

**FILE NO:** A14/0004491

**COMPLAINANT:** [REDACTED]

**LICENSED PREMISES:** Manly Wharf Hotel, Manly – LIQH400114400

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

**LEGISLATION:** *Liquor Act 2007*

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## SECTION 81 DECISION

Under Section 81 of the *Liquor Act 2007* (the Act) I, Anthony Keon, Director Compliance & Enforcement, Office of Liquor, Gaming & Racing (OLGR), a delegate of the Secretary, Department of Justice, in relation to the complaint made against the Manly Wharf Hotel, East Esplanade, Manly has decided to impose three conditions and vary one condition on the liquor licence relating to the following:

1. Amplified music volume limits to be adhered to and checked by a qualified acoustic consultant on a yearly basis.
2. Outdoor speakers to cease operation at 10.00 pm.
3. The closure of doors when amplified music is being conducted after 9.00 pm.
4. No patrons on the hotel's eastern deck from 9.30 pm and a maximum patron capacity of 80 persons in this area.

The details of the conditions, including the dates in which they become effective, are outlined in Annexure 1.

## REASONS FOR DECISION

### Legislation

1. Section 79 of the Act permits a person to complain to the Secretary that the quiet and good order of the neighbourhood of the licensed premises is being unduly disturbed because of the manner in which the business of the licensed premises is conducted, or the behaviour of persons after they leave the licensed premises (including, but not limited to, the incidence of anti-social behaviour or alcohol-related violence).
2. For the purpose of section 79 of the Act, a person who has standing to make a complaint includes a person who satisfies the Secretary that their interests (financial or otherwise) are adversely affected by the disturbance detailed within the complaint.
3. Section 80 of the Act enables the Secretary to deal with a complaint by way of written submissions from the licensee and any other person the Secretary considers appropriate. After dealing with the complaint, section 81 of the Act provides that the Secretary may decide to impose, vary or revoke licence conditions, issue a warning, or take no action.
4. In exercising functions under the Act, the Secretary must have regard to the Objects set out in section 3 of the Act and must have regard to the matters set out in section 3(2) which are:
  - a) The need to minimise harm associated with the misuse and abuse of liquor;
  - b) The need to encourage responsible attitudes and practices towards the promotion, sale, supply, services and consumption of liquor; and,
  - c) The need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.

### The Complaint

5. On 10 October 2014, [REDACTED] the complainant of [REDACTED] lodged a disturbance complaint under section 79 of the Act concerning the hotel. The complainant alleged that the hotel is “a recurring offender when it comes to noise disturbance” and 90 percent of the problem is caused by the incessant bass beat emanating from the hotel’s sound systems. The complainant lodged the complaint as a resident authorised by two other residents.

6. Between 30 October 2014 and 30 April 2015, various submissions were lodged by all parties. A list of the material that is before the delegate of the Secretary is set out in Annexure 2. A summary of key information obtained during the submission period is set out in Annexure 3.

## **Considerations and findings**

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

7. The Act requires that in certain cases the Secretary have regard to three statutory considerations being: the order of occupancy between the licensed premises and the complainant; any changes in the hotel and the premises occupied by the complainant, including structural changes to the premises; and, any changes in the activities conducted on the licensed premises over a period of time.
8. *The order of occupancy between the licensed premises and the complainant* – The hotel has operated at its present site since 14 February 2003. This however does not predate the complainant who has resided at the location for 25 years. This fact is not in dispute and I consider that the order of occupancy consideration is in favour of the complainant.
9. *Any changes in the licensed premises and the premises occupied by the complainant, including structural changes to the premises* – There is no evidence of any structural changes to either the hotel or the complainants residence. The complainant has installed double glazing in an attempt to mitigate the disturbance.
10. *Any changes in the activities conducted on the licensed premises over a period of time* – The complainant asserts that in late 2013 new management took over at the hotel and since that time the hotel has experienced increased patronage and adopted DJ and other amplified entertainment.

