type structures with thatched roofs", one of which is "alongside our fence and garage". Mr O'Keefe submits that a sign at the front of the Premises states "live and loud" and that this indicates that the Hotel does not "really care about noise". Mr O'Keefe submits that the Hotel has "installed external music speakers in the yard" which play music "most of the day"; that a "resident DJ" plays music at the Premises on weekends; and that "live music" is permitted by the Hotel to "play full blast till [12:00] midnight".
 27. Mr O'Keefe submits that he is the "third generation" to live in his house; that his wife has lived in the house for 71 years and that he has lived there for 52 years.
 28. Mr O'Keefe requests that the Hotel be made to "install independent noise monitors" to force the "greatly increased noise levels" to be addressed, to "stop the very loud internal live music events", and to keep doors closed at night to "keep the noise in". Mr O'Keefe also requests the new "Bali hut" and "bench" along his boundary to be removed, as well as the "external bar and large fully stocked fridge" and "external speakers".
 29. Briefly, Ms Jones' Complaint dated 14 November 2013 states that since the Hotel's "new owners" opened a "Beer Garden", the noise from the Hotel has been "unbearable", particularly on "sunny weekends" and that the noise "gets louder as the day goes on".
 30. Ms Jones states that the noise of people "leaving the hotel between 11:30pm and 12:30am" is "extremely intrusive" and "not conducive to a good night's sleep" for the Hotel's neighbours. Ms Jones states that she has lived at her current address for 44 years.
 31. Ms Jones states that the disturbance from the Hotel occurs "every Friday evening and Saturday afternoon" as well as "quite often on evenings during the week".
 32. Ms Jones states that on weekend mornings she has found "empty cans and bottles left on the sidewalk". Ms Jones contends that the "new owners" are "trying to turn this hotel into a party and function venue". Ms Jones submits that neighbours of the Hotel are "unable to open their windows for fresh air" or "enjoy listening to our own music" and that even "trying to have a quiet read is impossible".

33. The Review Applicant's key submissions in response to the Complaint are as follows:
- (i) The majority of the Complainant's concerns can be "satisfactorily addressed" by adherence to "a number of operational procedures" and some "remedial work to the affected residences"
 - (ii) The Licensee has employed an additional security person on Saturday nights to address the residents' concerns regarding patron behaviour at the Premises and noise caused by patrons entering and leaving the Premises
 - (iii) The Licensee has discontinued the provision of live music at the Hotel and has introduced a "house sound system" with volume limiters to "ensure compliance with the Authority's noise criteria"
 - (iv) The Licensee has introduced a policy of ensuring that the upper courtyard gates, doors and all windows facing onto Reynolds Street as well as all windows and doors facing onto Mullens Street save for the entrance to the public bar, are closed and secured at 8:00pm
 - (v) The Licensee has agreed to pay for specific remedial works to affected residences including double glazing windows, installing a ducted air-conditioning unit and the construction of a fence on Mr O'Keefe's property
 - (vi) The Licensee contends that "Mr Wills is a pro-active and co-operative Hotel operator".

Summary of the Reviewable Decision

34. In the Reviewable Decision, the Delegate imposed the four conditions identified above in this letter.
35. The Delegate notes that in his Complaint, Mr O'Keefe states that he has lived at his residence for 52 years. The Delegate also notes that the liquor licence in respect of the hotel was granted on 4 November 1957, and that the order of occupancy consideration under section 81(3) is in favour of the Hotel, although (as discussed below) a recent change in construction and use of the Premises are factors in this Complaint.
36. The Delegate notes that on 14 November 2013, Ms Patricia Jones submitted a similar complaint concerning the Premises, authorised by local resident Ms Susan Carrick. On 28 November 2013, Ms Jones consented to the matter being joined to the complaint lodged by Mr O'Keefe.
37. According to the Reviewable Decision, in 2013 the Premises came under new management who undertook a significant refurbishment which included internal renovations and improvements to the Premises' courtyard. There was also a significant change in the Hotel's business model and marketing, which the Delegate noted has resulted in a rapid increase in the number of patrons attending the Premises, particularly to use the courtyard which features an outdoor bar and seating at tables with umbrellas, making it an attractive area for patrons.
38. The Delegate was satisfied that the Premises has in fact caused undue disturbance within the meaning of section 79 of the Act through amplified music, patron noise coming particularly from the courtyard and due to patrons leaving the Premises.
39. The Delegate also found that the volume of patrons allowed in outdoor areas, the times at which they are permitted in those areas, and the insufficient structural and management controls to limit noise contributed to the level of disturbance, which he considered to be "beyond the level to be expected" from a small hotel located in a residential neighbourhood.

40. The Delegate gave particular weight to the findings of the expert acoustic consultant, The Acoustic Group. The acoustic consultant's report dated 24 February 2014 concluded that there were inadequate security measures to control patrons external to the Premises and that the LA10 criteria were breached due to patron noise from the courtyard. The report proposed a certain course of remedial building work to address the noise emanating from the Premises.
41. The Delegate noted that the conditions imposed by the Reviewable Decision do not seek to prescribe how the remedial work should be done; rather, they simply require that compliance with the LA10 criteria be demonstrated.
42. The Delegate gave weight to the observations of OLGR compliance officers who confirmed that during an inspection on 25 April 2014 (ANZAC Day), there were between 80 and 110 patrons in the outdoor area of the Premises creating excessive noise from the perspective of nearby residential boundaries and from Mr O'Keefe's residence.
43. The Delegate expressed concern that the Licensee had not yet demonstrated that the operation of the Premises' courtyard as it is currently used can comply with the LA10 condition, despite having made representations that remedial works would occur.
44. By reason that the Delegate had not been made aware of any evidence of such remedial works having commenced or been completed, he considered it appropriate to impose further conditions to restrict use of the courtyard from 8:00pm each night until such time as remedial works have been completed and a further acoustic report demonstrating compliance with the LA10 requirement is provided.
45. The Delegate also noted that the LA10 noise condition is an accepted industry standard and the preferred benchmark of OLGR for assessing undue disturbance at licensed premises.

Submission accompanying the Review Application from JDK Legal on behalf of the Licensee dated 24 July 2014

46. In this material, the Licensee seeks a stay of the Reviewable Decision (which the Authority declined to grant on 4 August 2014).
47. Substantively, the Licensee seeks that the conditions imposed by the Reviewable Decision be revoked and in lieu thereof, an order be made that the Complaint be referred for a conference under section 80(2)(a) of the Act involving the Complainant Mr O'Keefe and the Licensee.
48. Alternatively, the Licensee seeks that conditions 2, 3 and 4 be revoked.
49. The Licensee submits that following receipt of a letter from the Secretary on 23 December 2013 encouraging the Licensee to resolve the complaint directly with Mr O'Keefe, the Licensee engaged Mr Steven Cooper of The Acoustic Group Pty Limited as an "impartial expert" to conduct acoustic testing at the premises of Mr O'Keefe and those of the Authorising Residents who invited such testing at their premises, being Ms Carrick, and Mr and Mrs Armitage.
50. The Licensee submits that the advice given to the Licensee by Mr Cooper led to significant operational improvements at the Premises, including:
 - (i) Development and refinement of a plan of management including a noise minimisation plan for Friday and Saturday evenings, and a noise and security plan which involves both management and security

- (ii) Employment of a second security guard on Saturday evenings to patrol the immediate vicinity of the Premises to ensure that neither patrons nor passers-by cause disturbance to neighbours
 - (iii) Circulation of a courtesy letter in November 2013 to the Hotel's neighbours providing them with a mobile telephone number to call in the event of noise disturbance. The phone is carried by the extra security guard or the manager on duty and as at 24 July 2014, had not received any calls
 - (iv) Correspondence with neighbours as to upcoming events
 - (v) Implementation of restricted areas and times for smoking, live music and garbage collection to address the concerns of neighbours
 - (vi) Playing all music in the venue through a noise limiter at levels tested and approved by Mr Cooper (as noted in his 24 February 2014 report).
51. The Licensee submits that as noted in the acoustic report of Mr Cooper of 24 February 2014 and in submissions by JDK Legal on behalf of the Licensee to OLGR dated 24 March 2014, the Licensee had been corresponding with Mr O'Keefe prior to the Reviewable Decision being made.
52. The Licensee contends that Mr O'Keefe had agreed to a resolution proposed by the Licensee, but subsequently insisted on "more elaborate" works being undertaken. As a result, alternative attenuation works to the beer garden were undertaken for the benefit of Mr O'Keefe, which had an expected completion date of 22 August 2014. Those works included:
- (i) the installation of 15 45-litre pots containing bamboo plants against the eastern and southern boundaries of the beer garden
 - (ii) the installation of "wave bar" acoustic materials
 - (iii) acoustic alterations to the awning above the lower courtyard of the Premises.
53. The Licensee submits that Mr Cooper's report of 24 February 2014 also led the Licensee to undertake certain works at the premises of authorising residents Mr and Mrs Armitage, at the sole expense of the venue, which were completed in March 2014. These works involved double glazing windows and installing a ducted air-conditioning system.
54. The Licensee submits that Ms Carrick's concerns had, at that stage, been allayed by Mr Cooper's report.
55. The Licensee submits that these outcomes, as well as the works the Licensee conducted at Mr O'Keefe's premises, were indicated to the Delegate in the Licensee's submissions on 24 March 2014.
56. The Licensee contends that by reason that the Licensee did not hear from the Delegate again until notification of the Reviewable Decision, the Licensee was "led to believe" that the Delegate was not contemplating determining the Complaint otherwise.
57. The Licensee contends that at the time of the Reviewable Decision, the Delegate was not aware that works at the Armitages' residence had been completed, despite the Licensee's submissions of 24 March 2014 indicating that those works would be completed by that date. The Licensee submits that the Armitages are now regular customers at the Hotel.
58. The Licensee argues that the Reviewable Decision is "not well-founded" given that the Delegate had before him Mr Cooper's expert acoustic report of 24 February 2014, which states that Mr O'Keefe was not content to accept the expert's opinion as to what would be an adequate remedy to his problem, and given that the Delegate had received no contrary expert opinion.

