



Our ref: DOC17/206030

Mr Lee Kuhnell Licensee House of Gabriel 106 Riverside Drive TUMBLEGUM NSW 2490 [private email not published]	Mrs Lindy Margaret Jones [private address not published]	Mr Matthew Jones Liquor & Gaming Specialists Pty Ltd PO Box 789 FORTITUDE VALLEY QLD 4006 <a href="mailto:matthew@lgs.net.au">matthew@lgs.net.au</a>
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*Via Email*

25 September 2017

Dear Sir/Madam

**Review of a Decision under Section 45 of the *Liquor Act 2007* by a Delegate of the  
Independent Liquor and Gaming Authority –  
House of Gabriel, Tumbulgam**

On 20 June 2017 the Independent Liquor and Gaming Authority (Authority) received an application for review (Review Application) pursuant to section 36A of the *Gaming and Liquor Administration Act 2007* (GALA Act) from Mrs Lindy Margaret Jones (Review Applicant) seeking the variation of a decision dated 24 May 2017 (Reviewable Decision).

The Reviewable Decision was made by the Licensing Coordinator (Business Licensing), Liquor and Gaming NSW (LGNSW), in her capacity as a delegate (Delegate) of the Independent Liquor & Gaming Authority (Authority). The Delegate decided to grant, under section 45(1) of the *Liquor Act 2007* (Act) an application for a new on-premises licence with the designated primary purpose of a restaurant and catering business for premises located at 106 Riverside Drive, Tumbulgam NSW 2490 to trade as “House of Gabriel”.

The Review Application is made by a neighbouring resident who had made written submissions in respect of the licence application before the Delegate. The Review Applicant does not oppose the grant of the licence but seeks closer regulation of the authorisation conferred by the licence.

Having considered the powers conferred upon the Authority to consider licence applications under section 45 of the Act, informed by the statutory objects and considerations prescribed by section 3 of the Act, the Authority is satisfied that the correct and preferable decision is to **vary** the Reviewable Decision pursuant to section 36A(4) of the GALA Act by imposing the following additional conditions upon the licence:

1. Save for when functions are conducted on the premises, liquor may only be sold or supplied for consumption on the premises from midday to 5:00pm, Wednesday to Sunday.
2. During a maximum of 30 functions per calendar year, liquor may be sold or supplied for consumption on the premises until 10pm.
3. During the course of any function involving the use of amplified music or the use of an amplified public-address system, the licensee shall ensure compliance with the LA10 noise condition:

#### *LA10 Noise Condition*

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

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

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

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

4. The licensee must submit to the Authority by 16 October 2017 a revised Plan of Management ('Plan') for the licensed premises for the Authority's approval. The Plan will include:-
  - (i) matters pertaining to the responsible service of alcohol and the management of patrons on the premises; and
  - (ii) specific measures for the supervision and management of patrons on and within a 50-metre radius of the premises during the conduct of functions. These measures are to include but are not limited to the monitoring and control of patron parking to prevent their vehicles obstructing the driveways of private properties.*The licensee must ensure compliance with the Plan on and from the day following the date on which the licensee is advised of the Authority's written approval of the Plan. The Plan may only be amended following consultation with the Local Area Commander of NSW Police.*

In addition to the above measures, the Authority has decided to fix the licensed boundary for the premises, pursuant to section 94(1) of the Act, to exclude a shed that is situated towards the rear of the relevant property. This is by reason that the development approval in force for the Premises does not currently permit use of this shed for functions.

Under section 36C of the GALA Act, the Authority is required to publish statements of reasons with respect to those types of decisions prescribed by clause 8 of the *Gaming and Liquor Administration Regulation 2016*. The statement of reasons has been prepared in the context of a high-volume liquor jurisdiction that requires the publication of statements of reasons as soon as practicable.

