



Independent Liquor & Gaming Authority

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Dear Sir/Madam

**Application for Review under section 36A of the
Gaming and Liquor Administration Act 2007
Paddington Bowling Club, Paddington**

I refer to an application for review dated 7 April 2015 (Review Application) made to the Independent Liquor and Gaming Authority by Mr Allan Teale, Director of the Paddington Bowling Club Limited (Club). The Review Application requests a review under section 36A of the *Gaming and Liquor Administration Act 2007* of a decision dated 31 March 2015 (Reviewable Decision) made by the Secretary of (then) NSW Trade and Investment (now a function within the jurisdiction of the Secretary of the Department of Justice) to impose a new condition on the liquor licence of the Club under section 81 of the *Liquor Act 2007*.

The Authority considered the Review Application at its meeting on 27 May 2015 and has decided, pursuant to section 36A(3) of the *Gaming and Liquor Administration Act 2007*, to **confirm** the Reviewable Decision.

The Authority informally notified this decision to the parties via a detailed email dated 29 May 2015.

Under section 36C of the *Gaming and Liquor Administration Act 2007*, the Authority is required to publish statements of reasons with respect to those types of decisions prescribed by clause 6 of the *Gaming and Liquor Administration Regulation 2008*. The attached statement of reasons has been prepared in the context of a high volume liquor jurisdiction that requires the publication of statements of reasons as soon as practicable.

Yours faithfully

Micheil Brodie
Chief Executive

- 3 AUG 2015

STATEMENT OF REASONS

INTRODUCTION

1. The Authority has received an application for review dated 7 April 2015 (Review Application) made to the Authority under section 36A of the *Gaming and Liquor Administration Act 2007* (GLAA).
2. The Review Application is made by Mr Allan Teale, Director of the Paddington Bowling Club Limited (Club) and is signed by Mr Richard Perry, Director on behalf of the Club.
3. The Review Application seeks the revocation of a decision dated 31 March 2015 (Reviewable Decision) made by the Secretary of (then) NSW Trade and Investment to impose a new condition on the liquor licence for the Club under section 81 of the *Liquor Act 2007* (Act).
4. In a further submission dated 23 April 2015, the Review Applicant proposes by way of alternative that certain other conditions be imposed upon the Club's licence – that is, that the Reviewable Decision be varied.
5. The Reviewable Decision arose in response to a disturbance complaint under section 79 of the Act dated 31 March 2014 (Complaint) made to the Office of Liquor, Gaming and Racing (OLGR) by the Rose Bay Local Area Command (Complainant) of NSW Police, on behalf of the residents of the Goodwin Retirement Village, which neighbours and overlooks the Club premises.

SUMMARY OF THE REVIEWABLE DECISION

6. The Reviewable Decision imposed a condition on the Club's liquor licence number LIQC300229327 under section 81 of the Act, to commence effect from 14 April 2015, in the following terms:

The licensee must ensure that no patron is permitted to consume alcohol on the bowling greens, or in or on any other outdoor area of the Club.

(the Condition)

7. Briefly, the Secretary noted that the Complaint made by Police on behalf of the residents of the Goodwin Retirement Village alleged undue disturbance in relation to both the manner in which the business of the licensed premises was being conducted and the behaviour of patrons leaving the Club.
8. The Secretary noted that he had the following material before him when making the Reviewable Decision:
 - (a) Complaint lodged by NSW Police, Rose Bay Local Area Command dated 31 March 2014
 - (b) OLGR Inspectors' report on the Club's operation dated 25 April 2014
 - (c) Letter from Mr Anthony Keon, OLGR Director of Compliance to the Club dated 1 August 2014, formally accepting the Complaint and proposing the imposition of conditions on the licence
 - (d) Submission from Rose Bay Local Area Command Police dated 26 August 2014
 - (e) Submission from Mr Tony Hatzis of *Hatzis Cusack Lawyers* on behalf of the Club dated 19 September 2014

- (f) Letter from Mr Anthony Keon, OLGR Director of Compliance to the Club's lawyer dated 31 October 2014 imposing a condition under section 54 of the Act and advising that the Club would be subject to further monitoring
 - (g) OLGR Inspectors' file notes of inspections of the Club conducted on 21 November 2014, 28 November 2014, 5 December 2014, 6 December 2014, 12 December 2014 and 13 December 2014
 - (h) Club's schedule of events for the period 31 October 2014 to 29 December 2014
 - (i) Letter from Mr Paul Newson, OLGR Executive Director to the Club's lawyer dated 18 December 2014 proposing the imposition of conditions upon the licence
 - (j) Acoustic assessment report prepared by Koikas Acoustics Pty Limited dated 16 December 2014
 - (k) Submission from Mr Tony Hatzis of *Hatzis Cusack Lawyers* on behalf of the Club dated 13 January 2015
 - (l) Submission from Rose Bay Local Area Command Police dated 14 January 2015
 - (m) Acoustic assessment report prepared by Koikas Acoustics Pty Limited dated 16 January 2015
 - (n) Letter from Mr Paul Newson, OLGR Executive Director to the Club's lawyer dated 16 January 2015 granting an extension for the Club's final submission (which attaches additional material of the further Police submission dated 14 January 2015 and acoustic assessment report dated 16 January 2015)
 - (o) Submission from Mr Tony Hatzis of *Hatzis Cusack Lawyers* on behalf of the Club dated 27 February 2015
 - (p) Final submission from Mr Tony Hatzis of *Hatzis Cusack Lawyers* on behalf of the Club dated 6 March 2015 (attaching an acoustic assessment report from Dr Steven Cooper of The Acoustic Group Pty Limited).
9. The Secretary accepted, as submitted by the Club's solicitor, that a certain level of noise and disturbance should be expected by residents surrounding the Club - but was nevertheless satisfied that on balance, the material before him provided a proper basis to make a finding that the operation of the Club, at times, causes undue disturbance to the quiet and good order of the neighbourhood.
10. In arriving at this finding, the Secretary considered the submissions from the Club (including observations made in reports by A & M Consultants, Mr R J Redmond, and a report by The Acoustic Group Pty Limited), the submissions from Police, reports by OLGR Inspectors on their observations when attending the Club premises and acoustic reports from Koikas Acoustics Pty Limited (a consultant commissioned by OLGR).
11. However, the Secretary placed significant weight upon the observations of OLGR Inspectors during inspections of the Club, which demonstrated, to varying degrees, that the activities of patrons participating in social and corporate bowls functions while on the greens were likely to unduly disturb the neighbourhood, particularly the residents of the neighbouring Goodwin Retirement Village.
12. The Secretary noted that two compliance and risk audit reports undertaken by A & M Consultants on behalf of the Club made certain recommendations including, *inter alia*, the provision of additional free water stations and free food when entertainment is provided on high trade evenings, as a harm minimisation strategy and consideration of some type of noise buffering systems to be placed between the retirement village and the Club.
13. The Secretary observed that these noise mitigation recommendations appeared to conflict with the conclusions made by the Club's consultants that "...currently the controls being employed at the Club are ample and sufficient to allow the Club to provide the type of entertainment and operations they are presently supplying".

14. The Secretary was satisfied, on the basis of a report by OLGR Inspectors who attended the Club for an inspection on 25 April 2014 (the ANZAC Day holiday), that "...inadequate management on this day created an unduly permissive environment" that was conducive to patrons consuming more alcohol, conversing more loudly and displaying anti-social behaviour (including patrons leaving the venue yelling and screaming, patrons urinating in public and rubbish being left in the vicinity of the Club). This went far beyond what could reasonably be expected from the responsible operation of a bowling club located in a residential area.
15. The Secretary was satisfied that for many patrons attending the Club, the playing of bowls is "incidental to the consumption of liquor".
16. The Secretary was also satisfied, on the basis of contemporaneous file notes made by OLGR Inspectors recording their observations when attending the Club on seven (7) occasions between 21 November and 13 December 2014 that the Club, at times, was causing undue disturbance to the neighbourhood.
17. The Secretary also noted two reports commissioned by OLGR prepared by Koikas Acoustics Pty Limited, which describe the results of acoustic testing conducted at the Club on 5 December 2014, 12 December 2014 and 10 January 2015. Those reports concluded that the operational noise levels measured emanating from the Club exceeded the OLGR LA10 noise criteria "by a significant margin" on each of the three occasions that acoustic testing was conducted.
18. The Secretary noted that the Club had not yet provided an acoustic report or provided advice on potential remedial acoustic treatment, despite having had "ample opportunity" to do so since the Complaint was lodged in March 2014. The Secretary was satisfied that the reports by Koikas Acoustics Pty Limited provided additional weight to a finding of undue disturbance.
19. The Secretary further noted that on 25 April 2014, 5 October 2014 and 6 December 2014, multiple breaches of licence conditions under the *Liquor Act 2007* and the *Liquor Regulation 2008* (Regulation) were detected by OLGR Inspectors in relation to, *inter alia*, the service of alcohol in glass containers; failing to employ RSA marshals; failing to remove glass containers from the lawns; patrons removing open containers of liquor from the Club premises; failing to maintain an electronic noise monitoring system; employing a security guard with an expired RSA certificate and failing to maintain a patron count.
20. The Secretary noted that the Club received numerous Penalty Notices and Compliance Notices in respect of these contraventions of the legislation.
21. The Secretary observed that while the abovementioned breaches, considered in isolation, may not raise significant concerns, he was nevertheless satisfied that the pattern of breaches demonstrates a failure on the part of the Club to observe fundamental licence obligations in relation to licence conditions which exist as protective measures to ensure the community is not subject to undue disturbance or harm.
22. The Secretary noted with concern that many of these licence conditions had been imposed by the Authority during 2011 to address a previous noise disturbance complaint that had been made against the Club.
23. When the evidence now before the Secretary was considered in light of the management and compliance failures in relation to the prevailing controls designed to address the issue

of undue disturbance, the Secretary considered it appropriate to now implement additional controls to ensure the neighbourhood is not subject to continuing undue disturbance.

24. The Secretary noted that in circumstances where activities such as social bowls, "barefoot bowls" and corporate functions are not being conducted responsibly and were having an adverse impact on the local and broader community which is disproportionate to the benefit of those services to the community, regulatory intervention is "appropriate and necessary".
25. The Secretary noted that the current set of licence conditions imposed by the Authority in 2011 appeared to have been unsuccessful in controlling disturbance to the extent necessary.
26. The Secretary observed that the social and corporate functions held on the greens operate on such a large scale as to cause a significant impact, and the Club has been unable to adequately manage the risks associated with this impact.
27. The Secretary noted that on 1 August 2014, the OLGR Director of Compliance & Enforcement, Mr Anthony Keon had notified the Club of his intention to impose two new conditions upon the liquor licence for the Club. The first proposed condition would require the presence of a security guard whenever patron numbers exceed 200, while the second proposed condition would prohibit the sale or service of alcohol to patrons on the Club's bowling greens or outdoor areas. The proposed security guard condition was imposed by Mr Keon in a separate decision under section 54 of the Act dated 31 October 2014.
28. Following a further extensive consultation process, and in light of the material before him, the Secretary proposed to impose a more restrictive condition than proposed by Mr Keon that would prohibit the consumption of alcohol on the bowling greens or other outdoor areas. The Secretary was satisfied that this measure would be more likely to result in a considerable reduction in the level of ongoing undue disturbance from patron noise.
29. The Secretary accepted that the Club would suffer some adverse (financial) impact as a result of the imposition of the Condition, but did not accept that this would be an unreasonable expectation in the circumstances.
30. The Secretary determined that the Condition should take effect 14 days from the date of the decision (that is, 14 April 2015) in order to provide sufficient time to ensure business readiness and compliance with the new requirement.

