Our Ref: L 210
Your Ref:

Mr Tony Schwartz Back Schwartz Vaughan Level 5 75 Elizabeth Street SYDNEY 2000 *via email* *tschwartz@bsv.com.au*	The Complainant 163 Kiera Street WOLLONGONG 2500 *Via email* (name and email address withheld from publication)	Mr Paul Tonegato Manager Onefiveone nightclub 150 Kiera Street WOLLONGONG 2500
Commander Joseph Cassar Local Area Commander NSW Police Corner Church and Market WOLLONGONG 2500 *via email* *c/o canv1tra@police.nsw.gov.au*	Mr John Bannister Disturbance Complaints Unit Office of Liquor Gaming and Racing *Via email* *John.bannister@communities.nsw.gov.au*	

24 December 2010

Dear Sir/Madam

Application for review by Hotel Illawarra under section 153 of the *Liquor Act 2007*
Disturbance complaint regarding Hotel Illawarra and Onefiveone Nightclub

BACKGROUND

1. The licensee and owners of the Hotel Illawarra located at 160-164 Kiera Street Wollongong ("**Hotel**") made an application ("**Application**") dated 23 November 2010 under section 153 of the *Liquor Act 2007* ("**Act**") for review of a decision dated 2 November 2010 ("the **Decision**") of the Director-General of Communities NSW ("**Director-General**") under section 81 of the ("**Act**").

2. The Decision arose from a disturbance complaint filed by a local neighbourhood resident (the **Complainant**") with the Office of Liquor Gaming and Racing ("**OLGR**") under section 79 of the Act on 5 March 2010.

3. The Complainant is the registered proprietor of a rooftop apartment located in a residential building comprising nine apartments at 163 Kiera Street Wollongong, directly across the road from the Hotel.

4. The Complaint was authorised by two other persons, being the registered proprietors of one other apartment in the Complainant's building. (Section 79 (3) of the Act requires that a disturbance complaint filed by a person living in the neighbourhood of a licensed premises be authorised in writing by two or more such local residents).

5. The Complaint was directed against the Hotel and the Onefiveone nightclub located at 150 Kiera Street, Wollongong ("the **Nightclub**"). The Nightclub has not sought review of the Decision as it applies to those premises. The Nightclub has not made any response to the Authority's communications regarding the Application. The Nightclub's lawyers, JDK Legal, advised the Authority on 9 December 2010 that they have no instructions with regard to this review.

6. The Authority notes that the Wollongong Local Area Commander of Police filed a separate disturbance complaint with OLGR during 2010 directed against 11 licensed venues in Wollongong, including the Hotel and the Nightclub (the "**Police Complaint**"). Apparently for the sake of efficiency, the Director-General convened a conference to discuss both complaints over two days, on 30 June 2010 and 1 July 2010 ("the **Director General's Conference**"). The Director-General is yet to determine the wider Police Complaint.

7. On 23 November 2010 the Application was notified by the Authority to OLGR, the Complainant, the Nightclub and the Wollongong Local Area Command of NSW Police. Authority *Guideline 02/09* provides that the primary decision maker may, but is not expected to, make submissions to the Authority in response to matters raised on review by a review Applicant.

8. OLGR have provided the Authority with a copy of all documents that were before the Director-General but have not made any submissions on the merits of the Application. Aside from a very brief facsimile from the Local Area Commander dated 3 December 2010 addressed to the Director-General commending the Decision (a copy of which has been forwarded to the Authority), Police have made no submissions in response to the Application.

9. The matter now before the Authority for review is the Director-General's determination on the *Complainant's* case against the Hotel - specifically, whether the new licence conditions imposed by the Director-General upon the Hotel's licence constitute the correct or preferable decision in response to that Complaint.

10. To avoid doubt, the Authority's findings in this review decision are not intended to address the Police Complaint against the Hotel, the Nightclub, or any other venues named in the Police Complaint. In considering the Application the Authority has not considered material relating to any premises other than the Hotel. Nothing in this decision should be taken to indicate any view on the part of the Authority in relation to the broader Police Complaint.

SUMMARY OF THE COMPLAINT

11. The Complainant's case was initially submitted on the prescribed OLGR Form. It was supplemented by a very detailed schedule of observations noting numerous alleged disturbance incidents.

12. The Complainant explained during the Conference convened by the Authority for this review on 13 December 2010 ("the **Authority Conference**") that this schedule was compiled by the Complainant from contemporaneous handwritten diary entries. These were later typed up by the Complainant into a consolidated schedule for the purposes of the Complaint.

13. This schedule discloses the times, dates and descriptions of each disturbance event occurring over numerous evenings from October 2009 to March 2010. Each entry on the schedule makes a brief note on whether the cause of the alleged disturbance is attributed by the Complainant to either the Hotel or the Nightclub, whether the Complainant called Police about the incident and whether Police were observed by the Complainant as having attended the venues, either in response to her calls or otherwise.

14. The Complaint Form described the nature of the disturbance as:

> "amplified music from both venues penetrating residence even though forced to close windows and turn TV volume to maximum. The music has been loud enough to penetrate the downstairs bedroom which has walls 18" thick."

15. The Complainant further cites the conduct of patrons of the Hotel and Nightclub who:

> "wander about for up to one hour after closing of venues and can continue until 4 am. The street is fouled with vomit and urine and shop doorways are fouled."

16. The Complainant adds that:

> "when Police respond to noise complaints the music has been lowered but after 5 or 10 minutes the volume increases sometimes even louder than level previously complained about."

17. The Complainant alleges that:

> "both venues management exhibit wanton and wilful disregard for residents as they know Police cannot respond to every complaint. I have made 43 calls and other residents have phoned re noise. Street noisy when long queues are waiting outside venues. Front door of 151 is always open and patrons sit outside (up to 30 on one night".

18. The Complainant further submits Bureau of Crime Statistics and Research ("**BOCSAR**") data for the period January 2009 to September 2009, which displays incidents of non domestic assaults recorded by NSW Police on licensed premises throughout the Wollongong Local Government Area ("**LGA**") by time and day of the week, and another BOCSAR graph for the year 2008 showing the proportion of non domestic assault incidents by time of day and day of week for the LGA.

19. This BOCSAR data indicates that recorded assault incidents peak from 6 pm to midnight on Fridays; midnight and 6 am on Saturday mornings; 6pm to midnight on Saturday evenings and midnight to 6 am on Sunday mornings.

