Independent Liquor & Gaming Authority

NSW GOVERNMENT

Our Ref: A14/0004107

Ms Sharon Hodges
Secretary
Bundeena Bowling & Sports Club Co-operative Limited
49-53 Liverpool Street
BUNDEENA NSW 2230

Dear Ms Hodges

Application for Review under section 36A of the *Gaming and Liquor Administration Act* 2007
Bundeena Bowling & Sports Club Co-operative Limited, Bundeena

The Independent Liquor and Gaming Authority (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 on 29 July 2015 (Review Application) by you on behalf of Bundeena Bowling & Sports Club Co-operative Limited (Club).

The Review Application seeks the variation of a decision dated 3 July 2015 (Reviewable Decision) by Mr Anthony Keon in his capacity as a delegate of the Secretary of the NSW Department of Justice. In the Reviewable Decision, Mr Keon decided under section 81 of the *Liquor Act 2007* to impose four new conditions on the Club's liquor licence. That decision was made in response to a disturbance complaint made under section 79 of the *Liquor Act 2007* by Mr Bill Hollands, a close neighbour of the Club premises, authorised by other neighbouring residents.

At its meeting of 2 October 2015, the Authority considered the preliminary issue as to whether the Authority has jurisdiction to consider the merits of the Review Application. It decided that the Review Application had not been made within the statutory 21 day period required by clause 5 of the Gaming and Liquor Administration Regulation 2008, and for this reason the Review Application is invalid and the Authority does not have the power to accept the Review Application on this basis.

Informal advice of the Authority's decision was provided by the Authority's General Counsel by email on 13 October 2015. This letter provides the Authority's formal advice of its decision.

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.

Please contact the Authority's General Counsel via bryce.wilson@ilga.nsw.gov.au if you have any advice or enquiries about this letter.

Yours faithfully

Micheil Brodie 22 OCT 2015
Chief Executive

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STATEMENT OF REASONS

INTRODUCTION

1. I refer to a purported application for review dated and filed with the Authority on 29 July 2015 (Review Application). The Review Application concerns a decision dated 3 July 2015 (Reviewable Decision) made by Mr Anthony Keon in his capacity as a delegate (Delegate) of the Secretary of the NSW Department of Justice (Secretary) to impose four (4) new conditions upon the liquor licence of the Bundeena Bowling & Sports Club Co-operative Limited (Club).

2. The Reviewable Decision was made under section 81 of the *Liquor Act* 2007 (Act) in response to a disturbance complaint made under section 79 of the Act by Mr Bill Hollands, a close neighbour of the Club premises.

3. The Review Application was filed via email to the Authority's general email address on 29 July 2015 by Ms Sharon Maree Hodges (Review Applicant) in her capacity as the Club's Secretary Manager.

4. At its meeting of 2 October 2015, the Authority considered the preliminary issue as to whether the Authority has jurisdiction to consider the merits of the Review Application under section 36A of the *Gaming and Liquor Administration Act* 2007 (GALA Act).

5. This issue arose by reason that the Review Application was communicated to the Authority outside the statutory 21 day period required by clause 5 of the *Gaming and Liquor Administration Regulation 2008* (Regulation).

6. The Authority is satisfied that the Review Application was made out of time, and that the Review Application is invalid by reason of this non-compliance with the Regulation. The Authority is satisfied that it does not have the power to consider the merits of the Review Application.

MATERIAL BEFORE THE AUTHORITY

The Reviewable Decision

7. The Reviewable Decision is signed by Mr Anthony Keon and dated 3 July 2015. It imposes four (4) new conditions on the Club's liquor licence pursuant to section 81 of the Act, to commence effect on 24 July 2015, as follows:

1. *<u>LA10 Noise Condition</u>*

The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz – 8kHz inclusive) by more than 5dB between 07:00am and 12:00 midnight at the boundary of any affected residence.*

The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz – 8kHz inclusive) between 12:00 midnight and 07:00am at the boundary of any affected residence.*

Notwithstanding compliance with the above, the noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 12:00 midnight and 07:00am.

2. *Noise Limiter Condition*

The club must install a noise limiter to control all amplified entertainment in the licensed premises. The noise limiter must be calibrated by a qualified acoustic consultant.

(a) All amplifiers or noise generating equipment must be under the control of a noise limiter;

(b) The noise limiter must switch off power to all audio amplifier equipment if the sound levels at any point in the internal and external areas of the club exceed the levels recommended by the acoustic consultant;

(c) The noise limiter must be contained within a locked container or secure area and only accessible by club management.

