

|                         |   |
|-------------------------|---|
| <b>Reference No.</b>    | 1-4326895491  |
| <b>Application for</b>  | Review of a decision made by a delegate of the Secretary of the NSW Department of Justice under section 81 of the <i>Liquor Act 2007</i> .                    |
| <b>Applicant</b>        | Ms Rosemaree Rettenmund (former licensee)   |
| <b>Licence name</b>     | Beachcomber Resort and Conference Centre<br>LIQH400117116   |
| <b>Premises</b>         | 188-190 Main Street<br>TOUKLEY NSW 2263   |
| <b>Date of decision</b> | 21 March 2016   |
| <b>Issue</b>            | Whether to confirm, vary or revoke the decision made by the Secretary, Department of Justice under section 81 of the <i>Liquor Act 2007</i> on 21 March 2016. |
| <b>Legislation</b>      | Section 36A of the <i>Gaming and Liquor Administration Act 2007</i>   |

20 December 2017

Dear Sir/Madam

### **Application for Review – Beachcomber Resort and Conference Centre**

On 20 April 2016, the Independent Liquor and Gaming Authority (“Authority”) received an application for review (“Review Application”) under section 36A of the *Gaming and Liquor Administration Act 2007* (“GALA Act”) from Ms Rosemaree Rettenmund (“Review Applicant”), the now former licensee of the Beachcomber Resort and Conference Centre, a hotel licensed premises at 188-190 Main Street Toukley NSW 2263 (“Premises”).

The Review Applicant sought variation of a decision dated 21 March 2016 (“Reviewable Decision”) made by Mr Anthony Keon, Director Compliance and Enforcement, in his capacity as a delegate (“Delegate”) of the Secretary, NSW Department of Justice.

The Reviewable Decision arose from a disturbance complaint, under section 79 of the *Liquor Act 2007* (“Act”), lodged by Mr Terry Sinclair (“Complainant”), on behalf of the Strata Committee of the *White Sails* residential building (located at 190-198 Main Road Toukley NSW 2263), received by the then Office of Liquor, Gaming and Racing on 28 April 2015 and dated 20 April 2015 (“Complaint”).

Pursuant to section 81 of the Liquor Act, the Delegate decided to impose three new conditions upon the liquor licence number LIQH400117116 for the Premises. The three conditions required the use of noise limiting equipment to ensure compliance with the “LA10” noise emissions restriction, the use of a security guard to patrol certain exterior areas of the Premises and the extension of CCTV coverage to an area between the Premises and the neighbouring *White Sails* residential complex.

Of those measures, only the conditions imposing the noise limiter equipment on all amplified entertainment and the security patrol are the subject of review.

The Authority has considered the Review Application, all material that was before the Delegate at the time of making the Reviewable Decision and all further evidence and submissions provided during the course of this review.

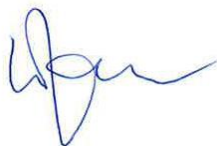
The Authority has considered its administrative review powers under section 36A of the GALA Act, the powers conferred upon the Secretary to determine disturbance complaints in sections 79 to 81 of the Liquor Act and the statutory objects and considerations prescribed by section 3 of the Liquor Act.

The Authority is satisfied that the operation of the Premises has at times caused undue disturbance to the quiet and good order of the neighbourhood within the meaning of section 79(1) of the Act.

In accordance with section 36A(4) of the GALA Act, the Authority has decided to **confirm** the Reviewable Decision. This means that the two licence conditions that were the subject of this review remain in effect. Pursuant to section 36C of the GALA Act, the Authority is required to publish statements of reasons for decisions listed in clause 8 of the *Gaming and Liquor Administration Regulation 2016*. This statement has been prepared in the context of a high volume jurisdiction and will be published to the Department's website as soon as practicable.

If you have any questions about this letter, please contact the Authority Secretariat via email at [ilga.secretariat@liquorandgaming.nsw.gov.au](mailto:ilga.secretariat@liquorandgaming.nsw.gov.au)

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'Philip Crawford', written in a cursive style.