Please contact the Authority Secretariat via email to [ilga.secretariat@liquorandgaming.nsw.gov.au](mailto:ilga.secretariat@liquorandgaming.nsw.gov.au) if you have any enquiries about this letter.

Yours faithfully



David Armati  
**Deputy Chairperson**

For and on behalf of the **Independent Liquor & Gaming Authority**

# STATEMENT OF REASONS

## INTRODUCTION

1. On 20 June 2017 the Independent Liquor and Gaming Authority (Authority) received an application for review (Review Application) pursuant to section 36A of the *Gaming and Liquor Administration Act 2007* (GALA Act) from Mrs Lindy Margaret Jones (Review Applicant) seeking the variation of a decision dated 24 May 2017 (Reviewable Decision).
2. In the Reviewable Decision, a delegate of the Authority (Delegate) decided, pursuant to section 45(1) of the *Liquor Act 2007* (Act), to grant an application made by Mr Lee Kuhnell (Licensee) for a new on-premises liquor licence in respect of a restaurant and catering service for premises located at 106 Riverside Drive, Tumbulgum NSW 2490 known as “House of Gabriel” (Premises).
3. The Review Applicant, Mrs Jones, is a neighbouring resident within 50 metres of the Premises who was required by the liquor legislation to be consulted on the application for the licence and had made written submissions to the Delegate raising concerns with the application.
4. The Delegate granted licence number LIQO660033597 with licensed trading hours permitting the sale or supply of liquor for consumption on the Premises from 10:00am to 10:00pm Monday to Sunday. Those hours were reflected on the *OneGov* record for the licence that accompanied the Reviewable Decision.
5. In this review the Review Applicant does not oppose the grant of the licence but seeks that the licence be varied to specify that licensed trading may be conducted between 12:00pm and 5:00pm Wednesday to Sunday, with an additional 30 evening functions per calendar year during which licensed trading may continue until 10:00pm.
6. The Review Applicant contends that permitting the business to engage in licensed trading on a daily basis until 10:00pm will be “detrimental to the ongoing lifestyle and health” of those members of the local community who live in close proximity to the Premises.

## LEGISLATION

7. Section 36A(1)(d) of the GALA Act provides that a decision of a designated public service employee, or other public service employee, acting under a delegation given by the Authority in respect of an application made under a provision of the gaming and liquor legislation that is prescribed for the purposes of this section (a “delegated decision”) is a “reviewable decision”.
8. Section 36A(2) provides that, subject to subsection (2A), any person who is aggrieved by a reviewable decision may, in accordance with the regulations, apply in writing to the Authority for a review of the decision. Section 36A(2A) provides that an application for review may be made by a person who was required to be notified of the application which was the subject of the delegated decision and who made a submission to the Authority or the Secretary in respect of that application.
9. Section 36A(4) empowers the Authority, when determining an application for review under this section, to confirm, vary or revoke the reviewable decision.
10. Clause 6(a)(iii) of the *Gaming and Liquor Administration Regulation 2016* (GALA Regulation) provides that an application under the Act for the grant of an *on-premises licence* relating to

a catering service is a “prescribed application” for the purposes of section 36A(1) of the GALA Act.

11. When reviewing a decision made under the Act, the Authority will have regard to relevant legislation pursuant to which the reviewable decision was made. The power to grant a liquor licence is provided by section 45 of that Act, and when granting a licence a decision maker will have regard to the statutory objects and considerations provided by section 3 of the Act.

