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cc: *Vaucluse Resident Submitters -*

Michael and Pamela Aldred; Dean Mullins; Frank and Cheryl Venturi; Joseph Weinreich; Robert and Kyrenia Thomas; Jacob Gutmann; Nicholas Andrews; Linda and Jeremy Nolan; Julia Bickstaff; Natalie Samuelson; Danielle Poli; Nicholas Bury; Mary Souris; Minas and Hellene Coroneo; Rachelle Rose; William Wurth and Desmond Miller

By Express Post and Email

Dear Sir/Madam

Application for Review by Fresh Catering Pty Ltd and Sydney Living Museums Regarding Direction under Section 54A of the *Liquor Act 2007* issued by the Secretary of NSW Trade & Investment in relation to the on-premises (catering service) licence of Fresh Catering Pty Ltd

BACKGROUND

1. The Authority has completed its consideration of a joint application for review (**Review Application**) made to the Authority on 11 December 2014 by a private caterer, Fresh Catering Pty Ltd (**Fresh Catering**) and a public agency, now known as Sydney Living Museums (**SLM**) (formerly the New South Wales Historic Houses Trust) under section 36A of the *Gaming and Liquor Administration Act 2007* (**GALA Act**).
2. The Review Application concerns a direction dated 28 November 2014 made by the Secretary of NSW Trade & Investment (**Secretary**) under section 54A of the *Liquor Act 2007* (**Act**), which states:

54A Directions relating to "sale on other premises" authorisations

- (1) *The Secretary may give a licensee who is the holder of an authorisation under section 25(6), or any employee or agent of such a licensee, a written direction that relates to the operation of the authorisation.*
- (2) *Without limitation, any such direction may prohibit or restrict the sale of liquor under the authorisation during such times, or on such premises, as may be specified in the direction.*
- (3) *A direction under this section:*
 - (a) *takes effect when it is given to the licensee or person concerned or on a later date specified in the direction, and*
 - (b) *may be varied or revoked by the Secretary, and*
 - (c) *has effect despite the authority conferred by the authorisation concerned.*

- (4) *A licensee or person who fails to comply with a direction under this section is guilty of an offence.*

Maximum penalty: 50 penalty units.

The Secretary's Direction dated 28 November 2014

3. The Direction made by the Secretary dated 28 November 2014 (**Direction**) under section 54A of the Act replaced a similar direction issued by the Secretary on 14 November 2014.

4. The Direction states:

I, Mark I Paterson, Secretary of the Department of Trade and Investment, Regional Infrastructure and Services, by notice in writing:

1. *Pursuant to section 54A(3)(b) of the Liquor Act 2007, hereby revoke the direction to the licensee of Fresh Catering (LIQO624008913) dated 14 November 2014.*
2. *Pursuant to section 54A(1) of the Liquor Act 2007, issue the following new direction to the licensee of Fresh Catering (LIQO624008913).*

From 5pm on 29 December 2014, in relation to the Vaucluse Tea Rooms and Terrace or any other premises located on the grounds of Vaucluse House located at Olola Avenue, Vaucluse, you must not:

- (a) *Sell or supply liquor, or cause liquor to be sold or supplied after 6:30pm on 16 January 2015 or 31 January 2015, or*
- (b) *Sell or supply liquor, or cause liquor to be sold or supplied at any other time.*

5. The effect of the Direction is to prevent *any* use of the catering licence LIQO624008913 *anywhere on the grounds of the Vaucluse House estate* other than on 16 and 31 January 2015.
6. SLM and Fresh Catering (the **Review Applicants**) sought a stay of the Direction while the Authority determines this review. By decisions dated 19 January 2015 and 17 February 2015, the Authority determined, under section 36A(3) of the GALA Act, that the Secretary's Direction shall be stayed *in part* to enable use of the catering licence for the conduct of what the Review Applicants had established, through statutory declarations and booking records, as nine (9) longstanding arrangements for wedding functions to be conducted in the Tea Rooms and on the grounds of Vaucluse House.
7. The Authority considered the evidence and material provided on this review by the Review Applicants and a number of other submitters, all of whom are residents of Vaucluse living in reasonably close proximity to the Vaucluse House estate (**Resident Submitters**).
8. The Stay was issued pursuant to directions from the Authority under section 36A(3) of the GALA Act that the Review Applicants must comply, when conducting these nine events, with those additional requirements that the Review Applicants had submitted be imposed as conditions upon the catering licence as part of their substantive case on the review. The Review Applicants' proposed conditions are discussed below.

