



Mr Tony Hatzis  
Hatzis Cusack  
Level 9  
68 Pitt Street  
SYDNEY NSW 2000

[th@hatziscusack.com.au](mailto:th@hatziscusack.com.au)  
[anthony.keon@olgr.nsw.gov.au](mailto:anthony.keon@olgr.nsw.gov.au)  
[alec@police.nsw.gov.au](mailto:alec@police.nsw.gov.au)  
[38823@police.nsw.gov.au](mailto:38823@police.nsw.gov.au)

Dear Mr Hatzis

**Decision on Application for Stay of Decision  
under Section 34A(3) *Gaming and Liquor Administration Act 2007*  
Paddington Bowling Club Ltd**

**INTRODUCTION**

1. On 7 April 2015 the Authority received an Application for Review (**Review Application**) made by Mr Allan Teale, Director on behalf of the Paddington Bowling Club Ltd (**Club**).
2. The Review Application is made under section 36A of the *Gaming and Liquor Administration Act 2007* (**GALA Act**) and seeks the revocation of a decision made by the Secretary of NSW Trade & Investment dated 31 March 2015 (**Reviewable Decision**).
3. As part of the Review Application, the Review Applicant Club seeks that the Authority issue a direction under section 36A(3) of the GALA Act staying the operation of the Reviewable Decision until the Authority determines the substantive review (**Stay Application**).
4. This letter notifies the Authority's decision on the Stay Application. A timetable for the conduct of the substantive review is discussed at the end of this letter.
5. The Authority notes that it is required by section 36C of the GALA Act to provide a statement of reasons for a decision in relation to a reviewable decision under section 36A of the GALA Act.
6. This letter provides a short statement of reasons noting that the matter has been determined on an expedited basis and in the context of a liquor jurisdiction that comprises a high volume aspect of the Authority's operations.

## REVIEWABLE DECISION

7. The Reviewable Decision arose from a complaint to the Office of Liquor Gaming and Racing (**OLGR**) from Rose Bay Local Area Command of NSW Police made on 31 March 2014 (**Complaint**).
8. The Complaint is made by NSW Police under section 79 of the *Liquor Act 2007* (**Act**) on behalf of the residents of the Godwin Retirement Village, which neighbours and overlooks the Club Premises.
9. The Complaint alleges that the manner in which the Club premises has been conducted and the behaviour of patrons leaving the Club has given rise to undue disturbance to the quiet and good order of the neighbourhood.
10. On 1 August 2014 the OLGR Director of Compliance, Mr Anthony Keon, notified the Club of his intention to impose two new conditions upon the liquor licence of the Club.
11. 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.
12. The Authority notes that the proposed security guard condition was imposed by Mr Keon in a separate decision under section 54 of the Act dated 31 October 2014.
13. Following a further extensive consultation process the Secretary determined, in the Reviewable Decision, that he was satisfied that the Club was, at times, causing undue disturbance to the neighbourhood - particularly due to patron noise emanating from their conduct on and near the bowling greens.
14. Without purporting to recount the decision in any detail the Secretary's findings were based upon a range of adverse evidence or material indicating noise emissions from the Club or its patrons. This ranged from material in the initial Police Complaint to evidence or material recording the monitoring of the Premises by OLGR inspectors (commencing, notably on ANZAC Day 2014 and resuming in November and December 2014) and acoustic expert evidence obtained by OLGR (during December 2014 and January 2015).
15. The Secretary also considered submissions from the Club which inter alia, refuted the Police and OLGR material, provided audit reports from compliance consultants engaged by the Club (dated February 2015) and an acoustic report commissioned by the Club (dated March 2015) which criticised the OLGR commissioned acoustic reports on technical grounds.
16. The Secretary decided under section 81 of the Act to impose one new condition upon the licence 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 outdoor area of the Club. (Condition)*
17. The Condition was determined to commence effect on 14 April 2015.

## REVIEW APPLICATION MATERIAL

18. The Review Application material comprises the following:
  - Review Application Form signed by Richard Perry, Club Director dated 7 April 2015
  - Copy of the Reviewable Decision

- Concise legal submissions in support of the Stay Application dated 6 April 2015
- Concise legal submissions in support of the substantive Review Application dated 6 April 2015.