### 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.*

## MATERIAL BEFORE THE DELEGATE

12. The Delegate had the following evidence or material before her when making the Reviewable Decision:

- Application Form for an on-premises liquor licence with the primary business of a restaurant, signed by the Licensee, Mr Lee Kuhnell, dated 18 October 2016 and lodged on 20 October 2016;
- Consultation Notices in relation to the application signed by the Licensee and dated 18 October 2016;
- Certificate of Advertising Application signed by the Licensee and dated 22 March 2017;
- Plan of the proposed licensed area of the Premises;
- Copies of the Licensee’s National Police Certificate, RSA Competency Card and identification;
- Photographs of the Premises;
- Copies of the food and drinks menu for the restaurant business;
- Plan of Management dated May 2017 for the business;
- Development Applications T4/1373 and D91/0336 granted by Tweed Shire Council (Council) on 5 January 1982 and 10 June 1992 respectively for the proposed use of the Premises (together referred to as the Development Consent);
- Submission from Council dated 19 October 2016, stating that development consent is in place for the proposed use of the Premises;
- Submission from Tweed/Byron Local Area Command Licensing Unit, NSW Police (Police) dated 19 October 2016, stating that “Police have no objections”;
- Submission from the Review Applicant, Mrs Lindy Jones, dated 9 November 2016, including photographs of the boundary between her residence and the Premises, and

copies of handwritten notes made by the Licensee during meetings with Mrs Jones headed "actual + potential + growth FY 15/16";

- Submission from William and Carolyn Bunker, residents of Riverside Drive, Tumbulgum, opposing the application, dated 15 November 2016;
- Submission from Mrs Kim Baker, resident of Riverside Drive, Tumbulgum, opposing the application, dated 17 November 2016;
- Submission from Dr Alexandra Copley, resident of Riverside Drive, Tumbulgum, opposing the application, dated 22 November 2016;
- Submission from Mrs Heather Steedman, resident of Riverside Drive, Tumbulgum, opposing the application, dated 22 November 2016;
- Submission from Liquor & Gaming Specialists Pty Ltd on behalf of the Licensee dated 13 April 2017, responding to submissions received in relation to the application;
- Email correspondence between the Authority and the Licensee in relation to further information requested in support of the application, including an email from the Licensee dated 23 May 2017 providing consent to the addition of "catering service" as a class of licence sought to enable private functions to be held at the Premises.

## **REVIEWABLE DECISION**

- 13.** Briefly, the Delegate was satisfied that minimum statutory requirements had been met by the Applicant, that all requirements under section 45 of the Act were satisfied, and that on the material before her, granting the new on-premises licence for a designated restaurant and catering business is unlikely to result in any significant increase in alcohol related harm in the local community.
- 14.** The Delegate found that the Premises is an "established restaurant and function venue"; that Police raised no objections, that Council confirmed that development consent was in force and that the Applicant had adequately addressed the concerns raised by five local residents who had made submissions objecting to the application in the Applicant's response dated 13 April 2017.
- 15.** The Delegate found that House of Gabriel has operated as a cafe at the Premises for over 10 years, permitting liquor to be consumed on a BYO basis and that granting the licence will enable the business to "better monitor and control alcohol consumption" on the Premises.
- 16.** The Delegate was satisfied, on the material before her, that granting the new licence would enable the business to "supplement and enhance the services already offered" at this café, which has permitted the consumption of liquor on a BYO basis, consistent with the objects of the Act. The Delegate found that the concerns of five local residents who made submissions in relation to noise, parking, traffic, antisocial behaviour by intoxicated persons and disturbance of the peace had been "adequately addressed" in the Licensee's submission in response to those concerns.
- 17.** The Delegate was also satisfied that the "overall social impact" of granting the licence would not be detrimental to the well-being of the local or broader community, as required by section 48(5). [The Authority notes, for the purposes of this review, that the licence application is not a "relevant application" pursuant to section 48(2) of the Act and hence the overall social impact test in section 48(5) does not apply].
- 18.** On the scope for adverse impact the Delegate noted that a number of adverse submissions were received from neighbouring residents, but found that those concerns were "adequately addressed" by the Applicant. The Delegate noted that the Premises is not a "late night trading" venue and was satisfied that the Licensee will "continue to work with the local community to address any ongoing concerns".