The Section 79 Complaint

9. By way of background, one of the Resident Submitters, Mr Michael Aldred, has also made a disturbance complaint to the Office of Liquor, Gaming and Racing (**OLGR**) dated 27 February 2014 under section 79 of the Act (**Complaint**). This Complaint, while not yet determined, appears to have informed and prompted the issue of the Direction now under review.
10. Mr Aldred alleges that the various public events and private functions (**Events**) conducted on the grounds of Vauclose House are causing undue disturbance to the quiet and good order of the neighbourhood. The Complaint is in the usual form and verified by a statutory declaration. The Complaint is supported by two other authorising residents who have also signed statutory declarations. The Complaint material includes previous letters sent by local residents to Woollahra Municipal Council (**Council**), SLM (the Historic Houses Trust) and the local State Member of Parliament for Vauclose dating back to 2010.
11. In the Complaint, Mr Aldred submits that conditions should be imposed upon any licence utilised on the grounds of Vauclose House constraining patron numbers at daytime or evening Events to 75 persons; that alcohol not be sold or supplied after 9:00pm; that no amplified music should be used on the grounds; that live music should be confined to a classical string trio and that daytime children's parties conducted on the grounds be confined to the "stables in the South Paddock of the grounds". Mr Aldred contends that the frequency of larger Events open to the public has increased in recent times and that the number of such Events should be confined to one or two per year and submits that "no event requiring the construction or erection of anything in the park be allowed".
12. The Authority notes that Mr Aldred expresses particular concern with the noise impacts from music and patrons attending wedding functions conducted in the evening, but his concerns also extend to a range of other daytime noise impacts, some of which are specifically alleged to be alcohol related while others (such as children's parties on the grounds of the estate) are clearly not.
13. The Complaint is supported by a number of local residents, nearly all of whom are among the Resident Submitters who have subsequently made similar supporting statements to the Authority for the purposes of this review.
14. The Authority notes that the section 79 Complaint has yet to be determined by the Secretary. The matter now before the Authority is a review on the merits of the Direction made under section 54A of the Act. The Authority is *not* conducting a review of any decision made by the Secretary in relation to that Complaint.
15. Nevertheless, the Complaint material, alleging a variety of adverse impacts upon local amenity, formed part of the evidence or material before the Secretary at the time of making the Direction.
16. The Complaint material and the submissions in response to that Complaint are now before the Authority when reviewing the Secretary's decision.

Two Liquor Licences are Currently Available for Use

17. Fresh Catering is a private catering company which occupies, pursuant to a lease from SLM, the Vauclose House Tea Rooms (**Tea Rooms**). The Tea Rooms comprises one of the smaller physical structures situated on the extensive grounds of the Vauclose House estate, but separate to the main Vauclose House.

18. An “on-premises” (restaurant) licence number LIQO624001748 attaches to the Tea Rooms. It permits the sale or supply of liquor for consumption on those premises, provided that such supply is ancillary to the primary service designated by the licence – which, in the case of a restaurant, is the provision of a meal. Fresh Catering is the current licensee under this licence.
19. When that restaurant licence was first granted by the (then) New South Wales Licensing Court on 18 November 1988 under the former *Liquor Act 1982*, certain conditions were imposed. They include conditions limiting seating capacity in the restaurant to 148; preventing licensed trading after 5:00pm on any day; requiring that any function involving live entertainment be subject to 7 days’ notice to Woollahra Municipal Council and requiring that the premises “be operated as a tea room”.
20. The material before the Authority provided by the Review Applicant and in the Complaint indicates that the Tea Rooms and other parts of the grounds of the Vaucluse House estate are currently being used to conduct a range of Events, such as private functions like wedding ceremonies and receptions or larger events that are open to the public – such as “Jazz in the Garden”.
21. Fresh Catering’s Review Application indicates that the company has been selling or supplying liquor on the grounds of the Vaucluse House estate in reliance upon its separate catering licence number LIQO624008913.
22. The Authority notes that use of the catering licence could potentially involve catering functions held both within and outside the structure of the Tea Rooms and on the wider grounds of the estate.
23. The Review Applicants submit, and the Authority accepts, that there are two components of the Fresh Catering business conducted on the estate – a regular restaurant/café business conducted within the Tea Rooms and a catering business conducted both inside and outside the Tea Rooms and on the grounds of the estate. Separate accounts are maintained by Fresh Catering for each part of the business.
24. The Authority notes, on the basis of the catering licence record, that this licence permits licensed trading from 8:00am until midnight Monday through Saturday and from 10:00am until 10:00pm on Sunday.
25. The catering licence is less restricted than the restaurant licence, but it also has the benefit of an authorisation under section 25(6) of the Act, which enables the caterer to sell or supply liquor on premises *other* than the caterer’s principal place of business.
26. This type of authorisation is relied upon by caterers across New South Wales to cater functions on a variety of third party premises and locations. All licensees who make use of this type of authorisation must observe the conditions imposed by clause 20 of the *Liquor Regulation 2008 (Regulation)*, which includes, *inter alia*, a requirement to notify the local Police and council of the details of a proposed function not less than 14 days prior to that function.

The Secretary’s Decision Letter dated 14 November 2014

27. Among the material under review is a letter from the Secretary dated 14 November 2014 explaining the Secretary’s rationale for issuing the initial direction and the Direction now under review.