### **Faraguna Statement**

19. On 8 April 2015 the Review Applicant provided a further statement in support of the Review Application, comprising a statutory declaration by Ms Natalie Faraguna, the Club's event manager dated 8 April 2015 (**Faraguna Statement**).
20. The statement attaches 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 (**Attachment 1**).
21. 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".
22. 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. The Faraguna Statement attaches another document (Attachment 2) 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.
23. Ms Faraguna contends that if patrons chose 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.

### **OLGR File**

24. On 8 April 2015 the Review Applicants provided a bundle of material before the Secretary. For the sake of completeness, the Authority sought and obtained the complete bundle of all material before the Secretary directly from OLGR (**OLGR File**).
25. The OLGR File was provided to the Authority on 10 April 2015. It comprises a copy of the Reviewable Decision, cover letters notifying the Reviewable Decision, a short briefing to the Secretary providing an overview of the matter (**OLGR Briefing**) and documents "a" to "p" referred to in the Reviewable Decision.
26. The Authority has not yet considered the OLGR Briefing as that document was not before the Review Applicants or the Complainant when the Reviewable Decision was made.

### **Submission on Stay Application**

27. In their submission in support of the Stay Application dated 6 April 2015 the Review Applicants submit 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'Neil* (2006) 227 CLR 57 at 65-72.

28. They submit 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.
29. They submit that is sufficient that the party seeking a stay demonstrate a reason or appropriate case to warrant favourable exercise of the discretion, and cite *Alexander v Cambridge Credit Corp Ltd* 1985 2 NSWLR 685 at 694.
30. With regard to the balance of convenience, the Review Applicants submit that the test is whether the inconvenience or injury to 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. They cite *Beecham Group Ltd v Bristol Laboratories Pty Ltd* (1968) 118 CLR 618 at 623 in this regard.
31. Without recounting all of the material provided by the Review Applicant, the primary submission made by the Club is that were the Stay Application not granted, the impact would be "devastating".
32. The Review Applicant contends that upcoming bookings have been made and that people "rightly demand and expect that such a facility 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."
33. The Review Applicant further argues that "the decision maker suffers no prejudice that the Club is able to discern" should the stay be granted.
34. When questioned by the Authority in an email dated 13 April 2015 as to how many of the bookings noted in Attachment 1 to the Faraguna Statement had been made since the Club was placed on notice that OLGR were contemplating imposing the Condition, the Review Applicant's solicitor, Mr Hatzis, advised in two emails sent that evening that none of the post 14 April 2015 bookings were made prior to 1 August 2014.
35. Mr Hatzis further argues that:

*With respect, a stay determination must depend upon a weighing of the strengths of the case and the balance of convenience. Here there is a strong case for the Club on the merits, and the Club would suffer considerable loss if a stay is not granted and there is no relevant prejudice to the decision maker or the complainant in granting a stay.*

*The determination of whether a stay ought be granted cannot be made to turn on the foreseeability that the Secretary might have made an adverse determination. What was the Club to do after 1 August? Should the Club have refused to take bookings after 1 August because of the possibility of an adverse determination, so that it might limit any possible detriment. The very suggestion seems absurd, with respect.*

## **DECISION ON STAY APPLICATION**

36. For the purposes of this Stay Application, the Review Applicant has presented, in its Review Application, an arguable case for review. The Review Applicant makes a number of submissions to the effect that the Reviewable Decision is either wrong in law or questioning the merits of the Condition imposed by the Secretary.
37. While the Review Applicant submits that it has presented a "strong" case for revocation of the Condition, the Authority has yet to form a considered view on the merits of the matter and is yet to hear from the Complainant on the Review Application.

