



Ms Michelle Coric
Licensee, Bodalla Arms Hotel
73-77 Princess Highway
BODALLA NSW 2545

Dear Ms Coric

**Decision on Review under section 36A of the
Gaming and Liquor Administration Act 2007 – Bodalla Arms Hotel, Bodalla**

The Independent Liquor and Gaming Authority has completed its consideration of an application for review made to the Authority under section 36A of the *Gaming and Liquor Administration Act 2007* dated 3 March 2016 in relation to the "full" hotel licensed premises currently trading as the "Bodalla Arms Hotel", located at 73-77 Princess Highway, Bodalla NSW 2545.

The review application concerns a decision dated 15 February 2016 made by a delegate of the Secretary of the NSW Department of Justice (Delegate) to impose three (3) new conditions on the hotel liquor licence number LIQH400116020 for the Premises under section 81 of the *Liquor Act 2007*. The Review Application seeks the revocation of those three new conditions.

After careful consideration of all of the submissions, evidence or material before it in relation to the review application the Authority decided, at its meeting on 30 March 2016, to **vary** the reviewable decision, but only in a minor and technical respect to facilitate live music during acoustic testing.

The substantive conditions imposed by the Delegate, which were not subject to a stay during the review, have remained in effect since they commenced on 29 February 2016 and shall continue to have effect. Authority staff advised you informally of this outcome on 5 April 2016.

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

Yours faithfully

David Armati
Deputy Chairperson

06 May 2016

STATEMENT OF REASONS

INTRODUCTION

1. On 3 March 2016, the Independent Liquor and Gaming Authority (Authority) received an application for review under section 36A of the *Gaming and Liquor Administration Act 2007* dated 3 March 2016 (Review Application).
2. The Review Application was filed by Ms Michelle Anne Coric (Review Applicant), the current licensee of the "full" hotel licensed premises known as "Bodalla Arms Hotel", located at 73-77 Princess Highway, Bodalla NSW 2545 (Premises).
3. The Review Application concerns a decision dated 15 February 2016 (Reviewable Decision) made by Mr Paul Irving (Delegate) in his capacity as a delegate of the Secretary of the NSW Department of Justice.
4. In the Reviewable Decision, the Delegate decided under section 81 of the *Liquor Act 2007* (Act) to impose three (3) new conditions on licence number LIQH400116020 in respect of the Premises.
5. The Reviewable Decision arose in response to a noise disturbance complaint under section 79 of the Act dated 17 September 2015 (Complaint) made to the (then) Office of Liquor, Gaming and Racing (OLGR), now known as Liquor and Gaming NSW (LGNSW), by Ms Valerie Richard (Complainant). The Complainant lodged the Complaint as a resident of the neighbourhood of the hotel residing in Wiltshire Lane, Bodalla.
6. The Complaint is authorised, for the purposes of section 79(3) of the Act, by two other residents of the neighbourhood also residing in Wiltshire Lane, Bodalla – Mr Gary Newman and Ms Susanna Gerdes (Authorising Residents).
7. The Review Application states that it seeks to "revoke" the three conditions that were imposed upon the licence by the Delegate in the Reviewable Decision.
8. The Review Applicant submits that she has been aggrieved by the Reviewable Decision through "financial hardship" and seeks to appeal the Reviewable Decision on the grounds of the "severity of the decision" and by reason that "false or misleading information was obtained".

THE REVIEWABLE DECISION IN SUMMARY

9. The Reviewable Decision is dated 15 February 2016 and was determined to commence effect from 29 February 2016. The Delegate decided to impose three (3) new conditions upon the licence for the Premises as follows:

1. *LA10*

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 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.

2. *Noise Limiter*

The Hotel must install a noise limiter to control all amplified entertainment. All amplifiers or noise generating equipment must be under the control of the noise limiter that has been calibrated by a qualified acoustic consultant to ensure compliance with the LA10 noise criteria consultant.

3. *Amplified Entertainment*

No amplified entertainment is to be conducted at the hotel until such time as an acoustic report prepared by a qualified acoustic consultant advises that all amplified entertainment to be conducted at the hotel complies with the LA10 noise criteria. A copy of the acoustic report must be provided to Liquor & Gaming NSW within 7 days from the date of issue.

10. Briefly, the Delegate summarised the Complaint as alleging that:
 - a) The hotel "conducted live bands on a bi-monthly basis, and has now increased amplified entertainment to every weekend"
 - b) The Complainant "engaged with the licensee on several occasions requesting noise levels be reduced" only to have these requests "ignored".
11. With regard to the statutory consideration prescribed by section 81(3)(a) of the Act (regarding the order of occupancy between the licensed premises and the Complainant), the Delegate was satisfied that the Complainant has resided at her current address for one and a half years, while the hotel has operated at its present site since 11 July 1952, with the present owner and licensee commencing operation at the hotel on 16 December 2014. The Delegate found the order of occupancy to be in favour of the hotel.
12. With regard to the statutory consideration prescribed by section 81(3)(b) of the Act (regarding any changes in the licensed premises and the premises occupied by the Complainant, including structural changes to the Premises), the Delegate was satisfied that an extension of a glass sunroom was added to the hotel in the 1970s or 1980s. The Delegate noted that there have been no relevant changes to the Complainant's residence.
13. With regard to the statutory consideration prescribed by section 81(3)(c) of the Act (regarding changes in activities conducted on the licensed premises over a period of time), the Delegate noted the Complainant's contention that since a change of licensee in December 2014, there has been a "significant increase in amplified music" and that the "glass sunroom extension is frequently open which projects the music noise in the direction of nearby residences". The Delegate found this to be a relevant change in activities.
14. The Delegate accepted that the hotel at times "has caused and continues to cause undue disturbance to the neighbourhood".
15. In reaching this conclusion, the Delegate had regard to the information provided in submissions from the Complainant; the licensee, Ms Michelle Coric (Licensee); Eurobodalla Shire Council (Council); and the Far South Coast Local Area Command (LAC) of NSW Police (Police).
16. The Delegate found that notwithstanding that formal notification of the Complaint was provided to the Licensee, ongoing issues of disturbance resulting from the operation of amplified entertainment at the hotel "continue to be reported" to Police and LGNSW by nearby residents and that these issues remain "unresolved".
17. The Delegate found that the Licensee "has not, during the process of dealing with the Complaint, engaged the services of an acoustic consultant to test and ensure that the hotel's noise emissions from amplified entertainment comply with the LA10 noise

[criteria], nor received appropriate advice to prevent undue disturbance to nearby residents from such entertainment".

18. On the basis of the Licensee's submissions and material sourced via Facebook, the Delegate was satisfied that the hotel is being promoted as a "live/amplified entertainment venue with up to five-piece instrumental bands".
19. The Delegate acknowledged that hotels can be expected to provide amplified entertainment, while observing that they must do so "in a way that does not unduly disturb the quiet and good order of their neighbour".
20. The Delegate accepted that social media sites allow users to post any information of their liking and make free comment; however the Delegate noted that the administrator of the hotel's Facebook page had used the social media site to "unnecessarily degrade" the complainants in this matter by referring to them as "*dickheads*" for making a complaint against the hotel. The Delegate found this conduct to be "inappropriate and offensive".
21. The Delegate was satisfied that the Licensee had hosted a three-day outdoor music festival "in an apparent attempt to demonstrate against" the Complaint. The Delegate was satisfied that the Licensee posted a Facebook comment which stated, "Lets stick it to em [sic]". The Delegate acknowledged that the Licensee, in her submission dated 9 November 2015, apologised to the residents of Wiltshire Lane for posting this comment, citing that she was upset at the time. However the Delegate was also satisfied, on the basis of evidence provided by the complainants and NSW Police, that there had been "no change in the manner [in which] live entertainment is presented at the hotel".
22. The Delegate was satisfied, on the basis of a submission from Police dated 26 November 2015, that Police had provided the Licensee with recommendations and advice to reduce the impact of noise to the neighbours on two occasions and that "it would appear that advice was not acted upon or did not assist in resolving the issues of undue disturbance from the hotel". The Delegate also noted Police advice that due to the close proximity of the affected residences to the Premises, "it is likely that continuing complaints will be received when entertainment is provided, and that prior attempts to conciliate similar noise complaints have been unsuccessful".
23. The Delegate further noted a submission from Police dated 27 January 2016 stating that, as a result of "further complaints" of noise disturbance, Police conducted a 1-hour assessment of music noise intrusion from within each residence nominated in the Complaint on 26 January 2016. The Delegate noted that Police had concluded that the amplified music emanating from the Premises was "clearly audible, excessive" and as a result the resident complaints of undue disturbance from live or amplified entertainment at the Premises "are justified". The Delegate noted that Police advised that following this assessment they had attended the Premises, where approximately 30 patrons were in attendance. Police engaged with the Licensee, who stopped the amplified entertainment from a live band.
24. The Delegate had regard to the following observations made by Police in the Police submission of 27 January 2016:

The continued "thump" of the bass that was being used was repetitious, constant and rhythmical and the only respite from the music was between songs.

The music was clearly audible in the Police vehicle despite the fact the window was wound up.

In one of the affected premises the occupant had the television turned up to almost the maximum level so televised cricket could be heard but the music from the Hotel was clearly able to be heard above the television level.

25. The Delegate was satisfied that Police served a Noise Abatement Direction on the Licensee under section 276 of the *Protection of the Environment Operations Act 1997* directing the Licensee to "cease the offensive noise". The Delegate noted that this direction was issued for a "ten-day period" (sic) commencing on 28 January 2016 and concluding at 10:20pm on Friday 5 February 2016.
26. The Delegate decided to impose a new licence condition upon the licence requiring compliance with the LA10 noise criteria and a requirement for the installation and calibration of a noise limiter in accordance with the LA10 noise criteria. This action was taken "in order to ensure appropriate safeguards are in place for the future operation of the hotel" and to "control all amplified entertainment conducted at the hotel". The Delegate was satisfied that these two conditions would "ensure regulatory certainty against future instances of disturbance" without placing "undue burden on the hotel's operation".
27. The Delegate was also satisfied that despite lodgement of the Complaint, the hotel has "continued to provide live amplified entertainment and has caused continuing issues of noise intrusion and disturbance to the affected residents". The Delegate noted that the Licensee had not committed to accepting professional advice or undertaken acoustic monitoring to ensure that noise emissions from the Premises comply with the LA10 noise criteria.
28. The Delegate was satisfied that the evidence provided by Police "clearly supports" the residents' claims that amplified entertainment conducted at the hotel is causing undue disturbance to the quiet and good order of the neighbourhood. The Delegate considered it "appropriate" to impose a further condition prohibiting "all amplified entertainment" until an acoustic report prepared by a qualified acoustic consultant advises that the amplified entertainment provided by the Premises is "compliant with the LA10 noise criteria".
29. The Delegate concluded that the three conditions imposed in the Reviewable Decision are "appropriate safeguards to prevent issues of disturbance from occurring in the future".
30. Annexure 1 to the Reviewable Decision sets out the action taken by the Delegate.
31. Annexure 2 to the Reviewable Decision comprises a list of the material before the Delegate (discussed in more detail below).
32. Annexure 3 to the Reviewable Decision summarises the key submissions on the Complaint (discussed in more detail below).

MATERIAL BEFORE THE DELEGATE

33. LGNSW provided the Authority with a bundle of the entire material before the Delegate at the time of making the Reviewable Decision (LGNSW File). The LGNSW File comprises the following material:

Complaint Form signed by the Complainant and dated 17 September 2015

34. In the Complaint Form, the Complainant states that the suburb of Bodalla is a "small historic village of just over 500 people with an average age of 48". The Complainant contends that the hotel is a "weatherboard and iron structure and has been on its present site for over 100 years"; that there have been residences behind the hotel throughout this time; that the hotel was rebuilt in 1910 and that a glass sunroom extension "was added probably in the 1970s or 80s".

35. The Complainant contends that it is inside this sunroom "with large glass windows and doors on three sides" that the bands "usually perform". The Complainant contends that "one entire side" of this sunroom is "made up of folding glass doors" which are "pushed right back, projecting the noise towards the houses at the back".
36. The Complainant contends that the present Licensee has held the licence since "December 2014" and since then, there have been "problems with the noise whenever a band plays". The Complainant contends that "requests" have been made to the hotel to "turn down the volume" which have been "ignored". The Complainant states that the matter "has also been reported to the Police" and contends that if any action was taken by Police "it didn't have any effect on the level of the noise".
37. The Complainant contends that the Licensee has "conducted a campaign via Facebook, and a local newspaper, and organised a 3-day music festival at the end of July" in response to a rumour that the residents had concerns about the noise and were contemplating contacting LGNSW. The Complainant contends that the Licensee posted on Facebook, "Lets stick it to em [sic]". The Complainant contends that "at no time" has the Licensee tried to speak with the residents to hear their concerns.
38. The Complainant contends that during this live music festival "a makeshift stage was set up outside" and a petition to stop live music at the hotel was also organised on the website change.org which was first directed to the local Council. Following a conversation between the Complainant and Sergeant Robert Moore (Licensing Coordinator from Narooma Police Station) about the noise, this petition was later "redirected" to LGNSW.
39. The Complainant submits that her house is located "furthest from the hotel" but that other residents, "some of whom have been living here for over 10 years, are closer". The Complainant contends that the noise affects (house numbers) "No.4 and No.6 greatly, being historic cottages, and the occupant of No.4, in a fibro cottage, is forced to spend the night elsewhere when a band plays".
40. The Complainant contends that prior to Ms Coric holding the licence, a live band played "about once every two months". However since Ms Coric took over responsibility for the hotel, "a band played about once a month, but this has increased to a point where bands are scheduled every weekend during September, sometimes with bands on Saturdays and Sundays".
41. The Complainant contends that the noise disturbance has increased from "once every two months, to every weekend".
42. The Complainant contends that on 25 June 2015, after seeing the initial statements made on Facebook and some of the "ill-will towards the residents created by [the hotel's] responses", the Complainant and her husband, Mr Cliff Richard, spoke with the Licensee of the Premises.
43. The Complainant summarises the position expressed by the Licensee during this meeting as follows:
 - a) The music "would be turned down if we [the complainants] phoned"
 - b) The Licensee was "within her right to have music every night if she wanted to"
 - c) People should "move if they didn't like it" [The Complainant contends that "all residents have lived here longer" than the Licensee has.]
 - d) The Licensee was "going to build an outdoor stage area, about 10 metres from the nearest house, on the boundary of hotel".

44. The Complainant contends that it was "just after this meeting" that the Complainant learned that the Licensee "had organised a 3-day music festival" that was scheduled to take place at the hotel during July 2015.
45. The Complainant contends that on 8 July 2015, Sergeant Bob Moore, Licensing Coordinator from Narooma Police Station, spoke to the Licensee and advised the Complainant that the Licensee had been told by Police to "keep the noise down" and that in response this the Licensee stated to Police that there were "no noise restrictions on her licence".
46. The Complainant contends that Police advised the Licensee that she had to be "mindful of the neighbours". The Complainant contends that after the conversation with Police, the Licensee "yelled abuse over the fence at the neighbours" which was "loud enough to be heard at No.10 [Wiltshire Lane]" and that after this reaction, the residents "do not wish to deal with the Licensee directly".
47. The Complainant contends that Police were contacted on "several occasions" and that when Police were telephoned at 10:33pm on the night of 5 September 2015, there was no reduction in the level of noise, as shown in the decibel readings attached to this Complaint.
48. The Complainant also contends that on 12 September 2015, Police were telephoned by local resident complainants at 9:48pm, 10:27pm and 10:37pm and that Police attended the hotel after the second call, resulting in the music being turned off "...for about 10 minutes" until being turned on again at the same level as before.
49. The Complainant contends that "there are more bands performing at the hotel now, and the glass sunroom is being opened up on one side, projecting the noise towards the residences".
50. The Complainant submits that the intention of this Complaint is "not to stop live music, but to see a containment of the noise, in particular the bass". The Complainant submits that the residents of Wiltshire Lane, Bodalla would "like to see an end to amplified music until proper acoustic controls and sound proofing are provided so the noise is contained within the building".
51. The Complainant contends that "music has changed a lot since the hotel was first built 100 years ago, and it [the hotel] was not built with sound control in mind".
52. The Complainant contends that building an outdoor stage at the hotel "would not keep the noise level down, but would, in all probability, increase the number of performances, particularly during the summer months".
53. The Complainant submits that the residents are "particularly anxious about the noise during the summer when it will be necessary to have open windows in the houses".

