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Dear Mr Wennerbom

**Decision on Review under section 36A of the
Gaming and Liquor Administration Act 2007
Manly Wharf Hotel, Manly**

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 16 December 2015 in relation to the hotel licensed premises currently trading as the "Manly Wharf Hotel", located on the East Esplanade of Manly Wharf, Manly.

The review concerns a decision dated 25 November 2015 made by a delegate of the Secretary of the NSW Department of Justice to impose three new conditions and vary one pre-existing condition of the liquor licence number LIQH400114400 for the Premises under section 81 of the *Liquor Act 2007*.

At its meeting on 24 February 2016, the Authority decided to take the following action:

- (a) Vary Condition "4" of the Reviewable Decision under section 36A(4) of the *Gaming and Liquor Administration Act 2007*
- (b) Invite submissions from the licensee on proposed ancillary action to vary or revoke the existing Conditions "3020", "3030" and "3050" pursuant to section 53(2)(b) of the *Liquor Act 2007*.

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.

The attached reasons also give notice to the licensee that the Authority is minded to take certain supplementary action pursuant to section 53 of the Act. The licensee is invited to make submissions within 14 days of the date of this decision on that proposed action.

Yours faithfully

DB Armati
Deputy Chairperson

7 March 2016

STATEMENT OF REASONS

INTRODUCTION

1. On 16 December 2015, the Independent Liquor and Gaming Authority (Authority) received an application for review under section 36A of the *Gaming and Liquor Administration Act 2007* dated 16 December 2015 (Review Application).
2. The Review Application was filed by solicitors from *Lands Legal*, who act for Mr Justin Anthony Tynan (Review Applicant), the current licensee of the "full" hotel licensed premises known as "Manly Wharf Hotel", located on the East Esplanade of Manly Wharf, Manly NSW 2095 (Premises).
3. The *OneGov* licence record for the Premises as at 11 December 2015 indicates that the Premises has the benefit of a minors area authorisation and an extended trading authorisation which enables the hotel to sell or supply liquor for consumption on the Premises between 5:00am and 1:00am on Monday through Saturday and from 10:00am to 12:00 midnight on Sunday.
4. The Review Application concerns a decision dated 25 November 2015 (Reviewable Decision) made by Mr Anthony Keon (Delegate) in his capacity as a delegate of the Secretary of the NSW Department of Justice.
5. In the Reviewable Decision the Delegate decided under section 81 of the *Liquor Act 2007* (Act) to impose three (3) new conditions and vary one (1) pre-existing condition on licence number LIQH400114400 in respect of the Premises.
6. The Reviewable Decision arose in response to a noise disturbance complaint under section 79 of the Act dated 7 October 2014 (Complaint) made to the (then) Office of Liquor, Gaming and Racing (now Liquor and Gaming NSW – LGNSW) (OLGR) by Dr Asha Persson (Complainant).
7. The Complainant is a resident of the neighbourhood of the hotel. The Complaint is authorised by two other residents of the neighbourhood, Mr Phillip Nolan and Mr David Harrison (Authorising Residents).
8. The Review Application states that it seeks "review" (not specifying whether this means variation or revocation) of Condition "4" of the Reviewable Decision.
9. Condition 4 is actually a decision to vary a pre-existing Condition numbered "210" on the licence record. The Delegate decided to take the following action:

Condition 210 is varied from:

The number of patrons allowed in the balcony area is limited to eighty (80). All patrons are to be moved off the balcony area by 10:00pm on Thursday, Friday, Saturday and Sunday evenings. The balcony area is the external deck comprising an area commencing at a point seventeen (17) metres in an easterly direction from the eastern wall dividing the main bar and restaurant.

To:

The number of patrons permitted on the eastern deck is limited to 80. From 9:30pm no patrons are to be permitted on this area.
10. The Review Application apparently seeks review of this aspect of the Reviewable Decision, on the basis of the works to be completed on the Premises in respect of which

evidence must be provided by the hotel to the Authority, pursuant to another condition numbered "3060" on the licence.