28. Without recounting this letter in its entirety, the Secretary was satisfied, on the material before him at that time (including acoustic evidence in a report from Renzo Tonin and Associates dated 30 July 2014), that the conduct of Events on the grounds of Vaucluse House was producing noise impacts that exceeded the “LA10” noise criteria.
29. The Authority notes that the LA10 criteria are a set of noise controls developed by the former Liquor Administration Board that are designed to limit the kind of noise impacts that may be caused by the operation of licensed businesses. The LA10 criteria may be potentially imposed, by way of a licence condition, upon licensed premises in New South Wales by the Secretary or the Authority from time to time if considered necessary or appropriate by a decision maker. The purpose of the LA10 criteria is to constrain noise emissions and thus reduce the adverse impact of the operation of a liquor licensed premises upon nearby residents. While the LA10 condition may be imposed in the course of determining a disturbance complaint under section 81 of the *Liquor Act*, it may also be imposed in other regulatory contexts – such as the exercise of regulatory power by the Secretary under section 54 of the Act or by the Authority under section 53 of the Act.
30. Liquor licences are not automatically subject to the LA10 requirement, but if and when the LA10 criteria are imposed by way of a licence condition, the licensed business must comply with a regime of measurable noise emission restrictions for the period from 7:00am until midnight, and a more stringent set of restrictions for the period between midnight and 7:00am. [The Authority notes that only pre-midnight trading is at issue in this case.]
31. The Secretary’s letter expresses a public policy concern that Fresh Catering should not be permitted to utilise its catering licence to cater Events conducted on the grounds of Vaucluse House in a manner that would “subvert” the conditions attaching to the restaurant licence for the Tea Rooms.
32. The Secretary also expressed concern that despite having given notice of the Complaint to Fresh Catering, and having received submissions in reply, Fresh Catering and SLM had not yet taken sufficient action to ameliorate those noise impacts, nor implemented the recommendations of (their own) acoustic consultant, Renzo Tonin and Associates, whose report had indicated that the pre-midnight noise emissions from catered functions held on the grounds were exceeding the “LA10” requirements.

THE REVIEW APPLICANTS’ CASE IN BRIEF

33. Without purporting to repeat here all of the Review Applicants’ submissions, the Review Applicants deny that their use of the catering licence to conduct events on the grounds of Vaucluse House was designed to “subvert” the conditions on the restaurant licence; or in the alternative, submit that there is no evidence of such intent.
34. The Review Applicants contend that around 39,000 persons have used the Tea Rooms for either “restaurant or private functions” during 2013-14. SLM (a public agency) derives substantial revenue as a result of the commercial use of the grounds and this revenue provides about half of the funds required for the annual upkeep of the Vaucluse House estate.
35. The Review Applicants make a number of legal arguments to the effect that the Secretary’s findings were not supported by evidence; that they were denied procedural fairness by OLGR staff and that the briefing material before the Secretary “misled” the Secretary as to the facts of the matter and indicated “bias” on the part of OLGR.

36. On the extent of noise emissions, the Review Applicants question whether the report provided by (their own) acoustic consultant Renzo Tonin and Associates dated 30 July 2014 would support a conclusion that the LA10 criteria are “consistently” being exceeded when the caterer’s licence is used.
37. The Review Applicants submit that the catering licence has been exercised by Fresh Catering pursuant to the requirements of the Act and Regulation and that the material before the Secretary does not indicate that those Events conducted on the grounds of the estate have been the subject of any adverse submissions from Council or NSW Police.
38. The Review Applicants note that no determination has yet been made on the section 79 Complaint. They argue that Mr Aldred’s Complaint is not supported by independently verifiable evidence and contend that the “inherent level of noise in the neighbourhood” is exacerbated by the geography of the area, which carries noise from other functions held on private premises throughout the suburb of Vaucluse.
39. The Review Applicants further contend, providing reports from their security contractors, that some of the noise impacts described by Mr Aldred in his Complaint occurred on dates when the likely cause was from private parties conducted in other private residences in Vaucluse on 22 February 2014, 14 March 2014 and 15 March 2014, not events held on the grounds of Vaucluse House.
40. The Review Applicants submit, apparently by way of explanation, that they have yet to implement some of the recommendations made in the report by Renzo Tonin and Associates on the basis that SLM has “not yet determined the viability” of implementing certain measures (such as an in-house sound system with noise limiters) from an economic and conservation perspective. They submit that they are still in the process of preparing a Plan of Management for future use of the Vaucluse House estate.
41. Significantly, the Authority notes that in their submissions to the Authority, the Review Applicants have now modified their position by comparison to the submissions made to the Secretary when he consulted with them on this matter. They now propose that the catering licence be subject to enforceable new conditions should they be permitted to continue catering Events on the grounds utilising this catering licence.
42. Briefly, the Review Applicants propose conditions that the licensee be required to observe the LA10 requirement for any function conducted on the premises of the Tea Rooms after 5:00pm; the use of a security guard after 7:00pm; the cessation of the supply of liquor at 10:30pm; a requirement that patrons leave the Tea Rooms by 11:00pm; a requirement that the licensee close the windows on the western side of the Tea Rooms from 5:00pm to 11:00pm and a requirement that amplified music be directed away from the eastern terrace doors of the Tea Rooms.