MATERIAL BEFORE THE AUTHORITY

31. In summary, the entire bundle of material before the Authority at the time of making the Reviewable Decision (OLGR File) comprises the following evidence or other material:
32. Briefing memo to the Secretary dated 25 March 2015 (OLGR Memo). The OLGR Memo provides an outline of the relevant legislation to be applied in determining the Complaint and notes that the Secretary is not technically required to consider the order of occupancy matters set out in sections 81(3)(a) and 81(3)(b) of the Act as the Complaint was made by the Commissioner of Police, who is not considered to be a "complainant" under section 81(3) of the Act.
33. However, the OLGR Memo notes that the order of occupancy of the licensed premises and whether there have been any changes in the activities conducted on the licensed premises over a period of time are still relevant considerations.

34. The OLGR Memo notes that the meaning of "unduly" is not defined in the Act. OLGR note the submission by the Club's solicitor that whether an alleged disturbance is "undue" is an objective test of what could reasonably be tolerated by neighbours. OLGR note that the Club has also requested that OLGR facilitate physical access to the Goodwin Retirement Village so that the Club can undertake its own acoustic testing.
35. Attachment A to the OLGR Memo – section 79 Complaint lodged by Senior Constable Mark Davies, Licensing Supervisor, Rose Bay Local Area Command on behalf of the Commissioner of Police dated 31 March 2014. The Complaint is made by Police on behalf of a number of residents of the Goodwin Retirement Village, whose names have been redacted, on the basis that people connected with the Club have allegedly made threats to complainants protesting about noise issues in the past.
36. The Complaint material constitutes the standard Complaint Form that is verified by statutory declaration. This document notes that NSW Police have regular contact with the Club and attaches a number of submissions from resident complainants and correspondence between the residents, Police and OLGR, as follows:
37. Formal complaint from principal complainant, a resident of the Goodwin Retirement Village to Senior Constable Mark Davies, Licensing Supervisor, Rose Bay Local Area Command dated 5 March 2014. Briefly, this resident submits that since the private developer, CSKS Holdings Pty Limited, was granted the site of the Club premises by the NSW Government, the Club has morphed from a quiet, pleasant bowling club to a "...privately run rock 'n' bowl barefoot bowling party precinct" which is "totally inappropriate" in a residential area adjoining the Goodwin Retirement Village.
38. The resident submits that numerous complaints, Court cases and other attempts to stop the activities that have been "seriously disadvantaging" the ability of residents to enjoy their right to peace and quiet have not resulted in any significant changes and that CSKS Holdings have "...repeatedly shown they have total disregard to nearby residents" by continuing to operate the Club in this manner.
39. The principal resident contends, *inter alia*, that people who have no regard for the neighbours or the neighbourhood are "coached in from all over" for parties; there is no, or very little, supervision of people consuming liquor on the greens; that guests are "allowed and encouraged" to scream and yell throughout the site, resulting in huge noise, particularly over weekend or public holiday periods and creating an "amphitheatre" effect which is "insufferable" for local residents who cannot sit on their balconies due to the noise; that patrons engage in anti-social behaviour including public urination and littering and that intoxicated, noisy patrons disturb residents when leaving the Club past midnight and into the early hours of the morning.
40. The principal resident further contends that the culture of the Club's management, which is apparent through the slogan employed by the Club ("*Paddo Bowls – bowls without the olds!*"), is "disrespectful" to the community, particularly the residents of the adjoining retirement village. Furthermore, streakers have been reported on the greens and the Club's Facebook page features a nude male bowler "encouraging such unacceptable behaviour" in a residential area where many children live.
41. The principal resident complainant then attaches 18 complaints from people living in close proximity to the Club, including some residents of the Goodwin Retirement Village. These complainants, whose names have been redacted, contend variously that they are subjected to excessive noise, screaming, yelling and anti-social behaviour (including public urination, littering, streakers and "nudie runs") by intoxicated patrons; noise from industrial machinery, garbage collection and delivery vehicles; bottles being thrown into

the nearby Trumper Park embankment and a "disrespectful attitude" from the Club's management, which actively promotes young and not older persons.

42. The supporting complaints allege that the Club is a "private business run under the umbrella of a club structure" and that the activity of barefoot bowling is "secondary" to the consumption of large quantities of alcohol.
43. One of these letters of complaint submits that no noise or nuisance issues arise from the nearby Bellevue Hotel or the Lord Dudley Hotel. This letter also attaches several photographs of car parking spaces "locked" by the Club, which causes "huge" parking problems for residents; litter allegedly thrown by patrons of the Club and patrons of the Club urinating in public and taking part in "nudie runs".
44. Also attached to the principal complainant's letter are copies of 59 individually signed petition letters dated 4 November 2013 addressed to the (then) Premier, Barry O'Farrell and the Mayor of Woollahra Municipal Council, Toni Zeltzer from residents of the Goodwin Retirement Village. The principal complainant notes that many of these resident petitioners do not have access to a computer and would have difficulty writing a formal complaint. The petition submits that the "...noisy privately owned Club is a totally inappropriate location on Crown land" and seeks that this land, which is currently subject to a commercial lease in favour of the Paddington Bowling Club, be added back to the Crown lands of Trumper Park.
45. Attachment B to the OLGR Memo – Report of Inspection of the Club on ANZAC Day 2014 by Mr Sean Goodchild, OLGR Manager of Investigations (OLGR ANZAC Day 2014 Report). In this document, Mr Goodchild records his observations of the operations of the Club on 25 April 2014 in relation to disturbance issues.
46. In summary, Mr Goodchild stated that based on his observations on that occasion, "poor management" of liquor operations of the Club on ANZAC Day 2014 contributed to causing undue disturbance to the neighbourhood, both from patron noise and patrons leaving the venue engaging in anti-social behaviour.
47. Mr Goodchild noted that the key issues in venue management which contributed to disturbance included, *inter alia*, insufficient monitoring of the patron queue by security guards; failure to conduct any security patrols or to adequately supervise the vicinity of the Club premises; failure to keep the vicinity of the Club clean, especially from empty alcohol containers on approaching the entrance to the Club; failure to engage any dedicated RSA marshals contrary to a licence condition; the conduct of "high risk" liquor activities and promotions on a high risk day, including serving bottles of wine in jugs and promoting six-packs of VB cans; security and management appearing to condone patrons urinating around the bowling greens, signalling a permissive environment where poor patron behaviour was tolerated; and the failure to adequately secure the boundary to the Club due to a hole in the fence, allowing patrons to sneak into the venue and bypass RSA assessment at the front door.
48. In support of these observations, Mr Goodchild has attached to his report several photographs taken during the course of the inspection of the Club on 25 April 2014. These photographs depict the queue at the entrance to the Club; examples of rubbish and empty glass vessels near the queue area; the hole in the fence near the Club entrance; groups of patrons consuming liquor on the greens; and three male patrons urinating around the bowling greens.
49. A written notice to the Club under section 102A of the Act dated 25 April 2014 is also attached to the OLGR ANZAC Day 2014 Report. The notice directs that the licensee is

prohibited from carrying on, or permitting on the licensed premises, any activity that involves (i) the sale or service of six-packs of VB in coolers and (ii) the sale or service of the contents of a full bottle of wine in a jug (1,145mL jugs or similar).

50. Attachment C to the OLGR Memo – Letter from Mr Anthony Keon, OLGR Director of Compliance & Enforcement to Mr Robert Ashton, secretary of the Club dated 1 August 2014. In this letter, Mr Keon notes that a disturbance complaint under section 79 of the Act was made to OLGR and advises that in accordance with section 80(1) of the Act, he has determined to deal with the Complaint as a delegate of the Secretary by way of written submissions.
51. Mr Keon notes that the Club has been the subject of three prior disturbance complaints lodged by residents with the former Liquor Administration Board and the Authority between 22 August 2000 and 1 January 2009, and that these earlier complaints were finalised by the former Board and the Authority by the imposition of licence conditions to address the issues of disturbance arising at those times.
52. Mr Keon refers to the inspection of the Club by OLGR Inspectors on 25 April 2014 and notes that that inspection revealed non-compliance with some pre-existing disturbance related conditions of the liquor licence, and that Club management demonstrated "insufficient control of patrons" resulting in undue disturbance to the neighbourhood.
53. Due to the allegations of ongoing issues of disturbance and the apparent ineffectiveness of the current conditions, Mr Keon advises that it may be appropriate to impose additional conditions upon the Club's liquor licence and invites written submissions from the Club in response to this proposed course of action.
54. Annexure A to this letter is the OLGR ANZAC Day 2014 Report, discussed above.
55. Annexure B to this letter is a document outlining the proposed conditions being considered by Mr Keon in his capacity as a delegate of the Secretary, as follows:
 1. *The licensee must ensure that no patron is permitted to consume alcohol on the bowling greens or any other outdoor area of the Club.*
 2. *At any time there are more than 200 patrons at the Club, the licensee must ensure at least one security guard is deployed to continuously patrol and monitor the patron queue and the 50 metre vicinity of the Club.*
56. Annexure C to this letter is a schedule of the parties to the Complaint, including the Club, the Police Complainant and a representative of the Local Government, being Mr Gary James, General Manager of Woollahra Municipal Council.
57. Attachment D to the OLGR Memo – Submission from Licensing Constable Phillip Street of NSW Police, Rose Bay Local Area Command dated 26 August 2014. In this one page submission, Licensing Constable Phillip Street notes that Police "welcome" the additional licence conditions as proposed by Mr Keon in his letter dated 1 August 2014, and submits that the imposition of these additional conditions will "...positively contribute to the amenity of community life and will reduce the complaints received by Police from the community in relation to unacceptable behaviour, intoxication and excessive noise of patrons when leaving the Club or utilising the outdoor areas of the Club".
58. Attachment E to the OLGR Memo – Submission from Mr Tony Hatzis, legal representative of the Club dated 19 September 2014. Briefly, this submission provides a history of the Club, noting that the Paddington Bowling Club was incorporated in 1955 and that the Club

operates as a "contemporary bowls club" offering a clubhouse and bar, which has continuously conducted the playing of bowls on its present site since that time. The commencement of operations of the Club predates the requirement for development approval; thus there are no relevant terms of development approval which govern the conduct of bowls at the Club. The Club is located in an open space zoned as a "community use zone" under the *Woollahra Local Environmental Plan* and its use is "consistent" with that zoning. The Club submits that the fact that the operation of the Club predates the erection of the Goodwin Retirement Village (circa 1975) is a factor which must be given weight in determining the Complaint, per section 81(3)(a) of the Act.