**19.** The Delegate granted the new licence, subject to the following conditions:

*1. Section 11A of the Liquor Act 2007 applies to this licence. Liquor must not be sold by retail on the licensed premises for a continuous period of 6 hours between 4:00 AM and 10:00 AM during each consecutive period of 24 hours. The licensee must comply with this 6-hour closure period along with any other limits specified in the trading hours for this licence.*

*2. Consumption on premises – restaurant*

*Good Friday 12:00 noon – 10:00 PM*

*Christmas Day 12:00 noon – 10:00 PM (liquor can only be served with or ancillary to a meal in a dining area)*

*December 31<sup>st</sup> Normal opening time until normal closing time or 2:00 AM on New Year's Day, whichever is the later*

*Note: Trading is also allowed after midnight into the early morning of Good Friday and Christmas Day if authorised by an extended trading authorisation. Trading must cease at the time specified under the authorisation. The latest time that can be specified is 5:00 AM.*

*3. Consumption on premises – catering service*

*Good Friday Normal trading*

*Christmas Day Normal trading*

*December 31<sup>st</sup> Normal opening time until normal closing time or 2:00 AM on New Year's Day, whichever is the later*

*4. The business of providing the Catering Service must be for fee, gain or reward. Functions held pursuant to the Catering Service must be pre-booked. A Catering Service booking register must be maintained.*

*5. No drinks commonly referred to as shots, shooters, slammers, and/or bombs, or any drink designed for rapid consumption are to be sold or supplied.*

**REVIEW APPLICATION MATERIAL**

**20.** In the Review Application Form dated 20 June 2017, the Review Applicant states that she is an owner/occupant of a building within 50 metres of the Premises. The Review Applicant seeks the variation of the Reviewable Decision that licensed trading hours be limited to between 12:00pm and 5:00pm Wednesday to Sunday, and until 10:00pm for a maximum of 30 evening functions (including monthly Valley Dinners) per annum.

**21.** In an accompanying submission letter sent by email to Liquor and Gaming NSW (LGNSW) dated 20 June 2017, the Review Applicant states that she is aggrieved by the Reviewable Decision, contending that the licensee is “currently failing in his obligation to provide the required off-street parking (eight off street car spaces)” as required by Council.

**22.** Briefly, the Review Applicant:

- notes the Delegate’s finding that Council has confirmed that development consent is “required and in place” and contends that Council have “commented” to the Review Applicant that LGNSW “don’t ask about compliance”.
- contends that the limited car parking area on the Premises is used by the “owners”, leaving no off-street car spaces for patrons. The Review Applicant attaches a copy of a determination of the DA for the Premises which requires in condition 10 that eight off-street car spaces be provided.

- submits that she is also aggrieved by the Reviewable Decision on the basis that the Licensee's Plan of Management does not address the residents' concerns she has raised about noise, parking, traffic, antisocial behaviour by intoxicated persons and disturbance of the peace and good order of the village. These concerns were raised in the submissions made by the Review Applicant and other nearby residents in response to the licence application.
- contends that she has spoken to the Licensee "in the hope of understanding how he had addressed these concerns", for example by "making any building adjustments or similar to manage the noise", and that the Licensee provided the Plan of Management for the venue which offers "no consideration or solution" to her specific concerns.
- submits that the Delegate gave no consideration to the toilet facilities the restaurant must provide, contending that there have been "several situations" where due to only one male and female toilet being available, women have been seen in the "front gutter" of the restaurant urinating in bottles or in the adjacent nature reserve.
- contends that men are "regularly seen standing and urinating in ours and neighbouring gardens" which has been caused by "the combination of the provision of poor facilities and the drunken behaviour of patrons".
- submits that her residence shares a boundary with the Premises and the business is conducted in an "open garden area" with "pergola structures and no actual roof or walls", so that there is "no barrier to control the sound, music and loud voices which escalate with alcohol".
- contends that noise "amplifies straight into our living room and bedrooms" and that even with all windows and doors on her residence closed the noise is "unbearable" to the point where she is "forced" from her own home when the restaurant trades into the evening.