3. *No music or PA to be operated in the outdoor beer garden Condition*

From 6:00pm on any trading day the playing of amplified music or the public address system must not be operated in the outdoor beer garden area.

4. *Closure of beer garden and outdoor areas Condition*

On any trading day, the club must ensure that no patron is in the outdoor areas located at the front of the Club (Liverpool Street) after 9:30pm.

For the purposes of conditions #3 and #4 the Director Compliance & Enforcement, Office of Liquor, Gaming & Racing as a delegate of the Secretary may consider varying or revoking the conditions on application by the club on the basis that the club has completed the noise amelioration work recommended in the report of Rodney Stevens Acoustics Pty Limited dated 18 March 2015.

Further, upon completion of the acoustic amelioration work the club will undertake acoustic compliance testing and within 21 days of such testing will provide OLGR with an acoustic report which evidences that the club's external outdoor beer garden and PA amplification system complies with the LA10 noise criteria.

8. Briefly, the Reviewable Decision states that these conditions were imposed upon the Club's licence in response to a disturbance complaint dated 22 July 2014 (Complaint) made under section 79 of the Act by Mr Bill Hollands, a close neighbour of the Club premises (Complainant). The Delegate was satisfied that the Complainant was a resident of the neighbourhood of the Club and that the Complaint was duly authorised, by four (4) other residents of the neighbourhood.

9. The Complainant alleged that the operation of the Club as well as the anti-social behaviour of patrons leaving the Premises were giving rise to undue disturbance to the quiet and good order of the neighbourhood. Specifically (as summarised by the Delegate), the Complaint alleged "peak undue disturbance on a weekly basis but particularly on Thursday, Friday, Saturday and Sunday nights from amplified music noise and from patrons using the outside entertainment area and car park area, as well as anti-social behaviour in the near vicinity of the licensed premises".

10. In the Reviewable Decision the Delegate notes that the material before him comprised the Complaint material; various rounds of written submissions from the Club, NSW Police (attached to the Sutherland Local Area Command Licensing Unit) and Sutherland Shire Council; observations and minutes of meetings recorded by officers from the Office of Liquor Gaming and Racing (**OLGR**) and two acoustic assessment reports prepared by Rodney Stevens Acoustics on behalf of the Club.

11. Without purporting to repeat the Reviewable Decision and all the material before the Delegate, the Delegate was satisfied that, on balance, the material before him provided a proper basis to make a finding that the Club, at times, causes undue disturbance to the neighbourhood. The Delegate found that the observations contained in file notes

prepared by OLGR officers and NSW Police COPS reports "collectively demonstrate that, to varying degrees, the activity of social activities and functions results in amplified music and patron noise emanating from the club premises which disturbs the neighbourhood".

12. The Delegate referred to the acoustic assessment report from Rodney Stevens Acoustics dated 18 March 2015 that recommended a number of noise abatement measures and states that, notwithstanding the intervention of NSW Police and OLGR in response to the issues raised in the Complaint, the Complainant has continued to notify NSW Police and OLGR of "ongoing issues of disturbance from the club's activities, and in particular noise from patrons congregating in the outdoor beer garden area, and when leaving the club after midnight".

13. The Delegate found that Conditions 1 and 2 (respectively requiring compliance with the "LA10" noise limitation and that the Club install a noise limiter for amplified entertainment) are "appropriate safeguards" for preventing undue disturbance from the Club. The Delegate notes that the installation of a noise limiter is recommended in the acoustic assessment report and that the LA10 noise condition is an "acceptable industry standard and the preferred benchmark of OLGR for assessing undue disturbance".

14. The Delegate found that Conditions 3 and 4 (prohibiting the playing of amplified music or use of the PA system in the beer garden from 6:00pm and requiring closure of the beer garden from 9:30pm) are "appropriate" measures to be imposed upon the licence in order to "prevent ongoing issues of disturbance" in relation to music and patron noise and to ensure that the quiet and good order of the neighbourhood is preserved. The Delegate notes that the restriction of the use of the PA system in the beer garden from 6:00pm was recommended in the acoustic report.

15. The Delegate determined that the four new conditions imposed by the Reviewable Decision commence effect 21 days from the date of the Reviewable Decision – that is, 24 July 2015 – in order to provide sufficient time to ensure business readiness and compliance with the new requirements.