Attachments to the Complaint

54. Attachment 1 to the Complaint Form is a Plan depicting the location of the Premises and where a band plays in relation to house numbers 4, 6 and 10 of Wiltshire Lane, Bodalla, where the Complainant and the Authorising Residents reside [the Plan indicates that house number 8 is currently under construction]. This Plan indicates that the distance of a band playing at the hotel from the respective houses is:
 - a) 37 metres from house No.4
 - b) 59 metres from house No.6

- c) 125 metres from house No.10.
55. Attachment 2 to the Complaint Form is a number of varying decibel readings taken using *SPLnFFT*, which show the normal background noise level, compared to the noise levels when a band is playing at the hotel. [The Complainant describes *SPLnFFT* in her later submissions to the Authority as being a mobile application which she has used on her iPad to enable acoustic recordings to be measured.]
56. The Complainant contends that these decibel readings indicate the following:
- The level of background noise recorded on Saturday 29 August 2015 at No.10 Wiltshire Lane, the furthest residence from the hotel, averaged about 45 decibels.
 - The background level of noise heard at No.10 Wiltshire Lane when a band was playing on 4 July 2015 (when it was cold and the doors to the sunroom were closed) was about 38 decibels and the level of noise when the band was playing was about 48 decibels.
 - In relation to the level of noise heard at house No.10 Wiltshire Lane when the Police were notified at 10:33pm on 5 September 2015, the Complainant contends that "there is no difference to the level of noise" between before and after the Police had been notified.
 - The level of noise heard at house No.10 Wiltshire Lane at 3:59pm on Sunday 6 September 2015. [The Authority notes that the average noise level evident from this reading is approximately 50 decibels.]
 - In relation to the level of noise heard at house No.4 Wiltshire Lane on 12 September 2015, the Complainant contends that the recorded background (rest) noise was about 43 decibels and the level of noise while the band was playing was approximately 63 decibels.
57. Attachment 3 to the Complaint Form comprises six photographs depicting the following:
- The front driveway entrance to the Premises [photograph apparently taken by the Complainant].
 - The interior of the sunroom at the rear of the hotel including the windows on the right and rear and the folding glass doors on the left – image sourced from the hotel's Facebook page.
 - The doors to the sunroom folded completely back and the use of external speakers on a Sunday afternoon – image sourced from the hotel's Facebook page.
 - The setup of the festival [the "Big BAH Fest"] in the beer garden – image sourced from the hotel's Facebook page with a photograph posted at 10:51am on 26 July.
 - The setup for the "music festival", showing No.4 Wiltshire Lane, Bodalla to the right of the photograph – image sourced from the hotel's Facebook page.
 - The exterior of the Premises [photograph apparently taken by the Complainant], marked with hand drawn red lines indicating the area for the planned outdoor stage and the distance from No.4 Wiltshire Lane.

Submission to LGNSW from Mr Bruce Young, Environmental Health Officer, Eurobodalla Shire Council dated 4 November 2015

58. Council have attached to their submission "all recorded customer service requests received by Council regarding noise emissions from the hotel" and note that a telephone call placed by a local resident complainant to Council on 16 October 2015 advised that "the noise issues had returned" and that liaison with NSW Police and LGNSW "would be taking place".
59. Council advise that "a number of historic development consents pertaining to various alterations and additions to the hotel have been issued" and that these consents "do not have any conditions limiting the operation of the hotel".

60. Council advise that a letter from the operator of the hotel dated 12 October 1995 requests permission to host live entertainment in the beer garden of the hotel and that Council responded in writing dated 27 October 1995. Council has attached a copy of that response to this submission, which states that Council does not object, provided that the following condition is complied with and that the operator of the hotel is aware that the approval does not permit public entertainment within the building structure:

The LA10 Noise level emitted from the premises shall not exceed the background noise level by more than 5dB(A) from 7.00am to midnight and shall not exceed the background level from midnight until 7.00am. No correction for tonality is applied. Measurement is taken at the boundary of the worst affected residence.

61. Council further advise that subsequent to noise and other issues being raised with Council on 13 November 2007, Council wrote to the (then) licensee in a letter dated 14 December 2007 "requiring the removal of speakers from the beer garden".
62. Council advise that there are "no development applications for this property currently under assessment" and that there are "no other matters considered to be relevant to this matter from a Council perspective".
63. Attachment 1 to Council's submission is a Work Sheet for work request number 108178 dated 29 May 2012, with the complainant's details redacted. This Work Sheet states that the complainant:

...is complaining about the level of noise coming from the Bodalla Arms Hotel. The sound level of the music is extreme. He has called the Police in the past but the noise continues after they leave. Apparently a conference has been organised with the licensee and the licensing [sergeant] also. [The complainant] would also like Council to take some action.

64. Attachment 2 to Council's submission is a Work Sheet for work request number 67220 dated 13 November 2007, with the complainant's details redacted. This Work Sheet states that the complainant:

...is complaining about the outside speakers on the hotel. The noise has been very loud on occasions when the pub was open. She believes that there are new owners and they have been testing the speakers. Can Council restrict the use of these speakers. [The complainant] is going to gather signatures for a petition to present to Council.

65. This Work Sheet also notes that on 6 December 2007 a petition was received by Council on behalf of a number of residents who live in close proximity to the Premises and that an additional complaint was received on 12 December 2007 regarding construction and development at the hotel.
66. This Work Sheet notes that a letter was sent by Council to the owners of the hotel with regard to the above mentioned complaints dated 13 November 2007 and 12 December 2007 respectively. The letter requested the removal of the outdoor speakers and allocated a time period of 14 days for the hotel to provide its response to the above issues.
67. Attachment 3 to Council's submission is a Work Sheet for work request number 62154 dated 22 March 2007, with the complainant's details redacted. This Work Sheet states that the complainant:

...is complaining about the excessive noise coming from the Bodalla Arms Hotel. They have [karaoke] functions from 4pm [to] 10pm on Sundays with outside speakers blaring to the point where she has to close all her doors and windows...She can also hear conversations in the pool room. Even on Wednesday night there was a lot of noise there up until midnight. Sometimes the management do turn

down the music but have commented to [the complainant] that they can have the music as loud as they want it.

68. This Work Sheet notes that Council were advised that the situation had improved however "problem noise" stems from bands and juke boxes inside the hotel, with the doors to the beer garden remaining open.
69. This Work Sheet notes that the hotel owner's daughter was "contacted and advised of the noise complaint and that they need to finalise a Place of Public Entertainment (POPE) application prior to any more bands".
70. The Work Sheet notes that the Planning department of Council advise that "POPE is required for inside entertainment" and development consent is required for outside entertainment.
71. Attachment 4 to Council's submission is a letter from Mr Nathan Ladmore, Environmental Health officer for Council to Genbay Pty Limited [the Authority notes that Genbay Pty Limited is the former business operator of the hotel] dated 14 December 2007 responding to concerns raised with Council on 12 December 2007 in relation to building and/or development works being conducted at the Premises.
72. Council state that investigations revealed that "the works are part of a refurbishment to the kitchen in response to requirements by Council's food inspector".
73. In this letter, Council advise that they received a fax from Mr Stephen Hardy on behalf of Genbay Pty Limited dated 12 December 2007 in which it was confirmed that the proposed works are to involve "cleaning, maintenance and restoration duties".
74. Council advise that no development consent is required for these works, provided that the works do not go beyond normal maintenance and restoration works and do not alter the existing fabric of the building.
75. In this letter, Council inform Genbay Pty Limited that Council has received complaints of offensive noise resulting from the operation of external speakers installed at the Premises and advise that the hotel "does not hold a current" POPE licence or a development consent "covering the installation and operation of the offending speakers. Council advise that these matters "have been previously discussed with the then licensee, Ms June Bolan".
76. Council required Genbay Pty Limited to "remove all external amplification equipment including speakers" within 14 days of this letter and advised that failure to remove this equipment "may result in the service of a formal notice including administration fee".
77. Attachment 5 to Council's submission is a letter from Mr Greg Cooney of the Planning and Environment Department of Council to the hotel dated 27 October 1995. This letter advises that Council have "no objection" to the request to promote musical entertainment within the beer garden at the Premises, provided that the following condition is complied with:

The LA10 Noise level emitted from the premises shall not exceed the background noise level by more than 5dB(A) from 7.00am to midnight and shall not exceed the background level from midnight until 7.00am. No correction for tonality is applied. Measurement is taken at the boundary of the worst affected residence.

78. Council also advise that "this approval does not permit public entertainment within the building structure".

Submission from the Licensee received by LGNSW on 9 November 2015

79. This submission from the Licensee comprises the following:
80. Copy of the entire Complaint Material, annotated with the Licensee's comments on the various documents (discussed in more detail below).
81. Copy of the "Plan" indicating the distances between the hotel and the residences on Wiltshire Lane provided with the Complaint, annotated with the Licensee's comments to the effect that the figures in the Plan are "incorrect measurements" and that the distance from No.4 Wiltshire Lane is in fact 43.473 metres, not 37 metres as contended by the Complainant.
82. Submission letter dated 3 November 2015. In this letter, the Licensee contends that the bands, duos and solo artists performing at the hotel are "not loud by industry standards" and that "the music stops between 10:30 and 11:00pm at night".
83. The Licensee submits that the Complaint has "deeply saddened" the Licensee as well as "local residents, hotel patrons and supporters as well as musicians both local and throughout Australia".
84. The Licensee contends that the statement made by the Complainant that the quiet and good order of the neighbourhood has been unduly disturbed by the hotel is "quite simply not true" and that the noise Complaint is "an unnecessary, baseless and unfounded attack on my livelihood and detrimental to the future development of the Bodalla township and our hotel".
85. The Licensee contends that the hotel has been operating as a "public house for more than 100 years and well before most of the houses in Wiltshire Lane were built".
86. The Licensee contends that there has "always" been live music and dances and that the hotel has "never experienced any problems with noise complaints until Ms Susanna Gerdes, of No.6 Wiltshire Lane began complaining to previous publicans" who were "as dumbfounded as we are about the complaints because bands always stopped playing well before [12:00] midnight and rarely past 11:00pm".
87. The Licensee contends that Ms Gerdes "had also complained during a previous tenancy of the hotel when semi-acoustic music was being played on a Sunday afternoon".
88. The Licensee contends that prior to the commencement of Ms Gerdes' complaints, "people had bought and sold houses in Wiltshire Lane with no issues or complaints about the hotel".
89. The Licensee submits that "if I was going to buy or rent a house near an established, licensed premises I would certainly look at how the business was conducted" and whether it would "affect my lifestyle".
90. The Licensee submits that "I would expect that venue to hold numerous functions throughout the year with trade and entertainment increasing over the festive season and throughout summer" and that if "I didn't like music or the sound of laughter and people having a good time I wouldn't purchase or rent a house near a public house or licensed venue".

91. The Licensee submits that the hotel sunroom looks out onto the beer garden and is the "main entertainment area". The Licensee submits that if the weather is good "the French doors are opened up so patrons can enjoy the entertainment from the beer garden" and at other times the entertainment is set up at the rear of the beer garden "with the music projecting towards the hotel".
92. The Licensee states that she purchased the hotel in December 2014 and that the hotel "did not present a full band until December 13 and then our only other live music event for 2014 was New Year's Eve".
93. The Licensee contends that throughout the summer and holiday trading period of 2015 the hotel "mostly presented semi-acoustic duos or solo artists" and that the Licensee is "at a loss to understand how the solo and duo acts could possibly exceed legal noise levels".
94. The Licensee states that the hotel is now in the process of "monitoring all entertainment noise levels with legally approved sound monitors to address this issue".
95. The Licensee contends that the hotel initially responded to local complainants' phone calls requesting that the volume be turned down by getting the band to turn down the volume. However the Licensee contends that the phone requests "became abusive so we stopped answering the calls".
96. The Licensee contends that "each time" Police attended the hotel in response to noise complaints, Police also appeared "somewhat bewildered as to how the volume of the band could be so disturbing to neighbours".
97. The Licensee contends that Police attended the Premises without informing the hotel in order to monitor the noise level and observe behaviour and felt that "there was no activity going on that required them to talk to us".
98. The Licensee contends that she became aware of the Complaint when a petition "appeared on Facebook in May 2015" which "clearly states that it was not started by anyone" from the hotel.
99. The Licensee contends that she "did not conduct" a Facebook or local newspaper campaign but that she "did respond to the Facebook petition" and a local newspaper which "approached" the Licensee requesting to do a news story about the noise complaints.
100. The Licensee submits that it was "important" to respond to the local newspaper's request as a way to respond to the complaints and social media activity concerning this issue.
101. The Licensee submits that she was "deeply threatened and upset" by the situation for the following reasons:
 - a) The hotel had "only presented a few bands at the hotel by that time and on each occasion the music had stopped by 11:00pm at the latest and often by 10:30pm, patrons had a great time and we had no problems or concerns throughout the night".
 - b) A previous licensee of the hotel, Ms June Bolan, had discovered a "loophole" in the LGNSW regulations and she "sold the three poker machines that were installed in the hotel".
 - c) The Licensee states that she was "aware that the hotel had no poker machines" when she bought the property and knew this would mean that "live music would be an important factor in allowing me to run my hotel as a profitable concern".

- d) Up to this point "other entertainment we had presented included semi-acoustic duos and soloists" and the Licensee is "at a loss" as to how these acts could have "exceeded noise limits" or could "unduly disturb the neighbourhood".
102. The Licensee states that she "did go ahead and organise a 3-day music festival in direct response to the perceived threat that our pub would be stopped from presenting live bands and other entertainment", but contends that she "always intended to run an annual music festival" at the hotel.
103. The Licensee contends that this festival "will be a growing success" as the inaugural event "went really well and generated lots of support from the local community as well as through the Eurobodalla Shire and, indeed Australia-wide".
104. The Licensee submits that the comment she posted on Facebook stating, "Let's stick it to 'em" was posted when she was "extremely upset" and admits that it was "not the right thing to do". The Licensee apologises to the tenants of Wiltshire Lane if this offended them and states that she regrets posting that statement.
105. The Licensee contends that the statement made by the Complainant that the occupant of No.4 Wiltshire Lane (Mr Gary Newman) is forced to spend the night elsewhere when a band plays is "misleading" as Mr Newman has previously told hotel management that he stays elsewhere on a regular basis "as part of his lifestyle".
106. The Licensee contends that Mr Newman schedules his absences to "coincide with a band night for convenience" and that Mr Newman has "told us that some bands playing at the pub are overwhelmingly loud in his house but that solo and duo artists playing at the pub are not a problem".
107. The Licensee contends that the previous licensee from 2009 to 2014, Ms Janelle Cavanagh, presented bands and live music "more than once a month on many occasions" and that Ms Gerdes made "numerous complaints" including one at 2:00pm on a Sunday afternoon when semi-acoustic music was being played in the beer garden, with the performers facing towards the pub.
108. The Licensee contends that Ms Cavanagh "worked through the issue" with Licensing Sergeant Bob Moore and held a mediation meeting where "nothing was really resolved".
109. The Licensee notes that Ms Cavanagh sought and was denied the ability to sit inside Ms Gerdes' house while a band was playing to experience how loud the noise was.
110. The Licensee agrees that the hotel "may have been presenting more live entertainment" than the previous licensee and that in September 2015 the hotel "did have a band every Saturday night with duos or solo artists sometimes on the Friday or the Sunday", but contends that "none of them were excessively loud bands and on each occasion the music was over by 10:30 or 11:00pm".
111. The Licensee contends that the previous publicans "have presented bands weekly" during spring and summer trading and had "no problems with residents of Wiltshire Lane".
112. The Licensee states that the hotel does plan to present "bands, soloists or duos regularly on weekends" throughout the spring, summer and autumn but it "would not necessarily occur every weekend".

113. The Licensee contends that she participated in a meeting with the Complainant and the Complainant's husband, Mr Richard on 25 June 2015 where it was "agreed that they [resident complainants] should phone" the hotel if the music was disturbing them. The Licensee informed the Complainant that she "could not control what people posted on social media".
114. The Licensee contends that Sergeant Bob Moore of NSW Police has had a "number of conversations" with her about the noise complaints and that the allegations that she yelled abuse at the neighbours are "completely untrue" as she states that "at no point have I ever done such a thing".
115. The Licensee contends that the noise measurements submitted by the Complainant are "inconsistent and incorrect". The Licensee describes the measurement from 4 July 2015 as "intriguing" as the hotel "did not present any entertainment on that date" and notes that the measurement from 5 September 2015 alleges that Police were notified, however the hotel "did not receive any notifications from them". The Licensee contends that a band called *Sacred Cow Electric* started playing at 7:00pm and played their last song at 11:00pm on that night.
116. The Licensee submits that "the noise from bands, duos and soloists" playing at the hotel "is atypical [*sic*] for the area and is not new or unusual" and that the time and duration of the music is "not unreasonable" as it is "consistent with the Eurobodalla Shire Council *Local Environment Plan*".
117. The Licensee concludes with the following statements and/or submissions:
1. *My legal obligation is to not have noise pollution which I am extremely careful about. I think if I can hear my TV and my twins cry in the next room then it's not loud.*
 2. *I do not and have never closed the bar/pub after our legal time and what is stated on my license [*sic*].*
 3. *I have never had the Police turn up at the pub asking us to turn down the music as its [*sic*] too loud.*
 4. *We are professional about how we conduct our business and are mindful of complaints but when on a Sunday afternoon at 2pm I'm receiving phone calls to turn the music down, I firmly believe this is an unfounded complaint.*
 5. *I also run raffles on a Thursday night that helps our local soccer club and primary school. Maybe our laughter and cheerful banter is also too much for the residents to deal with as they have also registered a complaint about the noise level on a raffle night.*
118. Single page document by the Licensee dated 19 October 2015 describing how the disturbance complaints affect the hotel's interests.
119. Briefly, the Licensee contends in this document that the hotel needs to present live music and entertainment or it will:
- a) "seriously reduce our day to day income and overall profit margin and seriously threaten our livelihood"
 - b) "significantly slow down our proposed development" of the hotel and future employment prospects for local residents
 - c) "upset" and disappoint patrons who thoroughly enjoy the music nights and attend these events regularly
 - d) close a "much needed avenue for the Bodalla community to fundraise"; and
 - e) prevent local and interstate musicians from performing and earning money at this venue.