23. The Review Applicant also makes certain contentions regarding her own health and the negative impacts that will flow to her from the business trading into the evenings. The Review Applicant comments that she would prefer the licence to be revoked, but that since that request would be "unreasonable" she seeks to have the Reviewable Decision varied to "lessen the impact on the lifestyle of ourselves and other surrounding residents of the local community".

24. Attached to the Review Application Form and supporting submission are copies of the DA 91/336 granted on 10 June 1992 for the Premises, the Plan of Management for the venue and a letter dated 28 November 2016 from Council to local residents Mr and Mrs Copley advising *inter alia* that "this site is to provide 8 off-street car parking spaces at the rear of the property as shown on the plans associated with D91/0336".

## CONSULTATION ON REVIEW

25. On 4 July 2017, the Authority Secretariat invited submissions in response to the Review Application from the Licensee, Council, Police, and those members of the public who had made submissions to the Delegate on the licence application (Mrs Baker, Mrs Bunker, Dr Copley and Mrs Steedman).

26. No further submission was received from NSW Police.

## Submission from Dr Alexandra Copley, resident of Riverside Drive dated 18 July 2017



27. In this 2-page submission, Dr Copley submits that the Licensee's responses to objections to the licence application do not "adequately address the issue of detrimental impact on the community"; that increased business at the Premises will bring increased traffic and parking problems; that elderly neighbours including herself may not be able to access means of transport in the event of an emergency; "every neighbour whose attention was drawn to this application (as required by the Authority) has lodged an objection"; and that planning and licensing decisions should be made with consideration of community wishes.

**Submission from Mrs Kim Baker, local resident of Riverside Drive dated 19 July 2017**

28. In this email submission, Mrs Baker contends that, on numerous occasions, she has witnessed patrons of the Premises crossing the road to urinate on a river embankment and then return to the Premises; that patrons of the Premises block the public footpath and have deposited ash from their cigarettes into the garden of the Review Applicant; and that patrons often park their cars across the driveways of local resident properties.

**Submission from Licensee dated 19 July 2017**

29. In this 4-page submission made through his professional representatives, Liquor & Gaming Specialists Pty Ltd, the Licensee submits that the grant of the licence means that the business is now "subject to operational parameters which were not previously there", including being subject to possible sanctions, which is a preferable position for anyone who might be impacted by the business.

30. The Licensee contends that, bearing in mind that the business has operated on the Premises prior to the Review Applicant moving to her residence, it was "completely foreseeable" that the business operator would "seek to improve and expand the business", its profitability and its value by seeking a liquor licence, and that the Review Applicant "designed and constructed" her residence with full knowledge of the "proximity of commercial activity".

31. The Licensee notes that the Review Application was not made on behalf of any other submitter and that only a "very small proportion" of the local community have made submissions against the licence application.

32. The Licensee attaches a letter dated 10 July 2017 from Mr Jim Glazebrook of Jim Glazebrook & Associates Pty Ltd (the Licensee's town planners and development consultants) addressed to Council advising that an inspection of the Premises confirms that DA 91/336 dated 10 June 1992 is "not currently operational and was in fact never implemented".

33. The Licensee submits that the grant of this licence will not result in any detriment to the lifestyle or health of any member of the community, as contended by the Review Applicant. Rather, the licence provides a "more solid foundation" for the management of liquor consumption on the Premises, which will have a positive effect on "related patterns of behaviour".

**Submission from Tweed Shire Council dated 20 July 2017**

34. In this letter to LGNSW, Council advise that a recent investigation by its Compliance Unit revealed that the "galvanised iron shed" at the rear of the Premises has been cladded and built in and is "now described by the current owner as a functions room". Council has requested the property owner, Mr Kuhnell, to submit a development application for approval of this change of use. Council also advise that the issue of off street car parking will be considered and that the "previous condition for off street car parking in Development

Application T4/1373 is not enforceable". Sketched plans and photographs of the Premises are attached.