16. The Delegate notes that should the Club complete the noise amelioration works (an apparent reference to works recommended by the acoustic consultant), and be able to demonstrate the Club's operation in compliance with the LA10 noise restriction through the provision of a further acoustic report from a qualified consultant, then OLGR would be open to reviewing the restriction imposed by Condition 4 relating to the use of the outdoor beer garden after 9:30pm.

Review Application Material

17. Cover email sent by Sharon Hodges from clubbundee@bigpond.com to disturbance@olgr.nsw.gov.au on 23 July 2015 at 7:09pm. This brief email simply states:

Hi attached is our letter requesting review of conditions. This letter has been express posted with the required cheque
Regards
Sharon Hodges.

18. Submission letter from the Review Applicant in support of the Review Application (undated). The full text of this brief submission attached to the email of 23 July 2015 and addressed to Mr Anthony Keon states as follows:

The Board & Management of the Bundeena Bowling & Sports Club, requests an extension of time for purchase and installation of the noise limiter controller, as we are still waiting a response from business contacted for quotes and indication of possible supply & installation dates.

The club has progressed with obtaining quotes and sought funding for a solid roof and sides structure to replace the existing porous, shade cloth cover on the garden entertainment area, it is hoped that this will provide a permanent solution to noise. Expected completion of this is anticipated for prior to Christmas 2015, should funding be successful.

The Club has instituted a policy in the interim to have all entertainment conducted within the club house to prevent noise from reaching the affected neighbours.

The club will comply with Condition 3 as per your letter dated 3/7/2015

The club is not in a position to comply with condition 4, 'closing the garden at 9.30 pm', as the club does not have an alternative smoking area available. The club has been in dialogue with our Landlord Southerland [sic] Shire Council, with regard to possible building alterations to solve this issue.

The club is aware of approaching Legislation and Regulation changes in regard to smoking laws in public spaces, and is requesting relief on condition 4 in the interim. The club would be able to comply with closure of the garden at 10:30pm, without causing impossible operational issues.

The Bundeena Bowling Club is struggling financially and discontinuing our music offering would cause the club to suffer permanent financial hardship & closure, leaving Bundeena without any licensed venue.

The Club has already spent a considerable sum on various noise attenuation projects:

1. *We have built an enclosed area (walls) around the Poker Machine area, cutting noise substantially and are in the process of applying acoustic tiles to the ceiling.*
2. *Moving Thursdays [sic] Open Mike into our Restaurant area, has virtually eliminated noise at our boundary. I believe there have been no complains [sic] since this change.*
3. *Changes in operating hours and closer supervision of the Council Car Park (used by our patrons) have also limited past problems.*

Finally, the Board is happy to negotiate an outcome that will satisfy OLGR and the Club, without ruining us financially."

19. Cover submission from Ms Sharon Maree Hodges, dated 28 July 2015. The full text of this brief 1-page communication, sent to info@ilga.nsw.gov.au on 28 July 2015 states:

To the Director General of trade & Investment [sic]

Attached is the application for review

I email [sic] the review letter to disturbance at OLGR on Thursday the 23.7.2015 not realising it was the wrong place.

lam [sic] asking that you please take this into consideration and still review our application.

I have email [sic] the trace so you can see my mistake I do apologies [sic] & do hope you will take this into account.

20. The Authority notes that the date stamps on this submission letter record that the Review Application was date stamped as received by the OLGR Customer Service Unit on 29 July 2015 and then received by the OLGR Compliance Branch on 6 August 2015.

21. It is apparent that the email that attached this letter was sent on 28 July 2015. So the Authority is satisfied that this communication, addressed to the Department of Trade and Investment, was first received electronically *by OLGR* at the time of communication of the email.

22. Review Application Form signed by Ms Sharon Maree Hodges, dated 28 July 2015 and attaching a copy of the Reviewable Decision. This is the prescribed form approved by the Authority for the making of applications for review under section 36A of the GALA Act. The Form does not specify whether the Review Applicant seeks a variation or revocation of the Reviewable Decision. On the Form, the Review Applicant simply states that "the Club is not in a financial position to undertake this work. We have applied for a grant". This is an apparent reference to the noise amelioration works noted by the Delegate.

23. The Review Application Form also indicates that the Review Applicant requests a stay of the Delegate's decision while the Authority is considering the Review Application "due to the financial position of the Club".