120. The Licensee further contends that the impact on the hotel business if live music stops will be as follows:
- a) The hotel employs local residents and uses local produce, holds raffles on a Thursday night to raise money for the local primary school and fundraises for the Leukaemia Foundation. The bands, duos and soloists that perform are "key to our fundraising efforts".
 - b) The hotel relies on the dance/music nights seeing as the Premises does not have poker machines, Keno or TAB and as a result a lot of people who have gambling problems come to the hotel.
 - c) If the music was stopped it would cost up to \$2,500 to \$3,000 a week and result in approximately four or five local residents losing their jobs as staff would have to be dismissed.
 - d) The stress and mental anguish from the situation has "stopped [the Licensee] from sleeping properly" due to the "false allegations" that have been made against the Licensee. The Licensee submits that the noise complaints represent a "personal attack on myself and now my business".
 - e) In response to the Complainant's concern about the negative comments on Facebook and the potential that their house might be in danger of being vandalised, the Licensee contends that she informed the Complainant that she "could not be responsible for comments made on social media" and that the hotel is "a professional establishment" that does not have any local patrons "who would do such a thing".
121. The Licensee further contends that the complainants have telephoned the hotel and "abused" the Licensee and staff to the point that "we simply don't answer the phone after 9:00pm" as a result of the abuse getting "out of hand". The Licensee contends that Police have "never turned up" to the hotel because of violence, as on music nights "we just have fun and dance".
122. The Licensee contends that Sergeant Bob Moore from NSW Police contacted the Licensee, after "four days" had passed, to inform the Licensee that a complaint had been made by Ms Gerdes who had felt threatened and abused as she walked her dog past the hotel [the Authority notes that the Licensee does not provide the exact date of this alleged incident].
123. The Licensee submits that she was on the verandah talking to locals at the time and that the pub patrons "turned away from" Ms Gerdes as she was walking her dog past the hotel "as we felt distressed and upset by her presence, knowing that she is the instigator of these noise complaints".
124. The Licensee contends that this complaint by Ms Gerdes is a "complete fabrication and totally untrue" as "at no point did anyone speak to her" and all the locals present at the time "are willing to provide statutory declarations about this". The Licensee contends that since this occurred, CCTV cameras have been installed in the hotel to protect herself from false allegations and provide her with "physical evidence" that will prevent local patrons from having to get involved in any disputes.
125. The Licensee states that she has "never made a statement saying people should move if they didn't like the music" but instead had said "that if I was going to buy a home near a commercial establishment - especially a pub - I would expect such an establishment to present entertainment on a regular basis".
126. Licensee's comments on a number of documents in relation to the Complaint, some of which were submitted by the Complainant. A brief summary of the Licensee's comments is as follows:

- a) In response to the decibel reading provided by the Complainant for Sunday 6 September 2015, the Licensee contends that this was a Father's Day lunch and dinner and the band, which is "not a loud band by music industry standards", started at 1:30pm and finished at 5:30pm.
- b) In response to the decibel reading provided by the Complainant for 5 September 2015, the Licensee contends that "the band started at 7:00pm and finished by 11:00pm with the pub fully closed at 11:30pm". The Licensee contends that during September 2015 the hotel "had bands, duos and soloists every weekend all starting between 7:00-7:30pm and all finishing by 10:30-11:30pm with the pub always fully closed by 12pm [sic]".
- c) In response to a decibel reading taken by the Complainant on 4 July 2015 using *SPLnFFT* at No.10 Wiltshire Lane when a band was playing when it was cold and the doors to the sunroom were closed, the Licensee contends that on this Saturday night, "we did not have a band". The Licensee also questions the accuracy of these readings as "they are not done with a professional decibel unit but with an application downloaded to a mobile phone".
- d) In response to the decibel readings taken by the Complainant, using *SPLnFFT*, on 12 September 2015 the Licensee submits that "I would like to know the reason this [reading] cannot be disregarded" as this sound measurement is "done on a mobile phone using a downloaded application".
- e) In response to a photograph provided by the Complainant of a band playing at the hotel on a Sunday afternoon while the doors to the sunroom were folded completely back and external speakers were used, the Licensee submits that this photograph was taken on Father's Day 2015 [Sunday 6 September 2015], when the band *Somedays* started at 1:30pm and finished at 5:30pm and there was "no music after this".
- f) The Licensee submits that the photograph provided by the Complainant depicting the proposed outdoor stage area of the hotel is a "blatant fabrication and completely incorrect" by reason that the hotel has "no such plans to build a stage here". The Licensee states that she is "astounded that they [the complainants] can claim to have such knowledge of our proposed plans".
- g) The Licensee submits that the photograph provided by the Complainant depicting the setup of a stage in the beer garden during the music festival [the "Big BAH Fest"] was uploaded to Facebook at 10:51am, at a time "when the pub was closed".
- h) The Complainant's Plan regarding the distances between the location of where the band plays in relation to house numbers 4, 6 and 10 of Wiltshire Lane, Bodalla is "completely incorrect". The Licensee submits that a "professional tradesman" was employed to carry out a measurement and that this tradesman calculated the distance from the hotel's sunroom to No.4 Wiltshire Lane as being 43.473 metres. The Licensee also attaches a photograph of the tradesman taking this measurement and a photograph of the measuring device recording the measurement as 43.473 metres.
- i) The Licensee refers to a copy of a newspaper article (which does not contain a date or title) in response to which the Licensee contends that the [change.org](https://www.change.org) petition "was not started by the Licensee" but started "without the knowledge or endorsement of the owners" of the hotel. This article states that the "new petition was started without the knowledge or endorsement of the owners of the Bodalla Arms Hotel" by a "visitor to the area" and that it was "directed" to Council. The Licensee also notes that the article reports that Eurobodalla Shire Mayor Mr Lindsay Brown offered his support for the petition with the following statement: "We would hate to see venues lose live music...live music in the Shire is an important part of our social fabric and we totally support it".

127. Petition from [change.org](https://www.change.org) containing 24 pages of signatures of people who have signed the petition [the Authority notes that only four signatures are from people who state that

they reside in the suburb of Bodalla, but the majority of those people who have signed the petition have listed their location as "Australia"]. The full text of the petition states as follows:

Greetings

Keep Bodalla Arms Hotel Music Live

This petition is started without the knowledge or endorsement of the owners and proprietors of the Bodalla Arms Hotel.

I'm not a local, none of my family are locals and the closest we've ever come to being locals is when we invade at Christmas time to clear out the award winning bakery and get sunburned at the Point. Every year since I can remember I've trekked down to this sleepy little town with a blink and you'll miss it landscape with my family to enjoy the beach, the sun and the atmosphere of relaxation and fun. My grandparents lived at Potato Point for many years. It's a place I fully intend to take my children to, just as my parent's [sic] took me when I was barely walking. I came to think of this little community as a place forever in my heart as the BEST holiday destination in the world. Quiet, peaceful and serene.

But that doesn't mean I don't like my music. It also doesn't mean I like to see it when a small group of people want to deaden the atmosphere of an iconic little place for no reason other than they've bought a house in the wrong part of town without looking at the blatantly obvious.

I've never seen these kinds of situations end well. I've never seen the majority win because councils run via their own rules.

Just this once though, can you listen to the will of the people?

Don't stifle a community's outlet for funk, jive, boot scootin' and general boogie on down. It's just not right.

We, the undersigned, do not wish to see the current Live Music schedule at the Bodalla Arms Hotel altered or muted in any way, shape or form.

Email from the Complainant to LGNSW Compliance Officer Ms Karen Wilkinson dated 15 November 2015

128. The Complainant here responds to the 9 November 2015 submission from the Licensee by stating that:

...the licensee has not fully understood the purpose of our complaint. We do not wish to see an end to the live music, we just want the noise contained within the building. In this way the patrons can still enjoy the music, the staff can still be employed and the fundraising can continue without affecting the neighbouring houses.

129. The Complainant also notes the letter from Council to the hotel dated 27 October 1995, which confers approval for live music to be conducted in the beer garden but not inside the Premises. The Complainant questions whether this "would still stand".

130. Attachment 1 to this submission from the Complainant is an undated four-page document in which the Complainant provides the following comments on the Licensee's submission dated 9 November 2015:

- a) **Page 1: "not loud by industry standards"** – The Complainant questions which industry standards the Licensee is referring to and contends that "we have been guided by" the details described in the *October 2009 Sound Advice* [the Authority notes that the Complainant does not specify the source of this advice] which states that the LA10 noise level "should not exceed 5dB over background between 0700 hours and midnight". The Complainant contends that the decibel readings "recorded 20dB above the background" and that "this has clearly been exceeded".
- b) **Page 1: "statement made by some of the Wiltshire Lane residents"** – The Complainant comments that "I don't know where she [the Licensee] got this statement from, it was not included in our submission".

- c) **Page 1: "I sincerely believe the problem can be resolved"** – The Complainant submits that "no effort on the part of the Licensee has been made to resolve this issue, no suggestion made on how to resolve it, and no attempt to liaise with us, as advised in your letter to her".
- d) **Page 2: "solo and duo acts"** – The Complainant contends that these were "mainly bands with amplified music" and that the event lists for the hotel show that "the majority of acts are bands".
- e) **Page 2: "phone requests became abusive so we stopped answering the calls (after 9pm)"** – The Complainant contends that the residents of Wiltshire Lane "have not made abusive calls" and that these calls "might have come from other neighbours being affected by the noise". The Complainant questions how they are supposed to ask the hotel to reduce the noise if hotel staff do not answer the phone.
- f) **Page 3: "yelled abuse"** – The Licensee claimed in her submission dated 9 November 2015 that at no point in time has she ever yelled abuse over the fence at the neighbours and this statement by the Complainant is completely untrue. In response, the Complainant contends that this yelled abuse was "witnessed" by residents at No.6 and No.10 Wiltshire Lane, Bodalla.
- g) **Page 3: "measurement for 2 July 2015"** – The Complainant contends that *Gingermist* was the band playing on this occasion, contrary to the submission by the Licensee, as detailed in the hotel's "own events list and posts on Facebook".
- h) **Page 4: "atypical"** – The Complainant submits that she and the Authorising Residents "do not understand the first paragraph" of this page of the Licensee's submission of 9 November 2015, or how the Council *Local Environment Plan* is involved in this matter. The Complainant contends that the "time and duration of the music is not the issue".
- i) **Page 5 dated 19 October 2015: "threaten their livelihood"** – the Complainant submits in response to this comment from the Licensee that the hotel "is not their only livelihood" as the Licensee and her husband "currently own two businesses, the hotel and Flanagans Café in Moruya".
- j) **Page 5 dated 19 October 2015: "stress and mental anguish"** – The Complainant contends that "it is the neighbours that are experiencing stress and sleep disturbance".
- k) **Page 5 dated 19 October 2015: "myself and the patrons all turned away"** – The Complainant contends that the residents of Wiltshire Lane "did not approach the hotel" as the laneway running alongside the hotel "is the only way to access the houses".
- l) **Page 5 dated 19 October 2015: "CCTV cameras to protect myself from false allegations"** The Complainant questions how the CCTV cameras will protect the Licensee from false allegations.
- m) **"Mud map"**: The Complainant contends that the measurements provided by the Licensee, which increase the measured distance between the hotel and the neighbouring houses, make the sound readings taken by the Complainant "even more important as they were taken even further away from the hotel". The Complainant explains that the Complainant's measurements were derived from an "aerial view and a scaled down surveyor's plan, and were approximate".
- n) **Photograph of people at the music festival**: The Complainant submits that it is "irrelevant" when this photograph was uploaded to Facebook.
- o) **Photograph of the planned stage area**: The Complainant contends that the Licensee herself made comments about this proposal to Mr Cliff Richard and Ms Valerie Richard during conversations instigated by the Richards. The Complainant further contends that Mr Nick Coric mentioned to Ms Valerie Richard during December 2014 that the hotel "planned to build a permanent stage outside".
- p) **SPLnFFT**: The Complainant submits that the National Institute for Occupational Safety and Health have stated that their study of mobile phone applications showed

that the *SPLnFFT* app had the best accuracy. These readings were taken using settings of dB(A), L10 and Fast, using an iPad. They have not been taken at every event hosted at the hotel by reason that the "wind conditions would have given a false reading". The Complainant submits that these readings "should be compared to those taken of the background levels on 29 August 2015". The Complainant submits that the readings supplied by the Complainant "give a good indication of the difference in the levels of noise between background and the band, most are between 10 and 20dB over background".

- q) ***SPLnFFT* reading on 4 July 2015 (when the Licensee stated that the hotel had no band playing):** The Complainant submits that "This is the longest reading taken, when the doors to the sunroom were closed" and the band *Gingermist* was playing at the relevant time, which was verified by the past events list and by posts on the hotel's Facebook page.
- r) ***SPLnFFT* reading on 14 September 2015 at No.4 Wiltshire Lane:** The Complainant submits that the part of the reading taken before 7:00pm on this occasion "should be disregarded as trucks trailing commercial fishing boats were being parked close by, and the resident at No.4 was working on his own truck".

131. The Complainant provides the following list of events hosted at the hotel between May 2015 and December 2015, noting that she has "gone by the volume of noise produced" when describing a particular set as a "Band":

Past Events

29 May	Darryl Lamb
6 June	<i>Gingermist</i> (Band)
4 July	<i>Gingermist</i> (Band)
24-26 July	Music Festival (Bands)
5 September	<i>Sacred Cow Electric</i> (Band)
6 September	<i>The Somedays</i> (Band)
12 September	<i>Gingermist</i> (Band)
19 September	<i>Sandman Panelvan</i> (Band)
26 September	Guy Turk
10 October	Music Factory
24 October	<i>The Nashberries</i> (Band)
31 October	<i>Infinity</i> (Band)
1 November	<i>Infinity</i> (Band)
14 November	<i>Sacred Cow Electric</i> (Band)

Future Events

21 November	Benn Gunn (stage will be set up outside)
27 November	<i>Gingermist</i> (Band)
12 December	<i>The Somedays</i> (Band)
19 December	Klaus
20 December	<i>The Nashberries</i> (Band).

132. The Complainant also provides a timeline of events occurring from 23 June to 1 July 2015 and submits that this short timeline shows that the hotel has "instigated the petition on change.org and approached the Narooma News themselves" as there was "no petition against the noise at that time, but the Licensee managed to get a good amount of publicity from it".

Material sourced by LGNSW staff from the hotel's Facebook page on 17 November 2015

133. This material comprises:
- a) photographs of the entertainment areas and the entertainment provided at the hotel
 - b) a "meme" [which the Authority notes is an idea or behaviour or style that spreads from person to person within a culture – particularly but not exclusively via social media] posted on the hotel's Facebook page implying that a person who moved into a house next door to the Premises and subsequently made a complaint about the hotel being a live music venue is a "dickhead" and the related comments
 - c) Facebook posts about a local newspaper article and the 710 signatures on a petition created to "keep live music alive" at the hotel
 - d) Facebook posts about the dates and times of the various live events at the hotel.

Email from Officer Wilkinson to the Licensee dated 17 November 2015

134. Ms Wilkinson requests the Licensee to confirm the licensed boundary of the hotel and whether or not it includes the outside area of the hotel.
135. Ms Wilkinson advises that a review of the LGNSW system showed a plan of the hotel that was submitted in relation to the minors area authorisation in April 2014, which depicts the boundary as being the "whole internal part of the hotel" but that there were "no further plans incorporating the outdoor area".

Submission from Sergeant Robert Moore, Licensing Coordinator, Far South Coast LAC of NSW Police to LGNSW dated 26 November 2015

136. Police contend that the hotel licence for the Premises was granted on 11 July 1952 and that Ms Michelle Coric was appointed as the licensee on 16 December 2014.
137. Police describe the hotel as a "single storey structure with a private residence" that also has accommodation facilities.
138. Police note that on the northern end of the building there is a room "which has large opening doors which open up into the beer garden area which is located at the rear of the premises on the north western side of the hotel" and that there are "a number of private dwellings which are located behind the hotel on a general westerly direction from the venue".
139. Police note that the Complaint lodged in September 2015 by the Complainant and two other Authorising Residents who reside behind the hotel was based on the "volume of the music being provided by the hotel".
140. Police note that this hotel "re-opened" on Saturday 13 December 2014 "after having been closed for several months".
141. Police state that they attended the hotel on 13 December 2014 to speak with the Licensee regarding Police expectations but the Licensee was "not present" so Police spoke to the manager, Ms Rose Flavell.
142. Sergeant Moore states that the Complainant and Ms Gerdes contacted Police on 30 June 2015 and 3 July 2015 concerning the "loud music coming from the hotel". Police submit that the complaint centred on the "volume of the entertainment and the fact that the music [that] was initially provided on a monthly basis was now occurring fortnightly" and that there was a three day "music festival" planned for 24 July 2015 to 26 July 2015.