## **Summary and conclusion**

11. I have considered submissions from the complainant, the licensee, NSW Police and the local council. I have had regard to the particular context in which the hotel operates (including statutory considerations mentioned above).
12. I am satisfied the material before me is sufficient to support a finding that the hotel, at times, has caused undue disturbance to the neighbourhood. I have balanced the submissions on behalf of the hotel, the submissions made on behalf of the complainant,

the material supplied by Manly Council and Northern Beaches Local Area Command, the acoustic reports and file notes of observations made by OLGR inspectors.

13. I acknowledge that sporadic disturbance continues to offend the complainant. An email dated 28 September 2015 indicates that disturbance in the form of medium level bass was observed by the residents on both Saturday 26<sup>th</sup> and Sunday 27<sup>th</sup> September 2015. I also note disturbance issues were reported as a result of the hotel's operations on Melbourne Cup Day 2015 and this disturbance occurred between 3.00 pm and around 5.00 or 6.00 pm.
14. It is expected that licensed premises will emit some level of noise while operating a business. Whether it is the local restaurant, community club or neighbouring hotel, some level of noise will be associated with the type of business that is operated under these licenses. This is especially so when these businesses are located in high-traffic tourist areas where larger groups of people are drawn to a particular location for an outing and socialisation. That is not to say that licensed premises can operate without due regard to their surrounding neighbourhoods and, as such, I consider the LA10 noise condition to be an acceptable industry standard and the preferred benchmark for assessing undue disturbances linked to licensed premises.
15. In this particular matter, the hotel was already bound by a requirement to comply with the LA10 noise criteria and, as a result, I requested the hotel to undertake independent acoustic testing to demonstrate whether or not the criteria was being complied with. I note the hotel is bound by three other conditions that address disturbance issues including security guards to be present to ensure patrons do not disturb the quiet and good order of the neighbourhood, patron limits on the balcony and prescribed times for the closure of that area.
16. The Acoustic Group undertook acoustic testing at the hotel on 19 December 2015 and reported that full compliance with the LA10 midnight criterion was established. However, I note The Acoustic Group undertook further testing on 8 February 2015 and reported that low level frequency emissions exceeded the permitted criteria from the closest residential balcony. The report for the testing on 8 February also raised a number of potential issues, being:
  - Whether limiters covered all areas of sound associated with the hotel and whether the limiters have been set at the correct levels.
  - A concern that some noise may be due to a breakout from ductwork on the roof of the hotel, which should be investigated.

- The lower ambient background noise level on Sunday nights compared to Friday and Saturday nights means the sound system needs to be adjusted to cater for Sunday night operations.
17. I note in response to the acoustic testing on 8 February the hotel engaged Slave Audio, who in conjunction with the acoustic consultant's advice, set the limiters to the appropriate levels to ensure compliance with the LA10 noise condition. An inspection of the roof area also confirmed that there was no noise leakage detected through the roof ducting.
18. In addition and on a voluntary basis in response to the report from The Acoustic Group, the hotel has applied additional controls, including:
- lowering the sound system volume by 3db on Sundays and 3db on the jetty at all times,
  - closing the eastern doors and the main door by 7:00 pm on Sunday for a trial period of six months
19. I note, overall, in response to the issues of disturbance, the hotel has taken positive steps by implementing a number of other controls to minimise any undue disturbance linked to the hotel. I note these controls include:
- the installation of a noise limiter for all speakers
  - removal of the bass speaker and subwoofer
  - a new sound system with speakers angled down and away from the residents
  - closure of doors on the eastern deck an hour earlier from 9:00 pm to 8:00 pm
  - relocation of the main entrance to eliminate noise escaping from the opening and shutting door
  - sound system set up to fade down volume levels after 10:00 pm and the sound system on the deck to mute at 10:00 pm
20. I consider the actions taken by the hotel to be proactive and of assistance in addressing the issues presented in the complaint.
21. In order to ensure appropriate safeguards are in place for the future operation of the hotel, I consider the imposition of a condition ensuring noise limiters remain set at an acceptable level (and to be checked by a qualified acoustic consultant on a yearly basis) and a condition requiring all hotel doors to be closed at 9.00 pm when entertainment is

provided and all outdoor speakers to cease operation at 10.00 pm, to be appropriate. The conditions do not place undue burden on the operation of the hotel and ensure regulatory certainty for future instances of disturbance.