Philip Crawford  
Chairperson

For and on behalf of the Independent Liquor & Gaming Authority

## STATEMENT OF REASONS

### Background

1. Under section 36A of the *Gaming and Liquor Administration Act 2007* (“GALA Act”), the Independent Liquor & Gaming Authority (“Authority”) is authorised to review certain decisions made by the Secretary of the New South Wales Department of Trade and Investment under the gaming and liquor legislation, as well as prescribed delegated decisions made on behalf of the Authority.
2. On 20 April 2016, an application for review (“Review Application”) was lodged by Ms Rosemaree Rettenmund (the now former Licensee) (“Review Applicant”) in relation to a decision made by a delegate (“Delegate”) of the then Secretary of NSW Department of Justice (the predecessor Department responsible for liquor and gaming regulation) under section 81 of the *Liquor Act 2007* (“Liquor Act”) on 21 March 2016 (“Reviewable Decision”).
3. The Reviewable Decision arose from a disturbance complaint that was received by the then Office of Liquor, Gaming and Racing (“OLGR”) now Liquor and Gaming New South Wales (“LGNSW”) on 28 April 2015 (“Complaint”).
4. The Complaint was made under section 79 of the Liquor Act 2007 (“Act”) by Mr Terry Sinclair (“Complainant”) on behalf of the Strata Committee for Strata Plan SP66036, a residential building known as *White Sails*, located at 190-198 Main Road Toukley NSW 2263. The Complaint Form was signed by the Complainant on 20 April 2015.
5. The Complaint concerns the hotel licensed premises trading as Beachcomber Resort and Conference Centre, Toukley which operates pursuant to licence number LIQH400117116 and is located at 188-190 Main Street, Toukley, NSW 2263 (“Premises”).
6. A OneGov licence record before the Authority dated 21 November 2017 indicates that the Premises is licensed to sell or supply liquor on premises from 5:00am to 1:00am Monday to Saturday and from 5:00am to 12:00midnight on Sunday. The Premises is also licensed to sell or supply liquor for consumption off the Premises from 5:00am to 12:00midnight Monday to Sunday.
7. In the Reviewable Decision, the Delegate decided to impose three new conditions upon the licence of the Premises under section 81 of the Liquor Act. The conditions imposed relate to a noise limiter, additional security guard patrol and CCTV surveillance and state respectively:
  - **Condition 10600 - Noise Limiter (“Noise Condition”)**

The hotel must install a noise limiter to control all amplified entertainment.

The noise limiter must be calibrated by a qualified acoustic consultant by 30 June of each calendar year to ensure that the hotels amplified noise levels comply with the LA10 noise criteria.

Written confirmation that the hotel’s noise limiting equipment meets the criteria that is set out in this condition must be kept at the hotel and be available on request by inspectors, NSW Police and the local council.
  - **Condition 11030 - Additional Security Guard Patrol (“Security Condition”)**

A security guard must constantly patrol the hotel's western boundary in the vicinity of the emergency exit to prevent patrons entering White Sails residential complex and the entrance to the hotel's carpark at any time when amplified DJ entertainment or a ticketed event is conducted at the hotel.

- **Condition 10510 - CCTV Surveillance ("CCTV Condition")**

CCTV surveillance cameras must capture the emergency exit between the hotel and White Sails, and the entrance to the hotel carpark. The surveillance footage and technical data must be of the same standard as that described in existing condition 10500.

8. In determining the Complaint the Delegate had regard to submissions made by Mr David Kingston the hotel business owner, Tuggerah Lakes Local Area Command ("LAC") of NSW Police ("Police"), Wyong Shire Council ("Council"), OLGR/LGNSW and the Complainant.
9. The Delegate gave weight to the 12-page submission made by Police dated June 2015 and the attached 33-page document, which was described as detailing Computerised Operational Policing System reports ("COPS Reports") for 309 recorded adverse events occurring between 1 May 2014 and 26 May 2015 and involving acts of violence or anti-social behaviour linked to the Premises. The Authority counts 308 references to COPS Reported events and notes that the full text of the specified COPS Reports was not provided to LGNSW. Police did provide 20 full text reports documenting Police meetings with hotel management and certain incidents relating to assaults, drugs and juveniles on the Premises.
10. The Delegate was satisfied that the operations of the hotel involving amplified entertainment and the conduct of patrons unlawfully entering the White Sails complex *had* caused undue disturbance to the quiet and good order of the neighbourhood within the meaning of section 79 of the Liquor Act and that the imposition of the three conditions provide appropriate safeguards to prevent the occurrence of further undue disturbance from the use of amplified entertainment on the Premises and the conduct of patrons unlawfully entering the White Sails residential complex.
11. Only the Noise Condition and the Security Condition are the subject of this Review Application. The Review Applicant requests the Authority to vary the wording of the Noise Condition and Security Condition imposed by the Delegate and seeks a stay of these two conditions pending the outcome of this review.
12. The Review Applicant contends that the Noise Condition and Security Condition as presently drafted place an undue burden on the hotel's operations.
13. The Review Applicant further contends that the conditions subject to the Review Application are not justified by the nature of the Complaint and not substantiated by the evidence relied upon by the Complainant.

## **Legislative framework**

14. Section 36A(1)(a)(iv) of the GALA Act prescribes a decision made by the Secretary under section 81 of the Liquor Act in relation to a disturbance complaint to be a reviewable decision.