59. In relation to the legislative scheme in respect of registered clubs, the Club submits that the objects of the Act are to regulate the sale and supply of liquor, not to regulate the conduct of a club's "underlying sporting activities".
60. The Club contends that many of the complaints that have been received are directed to the latter. The Club submits that the mere fact that patrons using the bowling greens may generate noise is not a cause for regulatory intervention pursuant to Division 3 of Part 5 of the Act. Mr Keon's letter dated 1 August 2014 refers to "three prior disturbance complaints" against the Club, giving rise to an implication that those complaints were resolved by conditions being imposed on the Club involuntarily.
61. The Club contends that this is "not a fair or correct implication" and that the Club engaged in "continual dialogue" with the complainants at that time, resulting in the satisfactory resolution of that disturbance complaint by consent, without the Authority having to make a non-voluntary determination.
62. The Club "strongly opposes" the imposition of the first of the proposed conditions prohibiting the consumption of alcohol on the bowling greens or any other outdoor area of the Club, submitting that the consumption of alcohol on bowling greens is a "commonplace activity" in most bowling clubs, and that patrons of a bowling club "legitimately expect" to be able to enjoy the consumption of alcohol while engaging in social or sporting activity on the bowling greens.
63. The Club submits that the Secretary is required to take into account the "legitimate expectations" of the Club's members and guests, as per subsection 3(1)(a) of the Act. The Club contends that over the course of a year, approximately 37,000 patrons use the bowling greens and imposing such a condition would result in the "likely insolvency of the Club".
64. The Club notes that it has once before been under administration and submits that it was able to "trade out successfully" because of its social/corporate bowls program. The Club submits that in exercising functions under the Act, the Secretary must take into account the likely severe adverse financial consequences of imposing such a condition, and refers to *O'Sullivan v Farrer* (1988) 13 NSWLR 562 and *Dalgety Wine Estates Pty Limited v Rizzon* (1979) 141 CLR 552 in support of this submission.
65. The Club consents to the second of the proposed conditions requiring a security guard to continuously patrol and monitor the patron queue at any time there are more than 200 patrons at the Club, pursuant to the Secretary's powers under section 54 of the Act. The Secretary "can take comfort" that the imposition of the second proposed condition will act to further reduce any instances of potential disturbance emanating from the Club.
66. Mr Hatzis submits that the concept of "undue" disturbance was considered in *OSB Operations Pty Limited v Jansen* [2006] WASCA 270, where the Court noted that noise or

conduct which is "unduly" disturbing necessarily conveys an objective test of what could be reasonably expected to be tolerated by neighbours.

67. The Club also refers to the South Australian authority of *Hackney Tavern Nominees Pty Limited v McLeod* (1983) 34 SASR 207. In determining what is "undue", the Club submits that one must have regard to the particular context.
68. The Club submits that in this case, it is relevant to note that this Club has been established at its present site for nearly 60 years, and that it is "manifestly unreasonable" for neighbouring occupiers residing in close proximity to the Club to expect no or almost no levels of disturbance from a licensed club. The Club submits that the fact that this licensed Club includes a clubhouse/bar and licensed bowling greens which have the capacity to accommodate several hundred people at peak periods must also be taken into account.
69. In relation to the OLGR ANZAC Day 2014 Report, the Club submits that it would be wrong for the Secretary to impose the suggested condition based on the observations made by OLGR Inspectors on that day because of the atypical nature of trading conditions experienced at the Club on ANZAC Day, in that it is a "special public holiday" and there are larger numbers of patrons visiting the Club, larger numbers of staff rostered on, and beverage sales are more than double the volume of sales on the next highest single day of the year. ANZAC Day is also the subject of special regulation (including the Club's own voluntary "Big Day Out" policy).
70. The Club contends that it is "highly inappropriate, and indeed wrong" to judge the statutory test of whether the Club gives rise to undue disturbance by reference to trading conditions on "one single day of the year".
71. The Club then makes specific submissions in response to the observations recorded by OLGR Inspectors in the OLGR ANZAC Day 2014 Report. The Club defends the "licensing breaches", matters which were the subject of Compliance Notices and the matters giving rise to the issue of a notice under section 102A of the Act in relation to irresponsible liquor promotions or activities noted in that report and contends that in light of the "...suite of [special licence] conditions applicable as a whole, and considering the nature and extent of the alleged non-compliances detected, one can only rationally conclude that the Club substantially complied with the conditions applicable to it for ANZAC Day trading".
72. In support of these submissions, the Club refers to covert observations made by a senior ex-Police officer, Mr Adam Purcell of A & M Consultants (Appendix 4 to the Club's submission) and a letter of support from Mr R J Redmond, a former Acting Commissioner of Police in Queensland and a current member of the Club (Appendix 5 to the Club's submission). Those documents are discussed below.
73. In relation to the section 79 Complaint, the Club submits that it is highly unusual that a complaint of this kind is not supported by any evidence or observations made by Police officers. The Club observes that only one COPS Report has been provided by Police in relation to an incident of trespass that occurred at 3:00pm on 15 February 2014, which was recorded in the Club's incident register.
74. The Club submits that the venue has not been a "declared premises" for the purposes of Schedule 4 to the Act in any of the 11 previous "rounds" and that no incidents requiring Police attendance have occurred at the Club over the last 12 months, apart from Police walkthroughs and the incident referred to above.

75. The Club contends that the Complaint is "...based entirely on claims, assertions and hearsay emanating from a select group of (unidentified) persons" and that these claims should be given little or no weight.
76. The Club contends that the resident complainants who have signed the petition dated 4 November 2013 "...seek to abuse the disturbance complaint process as a means of achieving their ultimate end of closing the Club".
77. The Club argues that the submission made by Senior Constable Davies in the Complaint to the effect that residents are reluctant to report incidents because they feel intimidated by management and are fearful of reprisal is "...entirely baseless, is offensive and is completely rejected".
78. The Club submits that the Police position "appears to be political", being a position that is "...urged upon the Police service by these political campaigners" [the resident complainants].
79. The Club protests at the "...denial of procedural fairness given to the Club and the apparent abuse of process" in not disclosing the names of the complainants and submits that it would be an error to give any weight to the unverified, non-specific assertions made by the unidentified persons whose letters are attached to the Police Complaint.
80. The Police letter makes reference to a meeting held at the Goodwin Retirement Village between OLGR Compliance Officers, representatives from Woollahra Municipal Council, Police, the local MP and residents of the Goodwin Retirement Village on 3 February 2014. The Club submits that it is "particularly concerning and disturbing" that OLGR officers were present at this meeting, in the absence of the Club.
81. The Club contends that OLGR's attendance at the meeting was "inappropriate" and that it "seriously compromises" OLGR's ability to determine the Complaint in an impartial manner. The Club also submits that it has not received any communication from any representative body within the Goodwin Retirement Village seeking any specific action; nor does the Police submission enclose any minutes of meeting or provide any further detail as to the persons who attended and/or the specific matters raised.
82. In conclusion, the Club notes that it does not object to the imposition of the proposed Condition 2 requiring that at least one security guard must be deployed to continuously control and monitor the patron queue at any time when there are more than 200 patrons at the Club.
83. However, the Club objects to the determination of the Complaint on the basis of "apprehended bias" and requests that the Secretary personally determine the Complaint on the available evidence.
84. Appendix 1 to the Club's submission dated 19 September 2014 is a decision of the Supreme Court of Western Australia in the matter of *OSB Operations Pty Limited Licensee of the Old Swan Brewery Restaurant v Jansen v Anor* [2006] WASCA 270 (8 December 2006).
85. Appendix 2 to the Club's submission dated 19 September 2014 is a graph entitled "Beverage sales 2013/2014" which indicates that there was a large spike in the beverage sales recorded for the Club on ANZAC Day 2014.
86. Appendix 3 to the Club's submission dated 19 September 2014 is a detailed response to the observations recorded by OLGR Inspectors in the OLGR ANZAC Day 2014 Report.

87. Appendix 4 to the Club's submission dated 19 September 2014 is a report of covert surveillance undertaken by Mr Adam Purcell of A & M Consultants, a former Police officer attached to the Eastern Suburbs Detectives and current President of the Eastern Suburbs Liquor Accord (his CV is annexed).
88. Briefly, Mr Purcell's report makes observations of the Club's operations on 16 August 2014, concluding that the ambient noise from the bowling greens and from outside the Club premises was "well within reasonable and acceptable limits" and that security guards were clearly visible and mobile around the patrons using the bowling greens. Mr Purcell noted in his report that he "did not detect any intoxication issues" and that food and free water were readily available. Mr Purcell continued to make observations through to the kick-off of the Rugby International Test Match (Australia v New Zealand), at which time patron numbers had decreased significantly, all doors to the outside area were closed and all noise was contained within the Club. Mr Purcell conducted an OLGR Checklist prior to leaving and could not detect any signage or compliance breaches.
89. Mr Purcell then made some "minor" recommendations including, *inter alia*, that identification be required to be produced by all patrons prior to entering the Club; that supervisors conduct decibel measurements with handheld devices to ensure crowd noise is not offensive; that security guards conduct more mobile patrols when patrons leave the Club; that two more external cameras be added to the existing CCTV system; that free food should be offered where entertainment is provided on high trade evenings as a harm minimisation strategy; that a water station be made available externally near the greens; and that consideration be given to some type of noise buffering systems placed between the "nursing home" and the bowling greens.
90. In conclusion, Mr Purcell was of the opinion that there was clear evidence that the current security being employed at the Club provides "...sufficient numbers (above what is required by licence condition), an efficient approach and a visible and perceptive deterrent to anti-social or compliance issues" and that the impact of the operation of the Club on the local community is "minimal and within reasonable bounds".
91. Appendix 5 to the Club's submission dated 19 September 2014 is a letter of support prepared by a former Acting Commissioner of Police in Queensland and current member of the Club, Mr R J Redmond.
92. Mr Redmond, who frequently visits the Club, refutes the allegations of rowdy behaviour and over-consumption of liquor on the greens "most forcibly". Mr Redmond also adds that he is aware that other similar bowling clubs provide liquor to patrons on their bowling greens and that his local club should be able to offer the same facility to its members.
93. Appendix 6 to the Club's submission dated 19 September 2014 is a graph provided by the OLGR Compliance Branch during the time that the 2011 disturbance complaint was before the Authority. That graph indicates the number of incidents over a two year period, based upon data from the NSW Bureau of Crime Statistics and Research (BOCSAR).
94. Appendix 7 to the Club's submission dated 19 September 2014 is a review of the licence conditions upon the Club's licence prepared by Licensing Constable Andrew Thompson, attached to NSW Police, Rose Bay Local Area Command dated 5 March 2011 in relation to the previous disturbance complaint.
95. That document contains details of audits of the Club, supported by event reports sourced from the NSW Police Computerised Operational Policing System (COPS) database. Briefly, Constable Thompson notes that the conditions that were upon the licence at that time had been "effective" and "suitable in controlling the noise related disturbances".

coming from the [Club] premises" and that the further conditions recommended by a delegate of the (then) Casino, Liquor and Gaming Control Authority in response to the 2011 noise disturbance complaint should not be implemented.