22. As a further safeguard, I have decided to vary existing condition 210 on the licence so patrons are not permitted on the eastern deck from 9.30 pm. I note patrons will still be able to be located on other outdoor areas of the hotel at this time. This variation is taken from a recommendation from The Acoustic Group (contained in their advice of 20 October 2015) and ensures surrounding residents are not disturbed by patrons late into the trading period.
23. In respect to the commencement of the condition requiring noise limiters to be tested by a qualified acoustic consultant, I note that noise limiters are already in place so the hotel is able to immediately comply with this requirement. In addition, to avoid any confusion, I recognise that the hotel has recently completed acoustic testing, so the relevant condition requires the next compliance testing to be conducted in 2016.
24. Having regard to the actions taken by the hotel to address the issues of disturbance, I consider the conditions imposed to be appropriate safeguards to prevent issues of disturbance from occurring in the future.

Date of decision: 25 November 2015.



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

**Application for review:**

Should you be aggrieved by this decision, you may seek a review by the Independent Liquor & Gaming Authority by an application which must be lodged within 21 days of the date of this decision, that is, by no later than 16/12/2015. A \$500 application fee applies. Further information can be obtained from Authority Guideline 2 published at [www.ilga.nsw.gov.au](http://www.ilga.nsw.gov.au).

In accordance with section 36C of the Gaming and Liquor Administration Act 2007 this decision will be published on the Office of Liquor, Gaming & Racing website at [www.olgr.nsw.gov.au](http://www.olgr.nsw.gov.au).

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

**Manly Wharf Hotel – Manly (LIQH400114400)**

**Noise Limiter**

At any time amplified music is conducted at the hotel, all amplifiers or noise generating equipment must be under the control of a noise limiter/s. The noise limiter/s must be tested by a suitably qualified acoustic consultant by November of each calendar year to ensure the levels comply with the LA10 noise criteria.

The acoustic test must be recorded in a report prepared by the acoustic consultant within 4 weeks of the testing. A copy of the report must be maintained at the premises and made available for immediate inspection by inspectors, NSW Police or council officers.

**Date condition effective: 27 November 2015**

**Outdoor speakers**

No outdoor speakers to be used after 10:00 pm on any night of trade.

**Date condition effective: 27 November 2015**

**Closure of Doors**

When amplified music is playing inside the hotel, from 9:00pm all doors are to remain in a closed position and must only be opened to allow for the immediate ingress or egress of patrons and staff.

**Date condition effective: 27 November 2015**

**Condition 210 varied from:**

The number of patrons allowed in the balcony area is limited to eighty (80). All patrons are to be moved off the balcony area by 10:00pm on Thursday, Friday, Saturday and Sunday evenings. The balcony area is the external deck comprising an area commencing at a point seventeen (17) metres in an easterly direction from the eastern wall dividing the main bar and restaurant.

**to:**

The number of patrons permitted on the eastern deck is limited to 80. From 9:30 pm no patrons are to be permitted on this area.