OLGR File Note

24. The full text of this file note, prepared by Ms Amy Haar, OLGR Compliance Officer, dated 28 July 2015, Reference Number A14/004107 (OLGR File Note) and provided to the Authority states as follows:

> *At approximately 10:40am on 28 July 2015 I received a call from Sharon Hodges, Secretary Manager of the Bundeena Bowling & Sports Club, as a result of my telephone message earlier in the morning.*
>
> *I advised Ms Hodges that we had received her email of 7:09pm 23 July 2015 and asked where the original had been sent by post. Ms Hodges replied that she was unsure where her staff had sent it. I then went on to explain that appeals have to be submitted with the Independent Liquor and Gaming Authority and in accordance with the Authority guideline 2, as identified in the decision document.*
>
> *I then assisted Ms Hodges to download the guidelines from the ILGA website and advised that the guidelines must be followed to lodge an appeal.*
>
> *Ms Hodges then sought my advice as to whether or not the Authority would accept her application and how she would prove that she had originally sent the letter prior to the due date expiry on 24 July 2015. I suggested that she forward her original email when supplying the Authority with the required form, etc. I conveyed that the decision was entirely the Authorities [sic] if they chose to accept the appeal request and stated that I could not advise whether this would happen.*
>
> *Ms Hodges conveyed that she would submit the review application and I concluded the call.*

25. Attached to the OLGR File Note is a copy of the initial email communication from the Review Applicant sent to Disturbance OLGR at 7:09pm on 23 July 2015 which attached the 1½-page letter addressed to Mr Anthony Keon set out at paragraph 18 above. The Authority notes that this copy of the communication of 23 July 2015 from the Review Applicant to OLGR does not include the Review Application form.

TIMELINE FOR REVIEWABLE DECISION AND REVIEW APPLICATION COMMUNICATIONS

26. On the basis of the material before the Authority, the timeline for communications made between the Review Applicant, OLGR and the Authority is as follows:

    (a) Friday 3 July 2015: Reviewable Decision was made on this date. Notably, the at the conclusion of the Reviewable Decision the Delegate warned the Club of the 21 day application for review period and referred the Club to *Authority Guideline 2*. The final paragraph of the Reviewable Decision states as follows:

    > *Should you be aggrieved by this decision, you may seek a review by the Independent Liquor and Gaming Authority by an application which must be lodged within 21 days of the date of this decision, that is, by no later than 24 July 2015. A $500 application fee*

applies. Further information can be obtained from Authority Guideline No 2 published at www.ilga.nsw.gov.au.

(b) Further, the covering letter from OLGR to Ms Hodges dated 3 July 2015 attaching the Reviewable Decision states:

Should you wish to seek a review of this decision, an application can be made to the Independent Liquor & Gaming Authority by written application within 21 days of the date of this decision. Further information can be obtained by the Authority's Guideline No. 02 published at www.ilga.nsw.gov.au.

(c) Thursday 23 July 2015: communication from the Club via brief covering email to the disturbance section of OLGR via disturbance@olgr.nsw.gov.au, attaching a 1½-page "letter requesting review of conditions" addressed to Mr Anthony Keon

(d) Tuesday 28 July 2015: Review Application first communicated to the Authority's general email address via info@ilga.nsw.gov.au, comprising a brief covering letter addressed to the "Director General of Trade & Investment", a copy of the letter from the Club sent on 23 July 2015, and the Review Application form.

(e) Wednesday 29 July 2015: Review Application Form, letter from the Club dated 28 July 2015 and a copy of the letter from the Club originally sent to OLGR on 23 July 2015 are stamped as received by the Authority's Customer Service Unit on this date.

Consultation with the Club on Jurisdictional Issue

27. On 21 September 2015, the Authority's General Counsel emailed the Review Applicant, advising that the Review Application appears to have been made out of time and inviting any further comment or submissions, confined to this jurisdictional question only, by 4:00pm on Wednesday 23 September 2015. No submissions were made by the Club by that time or at any further stage.

LEGISLATION

28. Section 36A of the GALA Act contains provisions in relation to reviews by the Authority of certain decisions made by the Secretary and states as follows:

36A Review by Authority of certain decisions by Secretary under gaming and liquor legislation
(1) In this section:
***"reviewable decision"** means:*
(a) any of the following decisions of the Secretary under the Liquor Act 2007:
(i) a decision under section 54 to impose a condition on a licence or to vary or revoke any such condition,
(ii) a decision under section 54A to give a direction relating to the operation of a "sale on other premises" authorisation,
(iii) a decision under section 75 to give a direction relating to licensed premises,
(iv) a decision under section 81 in relation to a disturbance complaint,
(v) a decision under section 87 to make a late hour entry declaration,
(vi) a decision under section 90 to vary or revoke a late hour entry declaration,
(vii) a decision under section 101 to restrict or prohibit the sale or supply of undesirable liquor products,
(viia) a decision under section 102A to restrict or prohibit activities that encourage misuse or abuse of liquor,
(viii) a decision under section 102 to restrict or prohibit the undesirable promotion of liquor,
(viiia) a decision of the Secretary under section 116AA (4) or 116B (4) to designate licensed premises as a high risk venue,