38. The Authority will consider the substantive review, on the papers, at its next ordinary monthly meeting scheduled for 30 April 2015. This will occur after a short opportunity for submissions from the Complainant if it wishes to make them.
39. As for the balance of convenience, the Authority is *not* satisfied that the Review Applicant's evidence and material demonstrates that, should the Club be required to comply with the Condition until such time as the Authority determines this Review, this will "devastate" the Club, or render it "financially unviable".
40. Attachment 1 to the Faraguna Statement details those upcoming bookings for the months of April to December 2015. Of that group, the bookings that will occur prior to 30 April 2015 are dated 16, 17, 18, 19, 22, 23, 24 and 25 April 2015.
41. The Review Applicant has not specified, to the Authority's satisfaction, which of those bookings are likely to be cancelled by reason that bowlers may not drink alcohol while playing, as distinct from drinking before and/or after the game in the bar.
42. While the Authority accepts that there may potentially be some reduction in liquor sales revenue for bowling functions held during the remainder of April 2015, the Review Applicants have not demonstrated or even estimated the quantum of lost revenue from alcohol sales that is likely to flow from having to comply with the Condition during the interim period.
43. The Authority notes that it is not the usual practice of the Secretary to play an active role in the merits review of his decisions. The Secretary's participation is usually confined to furnishing the bundle of material before the decision maker and occasionally providing background information or addressing procedural issues during the primary decision making phase, should that be required.
44. Noting that the Condition commenced effect on 14 April 2015 and in the interests of expediting a decision on the Stay Application, neither the Secretary nor the Complainant have been invited by the Authority to respond to the Stay Application. That is, this decision has been made on an *ex parte* basis.
45. The Authority is satisfied that the extent of inconvenience to the Club from the Stay Application being refused will, in a practical sense, be ameliorated by the ability of bowling patrons of the Club to purchase and consume liquor in the Club house before or after their games. Members of bowling parties may also drink during games provided that they do it inside. Patrons of the Club who are not attending the Premises for bowling will not be affected by the Condition at all.
46. The extent of inconvenience to the Club is further reduced in circumstances when the April 2015 bookings were made well after the Club had been placed on notice by OLGR (on 1 August 2014) that it was contemplating imposing the Condition now subject to review. That is, the Club was well placed to plan for the prospect of an adverse regulatory decision from the Secretary and was given 14 days to prepare before the Condition commenced effect.
47. The Review Applicants argue that patrons expect to be able to drink liquor on the bowling greens when they attend bowling clubs in 2015. However, patron expectations as to the supply of liquor on any licensed premises is subject to the operation of the disturbance provisions of the Act.

48. The Authority does not accept the Review Applicant's submission that no inconvenience will flow to either the Secretary or the Complainant should the Reviewable Decision be stayed.
49. Both the Secretary and Complainant have important compliance functions and an interest in the due administration of the Act and specifically the prompt remedying of undue disturbance arising from the operation of licensed premises or the conduct of their patrons.
50. While the Authority acknowledges that the primary decision making process has taken around 12 months to finalise, it is satisfied that the relevant "inconvenience" to flow from granting the Stay Application will be a delay in the implementation of a remedial measure that the Secretary has seen fit to impose, in order to address a validly made complaint of undue disturbance from the Complainant, made on behalf of numerous residents of a retirement village neighbouring the Club's licensed premises.
51. Although the merits of the Reviewable Decision are now subject to challenge, the Authority cannot dismiss lightly a finding by the regulator that undue disturbance to the neighbourhood *has occurred* and that the Condition under review is now required to prevent a recurrence of it.
52. The Authority stresses that it has yet to form its own view as to whether the Reviewable Decision should ultimately be revoked, varied or confirmed. However, it is artificial for the Review Applicants to argue that that no inconvenience will flow to either the Secretary or the Complainant should a regulatory decision of this kind be stayed.
53. The Authority is not satisfied that the Club will suffer, as contended by the Review Applicant, an "enormous loss of reputation and prestige" from having to comply with a regulatory decision made by the Secretary while awaiting a decision on its Review Application.
54. Having weighed the balance of convenience the Authority is not satisfied that a Stay of the Reviewable Decision should be granted.
55. The Stay Application is refused under section 36A(3) of the GALA Act.
56. In making this decision the Authority has considered relevant legislation, including section 34A of the GALA Act, sections 79-81 of the Act and the statutory objects and considerations provided by section 3 of the Act.

## NEXT STEPS

57. In separate correspondence, the Authority will forward its copy of the OLGR File and the Review Application material to the Complainant and the Review Applicant.
58. If Police wish to respond to anything new raised in the Review Application material they may do so in writing by **4:00pm on 22 April 2015**. Please direct all communication to the Authority's general counsel by email only to [bryce.wilson@ilga.nsw.gov.au](mailto:bryce.wilson@ilga.nsw.gov.au) and copy the Review Applicant's solicitor at the email addressed above.
59. The Review Applicant may make any brief submission in reply no later than **4:00pm on 23 April 2015** to [bryce.wilson@ilga.nsw.gov.au](mailto:bryce.wilson@ilga.nsw.gov.au) and copying the Complainant. The Review Applicant may also, if it wishes to do so, address anything arising from the OLGR Brief which will be provided as part of the OLGR File.

60. The Authority will consider the matter at its meeting scheduled for 30 April 2015 and plans to deal with the review on the papers.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'M Brodie', with a period at the end.

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

15 April 2015