20. The Complainant submits that these peak assault times correlate with the times and days of week for those general disturbance incidents that the Complainant describes in her schedule of observations.

21. With regard to the Hotel, the Complainant submits that the Hotel's "late trading hours licence should be cancelled". In the language of the Act, this is a request for the Hotel's extended trading authorisation to be cancelled. The Complainant's reasons for this submission are stated as follows:

    (i) every night of operation the management displays a "lawless" attitude to controlling the noise of its amplified music;

    (ii) in response to Police intervention, as soon as Police leave, the volume is increased, which the Complainant describes as a "malicious" act in the knowledge that there are limits as to how often Police can respond to noise complaints;

    (iii) there is often a large queue from the Market Street entrance stretching around the corner to Kiera Street as far as the Anglicare premises, up to 12.30 am, and "while reasonably well behaved, the loud talking and laughing is disturbing";

    (iv) there is insufficient control of patrons leaving premises, as they shriek, hoot and holler, with occasional pushing and shoving as "drunks" face off, continuing for up to one hour after closing;

    (v) every night this venue operates, it is to the detriment of the quiet and good order of the neighbourhood and with complete disregard to residents in the vicinity.

22. With regard to the Nightclub, the Complainant seeks that the licence be cancelled in its entirety. The reasons given are:

    (i) there is no foot traffic along this stretch of Kiera Street and the club resorts to "bussing in patrons" – 8 buses on 22 February 2010. This Nightclub is part of the IDL Group, which provides free buses picking up patrons from its other venues and busses them to the Nightclub . The Nightclub would not exist without this service;

    (ii) the front door is "never closed", with patrons migrating in and out at will, standing and sitting outside (probably to get some air and relief from the high volume music), causing a noise disturbance in the street;

(iii) frequent complaints to Police regarding noise are "ignored, with the volume being turned up when the Police car leaves";

(iv) use of the Nightclub for underage alcohol free discos could be interpreted as "grooming future patrons", exposing them to the excitement of being in a club, and the volume of amplified music from 6.30 pm is at a level dangerous to patrons' hearing, and certainly audible within every room, on both levels, of the Complainant's residence

(v) every night this venue operates, it is to the detriment of the quiet and good order of the neighbourhood and with "complete disregard" to residents in the vicinity.

23. The Director-General notified the Hotel, the Nightclub, Police and Wollongong City Council ("the **Council**") of the Complaint, inviting them to make submissions.

24. Police filed material in support of the Police Complaint (some of which concerns the Hotel and Nightclub). The Director-General received:

(i) a response from the Council dated 26 May 2010 providing relevant development approvals and other instruments relating to the Hotel and Nightclub
(ii) a submission from RDL Investments Pty Ltd (the owner of the Nightclub) dated 4 June 2010
(iii) submissions dated 31 May 2010 and 7 June 2020 from Mr Paul Azani (the Hotel's manager)
(iv) a legal submission from the Hotel's solicitors, Back Schwartz Vaughan, dated 11 June 2010
(v) a further submission from Back Schwartz Vaughan dated 29 June 2010 and
(vi) submissions from the Nightclub's solicitors JDK Legal dated 28 June 2010.

25. The Director-General's Conference was convened on 30 June and 1 July 2010, part of which was devoted to matters arising from this Complaint. At this conference, the Complainant made further written submissions, including a powerpoint presentation on 30 June 2010.

26. Following this conference, the Complainant filed additional submissions dated 14 July 2010 responding to the Hotel's submissions dated 23 June 2010. JDK Legal (lawyers for the Nightclub) also filed a post conference submission dated 29 July 2010, which focussed upon Council's proposed redevelopment of the Crown Street Mall area in the Wollongong CBD. The Complainant made further post conference submissions to the Director-General dated 16 August 2010 and 29 August 2010 respectively.

SUMMARY OF RESPONSE BY THE HOTEL AND NIGHTCLUB TO THE COMPLAINT

27. The Hotel made very detailed written and oral submissions to the Director-General during the primary decision making process. These submissions, *inter alia* argue that:

    (i) the relevance and/or weight that should be given to that component of the Police Complaint that concerns the Hotel was questionable;

    (ii) the 2010 *Hassle Free Nights* policy initiatives (and the associated new provisions of the Act) offer a preferable mechanism to section 79 of the Act for managing disturbance issues involving multiple premises located within an entertainment precinct;

    (iii) several large licensed venues on the fringe of the Wollongong CBD, such as the Towradgi Beach Hotel, North Wollongong Hotel, WIN Stadium/Wollongong Entertainment Centre and the University of Wollongong, act as "feeder" venues for patrons who move through the Wollongong CBD at night, contributing to disturbance;

    (iv) the Hotel has not received any complaints from any other residents living in the Complainant's building;

    (v) the Complainant's acquisition of the apartment on 9 September 2006 and her subsequent move into those premises on 20 August 2009 mean that the order of occupancy, to which a decision maker must have regard under section 81 (3) of the Act, militates against taking action against the Hotel in response to this Complaint;

    (vi) the Complainant's status as a "qualified lawyer" means it is not unreasonable to expect that the Complainant comprehended the consequences of a Development Consent imposed by Council when consent was granted on 24 December 1997 for the conversion of that former commercial building into residential apartments, including the Complainant's apartment;

    (vii) a statement provided by one other resident (of four years standing) who lives in the Complainant's building is to the effect that this resident has had no problem with the operation of the Hotel;

    (viii) inspection reports prepared by OLGR Inspectors dated 16 January 2010 and 1 February 2010 disclose minimal noise in relation to neighbourhood disturbance observed at the venue;

    (ix) the Complainant's disclosure to the Hotel's manager, Mr Azani, that she was concerned about the impact of the Hotel upon her ability to sell the apartment renders this Complaint "disingenuous".

28. The Authority notes that the Nightclub's owner, RDL Group, made detailed written and oral submissions during the primary decision making process. Those submissions, *inter alia*:

    (i) question the relevance and/or weight to be given to that component of the material furnished in support of the Police Complaint that concerns the Nightclub;

    (ii) argue that the material before the Director-General falls short of establishing "undue" disturbance for the purposes of section 79;

    (iii) note that the Nightclub has operated since 1997;

    (iv) note that the statutory objects in subsections 3 (1) and 3 (2) of the Act require a decision maker to consider the expectations, needs and aspirations of the community and that the Act contemplates some level of disturbance arising from the operation of licensed premises;

    (v) tenders a critique dated 28 June 2009 prepared by John Coady Consulting Pty Ltd of the research paper "The impact of Restricted Alcohol Availability on Alcohol Related Violence in Newcastle New South Wales"

    (vi) tenders a report prepared by RGR Gaming Pty Ltd detailing its surveillance of various Wollongong licensed premises owned by RDL Group, including the Nightclub, on 3 July , 10-11 July and 17-18 July 2010.