**Date condition effective: 27 November 2015**

## Annexure 2

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

1. Section 79 Disturbance Complaint lodged by [REDACTED] on 10 October 2014.
2. Submission from Mr Andrew Wennerbom, Solicitor Director of Lands Legal Pty Ltd, acting for the hotel dated 4 November 2014.
3. Submission from Superintendent Dave Darcy, Northern Beaches Local Area Command dated 30 October 2015.
4. Submission from Ms Anita Ugarkovic, Manager Regulatory Services, Landuse and Sustainability Division, Manly Council dated 14 November 2014.
5. Submission from [REDACTED] dated 13 December 2014 responding to the submissions of the licensee, Police and council.
6. File notes from OLGR inspectors observations made on 21 December 2014, 24 January 2015, 15 March 2015 and 5 June 2015.
7. File note of conversation with Inspector D. Duke and Mr Steven Cooper dated 12 February 2015.
8. Email received from [REDACTED] dated 2 March 2015 outlining disturbance since Mr Steven Cooper's assessment.
9. Email from [REDACTED] dated 8 March 2015 reporting issues of disturbance.
10. Letter from Mr Andrew Wennerbom dated 1 April 2015 including undertakings implemented by the hotel since the acoustic testing of 8 February 2015.
11. Email from [REDACTED] outlining noise disturbance dated 6 April 2015.
12. Email from [REDACTED] dated 30 April 2015 providing comment on the hotel's final submission and acoustic reports.
13. Submission from Mr Andrew Wennerbom including acoustic report prepared by Mr Steven Cooper from the Acoustic Group dated 15 April 2015.
14. Email from [REDACTED] dated 22 July 2015, 28 September 2015, 5 November 2015 raising issues of disturbance.
15. File note from meeting with OLGR inspectors and Mr Justin Tynan, Licensee at Manly Wharf Hotel dated 1 October 2015.
16. Acoustic compliance report prepared by Mr Steven Cooper dated 20 October 2015.



**Summary of submissions and OLGR operations:**

**Submission from Mr Andrew Wennerbom, Lands Legal on behalf of the hotel, dated 4 November 2014**

1. A submission was received from Mr Andrew Wennerbom, Solicitor Director of Lands Legal Pty Ltd in response to the complaint. The submission sought a 30 day extension to allow sufficient time to undertake acoustic testing and provide a detailed response to the complaint. In the interim, the following information was provided:
  - The licensee met with residents and NSW Police on 13 February 2014 and advised that the hotel had sourced quotes for a new sound system to ensure compliance with the LA10 noise criteria.
  - A temporary stand-alone system was in place until a new system was installed and it was established that this may have caused some noise problems as it had bass speakers and the speakers were positioned at window height. It was agreed at the meeting that the bass speakers would be turned off until the quote for the new system was approved.
  - A few months later the new system was installed (March 2014) and residents indicated the noise seemed much better.
  - At a later date, residents sent an email to the licensee raising issues with the level of disturbance and a further meeting was held where the licensee suggested trialling the closing of the main doors and moving the entrance to the southern facing entrance. He also agreed to send management to an affected residence however on 23 May the manager was told not to attend as there are no issues and it must have to do with “atmospheric conditions” on the night.
  - After two months of not hearing from the residents, the licensee emailed them to see if it was ok and within a week he received return emails. During those two months the hotel hosted the biggest international DJ with a sell-out crowd and no issues were raised by residents.
  - Police regularly visit the hotel on weekends and have not raised any issues with noise disturbance.
  - The hotel has obtained approval to build an awning on the eastern deck so it can trade in that area until midnight (with plastic blinds to close at 10pm). There is also a development consent in place to build two restaurants upstairs of the hotel. The hotel is concerned that there may be a hidden agenda from the residents to outline that noise is already excessive in the wharf precinct and the hotel is the scapegoat.
  
2. The hotel advises that since learning of the noise issues, the licensee has voluntarily undertaken the following:
  - Installation of a new sound system angled down away from residents.
  - Installation of a limiter set at LA10 noise criteria.
  - Removal of the bass speaker.
  - Closing the doors to the Eastern Deck and hour earlier than required.
  - Closing the main door and moving the entrance to the most northern entrance on busy nights to eliminate the door opening and closing.