96. Appendix 8 to the Club's submission dated 19 September 2014 is a letter from Mr Pople, a past President of the Goodwin Retirement Village, noting the matters of concern arising from the operation of the Club and suggesting recommendations that might be implemented to reduce the impact of those operations.
97. Attachment F to the OLGR Memo – Letter from Mr Anthony Keon, OLGR Director of Compliance & Enforcement to the Club dated 31 October 2014. In this letter, Mr Keon refers to his letter dated 1 August 2014 proposing to impose conditions upon the Club's licence under section 81 of the Act in response to a disturbance complaint lodged by NSW Police and the Club's submission in reply dated 19 September 2014.
98. Mr Keon considers it "necessary and appropriate" that a condition mandating the engagement of a security guard to patrol the vicinity of the Club on higher risk trading days be imposed upon the licence under section 54 of the Act, and advises that the section 79 Complaint shall remain open at this time.
99. Mr Keon then addresses a number of "contentious" issues raised by the Club in its submission dated 19 September 2014. Briefly, in relation to paragraph 9.22 of the Club's submission, Mr Keon rejects the Club's assertion that non-disclosure of the names of residents amounts to a denial of procedural fairness, as there is no requirement to disclose the identity of an individual by name and address, and the material attached to the Police Complaint provides sufficient information to enable the Club to make an informed submission in response to the Complaint.
100. In relation to paragraphs 10 and 12.4 to 12.7 of the Club's submission, Mr Keon rejects the Club's assertion that an OLGR officer's attendance at a meeting with local residents at the Goodwin Retirement Village was inappropriate, as the role of that officer at the meeting was as a passive observer and provider of basic procedural information only.
101. In relation to paragraph 12.8 of the Club's submission, Mr Keon notes that OLGR is investigating two matters in relation to the Club – the Complaint, and an investigation into Club governance issues.
102. Mr Keon rejects the Club's assertion of actual or perceived bias by himself as delegate determining this matter. However, he states that in the interest of removing any further conjecture on this issue, Mr Keon will refer the matter to another OLGR delegate for determination.
103. In relation to paragraphs 11.2 and 12.7 of the Club's submission, Mr Keon rejects the Club's assertion that the OLGR ANZAC Day 2014 Report was "unbalanced" and arrived at a "pre-ordained conclusion" on the basis that the report was a factual account of the observations of an experienced and well qualified officer. Furthermore, any opinion was clearly distinguished and expressed in a separate part of the report.
104. In relation to noise monitoring, Mr Keon notes that the Club is required by way of an existing licence condition (3310) to install and maintain an electronic noise monitoring system, but this has not been operated for some considerable time as patrons were deliberately making excessive noise to activate the system's flashing warning lights. Noting that the Club's submission not to operate the electronic noise monitoring system has some merit, Mr Keon states that while the condition remains on the licence, it should be complied with – in circumstances where patrons deliberately make undue noise as a

form of competition to achieve the highest noise level reading on the system, it is expected that venue staff intervene to stop the practice. Mr Keon advises that the Club should engage its own acoustic consultant to provide an acoustic report to demonstrate compliance with the LA10 noise condition.

105. Annexure A to Mr Keon's letter dated 31 October 2014 is a document outlining the condition to be imposed under section 54 of the Act, to commence effect from 14 November 2014:
 1. *At any time there are more than 200 patrons at the Club, the licensee must ensure at least one security guard is deployed to continuously patrol and monitor the patron queue and the 50 metre vicinity of the Club.*
106. Attachment G to the OLGR Memo – File Notes by various OLGR officers regarding inspections of the Club conducted on various dates. These File Notes record contemporaneous observations of the operation of the Club during inspections conducted on 5 October 2014, 21 November 2014, 28 November 2014, 5 December 2014, 6 December 2014, 12 December 2014 and 13 December 2014.
107. Attachment H to the OLGR Memo – Schedule of Events to be held at the Club for the period 31 October 2014 to 29 December 2014. This schedule lists a total of approximately 337 pre-existing bookings at the Club for both social and corporate functions during this time period, representing an estimated 8,500 potential patrons of the Club.
108. Attachment I to the OLGR Memo – Acoustic Compliance Survey for the Club, prepared by Koikas Acoustics Pty Limited dated 16 December 2014. This report concerns noise compliance testing undertaken at the Goodwin Retirement Village on 5 December 2014 and 12 December 2014 and concluded that on both those occasions, the outdoor operating noise levels of the Club exceeded the OLGR nominated noise criteria.
109. Attachment J to the OLGR Memo – Acoustic Compliance Survey for the Club, prepared by Koikas Acoustics Pty Limited dated 16 January 2015. This report concerns noise compliance testing undertaken at the Goodwin Retirement Village on Saturday, 10 January 2015 and concluded that the current outdoor operating noise levels of the Club exceeded the OLGR nominated noise criteria.
110. Attachment K to the OLGR Memo – Letter from Mr Paul Newson, OLGR Executive Director to the Club dated 18 December 2014. In this letter, Mr Newson refers to the imposition of a security guard condition on the licence on 31 October 2014 under section 54(1) of the Act and notes that he has reviewed the Complaint; the Club's submission of 19 September 2014; the Club's booking schedule for the period 29 October 2014 to 31 December 2014; the contemporaneous file notes recorded by OLGR Inspectors during inspections of the Club on eight occasions between 5 October 2014 and 13 December 2014; breaches of licence conditions on those occasions; the results of acoustic testing at the Club; and the OLGR ANZAC Day 2014 Report.
111. Mr Newson was satisfied that the above evidence "...demonstrates an ongoing and concerning pattern of undue disturbance from corporate and social functions held on the Club's bowling greens" and that the Club operates these activities in the absence of adequate controls, causing "excessive and unwarranted disturbance".
112. Mr Newson was of the opinion that a key factor contributing to undue disturbance is the consumption of alcohol on the bowling greens and advised that he was considering imposing a condition on the licence under section 81 of the Act, in the following terms:

The licensee must ensure that no patron is permitted to consume alcohol on the bowling greens or any other outdoor area of the Club.

113. Attachment L to the OLGR Memo – Letter from the Club dated 13 January 2015. By reference to Mr Newson's letter dated 18 December 2014, the Club advises that the report prepared by Koikas Acoustics Pty Limited dated 16 December 2014 "cries out for expert evaluation" and will be referred to Dr Steven Cooper, an acoustic consultant retained by the Club.
114. The Club submits that matters of particular concern arising from that report requiring expert evaluation include, *inter alia*, that Mr Koikas appears to have relied upon unspecified event records maintained by a resident complainant in compiling his background noise measurements; that Mr Koikas has applied noise criteria which are different from those specified on the Club's licence; that Mr Koikas has adjusted the background noise measurements in a manner which appears to be unexplained; and that Mr Koikas appears to have excluded from his assessment noise events which occurred inside the residential premises.
115. The Club states that it instructed Dr Steven Cooper to conduct acoustic assessments of the Club in late December 2014, but Dr Cooper was ordered off the adjoining property by a resident of the Goodwin Retirement Village, which has prevented the Club from obtaining its noise assessment (an email dated 14 December 2014 from Dr Cooper to the Club's lawyer providing his account of events is attached). Given that the Club requires expert assistance to properly evaluate and respond to the contents of the report prepared by Koikas Acoustics, that the Club has been prevented from obtaining its own report through the actions of adjoining residents, the existing disciplinary complaint against the Club and the intervening Christmas/New Year holiday period, the Club requests that it be granted an extension until 27 February 2015 to make further submissions in response to the proposed decision dated 18 December 2014.
116. Attachment M to the OLGR Memo – letter from OLGR Executive Director, Mr Paul Newson to the Club dated 16 January 2015. This letter grants the extension requested by the Club in its letter dated 13 January 2015.
117. Attachment N to the OLGR Memo – further NSW Police submission from Licensing Constable Phillip Street dated 14 January 2015. This submission contends that the levels of undue noise and disturbance at the Club have continued and, as reported by some community members, have actually increased over the month of December 2014. Constable Street provides communication from two local residents detailing the ongoing noise and anti-social behaviour they have observed in relation to this. Briefly, those communications allege that noise from the bowling greens has increased; that patrons have been seen urinating in the car park in clear view of the Club and any members of the public passing by; and that as recently as 10 January 2015, patrons leaving the Club have been seen attempting to damage street signs.
118. The community complainants also allege that staff at the Club, when contacted regarding noise, claimed it was "...impossible to control and the festive season is almost over so the partying would end".
119. On another occasion, the Approved Manager of the Club, Mr Robert Ashton is alleged to have stated to Police in relation to noise complaints on 16 December 2014 that "...it [is] that time of year and people let loose a bit at Christmas and we try to tell them but if they don't listen, what can we do".

120. Police submit that these responses by Club staff are "...not an appropriate and responsible way" to address noise and disturbance complaints.
121. Police support the OLGR Executive Director's decision to impose an additional licence condition as it directly addresses the noise and alcohol related anti-social behaviour that occurs on the bowling greens and will result in fewer noise and disturbance complaints from the local community. Without the imposition of this condition, Police believe that the noise and disturbance issues "will continue unabated" as they have done since the initial Complaint was lodged in March 2014.
122. Annexure 1 to the Police submission dated 14 January 2015 is a statement of a community member (name redacted) complaining about noise and disturbance arising from the operation of the Club. Attached to that statement is a letter from that same complainant to Constable Street dated 13 January 2015 alleging further key noise and disturbance issues emanating from the Club and its patrons, including vandalism to street signs. Also attached are several emails from resident complainants (whose names have all been redacted) to OLGR, the Mayor of Woollahra Municipal Council and the Premier in relation to this matter.
123. Annexure 2 to the Police submission dated 14 January 2015 is a further email from a member of the community (name redacted) to Constable Street noting that a complaint had been made in writing to the *Wentworth Courier* and the Anti-Discrimination Board in relation to the Club's advertising slogan "*Bowls without the Olds!*" This email also complained about excessive noise and anti-social behaviour of intoxicated patrons of the Club and the complainant submitted that one could expect that "...life in Woollahra, and in a retirement complex would not be adversely affected by the ill-bred behaviour of yahoos and louts".
124. Attachment O to the OLGR Memo – Submission from Mr Tony Hatzis, legal representative of the Club dated 27 February 2015. In this document, the Club expands upon the submissions made previously with regard to the history of the Club; the legislative scheme in relation to clubs; the proposed conditions; the legal concept of "undue" disturbance; the covert observations made by a senior ex-Police officer on the night of the Bledisloe Cup final (16 August 2014); the supporting letter from Mr R J Redmond (former Acting Commissioner of Police in Queensland) and reasons why the Police Complaint should be given little weight. The Club also makes detailed further specific submissions in relation to the observations recorded by OLGR Inspectors on several inspections of the Club during 2014, including those contained within the OLGR ANZAC Day 2014 Report.
125. The Club contends that the attendance by an OLGR representative at a meeting convened at the Goodwin Retirement Village on 3 February 2014 was "inappropriate" and gives rise to a reasonable apprehension of bias by Mr Keon's determination of the present Complaint. The Club submits that this apprehension of bias is further heightened by the fact that Mr Keon is the complainant in relation to a separate disciplinary complaint filed with the Authority under part 9 of the Act, and is the prosecutor in respect of certain alleged breaches of legislation with which the Club is charged, many of which are currently being prosecuted before the Local Court. In these circumstances, the Club requests that the Complaint be determined on the available evidence by the Secretary personally.
126. Attached to the Club's submission dated 27 February 2015 is a document containing detailed submissions in response to the contemporaneous file notes recorded by OLGR Inspectors conducting inspections of the Club on 5 October 2014; 21 November 2014; 28 November 2014; 5 December 2014; 6 December 2014; 12 December 2014 and 13 December 2014.