15. Under section 36A(2) of the GALA Act, subject to subsection (2A), 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.
16. Section 36A(2A) of the GALA Act, provides that an application for a review of a delegated decision may only be made by:
  - a) An applicant for, or the holder of, a gaming or liquor licence, or
  - b) A person:
    - i. who was required to be notified of the application the subject of the delegated decision, and
    - ii. who made a submission to the Authority or the Secretary in respect of that application.
17. Section 36A(4) of the GALA Act provides that in determining an application for review, the Authority may confirm, vary or revoke the decision under review.
18. Under section 36C of the GALA Act, the Authority is required to publish statements of reasons with respect to those types of decisions prescribed by clause 8 of the *Gaming and Liquor Administration Regulation 2016* as requiring publication.
19. In determining the Review Application, the Authority has had regard to the objects and considerations provided by section 3 of the Liquor Act, which states:

### **3 Objects of the 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 expectation, needs and aspirations of the community,*
  - b. *To facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practicable regulatory system with minimal formality and technicality,*
  - c. *To contribute to the responsible development of related industries such as 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.*

### **Material before the Delegate**

20. The Delegate has provided the Authority with a bundle of all material that was before the Delegate at the time that the Reviewable Decision was made. In summary, that material comprises the following material.
21. Letter from the Complainant lodging the Complaint received by OLGR on 27 April 2015. The following documents were attached:

- (a) Complaint Form signed by the Complainant and dated 20 April 2015. The Complaint is authorised, for the purposes of section 79(3) of the Liquor Act, by Mr Ross Lewis and Mr Graham Carpenter on 20 April 2015, being residents of the neighbourhood of the Premises (“Authorising Residents”).
  - (b) Letter from the Complainant to OLGR dated 15 April 2015 providing details of the Complaint.
22. Email correspondence between OLGR staff and Ms Cheryl Halpin, a local resident within the neighbouring ‘White Sails’ residential complex, dated 6 October 2015, 21 October 2015, 22 October 2015 and 30 November 2015 regarding information relevant to the noise complaint, responses Ms Halpin received during communication with the hotel and Ms Halpin’s communication with Council regarding classification of the hotel’s western boundary gate as a fire exit.
23. A letter from the Complainant to Council dated 12 November 2015 regarding the classification of the gate on the western boundary of the Premises being a fire exit. This document was attached to the email correspondence between Ms Halpin and OLGR staff on 30 November 2015.
24. Email correspondence between the Complainant and Ms Halpin dated 5 October 2015 regarding a letter from OLGR (the date and contents of which are unclear from the email).
25. Email correspondence between OLGR staff and the Complainant dated 2 October 2015 seeking any updates of the Complainant’s experiences with the hotel.
26. Email correspondence between Ms Halpin and the hotel dated 15 September 2015, 17 September 2015, 18 October 2015 and 20 October 2015 regarding noise and disturbance in relation to the Premises, the presence of security, lighting and the contact details of the duty manager.
27. Submission from Tuggerah Lakes LAC of Police to OLGR dated June 2015. In this 12-page submission, Police contend *inter alia* that unless further conditions are placed on the licence, complaints and further anti-social incidents will continue to occur. Police raise 9 major points (in some cases seeking conditions) regarding the booking procedure for the hotel’s accommodation, “large major events” which attract over 1000 patrons, the local licencing agreement tabled on 1 April 2015, the closure of external lounge doors, the implementation of additional security guards, increased lighting and the placement of CCTV cameras. The following documents are attached to the Police submission:
- (a) COPS Reports detailing meetings held between Police and the licensed business and events involving assaults, drugs and juveniles.
  - (b) 48 pages of computer screenshots listing COPS events between May 2014 and May 2015.
  - (c) A 33-page document listing 309 COPS events (although the Authority counted 308) in relation to incidents at the Premises between 1 May 2014 to 26 May 2015 and a three-page document listing Computerised Incident Dispatch System (“CIDS”) reports for incidents at and near the Premises between 1 May 2014 to 26 May 2015.

- (d) Two graphs depicting reported COPS events by day and by time ranges between 1 May 2014 and 26 May 2015 for the Premises.
  - (e) Alcohol Related Crime Information Exchange (“ARCIE”) Escalated Licensing Operational Response Model (“ELORM”) action taken report by licensed premises for various periods between June 2014 to the end of May 2015 identifying offences by customers and minors for the Toukley sector and specifically on the licensed Premises.
  - (f) Schedule 4 progress report, non-reviewed data, for licensed premises in Tuggerah Lakes LAC.
  - (g) While the submission refers to a Police “evidence matrix” of incidents relating to the Premises it appears that no such document was before the Delegate.
  - (h) Letter from NSW Fire and Rescue to Council dated 23 February 2015 regarding an inspection conducted at the Premises on 5 February 2015 identifying 5 items of concern (regarding the annual fire safety statement, hydrant booster, fire indicator panel, fire exit doors and fire separation) in which NSW Fire and Rescue was of the opinion that adequate provisions for fire and safety had not been made concerning the building. NSW Fire and Rescue recommend that Council inspect the Premises and require the deficiencies be addressed.
  - (i) Witness statement made to Police by Mr Kenneth Watson, a local resident of Main Road, Toukley dated 10 June 2015. Also included is a photocopy of the signed and dated original version of this statement contained in Senior Constable Dyer’s Police notebook F596469 at pages 1 to 7.
  - (j) A copy of the unsigned local licensing agreement, a voluntary undertaking given by licensee effective from 1 April 2015.
  - (k) Letter from Lands Legal (on behalf of the hotel) to OLGR dated 28 August 2014 attaching a copy of the operational noise compliance assessment undertaken at the Premises by Renzo Tonn & Associates dated 25 August 2014 and the proposed protocols for nights with live entertainment at the Premises.
  - (l) Alcohol and Licensing Enforcement Command (“ALEC”) licensed premises CCTV minimum standards.
  - (m) Plan of Management dated April 2015 for the Premises.
  - (n) 5 photographs of the licensed Premises taken by Police depicting the western driveway that leads to the underground car park, the western emergency gate and the waterfront rear grassed area in front of the emergency exit.
28. File note prepared by an OLGR Compliance Officer dated 10 June 2015 in relation to their inspection of the Premises on Friday 5 June 2015.
29. An undated internal OLGR schedule of parties to the Complaint.
30. Email correspondence between Mr David Kingston, the hotel business owner, and OLGR staff dated 17 June 2015 (requesting an extension to respond to the Complaint), 9 July 2015 (regarding a meeting between the hotel and the Complainant), 28 October 2015, 29 October 2015 (seeking a submission from Mr Kingston regarding the Complaint) and 23 November 2015 (in which Mr Kingston responds to the