59. The Licensee contends that it has not "sat on its hands" in relation to Mr O'Keefe's complaint, but rather has, at its own cost and for Mr O'Keefe's benefit:
- (i) engaged an arborist and liaised with Council about a tree overhanging Mr O'Keefe's property
 - (ii) installed an \$18,000 smell and smoke atomiser to eradicate the noise and smell from the kitchen exhaust fan
 - (iii) cancelled a promotional offer to patrons of a barbeque in the beer garden due to Mr O'Keefe's dissatisfaction with the smoke and smell travelling over the boundary fence
 - (iv) stopped using an outside bar since November 2013
 - (v) prohibited all outdoor live entertainment
 - (vi) instructed employees to remove litter from around the outside of the Premises, and leaves and debris from the roof of Mr O'Keefe's garage.
60. The Licensee also contends that it began installation of an acoustic screen along the boundary between Mr O'Keefe's property and the beer garden (the eastern edge) in June 2014 (following breakdown in negotiations between Mr Cooper and Mr O'Keefe in May 2014). However, the Licensee contends that Mr O'Keefe told the tradesmen to stop work, using words to the effect "I do not want an interim solution, only a final one".
61. The Licensee argues that the Delegate "misdirected himself" in considering for the purposes of section 79 of the Act whether the quiet and good order of the neighbourhood "are being unduly disturbed", as this section has a "clear focus" on the situation prevailing at the current time of the Reviewable Decision, yet the Delegate refers to the Hotel having caused undue disturbance "at times".
62. The Licensee submits that while the Delegate claimed to have given particular weight to the observations of Mr Cooper and OLGR compliance officers, Mr Cooper's report of 24 February 2014, despite initially stating that he had observed some inadequate security measures in November 2013, went on to state that security at the Premises "has seen an improvement since the complaint was lodged in late 2013". Therefore the Licensee submits that in relying upon Mr Cooper's initial observation, the Delegate gave "undue weight" to past conduct of the Hotel and failed to have due regard to the steps taken by the Hotel since November 2013 to better ensure the quiet and good order of the neighbourhood.
63. The Licensee submits that Mr Cooper's observation that more effective security measures were introduced at the Premises after November 2013 is consistent with the evidence before the Delegate of OLGR Inspector Coffey dated 18 January 2014 (that the venue was "being properly managed").
64. The Licensee argues that it was deprived of procedural fairness by the Delegate's failure to provide it with a copy of the observations of the OLGR compliance officers to which he had given weight, and by such weight being given to those observations at all, given that they pertain to the events of ANZAC Day 2014 which is an "atypically busy day" in the neighbourhood.
65. The Licensee contends that noise on that day coming from the "outdoor street party" held by the nearby Dicks Hotel and Exchange Hotel "must surely have elevated the background noise to a level unlike any other day of the year".
66. It was the Licensee's understanding that before the Delegate acted to impose conditions on the licence, the Licensee would be given the opportunity of making submissions as to the steps it had taken to resolve the section 79 Complaint and as to particular forms of

conditions that might be imposed. Such an opportunity was not provided after 24 March 2014.

67. The Licensee argues that it appears that the Delegate had regard to further information which was received subsequent to the Licensee's primary submissions of 24 March 2014 being received, and the Licensee was not provided with this information, nor given an opportunity to respond. That "undisclosed information" includes:
- (i) email correspondence from various Authorising Residents dated between 30 January 2014 and 26 April 2014
 - (ii) further submissions from Mr O'Keefe dated 11 April 2014
 - (iii) correspondence from Mr O'Keefe between 18 November and 24 April 2014
 - (iv) further submissions from Leichhardt Council dated 28 March 2014
 - (v) a file note of observations conducted by OLGR on 25 April 2014.
68. The Licensee argues that since the OLGR file note dated 25 April 2014 played an important role in the determination by the Delegate that there was "undue disturbance", the Licensee has not been afforded procedural fairness as it was not provided with the new material for comment or reply, or to bring the Delegate up to date with attempts to resolve the Complaint.
69. In summary, the Licensee submits that during the period between 24 March 2014 and 3 July 2014, the Licensee was focusing upon resolving issues with residents and performing procedures to ensure the quiet and good order of the neighbourhood, and was not aware of any further issues with the operation of the venue. The last recorded noise complaint the Licensee received was on 13 January 2014.

Submission from JDK Legal on behalf of the Licensee dated 18 August 2014

70. This email submission notes receipt from the Authority of the Authority's email dated 13 August 2014 attaching the OLGR File. The Licensee submits that some key documents were not brought to its attention before the Reviewable Decision was made. It also notes that the Licensee's stated date for completion of noise amelioration works is 22 August 2014.

Submission on behalf of complainant Raymond O'Keefe dated 21 August 2014

71. In this email, Mr Paul O'Keefe states that his father, Raymond O'Keefe, is currently recovering from open heart surgery of approximately one month earlier and the stress associated with ongoing issues with the Premises is having a detrimental effect on his health.
72. Paul O'Keefe details a phone conversation he had with the Hotel's Licensee, Mr Nick Wills, on 13 July 2014 and a subsequent meeting between the two to discuss the attenuation works on 19 August 2014, for the benefit of his father, the complainant Raymond O'Keefe. At that meeting, Mr O'Keefe expressed his scepticism that Mr Cooper's recommended acoustic blanket material between the fence that adjoins his property with the Premises and other "pieces of acoustic material" in the courtyard would be effective.
73. Paul O'Keefe suggests that during that meeting, Mr Wills denied saying to the Complainant, Mr Raymond O'Keefe, that proper planning works would be submitted to Council. However Paul O'Keefe cites a signed letter from Mr Wills dated 14 March 2013 which states "we are planning on lodging a DA in the next 6 to 8 weeks to tidy up some final structural changes and enclose some of the open areas to ensure a peaceful and quiet surround".

74. Paul O'Keefe notes the Hotel's website claims that "we encourage any sin at the Balmain and don't want to put any limitations on your romp!", and attaches photos sourced from that website featuring large crowds in the Premises' outdoor areas, as well as an article from www.hospitalitymagazine.com.au dated 2 September 2013 which states that on the previous Saturday, the Premises had had 1,500 customers and 500 on the Sunday, due in part to the Hotel's use of a PR agency for its "Snow Party" event. Paul O'Keefe also attaches a plan of the 1954 extension of the Hotel and beer garden and claims that the current Licensee has "improperly extended" these approved alterations.
75. Paul O'Keefe alleges that the noise restrictions imposed upon the Premises were breached on 9 August 2014. He states that a "representative" from the Hotel on that evening entered Raymond O'Keefe's house and "admitted" that "she could clearly hear the noise from the Hotel inside my parents' house which had all doors and windows closed".
76. Paul O'Keefe attaches a letter of thanks from the Balmain and White Bay Precincts Committee from July 2014, stating that "noise disturbance and safety concerns linked to overcrowding had been negatively impacting on residents in the vicinity of Rosser Street".

Email from JDK Legal on behalf of the Licensee dated 22 August 2014

77. In this email, the Licensee informs the Authority that for the purposes of acoustic testing to be conducted the following Saturday (23 August 2014), the outdoor area will remain open after 8:00pm on that evening.

Submission from complainant Patricia Jones dated 22 August 2014

78. In this email to the Authority, Ms Jones contends that the quiet and good order of the neighbourhood may have been disturbed "on occasion" in the past, but now the Premises causes "constant" disturbance.
79. Ms Jones states that she has lived in her nearby residence since 1970 and has experienced many ANZAC Days, none of which have been as "noisy and disruptive" as the last two. Ms Jones notes her home has two storeys and contends that she is unable to use her upstairs verandah on weekends due to the noise coming from the Premises.

Submission from local resident Penny Alexander dated 23 August 2014

80. In this email to the Authority, Ms Alexander thanks OLGR for its imposition of the 8:00pm closure requirement of the Hotel's courtyard as this has "made life bearable". Ms Alexander states that the neighbourhood has been "invaded and alienated by unmitigated noise" since the opening of the Hotel in April 2013. Ms Alexander makes particular mention of ANZAC Day 2014 when she could not clearly hear inside her house, located 100 metres from the Premises in Rosser Street, with all her doors closed.

Submission on behalf of Complainant Raymond O'Keefe dated 24 August 2014

81. In this email submission to the Authority, Mr Paul O'Keefe provides a detailed account of the acoustic testing that occurred on Saturday 23 August 2014. Paul O'Keefe claims that "to his surprise" the acoustic expert Mr Cooper began the testing at "only about 8:30pm" outside the Complainant's side gate. Paul O'Keefe contends that he had to remind Mr Cooper to do the testing at the "boundary of the residence as per section 81", which Mr Cooper did "in my opinion reluctantly".

82. Paul O'Keefe contends that when Mr Cooper finished the acoustic testing at the boundary, Mr O'Keefe said to him "It's over it, isn't it?" referring to being over the permissible dB(A) level, to which Mr Cooper "reluctantly admitted".
83. Paul O'Keefe contends that at 9:30pm the beer garden of the Hotel was closed for a second round of testing. Mr Cooper tested again at Mr O'Keefe's side gate and yard, but "refused" to do a second test from the boundary between the Premises and Mr O'Keefe's property.
84. Paul O'Keefe states that he returned to the Hotel and told the Licensee's solicitor, Mr Calvert, that Mr Cooper had "refused" to do the acoustic testing required for a section 81 decision and Mr Calvert "just nodded". Mr O'Keefe then returned to Mr Cooper and asked him "nicely" to do the test from the boundary to which Mr Cooper replied, "I'm not doing it. And don't have to answer to you".