#### **Final submission from Review Applicant dated 26 July 2017**

35. In this 7-page letter, the Review Applicant sets out the text of attached emails from Mr Vince Connell, Council, dated 5 July 2017 and 20 July 2017 advising her that the current use of the Premises does not seem to comply with previous development approvals, in respect of the provision of on-site car parking, and partially unauthorised function room use.
36. The Review Applicant contends that when functions are held on the Premises, amplified music "continues until 10pm", not 7:45pm as submitted by the Licensee in his submission dated 13 April 2017. The Review Applicant provides a screenshot of an SMS text message sent by her to the Licensee on 4 December 2015 at 10:07pm stating that noise from a party at the Premises was audible in her bedroom and lounge room.
37. The Review Applicant contends that when the Licensee first purchased the business 2.5 years ago, it operated from Wednesday to Sunday until 3pm with an occasional evening function. As the business has prospered "daytime noise" has increased. The cafe now operates until 4:00pm or 5:00pm, and the Premises is regularly visited by large groups of tourists as part of riverboat cruises who the Review Applicant contends are particularly loud.
38. The Review Applicant submits that the local community is supportive of the business but the Licensee is "making no allowance" for the impact that the increased *evening licensed* trade has on the "personal lives" of the members of the local community. She contends that granting the application for licensed trading, 12 hours per day, 7 days per week "completely changes the character" of the business, making it "incompatible with its location" in a residential area.

#### **Final submission from Licensee dated 7 August 2017**

39. On 31 July 2017, the Authority Secretariat provided the Licensee with a copy of the Review Applicant's final submission dated 26 July 2017 and he was given 7 days to respond. In a letter dated 7 August 2017, the Licensee submits through his representatives Liquor & Gaming Specialists Pty Ltd that no new objections have been made requiring a response.
40. The Licensee concedes that the function space on the Premises (an apparent reference to the galvanised iron shed to the rear of the Premises) has been operating without development consent but this space will not be used for functions until "the town planning issue is resolved".
41. The Licensee submits that it is "unreasonable" to assume that commercial businesses will not "evolve and adapt to meeting changing and growing needs of a community over time".

#### **Late submission from Review Applicant dated 11 August 2017**

42. In this email to LGNSW and Council, the Review Applicant attaches a photograph to demonstrate "how the [Premises] looked up until approximately 18-24 months ago" prior to works that were "carried out under the ownership of the current Licensee". The Review Applicant contends that the Licensee, not any previous owner of the business, is responsible for non-compliance with planning requirements.

## Response from Council dated 30 August 2017

43. On 15 August 2017, Council was invited by the Authority Secretariat to make a submission in reply to the email and material provided by the Review Applicant on 11 August 2017. Council confirmed by email dated 30 August 2017 that the requirement for eight off-street car spaces at the Premises is “not enforceable”. Council notes that it has been advised by the Licensee’s town planner/development consultant that the business will not continue to use its functions area located at the rear of the property unless or until the necessary development approval has been obtained from Council.