127. Appendix 1 to this document is the security register for the Club dated Sunday 5 October 2014, which indicates that four security guards were on duty at the time of the OLGR inspection on that date.
128. Appendix 2 to this document is a standard script given to "bowls butlers" to read to guests using the bowling greens. Where bowls butlers consider that the noise is excessive or overly exuberant, they request that patrons tone down the noise. The Club submits that this is not a function exercised by security guards.
129. Appendix 3 to this document is a map published by Air Services Australia, taken from the *Sydney Airport Noise Exposure Index Report for the Third Quarter 2014*. It appears to show that the Paddington Bowling Club is located well outside those areas regularly experiencing noise from jet aircraft of 70dBA and above, meaning that the noise of overhead aircraft measured on the greens is likely to achieve levels well below 70dBA – that is, the Club contends that the ordinary sound of voices on the greens would be likely to be heard over the noise of a jet airliner flying at a considerable distance overhead in this location.
130. Appendix 4 to this document is a consideration of the principles of what constitutes "offensive" language, having regard to current community standards, per the observations made by Magistrate Heilpern in *Police v Butler* [2003] NSWLC 2.
131. Appendix 5 to this document is an excerpt of an email from a patron who attended the Club, noting that "...We had quite the security guard shushing us throughout our event...it became quite the joke not only amongst us but other companies on different lanes too..." The Club submits that this is evidence that staff intervene "too readily", thus hindering patrons from enjoying their bowling activities on the greens.
132. Appendix 6 to this document is a video showing the noise monitor at the Club recording a dBA reading of 78dBA and going off through wind noise when the greens are entirely unoccupied. The Club contends that the noise monitor "going off" does not signify that the noise being experienced is excessive or undue.
133. Appendix 7 to this document is a further report from Mr Adam Purcell of A & M Consultants dated 24 February 2015, providing general observations of the operation of the Club during covert audits conducted on 7 February 2015 and 21 February 2015.
134. Appendix 8 to this document is an online news article sourced from the *Daily Telegraph* website entitled "Sydney bowls clubs reinventing themselves as foodie destinations" published on 9 December 2014, supporting the Club's contention that "barefoot bowls" is a common contemporary form of bowling activity that is "...particularly well suited to the time poor lifestyles of an inner urban population".
135. Attachment P to the OLGR Memo – Submission from Mr Tony Hatzis, legal representative of the Club dated 6 March 2015 attaching a report from Dr Steven Cooper of The Acoustic Group which addresses the matters raised in the reports from Koikas Acoustics. Briefly, this submission requests that OLGR facilitate access to the retirement village by Dr Cooper so that the Complaint may be determined on the basis of a "...proper objective assessment which is methodologically sound and made by an eminent acoustic expert" such as Dr Cooper.
136. The report from Dr Cooper highlights numerous "deficiencies" in the Koikas Acoustics reports, including, *inter alia*, adoption of an incorrect ambient noise profile; application of incorrect criteria; application of incorrect standards; and adoption of incorrect monitoring locations. In light of the deficiencies identified, the Club submits that the reports from

Koikas Acoustics are "patently unreliable", "virtually useless" and that "...no rational decision maker could safely rely upon the contents of those reports to make a decision adverse to the respondent Club".

APPLICATION FOR REVIEW DATED 7 APRIL 2015

137. The Review Application comprises the following material:
138. Review Application Form signed by Mr Richard Perry, Club Director dated 7 April 2015, which attaches a copy of the Reviewable Decision.
139. Concise legal submission in support of the Stay Application dated 6 April 2015. In this submission, the Review Applicant Club submits that the principles to be applied by a Court or decision maker when considering whether to grant a stay are those set out by the High Court of Australia in *Australian Broadcasting Corporation v O'Neill* (2006) 227 CLR 57 at 65-72.
140. The Review Applicant submits that a party seeking a stay must demonstrate a *prima facie* case that the balance of convenience favours a stay and that damages would be an inadequate remedy.
141. The Review Applicant Club submits that is sufficient that the party seeking a stay demonstrates a reason or appropriate case to warrant favourable exercise of the discretion, and cites *Alexander v Cambridge Credit Corp Limited* (1985) 2 NSWLR 685 at 694 in support of this submission.
142. With regard to the balance of convenience, the Review Applicant submits that the test is whether the inconvenience or injury which the Club is likely to suffer if the stay is refused, is outweighed by the injury to the decision maker if the stay is granted. The Club cites *Beecham Group Limited v Bristol Laboratories Pty Limited* (1968) 118 CLR 618 at 623 in this regard.
143. The primary submission made by the Club is that were the Stay Application not granted, the impact would be "devastating". The Review Applicant contends that upcoming bookings have been made and that people "...rightly demand and expect that such a facility [being able to consume liquor incidental to, and during, their playing of bowls] will be available to them as it is at many other bowls clubs" and that "depriving bowls players of such an important facility is likely to result in loss of forward bookings for the Club and may well result in the Club becoming unviable financially".
144. The Review Applicant submits that the Club employs a "significant number of staff members" who, if the proposed Condition were to be imposed on the licence, would be out of employment because the Club would likely close. The Review Applicant further argues that "the decision maker suffers no prejudice that the Club is able to discern" should the stay be granted.
145. With regard to the requirement to demonstrate a *prima facie* case, the Review Applicant submits that the test is set out in *Beecham Group Limited v Bristol Laboratories Pty Limited* (1968) 118 CLR 618 at 622.5, in the sense that:

...if the evidence remains as it is there is a probability that at the trial of the action the plaintiff will be held entitled to relief...how strong the probability needs to be depends, no doubt, upon the nature of the rights he asserts and the practical consequences likely to flow from the order he seeks.

146. The Review Applicant refers to its submissions on the substantive review, as discussed below.
147. With regard to the requirement to prove that damages are not an adequate remedy, the Review Applicant submits that there is no right of action in damages against the decision maker in respect of the making of the Reviewable Decision.
148. The Review Applicant further argues that the Club will certainly suffer "...enormous loss of reputation and prestige and will almost certainly lose a number of forward bookings" as a result of the Condition. If a stay is not granted and the Club is forced to impose the Condition, the Review Applicant submits that this would result in a "...significant loss of business into the foreseeable future".
149. Concise legal submission in support of the substantive Review Application dated 6 April 2015. In this submission, the Review Applicant contends that in making the Reviewable Decision, the Secretary has erred in the following respects:
- (a) Failing to take into account and/or properly apply the various tests contained in section 3 of the Act
 - (b) Finding that the Club, on the evidence, causes undue disturbance to the neighbourhood
 - (c) Taking into account and giving weight to alleged complaints in correspondence from residents in the making of the Reviewable Decision
 - (d) Taking into account the two reports of Koikas Acoustics Pty Limited dated 16 December 2014 and 16 January 2015 and failing to take into account the report of Dr Steven Cooper of The Acoustic Group dated 4 March 2015
 - (e) Giving excessive weight to the reports of inspections conducted by OLGR officers on ANZAC Day 2014, being an atypical trading day for the Club
 - (f) Failing to give consideration to the reports of A & M Consultants
 - (g) In dealing with incidents or breaches of licence conditions alleged by OLGR officers, the Secretary gave excessive weight to the content of the OLGR Inspectors' reports and failed to take into account the bulk of the Club's submissions
 - (h) The Secretary failed to afford proper, genuine and realistic consideration to relevant factors he was required to so consider
 - (i) Failing to afford procedural fairness or natural justice to the Review Applicant by refusing to delay the making of the decision so that the Review Applicant may obtain an acoustic report. In doing so, the Secretary failed to take into account the relevant incidents recorded in the report of Dr Steven Cooper and the Club's request for OLGR to assist with facilitating acoustic testing on neighbouring properties
 - (j) In finding, on the evidence, that the focus of the activity of the Club is the consumption of alcohol, and the playing of bowls is an incidental activity for those patrons to partake in while they are drinking
 - (k) In arriving at its decision, the Secretary acted unreasonably by giving excessive weight to all of the other evidence over the evidence and submissions provided by the Club.
150. The Review Applicant further contends that the Secretary gave excessive weight to the finding of undue disturbance over all of the objectives of the Act – specifically, he failed to consider the objectives to facilitate the development of the liquor industry and related industries in line with the community's expectations, needs and aspirations, pursuant to subsections 3(1)(a) and 3(1)(c) of the Act.
151. With regard to undue disturbance, the Review Applicant contends that the Secretary appears to minimise the relevance of the reports by A & M Consultants by identifying a perceived conflict between suggested recommendations and the conclusion reached.

152. The Review Applicant submits that this is "wholly misconceived and one sided" and that, on proper reading of the report, it is clear that the suggested recommendations are "in no way" intended by the consultant to minimise the conclusion that the Club has ample controls and management in place – they are merely further suggestions.
153. The Review Applicant further contends that the Secretary made his finding of undue disturbance based on incorrect assumptions in relation to the trading day selected and the level of patron noise on the day of the inspections; and failed to identify his reasons for deciding that the noise was related to alcohol consumption on the bowling greens warranting the imposition of the Condition.
154. The Review Applicant also argues that the Secretary failed to afford the Club procedural fairness by taking into account and giving weight to the alleged complaints in correspondence from residents, without providing the Club an opportunity to test or respond to the complaints of alleged disturbances. The Review Applicant submits that the residents' complaints have not been verified by statutory declarations as required by the Act and that they should be "wholly disregarded".
155. With regard to acoustic testing, the Review Applicant contends that the two Koikas Acoustics reports dated 16 December 2014 and 16 January 2015 contain "extreme deficiencies" and that the Secretary has erred by giving weight to these reports. The Review Applicant contends that the report of Dr Steven Cooper and the Club's submissions dated 6 March 2015 were "substantially ignored" by the Secretary and that the Secretary "unjustly cherry picked" evidence detrimental to the Club over all the other evidence before him.
156. The Review Applicant contends that the Secretary failed to afford procedural fairness or natural justice to the Club by refusing to delay the making of the Reviewable Decision so that the Review Applicant may obtain an acoustic report. The Review Applicant contends that in its submission dated 6 March 2015, it requested assistance from OLGR to gain access to neighbouring properties for the purpose of conducting acoustic testing; however it is "of great concern" that the Secretary gave weight to the fact that the Club did not provide an acoustic report or advice on potential remedial acoustic treatment.
157. The Review Applicant contends that the Secretary erred in finding that the focus of the activity of the Club is the consumption of alcohol, and the playing of bowls is an incidental activity for those patrons to partake in while they are consuming liquor, on the basis that there is no evidence before the Secretary to support this finding.
158. In conclusion, the Review Applicant contends that the decision under review is "...not only infected by legal error, it is plainly wrong". The Review Applicant submits that the Secretary failed to afford proper genuine and realistic consideration to the following relevant factors it was required to so consider in making the Reviewable Decision:
 - (a) Failure to have regard to the true effect or impact of the Condition on the Club, its members and guests
 - (b) Failure to have real regard for the content of the bulk of the Club's submissions and evidence
 - (c) Failure to have regard to the source of the noise complaints and whether or not they were attributable to alcohol usage on the bowling greens
 - (d) Failure to have regard to the low number of adverse events recorded as compared to the very large number of patrons who utilise the venue
 - (e) Failure to have regard to the controls in place at the Club
 - (f) Failure to give due weight to the fact that the consumption of alcohol in an outdoor setting, incidental to the playing of bowls, is an essential aspect in the reasonable enjoyment of contemporary bowls, and

(g) Failure to have regard to each of the objects of the Act.