29. The Hotel has not, in its amended Application,, challenged the underlying finding made by the Director-General on this Complaint for the purposes of section 79 of the Act that the quiet and good order of the neighbourhood of the Hotel has been unduly disturbed because of the manner in which the business of the licensed premises is conducted or the behaviour of persons after they leave that premises (including, but not limited to, the incidence of antisocial behaviour or alcohol related violence). Indeed, the Hotel submits that it does not object to the Director-General's imposition of new licence conditions regarding the management of noise from the Hotel. Rather, the Hotel seeks a variation of those conditions for the reasons it has identified in the Application, as discussed below.

30. Accordingly the Authority need not, for the purpose of this review, traverse all of the written and oral submissions made by the Hotel and Nightclub during the primary decision making stage.

EXPERT EVIDENCE ON NOISE EMISSIONS FROM THE HOTEL AND NIGHTCLUB

31. On 26 July 2010 the Director-General wrote to the Hotel and the Nightclub requesting them to engage acoustic experts from a list of accredited consultants.

32. A Noise Impact Assessment Report was commissioned by the Nightclub from Mr James Cameron, trading as Acoustic Studio, dated 26 August 2010 ("the **Cameron Report**"). Mr

Cameron performed testing at the Complainant's residence between 11pm Saturday 21 August 2010 and 1.30 am on Sunday 22 August 2010.

33. The Authority notes by way of background that the former Liquor Administration Board had devised, with input from expert acoustic consultants, a set of noise control requirements known as "LA10" specifically designed for the regulation of licensed premises in New South Wales. The LA10 requirements remain in use as a regulatory tool and are imposed by the Director-General as conditions upon the licenses of premises pursuant to various decisions made under the Act.

34. LA10 states:

> 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 7:00 am 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 (31.5 Hz- 8 kHz inclusive) between 12:00 midnight and 07:00 am at the boundary of any affected residence.
>
> Notwithstanding compliance with the above, the noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 12:00 midnight and 07:00 am.
>
> *For the purposes of this condition, the LA10 can be taken as the average maximum deflection of the noise emission from the licensed premises.

35. The Cameron Report found, *inter alia*, that:

(i) *music noise* from the Nightclub, taken from outside the open window of the upper floor of the Complainant's apartment "may be more than 5db higher than the background level, and may exceed OLGR's "LA10" criterion for noise occurring *before midnight;*

(ii) *music noise* from the Nightclub was generally audible above the background noise level inside the Complainant's apartment and exceeds OLGR's "LA10" noise criterion for noise occurring *after midnight;*

(iii) *patron noise* from patrons *inside* the Nightclub *before midnight* was generally inaudible from inside the Complainant's apartment above background noise levels, although occasional patron noise (cheering) was audible at times. Overall, this premises was found to comply with LA10 for noise occurring before midnight;

(iv) *patron noise* from patrons *inside* the Nightclub *after midnight* was generally inaudible from inside the Complainant's apartment above background noise levels. This was found to comply with the LA10 criterion for noise after midnight;

(v) *patron noise* from patrons located *outside* the Nightclub was generally audible above the background noise level both *before* and *after* midnight. The patron noise from the Complainant's property boundary may be more than 5 dB higher than the background noise level before midnight and otherwise exceeds the LA 10 criterion for noise after midnight. Mr Cameron queried whether patron noise arising from persons located outside the venue was intended to be captured by the LA 10 criteria.

36. The Cameron Report concluded with the observation that it was not possible to extract the influence of noise from the Hotel and background noise levels. Therefore it was "difficult to conclude from the testing completed exactly how much of a reduction is required to Onefiveone's operational noise levels in order to reach compliance with the OLGR criteria". Further testing, involving the cooperation of both venues, would be required to ascertain the noise attributable to the Nightclub alone.

37. On 6 September 2010 Back Schwartz Vaughan filed an Acoustic Compliance Report for the Hotel prepared by Mr Stephen Cooper, trading as The Acoustic Group, dated that day ("the **Cooper Report**"). This report, among other matters, presented findings on acoustic testing performed without notice to the Hotel, at the Complainant's residence and the Hotel premises from about 10.30 pm on Saturday 14 August 2010 until 1.30 am Sunday 15 August 2010.

38. The results of Mr Cooper's testing are disclosed at Appendix B of the Cooper Report. Briefly, from 10.45 pm some music noise (bass and some vocals) emanating from the front bar of the Hotel was audible from within the Complainant's apartment, but this was significantly less than the noise occurring as a result of traffic and music associated with vehicles when stationary at traffic lights outside the apartment. This music from the Hotel remained "consistently audible" from within the Complainant's apartment with the windows closed.

39. Upon Mr Cooper's attendance at the Hotel the measurements taken in front of the entry doors obtained an average maximum level of 89 dB decreasing to around 81 dB. Measurements taken inside the bar on the ground floor recorded an average maximum level of 96 dB. Upon his request that the Hotel restore the noise levels that were prevailing at 12.30 am (when Mr Cooper first arrived) he recorded an average maximum noise level of 101 dB from a position that was two metres from the dance floor.

40. Mr Cooper's report extended beyond his recorded noise levels to include commentary and analysis of development consents to which the Complainant's residential building had been subject. Mr Cooper discussed the implications for the management of noise within the Complainant's apartment arising from an apparent non compliance of the Complainant's building with noise protection requirements that had been imposed by Council when consent to developing that building for residential premises had been granted during the late 1990s, well before the Complainant purchased her apartment.

41. The Cooper Report reaches the following conclusions:

"If one was to conduct an acoustic assessment in terms of the standard LAB (LA10) noise criteria then as music was clearly audible in the living area of the complainant apartment, and as there were measurable increases above the ambient background level recorded at the external façade of the living area to that apartment then noise emission from the Hotel would be deemed to be excessive and in breach of the standard conditions.

However, as discussed above the building in which the complainant resides was required to be soundproofed and that any prospective and actual purchasers of the residential units were to be fully aware of potential noise sources impacting upon that site including entertainment venues such as hotels, nightclubs and restaurants, as well as the likely future approvals for entertainment venues and night-time uses. (Condition 1 of the approval for development application No D97/460)."