143. Police state that there was also entertainment planned for the weekend of 4 July 2015 and that the Complainant and Ms Gerdes expressed concerns about an issue on Facebook regarding "veiled" threats as a result of them opposing the music being provided at the hotel.
144. Police submit that on this occasion, they advised the Complainant and Ms Gerdes of the options available by way of a disturbance complaint to LGNSW. Police note that the Complainant and Ms Gerdes stated that they wanted to "see how the weekend would go" and preferred that the Licensee was "NOT" spoken to by Police prior to the entertainment scheduled to take place on the weekend of 4 July 2015.
145. Police state that on 9 July 2015, both the Complainant and Ms Gerdes contacted Police. The Complainant informed Police that the "music was still loud and she could hear the "thump" of the music but in her opinion it "did not seem to be as loud as it had been on other occasions".
146. Police state that the Complainant indicated that she was "approximately 100 metres from the hotel" and that her residence has a "solid brick wall, which may assist in dampening the noise levels".
147. Police submit that Ms Gerdes stated that the "music started around 7:00pm on the Saturday night of 4 July 2015 and that she felt it was excessive and it did upset her rest and repose". Police state that Ms Gerdes indicated that the "thump" of the music was "clearly audible within her residence" and that it stopped around 11:00pm but that she "couldn't be quite sure".
148. Police state that the Licensee was contacted by Police at 10:50am on 9 July 2015 and informed of that noise complaint. Police submit that they discussed with the Licensee options such as "reducing the bass levels, the repositioning of the speakers away from the beer garden area, the closing of the external doors". After the Licensee raised an issue of the order of occupancy, Police advised the Licensee that "the hotel had been closed on and off for a number of years and that live music at the hotel was more the exception than the rule for the last 10-15 years".
149. Police state that they attended the hotel at 10:15pm on 4 July 2015 for a walkthrough of the Premises and that the Licensee informed Police about a petition organised by the neighbours that was allegedly trying to stop the hotel from providing live music.
150. Police state that they attended the hotel at 8:30pm on Saturday 11 July 2015 for a further walkthrough during which the manager on duty "spoke extensively" about the noise complaints being made about the hotel when live entertainment was provided.
151. Police submit that at about 10:30pm on Saturday 12 September 2015, Police were called to the Premises as a result of a noise complaint. Upon attendance, Police noticed that a live band was playing "inside the hotel" and deemed the noise "NOT to be offensive", but requested the Licensee to close the doors that lead from the hotel to the beer garden as they were "open and face towards the residences of the victims".
152. Police state that on 16 October 2015, Police attended the hotel after the Licensee received a copy of the Complaint from LGNSW and Police provided "similar advice" as to that provided by Police to the Licensee on 9 July 2015.
153. Police state that they received a copy of this Complaint and the response from the Licensee. Police note that the Licensee is "placing a great deal of emphasis on the times that the music is being played and the time that it ceases".

154. Police submit that although "time" is a consideration when assessing whether music is deemed offensive, "it is not the only factor taken into account".
155. Police submit that if the "rest and repose of the neighbours is being affected by the music being provided by the hotel", then that as a "standalone issue" could result in the music being deemed as "offensive."
156. Police note the statement made by the Licensee on page 3 of her submission dated 9 November 2015 and submit that by the Licensee's "own admission more entertainment is being provided at the hotel than previous licensees".
157. Police submit that the Licensee has made "further contradictory statements" in her submission when she stated that previous licensees have not had any issues with the residents from Wiltshire Lane but in the "preceding paragraph makes reference to an issue between the previous licensee (Ms Cavanagh) and Ms Gerdes".
158. Police submit that there are "numerous issues" raised by the Licensee in her response but that the "main issue which forms the basis for the complaint lodged with [LGNSW] is the issue that noise (music) coming from the hotel is disturbing to the residents that live in close proximity to the hotel".
159. Police submit that as a result of the "close proximity of the residences of the complainants to the hotel" there will "likely be continuing complaints when entertainment is provided at the hotel". Police state that previous attempts to conciliate the matter "have not worked".
160. Police submit that they downloaded a printout of messages generated by the NSW Police Computer Aided Dispatch System (CADS) requesting Police to attend the Hotel between 1 December 2014 and 26 October 2015. Police submit that during this time, there were only eight dispatch messages created under CADS in relation to the hotel and five of those eight messages "related to noise complaints originating from the hotel".
161. Police submit that reports sourced from the NSW Police Computerised Operational Policing System (COPS Reports) revealed that between 1 December 2014 and 26 October 2015, there were a "total of 12 events" reported in relation to Police walkthroughs of the hotel.
162. Police submit that all parties involved in the Complaint have been spoken to and that they all "agree that they do not want the music to cease but they want it managed" so that it does not unduly disturb them whilst in their private dwellings.
163. Police contend that they have provided the Licensee with suggestions as to how to reduce the impact of the noise on the neighbours on two separate occasions, and it is "not known" whether the Licensee has adopted any of those suggestions. However, given that a disturbance Complaint has been lodged, Police submit that "it would appear that they [these suggestions] were either not acted upon or didn't assist in resolving the issue".
164. Police acknowledge the submission made by the Licensee regarding the provision of entertainment at the hotel being an important factor in allowing the Licensee to run the hotel as a profitable concern but submit that "any entertainment provided must take into account the welfare of neighbours which, in this case, does not appear to be occurring".
165. Police submit that a "perusal" of the hotel's liquor licence shows that "it does NOT have any LA10 noise conditions currently attached to it so although the noise readings

provided may give some insight as to the noise levels it would not constitute any breach of licence".

166. Police submit that they "feel that a common ground needs to be reached and whether that can be done by way of additional licence conditions restricting times/types of music/locations that entertainment can be provided is an issue that the Authority needs to establish".
167. Police also note that the "complainants do not wish to see the entertainment cease at the hotel but merely wish to ensure that any entertainment provided is done so in a courteous manner bearing in mind the relative close proximity of their houses to the hotel".

Email from the Licensee to Officer Wilkinson dated 27 November 2015

168. The Complainant contends that she has "got a quote for an acoustic consultant" at \$3,800 for a full report and that she is "in the process of trying to raise these funds and get a professional in to help ease the stress this is causing".

Email from Officer Wilkinson to the Licensee dated 1 December 2015

169. Ms Wilkinson requests that the Licensee advise when the acoustic consultant has been booked in order to update LGNSW records.

Email from the Complainant to Officer Wilkinson dated 6 December 2015

170. The Complainant submits that "there is nothing to add" to the submission made by Police.
171. The Complainant attaches the latest decibel reading taken by the Complainant on 4 December 2015 and states that Police were notified, however the noise "went on until 2335 hrs".
172. The Complainant submits that there "seems to be no effort on [the hotel's] part to reduce the noise levels" despite being "in the process now of monitoring all entertainment noise levels with legally approved sound monitors to address this issue".
173. The Complainant submits that "the latest reading equates with the readings provided with our submission".
174. Attachment 1 to this submission from the Complainant is a document with decibel readings taken by the Complainant, using *SPLnFFT*, between 9:00pm and 9:30pm on 4 December 2015 from No.10 Wiltshire Lane, which the Complainant submits is over 100 metres from the hotel. The Complainant submits that "experience shows that the noise would be 10dB greater at No.4 Wiltshire Lane" and contends that the occupant of No.4 heard that a band would be playing at the hotel and "went fishing". The Complainant contends that Police were notified of the noise at 11:10pm but that the noise continued until 11:35pm. [The Authority notes that the Complainant does not specify who notified Police of the noise from the hotel on this occasion.]

Email from the Complainant to Officer Wilkinson dated 14 December 2015

175. The Complainant attaches the latest decibel reading taken by the Complainant from Friday 12 December 2015, contending that hotel management had made "no effort to

reduce the noise level" and that after spending a while in No.6 Wiltshire Lane, "it was as if the band was inside the house".

176. The Complainant enquires of Ms Wilkinson as to the need for future decibel readings and the next stages in the complaint process. The Complainant contends that "residents are getting depressed and feel their concerns are being ignored" by the hotel and that "there is nothing they can do to stop this".
177. Attachment 1 to this submission from the Complainant is a document with decibel readings taken by the Complainant, using *SPLnFFT*, between 9:50pm and 10:55pm on 12 December 2015 from No.10 Wiltshire Lane, which the Complainant submits is over 100 metres from the hotel. The Complainant contends that the band stopped at 10:30pm; that the reading taken after this time is the background noise; and that Police were called at 8:23pm and 9:14pm and that this "did not make any difference to the noise level".

Email from Officer Wilkinson to the Licensee dated 18 December 2015

178. In this email, Ms Wilkinson advises the Licensee that the "complainants are still raising concerns regarding the disturbance being experienced from the hotel" and reminds the Licensee that the hotel is subject to a formal noise disturbance complaint under section 79 of the Act, meaning that "vigilance should be applied when hosting live entertainment" at the Premises.
179. Ms Wilkinson requests that the Licensee provide confirmation, by no later than 4 January 2016, that an acoustic consultant has been engaged by the hotel. Ms Wilkinson informs the Licensee that LGNSW will contact Police and request that Police conduct some observations on the Premises on behalf of LGNSW during the Christmas period, to ensure fairness to all parties involved.

Email from the Complainant to Officer Wilkinson dated 22 December 2015

180. The Complainant contends that over the past weekend, the hotel had an act scheduled for Friday night but "we didn't hear a thing" and on Saturday night "the band packed up early but returned on Sunday afternoon (3:00pm to 8:00pm)".
181. The Complainant contends that there were "hardly any cars in the car park on Saturday night or Sunday afternoon" and that this indicates that the hotel is "disturbing our peace and quiet for only a few patrons".
182. The Complainant contends that the decibel reading taken by the Complainant on Sunday 20 December 2015 "shows that they [the hotel] still have a total disregard for the noise concerns" and that as a result of this "continuous disrespect" one couple who live near the Premises are "considering putting their house on the market" as they feel that "even if a noise limit is put on the hotel, this would not be adhered to". The Complainant states that "this view is also shared by other residents".
183. The Complainant contends that the couple considering selling their home have "also been targeted by the hotel about other issues" in which a Council Ranger has been involved, in relation to claims that this couple's dog was "pooping in the laneway" and their cat "damaging cars in the car park".
184. Attachment 1 to this submission from the Complainant is a decibel reading taken by the Complainant, using *SPLnFFT*, on "Sunday afternoon" [20 December 2015] from No.10 Wiltshire Lane. The Complainant contends that this reading was taken at the end of the

band's session and that the band also played on Saturday evening but possibly "due to the lack of interest (only a few cars in the car park) packed up early".

Email from the Complainant to Officer Wilkinson dated 4 January 2016

185. The Complainant contends that "New Year's Eve was particularly loud" and that Police were called but were not able to attend the hotel due to other incidents. The Complainant contends that after the music stopped there were "fights and arguments" on the Premises, with the last argument taking place at "0400 hrs with a woman and a guy yelling abuse and a dog frantically barking".
186. The Complainant contends that on 2 January 2016, during the band *Gang Green's* set, abusive lyrics were heard that "seemed to be directed very loudly towards the residences" and that the lyrics were "F*** off and die, f*** off and die, die, die". The Complainant states that this was "disturbing and intimidating".
187. Attachment 1 to this submission from the Complainant is a document with decibel readings taken by the Complainant, using *SPLnFFT*, on New Year's Eve 2015 from No.10 Wiltshire Lane, which the Complainant submits is over 100 metres from the hotel. The Complainant contends that the average background noise level was 40dB and the average noise level with music playing was 52dB. The Complainant contends that Police were called at 12:19am and 1:20am on 1 January 2016, but were unable to attend the hotel due to other incidents.
188. Attachment 2 to this submission from the Complainant is a decibel reading taken by the Complainant, using *SPLnFFT*, on 2 January 2016 from No.10 Wiltshire Lane. The Complainant contends that Police were called at 9:00pm, 10:30pm and 10:35pm and that the "spike" in the decibel readings at about 10:30pm "is when the abusive lyrics were heard".

Email from Officer Wilkinson to the Licensee dated 5 January 2016

189. Ms Wilkinson notes that no response to the email dated 18 December 2015 has been received and requests that the Licensee advise on movements with hiring the services of an acoustic consultant to conduct noise testing at the Premises.
190. Ms Wilkinson also informs the Licensee that "regular noise complaints" are still being received and that if an extension of time is needed, LGNSW require a written request for an extension. Ms Wilkinson advises the Licensee that a response to this email is required no later than Friday 8 January 2016.

Email from the Licensee to Officer Wilkinson dated 9 January 2016

191. The Licensee submits that she has "been trying to keep everything low key" for the neighbours and describes the complaints as being "from the same people, almost nuisance complaints like a serial complainer".
192. The Licensee submits that she is "endeavouring to book in the experts" and that it was "planned before Christmas" but that she was "scammed out of \$23,000".
193. The Licensee states that she "has a Police event number" in relation to the alleged "scam" [NSW Police COPS event number E60435467] and the reason for the late reply to Officer Wilkinson's email is that she has been "consumed with statements" seeing as the event happened "a week before Christmas".

194. The Licensee submits that hotel management are "waiting for the experts to re-open after Christmas" and that she would like the acoustic experts to get a decibel reading from the lounge rooms of "each of the complainers" from where the complainants contend that the noise is "unbearable". This, it is submitted, will enable the Licensee to get a "better understanding on the noise level" in order to "control that level".
195. The Licensee submits that it is now "peak season" and that the live music "has been stopped before 11:00pm". The Licensee contends that the "whole community (except three, which are the complainers)" are "loving what we are doing for the community"; that the hotel has had only "1 fight in 12 months" which resulted in three people being barred from the Premises for 12 months; and that the hotel is a "family pub with amazing energy, great atmosphere" which targets middle aged people and provides "many jobs for locals".

Email from Officer Wilkinson to the Licensee dated 15 January 2016

196. Ms Wilkinson advises the Licensee that regardless of the identity of the complainants and their reasons for making complaints against the hotel, "there still appears to be undue disturbance coming from the hotel" and that even though this is peak season for the hotel, "there should be a level of care provided to the neighbours so they too can enjoy their homes and the location that they live in". Ms Wilkinson states that "it is also important that you can run a successful business that caters for the needs of the community".
197. Ms Wilkinson requests that the Licensee provide the following documents by no later than Friday 22 January 2016:
- a) Details of the acoustic consultant whom the hotel intends to hire
 - b) A rough idea on when the hotel will be financially viable to hire the services of the consultant
 - c) A list of live entertainment that the hotel has hosted since the "beginning" of this Complaint on 9 November 2015.

Email from the Complainant to Officer Wilkinson dated 18 January 2016

198. The Complainant contends that "they [the hotel] just had a man with a guitar" but the Complainant took a decibel reading on this occasion "just in case they [the hotel] decided to do their own reading on a quiet night".

Email from Officer Wilkinson to the Complainant dated 21 January 2016

199. Ms Wilkinson advises the Complainant that the Licensee has been emailed with some requests from LGNSW. [The Authority notes that Officer Wilkinson does not specify the nature of these requests.]

Email from the Complainant to Officer Wilkinson dated 21 January 2016

200. The Complainant states that she is "not looking forward to the coming week, a band on Saturday, two on Tuesday and another the following Saturday".

Email from the Complainant to Officer Wilkinson dated 25 January 2016

201. The Complainant submits that "this would have been the loudest the noise has been so far". The Complainant contends that the music started in the afternoon at 1:00pm which was "not too bad". It was then "up and down until 5:00pm" and in the evening it "started at 6:00pm and went until 11:00pm".

202. The Complainant contends that Police were called by "all the residents" and then by herself at 8:30pm. The Complainant contends that Police attended the hotel and the noise "reduced for a while, then went back up".
203. The Complainant contends that after Police attended, the resident of house No.4 Wiltshire Lane, Mr Gary Newman, had a "drunken female yelling" at the back of the hotel, "F***ing neighbours, let's go and bang on their doors" whilst trying to get other patrons to join her.
204. The Complainant contends that Mr Newman, who is an "easy going man", felt "so threatened by this that he sat in his lounge room with a spade and brick at his side for defence".
205. The Complainant questions how the lady yelling about neighbours knew it was the neighbours who had complained and why the Licensee or bar staff did nothing to prevent or stop her behaviour.
206. The Complainant contends that Mr Newman would like to have a meeting with Sergeant Bob Moore, Licensing Coordinator from Narooma Police Station as Mr Newman lives "closest to the Hotel" and is feeling "more vulnerable than the rest of us".
207. The Complainant questions when the Licensee "is going to take this seriously and act in a professional manner" and submits that "we [the residents] do not feel safe, especially with Australia Day on Tuesday with its full day of music and drinking".
208. The Complainant concludes with the submission that "this is turning into a bit of a frightening situation".
209. Attachment 1 to this submission from the Complainant is a document containing decibel readings taken, using *SPLnFFT*, by the Complainant on 23 January 2016 from No.10 Wiltshire Lane, which the Complainant submits is over 100 metres from the hotel. The Complainant contends that this is the "loudest the music has been so far".