## DECISION ON REVIEW AND REASONS

44. The Authority has considered the Review Application and all of the submissions, evidence and other material before it pertaining to the Review Application, including the material that was before the Delegate.
45. The Authority is satisfied that the Review Application was validly made pursuant to section 36A of the GALA Act, which (relevantly) requires that an application for review of a delegated decision be made by a person who was required to be notified of the application the subject of the delegated decision and who made a submission to the Authority or Secretary in respect of that application.
46. It is apparent from her address that the Review Applicant is the owner/occupant of premises located within 50 metres of the Premises and that she made a submission in relation to the on-premises licence application.
47. The Authority is satisfied, on the basis of the application material, that the licence application that is subject to review met the minimum requirements of section 40 of the Act and relevant provisions of the *Liquor Regulation 2008*, including the advertising requirements in clauses 6-9.
48. The Authority is satisfied, as required under section 45(3)(a) of the Act, that the Licensee is a fit and proper person to carry on the business or activity to which the licence relates. This finding is made on the basis of National Police Certificate No. NCHRC-2016-83328 dated 14 September 2016 indicating “no disclosable court outcomes” or outstanding matters recorded against the Licensee. The Authority notes that no adverse submissions were made in relation to the Licensee’s probity or the licensed business from law enforcement agencies who were consulted on the licence application, including LGNSW and NSW Police.
49. The Authority is satisfied, as required under section 45(3)(b) of the Act, that practices are and will remain in place at the Premises to ensure as far as reasonably practicable that all reasonable steps will be taken to prevent intoxication on the Premises. This finding is made on the basis of the information provided in the Licensee’s Plan of Management dated May 2017 and the further conditions restricting the scope of this licence that have been imposed by the Authority pursuant to this review.
50. The Authority is satisfied, as required under section 45(3)(c) of the Act, that development consent is in force for the use of the Premises as a restaurant and catering service. This finding is made on the basis of development approvals T4/1373 dated 5 January 1982 and D91/0336 dated 10 June 1992 granted by Council and the information provided in submissions from the Licensee dated 7 August 2017 and Council dated 30 August 2017 to the effect that no functions will be conducted in the iron shed situated on the Premises until the required further development consent is in force for use of that structure.

- 51.** When considering what, if any, conditions should be imposed upon an on-premises licence with a catering service, the Authority must consider whether such administrative action is in the public interest. This is informed by relevant provisions of the Act including the statutory objects and considerations prescribed by section 3.
- 52.** The community that will be most directly impacted by the operation of this small restaurant and catering business will be the community of Tumbulgum, although it is likely given the rural location and apparent popularity of the business that others in neighbouring areas within the Tweed Shire Local Government Area will also be serviced by the operation of the licence on the Premises.
- 53.** The Authority is satisfied, on the basis of the Review Applicant's submission dated 20 June 2017, the Licensee's submissions dated 13 April 2017 and 19 July 2017 and the submissions from members of the public, that the Premises is an established restaurant and function venue located in the small village of Tumbulgum, which is a popular tourist destination. The business has operated as a café for about 10 years and liquor has previously been consumed by patrons on a BYO basis.
- 54.** The Authority accepts, on the basis of the Review Applicant's submission dated 20 June 2017 (which the Licensee has not disputed), that there was a change of business ownership around 2.5 years ago when the café expanded its daytime operations and began trading into the evenings.
- 55.** The Authority is satisfied, on the Application material and information about the business provided by the Licensee, that the licence will provide the community benefit of increased choice of licensed entertainment venues in this small town, and provide a venue capable of hosting licensed functions for up to 100 patrons.
- 56.** The Authority also accepts the Licensee's submission dated 19 July 2017 that the licence will mean that supply of liquor on the Premises is better regulated, as the venue will now operate as licensed premises, rather than a business that permits the consumption of liquor on the property on a BYO basis.
- 57.** The Authority finds that these benefits of increased choice and better regulation are consistent with the expectations, needs and aspirations of the community, in furtherance of the object in section 3(1)(a) of the Act.
- 58.** In the context of a small town with relatively little variety in licensed venues within reasonable proximity, noting also the submissions from the Review Applicant, Licensee and residents, the Authority is satisfied that the business is popular with persons conducting functions and tourists.
- 59.** In this sense, granting the licence for a restaurant and catering business will also facilitate the balanced development, in the public interest, of the local liquor industry and contribute to the responsible development of related industries such as the entertainment, tourism and hospitality industries, consistent with the objects in sections 3(1)(b) and 3(1)(c) of the Act.
- 60.** However, on the basis of the credible information provided by the Review Applicant and other neighbouring residents as to occasional patron misconduct, the diagrams of the Premises provided by the Licensee and photographs provided by the Review Applicant illustrating very close proximity of the Review Applicant's residence, the Authority finds that permitting this business to potentially sell or supply liquor for consumption on the Premises until 10pm on any day of the week will have substantial adverse impacts upon local amenity.