11. The Review Applicant submits that the Complaint was made in relation to noise from *music* emanating from the Premises, while Condition "4" of the Reviewable Decision is a measure that is directed to *crowd* noise.
12. The Review Applicant also refers to a separate application number 1-2414517867, which was made under section 53 of the Act by the licensee of the hotel to the Authority on 15 April 2014 (Section 53 Application).
13. The Section 53 Application sought revocation of pre-existing Conditions numbered "210" and "220" on the licence. At that time, those conditions stated:

Condition 210

The number of patrons allowed in the balcony area is limited to eighty (80). All patrons are to be moved off the balcony area by 10:00pm on Thursday, Friday, Saturday and Sunday evenings. The balcony area is the external deck comprising an area commencing at a point seventeen (17) metres in an easterly direction from the eastern wall dividing the main bar and restaurant.

Condition 220

All doors leading to the balcony area, except the fire exit door are to be key locked at 9:00pm.

14. The Review Applicant advises that the Section 53 Application was approved by a delegate of the Authority in a decision dated 24 September 2015 (Authority Delegate Decision).
15. The Authority Delegate Decision imposed the following new conditions upon the licence, to commence effect from 24 September 2015:

Condition 3020

The number of patrons allowed in the balcony area is limited to eighty (80). All patrons are to be moved off the balcony area by midnight every night. The balcony area is the external deck comprising an area commencing at a point seventeen (17) metres in an easterly direction from the eastern wall dividing the main bar and restaurant.

Condition 3030

The drop down clear PVC blinds around the perimeter of the awning, to be zippered at all sides, dropped down and to sit on the timber counter from 9:00pm every night. All doors leading to the balcony area, except the fire exit door are to be closed at 9:00pm.

Condition 3040

The speakers located in the outdoor balcony area of the premises are to be turned off at 10:00pm and no further music is to be played in this area.

Condition 3050

When amplified music or entertainment is provided, that it is connected to a noise limiter, such as a GASCOM, and the noise limiter is set at a noise level of 93dB(A), as measured at a point in that part of the premises where the amplified music or entertainment is being provided, which is beneath the noise limiter microphone and that an acoustic consultant regularly services the noise limiter.

Condition 3060

The approval of the change licence condition application (1-2414517867) does not take effect until such time as the Independent Liquor and Gaming Authority has been provided with evidence that the building works are complete and PVC blinds are installed.

THE REVIEWABLE DECISION IN SUMMARY

16. The Reviewable Decision is dated 25 November 2015 and was determined to commence effect from 27 November 2015. The administrative action determined by the Delegate was as follows:

Condition 1: Noise Limiter

At any time amplified music is conducted at the hotel, all amplifiers or noise generating equipment must be under the control of a noise limiter/s. The noise limiter/s must be tested by a suitably qualified acoustic consultant by November of each calendar year to ensure the levels comply with the LA10 noise criteria.

The acoustic test must be recorded in a report prepared by the acoustic consultant within 4 weeks of the testing. A copy of the report must be maintained at the premises and made available for immediate inspection by inspectors, NSW Police or council officers.

Condition 2: Outdoor speakers

No outdoor speakers to be used after 10:00pm on any night of trade.

Condition 3: Closure of Doors

When amplified music is playing inside the hotel, from 9:00pm all doors are to remain in a closed position and must only be opened to allow for the immediate ingress or egress of patrons and staff.

Condition 4

Condition 210 varied from:

The number of patrons allowed in the balcony area is limited to eighty (80). All patrons are to be moved off the balcony area by 10:00pm on Thursday, Friday, Saturday and Sunday evenings. The balcony area is the external deck comprising an area commencing at a point seventeen (17) metres in an easterly direction from the eastern wall dividing the main bar and restaurant.

To:

The number of patrons permitted on the eastern deck is limited to 80. From 9:30pm no patrons are to be permitted on this area.