Submission from local resident Michele Hacking on 25 August 2014

85. In this email to the Authority Ms Hacking, who lives in Rumsay Street, requests that the Authority support noise controls, as the 8:00pm closure of the courtyard has "offered some relief from negative impacts on amenity for the local area". Ms Hacking contends that the venue previously co-existed harmoniously with local development but "recent initiatives associated with redevelopment have been intolerable".

Submission from local residents Julia and David Morgan dated 25 August 2014

86. In this email to the Authority Mr and Mrs Morgan, who live in Rosser Street, "strongly support" the current noise restrictions and claim that since the business in its current form opened in April 2013, noise from the Premises has been "a constant discomfort" to local residents, particularly noise from the beer garden and from patrons leaving the Premises. They contend that outdoor music has played on many occasions from 11:00am until close of the area at night. They contend that the current noise restrictions have somewhat restored local amenity and offered relief to neighbours of the Hotel.

Submission from local resident Alan Clark dated 25 August 2014

87. In this email to the Authority, Mr Clark states that he has lived in his residence in close proximity to the hotel for 39 years and opposes the use of the courtyard "primarily at all but especially after 8:00pm every night of the week". Mr Clark notes that houses in the area were built in the late 1800s and early 1900s of materials such as weatherboard and fibro and often with tin roofs, making them ill-equipped to withstand excess noise. Mr Clark contends that even sitting at the back of his house with all windows and doors at the front of the house closed, the noise from the courtyard pervades to the extent that such efforts are "rendered futile".

Statutory Declaration from authorising residents Sue Carrick-Clark and Alan Clark dated 26 August 2014

88. In this submission to the Authority sent by email the residents provide Statutory Declarations sworn on 26 August 2014. They state, in relation to the outcome sought by the Licensee that a conference be held between it and local residents, that this is "desirable". They state that the change in the use of the backyard of the Premises into a beer garden has impacted upon neighbours without their consultation. However, the willingness of the Licensee to communicate pleasantly with individual neighbours is "noted". Ms Carrick-Clark and Mr Clark, who live in Reynolds Street, state that it is "ridiculous" to expect neighbours of the Hotel to close the windows and doors to shut out

the noise from the Premises, particularly during the hot summer months when the Premises is at its busiest.

Email from JDK Legal on behalf of the Licensee dated 28 August 2014

89. In this email to the Authority, the Licensee notes receipt of local residents' submissions and claims that it is trying to arrange further acoustic testing for the Friday evening (29 August 2014), weather permitting, in order to obtain results with which to respond to such submissions. The Licensee requests that it be given until 8 September 2014 to file a response to the residents' submissions.
90. The Authority granted that extension.

Email from JDK Legal on behalf of the Licensee dated 29 August 2014

91. In this email to the Authority, the Licensee informs the Authority that for purposes of acoustic testing to be conducted that evening (29 August 2014), the outdoor area will remain open after 8:00pm on that evening.

Email from complainant Patricia Jones dated 29 August 2014

92. In this short email, Ms Jones thanks the Authority for informing her of the acoustic testing to be conducted that evening (as per the above email on behalf of the Licensee) and states that despite the weather, the noise from the Premises was "loud" on the previous Friday and Saturday nights (22 and 23 August 2014).

Email on behalf of complainant Raymond O'Keefe dated 29 August 2014

93. In this email to the Authority, Mr Paul O'Keefe informs the Authority that after receiving notice from the Hotel that acoustic testing would be carried out that evening, he contacted the Licensee's solicitor Mr Calvert to advise that this weekend was "not convenient" as Mr O'Keefe had functions to attend on Friday and Saturday nights and would like to be present for the testing. No response was received. Paul O'Keefe states that he is "concerned" that retesting on a "cold rainy night" in an open courtyard would not be a true indication of whether the attenuation works had been successful, and suggests waiting for a hot night when the maximum amount of patrons are in the courtyard.

Email on behalf of complainant Raymond O'Keefe dated 1 September 2014

94. In this email to the Authority, Paul O'Keefe claims that the acoustic tests conducted on 23 August 2014 found that noise from the Premises exceeded the allowable dB(A) levels at the boundary of Mr O'Keefe's property. Paul O'Keefe claims that on the morning of Saturday 30 August he found "large sections of acoustic foam shoved loosely inside the full length of our boundary by someone either trespassing on our property or placing these large sections over the fence without our permission", as well as some acoustic blanket material. Photographs are attached. Paul O'Keefe claims that this was done to "falsify" evidence obtained by the acoustic tests of 23 August 2014 and as such questions the impartiality of the consultant who did the testing.

Email from JDK Legal on behalf of the Licensee dated 8 September 2014

95. In this email to the Authority, solicitor Mr Tim Calvert states that he received draft acoustic reports from Mr Cooper late on Thursday 4 September and on Friday 5 September 2014 however, Mr Calvert was not able to review these reports over the weekend. Mr Calvert states that it is anticipated that Mr Cooper's final reports would be

ready for filing with the Authority the following day, and requests an extension to file the Licensee's submission to 10 September 2014.

96. This further extension of time was granted by the Authority.

Submission from local resident Dr Donald Hannah dated 9 September 2014

97. In this letter to the Authority sent by email dated 9 September 2014, Dr Hannah supports the noise restrictions currently imposed on the Premises. He claims that before purchasing his property, which directly faces the Hotel's beer garden, he spent "many nights watching the hotel" and "considering the noise that was produced by the beer garden", which under previous management was "an undeveloped yard" and which was empty by 7:00pm. Little noise then emanated from the Hotel. Dr Hannah claims that since the current Licensee developed the courtyard, there was a "very considerable increase" in the noise emanating from the Hotel, including noise from the patrons, from the electronic entertainment in the courtyard, from live bands inside the Hotel and from intoxicated patrons leaving the Hotel. He has also found empty alcohol cans and bottles on his front doorstep.
98. Dr Hannah states that when the current Licensee took over management, "there were assurances that the new management was planning to have a family friendly hotel", and that sound management including acoustic walls would be implemented.
99. Dr Hannah contends that the Hotel has instead been marketed as a "party pub." He alleges that the Licensee, Mr Nick Wills, told him in person that this marketing will continue so that the Premises does not compete with Mr Wills' other business, the nearby Riverview Hotel.
100. Dr Hannah states that the lyrics of the music played at the hotel and conversations of patrons are often discernible in his bedroom at night. This noise has woken his child, who sleeps in the room at the back of the house on the second floor.
101. Dr Hannah notes that acoustic curtains, noise insulation in the fences and a partially completed acoustic wall have been installed. Mr Wills has also offered to install magnetite on Dr Hannah's front doors, but Dr Hannah submits that magnetite is "ugly and out of keeping with the character of our Victorian house", and provides "no solution" for his children's bedrooms.
102. Dr Hannah contends that security staff have been "intermittent" in their attentiveness to noise management.

Email from JDK Legal on behalf of the Licensee dated 10 September 2014

103. Mr Calvert states in this short email that he will take further instructions from the Licensee in relation to Dr Hannah's submission and "will be in a position to file our submissions by 5pm tomorrow" but "would still expect that the Authority will deal with the application at its next hearing".

Email from Don McDougall on behalf of the Premises Owner dated 10 September 2014

104. In this email to the Authority, the Premises Owner requests that the Authority allow it to make further submissions in relation to the expert acoustic reports and the proposed submissions of the Licensee, on the ground that the representatives of the Premises Owner only became aware of both of these submissions on 8 September 2014. It is proposed that these further submissions would be made to the Authority by

23 September 2014, as the Premises Owner's principal solicitor, Mr Don McDougall, is overseas until 22 September 2014.

Email from JDK Legal on behalf of the Licensee dated 11 September 2014

105. In this email to the Authority, Mr Calvert advises that he is waiting for the consent of the Hotel's landlord before lodging submissions on behalf of the Licensee. He apologises for the delay and states that "with the late service of Dr Hannah's submissions, I have been under extreme pressure to finalise my client's response".

Email on behalf of complainant Raymond O'Keefe dated 15 September 2014 to JDK Legal and copied to the Authority

106. In this short email, Paul O'Keefe states the following:

Tim,

Could you please advise your client to remove all the acoustic material that has either been placed on our property or attached over the fence and secured to our pergola. (done without our permission) as it is blocking out air and sunlight into our property.

The noise over the weekend was at times unbearable which shows the attenuation works were completely ineffective".

Submission from Don McDougall on behalf of the Premises Owner dated 23 September 2014

107. In this submission letter, Don McDougall states that he received the Licensee's submission on 10 September 2014 at 11:33am. Don McDougall received the acoustic reports by Mr Cooper of 2 and 4 September 2014 from JDK Legal on 9 September at 10:24pm as an attachment to an email from JDK Legal outlining the substance of the Licensee's proposal for its submission. Mr McDougall was on leave overseas until 22 September and this is the first opportunity he has had to consider the material and provide this response.
108. The Premises Owner opposes conditions 2 and 4 of the Reviewable Decision because they "duplicate" the fundamental requirement arising from condition 1 (which is not opposed, being a standard condition) and would "complicate" the administration of the Hotel's business.
109. Condition 3 is opposed because patron behaviour would be addressed by compliance with condition 1, and because much of the evidence of the need for security to patrol the "immediate vicinity" of the licensed area "cannot be fairly attributed to the hotel".
110. The Premises Owner submits that the need for security to patrol this area is at any rate "not supported" by objective evidence provided by the complainants nor by the geographic location of the Hotel.
111. The Premises Owner notes the proposal put forward by the Licensee and the undertakings of the Licensee. The Premises Owner states that these proposals are not supported by the Premises Owner and "will not survive once this Licensee ceases to be the Licensee".