Complaint and discusses “extensive” changes that have been made to the Premises and the additional correspondence with “White Sails” since the Complaint was lodged 6 months earlier).

31. Email between the Review Applicant and Mr Kingston dated 8 July 2015 attaching a copy of the Review Applicant’s notes taken at the meeting with the body corporate members of White Sails on Wednesday 8 July 2015.
32. Email from Council to OLGR dated 23 June 2015 responding to the Complaint.
33. Letter from OLGR staff to Superintendent David Swilks, Commander, Tuggerah Lakes LAC of Police dated 21 May 2015 requesting Police provide a submission in response to the Complaint.
34. File note prepared by an OLGR Compliance Officer dated 26 February 2016 in relation to a telephone call with Ms Halpin on 10 February 2016 to ascertain the status of the disturbance from the hotel.
35. Undated document prepared by LGNSW staff assisting the Delegate, summarising the key submissions made on the Complaint.

### **Review Application material**

36. The Review Application material comprises the Review Application Form lodged on 20 April 2016 and is signed by the Review Applicant on 8 April 2016.
37. Attached to the Review Application Form is a four-page document answering Part 4 of this form specifying how the Review Applicant is aggrieved by the Delegate’s Reviewable Decision.
38. The Review Applicant responds to the Noise Condition by contending that a condition requiring the imposition of a noise limiter “would be acceptable” for the “DJ/Band entertainment conducted in The Indi’s Room (previously known as The Underground Nightclub)” particularly for “significant events with a patron level greater than 500” which is “less than one-third of the venue’s capacity”.
39. The Review Applicant seeks that the Authority vary the first paragraph of the Noise Condition to instead read:

*The hotel must install a noise limiter in The Indi’s Room (previously The Underground) to control all amplified entertainment in The Indi’s Room*
40. The Review Applicant makes the following key contentions under the heading “relevant background” that: the size of the Premises means that there are approximately 6 locations where amplified music can be played; the types of functions held in the Lakeview and Lakeside function rooms (wedding receptions, engagements and family birthday parties) do not cause any noise issues as their capacity is 100 seated persons each; the “overall pub” is licensed for 1,600 patrons with only The Indi’s Room involving loud amplified music in the nature of “nightclub music”; the other locations where amplified music is played from time to time involve soloists, duos, local bands, karaoke, jukebox performed in the hotel and in the function rooms and restaurants; and the acoustic volume of the types of amplified entertainment played elsewhere in the hotel is not loud enough to warrant the use of a noise limiter.



41. The Review Applicant contends that the cost of providing noise limiters in the numerous locations where amplified music is played would be an “unjustifiable burden” on the hotel’s operation and that music involving soloists, duos, local bands, background DJ’s, karaoke and jukebox were not the cause for the Complaint and therefore should not require a noise limiter. The Review Applicant contends that the Complaint was prompted to a significant extent by the large DJ/ Nightclub style entertainment of the *Sunbay* event with 1,600 patrons attending. The Review Applicant contends that these events have been discontinued and there is a licence condition agreed with ALEC discontinuing the occurrence of such events in the future.
42. The Review Applicant “strongly” objects to the wording of the Noise Condition, contending that the hotel is now trading as a “very modest level with low incidences of alcohol related violence since the business changed its focus in July 2015”. The Review Applicant contends that at the time of lodgement of the Complaint the nightclub was run on a weekly basis with this no longer the case and the number of events attracting patron levels greater than 500 has significantly reduced which has largely eliminated any acoustic noise issues to the White Sails property and its residents. The Review Applicant contends that this is acknowledged by White Sails in the file note of a conversation between the case officer and White Sails attached to the Reviewable Decision.
43. The Review Applicant seeks that the Authority vary the Security Condition to instead read:

*A security guard must constantly patrol the hotel’s western boundary in the vicinity of the emergency exit to prevent patrons entering White Sails residential complex and the entrance to the hotel’s carpark at any time when amplified DJ entertainment or a ticketed event is conducted at the hotel provided that there are 500 patrons or more in attendance.*
44. The Review Applicant contends that the key issue relating to the appropriateness of the extra security guard is patronage and where there are 500 or more patrons (less than one third of the hotel’s licensed capacity), the Review Applicant accepts that the condition should operate.
45. The Review Applicant further contends that a significant issue is that the western boundary fence of the White Sails property (not adjoining the Premises) is low in height and employing a guard to monitor and patrol the Premises boundary and carpark areas will not necessarily prevent a trespasser entering from the western boundary of the White Sails property. By contrast, the eastern boundary of the White Sails property, that adjoins Premises, is of “significant height”.
46. The Review Application further submits that after the Complaint was lodged, five additional conditions were imposed on the licence by agreement with ALEC and that there has been a major change to the hotel’s business since July 2015 with the major dance party nightclub events and regular weekly Friday nightclub ceased. Trade records evidence that the larger part of the business is from the operation of the rooms and function centre with the smaller component being the hotel. The Review Applicant contends that due to the major changes in the business operations most of the issues raised in the Complaint no longer exist and that the dramatic fall in alcohol-related incidents since July 2015 underlines the changed business profile by the venue. The

Review Applicant notes that in “Round 15” (an apparent reference to the scheme for violent venues in Schedule 4 to the Liquor Act) there will only be one incident recorded against the venue and so far for Round 16 there are only 2 incidents recorded. This, it is submitted, evidences that the venue is no longer trading as a high risk venue creating disturbances to neighbours.

47. The Review Applicant also contends that during an inspection of the Premises on 7 August 2015, Detective Inspector Kelly Kortlepel of ALEC agreed that the majority of the hotel’s operations were “low risk with modest patron attendance”.
48. The Review Applicant concludes with submissions that a new licensee; the business has been conducted “responsibly” and according to the conditions on the licence; the number of complaints and alcohol-related violent incidents attributed to the venue has dramatically reduced to the point that in Round 16 the hotel will no longer be listed as a declared premises; that a dialogue has been established with the resident representatives of the White Sails property, providing responses to their requests in a timely manner; a good dialogue has been established with Tuggerah Lakes LAC, working with their requests for improvements to the operation of the venue; and the business will continue to operate for a “positive imprint” on the community.
49. The Reviewable Decision letter with statements of reasons dated 21 March 2016, including a list of the conditions imposed by the Delegate, is also provided in the material before the Authority

### **Consultation on Review**

50. On 15 August 2017, the Authority Secretariat sent an email to Police, Council, LGNSW Compliance, the White Sails Committee, the Complainant, Mr Kingston and the licensee, enclosing a copy of the Review Application and all material before the Delegate and inviting any further written submission or evidence in response to the Review Application.
51. On 8 September 2017 the Authority Secretariat sent an email to the current licensee, Ms O’Toole, and the hotel business owner, Mr Kingston, seeking any final submissions on the Review Application.
52. No further submission was received from Council, Mr Kingston or LGNSW Compliance.

### **Submission from Police dated 29 August 2017**

53. On 29 August 2017, Senior Constable David Zappas of Tuggerah Lakes LAC of Police lodged a two-page email submission to the Authority Secretariat objecting to the Review Application. Police submit that the condition restricting noise emissions is satisfactorily worded and object to the Review Applicant’s proposal to vary it.
54. Police contend that noise may emanate from any of the areas of the hotel where amplified music is played, whether on the stage located near the main bar or the outside boatshed area. Police contend that previous noise complaints have come from across the lake at Buff Point, approximately 2 kilometres away and from San Remo, approximately 5 kilometres from the Premises. Police contend that by amending the condition to apply to the “Indi Room” only, as proposed by the Review Applicant, this may cause the hotel operator to relax their control of undue disturbance impacting the

residents of the neighbouring White Sails apartments. Police contend that although the Review Applicant indicates that *large* DJ style events have been discontinued, on Saturday 10 June 2017 a DJ event was held and advertised as the biggest night in *The Beachie's* history. Although numerous Police resources were planned and ticket sales only reached 350 people, this contradicts the Review Applicant's statements.

55. Police object to the Review Applicant's proposal to vary the Security Condition, but propose that should the Authority be minded to vary it, the number of patrons specified by the condition be fixed at 250 instead of the Review Applicant's proposed 500. Police contend that any time the hotel has a patronage of approximately 300 or more, Police make allowances for a certain number of resources to be available, on the basis of past experience with the venue. Police contend that this area of the property is the easiest way for under age persons to gain entry and placing a security guard here not only makes it much harder for minors to enter the hotel unaccompanied but also deters adult patrons that may want to gain access without paying for a ticket or after the lock out commences. Police contend that the conditions also protect the White Sails property from damage and trespassers attempting entry via their residential complex.
56. Police contend that the Review Applicant (prior to leaving the position as licensee) was issued with two Penalty Notices for breaching licence conditions. The first concerned CCTV not covering an alcohol related assault in which a male patron punched a female waitress (Police refer to COPS event E62858213 dated 1 December 2016 which is not provided with this submission). The Review Applicant elected to have the Penalty Notice heard in Court but pleaded guilty. The second Notice concerned insufficient security numbers at a large ticketed event (Police refer to COPS event E62545470 dated 23 December 2016 which is not provided with the submission) where fourteen Police vehicles and over twenty officers attended this event from 30 minutes to two hours, causing a "huge stress" on the LAC's resources. With 1100 patrons in attendance, Police were responding to patrons fighting in surrounding streets once leaving the hotel as well as on the Premises.
57. Police advise that on 27 August 2017 a resident of the White Sails complex advised Police that things "did improve" under the Review Applicant but have raised concerns over changing the conditions under the new licensee, Ms O'Toole, who residents advise has not responded to contact from local residents.
58. Police make the general submission that the conditions under review were imposed by the Delegate as a result of significant ongoing issues involving alcohol related violence, disturbance of the peace and damage to property that have occurred in relation to the operation of the hotel over a considerable amount of time.