SUBMISSIONS FROM RESIDENT SUBMITTERS ON THE REVIEW

43. Since the date of the Review Application, the Resident Submitters made several rounds of submissions to the Authority, primarily but not exclusively through Mr Aldred:

First round: on the Application for Stay of the Direction

- Brief email submission from Mr Aldred dated **7 January 2015**
- Further email submission from Mr Aldred dated **14 January 2015**

Second round: on the substantive review

- Substantive submission (supported by statutory declarations from Mr Aldred and 18 other Resident Submitters) dated **3 February 2015**
- Brief email submission from Mr Desmond Miller dated **9 February 2015**
- Email submission from Mr Aldred dated **20 February 2015**
- Further email submission from Mr and Mrs Aldred dated **23 February 2015**

Third round: on proposed administrative action notified to parties on 9 March 2015

- Submission from Mr Nicholas Andrews dated **11 March 2015**
- Submission from Mr Dean Mullins dated **15 March 2015**
- Submission from Mr Aldred dated **15 March 2015**
- Submission from Mrs Aldred dated **16 March 2015**
- Email enquiry from Mr Mullins dated **20 March 2015**
- Submission from Mrs Aldred dated **20 March 2015**
- Noise complaint from Mrs Aldred dated **20 March 2015**
- Noise complaint from Mr Mullins dated **21 March 2015**
- Submission from Mr Mullins dated **23 March 2015**
- Further submission from Mr Mullins dated **23 March 2015**
- Submission from Mr Aldred dated **23 March 2015**

Fourth round: on modified proposed administrative action notified to the parties on 27 March 2015

- Noise complaint from Mrs Aldred dated **29 March 2015**
- Noise complaint from Mr Mullins dated **30 March 2015**
- Noise complaint from Professor Minas and Mrs Hellene Coroneo dated **30 March 2015**
- Submission from Mr Jeremy Nolan dated **30 March 2015**
- Submission from Mr Aldred dated **30 March 2015**
- Submission from Mr Andrews dated **30 March 2015**.

44. Briefly, and without purporting to recount all of the submissions made, 21 of the 22 Resident Submitters seek that the Authority confirm the Direction issued by the Secretary.
45. In summary, they argue that the Review Applicants' reliance upon Fresh Catering's "temporary" catering licence to conduct events on the grounds of the estate is "unlawful" by reason that it "subverts" the conditions imposed upon the "permanent" restaurant licence that attaches to the premises of the Tea Rooms.
46. In the alternative, the Resident Submitters (particularly Mr Aldred) argue that the number and scale of functions being conducted on the premises of the Tea Rooms contravenes a provision in the lease granted by SLM to Fresh Catering.
47. Furthermore, Mr Aldred argues that the current use of the property is contrary to a requirement expressed in the initial transfer of estate from William Wentworth to Arthur Roberts dated 2 December 1924 which required that there be "no commercial activities on the estate" and "no disturbance of the peace of each neighbour".
48. A common theme in the submissions from the Resident Submitters is an emphasis that the grounds are located within an area of Vaucluse that is "zoned residential". They argue that the private caterer and the public agency (SLM) should not be permitted to conduct a "large scale commercial enterprise" in a residential area, nor should they profit from a catering business conducted on the grounds of this estate at the expense of local amenity.

49. They contend that adverse impacts upon local amenity have been ongoing, particularly from “amplified music and speech” that is audible from their homes, and that amenity is also affected by the “disorderly” behaviour of alcohol affected patrons leaving functions held on the grounds of the Vaucluse House estate in the evenings.
50. They also argue that the premises of the Tea Rooms is not constructed in a manner that will contain noise from the conduct of functions, and that this structure was not intended to accommodate wedding functions of the kind that are now being catered for.
51. A contrary submission was made by one Resident Submitter, Mr Desmond Miller dated 9 February 2015. In this short email, Mr Miller states that he lives across the road from Vaucluse House and contends that “he and many other residents of Vaucluse” are not in favour of restricting activities on the grounds of the estate, which “should be enjoyed by the public” and “do not interfere in any way with my family’s lifestyle”. He argues that those Resident Submitters opposing these activities are “insensitive to the needs of others, who come from less lavish homes”.
52. Some of the submissions from the Resident Submitters also include complaints of a compliance nature, sent to OLGR but copying in the Authority. Several of the Resident Submitters contend that noise from amplified music from functions held on the grounds can be heard from within their homes “with the doors and windows shut”.
53. In an email sent to the Authority by Mrs Pamela Aldred on the evening of Friday 20 March 2015, Mrs Aldred contends that she can currently hear the (Four Seasons/Frankie Valli) track *Oh What a Night* followed by “a cover by Michael Jackson” accompanied by “shouting and whooping and clapping from the party goers”. This email is supported by further emails from Mr Dean Mullins dated 21 and 23 March 2015, who also questions whether the circa 1920 weatherboard structure of the Tea Rooms is a suitable type of premises, from an environmental planning perspective, to accommodate such functions.