Email from Don McDougall on behalf of Premises Owner dated 23 September 2014

112. In this short email to the Authority, Mr McDougall corrects his "misapprehension" that the Licensee's proposed submission and the expert acoustic reports had previously been

submitted to the Authority, and apologises for any confusion this may have caused in relation to the submissions that he lodged on behalf of his client the Premises Owner earlier that day.

Email from JDK Legal on behalf of the Licensee dated 26 September 2014

113. In this email to the Authority, the Licensee advises that it has exercised an option in its lease to purchase the freehold in the Balmain Hotel on 25 September 2014. Settlement of the purchase is scheduled for 16 October 2014. Due to this, the Licensee proposes that its submissions shall be amended and lodged with the Authority "by 1 October 2014".

Email from Don McDougall on behalf of the Premises Owner dated 28 September 2014

114. In this email to the Authority, the Premises Owner advises that it will make no further submissions on the review, pending settlement of the Licensee's exercise of the option to purchase the freehold in the Balmain Hotel on 16 October 2014.

Submission from JDK Legal on behalf of the Licensee dated 3 October 2014

115. In this substantial submission from the Licensee, the Licensee amends the Review Application to now seek different outcomes from those originally sought.
116. The Licensee now seeks that Conditions 2, 3 and 4 of the Reviewable Decision be revoked and replaced by conditions in the following terms (the New Conditions):
2. *From 8:00pm on any trading day the licensee must ensure that use of the upper and lower courtyard and the beer garden is regulated as follows:*
 - i. *The beer garden will not be used for functions;*
 - ii. *The upper courtyard will not be used after 9pm, other than as a thoroughfare between the internal Hotel and the lower courtyard to the beer garden;*
 - iii. *The beer garden will not be used after 10pm;*
 - iv. *The lower courtyard will not have in excess of 40 patrons at any one time.*

Note: an exemption to this condition applies for the purpose of allowing acoustic testing to be concluded.
 3. *From 8:00pm until the close of trade on any Saturday, the licensee must ensure at least two security guards are engaged at the premises whose duties must include:*
 - i. *Monitoring patron behaviour within the licensed area to reduce disturbance to the neighbourhood; and*
 - ii. *Patrolling the immediate 50 metre vicinity of the premises to ensure persons do not loiter or linger in the vicinity of the premises.*
 4. *From 8:00pm until the close of trade every trading night, the licensee must ensure that all windows and doors to the licensed premises fronting Reynolds Street and Mullens Street (save for the entrance to the public bar), are kept closed except to allow for reasonable access of patrons when entering or leaving the premises.*
117. Reiterating the arguments contained in its submissions annexed to the Review Application dated 24 July 2014, the Licensee claims that the Delegate "acted prematurely" in imposing Conditions 2, 3 and 4, because he was aware that noise attenuation works to reduce the Hotel's sound profile had been proposed but not yet carried out, and because "in large part" it was the changed demands of the Complainant, Mr O'Keefe (for "more costly and less effectual attenuations") that slowed down that process.

118. The Licensee reiterates that the Delegate took Mr Cooper's comments in his 24 February 2014 report "out of context", relying upon Mr Cooper's comment that in November 2013 the Hotel had some "inadequate security measures" rather than focusing on his comment that those measures had "seen an improvement since the complaint was lodged in late 2013".
119. The Licensee reiterates that the Delegate's reliance on evidence from OLGR compliance officers and local residents in relation to the noise from the Hotel on ANZAC Day 2014 deprived the Licensee of procedural fairness and submits that ANZAC Day is "clearly an atypical day". The Licensee also submits that the imposition of the conditions in the Reviewable Decision without affording the Hotel a chance to respond or access to the material before the Delegate was also a denial of procedural fairness.
120. The Licensee submits that between approximately 4 and 15 August 2014 most of the planned acoustic attenuation works were performed, as well as some minor supplementary acoustic works in the week commencing 26 August 2014, at a cost to the hotel of in excess of \$60,000.
121. These attenuation works include:
- (i) Installation of timber acoustic window frames as divides between the upper and lower courtyards and the upper courtyard and beer garden
 - (ii) installation of *Quietspace* Black Nude Acoustic Panels to the existing boundary fence around the lower courtyard
 - (iii) planting of bamboo trees around the eastern and southern boundary of the beer garden and erection of "wavebar" acoustic material
 - (iv) securing "wavebar" acoustic material to the garage awning of Mr Raymond O'Keefe's property and fastening it to the boundary fence of the beer garden
 - (v) wedging *Quietspace* Black Nude Acoustic Panels between Mr Raymond O'Keefe's garage and the boundary of the beer garden.
122. The Licensee's New Condition 2 was proposed by acoustic expert Mr Cooper as appropriate operational procedures to ensure continued compliance with the LA10 noise criteria during peak usage times, with "all other concerns of residents and LA10 compliance issues" having been resolved by the noise attenuation works undertaken by the Premises.
123. The Licensee submits that by reason of the Licensee's sensitivity to its neighbours' legitimate concerns, prior to the section 79 Complaint, the Hotel elected to curtail its trade in outdoor areas at 10:00pm, and for this reason the New Condition 2 should replace the Delegate's Condition 2 imposed by the Reviewable Decision.
124. The Licensee submits that the Delegate's decision to impose Condition 3 requiring an additional security guard on Friday nights is "unnecessary", as trade figures for sale of goods and liquor on the Premises over the last financial year (attached) demonstrate that, "save for one aberration", bar trade from 8:00pm on Friday evenings is at around "one quarter to one third" of that on Saturday evenings.
125. The Licensee submits that this Condition 3 is "not financially sustainable" for the Hotel. The Hotel's operation is "focused on its menu" and therefore "it is unduly burdensome that a security guard is required to supervise diners mid-week".
126. As for Condition 2 of the Reviewable Decision, the Licensee submits that the requirement for patrons to move inside the Hotel during "our peak dining period" around 8:00pm is "particularly onerous" and an "unjust imposition". The Licensee contends that patrons may be in the middle of their meals at this time. The Licensee submits that it has "gone to

great lengths to focus on its unique gourmet menu, the creation of which was overseen by the AHA Chef of the Year".

127. In relation to the submission from the Complainant Paul O'Keefe on behalf of his father Raymond O'Keefe on 21 August 2014, the Licensee submits that the development application referred to by Mr O'Keefe related to redecoration works, not acoustic works, and did not require development consent.
128. The Licensee submits that the building certificate applied for from Council on 28 April 2014 relates to the rear shed and does not concern compliance of the entire outdoor area.
129. The Licensee contends that the 2013 "*Snow Party*" referred to by Paul O'Keefe finished before 8:00pm. The Licensee contends that much of the "antisocial behaviour" alleged by Mr O'Keefe in the material before the Delegate at the time the Reviewable Decision was made "is no longer in issue".
130. The Licensee submits that Mr O'Keefe's comments regarding the past operation of the outdoor area are "misleading" and in fact a beer garden has been operated on the Premises for "many years".
131. In relation to the submission from Paul O'Keefe dated 25 August 2014, the Licensee submits that despite Mr O'Keefe's apparent belief that he is "entitled to inaudibility from the Hotel at all times" and that the only way to achieve this is for the outdoor areas of the Hotel to be fully enclosed, Mr Cooper's report of 2 September 2014 demonstrates that "inaudibility of noise at his residence from the Hotel is not the test" and "as such, lesser attenuation works than full enclosure of the outdoor area were actually required".
132. In relation to the submission from Paul O'Keefe dated 1 September 2014, the Licensee submits that the installation of "wavebar" material between Mr Raymond O'Keefe's abutting garage and the boundary fence was performed following testing on 23 August 2014 "to assist in reducing noise leakage" and not to "falsify testing" as Mr O'Keefe claims.
133. The Licensee submits that at the time of the 23 August 2014 testing, the Hotel was found compliant with the LA10 noise criteria and Mr O'Keefe's comment is "incorrect" and should be disregarded by the Authority.
134. In relation to the statutory declaration of complainant Ms Patricia Jones dated 2 September 2014, the Licensee has made numerous attempts to engage Ms Jones with no response except one occasion when "she left a terse voicemail on Mr Wills' phone." In his reports of 24 February 2014, 22 July 2014, 2 September 2014 and 4 September 2014, Mr Cooper cites his testing performed at Ms Jones' location "4" and found that the noise complied with the LA10 residential boundary criteria.
135. In relation to the submissions from Dr Hannah, the Licensee contends that Mr Wills, the Licensee, met with Dr Hannah and his wife on 28 August 2014 and was shown a copy of a letter dated 19 March 2014 that Dr Hannah "allegedly" sent to OLGR. This letter was not provided to the Hotel in connection with the Complaint. However, the Licensee highlights Dr Hannah's views on the attitude of the Hotel, particularly through Mr Wills, as more positive and responsive to residents' concerns.
136. In relation to Dr Hannah's contention that Mr Wills had claimed the Hotel would be marketed as a "party pub", the Licensee concedes that the conversation took place but that Mr Wills qualified his statement by saying that "this initial concept lasted for only four

days as Hotel management quickly realised that the concept was not going to work". Therefore Dr Hannah's description is "not an accurate description of the hotel's current position". The Licensee submits that the Authority should note that in response to Dr Hannah's concerns, the second security guard has been instructed to base himself outside Dr Hannah's residence.

137. In relation to the submission from Mr Clark and Ms Carrick-Clark dated 25 August 2014, the Licensee submits that whilst the Hotel initially sought an order under section 80(2)(a) of the Act for a conference involving the complainants, "it appears now, in light of the submissions received, that it would be preferable for the Authority to finally determine the matter". The Licensee also highlights the submission's favourable impression of Mr Wills.
138. In relation to the submission from Ms Hacking dated 25 August 2014, the Licensee submits that Ms Hacking resides approximately 300 metres from the hotel and should not experience any disturbance caused by the Hotel, which was confirmed by Mr Cooper on 4 September 2014. Ms Hacking is the secretary of the Balmain and White Bay Rozelle Precincts Committee and her views appear to be "merely adopted by her as an advocate" for others.
139. In relation to the submission from Ms Alexander dated 23 August 2014, the Licensee submits that Ms Alexander's views appear to be an "amalgam of views, perhaps discussed at the Precinct Committee".
140. The Licensee submits that it is "very hard" to comment on submissions received from objectors "somewhere in Rosser Street" who asked to remain anonymous, sent by the Authority to JDK Legal on 26 August 2014.