61. While the Authority accepts that the business generates ordinary patron noise during the day time, there is considerable scope for unreasonable noise impacts to flow to the Review Applicant and other nearby residences from the exercise of this licence in the evening, particularly when functions are conducted.
62. The plans of the Premises before the Authority and the submission provided with the Review Application dated 20 June 2017 establish (and this is not in dispute) that the venue is an open air informal café style of business with no roof or walls, and therefore no barrier to control patron noise, music noise or other noise impacting neighbouring properties.
63. The Authority accepts the information provided by the Review Applicant to the Delegate and the Authority that, from time to time, the Review Applicant has encountered adverse amenity impacts from the conduct of patrons of the business, including public urination and motor vehicles blocking driveways on nearby private property.
64. While the Authority acknowledges that a café has operated on the Premises for some years, and, as submitted by the Review Applicant, the local community is generally supportive of the business, the Authority accepts the Review Applicant's submission that licensing the venue to sell or supply liquor until 10pm on any day of the week represents a shift in the character of the business and will likely generate substantial adverse impacts upon local amenity over time.
65. Giving weight to the statutory consideration in section 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) in light of the physical characteristics of the venue and its immediate proximity to the Review Applicant's home, the Authority considers that it is in the public interest for the licence to be more closely structured through the imposition of conditions that are designed to reduce the scope for adverse amenity impacts and provide a better balance of the statutory objects and considerations in section 3 of the Act.
66. The Authority is satisfied that the correct and preferable decision is to **vary** the Reviewable Decision pursuant to section 36A(4) of the GALA Act and impose the following licence conditions that shall operate in addition to the conditions imposed by the Delegate:

1. *Liquor may only be sold or supplied for consumption on the premises from midday to 5:00pm on Wednesday to Sunday.*
2. *During a maximum of 30 pre-booked functions per calendar year, the venue may continue to sell or supply liquor for consumption on the premises until 10pm.*
3. *During the course of any function involving amplified music or the use an amplified public-address system, the LA10 noise restriction shall apply:*

**LA10 Noise Condition**

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

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

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

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

*4. The licensee must submit to the Authority by 16 October 2017 a revised Plan of Management ('Plan') for the licensed premises for the Authority's approval. The Plan will include:-*

*(i) matters pertaining to the responsible service of alcohol and the management of patrons on the premises; and*

*(ii) specific measures for the supervision and management of patrons on and within a 50-metre radius of the premises during the conduct of functions. These measures are to include but are not limited to the monitoring and control of patron parking to prevent their vehicles obstructing the driveways of private properties.*

*The licensee must ensure compliance with the Plan on and from the day following the date on which the licensee is advised of the Authority's written approval of the Plan. The Plan may only be amended following consultation with the Local Area Commander of NSW Police.*

- 67.** The Authority notes the development approvals T4/1373 dated 5 January 1982 and D91/0336 dated 10 June 1992 granted by Council and the information provided in submissions from the Licensee dated 7 August 2017 and Council dated 30 August 2017 to the effect that no functions will be conducted in the iron shed situated on the Premises until the required further development consent is in force for use of that structure.
- 68.** The Authority has determined, pursuant to section 94(1) of the Act, that it is in the public interest to fix the licensed boundary for the premises in a manner that excludes this shed from the licensed area.
- 69.** If you have any enquiries about this decision please contact the case manager via email to [ilga.secretariat@liquorandgaming.nsw.gov.au](mailto:ilga.secretariat@liquorandgaming.nsw.gov.au).



David Armati  
**Deputy Chairperson**