159. On 8 April 2015, the Review Applicant Club provided a further statement in support of the Review Application dated 8 April 2015, comprising a statutory declaration by Ms Natali Faraguna, the Club's event manager (Faraguna Statement).
160. Attachment 1 to the Faraguna Statement comprises a list of 85 upcoming bookings for groups of patrons to attend the Club to play lawn bowls – the dates of which range from April 2015 to December 2015.
161. Ms Faraguna explains that these bookings usually involve a package of greens hire and some provision of food. Patrons pay for their drinks on an "as consumed" basis. Ms Faraguna contends that a large part of playing lawn bowls is to consume an alcoholic drink or two while playing and that this is a "...regular expected part of bowling clubs in 2015". Ms Faraguna contends that if the Reviewable Decision is not stayed, she anticipates that she will lose many of the bookings listed on Attachment 1.
162. Attachment 2 to the Faraguna Statement attaches a document detailing the Club's takings for the period from July to September 2014. Ms Faraguna contends, on the basis of Attachment 2, that bar sales comprise a significant proportion of the Club's sales and profitability.
163. Ms Faraguna contends that if patrons choose to go elsewhere for their bowling functions, then this will have a "devastating" effect upon the Club's finances. Ms Faraguna contends that should this occur, she fears the loss of her own employment and the employment of other persons at the Club, being three full time employees (including herself), one contracted greens keeper, five casual kitchen staff, four casual shift managers, 15 casual general staff and one casual accountant.

DETERMINATION ON STAY APPLICATION

164. As discussed above, the Review Applicant also seeks that the Authority issue a direction under section 36A(3) of the GLAA staying the operation of the Reviewable Decision until the Authority determines the substantive review (Stay Application).
165. The Stay Application was refused on 15 April 2015. A copy of the OLGR File was forwarded to the parties on that date and the Complainant and Review Applicant were given an opportunity to make any final submissions on the substantive review by 4:00pm on 22 April 2015 and 4:00pm on 23 April 2015 respectively, pursuant to an expedited timetable set by the Authority for consideration of the substantive review.

RESPONSE TO CONSULTATION

Late material provided by OLGR on 21 April 2015

166. On the afternoon of 21 April 2015, OLGR provided to the Authority two further documents that were not before the Secretary at the time of making the Reviewable Decision, but that OLGR submit may be of assistance to the Authority in determining the substantive review, as follows:
167. Additional acoustic report prepared by Koikas Acoustics Pty Limited dated 9 February 2015 in relation to acoustic testing conducted at the Club on 31 January 2015. [OLGR noted that this most recent report had not been included in the OLGR File as it had not been provided to the Club prior to the due date for final submissions on the section 81

decision.] This acoustic report concluded that the current outdoor operating noise levels of the Club exceeded the OLGR nominated noise criteria.

168. Letter from Koikas Acoustics dated 17 April 2015. This letter responds to criticisms of the two previous reports by Koikas Acoustics dated 16 December 2014 and 16 January 2015 as contained in the Club's submission dated 6 March 2015. Briefly, Mr Nick Koikas, the Principal Consultant at Koikas Acoustics, makes technical submissions in relation to the definition of the word "boundary" for the purposes of acoustic testing in this case; measurement of the LA10 noise criteria adopted by OLGR; statistical data; equipment used; and calculation methods employed. Mr Koikas concluded that the noise emanating from the bowling greens of the Club was significantly more than the OLGR nominated noise criterion level.

Submission from Police on the Review Application dated 22 April 2015

169. On 22 April 2015, Licensing Constable Phillip Street and Superintendent Bradley Hodder, Commander of Rose Bay Local Area Command provided a short submission to the Authority. Briefly, that submission advises that Police "stand by" the information contained in the Complaint. Police note that they have continued to receive complaints in relation to the noise and disturbance emanating from the bowling greens and outdoor areas of the Club.
170. Police attended the Club and carried out a business inspection after receiving a telephone call on 14 March 2015 complaining of loud music and the throwing of beanbags on the lawn bowls area.
171. Police were advised that this was a function for approximately 300 American tourists and students, which involved a temporary bar serving liquor and beanbag throwing as "one of the games being played". The lawn had four security guards for this group. Police are of the belief that the object of the games mentioned was to provide entertainment for patrons who were on the greens primarily to consume liquor. COPS Event number E57381007 is also attached to this submission.
172. In addition, Licensing Police have observed on previous business inspections groups of 150 to 200 patrons on the greens and outdoor areas of the Club, which are made up of pre-booked corporate groups, Christmas parties or private functions. Police contend that the focus of these patrons is primarily the consumption of liquor and socialising, with the bowling taking a secondary role.
173. On 18 April 2015, Police spoke on the telephone with a resident of the Goodwin Retirement Village, who alleged that the excessive noise and disturbance from the Club had continued since the lodgement of the section 79 Complaint, with the noise escalating throughout the day from 10:30am until 8:30pm, when all patrons are removed from the greens. The resident stated that the noise was the loudest on Fridays and Saturdays, and is mostly from patrons yelling and using offensive language.
174. Police submit that the proposed Condition will stop the noise and disturbance, while still allowing Club members and patrons to consume liquor in the clubhouse prior to or at the conclusion of bowling.

Submission from Club in Reply dated 23 April 2015

175. On 23 April 2015, the Club provided a submission to the Authority addressing the two further reports from Koikas Acoustics made available to the Club on the evening of 21 April 2015.

176. Briefly, the Club noted that Dr Steven Cooper had had a limited opportunity to review these reports and that he raised serious concerns about the methodology and reliability of the evidence provided by Mr Koikas. The Club contends that the comment made by Mr Koikas in his report in relation to residents being unable or unwilling to make complaints against the Club due to fear of retributions "strongly indicates bias" on his part and "strongly suggests a lack of objectivity".
177. The Club refers to the Police attendance on 14 March 2015 when a group of 300 predominantly American students were on the greens, and submits that apart from one incident earlier on that day where a "potentially intoxicated" patron was asked to leave, "...no other incidents were recorded, nor were there any adverse incidents seen by attending Police". The Club contends that the assertions made by unidentified resident complainants are "manifestly unreliable, have been plainly exaggerated and cannot be taken at face value".
178. The Club submits that if the Authority were minded to make an adverse finding, the appropriate course would be to stay the Reviewable Decision, pending provision of an objective acoustic report by Dr Steven Cooper, which could then provide a "reliable, sound and objective basis" for decision making by the Authority. It would be necessary to stay the Secretary's decision of "7 April 2015" to enable Dr Cooper's testing to be undertaken in conditions where liquor was being served on the greens.
179. Attached to the Club's submission is an email exchange between the Club's legal representative, Mr Tony Hatzis and Dr Steven Cooper from The Acoustic Group Pty Limited, which contains Dr Cooper's analysis of the two documents provided by OLGR on the afternoon of 21 April 2015.
180. Briefly, Dr Cooper made specific submissions in response to the statements made by Mr Koikas in the acoustic assessment reports dated 16 January 2015 and 9 February 2015 and his letter dated 17 April 2015 regarding the noise criteria used, the measurements recorded and the method by which the noise levels were calculated.

Further Submission from the Club dated 23 April 2015

181. Also on 23 April 2015, the Club provided an updated version of the list of bookings that formed Attachment 1 to the Faraguna Statement that was previously submitted in support of the Stay Application. The entries highlighted in yellow represent those bookings that were cancelled after customers were made aware that liquor could no longer be consumed on the greens following the Authority's refusal of the Stay Application on 15 April 2015. The Club submits that this is "powerful evidence" that:
 - (a) Persons attending at the Club expect to be able to enjoy a drink on the greens and outside the clubhouse; and
 - (b) The financial consequences to the Club are already proving to be severe. As more people learn of the restrictions, the Club is likely to lose patronage more rapidly to other bowling clubs that can offer the provision of a drink and/or meal in an outdoor setting.
182. The Club submits that it would be prepared to accept the following conditions in lieu of the Condition outlined in the Reviewable Decision prohibiting the consumption of alcohol on the bowling greens or any other outdoor area of the Club:
 - (a) *No jugs of alcohol permitted on the bowling greens.*
 - (b) *No glass allowed on the bowling greens – plastic vessels only.*
 - (c) *No full strength nips of spirits permitted on the bowling greens.*

- (d) *No mobile bars permitted in outdoor areas, including large events.*
- (e) *No tray service permitted on bowling greens for alcoholic drinks – patrons must come into the Club to purchase their alcoholic beverages to take outside on the bowling greens.*
- (f) *No amplified or live music to be played on the bowling greens.*

183. The Club submits that it would also accept a further condition that Dr Cooper prepare and file with the Authority, within two months, an acoustic assessment reporting on whether the Club complies with the LA10 noise condition under these operational conditions – following which the Authority could reconsider the matter in light of Dr Cooper's findings.

Determination on Further Stay Application dated 1 May 2015

184. In its submissions on the substantive review dated 23 April 2015, the Club argued that it had not been given sufficient time to deal with the additional reports from Koikas Acoustics that OLGR had provided to the Authority on 21 April 2015. The Club made some preliminary observations in reply to that material, but submitted that the Authority should now stay the Reviewable Decision and give the Club another two months to provide material in reply.

185. At its meeting on 30 April 2015, the Authority considered this further request for a stay of the Reviewable Decision. The Authority decided that the Club should be given more time to reply to the material provided by Koikas Acoustics, but did not accept that the Club needed another two months to do so, nor had the balance of convenience changed to warrant issuing a stay of the Reviewable Decision since the first Stay Application had been determined.

186. The Authority resolved to consider the merits of the substantive review at its meeting on 27 May 2015 and give the Club until 15 May 2015 to file any material in reply to the new material from Koikas Acoustics.

Final submission from Club dated 15 May 2015

187. On 15 May 2015, the Club provided a final submission in response to the further reports from Koikas Acoustics.

188. Briefly, the Club submits that the acoustic assessment at the Club undertaken by Dr Steven Cooper of The Acoustic Group Pty Limited 10 May 2015 indicated that there were "very few people" on the greens that day.

189. However, the ambient noise found by Dr Cooper on that day was greater than Mr Koikas's calculated background +5dB measurements.

190. The Club submits that Dr Cooper's finding "strongly suggests" that Mr Koikas' background noise measurements are "flawed" and that Mr Koikas' technique is contrary to the relevant Australian Standard for the taking of noise measurements.

191. The Club submits that Dr Cooper's report indicates that "any large number" of people on the greens is likely to generate noise of a level "greater than" 5dB above background, simply through the conduct of bowling activity.

192. The Club submits that the "sporting activity of bowls" is lawful, that the Club has been approved for the conduct of that sporting activity and that the Club has operated from the same premises since 1955, with the Goodwin Retirement Village being constructed "many years later".