REASONS FOR DECISION

54. The Authority has the power under section 36A(4) of the *Gaming and Liquor Administration Act 2007* to confirm, vary or revoke a “reviewable decision”. Under section 36A(1) of the GALA Act, a direction made by the Secretary under section 54A of the Act is one type of “reviewable decision”.
55. While section 54A does not provide an express test to be applied by a decision maker when issuing a direction, the Secretary and the Authority, upon review, are required to consider the public interest in respect of the *Liquor Act*. When doing so, a decision maker may be guided by the statutory objects in section 3(1) of the Act and must consider the statutory considerations prescribed by section 3(2) of the Act.
56. The Authority also has the power to impose conditions upon liquor licences from time to time under section 53 of the Act, and to impose conditions upon licence related authorisations under section 51(9)(a) of the Act from time to time.
57. In taking the administrative action identified below, the Authority has been guided by the statutory objects and considerations provided by section 3 of the Act, which states:

3 *Objects of Act*

(1) *The objects of this Act are as follows:*

- (a) *to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community.*

- (b) *to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality,*
 - (c) *to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.*
 - (2) *In order to secure the objects of this Act, each person who exercises functions under this Act (including a licensee) is required to have due regard to the following:*
 - (a) *the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),*
 - (b) *the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,*
 - (c) *the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.*
- 58. The Authority has consulted extensively with the parties who participated in this review. It has considered all the submissions received from the Review Applicants and the Resident Submitters. The first round of submissions was made on the preliminary question of the Application for Stay of the Direction. The second round of submissions addressed the substantive review, and included further submissions from the Resident Submitters who provided similarly worded statutory declarations expressing support for the Secretary’s decision and other material about the business operating on the grounds of the estate.
- 59. A further (third) round of submissions was received from the Review Applicants and some of the Resident Submitters in response to a course of administrative action proposed by the Authority in a letter dated 9 March 2015. A final (fourth) round of submissions was received from the Review Applicants and some of the Resident Submitters on a varied proposed course of administrative action that was communicated to the parties in a letter dated 27 March 2015 (being the action now confirmed by this decision).
- 60. Aside from Mr Miller, the Resident Submitters have maintained their position that the Secretary’s Direction be confirmed. As for the Review Applicants, after initially contesting (in some respects) the noise control measures proposed by the Authority in its letter dated 9 March 2015 and counter proposing (in other respects) the form of further conditions proposed by the Authority, the Review Applicants have now reached a position whereby, in their final submission dated 7 April 2015, they now *consent* to the revised suite of conditions proposed by the Authority in its letter dated 27 March 2015.
- 61. That is, the Review Applicants consent to the two sets of conditions that the Authority has now imposed upon the restaurant licence and catering licence in this decision.
- 62. The Authority notes that the Secretary issued the Direction in part because of a concern that the catering licence was being used in a manner that “subverts” the restrictions placed upon the restaurant licence, which is subject, *inter alia*, to conditions requiring that liquor not be sold after 5:00pm, restrictions on live entertainment, and a requirement that the Tea Rooms “be used as a tea room”.
- 63. The Secretary raises a legitimate public policy concern that a catering licence should not be used in a manner which circumvents (whether by design or effect) another licence with respect to the same premises.
- 64. The Authority considers that there may well be cases where the issue of a direction under section 54A prohibiting *any* use of a catering licence on an already licensed premises is the best response to preserve the public interest in right of the *Liquor Act*.