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NEW LICENCE CONDITIONS IMPOSED BY THE DIRECTOR-GENERAL

42. At the conclusion of the Decision the Director-General imposed the following conditions upon the license of the Hotel, effective from 1 December 2010:

Conditions
Acceptable noise emission levels

1. From 1 December 2010 the noise emission must at all times comply with the following:

    a. 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 7:00 am and 12:00 midnight at the boundary of any affected residence**.

    b. 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 7:00 am at the boundary of any affected residence**.

    c. Notwithstanding compliance with conditions 1(a) and 1(b) above, the music 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 7:00 am.

    * For the purposes of this condition, the LA10 can be taken as the average maximum deflection of the noise emission from the licensed premises.

    ** For the purposes of this condition, affected residence and/or residential premises excludes any residence in the building situated at 163 Kiera Street Wollongong.

Control of noise emission

2. At all times when music is provided on the licensed premises, all amplifiers or noise generating equipment associated with the music must be under the control of a noise limiter.

3. The noise limiter must be calibrated to the levels approved by an acoustic engineer.

4. The noise limited controller must be contained within a locked container or secure area and only accessible by a key held by the licensee.

5. The licensee must ensure the windows of the licensed premises facing Kiera Street, Wollongong, are kept closed at any time amplified music is provided on the licensed premises (unless they are used for emergency egress).

6. The licensee must ensure that at all times, patrons awaiting venue entry form a queue on Market Street, Wollongong of no more than two persons wide and positioned so as not to impede the free flow of pedestrians, and do not queue on Kiera Street, Wollongong.

Review

7. These conditions and the matters raised in this complaint will be reviewed under section 54 of the Act within six months of the implementation of the conditions.

("the **Director General's Conditions**")

43. The Director-General imposed conditions upon the Nightclub's licence in identical terms to conditions 1 to 4 and 7 above. The Director-General did not impose any condition equivalent to the abovementioned condition 5 but imposed a condition similar to condition 6 regarding the management of queuing outside the Nightclub, in the following terms:

> "The Licensee must ensure that at all times, patrons awaiting venue entry form a queue on Kiera Street, Wollongong of no more than two persons wide and positioned so as not to impede the free flow of pedestrians. The queue is to commence from near the Kiera Street doors, and to proceed towards Victoria Street."

THE APPLICATION FOR REVIEW

44. As part of its Application, the Hotel sought a stay of the Decision until the Authority finally determines the review. When the Authority indicated to the Hotel that it was not minded to stay the Decision, the Hotel's lawyers suggested that a stay be granted subject to conditions that the Hotel would comply, in the interim, with the varied form of licence conditions proposed by the Hotel in its substantive Application. On 30 November 2010 the Authority issued a direction under section 153 (3) of the Act, staying the Decision as it applied to the Hotel, upon that basis.

45. The Hotel's Application initially sought that the Decision be "set aside" or, in the alternative, that the Decision be varied and that the conditions imposed by the Director-General be replaced with alternative conditions proposed by the Hotel.

46. However, on 13 December 2010 the Hotel's lawyers, Back Schwartz Vaughan, advised the Authority that the Hotel only seeks a varied drafting of the Director's conditions for the purposes of this review. That is, the Hotel does not press for the Director's decision to be revoked or that no conditions be imposed.

47. The Hotel's proposed alternative conditions (as amended in light of discussion during the Authority's Conference) would consolidate most of the Director's seven conditions into four conditions, but in the following terms:

Condition 1

1. From [insert date] the noise emission must at all times comply with the following:

    a. 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 7:00am and 12:00 midnight at the boundary of any affected residence**

    b. The LA10* noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5 Hz – 8kHz inclusive) between 12:00 midnight and 7:00 am at the boundary of any affected residence**

    c. Notwithstanding compliance with conditions 1(a) and 1(b) above, the music 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 7:00 am.

    *For the purposes of this condition, the LA10 can be taken as the average maximum deflection of the noise emission from the licensed premises
    ** For the purposes of this condition, affected residence and/or residential premises excludes any residence which is in any building within 150 metres of the Hotel Illawarra.

Condition 2

a. At all times music and any amplification associated with the entertainment provided on the licensed premises shall be via the Hotels principal sound equipment (the "House Sound System").

b. All amplifiers or noise generating equipment associated with the use of the House Sound System must be under the control of a noise limiter.

c. The noise limiter must be calibrated to the following after midnight levels when measured adjacent to the dance floor for the Inside front bar (located alongside Keira St frontage of the premises):-

    (i) from midnight the music L10 is not to exceed 101dB(A), and
    (ii) from 1.30am the music L10 is not to exceed 96 dB(A)

d. the noise limiter must be contained within a locked container or a secure area and only accessible by a key held by the licensee or duty manager.

Condition 3

On any night that entertainment is provided on the licensed premises, the Licensee must ensure that the windows of the licensed premises facing Kiera Street, Wollongong, are kept closed by 11:00pm until the Hotel ceases trade (unless they are used for emergency egress).

Condition 4

Whenever entertainment is being held at the Hotel, the licensee must ensure that at all times patrons awaiting venue entry form a queue on Market Street, Wollongong, of no more than two persons wide and positioned so as not to impede the free flow of pedestrians, and do not queue on Kiera Street, Wollongong.

"Entertainment" where referred to in the conditions on this licence is defined to mean entertainment associated with or provided by a person or persons physically present and actually providing the entertainment by way of amplified music, including bands; disc jockeys(s) or where patrons are dancing.

(the "**Hotel's Proposed Conditions**")

48. As discussed during the Authority's Conference, while the Hotel does not object to the Director-General's Condition 7 (providing for review of the Decision in 6 months time) the Hotel submits that this condition is not strictly necessary, as a regulator may impose, vary or revoke licence conditions under sections 53, 54 or 81 of the Act (as the case may be) either of its own motion or in response to a further complaint. The Hotel submits that given the costs and time expended on this matter so far it is in the interests of all parties to finalise this Complaint.

49. The reasons given in the Application as to why the Hotel's Proposed Conditions are preferable to the Director- General's Conditions are, in summary:

    (i) The Hotel's conditions are "in the spirit" of the Director-General's conditions, while avoiding consequences that the Hotel submits were not intended by the Director-General.