Annexures to the Licensee's submission dated 3 October 2014

141. The Licensee did not file several documents or annexures referred to in the Licensee's submissions of 3 October 2014 until the afternoon and evening of Friday 10 October 2014. The material submitted to the Authority on 10 October 2014 comprises:
 - (i) Non-confidential Annexures A to J
 - (ii) Confidential Annexure I (with trading figures for food and liquor) and J (with trading figures for 2014)
 - (iii) Two acoustic reports from Steven Cooper dated 2 September 2014 and 4 September 2014.
142. Annexure A contains tax invoices for the attenuation works carried out between approximately 4 and 15 August 2014. The Licensee described these works in its submissions of 3 October (at page 5) as costing the Hotel over \$60,000 overall:
 - (i) Invoice from Master Landscape Maintenance Pty Limited trading as "Clippings" (undated) for landscaping services including installation of slender weaver, fertiliser and pine bark mulch, for a total of \$10,095.80. This invoice also notes earlier work planting bamboo in the rear courtyard to reduce external noise output;
 - (ii) Invoice from DJW Project Investments Pty Limited dated 25 August 2014 for *Quietspace* Black Nude Acoustic Panels, totalling \$13,398.00
 - (iii) Invoice from Harrisons Building Services dated 4 September 2014 for "supply and install of New Timber windows designed for acoustic performance as per the Acoustic Engineers", totalling \$17,000.00
 - (iv) Invoice from Harrisons Building Services dated 19 August 2014 for "new treated pine fence palings nailed over top of wavebar", totalling \$8,706.00
 - (v) Invoice from Harrisons Building Services dated 19 August 2014 for a Progress Payment for "building of vertical and horizontal slated screens with 15mm

compressed fibro and quiet space in behind slats to top beer garden and deck area", totalling \$11,750.00.

143. Annexure B contains three photographs of "timber acoustic window frames" (without windows), installed as divides between the lower and upper courtyards, and the upper courtyard and beer garden.
144. Annexure C contains four photographs of timber palings built over the top of *wavebar* acoustic material "giving extra thickness to the boundary fence" (as described on page 5 of the Licensee's submissions dated 3 October 2014).
145. Annexure D contains two photographs of bamboo plants along the eastern and southern boundaries of the beer garden, which the Licensee states on page 5 of its submissions will be more effective as an acoustic barrier as it "grows and thickens in the warmer weather".
146. Annexure E contains three photographs to demonstrate how *wavebar* acoustic material may be lowered around the edges of the outdoor "huts" to block line of sight to residences at the eastern boundary of the beer garden.
147. Annexure F contains two photographs of *wavebar* acoustic material secured to Mr Raymond O'Keefe's garage awning and fastened to the hotel beer garden's boundary fence.
148. Annexure G contains two photographs of *Quietspace* Black Nude Acoustic Panels wedged between Mr Raymond O'Keefe's garage and the southern boundary of the beer garden.
149. Annexure H is an aerial view of the vicinity of the Premises, showing the locations of local residences and the testing locations of the acoustic reports.
150. Annexure I is an email from the Authority's General Counsel, Mr Bryce Wilson to the Complainant, Mr Raymond O'Keefe in response to Mr O'Keefe's letter to the Authority dated 29 August 2014 objecting to acoustic testing that evening. Mr Wilson informs Mr O'Keefe that it is his choice whether to permit the acoustic consultant access to his property and whether to be available during testing, and makes him aware that if access to his property is not granted, the consultant may take measures from alternative locations if appropriate. Mr Wilson also explains that to delay testing would affect the timetable set by the Authority, and that testing on peak trading nights is appropriate.
151. Annexure J is a statutory declaration by builder Mr Dean Harrison, describing his interaction with Mr Raymond O'Keefe "on or about 4 August 2014" when Mr Harrison attended Mr O'Keefe's property with Mr Nick Wills, the Licensee, to introduce himself before performing acoustic works. Mr Harrison states that he explained to Mr O'Keefe the nature of the works, that Mr O'Keefe responded "that's fine, do whatever you need to do, just don't let the rabbits out", and that he performed the works while Mr O'Keefe occasionally walked into the backyard to observe and engage in "general chitchat" with Mr Harrison. This went on for four hours. Subsequently "on or about 13 August 2014", Mr Harrison returned to Mr O'Keefe's property at the Hotel's request, and Mr Raymond O'Keefe appeared at the door along with his son Mr Paul O'Keefe. Again Mr Harrison introduced himself and said words to the effect of, "Nick wants to continue the fence line down the back of the garden" to which Paul O'Keefe replied, "No. It's nothing to do with you, but no more works will be happening until we get the report". After this conversation, Mr Harrison has not accessed Mr O'Keefe's property again.

152. Confidential Annexure I contains Stock Item Sales Reports showing trading figures for Friday and Saturday nights respectively over a period from 4 July 2014 to 27 September 2014. As argued by the Licensee on page 7 of its submission dated 3 October 2014, sales of food and liquor at the Hotel are on average "considerably higher" on Saturday nights as opposed to Friday nights over this period. The average total sales of food and liquor on Friday nights in this period was \$3,061.00 (notably one night of anomalously high figures has skewed this average), whereas the average for Saturday nights in this period was \$8,451.00.
153. Confidential Annexure J contains Stock Item Sales Reports showing trading figures for sales of food and beverages respectively over the period from 1 July 2014 to 1 October 2014. These figures reveal that food sales account for 33.65 per cent of the Hotel's total sales, whereas drinks account for 66.35 per cent of the total sales over this period.

**Acoustic Compliance Report from Steven Cooper (The Acoustic Group)
dated 2 September 2014**

154. The key points of this report are as follows:
155. Acoustic measurements of noise from the Premises were taken from inside the residential property at 96 Rosser Street (location "5" in the report, the property of complainant Mr Raymond O'Keefe), to the north of the Hotel, on the night of Saturday 18 January 2014. In seeking to address the specific noise complaint from the principal Complainant, the measurement at location 5 was taken outside a bedroom window approximately midway between the western and eastern boundaries. The noise from the beer garden, lower courtyard and upper courtyard were found by this test to exceed the noise criteria permitted by OLGR. This led to the recommendation of noise controls.
156. Mr Cooper states in his report that the noise restrictions imposed upon on the hotel by OLGR as a result of the complaint by the principal Complainant (Mr O'Keefe) were made "...on an incorrect technical basis that did not reflect the change in management practices as a result of the earlier investigations".
157. Mr Cooper states that "...as a result of the principal complainant refusing to permit noise control measures to be erected at the most efficient position [being adjacent to his boundary] the hotel has been required to implement more extensive noise controls".
158. Acoustic measurement of noise from the Premises was taken on the night of Saturday 23 August 2014, from the rear yard of the principal complainant, as well as other monitoring locations (identified in Appendix A of the report). A site visit was carried out on Friday 22 August 2014 while the beer garden was in operation to ascertain the effectiveness of controls for the tests.
159. The report does not specify the timeframe of the testing period overall, however it is noted that the time splice graph for monitoring location 5 (the property of Complainant Mr O'Keefe) commences at 8:34pm and experiences general increases due to traffic at 8:35pm and aircraft at 8:40pm. It is also noted that a patron's scream from the beer garden occurs at 8:53pm.
160. An inspection of the Hotel was carried out and 13 people were recorded as being in the beer garden at the time of testing, giving rise to an average maximum level of 64 dB(A) in the centre of that space. There were no persons present in the upper courtyard at that time, but 26 people were in the lower courtyard where an average maximum noise level of 76 dB(A) was recorded. At the time of testing, conditions were overcast with no wind and a temperature of approximately 15°C.

161. Mr Cooper states that the results of the acoustic measurements of 23 August 2014 "reveal full compliance" with the OLGR "before [12:00] midnight criteria" and a "very significant reduction" in results recorded for the upper and lower courtyards prior to the noise controls being imposed.

**Acoustic Compliance Report by Steven Cooper (The Acoustic Group)
dated 4 September 2014**

162. The key points of this report are as follows:
163. This report details results of further acoustic testing conducted on Friday 29 August 2014 at an unspecified time of the evening to address additional submissions of local residents. Access was requested to the rear yard of Mr O'Keefe's premises to undertake measurements, but was denied.
164. The weather conditions on Friday 29 August 2014 were overcast with a variable south-west wind and a temperature of approximately 14°C. The beer garden, upper courtyard and lower courtyard were all in operation at the time of testing.
165. The ambient background noise level at the time of measurements was higher than that recorded on other occasions, but attributable to the propagation of road traffic noise from Victoria Road, enhanced by the wind, rather than the Hotel.
166. Mr Cooper states that "...No noise could be detected from the hotel at the front boundary of 10 Rumsay Street of 72 Rosser Street" (being 100 metres from the Hotel) and from an acoustic perspective there is "no substance in those submissions that relate to an acoustic impact" from the Hotel.
167. Mr Cooper concludes that the results of these tests reveal "...full compliance with the OLGR before midnight criteria at the publicly accessible residential boundaries" of the other submitters.