(ix) a decision under section 136 to give a direction to contribute to the costs of promoting or giving effect to a local liquor accord,
(ixa) a decision under section 136E to impose a condition on a licence requiring a licensee to participate in a precinct or community event liquor accord,
(x) a decision under section 136F to give a direction to contribute to the costs associated with the operation of a precinct liquor accord, or
(b) a decision of the Secretary to give a direction under section 44A (Location of gaming machines in venues) of the Gaming Machines Act 2001, or
(c) a decision of the Secretary to give a direction under section 41O (Requirements relating to loan and management contracts) of the Registered Clubs Act 1976.

(2) Any person who is aggrieved by a reviewable decision may, in accordance with the regulations and on payment of such fee as may be prescribed by the regulations, apply in writing to the Authority for a review of the decision.
(3) An application for such a review does not operate to stay the reviewable decision of the Secretary unless the Authority otherwise directs.
(4) In determining an application for review under this section, the Authority may:
(a) confirm the decision the subject of the application, or
(b) vary the decision, or
(c) revoke the decision.
(5) However, in the case of a review of a decision of the Secretary under section 136F of the Liquor Act 2007, the Authority may vary or revoke the Secretary's decision only if the Authority is satisfied that the amount of the contribution directed to be paid was not determined in accordance with the terms of the relevant precinct liquor accord (within the meaning of that Act).
(6) The Secretary is to give effect to any decision of the Authority under this section to vary or revoke the decision the subject of the application for review.
(7) The Authority may not make any decision in relation to an application for review under this section unless a member of the Authority who is or has been a Judge, or has been an Australian lawyer for at least 7 years, is present at the meeting of the Authority or the committee of the Authority at which the decision of the Authority is made.

29. Clause 5 of the Regulation contains provisions in relation to applications for review by the Authority of the Secretary's decisions and states as follows:

5 Application for review by Authority of Secretary's decisions
(1) An application to the Authority under section 36A (2) of the Act for a review of a decision of the Secretary must:
(a) be made within 21 days of the day on which the decision was made, and
(b) specify the grounds on which the application for review is made, and
(c) be accompanied by a copy of the decision of the Secretary (if the decision was provided in writing to the person making the application), and
(d) be accompanied by a fee of $500.
(2) The applicant for review must provide the Secretary with a copy of the application as soon as practicable after making the application to the Authority.

DECISION

30. The Authority considered this matter at its ordinary meeting on 2 October 2015.

31. The Authority is satisfied that the purported application for review filed by the Club with the Authority on 28 July 2015 was made out of time.

32. The Authority is satisfied, on the basis of the handwritten date recorded by the Delegate on the face of the Reviewable Decision letter that the Reviewable Decision was made on 3 July 2015.

33. The Reviewable Decision letter advised the Club of its review rights and noted the 21 day period for the making of an application for review to the Authority. The Reviewable Decision letter referred the Club to Authority Guideline 2 for information as to how to make an application for review.

34. The Authority is satisfied, on the basis of the communication made by the Club to OLGR via email on 23 July 2015 and the OLGR File Note, that this first communication was not an application for review made to the Authority.

35. The Authority is a statutory agency that is independent from the Department of Justice and the OLGR. Clause 5 of the Regulation states that a review application must be made to the Authority within 21 days of the date upon which a review application was made.

36. The 23 July 2015 communication was sent via email to an OLGR address, not an Authority address. That communication is not addressed to the Authority and does not contain a Review Application form. That communication does not state that it is an application for review made to the Authority. It is a communication with OLGR.

37. In all the circumstances of this matter the Authority is not satisfied that the Review Applicant's communication dated 23 July 2015 is an application for review made to the Authority.

38. The Authority notes that clause 5(1)(a) of the Regulation states that the 21 day application for review period runs from "the day on which the decision was made", not the day on which the decision was "served" or otherwise notified. In any event there does not appear to have been any delay by OLGR in notifying the Reviewable Decision.