193. The Club submits that Dr Cooper's report states that the noise levels generated from the conduct of sporting activities at the Club are "not shown to arise from the consumption of liquor".
194. The Club submits that "this is a particularly important point" in the context of a licensed club, as "the very raison d'etre" of a bowls club is the sporting activity, with the grant of a liquor licence being an added benefit which is dependent upon the continued operation of the sporting activity.
195. The Club contends that it is "wholly perverse" to make a finding of "undue disturbance" from the "continued conduct of the sporting activity".
196. The Club submits that in his report, Dr Cooper suggests that there is a "common sense solution" for shielding the adjoining Retirement Village from noise from the Club's greens – that is, the erection of an "acoustic awning/structure" between the Club and the Retirement Village.
197. The Club submits that such a solution was previously recommended by Dr Louis Challis who was previously retained by the Club to advise on noise issues in 2009 to 2010.
198. The submission from the Club attaches minutes of a meeting of the Club's Directors dated 28 July 2009, reflecting the consultation that the Club undertook with the adjoining Retirement Village at that earlier time.
199. The Club submits that 18 residents of the Retirement Village attended a meeting with representatives of the Club on 4 August 2009. Attached to the Club's submission is an "attendance list" which provides the names and addresses of these 18 residents.
200. The Club submits that the result of that consultation was that the "majority" of the residents were against any such structure being erected, "primarily on aesthetic grounds".
201. The Club attaches minutes of a further meeting between Club Directors and staff dated 27 November 2009 which note, in relation to the proposed noise barrier structure, that "...further advice is being sought on the design, cost and acoustic effectiveness of different construction materials in an effort to reduce costs".
202. The Club submits that it is unaware of who the resident complainants are in the matter now before the Authority, and that there appears to be "...no more than two such resident complainants" currently residing in the Retirement Village.
203. The Club submits that with the "common sense solution" having been rejected by the majority of the Retirement Village residents, the "few" remaining complainants are "agitating for a more far-reaching outcome" – that is, the total prohibition on the service of liquor on the greens.
204. The Club contends that such an outcome would not only deprive members and guests of enjoying drinks on the greens, but would also have "financially crippling effects" on the Club.
205. The Club notes that it has had approximately four weeks of trading experience since the Condition imposed by the Reviewable Decision commenced effect on 14 April 2015.
206. The Club sets out the comparable trading figures for the Club between 2014 and 2015 and submits that there has been a reduction of "almost 50 per cent" in the Club's turnover since that time, which is likely to render the Club's financial position "untenable".

207. The Club submits that it is bound to a lease requiring payment of "...some \$30,000.00 per month plus outgoings" and that it employs a number of full time staff. The Club contends that this reduction in turnover of the Club evident over the last month is "likely to render the Club insolvent".
208. The Club contends that this recent reduction in turnover is a "clear reflection of the fact" that members and guests attending at the Club "...fully expect to be able to enjoy an alcoholic drink whilst they are engaged in sporting activities on the very pleasant greens of this club".
209. The Club contends that denying members and guests that opportunity not only deprives them of that reasonable expectation, but is also "likely to result in closure of the Club". The Club submits that that is a "grossly disproportionate outcome" in relation to the matters that have been raised in the Complaint.
210. The Club offers the following conditions as an alternative to the Condition imposed by the Secretary, so as to "slow the consumption of alcohol and minimise the potential for alcohol related disturbances" by members and guests on the greens:
- (a) *No jugs of any alcoholic drink permitted in any outdoor areas.*
 - (b) *No glass allowed in the outdoor areas – plastic vessels only.*
 - (c) *No full strength nips of spirits permitted in the outdoor areas.*
 - (d) *No mobile bars permitted in the outdoor areas.*
 - (e) *No tray service permitted in the outdoor areas for alcoholic drinks – members and guests must come into the Club to purchase their alcoholic beverages to take outside.*
 - (f) *No amplified or live music to be played in the outdoor areas of the Club.*
 - (g) *No more than:*
 - (i) *4 alcoholic drinks (whether or not of the same kind), or*
 - (ii) *the contents of one bottle of wine,**...may be sold or supplied on the premises to the same person at any one time.*
211. The Club submits that if the Authority were to make a finding of undue disturbance, the imposition of the above conditions would represent a "more proportionate and measured response" to the matters raised in the Complaint, which would enable the Club to retain its viability whilst minimising the potential for alcohol related disturbances in those outdoor areas.

LEGISLATION

212. Section 36A(1)(a)(iv) of the *Gaming and Liquor Administration Act 2007* prescribes a decision made under section 81 of the *Liquor Act 2007* to be a reviewable decision.
213. Section 36A(4) of the GLAA provides that, in determining an application for review, the Authority may confirm the decision, vary the decision or revoke the decision under review.
214. Division 3 of Part 5 of the *Liquor Act 2007* contains provisions for dealing with disturbance complaints, as follows:
- 79 *Making of complaint*
- (1) *A person may complain to the Secretary that the quiet and good order of the neighbourhood of licensed premises are being unduly disturbed because of:*
 - (a) *the manner in which the business of the licensed premises is conducted, or*
 - (b) *the behaviour of persons after they leave the licensed premises (including, but not limited to, the incidence of anti-social behaviour or alcohol related violence).*
 - (2) *Such a complaint must be made in writing and be made or verified by statutory declaration.*
 - (3) *A complaint under this section may only be made by any of the following persons (referred to in this Division as "the complainant"):*

- (a) a person authorised in writing by 3 or more persons residing in the neighbourhood of the licensed premises or a person who is such a resident and is authorised in writing by 2 or more other such residents,
 - (b) the Commissioner of Police,
 - (c) a person authorised by the local consent authority in relation to the licensed premises,
 - (d) a person who satisfies the Secretary that his or her interests, financial or other, are adversely affected by the undue disturbance to which the person's complaint relates.
- (4) A complaint may relate to more than one licensed premises.
- (5) In the application of this Division to an on-premises licence that relates to a catering service:
- (a) a reference to licensed premises does not include private domestic premises, and
 - (b) a reference to the business of the licensed premises is a reference to the business of providing catering services on licensed premises (other than private domestic premises) under the licence.

80 *Dealing with complaints*

- (1) The Secretary may, after receiving a complaint under section 79, decide:
- (a) to deal with the complaint in accordance with this Division, or
 - (b) to take no further action under this Division in relation to the complaint.
- (2) If the Secretary decides to deal with the complaint, the Secretary may:
- (a) convene a conference to hear submissions in relation to the complaint, or
 - (b) invite written submissions from the licensee for the licensed premises to which the complaint relates, and from such other persons as the Secretary considers appropriate, and make a decision in relation to the complaint without convening a conference.
- (3) A conference, if convened, may deal with more than one complaint.
- (4) A complaint in relation to licensed premises that is being dealt with by the Secretary under this section may be extended to include other licensed premises if the Secretary is satisfied:
- (a) that the evidence given in support of the complaint would support a complaint against the other licensed premises, or
 - (b) that, assuming that the complaint is shown to be justified, action taken in relation to the licensed premises the subject of the complaint will be ineffective unless similar action is taken in relation to the other licensed premises.
- (5) Any licensed premises in respect of which a complaint is extended as referred to in subsection (4) is, for the purposes of this Division, taken to be the subject of a complaint under this Division.
- (6) If, in relation to any such extended complaint, a conference is not convened, the Secretary must invite written submissions from the licensee for the licensed premises that are the subject of the extended complaint before making a decision in relation to the complaint.
- (7) If a conference is convened in relation to a complaint:
- (a) notice of the time and place of the conference is to be given to all complainants and the licensee or licensees as specified by the Secretary, and
 - (b) the Secretary is not to make a decision in relation to the complaint unless each complainant and licensee who is present at the conference is given a reasonable opportunity to be heard.
- (8) A conference under this section is to be presided over by the Secretary and the procedure at the conference is to be determined by the Secretary.
- (9) Nothing in this section prevents the Secretary from taking other action in relation to a complaint under this Division or in relation to licensed premises that are the subject of a complaint under this Division.

81 *Decision by Secretary in relation to complaint*

- (1) The Secretary may, after dealing with a complaint in accordance with section 80, decide to do any one or more of the following:
- (a) impose a condition on the licence for the licensed premises the subject of the complaint,
 - (b) vary or revoke a condition to which the licence is subject,
 - (c) if a conference has been convened in relation to the complaint – adjourn the conference subject to implementation and continuation of undertakings given by the licensee,
 - (d) issue a warning to the licensee,

- (e) *take no further action in relation to the complaint.*
- (2) *The conditions that may be imposed on a licence include, but are not limited to, conditions relating to any one or more of the following:*
 - (a) *noise abatement,*
 - (b) *prohibition of the sale or supply of liquor before 10am and after 11pm,*
 - (c) *prohibition of, or restriction on, activities (such as promotions or discounting) that could encourage misuse or abuse of liquor (such as binge drinking or excessive consumption),*
 - (d) *restricting the trading hours of, and public access to, the licensed premises,*
 - (e) *requiring the licensee to participate in, and to comply with, a liquor accord.*
- (3) *The Secretary is to take the following matters into consideration before making a decision under this section:*
 - (a) *the order of occupancy between the licensed premises and the complainant,*
 - (b) *any changes in the licensed premises and the premises occupied by the complainant, including structural changes to the premises,*
 - (c) *any changes in the activities conducted on the licensed premises over a period of time.*
- (4) *For the purposes of subsection (3),*
"complainant" *does not include a complainant who is the Commissioner of Police or a person authorised by the local consent authority.*

215. In deciding what action to take with regard to the Reviewable Decision, the Authority had regard to the scope of the Secretary's power to make conditions under section 81, which structures the scope of the Authority's powers on review. The considerations under section 81(3) were also taken into account.

216. In determining the review, the Authority also had regard to the broader statutory objects and considerations prescribed by section 3 of the *Liquor Act 2007*, which states as follows:

3 *Objects of Act*

- (1) *The objects of this Act are as follows:*
 - (a) *to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community,*
 - (b) *to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality,*
 - (c) *to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.*
- (2) *In order to secure the objects of this Act, each person who exercises functions under this Act (including a licensee) is required to have due regard to the following:*
 - (a) *the need to minimise the harm associated with the misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),*
 - (b) *the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,*
 - (c) *the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.*

DECISION ON REVIEW AND REASONS

217. The Authority notes that there have been a significant number of complaints from local residents, including 18 complaints from people living in close proximity to the Club premises and 59 individually signed petitions, about the level of noise emanating from the Club, as well as disturbances to the quiet and good order of the neighbourhood, including incidents of public urination, littering, and public nudity.

218. The Rose Bay Local Area Command has also indicated that they have received complaints from the community regarding what Police describe as "...unacceptable behaviour, intoxication and excessive noise of patrons when leaving the Club or utilising the outdoor areas of the Club".