Email from the Complainant to Officer Wilkinson dated 27 January 2016

210. The Complainant contends that after returning from being away in the afternoon and early evening, the music noise was "full on again, the same duo, *Intensity*, that were on Saturday".
211. The Complainant contends that her sister, to whom she was speaking on the phone at the time, could hear the music "clearly" through the phone.
212. The Complainant states that Sergeant Bob Moore, Licensing Coordinator from Narooma Police Station, also attended the Complainant's residence and "experienced the noise for himself".
213. Attachment 1 to this submission from the Complainant is a decibel reading taken by the Complainant, using *SPLnFFT*, on the night of 26 January 2016 from No.10 Wiltshire Lane. The Complainant contends that the group on this occasion (the *Intensity* duo) and the noise was "way above the background level of 45dB".

Email from Sergeant Bob Moore to Officer Wilkinson dated 27 January 2016

214. Police submit that on 26 January 2016, they spoke "at length" with the Complainant and Authorising Resident, Ms Susanna Gerdes. Police state that the Complainant telephoned

Police at around 9:00pm and lodged a complaint. Police submit that they then telephoned Ms Gerdes, who also "confirmed that the noise in her opinion was excessive".

215. Police submit that they attended the homes of the Complainant and Ms Gerdes around 9:20pm in an unmarked car and made observations inside the houses of the Complainant, Ms Gerdes and Mr Newman.
216. After making observations for almost an hour, Police state that "the noise WAS excessive despite the fact that it was around 10:00pm and it was Australia Day" and that the residents "do have a basis for complaining".
217. Police state that they then spoke to the Licensee at around 10:20pm and "when requested, they stopped the band". Police advise that they have not informed the Licensee but that they intend to issue a noise abatement direction to the Licensee for a period of seven (7) days instead of the usual 28 days as a matter of fairness.

Email from Sergeant Bob Moore to Officer Wilkinson dated 28 January 2016

218. In this correspondence Sergeant Moore states that at about 9:00pm on Tuesday 26 January 2016, NSW Police received a community based noise complaint in relation to the hotel and attended the vicinity of the hotel in an unmarked Police vehicle at around 9:30pm to make observations of the Premises and to gauge the volume of the music being played.
219. Upon arrival, Police observed a band performing in the "lounge area of the hotel" which is located at the northern end of the hotel and has "opening folding doors which open into the outdoor beer garden area". Police note that they observed "a relatively small crowd in attendance (estimated to be around 30 patrons) in the lounge area and beer garden area".
220. Police state that they observed that the volume of the music being played was "loud and the bass level being played was very loud and had a repetitious "thumping" sound to it".
221. Police state that the music was "clearly audible in the Police vehicle despite the fact that the window was wound up" and that Police were located in Wiltshire Lane, Bodalla which is a "private road which runs off the Princess Highway in a generally westerly direction towards a number of dwellings which are located at the rear of the hotel".
222. Police state that assessments were made "in various rooms of the dwellings" and ensured that the "windows and doors of the premises were closed whilst making these assessments". Police state that the music from the hotel "was clearly audible within all three premises" and that the continued "thump" from the bass was "repetitious, constant and rhythmical" with the only respite coming from "in between songs".
223. Police advise that in one of the affected residences, the occupant had the television "turned up to almost maximum level so the televised cricket could be heard" but the music from the hotel was "clearly able to be heard above the television volume".
224. Police state that despite the fact that it was about 10:00pm on Australia Day, the music from the hotel was "deemed to be excessive by the attending Police and the complaints received from the residents were justified".

225. Police state that the "amplified music being emitted from the hotel could clearly be heard within the three affected private dwellings and was considered to be excessive and offensive".
226. Police note that at about 10:20pm on Tuesday 26 January 2016, Police attended the hotel and advised the Licensee that Police had been called there for a complaint about the music levels and that Police had been assessing the noise levels from within the affected dwellings for almost the last hour. Police report that the Licensee stated that the band was due to finish after a "couple of more songs" but instead agreed to the Police suggestion to stop the music.
227. The Noise Abatement Direction directs the Licensee to "cause the emission of any offensive noise from the premises to cease" and advises that the Noise Abatement Direction is to remain in effect for a period of 10 days, with the direction ceasing at 10:20pm on Friday 5 February 2016.
228. The Noise Abatement Direction advises the Licensee that:
- a) Under the *Protection of the Environment Operations Act 1997* offensive noise can occur at any time.
 - b) In order to "avoid any future legal proceedings" it is "extremely important" that any amplified music or entertainment occurring inside the hotel is "kept to a low level".
 - c) Persons within the Premises "should be able to have a conversation and hear one another".
 - d) Speakers associated with any amplified music or entertainment "should face away from the neighbouring properties".
 - e) Any external doors "should not be left open whilst amplified music/entertainment is occurring within any part of the premises".
229. Attachment 1 to the Police submission is the Noise Abatement Direction dated 28 January 2016.
230. Attached to the Noise Abatement Direction is a copy of section 276 of the *Protection of the Environment Operations Act 1997* regarding the issue of noise abatement directions.

REVIEW APPLICATION MATERIAL

Review Application Form dated 3 March 2016

231. The Review Applicant states on the form that she is the "licensee of Bodalla Arms Hotel" and is aggrieved by "financial hardship". The Review Applicant is seeking to "revoke" the Reviewable Decision.
232. Annexure 1 to the Review Application Form is a copy of the three new licence conditions imposed by the Delegate in the Reviewable Decision.

Submission Letter from the Review Applicant to LGNSW dated 29 February 2016

233. In a letter addressed to LGNSW rather than the Authority, the Review Applicant (the Licensee) advises LGNSW that she wishes to "appeal the decision made on 15/2/16, on the grounds of the severity of the decision, and false or misleading information was obtained".
234. The Review Applicant contends that the hotel has operated at its present site since 11 July 1952 and the present owner and Licensee commenced operations at the hotel on 13 December 2014.

235. The Review Applicant submits that the hotel "pre-dates" the Complainant, who has lived at her residence for "one and a half years".
236. The Review Applicant contends that an extension of the sunroom was added to the hotel in approximately the 1970s or 1980s and that there have been no changes to the Complainant's residence.
237. The Review Applicant contends that the amplified music "has not increased by the present Licensee" and that currently amplified music in the summer occurs "once a week, on a Saturday, sometimes on Sundays".
238. The Review Applicant contends that the previous licensee, Ms Janelle Cavanagh stated in a document annexed to this submission that she had "regular amplified music every weekend" from 7:00pm to 11:00pm on Friday and Saturday and between 3:00pm and 8:00pm on Sunday afternoons.
239. The Review Applicant contends that the present Licensee has "less music now then [sic] the previous licensee of the hotel". The Review Applicant notes her admission that the hotel had "more live music then the previous licensee" but this was because she was "going on the advice" of Police and "wasn't in contact with the previous licensee" at the time.
240. The Review Applicant notes the submissions from Police dated 9 July 2015 and 12 September 2015 in relation to the Complaint and contends that since the Complaint was made, she has "made an effort to try and keep the level of music down to a minimum".
241. The Review Applicant contends that she has also "changed the direction of where the bands set up", changed the direction of the speakers so that they now face "the bar inside the hotel", and taken various walks down the laneway towards the resident complainants' houses "checking music levels" and then reporting back to the band if anything needs to be adjusted. The Review Applicant contends that if she cannot do these walks, someone else is appointed to do this walk for her and report back.
242. The Review Applicant contends that the hotel has a Facebook page that "promotes live/amplified music with 5-piece bands" and that the hotel "recently had a 7-piece band playing in the same room and we didn't get one complaint".
243. The Review Applicant contends that this was the "same day" that Police attended the hotel asking whether the hotel was hosting a wedding reception on that occasion, which the hotel was not [The Authority notes that the Review Applicant does not specify the date].
244. The Review Applicant contends that "someone else shared a posting" on the hotel's Facebook page and that it was not the hotel's Facebook administrator who degraded the Complainants by referring to them as "dickheads" for making the Complaint against the hotel.
245. The Review Applicant contends that she has not had any contact from the Complainant since May or June 2015 when the Complainant and her husband came to the hotel and spoke with the Review Applicant about the music.
246. The Review Applicant contends that she informed the Complainant and her husband that she would "try and keep the levels down" but that this was the "last time" she spoke with the Complainant about the situation and "not the several that has been suggested".

247. The Review Applicant states that she has not met Ms Susanna Gerdes but has met Mr Gary Newman on several occasions as he "used to drink" at the hotel.
248. The Review Applicant contends that Mr Graeme Newman, Ms Joanne Rugg and herself had a meeting with Mr Gary Newman (not long after the meeting with the Complainant and her husband) as the Review Applicant was "concerned" as a result of the previous meeting with the Complainant and her husband, that the hotel was "making excessive noise".
249. The Review Applicant contends that during this meeting, Mr Gary Newman stated that the "music wasn't an issue for him" but the neighbours went and saw Gary Newman prior to the meeting and asked him to "side with them". The Review Applicant contends that the Complainant stated that Gary Newman left the house because of the volume of the music.
250. The Review Applicant contends that during the meeting, Gary Newman told them that "the music wasn't a problem for him" and that the "neighbours could do more for him than [sic] what the pub could".
251. The Review Applicant contends that Gary Newman has two houses and that it is "his choice to stay in the other house sometimes, as he does a lot of fishing and it's just easier to stay at the other house when he goes fishing as he finishes late at night or early morning".
252. The Review Applicant contends that the "only time" that the hotel would learn of a complaint was when the Police would attend to assess the noise level.
253. The Review Applicant contends that "on every occasion" Police would deem the music "NOT offensive NOT loud". The Review Applicant contends that even on the night when Sergeant Moore was doing the assessment [26 January 2016], a complaint was made and Police arrived and "still deemed the music NOT offensive or loud".
254. With regard to the Noise Abatement Direction dated 28 January 2016, the Review Applicant contends that Police stated that it was not a necessity in response to this direction that the Review Applicant cancels the live bands, but that the hotel had to "just be mindful of the volume and keep the noise down".
255. The Review Applicant contends that on "the Saturday" [the Authority notes that the Review Applicant does not specify the date] staff at the hotel "were making sure there were no complaints" by walking the lane all night and making sure the noise level was a "good level".
256. The Review Applicant contends that Police showed up in response to a complaint 30 minutes earlier, however "the band had been finished for 45 minutes" and Police could "clearly see all the equipment packed up".
257. The Review Applicant contends that on this night it was Ms Donna Thomas who was walking Wiltshire Lane, checking the music levels and reporting back.
258. The Review Applicant contends that in November [apparently a reference to November 2015] a quote was obtained from an acoustic consultant and that more time was needed to "sort out the money". The Review Applicant submitted that "in a couple of weeks with the sale of our little café, we could get an acoustic report done".

259. However the Review Applicant claims that on 8 December 2015, the Review Applicant and her husband "were scammed out of \$23,000, Police event no. E60435467". The Review Applicant submits that she and her husband may "never get this money back" and that "this is why we haven't obtained the acoustic report".
260. The Review Applicant submits that the hotel is a "small country pub" and stopping amplified music at the hotel "is going to cause financial hardship".
261. The Review Applicant contends that amplified music is needed to "draw in the local crowds" seeing as the hotel does not have poker machines, Keno or TAB.
262. The Review Applicant contends that the hotel's "poker machine license" [sic] was "sold off some years ago and we cannot get the licence back". The Review Applicant contends that the hotel provides amplified music for "1 night a week for 3 hrs" and that this music is the hotel's "draw card to get the locals, farm workers, dairy farm workers in for a night of good old pub music". The Review Applicant states that the hotel uses its courtesy bus service to "pick up and drop off all our locals".
263. The Review Applicant submits that Police informed her that the music at the pub was "more the exception that the rule for the last 10-15 years" but contends that Ms Janelle Cavanagh, the previous licensee from 1 July 2011 to 9 October 2014, informed her that the hotel "used to have amplified music every weekend".
264. In response to the Police submission of 26 November 2015 that between the period from 1 December 2014 and 26 October 2015, eight messages were recorded by Police with five relating to noise complaints originating from the hotel, the Review Applicant counters that the hotel was not open on 1 December 2014 and "didn't re-open" until 13 December 2014.
265. The Review Applicant contends that the Complainant's statement regarding a female yelling at the back of the hotel the words, "F***ing neighbours, let's go and bang on their doors" is "fraudulent" and "didn't happen".
266. The Review Applicant questions the Complainant's ability to determine whether the female in question was intoxicated and seeks evidence to support the Complainant's claim. The Licensee states that she was at the hotel "the whole night" and "didn't hear anything like that being yelled out from anyone" at the hotel.
267. The Review Applicant contends that she has "never abused" any of the resident complainants "over any back fence". The Review Applicant requests further information regarding the alleged incident, and to view any Police reports made in relation to that incident.
268. The Review Applicant contends that the Complainant has posted this claim about being abused over the back fence by the Licensee on the hotel's Facebook page and that this has become a "personal vendetta now with her false statements".
269. The Review Applicant concludes with the following submission:

We are a small country pub, our live music is vital part our business and the community. This decision to stop live music at Bodalla Arms until we get an acoustic report is going to cause financial hardship. We are in a catch 22 situation, can't afford the minimum needed of approx. 10,000 (for the report and the amplifier limiter) but we can't make that sort of money as we aren't allowed amplified music such as a band. We Are in the process of putting theatre curtains in the room, changing the direction of the way the door opens so we can leave the door closed a bit and finally putting up a hedge around the pub. All these changes will help limit the noise level the complainants say they are experiencing.

270. Annexure 1 to the Review Application is a letter from Ms Janelle Cavanagh, the previous licensee of the hotel. Ms Cavanagh states that she was the licensee of the hotel from 1 July 2011 until 9 October 2014 when the Review Applicant bought the freehold in the building in which the Premises is located. Ms Cavanagh contends that during her time as licensee, the hotel held "regular live entertainment every weekend" between:
- a) 7:00pm and 11:00pm on Friday and Saturday
 - b) 3:00pm and 8:00pm on Sunday.
271. Ms Cavanagh contends that the entertainment provided at the hotel during her tenure as licensee included bands, solo and duo artists, and electric and acoustic sets.
272. Ms Cavanagh contends that during the first year of holding the licence she had "a number of issues" with a neighbour, Ms Susanna Gerdes, who would "come to the hotel within an hour of the entertainment starting and start abusing staff, patrons and entertainers".
273. Ms Cavanagh contends that after about "six months of continued harassment" from Ms Gerdes, she (Ms Gerdes) finally agreed to "sit and talk" to Ms Cavanagh and Police.
274. Ms Cavanagh contends that during this process, Ms Gerdes agreed that "it was not how loud the music or patrons were, it was the BASS that was the problem". Ms Cavanagh contends that she "agreed to keep the BASS at acceptable levels" and that Ms Gerdes would "ring and politely ask me to lower the level" if they were "still unacceptable" for Ms Gerdes.
275. Ms Cavanagh contends that the next two years "went without further issue" except for when Ms Gerdes complained that she could hear the pool/snooker balls being hit too hard on the hotel Premises.
276. Ms Cavanagh contends that prior to trading, Ms Gerdes had "made it known" to Ms Cavanagh that she (Ms Gerdes) "did not believe in live entertainment in venues".
277. Ms Cavanagh contends that the hotel has no forms of gaming, is family friendly and "relies on" live entertainment to attract patrons.
278. Annexure 2 to the Review Application is a letter from Ms Donna Thomas, a regular patron of the hotel. Ms Thomas contends that she has been attending the hotel "for quite a long time" and would sit under a large tree close to the rear fence as a result of feeling that this was the "safer" place to sit due to her melanoma cancer.
279. Ms Thomas states that "I never in the time I've been going out there heard nor saw anybody yell nor down at the rear fence facing the residences [*sic*]" and that she arrives at the hotel "early" to give her time to "set up and enjoy" her evening meal there with time to spare.
280. Ms Thomas contends that she is the only female "known to myself" and hotel staff that goes down near the residences at any time; that she does "not drink alcohol at all"; and that she "did not go to cause menace on any level" but instead went down "to work out which noise was the most offensive/annoying" in order to have the band members "adjust accordingly".
281. Ms Thomas contends that she is "well known by all patrons" and that in her time at the hotel she has "never seen any aggressive behaviour, bad language nor any arguments by any local patrons nor visitors [*sic*]".