17. The Delegate summarised the Complaint as alleging that the hotel is "a recurring offender when it comes to noise disturbance" and that "90 percent" of the problem of disturbance is caused by the "incessant bass beat" emanating from the hotel's sound systems.
18. With regard to the statutory consideration of 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 25 years, while the hotel has operated at its present site since 14 February 2003. The Delegate found the order of occupancy to be in favour of the Complainant.
19. With regard to the 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 there is no evidence of any structural changes made to either the hotel or the Complainant's residence. The Delegate noted that the Complainant has installed double glazing on her windows in an attempt to "mitigate the disturbance".
20. With regard to the 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 assertion that in late 2013, new management took over at the hotel and since that time the hotel has experienced "increased patronage and adopted DJ and other amplified entertainment".
21. The Delegate accepted that a certain level of noise and disturbance should be expected by residents surrounding the Premises, but was nevertheless satisfied that on balance, the material before him provided a proper basis to make a finding that the operation of the hotel on the Premises, at times, causes undue disturbance to the neighbourhood.

22. In reaching this conclusion, the Delegate had regard to the information provided in submissions from the Complainant, the licensee, Manly Council (Council) and the Northern Beaches Local Area Command (LAC) of NSW Police (Police).
23. The Delegate further noted that an acoustic consultant (Mr Stephen Cooper of The Acoustic Group) undertook acoustic testing on the Premises on 19 December 2014 and reported full compliance with the pre-midnight criterion of the "LA10" noise restriction requirement (being a noise control requirement that specifies certain maximum permissible noise emissions from licensed premises that is used as a regulatory tool by the Authority and the Secretary from time to time).
24. However, the Delegate noted that The Acoustic Group undertook a further round of testing on 8 February 2015 and reported that low level frequency emissions "exceeded the permitted criteria" from the closest residential balcony to the Premises [the Authority notes that the Delegate does not specify whether this exceedance refers to pre-midnight or post-midnight criteria, but it would appear to refer to the pre-midnight criteria].
25. The Delegate observed that the report on testing performed on 8 February 2015 raised a number of potential issues, being:
 - a) Whether noise limiters covered all areas of sound associated with the Premises and whether the limiters have been set at the correct levels.
 - b) Concern that some noise may be due to a breakout from ductwork on the roof of the hotel, which should be investigated.
 - c) The lower ambient background noise level on Sunday nights compared to Friday and Saturday nights means the sound system needs to be adjusted to cater for Sunday night operations.
26. The Delegate noted that in response to the acoustic testing performed on 8 February 2015 the hotel engaged *Slave International* (an independent design and engineering consultancy firm), which set the noise limiters to the appropriate levels to ensure compliance with the LA10 noise condition, in accordance with advice from The Acoustic Group. An inspection of the roof area confirmed that there was no noise leakage detected through the roof ducting.
27. The Delegate was satisfied that in response to the report from The Acoustic Group, the hotel has implemented certain additional voluntary noise controls, including:
 - a) Lowering the sound system volume by 3dB on Sundays and 3dB on the jetty at all times.
 - b) Closing the eastern doors and the main door by 7:00pm on Sunday for a trial period of six months [the dates of this trial period are not specified].
28. The Delegate found that overall, in response to the issues of disturbance raised in the Complaint, the hotel had taken positive steps by implementing a number of controls to minimise any undue disturbance linked to the hotel business operating on the Premises. These measures included:
 - a) The installation of a noise limiter for all speakers.
 - b) Removal of the bass speaker and subwoofer.
 - c) A new sound system with speakers angled down and away from residents.
 - d) Closure of doors on the eastern deck an hour earlier from 9:00pm to 8:00pm.
 - e) Relocation of the main entrance to eliminate noise escaping from the opening and shutting door.
 - f) The sound system being set up to fade down volume levels after 10:00pm and the sound system on the deck to mute at 10:00pm.