65. However, in this case, the Authority is not dealing with any ordinary licensed premises or venue. The Vaucluse House estate comprises 9 hectares of land. It constitutes a significant historic place of public recreation, set on extensive and attractive grounds. It is a substantial place of public recreation and is a sought after venue for the conduct of private functions and public events alike.
66. There are two zones under consideration – the modest Tea Rooms structure, which is an outdoor weatherboard structure with stained glass windows (separate to the main Vaucluse House itself) and the wider grounds of the estate that are not regulated by any liquor licence.
67. As things stand, catered functions involving the sale or supply of liquor may potentially be conducted by any caterer who has an authorisation under section 25(6) of the Act.
68. Furthermore, there are no specific noise control conditions imposed upon Fresh Catering’s catering licence nor the restaurant licence that Fresh Catering also controls in respect of the Tea Rooms.
69. The Authority notes, on the basis of the material now before the Authority, that despite complaints made by the Resident Submitters to Woollahra Council and NSW Police, there is little by way of adverse evidence from those two agencies establishing a breach of the *Environmental Planning and Assessment Act 1979* or the *Protection of the Environment Operations Act 1997*, as suggested in some of the Resident Submissions.
70. While the Authority is not a planning regulator, it notes a letter from Woollahra Municipal Council dated 19 December 2013 (included in the Complaint material provided to OLGR by Mr Aldred) advising Council’s view that there are “no apparent breaches” of development consent in relation to Vaucluse House, but that future submissions to Council will be referred to the Department of Environment and Heritage for its consideration. Council also notes the potential for Mr Aldred to correspond with Police or OLGR about any issues arising from the exercise of the liquor licence.
71. The Authority further notes the view of SLM (expressed in a letter from Mr Mark Goggin, Director, to Mrs Aldred dated 26 November 2013) that the grounds of the Vaucluse House estate are classified as a “general recreation area” under the *Woollahra Council Local Environmental Plan*, and for this reason, SLM is permitted to conduct Events and activities within those grounds.
72. In conclusion, while the Resident Submitters have frequently described the conduct of Fresh Catering and SLM as “unlawful”, they have not demonstrated to the Authority’s satisfaction how the exercise of the catering licence is unlawful.
73. There have been allegations made that some of the Events permitted by the Authority pursuant to the Stay Direction were not in compliance with that direction. There is insufficient evidence before the Authority to establish whether a breach of the Stay Direction occurred, and that is a matter for an agency (such as OLGR or Police) vested with functions of enforcing the Act.
74. Fresh Catering occupies the Tea Rooms and has acquired the restaurant licence pursuant to a commercial lease granted to it by SLM. It otherwise conducts functions on the grounds of the estate with the knowledge and permission of SLM, who control the property of the Vaucluse House estate.

75. As things stand, Fresh Catering (or another caterer) may, for example, set up a marquee outside the physical structure that comprises the Tea Rooms with no scope for overlap in use of the two licences.
76. As for use of the Tea Rooms itself, the Authority is satisfied, on the submissions of the Review Applicants, that Fresh Catering is exercising the restaurant licence for *bona fide* restaurant purposes (the regular conduct of a restaurant/café business that is open to the public) and is also, at times, using a catering licence for the conduct of *bona fide* individual functions, mostly wedding receptions.
77. The Authority notes that Fresh Catering's proposal for the imposition of new conditions upon its licence would only apply to the exercise of its *catering licence* on the *premises of the Tea Rooms*.
78. The Authority has built upon those proposals and considers that a regime of enforceable licence conditions imposed upon *both* the restaurant and catering licences in respect of *all* relevant areas of the grounds is the correct and preferable regulatory approach to take to secure the public interest at this time.
79. The Authority is satisfied, on the material now before it, that this action will provide a better balance of the competing statutory objects and considerations prescribed by section 3 of the Act than an outright prohibition on any use of the catering licence.
80. The Authority is satisfied that *subject to proper regulation*, the exercise of the catering licence on the grounds, both before and after 5:00pm but no later than 11.00pm, will best promote the competing objects and considerations provided by section 3 of the *Liquor Act 2007*.
81. The Authority is satisfied, on the basis of the information provided by the Review Applicants, that 39,000 patrons made use of the restaurant and catering services provided on the grounds of the estate during 2013. There is substantial demonstrated community demand for use of this unique site for wedding functions and other types of events on the grounds. The Authority is satisfied that some functions are held during the day and others in the evening, until 10:30pm.
82. In this respect, the Authority is satisfied that making the grounds available for catered functions can be said to advance the expectations, needs and aspirations of the community within the meaning of subsection 3(1)(a) of the Act.
83. Subject to proper regulation, use of the grounds for Events may also be said to advance the responsible development of related industries, including the hospitality and music industries, for the purposes of subsection 3(1)(c) of the Act.
84. The Authority is satisfied, on the basis of the Review Applicants' submissions, that the availability of an historic estate, set on attractive grounds in this location, develops the hospitality industry in a way that (for example) mainstream hotels, clubs or function centres do not. The Authority is also satisfied that the various functions may also provide some employment for hospitality workers, event organisers, jazz, classical and popular musicians or disc jockeys.
85. Although preserving the State's built heritage is not an express purpose of the *Liquor Act*, the Authority is satisfied, on the basis of the Review Applicants' submissions, that SLM receives substantial income from its commercial lease of the Tea Rooms to Fresh Catering and that this provides around half the annual cost of upkeep of the entire estate.