282. Ms Thomas contends that visitors come to the hotel "regularly for the non-violence and calm and friendly atmosphere".
283. Ms Thomas contends that there have been times that the owner feels the band is too loud and asks "me or the drummer's wife to signal to bring them down in volume". As a result, Ms Thomas states that she "cannot say the owners are ignorant to the volume at all".
284. Ms Thomas contends that after speaking with the hotel owner and band members, it had "been agreed that all bands will now turn speakers to face towards the bar" instead of facing the beer garden "in an effort to cut down noise further travelling towards the homes".
285. Ms Thomas contends that the "only large group of female drinkers" was during early December and that they were the "most intoxicated females" but they did not come down into the beer garden at any time. Ms Thomas contends that these women "just danced and had good clean adult fun" on the rear verandah.
286. Ms Thomas contends that she stayed in the beer garden "all evening" as a result of having two broken toes and the dance area being very crowded. Ms Thomas contends that it was only herself and the drummer's wife in the "entire area all evening".
287. Ms Thomas contends that on "the 30th February 2016 [*sic*]" she was present at the hotel while a band called the *Nashberries* played. Ms Thomas had made four trips down to see how loud the music appeared to nearby residents. Ms Thomas contends that during the last song a complaint was made by a local resident, and that she and the band were still at the hotel when the Police arrived as they were waiting for a bad storm to pass so that they could finish packing their equipment into the cars. Ms Thomas contends that this gave the impression to Police that "we were just packing up due to just finishing"; however one of the band members "had long gone".
288. Ms Thomas contends that she spoke to Police as she was not happy that the general duties officer had made the assumption that the music had just ended as "this was not the case".
289. Ms Thomas contends that she went down the back of the Premises three times two weeks later as a wedding reception across from the hotel had "managed to drown our band out totally at times". During these walks she noticed that "the house in the middle of the residential homes" had "opened all of it's [*sic*] doors, windows, and pulled it's [*sic*] curtains back fully whilst we played and there was no Police attendance to our knowledge, nobody home in the bottom home at all".
290. Ms Thomas states that she is a retired psychologist and acknowledges that this submission is a "matter of her word to be taken as honest or not" but contends that she would not "in any way cause shame nor embarrassment" for her ex-husband who is a retired NSW Police Sergeant Prosecutor or her family who have been in thoroughbred horse racing for 70 years.
291. Ms Thomas states that she does not believe that any of the residences were aware of her walking down the lane at all until recently, when they were informed that she had done so.
292. Ms Thomas contends that she walks "a lot further past the last house to see how far the noise travels" and states that she has "WIFI hearing aids" which give her a "clearer

sound than most people will get". Ms Thomas contends that the reputations of the hotel owners "are grossly affected with ours and their income also".

293. Ms Thomas contends that she has "always walked down to the homes as late as possible while the band is still playing to see the difference between when we start and the ending, when there is next to no highway traffic to mix with the decibels".
294. Ms Thomas contends that later in the evening when the traffic noises cease, it might seem like the hotel has increased the volume to annoy the residences but it is merely a result of the traffic ceasing to flow and use the highway. Ms Thomas contends that on an evening when 23 horse trucks and cars passed the hotel there was "no Police attendance at all as the gear changes and general highway noise blended with and washed out a lot of the band noise and decibels until late".
295. Ms Thomas concludes by stating that some of the complaints are "ludicrous" and that we are "stunned and stuck not knowing what to do in our situation".
296. Annexure 3 to the Review Application is a screenshot of the Facebook post made by Ms Jo Rugg to the hotel's Facebook page captioning a picture which states that "Norman" is a "dickhead" for making a noise complaint against the hotel.
297. Annexure 4 to the Review Application is a letter from Mr Graeme Newman dated 26 February 2016. Mr Graeme Newman states that he was present at the meeting with the Licensee and Jo Rugg when Gary Newman stated that "he wasn't that worried about the music, but was siding with the neighbours because they could do more for me than the pub ever could" and that he does not leave his residence because of the music but leaves because he does "a lot of fishing" and he has two houses so it suits him.
298. Annexure 5 to the Review Application is a letter from Mr and Mrs Robert and Sandra McCuaig, directors of Fallow Holding Pty Limited, Bodalla Dairy Shed and Cheese Factory dated 26 February 2016.
299. Mr and Ms McCuaig state in this letter that they "support the proprietors" of the hotel. They contend that:
 - a) The McCuaig family has owned property in Bodalla for "over 25 years"
 - b) Over that period live music has been "a traditional form of entertainment for both locals, visitors and tourists"
 - c) it is "inconceivable" that any person living near the hotel would not have been "well aware of the hotel's mode of service when they either purchased or leased their premises"
 - d) No resident within range of the hotel "has been around for more than 10 years, whereas the hotel has been in place for at least 106 years"
 - e) Council has zoned the land "Village Commercial" and the hotel is "a fully compliant use" as it is "not on residential or rural land"
 - f) The hotel is an "integral part of the local and wider South Coast community, well established and greatly admired"
 - g) The history of the village is a working village designed "circa 1860 to provide commercial and entertainment services to the surrounding dairy farms" and that until recently this part of Bodalla has never been a residential area.
300. Annexure 6 to the Review Application comprises numerous letters of support from local residents (discussed below).

Email from Ms Joanne Allard dated 22 February 2016

301. Ms Allard [the Authority notes that there is no information to indicate whether or not Ms Allard is a local resident of Bodalla] contends that she has "never in my frequently time spent at this venue" seen or heard any person call out or yell or go anywhere near the people or houses behind the pub. Ms Allard also states that the Complainants "obviously have nothing better to do than try to ruin one family" and do not realise the effect on the town or the innocent people who frequently attend this hotel.
302. Ms Allard states that she has "very bad hearing" but can still talk in front of the bands and submits that the bands "know the sensitivity of the noise volume for the neighbours and have gone as far as turning the band other way so it does not impede out to the beer garden [sic]".

Email from Mr James Thomson, a resident of Belowra Station dated 23 February 2016

303. Mr Thomson contends that he has been a patron of the hotel since he turned 18 in 2000 and has attended "many live music events".
304. Mr Thomson submits that in a small community like Bodalla "it is incredibly important that there is a venue like the local pub where people can gather to hear and often participate in live music" and that the hotel "has been a great supporter of up and coming local artists".
305. Mr Thomson contends that he has "never been to an event" at the hotel that was "distressingly noisy or in any way out of control and the bands have always finished by the allotted time".
306. Mr Thomson contends that the hotel has been there for "a century or more, operating in much the same way through its various owners" and that the "vast majority of locals support live music" at the hotel. Mr Thomson comments that "it must be noted that some of the complainants knowingly bought a house next to" the hotel and "should not have been surprised to experience some noise".

Letter from Ms Allison Aitken, a resident of Dalmeny dated 23 February 2016

307. Ms Aitken states that it "saddens and disheartens" her to hear the problems of this "local and well known pub" and contends that she has "never found" the music at the hotel to be "too loud" even with her "genetic condition" that makes her hearing "very sensitive". Ms Aitken contends that she has "NEVER" had a problem with her hearing in the hotel.
308. Ms Aitken contends that the Reviewable Decision will "punish" new and upcoming bands which "rely on local pubs", the hotel's business which "draws people to a small country town with not a lot in it" and the locals and people from neighbouring towns who attend the live music nights.
309. Ms Aitken submits that the Complainants "knew" when they purchased their properties that they would be living near a pub that plays live music. Ms Aitken contends that "not once" has she had to stand and yell as a result of the music being too loud, even when standing approximately 4 metres from the band.
310. Ms Aitken states that if "I am in your establishment and my ears aren't bleeding and I'm not going deaf how can others in the surrounding area complain".

311. Ms Aitken contends that she has never been at the hotel when a band has played past 11:00pm. Ms Aitken comments that if people "move into a property in the near vicinity of a Local Pub they would expect to hear music".

Email from Ms Donna McCleer, local resident of Bodalla dated 23 February 2016

312. Ms McCleer states that she was employed by the previous owner of the hotel and has been a patron for approximately "20 years" and contends that over this time has "never been to a live music event that could be deemed as over the top".

313. Ms McCleer submits that the hotel has been in its current location for "over 100 years" and that "if you move in close to a pub you would expect to hear some noise".

314. Ms McCleer contends that she has "never" heard the music so loud that, as a patron, she could not hear the person next to her.

315. Ms McCleer submits that the last two owners "always had the neighbours in mind when arranging live events" and states that the hotel is a "meeting place for a lot of locals".

Letter from Mr Stewart Mathie, local resident of Bodalla dated 29 February 2016

316. Mr Mathie states that he has lived in Bodalla for "eighteen years" and that the patrons who visit the hotel include "local residents, farmers and business owners as well as families looking for a venue that is close to home for them to visit on a weekend with their children".

317. Mr Mathie contends that the hotel has a "unique design" allowing families to sit outside with a view of the mountains "while their children have much room to play without a worry".

318. Mr Mathie submits that the venue provides a "meeting place for locals", allows people to have entertainment close to home and provides a courtesy bus for locals.

319. Mr Mathie contends that the Reviewable Decision would "have a great impact on the residents who enjoy patronising the pub" and that "local artists would be disadvantaged by not having this platform to be heard and gain exposure".

320. Mr Mathie contends that the live music "brings people from out of town" which benefits the hotel's business as well as other local businesses. Mr Mathie contends that Bodalla business has grown significantly and this is due to "what we have to offer, including the live music at the pub".

321. Mr Mathie expresses "support" for the hotel's live music and contends that the Reviewable Decision will "not only affect the local pub but all of the businesses in our small town as well as local artists who are looking for support and exposure".

322. Mr Mathie submits that the live music played at the hotel is an "integral part of our community" and believes that an agreement that satisfies all parties can be met "without the closure of the music".

Letter from Mr Brendon Houlahan, director of Audioary Records Canberra dated 26 February 2016

323. Mr Houlahan writes to provide his "support" for the appeal against the restrictions on live music currently being imposed and states that, as a working musician from a small NSW

town, he knows firsthand "how difficult it can be to get touring musicians to visit regional locations".

324. Mr Houlahan states that he is "disheartened" to see another small town lose the opportunity to have live musicians and contends that "there is a distinct ripple effect which leads to a disruption to the local economy when bands are disallowed".
325. Mr Houlahan submits that live music "brings such a positive effect on night life, particularly in smaller regions" and that the Premises has made a "concerted effort to ensure that sound disruption is kept to a minimum".
326. Mr Houlahan states that he hopes that an agreement can be reached which "will not come at the cost of live music and the joy it brings visiting Bodalla".

Letter from Mr Steve Tantala and Mrs Kerrie Tantala, local residents of Bodalla dated 25 February 2016

327. Mr and Mrs Tantala provide their "support" for the hotel and contend that it attracts "some of the region's best live performers to Bodalla" and travellers who also visit other businesses whilst also publicising the town as a tourist centre through the publicity surrounding the attractions.
328. Mr and Mrs Tantala state that they are in their sixties, have been in the area for over 10 years, and are of the view that the hotel provides a "level of entertainment that has been missing from this area".
329. Mr and Mrs Tantala state that they are "regular attendees" of the hotel's functions and contend that they are "well monitored and well run" and the patrons are "easily able to converse when music is being played".
330. Mr and Mrs Tantala contend that the noise levels at the hotel are "not of great disturbance even inside the premises".
331. Mr and Mrs Tantala conclude with the following submissions:
 - a) The hotel "provides the only such entertainment for many locals in the area"
 - b) The entertainment is "well managed, and not associated with excessive noise"
 - c) The functions "attract visitors to Bodalla"
 - d) Bodalla is "publicised as a tourist destination".

Letter from Mr David Pearce, local resident of Bodalla dated 24 February 2016

332. Mr Pearce states that he has "lived in the Bodalla area for the last thirty years" and had visited and stayed in the area for a further 10 years prior to that.
333. Mr Pearce states that he has been a patron of the hotel since 1986 and has attended the "vast majority" of musical performances that have been held there over many years.
334. Mr Pearce contends that there have "never been any complaints about live music at the hotel until 2011, when the hotel reopened" and live music returned.
335. Mr Pearce submits that the "music has not been exceptionally loud", that "you can hold a normal conversation at the bar" and that you can "hold a normal conversation on the back deck, near where the music is being played".

336. Mr Pearce states that "live music is one of the few things we have left to entertain us" and he "cannot believe that people move near a venue that plays music and then seek to try and stop the music" especially when the music "hasn't been" loud.
337. Annexure 7 to the Review Application is a copy of the Complainant's Facebook post [apparently posted by the Complainant on the hotel's Facebook page during June 2015], the full text of which states as follows:

There is not, nor ever has been, a move to stop music at the Bodalla Arms. All their neighbours wanted was for the volume to be turned down. Despite requests and advice from the Police, OLGR and neighbours to turn it down you have not considered doing this. Since the disturbance complaint was submitted at the end of September, your neighbours have experienced abuse shouted over the back fence (by the licensee), abuse shouted into the microphone (f... off and die, die, die – great when you are dealing with a cancer diagnosis), a drunken female trying to urge others to bash our doors down, and complaints about a cat damaging cars (!), and of course, music played about 5 times that of the guidelines every weekend or more. You have only yourself to blame for the present situation. In fact, when you heard a rumour in June that your neighbours were concerned about the noise, you acted in a very adult and professional manner, and organised a music festival. If anyone wants to see the reason for the decision from OLGR, I suggest that you go to their website, OLGR, liquor [sic], and recent decisions. I'm sure it will make interesting reading for you.

Letter of support from Dr Nicole Sides of Isis Fertility located in Sydney Avenue, Barton ACT 2600, dated 29 February 2016

338. Dr Sides provides her "strong support" for the hotel and submits that the hotel is "a great place to meet up with friends, and locals and visitors for a drink or for live music".
339. Dr Sides contends that the music is "only occasional and never very noisy", and that the hotel has "been there for over 100 years". Dr Sides submits that it is "expected that anyone buying or renting near a pub would know that there would be high loads of traffic particularly on Friday and Saturday nights, there would be noise from the local revellers, and live music".
340. Dr Sides states that she "does not support the loss of this valuable meeting place" and that she is appalled "that it is coming to a point where an acoustic consultant is required".
341. Dr Sides submits that this is "totally unreasonable, totally outside the norms of running public houses/pubs" and requests that "this very valuable local business which offers employment as well as attracting tourism to our local area, is retained".
342. Dr Sides concludes with the submission that "surely the value to the majority should outweigh [sic] 2 or 3 whingeing residents who are inconvenienced very rarely and to a very small degree".

Letter from Councillor Lindsay Brown, Mayor of Eurobodalla Shire Council dated 3 March 2016

343. Mayor Brown states that Council "encourages, supports and presents local musicians as part of our wider support of arts and creative practitioners" and provides examples of how Council supports local music and musicians.
344. Mayor Brown states that he understands that there is a "decline in live music venues across Australia, including those within Eurobodalla Shire" and that Council "encourages live music as part of our promotion of cultural and artistic programs and local business operators, such as clubs and pubs, play an integral role in providing entertainment experiences".

345. Mayor Brown also advises that it "might be worth" contacting the National Office for Live Music, established by the Australian Performing Rights Association, to find out more about campaigns to revitalise the industry and provides a link to their website.

CONSULTATION ON THE REVIEW APPLICATION

346. On Tuesday 8 March 2016, the Authority's General Counsel sent the entire Review Application material via email to the Complainant inviting any submissions or evidence in response. The Complainant was also provided with a copy of the LGNSW File (being a bundle of all the material before the Delegate at the time the Reviewable Decision was made) and a copy of the Reviewable Decision.
347. General Counsel advised the Complainant that by reason of the limited nature of the Review Application and material provided on review, any submissions in response were sought by 4:00pm on Friday 15 March 2016.

Complainant Response to the Review Application dated 14 March 2016

348. In response to the Review Application, the Complainant sent the following cover email to the Authority's General Counsel:

I have read through the Application for Review of a decision made by the Secretary, NSW Department of Justice submitted by the Licensee, Michelle Coric, of the Bodalla Arms Hotel.

I attach a document outlining points as I have encountered them in the Application and Appendices, and a letter from Gary Newman concerning the alleged meeting.

Notes about the SPLnFFT Readings

SPLnFFT is an application from the Apple App Store that I purchased for a small amount for my iPad. It is a sound level meter, which I calibrated, and set at L10 and dBa. I have used it to give an indication of the difference between normal background noise and noise when there is a band at the Hotel. Most of the readings are from No.10 Wiltshire Lane, over 100m away from the Hotel. One was taken from No.4 Wiltshire Lane (12 September 2015). The reading from No.4 shows a background noise of between 40 and 45 dBa, which rose to between 55 and 70 dBa when the band were playing, averaged at 43 dBa and 63 dBa respectively.

If you look at the all the readings attached to my emails, you will see that, at no time, has the Licensee made an effort to reduce the noise.

I find it surprising that no one from the Hotel has downloaded the same or similar application and got readings for their own use.

I do not think the Licensee fully comprehends the decision to the Disturbance Complaint. She seems fixated just on the fact that there is to be no amplified music. As her Facebook post advertising an acoustic jamming session shows, any instrument is allowed as long as it is not amplified, when it is really the noise that is an issue.

The Bodalla Arms is not the only venue that has live music. Close by are Moruya (23km), Dalmeny (14km) and Narooma (18km).

I'm sure the locals and loyal supporters will continue to frequent the Hotel even without the music.

349. Attachment 1 to the Complainant's submission is a signed letter from Mr Gary Newman (undated) clarifying the "alleged meeting outlined by Mr Graeme Newman". Mr Gary Newman contends that Mr Graeme Newman "was leaving the house of myself (Gary Newman) when Jo Rugg came to stand outside my fence and asked me about the music". Mr Gary Newman states that he "jokingly stated that the music did not bother me when I wasn't home".
350. Mr Gary Newman states that when he is home and the bands are playing, "the noise is overwhelmingly loud in my house".