**Statutory Declaration from complainant Raymond O'Keefe
dated 27 October 2014**

168. This submission to the Authority by Mr O'Keefe is an attachment of a letter from Mr Wills on behalf of the Hotel (then the West End Hotel) dated 14 March 2013, with annotations.
169. Mr Wills' stated purpose of the letter is "...just to introduce myself as the new operator of the West End Hotel, and to provide our neighbours with an update around the changes that are occurring to the hotel at present and into the future".
170. Where Mr Wills states that in relation to the other nearby hotel he operates, the Riverview Hotel, "...we have a fantastic relationship with all our locals/neighbours" – Mr O'Keefe notes that the Riverview has no external area.
171. Where Mr Wills states that "...we have commenced a small and brief redecoration of the hotel aimed at re-invigorating the hotel" – Mr O'Keefe highlights "small and brief" and notes "2 months – \$1 million – no DA".
172. Where Mr Wills states that "...we plan on lodging a DA in the next 6-8 weeks to tidy up some final structural changes and enclose some of the open areas to ensure a peaceful and quiet surround" – Mr O'Keefe notes "...after all works were completed which never happened".

173. Mr Wills also states that the "...longer term aim of the hotel is to focus on introducing some amazing food and icy cold wines and beers to the area, and providing a space for families, kids, couples and mates to co-exist and to enjoy what the hotel was built for".

**Statutory Declaration from complainant Patricia Jones
dated 10 November 2014**

174. In this letter to the Authority supported by a statutory declaration, Ms Jones states that she experiences the same problem that Dr Hannah noted in his letter to the Authority, being noise from the Hotel entering her bedroom and balcony.
175. Ms Jones describes the noise from the Hotel's beer garden in the late afternoon on each day over the October long weekend (4-6 October 2014) and on the preceding Saturday afternoon (1 November 2014) as "deafening".
176. Ms Jones requests an additional acoustic report prepared by "...someone unknown to the owners of the Hotel, who turns up unannounced". She states that she would allow such person access to the second floor of her house where the noise is "much worse" than downstairs or on the street.
177. Ms Jones contends that the 'terse voicemail' she left for Mr Wills, referred to in the Licensee's submission dated 3 October 2014, occurred after she was woken at 4:20am on a Sunday morning. In relation to her failure to respond to Mr Wills' subsequent voicemail messages, Ms Jones states "I did not think I had anything to say to him". Ms Jones states that she works full time and her free time is "precious".
178. Ms Jones adds that beer bottles continue to be left around the area on Saturday nights (on one occasion left against her doorstep) and patrons continue to leave the Hotel in a noisy manner.

Email from complainant Raymond O'Keefe dated 17 November 2014

179. In this email to the Authority, Mr O'Keefe alleges that the Hotel is "treating OLGR with contempt" by regularly disobeying the LA10 noise conditions imposed on the Hotel's licence. Mr O'Keefe states that most evenings and from 12:00 midday until 8:00pm on weekends he continues to experience noise from the Premises at his residence.
180. Mr O'Keefe submits that on Saturday 15 November 2014, he went into Reynolds Street and with his smartphone took photographs and videos of patrons "shoulder to shoulder" in the top courtyard area of the Premises. Mr O'Keefe alleges that the Hotel's on-site managers challenged him about taking the photographs, and in response he provided the managers with a copy of the LA10 condition which one manager put into his shirt pocket. Mr O'Keefe alleges that he then said, "...Don't just put it in your pocket, read the bloody thing", to which the manager replied that he already had a copy.

Email from complainant Raymond O'Keefe dated 19 November 2014

181. In this email to the Authority, Mr O'Keefe attached a photograph he took of patrons at the Premises on Saturday 15 November 2014.

Submission from JDK Legal on behalf of the Licensee dated 20 November 2014

182. In this letter to the Authority, the Licensee responds to the submissions of Mr O'Keefe and Ms Jones dated 27 October 2014 and 10 November 2014 respectively. The Licensee contends that the two Complainants have been comparing notes so as to support the

other's complaint which "...makes it difficult for the Hotel and the Authority to make a balanced assessment of each individual grievance".

183. The Licensee claims that Mr O'Keefe is becoming increasingly "vitriolic and confrontational" in his approach to the Hotel, its staff and its patrons. The Licensee quotes an email sent from Licensee Adrienne Brown to Mr Wills on 15 November 2014 as evidence of this claim about Mr O'Keefe.
184. The Licensee submits that Mr O'Keefe has turned this process into a "personal crusade" and for the Authority to accept his assertions in preference to the acoustic evidence provided by Mr Cooper would be "folly".
185. The Licensee contends that Ms Jones' submission evidences her lack of preparedness to engage with the Hotel directly, which makes it "difficult" for the Hotel to deal with any genuine and legitimate concerns she may have. The Licensee further submits that Ms Jones' claim that she was disturbed at 4:20am on a Sunday by the Hotel is "unmeritorious" given that the Hotel closes at [12:00] midnight and that Ms Jones "...has the protection afforded by the LA10 condition should noise be excessive".
186. The Licensee submits that the implementation of acoustic attenuation works at significant cost to the Hotel have been effective.

Submission from Leichhardt Council dated 28 November 2014

187. In this late submission to the Authority, Council states that the main points raised with Council by community members in relation to the Hotel have been with respect to maximum noise levels; access to premises; security requirements and patrols of local areas based on occupancy numbers; and the necessity to keep windows and doors closed at the premises.
188. Council submits that while the Premises has been in operation since "prior to 1952", the recent operation of the Premises has significantly altered from its operation in previous years, particularly through the significant use of the beer garden.
189. Council submits that on the basis of the "approximately 18" noise complaints Council has received in relation to the Hotel since 2011, Council supports the conditions imposed by OLGR and requests that no variation or reduction in the strength of those conditions occurs. Council submits that a number of residents have advised Council that noise levels associated with the operation of the Premises have "...not been satisfactorily mitigated", leading to residents reporting to Council a reduced quality of life.

Submission from Council dated 4 December 2014

190. In this submission, Council provided to the Authority a bundle of records held by Council, primarily comprised of noise complaints made against the Hotel from October 2011 to December 2013. Council's submissions were sent by email to the Licensee's lawyers and the two Complainants, Ms Jones and Mr O'Keefe, inviting any comment on that material and the Authority's proposed course of action with regard to the Reviewable Decision following the Authority meeting on 28 November 2014 (being to confirm Conditions 1, 3 and 4 and to vary Condition 2 as per the Hotel's proposed variation of the Condition).

**Submission from JDK Legal on behalf of the Licensee
dated 11 December 2014**

191. In this submission to the Authority, the Licensee provides another copy of confidential annexures to submissions made to the Authority on 3 October 2014 setting out the Hotel's revenue for selected Friday and Saturday evenings.
192. The Licensee notes that the Council's complaint records only extend until December 2013. The Licensee "strongly agrees" with Council's submission that the Authority should not vary the Reviewable Decision. The Licensee does not oppose having to perform a further round of testing, but notes that this will be at considerable expense. The Licensee submits that it should be able to use Mr Cooper again, as he is a "preeminent" expert in Australia who drafted the LA10 criteria. The Licensee suggests that a delegate of the Authority or Council be present when any covert testing is conducted.
193. The Licensee submits that the Authority should revisit the confidential trading figures provided by the Licensee on 3 October 2014 and by reason of the great disparity in trading figures between Friday and Saturday nights, should not impose a security guard on Friday nights. The Licensee submits that the Authority should vary Condition 3 as proposed by the Hotel.

Email from Complainant Raymond O'Keefe dated 19 December 2014

194. In this email to the Authority, Mr O'Keefe responds to an email from the Authority sent on 18 December 2014 advising the parties of its interim decision that Condition 2 as imposed by the Reviewable Decision is stayed for so long as the Licensee ensures that:
2. *From 8:00pm on any trading day the licensee must ensure that use of the upper and lower courtyard and the beer garden is regulated as follows:*
- i. The beer garden will not be used for functions;*
 - ii. The upper courtyard will not be used after 9pm, other than as a thoroughfare between the internal Hotel and the lower courtyard to the beer garden;*
 - iii. The beer garden will not be used after 10pm;*
 - iv. The lower courtyard will not have in excess of 40 patrons at any one time.*

Note: an exemption to this condition applies for the purpose of allowing acoustic testing to be concluded.

195. Mr O'Keefe states that he finds the Authority's decision "disappointing". Mr O'Keefe states that "...it is now 8:30pm Thursday evening and its[sic] back to the yelling and screaming and loud laughter in the courtyard as before". Mr O'Keefe submits that any further acoustic testing should include Saturday and Sunday afternoons as the Hotel has many functions at these times. Mr O'Keefe states that he "...doubts" Mr Cooper's true independence in the matter" and encourages the Authority to visit the Premises unannounced on a weekend afternoon to observe the noise emitted from the Premises. Mr O'Keefe states that "...all we want is for the Hotel to keep the majority of its noise inside the Hotel".
196. This email was forwarded by the Authority to the Licensee and to the other Complainant Ms Jones on 19 December 2014.

**Email from complainant Patricia Jones to the Authority
dated 12 March 2015**

197. In this brief email to the Authority, Ms Jones states that although recently the Hotel has been quieter, "...at around 8:15pm on Tuesday evening live music could be heard" from

inside the Premises and that "...a few Saturdays ago at around [12:00] midnight" there was a "noisy fight on the street". Ms Jones states that "chances are" the persons fighting were Hotel patrons.

**Statutory Declaration from complainant Patricia Jones
dated 16 March 2015**

198. In this statutory declaration provided to the Authority, Ms Jones states that "...on a Saturday night early in February", there had been a physical fight in the street, and that at "...approximately 8:15pm on Tuesday 10th March 2015" there [had been] very audible live music playing in the hotel". Ms Jones states that she is concerned that the noise from the Hotel is being "mostly controlled at present" until the further acoustic report is completed and then "...the noise will be back to the level we had to put up with last year".