#### Submission from White Sails Strata Committee dated 29 August 2017

59. On 29 August 2017, the White Sails Strata Committee sent a five-page email submission to the Authority Secretariat on the Review Application. In summary, the Committee:
  - (a) Advises that the Complainant was the Chairman of the White Sails Strata Committee at the time of making the Complaint, with Malcolm McGregor and Vance Kelly the current joint Chairmen.

- (b) Advises that this submission is made on behalf of the entire White Sails residential complex.
- (c) Submits that the residents wish to continue to have a good working relationship with the hotel.
- (d) Contends in relation to the Noise Condition, that once the noise limiter is purchased/installed there is “no further burden, neither staffing nor ongoing equipment cost”, that there is no reference to the possibility of other band music including outdoor bands and that the number of patrons is “not relevant specifically” to the noise complaint “it is the music”. White Sails re-iterated that this condition apply to “all amplified events” and are concerned that the advice from the Review Applicant (relating to entertainment being contained by moving inside with closure of doors and windows at 10pm) was verbal.
- (e) Questions the legality of security guard numbers for large hotel events and contends that if the hotel effectively patrolled their western boundary it would signal to all trespassers that accessing the White Sails boundary is futile. White Sails contend that trespassers come directly from the hotel, that evidence of drugs have been found and express concern about potentially “drunk, drugged” trespassers entering neighbouring units.
- (f) Submit that the conditions imposed by the Delegate do not place an undue burden on the operation of the venue but provide appropriate safeguards against undue disturbance arising from the operation of the hotel.
- (g) Contend that since the Reviewable Decision was made, the hotel has improved its operations in respect of the forms of disturbance specified in the initial Complaint.
- (h) Question the need to change the conditions, contending that they have worked for the last twelve (12) months and appear to be achieving the desired outcomes of reducing undue disturbance.
- (i) Note that the Review Application is timed prior to the summer season when more outdoor events occur.

Submission from the new licensee, Ms Helga O’Toole, dated 11 September 2017

60. On 11 September 2017, Ms Helga O’Toole (the new Licensee) sent a two-page email to the Authority Secretariat providing a submission in reply. In summary, Ms O’Toole:
- (a) Requests that the Review Application made by the former licensee (Ms Rosemarie Rettenmund) proceed.
  - (b) Advises that she adopts the submissions made by the former licensee in relation to the Review Application.
  - (c) Advises that amplified music is “at times” conducted in a number of different areas of the hotel but the hotel seeks that the noise limitation condition only apply to the Indi’s Room of the Premises only.
  - (d) Advises that the hotel agrees to operate a noise limiter but requests that the condition be varied to apply to amplified DJ or live band events only. The

licensee contends that this is the only form of amplified entertainment that poses significant noise levels.

- (e) Submits that the current controls the hotel has in place include ceasing all music by 10pm in the outside boatshed and closing external doors at 11pm if DJ amplified music is played.
- (f) Contends that no noise complaints have been received in the last 2 years during which time regular functions, wedding and some DJ events have occurred (without concerns raised from neighbours or Police).
- (g) Submits that hotel has no intention of “relaxing” their position on noise generated from the Premises and will continue to self-monitor and control these issues.
- (h) Although 350 people attended the “large DJ style event” on 10 June 2017, the security provided was “ample” to ensure the safety of guests and neighbours and the “massive” Police presence “was not required” as no noise complaints or issues occurred as a result of this event.
- (i) Contends that patronage of the hotel has “dramatically” changed over the past two years
- (j) Advises that the hotel no longer hosts large DJ events every Friday night nor the quarterly dance parties that were previously conducted on the Premises.
- (k) Contends that Fridays entertainment is mostly soloists with Saturday being “mostly karaoke” and normal patronage on these days “would not exceed 100 people”.
- (l) Requests that the security guard condition under review only apply to those evenings when patronage is expected to be over **350** people and if amplified DJ entertainment is provided for younger patrons.
- (m) Contends that the hotel markets entertainment to the over 30 age bracket and disputes the claim that these people would climb fences and breach security at White Sails as the hotel has CCTV for this area which “should be ample” when amplified DJ entertainment is provided.