351. Mr Gary Newman contends that the Licensee "was not present at this so-called meeting, standing next to her car about 20-30m away, and did not take part at all".
352. Mr Gary Newman comments that "of course I am siding with the neighbours as I am one of the complainants".
353. Attachment 2 to the Complainant's submission is a detailed 5-page submission letter from the Complainant in response to the Review Application (undated).
354. In this letter the Complainant submits that she, as the spokesperson for the residents, has "now been in residence [in Wiltshire Lane] for nearly two years, but other residents have been living in Wiltshire Lane for over 10 years". The Complainant compares this period of residence to the Licensee who the Complainant contends has "been in resident [sic] for just over one year". The Complainant states that "there have always been residences near the Hotel since the time it was built".
355. The Complainant contends that there has been music at the hotel "during the winter and summer, usually on Friday, Saturday or Sunday, sometimes twice a weekend". This music usually lasts from about 7:00pm to 11:00pm, but it went on to 1:30am on New Year's Day. The Complainant submits that the previous licensee of the hotel hosted a band at the hotel "maybe once every two months".
356. The Complainant contends that the current Licensee was in contact with the previous licensee when this Complaint was submitted, evidenced from the Licensee's reply to this Complaint on page 3 of Part D of the Complaint Form in relation to "Frequency and Patterns" of the alleged noise disturbance.
357. The Complainant contends that:
- a) No effort has been made to reduce the volume
 - b) The Licensee has "never been seen in our lane at all"
 - c) There have "only" been three times that people have been seen at our gateway – a small group "twice on October 31, led by a female, and one other time"
 - d) The Complainant submits that she would see any people in the laneway as her kitchen window faces the laneway
 - e) The Complainant is usually at home on Saturday night and checks her kitchen window "more frequently" as a result of feeling "uneasy after the ill feeling created by the Licensee in June 2015 on Facebook"
 - f) The Complainant has "no idea" what the Licensee is referring to when the Licensee mentions a wedding reception
 - g) The person who posted a "meme" on Facebook implying that any neighbour who knowingly moved into a house near a pub and then complained about noise was a "dickhead" is "an employee of the Hotel".
358. The Complainant submits that the Licensee has "totally misunderstood the complaint" and that when she stated several requests had been made, the Complainant intended that those requests "can come from either myself or other residents".
359. In response to the Licensee's advice that the hotel does not answer the phone after 9:00pm, the Complainant states that "the only recourse" is therefore to "phone the Police to report the excessive noise". The Complainant contends that after abuse was shouted over the fence "the residents felt disinclined to deal" with the Licensee directly.
360. The Complainant contends that after a conversation between Police and the Licensee on 9 July 2015, the "abuse was shouted over the back fence, witnessed by the resident of No.6, who heard every abusive word, and the resident of No.10, who heard yelling". The

Complainant states that this was reported to Police and that the incident was "probably" witnessed by a team of workers who were installing solar panels at the time.

361. The Complainant contends that Police attended the hotel in an "unmarked car" on 26 January 2016 and deemed the noise "offensive" and as a result issued a noise abatement direction.
362. The Complainant states that the cost of the acoustic report required to be undertaken by the hotel "needs some clarification".
363. The Complainant submits that there is "no need to stop the music" if the Licensee "complies and keeps the level of noise down" but that the Licensee has "failed to comprehend this".
364. The Complainant notes the range of events held at the hotel on various nights of the week including a poker night, raffle and pool competitions and submits that there are "other ways to attract patrons".
365. The Complainant refers to her email to LGNSW dated 25 January 2016 and states that the details of this incident were reported to Police and that it "unsettled Gary Newman so much that he sat in his lounge room with a spade and a brick for protection".
366. The Complainant submits that there has been no need to make false allegations and that the Reviewable Decision is "not to stop the live music, it is about keeping the noise level down".
367. The Complainant contends that before the residents of No.10 Wiltshire Lane bought the property they made enquiries at the dairy shed across the road and the local real estate agent and were told that "there were live bands perhaps once every two months at most" and that immediately after moving in "that was the case".
368. The Complainant submits that she finds it "hard to believe that there would have been more bands during 2013-14 as those years were without further issue".
369. In response to the letter from Ms Donna Thomas, the Complainant makes the following submissions:
 - a) She has "never seen Donna Thomas" living in Wiltshire Lane
 - b) Ms Thomas's letter is "hard to understand" with a lot of "irrelevancies"
 - c) The last house is No.10 and Wiltshire Lane finishes at the gate and goes no further, contrary to Ms Thomas's statement that she "goes a lot further down our lane, past the last house"
 - d) The Complainant submits that Ms Thomas "has taken the wrong lane, which goes down into a gully past a farm cottage"
 - e) Police do not always attend the hotel when a disturbance is reported and if Police have not attended by the time the music finishes, the Complainant telephones Police so there is no need for them to attend
 - f) According to the Complainant, there is one resident who has sold their home, and due to personal reasons "not concerning" the hotel, has a longer than normal period of settlement.
370. The Complainant agrees with the Licensee's proposition that no resident has been there for much more than 10 years but contends that during the time the hotel has been in its current position (for over 100 years) there have been "residences close to the Hotel" and that the village has "always been a mix of business and residences".

371. The Complainant contends that there is also live music available at "Moruya (23km), Dalmeny (14km) and Narooma (18km)" and that the residents "do not want to see an end to live music, just a reduction in the noise level".
372. In response to the submission letter from Mr Brendan Houlahan dated 26 February 2016, the Complainant notes that Mr Houlahan is from Canberra and states that she is "not sure whether he has actually been to the Hotel".
373. The Complainant contends that live bands perform "mainly in the evening, so would not be attracting travellers to other businesses".
374. The Complainant provides a copy of her post on the hotel's Facebook page, which states as follows:

There is not, nor ever has been, a move to stop live music at the Bodalla Arms. All their neighbours wanted was for the volume to be turned down. Despite requests and advice from the Police, OLGR and neighbours to turn it down you have not considered doing this. Since the disturbance complaint was submitted at the end of September, your neighbours have experienced abuse shouted over the back fence (by the licensee), abuse shouted into the microphone (f... off and die, die, die – great when you are dealing with a cancer diagnosis), a drunken female trying to urge others to bash our doors down, and complaints about a cat damaging cars (!), and of course, music played at about 5 times that of the guidelines every weekend or more. You have only yourself to blame for the present situation. In fact, when you heard a rumour in June that your neighbours were concerned about the noise, you acted in a very adult and professional manner, and organised a music festival. If anyone wants to see the reason for the decision from OLGR, I suggest that you go to their website, OLGR, liquor, and recent decisions. I'm sure it will make interesting reading for you.

375. The Complainant also provides a copy of the Licensee's response to the Complainant's Facebook post, which states as follows:

Valerie Richard since you have had your say I will now have mine..

There has been a move to stop the music at Bodalla Arms Hotel because of the complaints been made every week end by yourself and the other 2. I have had the music turned down on all occasions but I haven't spoken to you since about May. Not once have you approached me after this date to turn the music down, instead you have made complaints to the licensing board.

Not one person here and especially myself have ever abused you, my name is Michelle Coric I have never shouted abuse over any back fence, these are all false accusations. I am appealing the decision as I have never lied in any of my statements to olga [sic]. I would actually like to see the proof you have that I Michelle Coric abused you or the neighbours over the fence. After false allegations were made I put in more security cameras so I could have proof that I don't do the things you and the others have said against me.. Cancer diagnoses??? Don't know what your [sic] talking about there. Not once have any drunken females yelled out anything about dashing [sic] down your doors. That is an utter lie. I actually like how you have assumed a lady was drunk just because she was at the pub. What proof have you got there, as no breathalyser was ever performed on any lady at this pub ever.

Actually have pictures of a cat that I sent to the Rangers of a ginger cat laying all over the cars, cats have nails and cats scratch cars jumping on and off the cars. All these false allegations will be deal [sic] with once and for all even if I have to press criminal charges for your personal attack on myself... It's funny how patrons, when live music is on can stand 5 metres away from a band have a normal conversation without yelling while the band is playing and you that live 120 metres away find the music loud and offensive.. We have music once a week in the summer season starting at between 7/7:30 and finish between 10.30-11pm. That's 3 hrs of music not heavy metal good old pub music.

376. In response to the letter from Dr Nicole Sides of Isis Fertility dated 29 February 2016, the Complainant submits that some of the points made by Dr Sides "do not ring true" and that Dr Sides seems to think that the Complainant is "closing down the Hotel".

377. The Complainant notes that Dr Sides lives in Canberra and reiterates her earlier submissions that the music played at the hotel is "only occasional" and that the effect of the Reviewable Decision is the "loss of a valuable meeting place".

Review Applicant Submission in Reply dated 18 March 2016

378. The Complainant's submissions were forwarded to the Review Applicant on Monday 14 March 2016 with a request for any submissions in reply by Friday 18 March 2016.
379. On 18 March 2016, the Review Applicant emailed the Authority with a 3-page submission letter in response to the Complainant's further submissions of 14 March 2016.
380. On 19 March 2016, the Review Applicant emailed the Authority with a brief note to the effect that the document sent on 18 March 2016 was the "wrong response" and that the attached document is the "correct response".
381. In the three-page submission letter provided to the Authority on 19 March 2016, the Review Applicant contends that the hotel's licence on New Year's Eve is "till 2:00am" and that the hotel has not broken any laws by closing at 1:30am.
382. The Review Applicant contends that "just because I wasn't seen in the lane way doesn't mean I wasn't there checking out the noise".
383. The Review Applicant attaches a video of her "evidence from Gary Newman's house". [The Authority notes that the Review Applicant does not provide any further detail about the subject matter or nature of this evidence.]
384. The Review Applicant contends that she is "not sure what's being implied" by the Complainant's statement in her submission dated 14 March 2016 that she (the Complainant) has been "uneasy, since June" [the Authority notes that this is an apparent reference to the posting of the "dickhead" meme on the hotel's Facebook page in June 2015].
385. If this uneasy feeling is about the "dickhead" meme posted on the hotel's Facebook page, the Review Applicant submits that she had "nothing to do with that posting" and that the Complainant is "well aware of this".
386. The Review Applicant contends that Ms Jo Rugg was the person responsible for posting the "dickhead" meme and that this was done "without" the Review Applicant's knowledge. The Review Applicant contends that Ms Jo Rugg "was not employed by the pub until late December 2015, as a casual employee not a Manager".
387. In response to the incident on 25 January 2016, during which the Complainant in her response to the Review Application dated 14 March 2016 stated that Mr Gary Newman was allegedly so unsettled that he sat in his lounge room with a spade and brick for protection, the Review Applicant states that she is "not sure what the incident is or was as no police officers attended the Pub".
388. The Review Applicant contends that Sergeant Moore attended the hotel on 26 January 2016 and so did two other Police officers who deemed the music "not loud not offensive". The Review Applicant contends that this added confusion as to why she was "hit with a music abatement order" when two officers stated that the music "is fine", with only one officer stating that it was not.

389. In response to the Complainant's statement dated 14 March 2016, the Review Applicant states that she (the Review Applicant) is "not comprehending the decision" and is concerned about the fact that the hotel "can't have amplified music...as my business is suffering and so is the community at the hands of 3 people".
390. The Review Applicant contends that the Complainant's submission that people would frequent the hotel without live music is a "false statement" as the hotel bistro is "down from 70-98 meals down to 38 meals on a Saturday night since no amplified music".
391. In response to the Complainant's statement that the hotel is not the only live music venue in the area, the Review Applicant contends that sending people out of Bodalla to Moruya which is 23 kilometres away, Dalmeny which is 15 kilometres away or Narooma which is 18 kilometres away would "promote drink driving, or promote other areas". The Review Applicant submits that "this is not looking after the community or other businesses in our area, we are a small country town with a small population 1,500".
392. The Review Applicant submits that the hotel has a courtesy bus which offers a pick-up and drop-off service so that the hotel does not promote drink driving by ensuring that "everyone gets home safely". The Review Applicant notes that residents of Bodalla "do not live in the city, no public transport".
393. The Review Applicant submits that people who "live in small country towns like to support their local businesses, not clubs with gambling machines". The Review Applicant notes that the hotel does not have poker machines, Keno or TAB.
394. The Review Applicant states that she has attached to this submission letter statutory declarations from Mr Graeme Newman and Ms Jo Rugg regarding the meeting that occurred with local resident Mr Gary Newman (discussed in more detail below).
395. The Review Applicant contends that she has "not heard" from the Complainant since May or June 2015 - "not a phone call, not in person, not at all".
396. The Review Applicant contends that she is "not sure of the date" when she spoke to Sergeant Bob Moore and that it "could have been" 9 July 2015, but that it is "amusing" that the Complainant knows that the Licensee "definitely spoke to him and the content of our conversation".
397. In response to the Complainant's submission that solar panels were being installed at the hotel and that this team of workers would have witnessed the Licensee allegedly yelling abuse over the back fence on 9 July 2015, the Review Applicant contends that the sale of the solar panels "wasn't till the 20/7".
398. The Review Applicant states that she has also attached an "application reading" [an apparent reference to decibel readings sourced from a mobile application] but contends that Sergeant Bob Moore stated that readings from the "decimal [*sic*] reading application from Apple" are "to [*sic*] unreliable as there are too many interferences". The Review Applicant notes that the hotel is on the Princess Highway "with lots of traffic at night including trucks".
399. The Review Applicant submits that she and her family "live at the pub" and the current restrictions have a "huge impact on our lives". The Review Applicant submits that her 11 year old son "loves playing the drums" and as a result of the Complaint, "he can't do something he loves doing". The Review Applicant contends that there is also "no karaoke, no juke box as there [*sic*] all amplified".

400. The Review Applicant submits that "these are the only issues I would like to bring up as I feel this is just going back and forth with no solution to a problem".
401. The Review Applicant concludes with the submission that she can "try and reduce the noise level" by:
- a) Turning the French doors around so that they open on the other side of the doorway
 - b) Putting up theatre curtains in the sunroom [the Review Applicant states that these have already been purchased and she is awaiting delivery]
 - c) Turning the speakers to face the bar
 - d) Changing the position of the band when set up.

Email from the Licensee to the Authority's General Counsel dated 18 March 2016

402. The Licensee contends that the solar system of the hotel was not installed on 9 July 2015 as indicated by the Complainant.
403. Attachment 1 to this email from the Licensee is a copy of the receipt of sale for the solar panels from *Euro Solar* dated 20 July 2015.

Email from the Licensee to the Authority's General Counsel dated 18 March 2016

404. The Licensee attaches the following to this email:
- a) Newspaper article from the *Bay Post/Moruya Examiner* dated 18 March 2016 entitled "The pub with no cheer". This article states that the hotel is "in jeopardy" after the ban on amplified music and quotes the Licensee as stating that an acoustic report "is going to cost us \$3,800 to \$4,800 just to get the report" and that as the pub is "heritage listed" it "scares me to think what the cost could blow out to". The Licensee is also quoted as saying that the Reviewable Decision is "already badly affecting the business and it is going to kill us". The newspaper outlines statements made in relation to the Complaint by Mr Paul Irving, the Acting Director of Compliance and Enforcement of Liquor and Gaming NSW, and quotes the NSW Business Chamber regional president, Ms Orit Karny Winters as saying that it is "important for the pub to have live music for both the business and the town, because it brings people from everywhere".
 - b) A receipt issued by eBay to the Licensee dated 18 March 2016 for the curtains that the Licensee has purchased to be installed in the sunroom of the hotel.
 - c) Two photographs taken by the Licensee of the (Wiltshire) laneway from the hotel.
 - d) Three sound readings of the noise levels at the hotel taken by the Licensee on 20 February 2016. [The Authority notes that the mobile application used to take these decibel readings is not specified.]

Statutory Declaration by Mr Graeme Nigel Newman dated 18 March 2016

405. In this Statutory Declaration, Mr Graeme Newman contends that he arranged an informal meeting with "Mr Gary Newman with myself and Jo Rugg in his [Mr Gary Newman's] backyard to talk about the issue with the pub music". [The Authority notes that the date of this meeting is not specified.]
406. Mr Graeme Newman states that he "stands by" his first statement that appears on page 19 of the Review Application lodged by the hotel on 3 March 2016.