Email from JDK Legal on behalf of the Licensee dated 17 March 2015

199. In this email to the Authority, Mr Calvert of JDK Legal states that acoustic testing at the Hotel has now been completed by Mr Cooper and that Mr Koikas had observed Mr Cooper's testing. Mr Calvert states that according to Mr Cooper, the testing was conducted on Saturday 14 March 2015 and that due to other commitments, Mr Cooper is unable to produce the acoustic report until 27 March 2015. Mr Calvert proposes that the parties be given until 10 April 2015 to provide the Authority with submissions on the acoustic report and that the stay permitted by the Authority "continue on the same terms" until the matter is determined by the Authority on 30 April 2015.

**Acoustic report from Steven Cooper (The Acoustic Group)
dated 18 March 2015**

200. The key points of this new report may be summarised as follows:

- a. None of the legal representatives for the Hotel or Hotel management were advised of the dates of acoustic testing.
- b. Access to the "principal complainant's" premises was arranged by Mr Nick Koikas, the observer, who was requested by the Authority to attend Mr Cooper's acoustic testing at the Hotel. [The Authority assumes that this refers to Mr O'Keefe's premises.]
- c. Mr Cooper refers to the first night of testing as "Friday 31 January 2015".

[However, the Authority notes from other parts of this report and from Mr Koikas' findings in his report, detailed below, that Mr Cooper means to describe the first night of acoustic testing as Friday 6 February 2015.]

- d. Mr Cooper states that conditions on the first night of testing were clear, with no apparent wind and a temperature of approximately 23°C at the Hotel. The acoustic environment was found to be dominated by local traffic on Mullens Street and Reynolds Street, pedestrian traffic on those streets, and aircraft noise, which raised the ambient background level by "in the order of 20 dB" at 8:04pm and 8:08pm.
- e. Measurements were taken from four locations. "Location 1" was "the nearest residential premises to the Tiki Beer Garden"; "Location 4" was on Reynolds Street; "Location 5" was the rear yard of the principal complainant's premises, approximately 3 metres from the side of the house; and "Location 6" was in Rosser

Street being outside the complainant's premises. These locations are identified at Appendix A of the report.

- f. During the measurements at Location 4, Mr Koikas attended the Hotel to identify that there were 16 patrons in the Tiki Beer Garden, 14 patrons in the upper courtyard and 16 patrons in the lower courtyard.
- g. The report does not specify the timeframe for the testing overall, however the time splice graphs contained in Appendix B indicate that testing began at or about 7:54pm at the earliest and concluded at or about 9:32pm at the latest.
- h. With regard to testing carried out on Friday 6 February 2015, there was agreement between the two acoustic experts that "...the operation of the hotel fully complied with the OLGR criteria".
- i. Mr Cooper then describes the second night of testing as having taken place on Saturday 14 March 2015 and having commenced at or about 7:30pm. Conditions on this night were clear, with no apparent wind other than an occasional light north-east wind and a temperature of approximately 21°C.
- j. Mr Cooper observes that on this night, Mr Koikas "...advised that he had been in attendance earlier" and had "...observed an issue of noise coming from the premises, as a result of some rowdy patrons". The Cooper Report notes that it was Mr Koikas' opinion that should this noise continue during acoustic testing, then noise from the Hotel would exceed the OLGR criteria.
- k. However Mr Cooper states that Mr Koikas "...noted that that issue was amended/corrected in a short time". After tests were completed on this evening, the earlier patron noise observed by Koikas was raised in discussions with the Licensee, who informed Mr Cooper and Mr Koikas that a group of adults had become more boisterous before being removed by the licensee to the Lower Garden Courtyard.
- l. Measurements were taken from the same four locations as during the previous round of tests. During testing at location 1 (which occurred between approximately 7:50pm and 8:06pm according to the graphs in Appendix B), Mr Koikas attended the Hotel and identified that there were between 45 and 50 people in the Tiki Beer Garden, 22 in the upper courtyard and 14 in the lower courtyard. Later, during repeated testing at location 1 between approximately 8:50pm and 9:08pm, Mr Koikas identified 42 people in the Tiki Beer Garden, 0 people in the upper courtyard and 29 people in the lower courtyard.
- m. As to the difference in recorded noise levels between these two time periods, Mr Cooper notes that "...no differences in the background level were observed, although a slight reduction in noise emitted from the hotel could be heard which was difficult to measure in view of the ambient noise level".
- n. Measurements taken from location 5, being Mr O'Keefe's rear yard, found there was a slight reduction in noise from the hotel by reason of the closure of the Upper Courtyard. The noise detected at that location from the hotel was associated with the Tiki Beer Garden.
- o. It is noted that, once again Mr Cooper experienced "...difficulty in determining the average maximum noise level from the hotel by reason of noise from the ambient environment". Instances of interference from aircraft are noted, as well as from

patrons singing *Happy Birthday* at one occasion at 8:16pm "which lasted less than 15 seconds". However, "...by use of the average maximum deflection on a sound level meter, the general noise levels from the hotel were obtained and clearly indicate compliance".

- p. Mr Cooper and Mr Koikas inspected the various noise controls and barriers at the Hotel at 10:00pm. At this time the Tiki Beer Garden was vacant and upon returning to location 5, there was no audible noise from the Hotel.
- q. Results of testing on this evening reveal that "...the existing ambient noise level from sources other than the hotel" (that is, noise which is not attributed to the Hotel or its patrons) is above that which is specified on the Hotel's licence. However, "...comparison of the contribution from the hotel reveals full compliance with the OLGR criteria".
- r. The report states that overall the level of noise generated by the Hotel, as recorded at the various testing locations, "...would not be classified as offensive noise" and "...would be less than what is considered as of marginal significance".
- s. The report concludes that "...the measurement results for the Friday night testing in February identify clear compliance by a significant margin" and that the Saturday night testing also indicated compliance with the LA10 criteria, even given that "...there were a large number of external patrons" on the Saturday night compared with the Friday night.
- t. Mr Cooper observed that during testing, appropriate management controls were in place at the Hotel and that restrictions on opening hours and capacities for outdoor areas indicated that the Hotel can comply with the OLGR noise criteria.
- u. Mr Cooper also observed that "...the area would not be considered a quiet suburban area and is subject to a significant degree of extraneous noise".
- v. Mr Cooper states that discussions with residents of premises in proximity to the various monitoring locations "...ha[ve] revealed general consensus that there has been a significant improvement in the hotel and in the main there is minimal disturbance".

**Peer Review of Acoustic Testing from Nick Koikas (Koikas Acoustics)
dated 18 March 2015**

- 201. The Koikas Report states that the Authority requested that Mr Koikas of Koikas Acoustics provide a brief written report confirming attendance as an observer of acoustic testing at the Hotel on two separate nights, one a Friday and the other a Saturday night; that testing was undertaken without prior notice to the Licensee; and that "...testing was performed in a manner appropriate to an assessment of compliance with the LA10 requirements".
- 202. With respect to the first night that Mr Koikas attended the Hotel to observe testing, the key points made by Mr Koikas are as follows:
 - a. The testing took place between 8:00pm and 9:30pm on Friday 6 February 2015.
 - b. While the testing was performed without prior notice to the Licensee, "...it is highly likely that the security personnel became aware of our activities and quite possibly informed the Licensee". He states that after having taken two patron counts in the outdoor areas during the night, "...the Licensee was well aware by then who I was".

- c. At 8:45pm on Friday 6 February 2015, 15 patrons were recorded as being in the Tiki Beer Garden, 14 patrons were recorded as being in the upper courtyard and 16 patrons were recorded as being in the lower courtyard. These numbers accord with those reported by Mr Cooper.
 - d. At 9:20pm on Friday 6 February 2015, three patrons were recorded as being in the Tiki Beer Garden, 0 patrons were recorded as being in the upper courtyard and 18 patrons were recorded as being in the lower courtyard.
 - e. Mr Koikas states that after 9:00pm, "...noise emanating from the Lower Court Yard was audible but subjectively did not in my opinion exceed the nominated criterion of background +5 when assessed as an average maximum deflection of the sound pressure level in octave bands".
 - f. The background noise during testing was recorded as consisting of "...local traffic and mechanical plant noise emanating from Balmain Hotel".
203. With respect to the second night that Mr Koikas attended the Hotel to observe acoustic testing, the key points of the Koikas Report are as follows:
- a. The testing took place between 7:15pm and 9:45pm on Saturday 14 March 2015.
 - b. Again Mr Koikas believes that security personnel at the Hotel became aware of who he was while the testing was being performed and that the Licensee certainly knew who he was after seeing Mr Koikas take patron head counts.
 - c. At 7:55pm on Saturday 14 March 2015, 45 to 50 patrons were recorded as being in the Tiki Beer Garden, 22 patrons were recorded as being in the upper courtyard and 14 patrons were recorded as being in the lower courtyard.
 - d. At 9:10pm on Saturday 14 March 2015, 15 patrons were recorded as being in the Tiki Beer Garden, 0 patrons were recorded as being in the upper courtyard and 32 patrons were recorded as being in the lower courtyard. [These numbers accord with those reported by Mr Cooper.]
 - e. Mr Koikas states that after 9:00pm, "...noise emanating from the Tiki Beer Garden and the Lower Court Yard was subjectively louder compared to Friday 6 February 2015". However, Mr Koikas states that from his experience, noise of patrons at "...the most noise sensitive location being near the rear building façade of 96 Rosser St, Balmain did not exceed the ambient background noise by more than 5 dB".
 - f. The background noise during testing was recorded as consisting of traffic and mechanical at the rear yard of 96 Rosser Street, but the level of this background noise "...may have been influenced by the constant murmur of patron noise emanating from the occupied outdoor court yards".
204. Mr Koikas states that the measurement methodology used by Mr Cooper to obtain acoustic LA10 readings was observed by him to be "satisfactory".
205. Mr Koikas concludes with the observation that patron noise is described as a "series of transient events" which can be substantially louder or quieter at given times, as opposed to the constant levels of mechanical noise. He observes that in light of this "...it would be prudent to consider additional noise attenuation measures where possible", and that this

was discussed with Mr Cooper and the Licensee of the Hotel on Saturday 14 March 2015.