## Reasons

- 61. The Authority has considered the Review Application, the material before the Delegate and all further submissions, evidence or other material provided during the review.
- 62. The Authority is satisfied that the Complaint was validly made in accordance with section 79(3) of the Liquor Act. It was made by a person residing in the neighbourhood of the licensed Premises, Mr Terry Sinclair, Chairman of the White Sails Strata Committee and resident of this residential complex. The Complaint is authorised in writing by two other residents of the neighbourhood, Mr Graham Carpenter and Mr Ross Lewis (also residents of the neighbouring White Sails complex).
- 63. A Onegov liquor licence record as at 21 November 2017 (sourced by the Authority Secretariat) indicates that the licence for the Premises commenced on 21 April 1959. In an email from Mr Kingston to OLGR staff dated 29 October 2015, Mr Kingston submits that the “occupants of White Sails were well aware that there was a large long established pub in that location before they moved into White Sails” as the hotel was

“built around 1950 whereas White Sails was built around 1990” on land that Mr Kingston “originally owned”.

64. While it is not in dispute, on the basis of this material the Authority is satisfied for the purposes of section 81(3)(a) of the Liquor Act, that the order of occupancy between the licensed Premises and the Complainant is in favour of the hotel.
65. Apart from the Complainant’s submission in Part F of the Complaint Form, which states that White Sails is in the process of getting quotes for fencing the residential premises’ western perimeter, there is no other information relating to changes to the licensed Premises and the premises occupied by the Complainant. The Authority finds for the purposes of section 81(3)(b) of the Liquor Act, that no relevant changes (including structural changes) to the Complainant’s premises or the hotel Premises have occurred pertaining to the period that is the subject of the Complaint.
66. The Authority is satisfied, for the purposes of section 81(3)(c) of the Liquor Act, on the information provided in the Complaint, the Review Application (and supporting material), the NSW Police submission dated 29 August 2017, the submission from White Sails Strata Committee on 29 August 2017 and Ms O’Toole’s submission dated 11 September 2017 that there have been some relevant changes to activities, in that large scale, ticketed, multiple performer dance party events like the former *Sunbay* events, were ceased under the previous licensee and are now prevented by condition 11010 that commenced on 5 November 2015.
67. Nevertheless, the Authority is satisfied that subject to Condition 11010 and other conditions on the licence, the hotel retains the capacity to operate a late trading hotel business, host functions and offer a range of live entertainment - including live bands and DJs.
68. The Authority notes the Police submission dated June 2015 in which Police contend that between 1 May 2014 to 26 May 2015, there were around 309 COPS Reported events linked to the Premises, 297 occurring over Friday, Saturdays and Sundays (96%), 170 being on Fridays (55%) and 221 occurring between 9:00pm and 2:00am (71%). Although Police have not provided a copy of each of these COPS Reported events in full, Police have provided a list identifying the date, day of the week, COPS event number and incident category for the Premises which satisfies the Authority that the Premises has had a history of anti-social conduct linked to the hotel. The Authority is satisfied on the basis of this Police submission and the attached ARCIE ELORM action taken report by licensed premises for various periods between June 2014 to the end of May 2015 that significantly more offences were committed at the Beachcomber Resort and Conference Centre than any other licensed premises in the Tuggerah Lakes LAC during that period.
69. The Police submission dated June 2015 indicates that this is the second section 79 disturbance complaint in recent years that Police have been involved with. The Authority notes that the former OLGR decided on 18 February 2015 that the previous complaint was resolved in favour of the hotel on the basis of the hotel implementing new controls to prevent further undue disturbance. The Authority accepts, on the basis of the information provided in the Complaint that the previous controls placed on the hotel were not sufficient to prevent the undue disturbances to the quiet and good order of the neighbourhood that is the Complaint that is the subject of this review.

70. The Authority has taken into consideration the statements made by a local resident of Main Road Toukley, Mr Kenneth Watson, in the form of a witness statement dated 10 June 2015 raising concerns about underage people and intoxicated patrons trespassing through his driveway to get back into the hotel, assaults, damage to private fences, slashed tyres and verbal arguments. The Authority accepts those accounts as credible.
71. The Authority has also considered the events recorded in an OLGR file note on 10 June 2015 relating to an inspection conducted at the Premises on 5 June 2015 which identified *inter alia* patrons waiting for transport 1 hour after the venue had closed, considerable noise deflecting towards the White Sails apartment complex and another incident involving a minor attempting to remove alcohol from the Premises.
72. The Authority has also taken into consideration and accepts as credible the concerns expressed by the Complainant in the Complaint Form which include noise impacts from music, alcohol and drug affected persons, trespassers, damage to property, security concerns, violence and rubbish attributable to patrons of the hotel affecting local amenity.
73. The Authority finds credible the Police contention that amending the Noise Condition to apply to the “Indi Room” only may enable the hotel operator to relax current controls of undue disturbance, impacting residents of the neighbouring White Sails apartments. The Authority accepts and gives weight to the observations of Police that the Security Condition makes it much harder for minors to enter the Premises unaccompanied and deters adult patrons seeking to gain access after the lockout implemented by the hotel.
74. The Authority accepts the advice from Police in their 29 August 2017 submission that the Review Applicant, Ms Rettenmund (prior to departing as licensee) was issued with two Penalty Notices for contravening licence conditions. While Police have not provided the Authority with a copy of those Notices the Authority accepts that these incidents occurred, and this is not contested in submissions from the current hotelier.
75. The Authority is satisfied, on the Police submission and supporting material dated June 2015, in addition to the information in the initial Complaint and the Police submission dated 29 August 2017, that hotel’s operations were causing undue disturbance when amplified entertainment was provided on Friday, Saturday and Sunday evenings and/or from patrons frequenting the hotel car park and entering the White Sails residential complex.
76. The Authority accepts the advice in an email from the hotel business owner, Mr Kingston, dated 17 June 2015 that the former licensee Mr Greg James (who was licensee of the hotel at the time the Complaint was lodged) was terminated effective Tuesday 9 June 2015.
77. The Authority further accepts Mr Kingston’s statements in his email dated 23 November 2015 that the business model of the hotel was changing. The Authority accepts, on the basis of Ms O’Toole’s submission letter dated 11 September 2017 and submissions from the Review Applicant in response to Part 4 of the Review Application Form, that over the past two years the hotel’s patronage has changed and there has been a change in entertainment activities conducted by the hotel business. The Authority accepts the licensee’s contention, made in her submission dated 11