Statutory Declaration by Ms Joanne Susan Rugg dated 18 March 2016

407. In this Statutory Declaration, Ms Rugg states that she was present at an "informal meeting with Gary Newman, a resident of Wiltshire Lane and Graeme Newman earlier this year". [The Authority notes that the date of this meeting is not specified.]
408. Ms Rugg submits that the meeting "was not arranged" but was held "off the cuff" to talk to Mr Gary Newman about his "reasons for filing noise complaints about the live music" at the Hotel.
409. Ms Rugg contends that Mr Gary Newman stated that the "music was very loud in his house"; that "he had agreed to file the complaint because his neighbours had asked him to do so" and that "he had to side with the neighbours as they did more for him than the pub ever could".
410. Ms Rugg contends that "on numerous occasions" she has walked down Wiltshire Lane when bands have been playing to gauge how loud the noise is but that she remains "at a loss to understand how the music could be that intrusive to the people in their homes". Ms Rugg contends that the music "certainly wouldn't" keep her awake at night or bother her to the point where she had to call the Police.
411. Ms Rugg concedes that she posted a "meme" on the hotel's Facebook page that stated that "a person who rented a place near a hotel then complained about the noise" was a "dickhead" and submits that at the time when she posted the "meme", Ms Rugg "was not an employee" of the hotel.
412. Ms Rugg states that she is "now employed" by the hotel on a permanent part time basis as a "kitchen hand, cook, housekeeper, bar attendant, delivery driver and courtesy bus driver" and that on average she works at the hotel for "7 hours a week" and "sometimes more during busy periods". Ms Rugg contends that she has "never been employed" by the hotel "as a manager".
413. Ms Rugg contends that she has "never witnessed patrons of the hotel, employees or the owners" of the hotel being "abusive to the complainants".
414. Ms Rugg contends that she has "witnessed the complainants walk past the hotel when there have been several patrons out on the deck (all of whom were aware of the noise complaint situation" and that no one has "ever approached or yelled abuse at the complainants" in her presence.
415. Ms Rugg contends that the complainants' statements regarding being harassed by people from the deck of the hotel "match up with" times when she was "on the deck" and that she has "never seen any such thing take place". Ms Rugg contends that when the complainants have passed by when she has been around with other hotel patrons, "everyone has felt extremely intimidated and turned their backs so they do not have to make any eye contact or have gone inside".
416. Ms Rugg contends that the previous tenants of number 10 Wiltshire Lane, Mr and Mrs Dave and Christine Wells, told her that the music at the hotel "was never a problem to them".

LEGISLATION

417. Section 36A(1)(a)(iv) of the *Gaming and Liquor Administration Act 2007* prescribes a decision made under section 81 of the *Liquor Act 2007* to be a reviewable decision.

418. Section 36A(4) of that Act provides that, in determining an application for review, the Authority may confirm the decision, vary the decision or revoke the decision under review.

419. Section 36A of the *Gaming and Liquor Administration Act 2007* provides:

36A Review by Authority of certain decisions

(1) *In this section:*

reviewable decision means:

(a) *any of the following decisions of the Secretary under the Liquor Act 2007:*

- (i) *a decision under section 54 to impose a condition on a licence or to vary or revoke any such condition,*
- (ii) *a decision under section 54A to give a direction relating to the operation of a "sale on other premises" authorisation,*
- (iii) *a decision under section 75 to give a direction relating to licensed premises,*
- (iv) *a decision under section 81 in relation to a disturbance complaint,*
- (v) *a decision under section 87 to make a late hour entry declaration,*
- (vi) *a decision under section 90 to vary or revoke a late hour entry declaration,*
- (vii) *a decision under section 101 to restrict or prohibit the sale or supply of undesirable liquor products,*
- (viii) *a decision under section 102A to restrict or prohibit activities that encourage misuse or abuse of liquor,*
- (ix) *a decision under section 102 to restrict or prohibit the undesirable promotion of liquor,*
- (x) *a decision of the Secretary under section 116AA (4) or 116B (4) to designate licensed premises as a high risk venue,*
- (ix) *a decision under section 136 to give a direction to contribute to the costs of promoting or giving effect to a local liquor accord,*
- (ixa) *a decision under section 136E to impose a condition on a licence requiring a licensee to participate in a precinct or community event liquor accord,*
- (x) *a decision under section 136F to give a direction to contribute to the costs associated with the operation of a precinct liquor accord, or*

(b) *a decision of the Secretary to give a direction under section 44A (Location of gaming machines in venues) of the Gaming Machines Act 2001, or*

(c) *a decision of the Secretary to give a direction under section 41O (Requirements relating to loan and management contracts) of the Registered Clubs Act 1976, or 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 prescribed by the regulations for the purposes of this section (delegated decision).*

(2) *Subject to subsection (2A), any person who is aggrieved by a reviewable decision may, in accordance with the regulations and on payment of such fee as may be prescribed by the regulations, apply in writing to the Authority for a review of the decision.*

(2A) *An Application for review of a delegated decision may only be made by:*

(a) *an applicant for, or the holder of, a gaming or liquor licence, or*

(b) *a person:*

(i) *who was required to be notified of the application the subject of the delegated decision, and*

(ii) *who made a submission to the Authority or the Secretary in respect of that application.*

(3) *An application for such a review does not operate to stay the reviewable decision unless the Authority otherwise directs.*

(4) *In determining an application for review under this section, the Authority may:*

(a) *confirm the decision the subject of the application, or*

(b) *vary the decision, or*

(c) *revoke the decision.*

(5) *However, in the case of a review of a decision of the Secretary under section 136F of the Liquor Act 2007, the Authority may vary or revoke the Secretary's decision only if the Authority is satisfied that the amount of the contribution directed to be paid was not determined in accordance with the terms of the relevant precinct liquor accord (within the meaning of that Act).*

- (6) *The Secretary is to give effect to any decision of the Authority under this section to vary or revoke the decision the subject of the application for review.*
- (7) *The Authority may not make any decision in relation to an application for review under this section unless a member of the Authority who is or has been a Judge, or has been an Australian lawyer for at least 7 years, is present at the meeting of the Authority or the committee of the Authority at which the decision of the Authority is made.*

420. Division 3 of Part 5 of the *Liquor Act 2007* contains provisions for dealing with disturbance complaints, as follows:

79 Making of complaint

- (1) *A person may complain to the Secretary that the quiet and good order of the neighbourhood of licensed premises are being unduly disturbed because of:*
 - (a) *the manner in which the business of the licensed premises is conducted, or*
 - (b) *the behaviour of persons after they leave the licensed premises (including, but not limited to, the incidence of anti-social behaviour or alcohol related violence).*
- (2) *Such a complaint must be made in writing and be made or verified by statutory declaration.*
- (3) *A complaint under this section may only be made by any of the following persons (referred to in this Division as "the complainant"):*
 - (a) *a person authorised in writing by 3 or more persons residing in the neighbourhood of the licensed premises or a person who is such a resident and is authorised in writing by 2 or more other such residents,*
 - (b) *the Commissioner of Police,*
 - (c) *a person authorised by the local consent authority in relation to the licensed premises,*
 - (d) *a person who satisfies the Secretary that his or her interests, financial or other, are adversely affected by the undue disturbance to which the person's complaint relates.*
- (4) *A complaint may relate to more than one licensed premises.*
- (5) *In the application of this Division to an on-premises licence that relates to a catering service:*
 - (a) *a reference to licensed premises does not include private domestic premises, and*
 - (b) *a reference to the business of the licensed premises is a reference to the business of providing catering services on licensed premises (other than private domestic premises) under the licence.*

80 Dealing with complaints

- (1) *The Secretary may, after receiving a complaint under section 79, decide:*
 - (a) *to deal with the complaint in accordance with this Division, or*
 - (b) *to take no further action under this Division in relation to the complaint.*
- (2) *If the Secretary decides to deal with the complaint, the Secretary may:*
 - (a) *convene a conference to hear submissions in relation to the complaint, or*
 - (b) *invite written submissions from the licensee for the licensed premises to which the complaint relates, and from such other persons as the Secretary considers appropriate, and make a decision in relation to the complaint without convening a conference.*
- (3) *A conference, if convened, may deal with more than one complaint.*
- (4) *A complaint in relation to licensed premises that is being dealt with by the Secretary under this section may be extended to include other licensed premises if the Secretary is satisfied:*
 - (a) *that the evidence given in support of the complaint would support a complaint against the other licensed premises, or*
 - (b) *that, assuming that the complaint is shown to be justified, action taken in relation to the licensed premises the subject of the complaint will be ineffective unless similar action is taken in relation to the other licensed premises.*
- (5) *Any licensed premises in respect of which a complaint is extended as referred to in subsection (4) is, for the purposes of this Division, taken to be the subject of a complaint under this Division.*
- (6) *If, in relation to any such extended complaint, a conference is not convened, the Secretary must invite written submissions from the licensee for the licensed premises that*

are the subject of the extended complaint before making a decision in relation to the complaint.

- (7) *If a conference is convened in relation to a complaint:*
 - (a) *notice of the time and place of the conference is to be given to all complainants and the licensee or licensees as specified by the Secretary, and*
 - (b) *the Secretary is not to make a decision in relation to the complaint unless each complainant and licensee who is present at the conference is given a reasonable opportunity to be heard.*
- (8) *A conference under this section is to be presided over by the Secretary and the procedure at the conference is to be determined by the Secretary.*
- (9) *Nothing in this section prevents the Secretary from taking other action in relation to a complaint under this Division or in relation to licensed premises that are the subject of a complaint under this Division.*

81 Decision by Secretary in relation to complaint

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

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

422. When determining the review, the Authority has also had regard to the broader statutory objects and considerations prescribed by section 3 of the *Liquor Act 2007*, 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 the harm associated with the misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),*
 - (b) *the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,*
 - (c) *the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.*

DECISION AND REASONS

423. The Authority has considered all of the material that was before the Delegate at the time of making the Reviewable Decision and all of the additional material that has been provided over the course of this review.
424. The Authority is satisfied that the hotel has operated on its present site since 11 July 1952, while the Complainant, Ms Richard, has resided at her current address for one and a half years.
425. The Authority is satisfied that the order of occupancy, a consideration to which the Authority must have regard under section 81(3)(a) of the Act, is in favour of the hotel.
426. The Authority is satisfied that the only evidence of any relevant structural changes made to either the hotel or the Complainant's residence, for the purposes of section 81(3)(b) of the Act, is an extension of a glass sunroom that was added to the hotel in the 1970s or 1980s. The Authority is satisfied that there have been no relevant changes to the Complainant's residence.
427. In relation to any recent change in the use of the Premises for the purposes of section 81(3)(c) of the Act, the Authority is satisfied, as alleged by the Complainant, that since a change of licensee in December 2014 there has been a "significant increase in amplified music" and the "glass sunroom extension is frequently open which projects the music noise in the direction of nearby residences". The Authority is satisfied that this constitutes a relevant change in the use of the Premises for the purposes of section 81(3)(c) of the Act.
428. The Authority makes this findings on the basis of the information provided by the Complainant in the Complaint Material, supported by the Authorising Residents all of which is supported by a statutory declaration; the submissions in support of the Complaint; and various email correspondence between the Complainant and LGNSW staff as to noise emanating from the hotel, the Authority is satisfied that undue disturbance has occurred to neighbouring residents and that the local residents' noise disturbance complaints are credible.
429. The Authority notes that there is competing evidence from Ms Cavanagh, who states in an unsworn letter to the Authority that she was the licensee of the hotel from 1 July 2011 until 9 October 2014 when the Review Applicant bought the freehold in the building in which the Premises is located. Ms Cavanagh contends that during her time as licensee, the hotel held "regular live entertainment every weekend" between:
- a) 7:00pm and 11:00pm on Friday and Saturday
 - b) 3:00pm and 8:00pm on Sunday.
430. Having considered this dispute among the evidence, the Authority prefers to position of the Complainant and is satisfied that the current licensee has more likely than not provided an increased focus on the provision of live entertainment during her tenure. The Review Applicant has made no secret in her submissions as her enthusiasm for live

entertainment in the business model for the hotel and this is emphasised throughout her submissions, to the point of proposing an outdoor music festival at the hotel. The Authority prefers, on balance, the sworn evidence of the Complainant and is satisfied that the nature and intensity of live music has likely increased under the Review Applicant's tenure, while accepting that live entertainment in various forms, from soloists to bands, was a regular feature under the previous licensee as well.

431. The Authority is satisfied that the provision of amplified live music on the Premises is causing undue disturbance to the quiet and good order of the neighbourhood. This finding is made on the basis of the evidence or material provided by the Complainant and the Authorising Residents and independently supported by the observations of Police who attended the Complainant's residence and Ms Gerdes' residence on 26 January 2016, when Police issued the Licensee with a Noise Abatement Direction that remained in effect from 28 January 2016 until 5 February 2016.
432. While the extent of noise emissions is questioned by patrons of the venue in letters in support of the hotel, the Authority prefers the evidence or information provided by the Complainant and Authorising Residents who are better placed to provide an account of how music noise is impacting the enjoyment of their property while *inside their homes*. The Authority is satisfied that the extent of that noise disturbance is undue.
433. The Authority considers that country hotels have an important role to play in servicing local communities and that there has been a strong level of support expressed by patrons of this hotel who hold an expectation that live entertainment and live music will be available at the Premises. The Authority notes that the object of section 3(1)(c) of the Act is to contribute to the responsible development of related industries, including the live music and entertainment industries.
434. However, the divergent views of the Licensee, the hotel's supporters and the Complaining residents only emphasis the need for an *objective* assessment of noise emissions from the live entertainment provided at the hotel and recommendations as to how they may be ameliorated.
435. The Authority agrees with the Review Applicant's concerns as to the weight that should be given to acoustic measurements taken by the Complainant, who is not a qualified acoustic engineer and is using Apple telephone application.
436. The Authority is unable to give much weight to noise measurements taken by the Complainant using a mobile application (*SPLnFFT*), in circumstances when those readings have been contested.
437. However, the hotel has had an extensive opportunity to procure professional advice and assessment from a qualified engineer in circumstances where the hotel is subject to high levels of patronage and where live bands with amplified instruments are regularly performing.
438. The Authority accepts the Licensee's submissions as to the likely cost of commissioning an acoustic assessment report, but if the hotel is to provide live entertainment in the face of credible undue disturbance complaints, supported by local Police, it is appropriate that the hotel provide sufficient advice to make an evidence based response to managing the provision of live entertainment. An acoustic expert may well be able to recommend a range of practical noise amelioration measures to reduce the extent of noise impacts inside nearby residences.

439. The Authority notes that, while the LA10 noise requirement is not automatically imposed upon licensed premises by the licensing legislation, it is a specialist noise control regime that was devised by the former Liquor Administration Board in NSW, in consultation with acoustic experts during the 1990s.
440. The LA10 regime does not require that a licenced premises generate no noise emissions before 12:00 midnight. However, it is the standard regulatory control imposed upon licensed premises in metropolitan and regional areas alike by delegates of the Secretary and the Authority to manage undue disturbance issues as and when they arise from the operation of licensed venues, particularly disturbance from amplified music.
441. The Authority notes that the Delegate has not imposed a condition banning all live entertainment at the hotel, but such entertainment is suspended until such time as a report prepared by a qualified acoustic consultant is furnished by the licensee to the Secretary (the Compliance Branch of Liquor and Gaming NSW).
442. The Authority observes that such assessment should be conducted at a time when a live band is performing during a time of high patronage, to properly gauge the acoustic profile of the venue as configured with a view to reducing exterior noise emissions. Ideally it should be conducted at a time that is without notice to the business, to the extent that this is practicable in a regional location. Professional testing will also require the cooperation of noise complainants, who will need to provide access to the engineer to properly gauge emissions from within their homes. The Authority accepts that professional testing will impose a cost upon the licensed business but observes that LGNSW will be able to refer experienced and credible acoustic technicians to the Review Applicant if a referral is required.
443. Live entertainment may resume on the Premises as soon as that occurs, subject to compliance with the other conditions imposed by the Delegate regarding the imposition of the LA10 noise requirement and the use of a noise limiter on the Premises. The Authority is satisfied that a condition requiring compliance with the LA10 requirement is an appropriate and consistent regulatory measure to impose in the present circumstances and this will be supplemented by the condition requiring use of a noise limiter.
444. The Authority is satisfied that the Review Applicant has had every opportunity to obtain an acoustic report or otherwise inform the Delegate and the Authority of how noise will be ameliorated in the interim. Rather than establishing a persuasive course of action on the basis of expert advice, the Review Applicant has instead focussed upon challenging the genuineness of the Complainants while seeking that all three conditions imposed by the Delegate be revoked.
445. In conclusion, the Authority is satisfied that the imposition all three conditions under review comprise the correct and preferable decision in the circumstances, noting the ongoing absence of expert acoustic evidence. The Authority is satisfied that Condition 3 should be varied in a minor and technical respect only so as to accommodate the conduct of professional acoustic testing.

DECISION ON REVIEW

446. The Authority has decided to vary the reviewable decision pursuant to section 36A(4) of the *Gaming and Liquor Administration Act 2007*. Noting that the Reviewable Decision was not subject to a stay direction under section 36(3) while this review was underway, the Authority notes that:
- a) Condition "1" of the Reviewable Decision is confirmed and remains in effect.

- b) Condition "2" of the Reviewable Decision is confirmed and remains in effect.
- c) Condition "3" of the Reviewable Decision is varied only so that the following words are added (indicated in bold):

Amplified Entertainment

Other than for the sole purpose of performing acoustic testing by a qualified acoustic engineer, no amplified entertainment is to be conducted at the hotel until such time as an acoustic report prepared by a qualified acoustic consultant advises that all amplified entertainment to be conducted at the hotel complies with the LA10 noise criteria. A copy of the acoustic report must be provided to Liquor & Gaming NSW within 7 days from the date of issue.

447. In making this decision, the Authority has considered all of the statutory objects and considerations prescribed by section 3 of the Act, but has given weight to subsection 3(2)(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.



David Armati
Deputy Chairperson
for and on behalf of the **Independent Liquor and Gaming Authority**

DATED 06 May 2016