29. The Delegate considered these actions to be proactive and of assistance in addressing the issues raised by the Complaint.
30. However the Delegate was satisfied that in order to ensure appropriate safeguards are in place for the future operation of the hotel business, it is appropriate to impose a licence condition ensuring that noise limiters remain set at an acceptable level (and are to be checked by a qualified acoustic consultant on a yearly basis), in addition to two further licence conditions requiring all doors to be closed at 9:00pm when entertainment is provided and requiring all outdoor speakers to cease operation at 10:00pm.
31. The Delegate was satisfied that these new conditions do not place undue burden on the operation of the hotel and ensure regulatory certainty for future instances of disturbance.
32. The Delegate considered that, as a further safeguard, the existing licence Condition numbered "210" on the licence record should be *varied* so that patrons are **not permitted** on the eastern deck of the Premises from 9:30pm.
33. The Delegate noted that patrons will still be able to use other outdoor areas of the Premises after this time. The Delegate explained that the variation of this condition was based upon a recommendation made by The Acoustic Group in its advice dated 20 October 2015. The Delegate was satisfied that this action will ensure that surrounding residents are not disturbed by patrons late into the trading period.
34. The Delegate noted, with respect to the new condition requiring the use of noise limiters to be tested by a qualified acoustic consultant that noise limiters were already in place so the hotel would be able to immediately comply with this licence condition.
35. The Delegate also acknowledged that the hotel had recently completed acoustic testing and that the next round of compliance testing is to be conducted in 2016.
36. The Delegate concluded that, having regard to the actions taken by the hotel to address issues of disturbance, the conditions imposed by the Reviewable Decision amount to appropriate safeguards to prevent issues of disturbance from occurring in the future.
37. Annexure 1 to the Reviewable Decision sets out a schedule of the regulatory action taken against the licence.
38. Annexure 2 to the Reviewable Decision comprises a list of the material that was before the Delegate (discussed in more detail below).
39. Annexure 3 to the Reviewable Decision summarises the key submissions on the Complaint made by the parties (discussed in more detail below).

MATERIAL BEFORE THE AUTHORITY

40. OLGR staff released to the Authority a bundle of all the material before the Delegate at the time the Reviewable Decision was made (OLGR File) for the purposes of determining the Review Application. The OLGR File comprises the following material:

Complaint under Section 79 Liquor Act 2007 signed by the Complainant and dated 7 October 2014

41. The Complaint is made on the usual form, which includes a section whereby the Complainant and the authorising residents verify the information provided in the Complaint by statutory declaration.
42. In the Complaint Form, the Complainant contends that the hotel is a "recurring offender when it comes to noise disturbance" and that "90 percent" of the noise problem is caused by the "incessant" bass beat emanating from the hotel's sound systems. The Complainant contends that the bass noise "amplifies across the water" and travels into residents' living rooms and bedrooms around Manly Cove.
43. The Complainant further contends that even when the bass noise is very low, it is "still incredibly annoying and stressful" and that hearing "any bass at all" within residents' homes "severely impacts" residential amenity. The Complainant contends that when the volume is very loud, residents can also hear the music, which is "unacceptable" in a residential area.
44. The Complainant contends that a secondary issue is *crowd noise* when the hotel is operating "at or near capacity".
45. The Complainant contends that residents have spoken and written to the hotel's manager on "several occasions" since February 2014. The Complainant states that Manly Cove residents met with the hotel's manager and with four Licensing Police officers on 18 February 2014 but that both the Complainant and the residents were "not at all satisfied" with the hotel manager's "commitment" to solve the problem.
46. The Complainant contends that residents have phoned and emailed Manly Police and Manly Council "many times" and met with Manly Police "on a number of occasions" to discuss the noise. With regard to Manly Police, the residents believe that it is "within their scope" to solve this problem.
47. The Complainant further contends that residents have had a number of conversations with the licensee, who has undertaken to "resolve the bass beat noise". However, the Complaint submits that after many months of a strained relationship and continued noise disturbance "we have lost faith with the hotel management and our local enforcement authorities".
48. The Complainant states that she has lived at her current address for 25 years. The Complainant contends that she and her husband have spent \$10,000 since January 2014 installing double glazing and 10 millimetre glass to try to mitigate the impact of noise emanating from the Premises, but with little impact due to the "penetrating nature of low frequency bass beat".
49. The Complainant contends that other Manly Cove residents have also installed double glazing for the same reason.
50. The Complainant submits that since late 2013, new management has taken over the hotel and that some residents had previously negotiated "far from ideal, but better outcomes" with the previous manager regarding the bass and music volume.
51. The Complainant submits that the hotel has been a noise problem for residents, on and off, for at least 10 years but that during 2014 this problem has been "extreme".