39. The Authority is satisfied that no application for review was communicated to the Authority until the purported Review Application was sent by the Club via email to the Authority on 28 July 2015. However, this communication was received by the Authority outside the relevant 21 day period.

40. Failure by an applicant to observe a legislative requirement does not automatically have the result of depriving an administrative decision maker of jurisdiction to consider the application in question. As discussed by the High Court of Australia in *Project Blue Sky v Australian Broadcasting Authority* (1998) 194 CLR 355 at 390 (per McHugh, Gummow, Kirby and Hayne JJ):

> *An act done in breach of a condition regulating the exercise of a statutory power is not necessarily invalid and of no effect. Whether it is depends upon whether there can be discerned a legislative purpose to invalidate any act that fails to comply with the condition. The existence of the purpose is ascertained by reference to the language of the statute, its subject matter and objects, and the consequences for the parties of holding void every act done in breach of the condition. Unfortunately, a finding of purpose or no purpose in this context often reflects a contestable judgment… There is no decisive rule that can be applied; there is not even a ranking of relevant factors or categories to give guidance on the issue."*

41. At paragraph 97 of that judgment their Honours observed that the courts "have always accepted that it is unlikely that it was a purpose of the legislation that an act done in breach of a statutory provision should be invalid if public inconvenience would be a result of the invalidity of the act".

42. The issue for the Authority is not simply whether Parliament intended that review applicants comply with the requirements of clause 5 of the Regulation, but whether Parliament also intended that the Authority should not have jurisdiction to entertain a non-compliant application for review.

43. The Authority is unaware of any superior Court authority interpreting the meaning or operation of section 36A of the GALA Act or clause 5 of the Regulation. While the matter is not beyond doubt, the Authority considers that the better view is that Parliament did

not intend for the Authority to have jurisdiction to entertain an application for review that is made outside the period prescribed by clause 5(1)(a) of the Regulation.

44. First, the legislature's use of mandatory language (an applicant "must" make their application within 21 days from the day on which a reviewable decision is made) is a significant textual indicator and entitled to be accorded substantial weight. Second, the requirements of clause 5(1) of the Regulation are stated to apply at the time of making an application, not to the course of the decision making process itself. Third, decisions of the kind that are deemed to be reviewable under section 36A(1) of the GALA Act are matters of some commercial importance to licensees, and the outcome may be of significant commercial value to them. Fourth, reviewable decisions are of considerable importance both to those making complaints about licensed premises, and licensing compliance officers within the NSW Police Force and OLGR (agencies that bear a significant responsibility for the enforcement of the GALA Act). It is in the public interest that those parties have the benefit of regulatory certainty. Fifth, the imposition of a 21 day time limit, without any express discretion conferred upon the Authority to extend that time, may be seen as voicing a legislative policy to the effect that applications for review of decisions of the Secretary ought to be resolved in an expeditious manner.

45. Furthermore, the inconvenience that would flow from invalidating a late review application would primarily flow to the interests of the person aggrieved by the decision (the Club), to the extent that they lose an opportunity for the Authority to review a decision. The Authority does not consider that there are broader issues of *public* inconvenience that would warrant discerning a Parliamentary intention to preserve the validity of an application that does not comply with clause 5(1)(a).

46. In conclusion, the Authority finds that the purported Review Application sent by the Club to the Authority on 28 July 2015 is invalid, by reason that it was made outside of the legislative time period prescribed by clause 5(1)(a) of the Regulation. The Authority considers that it does not have jurisdiction to entertain the merits of the Review Application.

47. The Authority notes however that the Club is not without an option for varying or revoking the conditions imposed upon the licence.

48. Without making any observations on the merits of the Review Application, it would be open to the Club to make a submission to the Secretary at some point in the future seeking the variation or revocation of conditions imposed upon the licence. The Delegate has indicated that he would revisit some of the restrictions imposed upon the use of the outdoor areas of the Club should certain conditions be satisfied.

49. Once a licence condition is imposed by the Secretary or a delegate of the Secretary under the Act, the Secretary has the power, under section 54 of the Act, to revoke or vary a condition that was previously imposed by the Secretary. That power may be exercised from time to time.

50. However, as a practical matter, any further submission may need to be supported by fresh evidence or other material, or demonstrate a change of circumstances, in order to move a decision maker to reach a different conclusion from the one reached in a recent decision. The merits of any submission of that nature will be a matter for the Secretary.

Micheil Brodie
Chief Executive

DATED 22/ 10 /2015