86. In this sense, the revenue derived by SLM from Fresh Catering's use of both licences provides an ancillary public benefit through the upkeep of this historic site, in turn making the grounds available for the development of the hospitality industry through private functions such as weddings or larger, less frequent events that are open to the general public such as "Jazz in the Gardens" and other Events described in the Review Applicants' submissions.
87. However, the Authority must also consider the requirements of subsection 3(2)(a) of the Act – the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour) and subsection 3(2)(c) of the Act – the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.
88. While the Authority accepts, on the basis of the Review Applicants' submissions and security reports, that on a few occasions the Resident Submitters may have confused noise from neighbourhood private parties with noise from catered functions on the estate, on the whole (and giving weight to the report from Renzo Tonin and Associates), the Authority is satisfied that catered Events conducted on the estate have generated noise in excess of the LA10 requirements. The Authority considers it more likely than not that such impacts will continue, unless a scheme of better regulation is implemented.
89. The Authority is satisfied that adverse amenity impacts are likely to arise particularly through the use of amplified recorded or live music at private functions held on the grounds of the estate in the evenings which may extend until 10:30pm. The Authority is satisfied that there may be other impacts upon residential amenity, such as the disposal of bottles by staff or noise from patrons lingering in the area as they depart.
90. The Authority observes that it is not the purpose of the *Liquor Act* to eliminate all forms of noise from the conduct of a licensed business or its patrons and that 10:30pm is not particularly late in the evening for the conduct of a licensed business.
91. The Authority notes the Resident Submitters' submissions that they live in a predominantly residential area. While that is certainly the case and the nature of the licensed business, location and geography of the estate have been taken into consideration, the zoning of the area as residential is not decisive. Many licensed businesses operate within a predominantly residential environment.
92. The Authority is satisfied that so long as consistent and enforceable controls are in place against both licences in order to better manage the likely noise emissions, this will provide a better balance of all of the statutory objects and considerations that the Authority is required to consider than an outright prohibition on any use of the catering licence.
93. During the course of this review, the Review Applicants have proposed a regime of enforceable licence conditions to mitigate adverse impacts on local amenity. These enforceable conditions were not put to the Secretary during his consultation with Fresh Catering and SLM before the Direction was issued.
94. When issuing the Direction, the Secretary was clearly concerned that SLM and Fresh Catering had not acted in a timely manner to address the alcohol related noise impacts on local amenity that he was satisfied were occurring from the exercise of the catering licence on the grounds of the Vaucluse House estate.
95. The Authority shares those concerns, and observes that had SLM and Fresh Catering taken the initiative to implement their own expert advice sooner and not forced the

Secretary's hand, considerable time and resources may have been spared with the conduct of this review.

96. The Authority does not accept that OLGR demonstrated bias in briefing the Secretary on this matter, but that legitimate amenity concerns had been demonstrated by the Resident Submitters and substantiated by the report from Renzo Tonin and Associates. OLGR were correct in identifying a delay on the part of SLM and Fresh Catering to implement changes to their commercial activities that would address those concerns.
97. The Authority has considered the Review Applicants' explanation that their action was subject to consultation on a new Plan of Management for the estate and heritage and other internal assessments. While the Authority accepts that they were taking such measures, the Authority is not persuaded that Fresh Catering and SLM could not have acted sooner to ameliorate the noise impacts from (for example) amplified music, given that complaints of this nature had been ongoing since around 2010.
98. The Authority has devised two sets of enforceable licence conditions to better ensure that controls are in place across both licences and that will apply whether licensed activity is conducted on the licensed premises of the Tea Rooms and/or the broader grounds of the Vaucluse House estate.
99. The Authority notes that once a licence condition is in effect, contravention of a condition is an offence against section 11 of the Act, punishable by a fine of 100 penalty units, 12 months' imprisonment or both.
100. The Authority is aware, having regard to the report by Renzo Tonin and Associates, that given the structure of the Tea Rooms and the layout of the grounds, the Review Applicants may not be able to conduct the current range of Events in a manner that will also comply with the LA10 requirement.
101. As previously advised to the parties, it will be open to SLM to seek, on a case by case basis, a limited liquor licence to conduct special events, which may be a preferable course to take for those larger scale Events that are open to the public. Those Events would appear to provide positive amenity benefits to the community and will be subject to the usual legislative requirements to consult with local Police and Council. They may be regulated by alternative, event-specific arrangements devised in consultation with those agencies.

ADMINISTRATIVE ACTION

102. The Authority has decided, pursuant to section 36A(4) of the *Gaming and Liquor Administration Act 2007*, to **revoke** the Direction dated 28 November 2014, with effect from 12:01am on **Monday 20 April 2015**.
103. The Authority has decided to **impose**, pursuant to section 51(9)(a) of the *Liquor Act 2007*, the below set of Conditions marked "1" upon the section 25(6) authorisation to trade on other premises that attaches to the catering licence of Fresh Catering Pty Ltd (LIQO624008913) in respect of the use of that licence *anywhere on the grounds of the Vaucluse House estate*. These conditions will take effect from 12:01am on **Monday 20 April 2015**.
104. The Authority has decided to **impose**, pursuant to section 53 of the *Liquor Act 2007*, the below set of Conditions marked "2" upon the on-premises (restaurant) licence (LIQO624001748) controlled by Fresh Catering Pty Ltd in respect of the licensed

premises comprising the Vaucluse House Tea Rooms. These conditions will take effect from 12:01am on **Monday 20 April 2015**.