    (ii) The Hotel's proposed exclusion of residences located within 150 metres of the Hotel from the definition of "affected residence" proposed by Director-General's Condition 1 will better reflect the purpose of section 81 (3) of the Act, which requires that any decision made in response to a disturbance complainant takes into account the *priority of residence* as between complainant and licensed premises. It is, on the material before the Authority, "likely" that the Hotel's noise profile may exceed the LA10 standard with regard to audible noise within other residential premises in the vicinity of the Hotel. While there are presently very few residences within 150 metres of the Hotel, the current condition does not give the Hotel any real benefit from its prior occupancy. As things stand, this Complaint has given rise to a new licence condition that may automatically expose the licensee of the Hotel to liability for an offence should (for example) some other resident move close to the Hotel and experience a level of noise from within their premises.

(iii) There is no definition of "amplified music" for the purposes of Director General's Condition 5 requiring closure of the Hotel windows. Some definition is appropriate for the sake of administrative certainty and given that any non compliance with a licence condition will give rise to an offence against the Act. This Complaint was directed against disturbance caused by loud music played through the Hotel's sound system in the evenings. The Director-General's Conditions should not inadvertently apply at times or in circumstances that were not the subject of Complaint.

(iv) The present requirement that the Hotel close its windows at *any* time when "amplified music" is provided should be varied so that this requirement commences at 11 pm. Otherwise, should the Hotel play a compact disc during the day or even music video through the Hotel's television it may theoretically be compelled to comply with this requirement. Patrons have an expectation that the Hotel's windows will be open, and the renovated premises were designed for this, especially during the warmer months and daytimes. An 11 pm commencement time, combined with the specification that this condition shall apply when the Hotel provides "entertainment", will provide greater certainty and a better reconciliation of patron expectations against the kind of noise likely to constitute an "undue" disturbance to the neighbourhood.

THE COMPLAINANT'S SUBMISSIONS TO THE AUTHORITY CONFERENCE

50. During the Authority Conference, the Complainant conceded that the order of occupancy issue, to which the Director-General and the Authority must have regard, is in the Hotel's favour.

51. The Complainant vehemently disputes the Hotel's submission that the Complaint lacks credibility or is mischievous by reason that, as a "trained lawyer", the Complainant must have known that the apartment she purchased in 2006 was not in compliance with certain conditions imposed upon the developer of that building, including provisions requiring the amelioration of noise such as double glazed windows on the rooftop living area of the Complainant's apartment. The Complainant advised the Authority that she is an academic with no experience in legal practice or property matters. The Complainant did not review all the development consents that were imposed upon the original developer of her premises.

52. The Complainant advised the Conference (and the Authority accepts) that the Complainant was not actually aware that the apartment she purchased in 2006 was not in compliance with certain development conditions regarding the amelioration of noise that had been imposed upon the developer by Council during 1997, when consent was granted to convert that building from commercial premises to residential apartments.

53. The Complainant briefly reiterated her account of the noise that she has encountered arising from the Hotel and the Nightclub, explaining how she kept a log of disturbance

incidents as they occurred and that this information had been reduced to the submissions contained in her Complaint.

54. The Complainant cast doubt upon the compliance reports prepared by OLGR Inspectors with regard to the Hotel and Nightclub that were before the Director-General, implying that there is scope for corruption, whereby licensed venues are tipped off before compliance inspections occur. The Complainant did not elaborate but said that she would take those concerns up with OLGR. The Authority has not had regard to these concerns in making this Determination and in any event accepts that there has been noise disturbance arising from the Hotel and Nightclub.

55. The Complainant stated that the Hotel's performance with regard to the management of noise had "improved markedly" since the Complaint was filed. The Complainant argues that this change in conduct has only arisen because the Hotel has become subject to regulatory scrutiny and "the jury is out" (that is, a decision from the Director-General and now the Authority has been pending).

56. The Complainant does not object to the Director-General's decision to modify the LA10 requirements by excluding the Complainant's own building from the definition of "affected premises" in the Director-General's Condition 1, acknowledging that her building has been shown to not comply with Council development conditions and that the Hotel has the order of occupancy in its favour. However, the Complainant opposes the Hotel's proposal that all residential premises within 150 metres of the Hotel be excluded from the definition of "affected residence", in that this is too great a concession to the Hotel.

57. The Complainant emphasised that high levels of noise are a public health issue, encouraging excess liquor consumption. The Complainant submitted that the commercial rationale for loud music on the licensed premises was, according to a maxim related to her by an (unidentified) publican:

> "Bass=babes=blokes=booze= bucks".

58. The Complainant briefly alluded to some academic research (Warner J, "Researchers Say Bar Patrons Drink More and Faster When the Music is Loud" *Alcoholism: Clinical & Experimental Research* July 18, 2008) indicating a correlation between loud music and increased consumption of liquor.

59. The Complainant further submitted that the music noise levels disclosed by the Cooper Report as occurring inside the Hotel, while acceptable from her apartment during that evening, were at levels that are objectively likely to cause permanent hearing loss to Hotel patrons. The Complainant questioned whether the acoustic practices of licensed premises today are creating a generation of hearing impaired people in the near future.

60. The Complainant also discussed with the Authority how noise caused by patrons outside licensed premises has affected her, but she queries what licensed venues can really do to stop this type of disturbance arising.

61. On the issue of queuing, the Complainant observed that the Hotel has almost always complied with the requirement for the Hotel entrance being in Market Street. However, she notes that on three busy nights, the queue has been observed running from Market Street, around the corner into Keira Street, reaching almost to the Nightclub. It was between two and four people deep, totalling 160 people. The Complainant advised the Conference that she has great difficulty understanding what the Hotel could do to control noise from patrons in those circumstances.

62. The Complainant accepted a proposal, raised by the Authority during the Authority Conference and agreed by the Hotel, that the Director-General's Conditions 2-4 requiring the operation of a noise limiter should, for the sake of certainty, specify what internal noise levels the limiter should be set to maintain at relevant times of the evening. In an exchange of emails following the Conference, the Complainant accepted the Hotel's Proposed Condition 2 (c).

63. The Complainant accepted as reasonable the Hotel's proposal that its windows be closed from 11 pm at night, whenever music is being played through the House Sound System.

THE HOTEL'S FURTHER SUBMISSIONS AT THE AUTHORITY CONFERENCE

64. The Hotel was represented at the Conference by Mr Tony Schwartz of Back Schwartz Vaughan, accompanied by Mr Paul Azani, the Hotel's manager, and Mr Stephen Cooper, the Hotel's acoustic consultant.