- Engaged with residents in person and constantly via email.
  - Engaged with council and Police.
  - Set the sound system to fade down volume levels after 10:00pm until close.
  - Have had the sound system set up to mute at 10:00pm on deck areas.
3. The hotel concedes to one of the four noise complaints made by the complainant is legitimate. This incident occurred on 29 September 2014 and relates to a trumpet player in a band playing at a private function at the hotel. Police contacted the hotel and the matter was dealt with swiftly.

**Submission from Superintendent Dave Darcy, Northern Beaches Local Area Command dated 30 October 2015**

4. In a submission received by this Office, Superintendent Dave Darcy from Northern Beaches Local Area Command identified that any determination as to the compromise of the amenity of a community by noise is very challenging for Police as the Manly entertainment precinct has multiple sources of noise.
5. The Police have very little evidence that can be presented to support the section 79 complaint, however believe it would be wrong to assume that this is a result of no disturbance to the residents of Manly Cove and surrounds. As such, Police believe that the assessment of noise disturbance would be best left to those with technical skill. In the absence of this, Police agree with the next most efficacious way forward is to have frequency/sound control devices fitted to amplifiers in the hotel.
6. Police have confirmed that on several occasions officers from Northern Beaches Licensing have conducted observations with regard to noise emanating from the hotel. In these instances Police have deemed the noise inaudible or observed people to be louder than music at the hotel. Overall, in the 12 months prior to the Police submission no noise complaints received by Police have been substantiated and it is the view of Police that the hotel has taken reasonable steps to address the noise complaints at considerable cost. It is in the opinion of Police that the hotel has considered the quiet and good order of their environment to a degree of satisfaction acceptable to Northern Beaches Local Area Command.

**Submission from Ms Anita Ugarkovic, Manager Regulatory Services, Landuse & Sustainability Division, Manly Council, dated 14 November 2014**

7. In a submission, Ms Anita Ugarkovic, Manager Regulatory Services, Landuse & Sustainability Division, Manly Council, conveyed that noise complaints were initially received by council in January 2014 and several other complaints have been received since, including noise diaries from four residents. Council confirmed that complaints have been received from residents, but not to the magnitude identified in the initial complaint to this Office.
8. The submission acknowledges that council officers conducted late-evening inspections in Manly CBD area to monitor noise disturbance. At the time of the submission, council had been unable to obtain sufficient evidence to establish whether an offence had occurred at the hotel. Based on the information received by the licensee, council is now of the view that noise limiters have been installed to control amplified levels, however did not have access to information to determine compliance with noise related conditions such as the LA10.
9. A total of eight development consents and Land and Environment court approvals have been issued in relation to the hotel, with conditions in relation to the hours of

operation for the use of outdoors areas, patron number restrictions, noise from plant and equipment, and waste collection.

### **Complainant's response to licensee, Police and council submissions, dated 13 December 2014**

10. The complainant provided a response (dated 13 December 2014) to the submissions from the licensee, Police and council submissions contending the following:

- The licensee's response is characteristic of his dismissive attitude towards residents' concerns and rather than addressing the central issue his submission refers to "hidden agendas" and "crusades".
- Residents' stopped complaining directly to the licensee as it did not change the situation. The responses received from the licensee have generally been dismissive, or he has blamed other venues, the weather, people partying on the beach etc.
- The licensee has played games with residents which can be shown when he committed to sending a manager to an affected resident on 23 May 2014. The resident told the manager not to bother coming on that evening as the hotel deliberately kept the level of noise to a low level.
- Since the complaint was lodged, residents have been disturbed by bass noise from the hotel on several occasions (mostly weekends). The licensee was advised of the complaints on 19 October and 26 October 2014 however, the concerns were dismissed in email correspondence.
- Contrary to the licensee's contentions that there were no noise complaints for two months from 23 May 2014, while the licensee contends there were only 2 complaints in relation to the incident of 8 June 2014, the Manly Wharf Alliance actually received 10 complaints and forwarded them to the appropriate authorities.
- As a result of the 8 June 2014 incident, the licensee was directed by a senior council executive officer to reset his bass levels which explains why the hotel was comparatively quite throughout the rest of June, July and parts of August.
- The main point is that "...the quiet weeks over winter proves that the hotel can play music at a level that residents are happy with" and "In the end, it needs to be taken into account that this noise problem started at the same time as Justin Tynan took over as Licensee...".
- "It is our understanding that Mr Tynan was installed as Manager to transform the hotel into a nightclub-type venue. And that is exactly what is happening: a bass-thumping DJ scene plonked in the middle of a residential area in a natural amphitheatre".
- Due to a number of reasons, residents have lost faith in reporting matters to Police or council.