**Email from Ms Tanya Bowes to OLGR dated 22 March 2015
forwarded to the Authority on 24 March 2015**

206. In this email, Ms Bowes thanks OLGR for its "positive action thus far" in assisting residents with noise abatement in relation to the Hotel.
207. Ms Bowes states that it is disappointing that the Hotel's 8:00pm curfew has been extended when "...the pub has taken on action to mitigate the noise". Ms Bowes contends that "...without a permanent solution in place to address the noise, a reasonable noise level cannot be guaranteed".
208. Attached to this email is another email sent by Ms Bowes to Leichhardt Council on 22 March 2015. In this email, Ms Bowes similarly commends OLGR on its work to date in controlling noise from the Hotel, however Ms Bowes contends that the Hotel has had a free run and has ignored basic planning laws which have contributed to "...significant noise impacts throughout the weekend and evenings".

**Letter from JDK Legal on behalf of the Licensee to the Authority
dated 2 April 2015**

209. In this letter, Mr Calvert responds to Ms Bowes' submissions noting that most have been addressed thoroughly in the Licensee's past submissions and that "...matters addressing use and structures in the outdoor area are properly a matter for Leichhardt Council". Mr Calvert submits that "...the [Review] Applicant will address these matters with Leichhardt Council should it so require".
210. In relation to Ms Bowes' claims regarding excessive noise, Mr Calvert states that the Licensee relies on Mr Cooper's acoustic reports dated 2 September 2014, 4 September 2014 and 18 March 2015 demonstrating compliance with the LA10 noise criteria.

LEGISLATION

211. 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.
212. 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.
213. 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.*

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

215. 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.*

REASONS

216. The Authority has considered all the material that was before the Delegate and all of the additional material that has been provided over the course of the review.

217. The Authority is satisfied that the licensed hotel operating on the Premises has caused undue disturbance to the quiet and good order of the neighbourhood. Undue disturbance has primarily been caused by amplified music, patron noise coming particularly from the

courtyard and patrons leaving the Premises. The Authority agrees with the findings of the Delegate in this regard.

218. This finding is made on the basis of the material in the Complaint from Mr O'Keefe; the subsequent complaint from Ms Jones and the submissions from numerous other close neighbours of the Hotel.
219. The Authority is satisfied that the Complainant Mr O'Keefe has lived at his residence for 52 years and Ms Jones has lived at her residence for 44 years. The Authority is also satisfied that the liquor licence for the Premises was granted on 4 November 1957, and that the order of occupancy consideration under section 81(3)(a) is in favour of the Hotel.
220. However, the Authority is satisfied that a recent change in use of the Premises is also a relevant factor to the Authority's consideration of this Review Application.
221. The Authority notes the significant increase in noise complaints from local residents in relation to patron and music noise from the Premises since the current Licensee and business owner commenced operation of the Hotel. The Authority is satisfied that a change in activities and use of the hotel Premises gave rise to the Complaints now under consideration for the purposes of section 81(3)(c) of the Act.
222. The Authority notes the previous promotional material of the Hotel identified by Mr O'Keefe's Complaint indicating a permissive attitude to patron conduct. The Authority has no difficulty accepting that between 80 to 100 patrons in an outdoor courtyard area on a holiday like ANZAC Day, in a hotel close to neighbouring residential buildings, will cause unacceptable levels of patron noise for neighbours.
223. The Authority considers that there is a public interest in resolving the demonstrated potential for this licensed business to cause undue disturbance issues arising from the operation of the Premises, given the location and patron capacity of its outdoor courtyard.
224. The Authority is satisfied that in 2013 the Premises came under new management who undertook a significant refurbishment which included internal renovations and improvements to the Premises' courtyard. There was also a significant change in the Hotel's business model and marketing, which the Delegate noted in the Reviewable Decision, resulted in a rapid increase in the number of patrons attending the Premises, particularly to use the external courtyard area.
225. The Authority is also satisfied that a range of noise amelioration works were also performed on the Premises by the Review Applicant Licensee during August 2014, as detailed in the Review Applicant's submissions and at a cost of approximately \$60,000 to the Review Applicant. Those works were not, it would seem, completed by the time the Delegate determined that restrictions should be placed upon the Hotel's use of the courtyard. The Authority considers that those restrictions were, on the material before the Delegate, appropriate at that time.
226. Works have now been performed on the residences of the Complainant Mr O'Keefe and for the benefit of other neighbours of the Hotel, at the Review Applicant's expense. 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.
227. The Authority is satisfied that while the Review Applicant, upon purchasing the business operating on the Premises, intended to market the Hotel as a "party pub", this intended mode of operation was subsequently abandoned as the Hotel management quickly realised that the concept was not going to work.

228. However, the Authority is satisfied, on the basis of the submissions received from the Complainants and other local residents, that the operation of the Hotel continued to cause undue disturbance even after the idea of marketing the Premises as a "party pub" was abandoned.
229. The Authority notes that in the Reviewable Decision, the Delegate notes that the acoustic report of Steven Cooper dated 24 February 2014 found that there were inadequate security measures to control patrons external to the Premises and that the LA10 noise criteria were breached due to patron noise from the courtyard.
230. The Authority also accepts the Licensee's submission dated 3 October 2014 that Mr Cooper found in his report that those measures had "...seen an improvement since the complaint was lodged in late 2013".
231. While the Authority accepts that there has been some improvement in the management of the Hotel so as to minimise the extent of undue disturbance caused by patron noise and amplified music at the Hotel, the Authority is satisfied that local residents have continued to experience undue disturbance from noise and also beer cans from the Hotel outside their residences and at times on their front doorsteps, and have continued to complain of noise from the Hotel since the amelioration works were completed.
232. The Authority notes the recent acoustic report of Steven Mr Cooper dated 18 March 2015, which notes that before testing began on Saturday 14 March 2015, Mr Koikas of Koikas Acoustics observed some patrons causing a significant amount of noise at the Premises which, in Mr Koikas' opinion, would "exceed the OLGR criteria" if measured.
233. However, the Authority notes and accepts that the 18 March 2015 report of Mr Cooper indicates the Hotel's compliance with the LA10 criteria. The Authority notes Mr Koikas' opinion that it is likely that Hotel management were aware that acoustic testing was being conducted on both Friday 14 March 2015 and Saturday 15 March 2015.
234. The Authority has had regard to Ms Jones' submission to the effect that the Hotel likely been on its best behaviour since the Authority's interim decision that was notified on 18 December 2014. That concern about the hotel adapting its behaviour while under regulatory scrutiny is generally credible, although the Authority considers it likely that the remedial works performed by the Hotel and the limited use of the courtyard permitted by these interim measures imposed by the Authority have helped to constrain noise resulting from use of the courtyard which has in turn resulted in a reduction in complaints or adverse submissions since 18 December 2014. The Authority notes with interest that there have been no further submissions or concerns raised by Council.
235. The Authority is satisfied that the noise attenuation works carried out by the Review Applicant Licensee during 2014 have resulted in an improvement to the extent of noise caused by the Hotel which can be heard from the residences of the Hotel's neighbours, on the basis of the acoustic reports of Mr Cooper and the peer review report of Mr Koikas.
236. The Authority notes that the Premises is not a late trading venue. This objectively reduces the extent to which noise disturbance is prone to become undue – as some noise from licensed businesses is to be expected in an inner urban location earlier in the evening.
237. Nevertheless, noise occurring before 12:00 midnight on weeknights and after 12:00 midnight on weekends can potentially be considered undue depending on the nature and extent of that noise. The Authority accepts the submissions of the Complainants Mr O'Keefe and Ms Jones, as well as other local residents who made submissions to the

Authority, that use of the courtyard by this Hotel business has been causing undue disturbance for nearby residents on an ongoing basis, particularly for those who have been woken during the night and who can hear noise arising from the Hotel even with all their windows and doors closed.

238. The Authority is satisfied that some ongoing and enforceable restrictions are warranted, in the public interest, upon use of the exterior courtyard to reduce the capacity of patrons on the Premises to cause undue disturbance to the quiet and good order of the neighbourhood.
239. The Authority has decided to fix in place those interim restrictions upon use of the Courtyard that were notified on 18 December 2014, on the basis that those interim measures, as reinforced by the recent independent acoustic evidence, appear to have had a positive effect on reducing noise emissions from the Hotel and the number of complaints from neighbouring residents in recent months.

DECISION ON REVIEW

240. The Authority has decided to take the following final administrative action to conclude this review, noting that Conditions 1, 3 and 4 are not or are no longer under review by the Licensee.
1. Note that Condition 1 of the Reviewable Decision remains in effect.
 2. **Vary** Condition 2 of the Reviewable Decision so that it instead reads as follows:
From 8:00pm on any trading day use of the upper and lower courtyard and the beer garden is regulated as follows:
 - i. *The beer garden will not be used for functions;*
 - ii. *The upper courtyard will not be used after 9:00pm, other than as a thoroughfare between the internal Hotel and the lower courtyard to the beer garden;*
 - iii. *The beer garden will not be used after 10:00pm;*
 - iv. *The lower courtyard will not have in excess of 40 patrons at any one time.*
 3. Note that Condition 3 of the Reviewable Decision remains in effect.
 4. Note that Condition 4 of the Reviewable Decision remains in effect.
241. In making this decision, the Authority has considered all of the statutory objects and considerations prescribed by section 3 of the Act, but has given weight to subsection 3(2)(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.
242. It is noted that this decision was notified to the parties by email on 1 May 2015 and commenced effect on that date.



Micheil Brodie

Chief Executive

for and on behalf of the Independent Liquor and Gaming Authority

DATED 30 / 7 / 2015