65. In summary, the Hotel elaborated on its position by making the following points:

    (i) The Complaint should be considered in its context – that the Hotel is in a commercial area of Wollongong, which has been "infiltrated" as an afterthought by the local Council to admit developments of a residential nature.

    (ii) The Complainant's premises are located "cheek by jowl" to the entertainment precinct, and, in particular, to the Hotel and adjoining Nightclub. The Hotel is not taking issue with the noise alleged by the Complainant. The Hotel is not surprised that music is audible in the Complainant's rooms, for circumstances which are explained in detail in the written submissions. The Complainant's premises are across the road from the Hotel. Those premises were formerly an insurance building. The Complainant bought the premises after it became a residence. There are development consent conditions that are applicable to the Complainant's premises which have not been complied with.

    (iii) Historically, it was very standard practice to have a noise condition imposed on premises with entertainment, and no one debates that. What has happened, however, is that there has been a "protection" afforded through priority of occupancy, which was introduced with the *Liquor Act 2007*, which was not part of the *Liquor Act 1982*. This was to provide some balance, in circumstances such as

those of the Complainant, where a resident has come to the residence after the Hotel and after the Hotel has been renovated.

(iv) The Hotel "agrees with the intent" of the Director-General's conditions, but seeks clarification and modification of those conditions to enable them to be applied fairly in these particular circumstances.

(v) On the desirability of inserting a definition of "entertainment" into the Director-General's conditions, Mr Cooper observed:

> *"there's been quite a few conditions changed with councils as a result of the elimination of Place of Public Entertainment. And this is a common matter that there was a previous definition for entertainment, there is a new definition of entertainment, and therefore some councils have been greatly confused. And this isn't the first time that the matter has been raised, so it's actually a technicality in getting the clarification of "amplified music" versus the intent of "entertainment". And so the view is that a definition of "entertainment" and having a condition relating to entertainment, rather than "amplified music" overcomes the problem that has occurred on quite a few other development consents, which are going through the same process of technically having to apply to council under a section 96 to get the condition changed. So that it reflects what the intent, or how it used to operate before, purely because the definition of entertainment was changed, and so it's just a matter of consistency in trying to resolve that issue."*

(vi) Mr Schwartz submits that the Hotel agrees with the imposition of a noise limiter and has one currently in operation at the premises. However, the Director-General's condition requiring use of the noise limiter should be varied to apply only to amplification through the Hotel's Sound System. The condition as it stands would theoretically require any amplification device to be governed by a limiter – including, for example, the speakers on the Hotel's television. This was, it is asserted, not the Director-General's intent. When questioned by the Authority Mr Azani and Mr Cooper advised the Authority Conference that in practice it is sound channelled though the Hotel Sound System that is likely to be audible outside the venue.

(vii) Mr Schwartz submits that the Hotel is happy to comply with the Director-General's condition with regard to queuing, but submits that this condition should apply when the Hotel is busy, not "at all times" as presently prescribed.

(viii) On the rationale for inserting a 150 metre exclusion zone into the Director General's Condition 1, Mr Schwartz elaborates:

> *"At the moment, if somebody comes and builds something new near us or across the road, we've got to rely on the Council putting in very tough DA conditions and that there's noise attenuation occurring at the premises to take*

into account the hotel. And in my experience, that is not uncommon in some Councils where the hotel or other licensed premises has got wind of the fact that there's a development going ahead and they've made a submission to the Council. And I'm sure Mr Cooper will give you examples of that, and I have got many examples. But sometimes they don't. They might be more than 50 metres away and certainly have no idea.

So all of a sudden, you have this conflict between the Council, or Land and Environment Court, as someone else who is approving things, and, of course, what I will call the licensing authorities. And we think that's inappropriate and unfair, and we don't want to be in that particular situation. We are very happy with the status quo as it is. We understand how the testing applies. We've got limiters in place, we've had acoustic testing. We acknowledge there's disturbance from [the Complaint's] premises, and we know that the measurements done have to be taken from her premises .But what we're concerned about is that – what I will call the development creep"

(ix) On the potential "conflict" between liquor and planning regulation, Mr Cooper observes:

"The Council LEP indicates two zones, and that residential use on the eastern side of what is marked on this as the Princes Highway for Keira Street, is to be permitted, provided it's not restricting the commercial operations. And what the Land and Environment Court has ruled on two matters now is that, if there are developments that incorporate noise control measures for attenuation, to safeguard them against the external noise and/or the hotel, then it is illegal for the Court to grant an approval for the hotel to permit that without first having had the licence changed."

(x) After noting that that the two recent planning cases to which he refers concerned the Doncaster Hotel in Kensington and the Minus Five Bar at Circular Quay, Mr Cooper continued:

"And it's a matter of looking at it and saying, 'Well, is there a mechanism that we look at the moment that provides that protection, for the hotel, and makes it consistent with the Land and Environment Court's rulings, so that we don't necessarily have to come back for each and every development application that would be in proximity to the hotel that would require, by the Council's LEP, any directions, noise controls to address the traffic and/or the entertainment noise from the hotel.' It's a similar thing that's been happening in the [Sydney] *City Council with their DCP for addressing inner city living, and it's sort of snowballing in terms of it."*

(xi) Mr Schwartz submits that were the Director-General's Condition 1 to remain as it is presently drafted, the following scenario may arise:

"What could end up is that, the condition stays as it is, and someone at 155 Keira Street tells the police and tells the Council, "Come down and measure the noise," and it's after 12 o'clock and someone can hear it, we will be prosecuted. We won't be here and be able to argue that 155 Keira Street came later, and that they don't have what the development considers [necessary] – *we'll have to deal with a prosecution. And we don't' think (a) that that's fair and (b), that was the intent of the director. We simply think the director wasn't aware that 155 Keira Street was a residential premises. And I have got photos of it, if it assists."*

(xii) Mr Schwartz advises that there are presently six residential buildings, ranging from 1 to 24 units, within a radius of 150 metres of the Hotel. [The Hotel tabled a map and photographs of those premises at the Authority Conference].

COMMENT

66. The Complaint was filed under section 79 (1) of the Act, which states:

> **79** (1) A person may complain to the Director-General that the quiet and good order of the neighbourhood of licensed premises are being unduly disturbed because of:
> (a) the manner in which the business of the licensed premises is conducted, or
> (b) the behaviour of persons after they leave the licensed premises (including, but not limited to, the incidence of anti-social behaviour or alcohol-related violence).