September 2017, that the venue no longer hosts *regular* DJ entertainment on Friday nights, nor quarterly dance party events on the Premises.

78. The Authority has considered contentions made by the Review Applicant that the cost of providing noise limiters in the numerous locations where amplified music is played would be an “unjustifiable burden” upon the hotel business; that music involving soloists, duos, local bands, “background DJ’s”, karaoke and jukebox music were not a cause for the Complaint and for this reason should not be subject to a noise limiter; that the number of events attracting patron levels greater than 500 have significantly reduced which in turn has largely eliminated any acoustic noise issues to the White Sails property and its residents; and that the key issue relating to the appropriateness of the extra security guard is patronage.
79. While accepting that the hotel’s provision of entertainment has moved away from large scale ticketed dance parties and weekly DJ entertainment, the Premises remains a full hotel licensed venue of substantial scale. It is presently configured to provide live entertainment, including amplified music whether in the form of disc jockeys or live musicians.
80. The licence does not restrict live entertainment to the Indi’s Room of the Premises. The nature and scope of any live entertainment is in the discretion of the business owners. Business ownership and/or management may change from time to time and there is proven scope for noise emissions from live entertainment at this hotel to cause undue disturbance, in addition to the disturbance caused by patrons drawn to the Premises.
81. The Authority accepts the contention made by the White Sails Strata Committee in their submission dated 29 August 2017 that the hotel’s performance has improved in respect of the areas of concern that were identified in the Complaint since the Delegate handed down the Reviewable Decision. The Authority considers it likely that the package of conditions imposed by the Delegate have contributed to this reduction in disturbance.
82. The Authority accepts the contention made by the White Sails Strata Committee in their submission dated 29 August 2017 that the conditions are having the desired effect in reducing undue disturbance. The Authority further accepts advice from Police in their submission dated 29 August 2017 that during a dance music entertainment event provided on 10 June 2017 the venue reached a patron level of 350 and was promoted with words to the effect of it offering “the biggest night in The Beachie’s history”.
83. This promotion underscores the fact that notwithstanding the Review Applicant’s submissions of a change of patronage and business style, the provision of live entertainment and the mode of hotel business conducted on the Premises is largely in the discretion of management, which may change its practices from time to time.
84. The Authority finds it premature, in the present circumstances, to remove or vary the conditions under review. Requiring the use of noise limiters is not an unreasonable burden as a means of ensuring that all amplified entertainment does not exceed the LA10 requirement. Requiring a security guard in the relevant area is not an unreasonable impost, particularly when a hotel of this scale trades late and is located

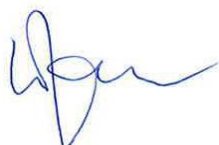


in close proximity to a residential building with a boundary that may be scaled by trespassers. Patron numbers need not exceed the very large threshold proposed by the Review Applicant of 500 patrons, nor the 350 patron alternative suggested by Police, to cause undue disturbance to the White Sails residents. The more prudent course, given the configuration of the relevant properties, is to maintain the Security Guard Condition in its current form.

85. The correct or preferable decision on the evidence and material now before the Authority is to confirm the Reviewable Decision. The Authority is satisfied that the conditions imposed by the Delegate are having the desired regulatory effect and should be maintained.

## Conclusion

86. In accordance with section 36A(4) of the GALA Act, the Authority has decided to **confirm** the reviewable decision made by the Delegate.
87. In determining this review, the Authority has had regard to the statutory objects and considerations prescribed by section 3(1) and 3(2) of the Liquor Act. The Authority has given weight to the considerations in section 3(2)(a) of the Liquor Act regarding the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour) and section 3(2)(c) of the Liquor Act regarding the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.



Philip Crawford  
Chairperson

For and on behalf of the Independent Liquor & Gaming Authority