### **Acoustic report prepared by The Acoustic Group – 19 December 2014**

11. On Friday 19 December 2014 The Acoustic Group conducted noise measurements in various locations of the residential area as well as internal and external areas of the hotel with no prior advice given to the hotel. The acoustic report was submitted to this Office on 15 April 2015 as part of the hotel's final submission and advised that overall the acoustic assessment found full compliance with the OLGCR before midnight criterion.

## **Second acoustic report prepared by The Acoustic Group – 8 February 2015**

12. On 8 February 2015 a subsequent acoustic assessment was conducted by The Acoustic Group. The report was supplied to this Office on 15 April 2015 and reported the following;
  - Whilst achieving compliance at the residential balconies, the residential boundary which is closest to the licensed premises revealed low frequency emission exceeded the permitted criteria.
  - Comparison of the measurement results from previous testing reveals that ambient background level on a Sunday night is lower than that on a Friday or Saturday night and therefore adjustments are required to the sound system to cater for Sunday night operations.
  - There may be potentially some noise breakout from the ductwork on the roof of the licensed premises and is a matter that needs to be investigated.
  - Locations tested within the complainant's residence found that measurable increases above the background level were detected.
  - Mr Cooper had no information to indicate the presence of limiters covering all areas of sound associated with the hotel or that those limiters have been set for the purpose of establishing compliance with OLGR criteria.

## **Submission by Mr Andrew Wennerbom in response to the acoustic reports, dated 15 April 2015**

13. On 15 April 2015, Mr Andrew Wennerbom submitted the two acoustic reports to this Office and a list of initiatives that had been implemented by the hotel to resolve issues identified in the second acoustic report. This was prepared in conjunction with a report by Slave Audio. Below are the proposed initiatives:
  - Noise limiters are in place and operate in respect to LA10 noise criteria.
  - The sound system operated by the hotel will be lowered by 3db on Sundays (excluding Sundays which are followed by a public holiday Monday)
  - The outdoor music noise will be lowered by 3db at all times with a limiter put in place.
  - The eastern deck doors and the main door will be closed at 7:00pm on Sunday evenings for a trial period of six months.
  - The roof area has been inspected and no noise leakage has been detected.
  - The acoustic consultant confirmed there is no resonant frequency at or around 63Hz as the hotel has no subwoofer in place that carries that frequency. However the sub has been removed in any event.
  - DJ's do not have the ability to manipulate the sound level and are controlled by the limiters.
  - Slave audio are preparing a new block plan showing the above changes and this will be in place within 21 days.

## **Response from complainant on acoustic report and hotel submission dated 30 April 2015**

14. The complainant reiterated that the problem for residents is the bass noise and requested that it be made lower and to an acceptable level. The complainant advised that over the last few weeks the noise levels have been generally reasonable, however had concerns that the hotel would revert to unacceptable levels based on their operating history. The complainant requested a permanent

solution to ensure noise levels are controlled and for OLGR inspectors to act should the situation change.