219. The Authority also notes that there have been further submissions from NSW Police indicating that complaints to Police relating to the noise and disturbances from the Club have continued to increase over the month of December 2014, and that the responses from the Club's staff have not been "appropriate and responsible".
220. The Authority notes in particular the detailed and contemporaneous observations made by OLGR inspectors in the OLGR ANZAC Day 2014 Report which identified "poor management" of liquor operations at the Club as contributing to high noise levels and anti-social behaviour at the Club.
221. This report identifies six (6) breaches of liquor legislation during the OLGR inspection, and makes the observation that patron noise was clearly audible above background noise from residential premises at a level considered by OLGR inspectors to be "constant and annoying".
222. The OLGR inspector identified the noise as sounding like "a large volume of persons talking" and that it was clearly audible from inside the private residence with the doors closed. This report also details the presence of a notable amount of garbage in the vicinity of the Club, including empty cans, bottles, and an empty "goon bag" (the inside of a wine cask). The report further notes large volumes of alcohol being distributed in the Club by staff, including jugs of wine; as well as displays of anti-social behaviour observed by OLGR inspectors, including urinating in public view in the vicinity of the Club and patrons leaving the Club yelling and swearing loudly. The OLGR ANZAC Day 2014 Report provides photographic evidence of public urination, as well as rubbish and empty glass vessels at the entrance to the Club.
223. The licensing breaches reported by the OLGR inspectors on ANZAC Day 2014 included the service of glass bottles of beer on ANZAC Day contrary to a licence condition; failing to employ RSA marshals on ANZAC Day contrary to a licence condition; employing a security guard who had an expired RSA Certificate contrary to the *Liquor Regulation 2008*; failing to remove glass containers from the lawn; patrons removing open containers of liquor from the Club premises; and failing to maintain an electronic noise monitoring system in accordance with licence conditions.
224. The Authority notes that the OLGR issued the Club with three warning letters and three penalty notices in relation to the operation of the Club on ANZAC Day 2014, including five breaches of its liquor licence conditions.
225. The Authority notes that subsequent monitoring was conducted by OLGR, including inspections of the Club on eight different occasions from 5 October 2014 to 13 December 2014. File notes from these inspections report further breaches of the Club's licence conditions, as well as anti-social behaviour and undue noise observed by OLGR officers in their contemporaneous notes of inspections. The Authority has given particular regard to the following instances:
 - (a) On 5 October 2014, OLGR inspectors detected a breach of liquor licence conditions for a failure to maintain a patron count. A penalty notice was issued for this breach.
 - (b) On 21 November 2014, OLGR inspectors reported constant noise from patrons of the Club on the bowling greens, including offensive language, which could be heard even though a jet airliner was passing overhead.
 - (c) On 5 December 2014, OLGR inspectors reported the noise monitor on the bowling greens went off 12 times in a 9 minute period, with no intervention by staff. Inspectors also noted patrons urinating behind the shed on the greens.
 - (d) On 6 December 2014, OLGR inspectors conducted a noise assessment and advised that amplified entertainment from the Club was clearly audible within a complainant's

- residence, contrary to the Club's liquor licence requirements. A penalty notice was issued for this breach.
- (e) On 12 December 2014, OLGR inspectors reported the sound monitors on the greens being triggered and that a security guard indicated to inspectors that he was unaware of their purpose.
 - (f) On 13 December 2014, OLGR inspectors reported that patron noise from the Club was clearly audible from the boundary of an affected residence. Inspectors also reported observing patrons urinating behind the shed on the bowling greens and that the noise monitors on the greens were being triggered with no response from staff.
226. The Authority accepts the OLGR inspectors' reports as credible. The observations as to what the inspectors have seen and heard relating to noise disturbance from patrons of the Club have not been seriously challenged with competing evidence as to what occurred on those dates.
227. The Authority has given consideration to the submission by A & M Consultants which contends that there were no compliance breaches after conducting an OLGR Checklist and that the impact of the Club on the community is "...minimal and within reasonable bounds".
228. The Authority has also given consideration to the acoustic assessment by Dr Steven Cooper which contends that the audio reports conducted by Koikas Acoustics are in error and that the Club does not exceed the OLGR LA10 noise criteria.
229. However, regardless of any controversy as to the acoustic evidence provided by the respective experts, the Authority is satisfied, on the basis of the evidence or information provided in the Complaint and in particular the observations provided by OLGR inspectors, on the balance of probabilities, that patrons on the greens have been permitted to conduct themselves in a manner that has unduly disturbed the quiet and good order of the neighbourhood.
230. The Authority is satisfied that such conduct is likely to recur unless substantial measures are taken to curtail the behaviour of patrons on the greens, given the close proximity of those parts of the Club grounds to the neighbouring retirement village.
231. The Authority does not need to refer to the acoustic evidence to be satisfied that the Club's operations have actually caused undue disturbance to the quiet and good order of the neighbourhood.
232. The Authority has given consideration to the Club's submission that the OLGR report from ANZAC Day 2014 does not represent the normal activity of the Club, due to the nature of the public holiday and its association with heavy drinking.
233. However, the Authority notes that subsequent reports from OLGR indicated continuous disturbance to the quiet and good order of the neighbourhood. While the Authority accepts that there may be increased revelry among patrons on ANZAC Day and other similar public holidays, the Club is required to operate in a manner that does not cause undue disturbance to the neighbourhood on *any* day of the year.
234. The evidence of the OLGR inspectors indicates some level of disregard for the Club's licence conditions and RSA practices and an inability to manage the behaviour of alcohol affected patrons on the greens so that they do not cause undue disturbance. The risk of such disturbance should be apparent when the Club greens are situated in close proximity to residential premises and it is a matter for the Club to take whatever noise amelioration measures possible to reduce the risk of such disturbance.

235. In the alternative, if corporate or social bowling functions simply cannot be run without undue disturbance, then it is the Club's responsibility to either cease to run those functions or take rigorous measures to reduce alcohol affected patrons on the Club premises causing undue disturbance. If there is a contest between the community expectation that Club patrons be able to consume liquor on the greens and the requirement that licensed premises conduct themselves in a manner that does not cause undue disturbance, the public interest in avoiding undue disturbance must prevail.
236. The Authority is satisfied, on the basis of the initial Complaint material and the material from OLGR inspectors, that patrons of the Club have engaged in rowdy, noisy and at times offensive behaviour and that the Club has not taken adequate steps to control this behaviour.
237. Given that there is little by way of an acoustic barrier between the greens and the Goodwin Retirement Village, it is perhaps inevitable that large numbers of persons attending social functions and affected by alcohol to varying degrees in this outdoor area of the Club premises will cause undue noise disturbance. This is particularly likely to be the case on public holidays or during the festive season, but may potentially occur whenever a large enough group is playing on the greens while many of their number are disinhibited by alcohol.
238. The Authority is satisfied that alcohol has more likely than not played a major role in the boisterous and disinhibited behaviour of patrons on the greens and that the Condition imposed by the Secretary will serve to reduce the extent to which players may consume alcohol while on those areas of the Club premises.
239. The Authority is satisfied that restricting the consumption of alcohol while persons are on the greens will make a substantial contribution to reducing the alcohol fuelled high spirited antics of patrons.
240. The kind of functions conducted on the Club premises could more aptly be characterised as "bowls themed entertainment" rather than the serious pursuit of bowls as a sport. The submission by the Club that the Condition is directed toward impermissibly regulating the underlying sport of bowls is simply not credible. The Condition is plainly directed towards regulating the consumption of liquor in the outdoor areas of the Premises.
241. The Authority accepts the Club's submissions to the effect that persons playing bowls in this informal manner may come to expect to be able to consume liquor while playing. Nevertheless, the Authority considers that this expectation must be subsumed by the public interest in preventing undue disturbance to the quiet and good order of the neighbourhood of licensed premises, which is occurring in this case by reason of the repeated misconduct of large groups of patrons on the greens.
242. Section 79 of the Act provides a mechanism for remedying undue disturbance if a bowling club or any licensed premises cannot conduct its affairs without causing undue disturbance. This Club may be relatively more vulnerable to noise complaints than other bowling clubs that accommodate informal bowling groups, by reason of the close proximity of the greens to the Goodwin Retirement Village, but those are the prevailing environmental circumstances to which this licensed venue must adapt.
243. The Authority is satisfied that the imposition of the Condition is both necessary and appropriate in the current circumstances.

244. Particular weight has been given to the fact that, as noted by the Secretary, the Club has previously been subject to disturbance complaints arising from the conduct of patrons on the greens (including a disturbance complaint that was before the Authority in 2011).
245. The Authority agrees with the Secretary's analysis that the conditions that are currently imposed upon the licence have proved ineffective in preventing further disturbance arising from the conduct of patrons on the greens and that an escalated regulatory response is required.
246. With regard to the order of occupation consideration pursuant to section 81(3)(a) of the Act, the Authority accepts that the Club has existed since the mid-1950s and has been a feature of the neighbourhood for longer than many of the existing residents, and as such, most of those residents would have moved into the area being aware that the Club operated in that neighbourhood.
247. However, the nature of the activities conducted at the Club appears to have changed in recent years to include corporate and other social functions that focus significantly on the consumption of alcohol on the greens.
248. On this basis the Authority is satisfied, for the purposes of section 81(3)(c) of the Act, that there has been a change in activities at the Club which has led to the disruption of the quiet and good order of the neighbourhood pursuant to section 79 of the Act. There do not appear to be any substantial structural developments in relation to the Premises that at issue for the purposes of section 81(3)(b) of the Act.
249. The Authority has considered the Applicant's alternative and belated proposals that the Club be permitted to manage the problem rather than be exposed to the impact of the Condition, through the imposition of alternative conditions regulating jugs of alcohol, the use of glass, restrictions on full strength nips of spirits, use of mobile bars, tray service and no live or amplified music be allowed on the bowling greens.
250. However, the Authority is satisfied that the patron misconduct of concern on the greens is substantially alcohol driven and requires an escalated regulatory response that targets that conduct by prohibiting *all* use of alcohol in these exterior areas of the Club premises.
251. In light of the inability of the Club to manage alcohol related noise disturbance arising from this aspect of its business over some time, the Authority is not persuaded that it would be in the public interest to trust the Club to attempt to further manage the problem through licence conditions that refine the service of liquor on the greens. A more substantial response is required to ensure a modification of patron behaviour, noting that the Club will still be able to serve liquor to its patrons for consumption within the clubhouse, but not on the greens.
252. The Authority accepts the Review Applicant's submissions that the Condition will come at some substantial economic cost to the Club in that it may lose bookings that may have otherwise been made by reason that patrons attending the Club premises desire to be able to consume liquor on the greens.
253. However, if a licensed establishment cannot remain viable without causing undue alcohol related disturbance from the conduct of its patrons, then the public interest in preventing undue alcohol related disturbance must prevail.
254. The Club has had ample opportunity over recent years to plan its affairs to avoid further conflict between the conduct of its bowling parties and the interests of neighbouring residents and has not managed to find an alternative. It has faced complaint after

complaint and has not found an enduring solution to the re-emergence of undue disturbance.

255. In conclusion, the Authority has no confidence in the Club's ability to manage an alternative solution to the reduction of patron misbehaviour on the greens. Liquor consumption on the greens is the "elephant in the room" and the Club can no longer be trusted to continue the operation of social functions in these outdoor areas of the Club premises while respecting the interests of its neighbours.

CONCLUSION

256. The Authority determined the substantive review at its meeting on 27 May 2015. The Authority accepted the evidence of the Complainant, OLGR and residents of the Goodwin Retirement Village and was satisfied that the operation of the Club is causing undue disturbance to the quiet and good order of the neighbourhood.
257. The Authority has carefully considered all of the submissions and material before it and has had regard to relevant legislation, including but not limited to, the statutory objects and considerations provided by section 3 of the *Liquor Act 2007* and the order of occupancy considerations under section 81 of that Act.
258. The Authority is satisfied that the Condition imposed by the Secretary directly addressed the disturbance and was reasonable, necessary and preferable to any alternate condition, including the alternate conditions proffered by the Review Applicant Club.
259. The Authority resolved to **confirm** the Reviewable Decision under section 36A(4) of the *Gaming and Liquor Administration Act 2007*. This means that the following Condition, as imposed pursuant to section 81 of the *Liquor Act 2007* by the Secretary in the Reviewable Decision, continues to remain in effect:

The licensee must ensure that no patron is permitted to consume alcohol on the bowling greens, or in or on any other outdoor area of the Club.

260. If you have any enquiries about this decision, please contact the Authority's General Counsel, Mr Bryce Wilson via email at bryce.wilson@ilga.nsw.gov.au.



Micheil Brodie
Chief Executive
for and on behalf of the Independent Liquor and Gaming Authority

DATED **3 / 8** / 2015