Proposed Conditions #1: Catering Licence (LIQO624008913)

1. *In relation to the use of the licence by or on behalf of or authorised by the licensee on the grounds of the Vaucluse House estate located at Olola Avenue, Vaucluse, the licensee will comply with the following requirements:*
 - (a) *From 7:00pm until 11:00pm the licensee must ensure that at least one security guard is engaged whose duties must include (i) monitoring noise levels from the Tea Rooms and (ii) patrolling the grounds of Vaucluse House to ensure that patrons attending functions or events catered by the licensee leave the area quietly and do not loiter or linger on the grounds.*
 - (b) *Sale or supply of liquor will cease at 10:30pm.*
 - (c) *The licensee will require patrons to leave the grounds by 11:00pm.*
 - (d) *The licensee will close the windows on the western side of the Tea Rooms from 5:00pm to 11:00pm.*
 - (e) *Amplified music will be directed away from the eastern terrace doors of the Tea Rooms.*
 - (f) *Amplified music and/or public address systems will only be operated on the grounds through a sound system that has a noise limiter configured by an acoustic consultant to constrain the volume to levels recommended by the licensee's acoustic consultant with a view to ensuring compliance with the LA10* requirements.*
 - (g) *No disposal or collection of glass bottles shall be conducted on the grounds between the hours of 7:00pm and 7:00am.*
 - (h) *The LA10* noise level emitted from use of the licence on the grounds of Vaucluse House shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz-8kHz inclusive) by more than 5dB between 7:00am and 12:00 midnight at the boundary of any affected residence. The LA10* noise level emitted from the grounds shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz-8kHz inclusive) between 12:00 midnight and 7:00am at the boundary of any affected residence.*

** Notwithstanding compliance with the above, the noise from the use of the licence shall not be audible within any habitable room in any residential premises between the hours of 12:00 midnight and 7:00am.*

Proposed Conditions #2: Restaurant Licence (LIQO624001748)

2. *The licensee will comply with the following requirements:*
 - (a) *The licensee will require patrons of the Tea Rooms to leave the premises and the grounds of Vaucluse House estate by 11:00pm.*
 - (b) *Amplified music will be directed away from the eastern terrace doors of the Tea Rooms.*

- (c) *Amplified music and/or public address systems will only be operated on the Tea Rooms through a sound system that has a noise limiter configured by an acoustic consultant to constrain the volume to levels recommended by the licensee's acoustic consultant with a view to ensuring compliance with the LA10* requirements.*
- (d) *The LA10* noise level emitted from use of the licence on the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz-8kHz inclusive) by more than 5dB between 7:00am and 12:00 midnight at the boundary of any affected residence. The LA10* noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz-8kHz inclusive) between 12:00 midnight and 7:00am at the boundary of any affected residence.*

** Notwithstanding compliance with the above, the noise from the use of the licence shall not be audible within any habitable room in any residential premises between the hours of 12:00 midnight and 7:00am.*

- (e) *No disposal or collection of glass bottles conducted between the hours of 7:00pm and 7:00am.*

NOTICE TO FRESH CATERING PTY LTD

105. The review is now finalised.
106. However, in light of the ongoing complaints made by some Resident Submitters regarding noise from amplified music, and noting the advice from the Review Applicants in their final submissions dated 7 April 2015 that they are still seeking advice on compliance with the LA10 requirements, the Authority places Fresh Catering on notice that it is contemplating imposing a further licence condition separate to this review process.
107. The Authority is contemplating the imposition of a condition, on its own initiative, pursuant to section 51(9)(a) of the Act upon the section 25(6) authorisation (in respect of the catering licence) and pursuant to section 53 of the Act (in respect of the restaurant licence).
108. This condition, if imposed, would prohibit the licensee from making *any* use of audio amplification equipment on the premises of the Tea Rooms (in the case of the restaurant licence) or the grounds of the Vacluse House estate (in the case of the catering authorisation).
109. However, the Authority will defer taking further action on this contemplated condition for a period of two (2) months from the date of this letter. The Authority invites Fresh Catering to furnish the Authority's Chief Executive with a report, prepared by a suitably qualified acoustic expert, demonstrating compliance with the LA10 criteria within that time.
110. This report will be prepared at the licensee's expense with testing to be performed during the conduct of at least two (2) functions held on the Tea Rooms and/or the grounds of the estate. Each function will be attended by at least 120 persons and include either (i) recorded music played by a disc jockey or (ii) live music played through amplified instruments. The testing will be performed while a noise limiter recommended by the acoustic consultant is in operation after 9:00pm.

111. The Authority requests that the acoustic consultant be provided by the licensee with dates of all upcoming functions over the next two (2) month period, so that the actual date and time of testing may be conducted without advance notice to the licensee or staff of the licensed business.

[Note: as the review is now finalised, the Authority is not seeking further submissions from residents. Any complaints of a compliance nature may, as usual, be directed to OLGR Compliance or NSW Police].

Yours faithfully

A handwritten signature in blue ink, appearing to read 'M Brodie'.

Micheil Brodie
Chief Executive
for the **Independent Liquor and Gaming Authority**

15 April 2015