**File note from planned meeting with Mr Justin Tynan and OLGR Inspectors, 1 October 2015**

15. On Thursday 1 October 2015 OLGR Inspector's attended a meeting with the licensee where the existing voluntary controls and noise reducing strategies were discussed. The licensee confirmed that both sets of measures outlined in the original submission dated 4 November 2015 and second submission dated 15 April 2015 had continued to apply to everyday trade. Inspectors conducted an inspection of the hotel to confirm the existence of the internal noise limiter as well as the disconnection of the external, eastern side speakers.

**Acoustic Compliance report prepared by Mr Steven Cooper, The Acoustic Group, dated 20 October 2015**

16. In response to the meeting between OLGR inspectors and the licensee it was requested that clarification be sought from Mr Cooper confirming that if the hotel were to host amplified music at the permitted maximum level with the doors open would this comply with the LA10 criteria. Mr Cooper was able to clarify that he had no issues with the eastern deck or the doors open at the southern end of the hotel. So that the eastern deck does not create an acoustic issue after 10pm he recommended that the eastern deck be closed from 9:30 pm, and that the practice should continue.

**Further reports of disturbance from the hotel (September 2015 and Melbourne Cup)**

17. Further reports of disturbance were reported by the complainant on 28 September 2015 concerning medium level bass noise and other residents had reported (to the complainant) re-emergence of low frequency bass noise, particularly on Saturdays. Another disturbance report was made the day after Melbourne Cup complaining of bass noise affecting residents.

**Observations from OLGR operations**

18. Between 6:20 pm and 8:00 pm on **21 December 2014** OLGR inspectors attended the hotel and the complainant's residence and made the following observations:
  - Considerable noise was emanating from a speedboat operating close to the shore which had three to four speakers erected on its roof with music which could be heard in the surrounding areas.
  - Multiple patrons had congregated in the public carpark near the shore and were socialising.
  - Approximately 800 patrons were situated inside the hotel and a further 500 patrons located on the external decks.
  - Noise could be generally heard from the complainant's living room which was patron chatter and the speakers of the speedboat.
  - Officers were unable to differentiate the sounds from the hotel or its patrons versus the background noise from people congregating in the public wharf areas.
  - Steady bass could be heard from the complainant's residence but this was very faint.
19. At 11:05 pm on **Sunday 24 January 2015** OLGR inspectors attended the complainant's residence and the hotel and made the following observations:

- On arrival, the hotel was playing amplified music which could be heard from outside of the hotel, however was not deemed excessive by inspectors.
  - Inspectors met the complainant at the foreshore and proceeded up to the affected residence. At this point a 'slight' bass noise could be heard from the hotel.
  - On entry to the complainant's residence the bass noise had virtually ceased. This was acknowledged by the complainant.
  - Predominate noise at this time was coming from persons congregating on the foreshore drinking, swimming and fishing and not from the hotel.
20. At 10:20 pm on **Sunday 15 March 2015** OLGR inspectors attended the hotel and made the following observations:
- Inspectors contacted an affected resident who advised that the current noise was not significant, however alleged that heavy bass coming from the hotel was audible at 8:00pm.
  - Inspectors engaged with the hotel's manager who advised that due to the rainy weather the bar had closed at 10:00 pm and that patronage was at a low of 250 (this would usually be 350 patrons)
  - The outside area was closed and most patrons were inside the hotel.
21. Between 8:10 pm - 8:55 pm and 10:00 pm - 10:25 pm on **Friday 5 June 2015** OLGR inspectors attended both the boundary of the complainant's residence and the hotel. The following observations were recorded:
- At the boundary of the apartment the only audible noise that could be heard was wind, ocean and vehicles including a city bound ferry.
  - During the initial external observation of the hotel all the doors and windows were closed. Very slight music and patron chatter/noise could be heard.
  - During the observations made later in the night inspectors acknowledged that slight music and patron chatter/noise was audible. It should be noted that a separate licensed premises, geographically closer to the complainant's residence was louder than the subject hotel.
  - The weather was cool, overcast and began to rain which contributed to patrons not utilising the hotel's outdoor facilities.