67. Section 81 of the Act provides the powers of the Director-General when determining a disturbance complaint:

> **81 Decision by Director-General in relation to complaint**
>
> (1) The Director-General may, after dealing with a complaint in accordance with section 80, decide to do any one or more of the following:
> (a) impose a condition on the licence for the licensed premises the subject of the complaint,
> (b) vary or revoke a condition to which the licence is subject,
> (c) if a conference has been convened in relation to the complaint—adjourn the conference subject to implementation and continuation of undertakings given by the licensee,
> (d) issue a warning to the licensee,
> (e) take no further action in relation to the complaint.
> (2) The conditions that may be imposed on a licence include, but are not limited to, conditions relating to any one or more of the following:
> (a) noise abatement,
> (b) prohibition of the sale or supply of liquor before 10 am and after 11 pm,
> (c) prohibition of, or restriction on, activities (such as promotions or discounting) that could encourage misuse or abuse of liquor (such as binge drinking or excessive consumption),
> (d) restricting the trading hours of, and public access to, the licensed premises,
> (e) requiring the licensee to participate in, and to comply with, a liquor accord.
> (3) The Director-General is to take the following matters into consideration before making a decision under this section:
> (a) the order of occupancy between the licensed premises and the complainant,

(b) any changes in the licensed premises and the premises occupied by the complainant, including structural changes to the premises,
(c) any changes in the activities conducted on the licensed premises over a period of time.

(4) For the purposes of subsection (3), ***complainant*** does not include a complainant who is the Commissioner of Police or a person authorised by the local consent authority.

68. The Applicant has not, on review, taken issue with the Director- General's finding that the conduct of the Hotel business or the behaviour of departing Hotel patrons has given rise to undue disturbance to the quiet and good order of the neighbourhood.

69. While it is not necessary in this review for the Authority to make a finding on this issue the Authority observes that the Complainant presented a sufficient case to satisfy the Director-General that undue disturbance to the quiet and good order of the neighbourhood had occurred within the meaning of section 79 of the Act.

70. In determining this review, the Authority has turned its mind to the objectives of the Act and the statutory considerations set out under section 3:

3 Objects of Act

(1) The objects of this Act are as follows:
(a) to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community,
(b) to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality,
(c) to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.

(2) In order to secure the objects of this Act, each person who exercises functions under this Act (including a licensee) is required to have due regard to the following:
(a) the need to minimise harm associated with 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.

71. Noting that the question of whether undue disturbance has occurred is not, for the purposes of this review, in dispute, the Authority has considered afresh what, if any, regulatory action should be taken in response to the Complaint in light of the Application before it. The Authority has considered the provisions contained within sections 79 to 81 of the Act, that govern the Director-General's jurisdiction to determine disturbance complaints, and section 153 of the Act, that empowers the Authority to confirm, vary or revoke a reviewable decision.

72. The Authority does not consider that it has the power, when determining the correct and preferable decision on review of a disturbance decision, to impose regulatory measures that a primary decision maker would not be empowered to impose under section 81 of the Act. The Director-General could not, for example, have cancelled a licence in the

course of determining this Complaint, which was the response initially requested by the Complainant with regard to the Nightclub. The Authority cannot impose cancellation on review.

73. As noted above, the Complainant did not seek review of any aspect of the Decision and the Nightclub did not seek review of the Decision as it applied to those premises. Neither the Director-General nor Police made any submissions in response to this Application. Neither of those parties sought to participate in the Authority Conference.

74. In the circumstances, the Authority does not propose to disturb the Decision as it applies to the Nightclub. It may be open to the Director-General to vary (for the sake of clarity) the Decision as it applies to the Nightclub, with the benefit of legal and expert submissions now before the Authority, but that is a matter for the Director-General.

75. The Authority notes that the Hotel and the Complainant are in substantial agreement as to the Hotel's proposed minor drafting variations to the Director-General's Conditions, in so far as they would require:

    (i) closure of windows facing Kiera Street from 11pm when entertainment is provided;

    (ii) management of queuing (notwithstanding some scepticism by the Complainant as to whether this measure will work on those occasions when there are large queues);

    (iii) the application of a noise limiter to the House Sound System, set to prescribed decibel levels for specified time periods.

76. The Authority regards the Hotel's proposals in this regard as reasonable and desirable, offering greater certainty from the perspective of compliance and enforceability. The Authority notes that a venue's non compliance with a licence condition may give rise to liability on the part of a licensee for an offence against section 11 (2) of the Act, punishable by a fine of $11, 000 or imprisonment for 12 months or both. For that reason, greater certainty is fair and reasonable.

77. The Authority considers it preferable to insert some further words into the Director General's Condition 6 regarding the management of queuing, so that the queuing condition shall only apply at times when there are 10 or more persons present at the door.

78. The main point of difference between the Hotel and the Complainant with regard to this Application was the Hotel's proposed insertion of a 150 metre exclusion zone into the definition of "affected residence" that was prescribed by the Director-General's Condition 1.

79. The Authority notes that varying this condition in the manner proposed by the Hotel will not adversely affect the Complainant, as the condition as it stands already excludes the Complainant's building from the definition of an "affected residence".

80. The Authority is persuaded by the arguments made by the Hotel that some degree of comfort should be given to the Hotel in light of the order of occupation issue. In the circumstances of this case, the Hotel's priority in occupation calls for a more liberal regulatory response than the Authority might otherwise impose with regard to noise management.

81. The Director-General was persuaded that some allowance should be made to reflect the order of occupancy. The Director-General was also influenced by the fact that the Complainant 's residence is a rooftop apartment, comprising one level beneath the roof of the building and an upstairs, glass walled living area on top of the roof. The rooftop structure does not comply with development conditions that were imposed by Council upon a third party property developer who converted that building from commercial to residential premises. Were those development conditions adhered to, this may have ameliorated the effects of noise that is now complained of, emanating from the Hotel, the Nightclub and/or their patrons.

82. The Hotel has presented a satisfactory case why, in these unusual circumstances, the Director General's Condition 1 as it stands may yet work to deprive the Hotel of the benefit of its priority in occupancy should another resident move to other premises in the immediate vicinity of the Hotel and rely upon the Director General's Condition 1 to have the licensee prosecuted for noise that is audible within their premises.

83. In a separate argument, the Hotel submits that this condition, as it stands, may give rise to unintended conflict s between liquor regulation under the Act and planning regulation under the *Environmental Planning and Assessment Act 1979*.

84. The Hotel's consultant, Mr Cooper submits that this regulatory conflict is illustrated by the decision of Commissioner Moore of the New South Wales Land and Environment Court in the matter of *Doncaster Operations Pty Limited* v *Randwick City Council* [2005] NSWLEC 217 ("the **Doncaster Case**").

85. In that matter, the Doncaster Hotel sought planning approval from Randwick Council to construct a first floor outdoor dining area. That hotel's licence had a condition on its liquor licence that provided:

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

86. It was common ground in the Doncaster Case that the development, if approved, would result in that hotel operating in a manner that was likely to contravene the abovementioned noise condition on the liquor licence. At paragraphs 5-7 and 15 of the judgment, the Land and Environment Court referred to the regulation of noise by the former NSW Licensing Court and the scope for a disturbance complaint arising under the

former section 104 of the *Liquor Act 1982* (the predecessor to section 79 of the current Act).

87. The Court held:

> "5. The liquor licensing provisions are imposed pursuant to the *Liquor Act 1982* (the Liquor Act) and are enforceable, relevantly, through a process set out in s 104 of that Act. It is clear from the terms of those provisions that, although there is a discretion given to the Licensing Court not to enforce the condition or to vary the condition, nonetheless the condition is enforceable and a licensee who breaches it is potentially subject to sanctions as a consequence of a breach.
>
> 6. It is clear that I have jurisdiction to uphold the appeal and approve the application. It is also well settled that, in exercising its discretion, this Court can determine that an proposal, which is otherwise permitted under another regulatory regime such as the Liquor Act, is nonetheless unacceptable in a planning or environmental context. Thus, this Court can impose restrictions on a proposal that is otherwise permitted by another regulatory regime. However, I am not satisfied that the converse is the correct position.
>
> 7. In the present instance, the granting of the application, as sought, would involve this Court in granting a consent which would have the effect of permitting a breach of the licensing conditions…
>
> 15. If the applicant were to approach the Licensing Court and have this licence condition amended so that the condition did not act as an impediment to the granting of such an application, a future application to modify any consent arising from the present proceedings or a fresh development application for a supplementary consent could be lodged. Absent such variation, it is not appropriate for this Court to consider approval of the application in its present form."

88. While it is not clear on the information before the Authority how the potential regulatory conflict identified in the Doncaster Case will actually manifest and prejudice the Hotel should the Director General's Condition 1 not be modified (unless the Hotel has undisclosed plans to develop the premises further) the Authority is otherwise satisfied that the Director General's Condition 1 should be varied to exclude from the definition of "affected residence" any residences within 150 metres of the Hotel.

89. This variation will not prevent a future complaint arising under section 79 of the Act, but may limit the potential for *this* Complaint to give rise to liability for an offence in circumstances that do not do justice to the priority in occupation of the Hotel vis a vis *this* Complainant.

90. The Authority is not persuaded by the Hotel's proposal that the Authority should not make any provision for review of the Authority Conditions. While the Authority appreciates the Hotel's desire for regulatory finality, the Authority considers it preferable that the parties to this review (that is, the Complainant and the Hotel) have some opportunity to provide feedback on the operation of the licence conditions imposed by this review determination. This will enable the Authority to assess the merit of maintaining, varying, revoking or even supplementing the conditions imposed without the commencement of a

new administrative process. The Authority requests that any submissions be made in writing, addressed to the Chief Executive, by Monday 4 July 2011. The Authority expects to determine its response to those submissions, on the papers, promptly thereafter.

DETERMINATION

91. The Authority has decided to **vary** the Decision as it applies to the Hotel, by replacing the seven (7) conditions that were imposed by the Director-General with the following five (5) consolidated conditions ("**Authority Conditions**") to be imposed upon the licence of the Hotel. The Authority Conditions shall take effect from 4 January 2011:

Condition 1

Noise emission must at all times comply with the following:

a. The LA10* noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz 08kHz inclusive) by more than 5dB between 7:00am and 12:00 midnight at the boundary of any affected residence**

b. The LA10* noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5 Hz – 8kHz inclusive) between 12:00 midnight and 7:00 am at the boundary of any affected residence**

c. Notwithstanding compliance with conditions 1(a) and 1(b) above, the music 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 7:00 am

*For the purposes of this condition, the LA10 can be taken as the average maximum deflection of the noise emission from the licensed premises

** For the purposes of this condition, affected residence and/or residential premises excludes any residence which is in any building within 150 metres of the Hotel Illawarra.

Condition 2

a. At all times music and any amplification associated with the entertainment provided on the licensed premises shall be via the Hotels principal sound equipment (the "House Sound System").

b. All amplifiers or noise generating equipment associated with the use of the House Sound System must be under the control of a noise limiter.

c. The noise limiter must be calibrated to the following after midnight levels when measured adjacent to the dance floor for the Inside front bar (located alongside the Keira Street frontage of the premises):-

(i) from midnight the music L10 is not to exceed 101dB(A) ,and
(ii) from 1.30am the music L10 is not to exceed 96 dB(A)

d. The noise limiter must be contained within a locked container or a secure area and only accessible by a key held by the licensee or duty manager.

Note: For the purposes of this Condition, "dB(A)"refers to the most commonly used standard weighting of the audible frequencies designed to reflect the response of the human ear to noise.

"L10" refers to noise level exceeded for 10% of the measurement period, calculated by statistical analysis.

Condition 3

On any night that entertainment is provided on the licensed premises, the Licensee must ensure that the windows of the licensed premises facing Kiera Street, Wollongong, are kept closed by 11:00pm until the Hotel ceases trade (unless they are used for emergency egress).

Condition 4

Whenever entertainment is being held at the Hotel, the licensee must ensure that at all times when there are 10 or more patrons awaiting venue entry, those persons form a queue on Market Street, Wollongong, of no more than two persons wide and positioned so as not to impede the free flow of pedestrians, and do not queue on Kiera Street, Wollongong.

"Entertainment" where referred to in Conditions 2-4 is defined to mean entertainment associated with or provided by a person or persons physically present and actually providing the entertainment by way of amplified music, including bands; disc jockeys(s) or where patrons are dancing or where the House Sound System is utilised.

Condition 5

The operation of Conditions 1-4 will be reviewed by the Authority under section 53 of the Act. This review will commence six months after the commencement of these conditions.

Yours sincerely

Chris Sidoti
Chairperson