52. The Complainant submits that the residents seek the following outcomes from the resolution of this Complaint:
1. *That the hotel be ordered by OLGR to install a sound system, engineered by a suitably qualified independent expert, which should include an appropriate number of sound limitation devices and/or sound processors that will ensure that the music is never heard at all by surrounding residents inside their homes. Residents accept that the hotel has a right to play music inside. Indeed, we wish to help the hotel find the maximum volume they can play without disturbing residents.*
 2. *The external speakers to be removed permanently. Why? Because these speakers, not only direct music across the open water and into our habitable rooms, but these speakers also increase the background noise causing patrons to speak/shout louder, thus adding to the crowd noise from the patrons on the external drinking areas. The hotel has also on occasions had external speakers playing offensive music when very few, if any, patrons are actually outside.*
 3. *That OLGR impose an order that no other sound system can be used in the hotel other than the hotel sound system. (Recently a "private" function brought their own sound system which caused much grief for residents. There have also been quite a number of occasions where DJ's have brought there [sic] own equipment which caused offensive noise.)*
 4. *An air-lock door at the main East Esplanade entrance to act as a sound block. Why? Because when patrons enter and exit from that door the internal music and crowd noise is heard in residents' homes. If not [sic] air-lock door is installed then the maximum volumes must be set according to when the door is open.*
 5. *A limit set on the maximum number of people allowed on the external jetty bar. When this external area become [sic] very crowded and rowdy the noise enters residents' homes.*
53. The Complaint Form is verified by a statutory declaration and accompanied by authorisation forms signed by two local residents, Mr Phillip Nolan (residing at 1/10-12 East Esplanade, Manly) and Mr David Harrison (residing at 20/37-38 East Esplanade, Manly) authorising the Complainant to act on their behalf (Authorising Residents).
54. Attachment 1 to the Complaint Form is a document which contains a total of 88 email complaints and objections from Manly Cove residents sent variously to the OLGR Web Complaints email address at webcomplaints@olgr.nsw.gov.au, Police, Council and the Manly Cove Alliance (Alliance) regarding noise emanating from the Premises.
55. [The Authority notes that the Manly Cove Alliance is apparently a group of local residents which was founded by Mr Roger James and Mr Brad Pedersen who, while not listed as Authorising Residents on the Complaint Form, have also made submissions in relation to the Complaint.]
56. These complaints cover a period of "8 months" [from February 2014 to September 2014] and comprise submissions, complaints and objections from at least 35 different individuals residing around Manly Cove. The Complainant contends that many of these residents have lived in Manly Cove for a "much longer time" than the hotel has existed and that "no licensed premises in the history of Manly has been the subject of so many written noise complaints".

Submission from Superintendent Dave Darcy of NSW Police, Northern Beaches Local Area Command dated 30 October 2014

57. Police note that in a complaint such as this, the amenity of a community being compromised by noise is "very challenging" for Police due to the Manly entertainment precinct having multiple sources of noise including from human activity; amplified music; the topography, which includes large surfaces of water and a steep rising harbour foreshore; the structural environment of multi-storied residential units mixed with single and multi-storied residences that add to the complexity in which sound interacts with the

environment; and the prevailing winds which carry sound over long distances and/or alter its nature and intensity.

58. Police submit that a judgment as to whether a sound is offensive or significantly interferes with the amenity of a complainant is "usually clear cut" for Police as most complaints relating to noise in the area are limited to loud parties.
59. However, Police submit that the residents' complaints concerning noise and disturbance in this case are "far more challenging for Police to assess".
60. Police caution that it is "likely that for this Complaint, Police observations and records are unreliable and there may be a tendency of underreporting" and that Police are "ill equipped to appreciate the impact of amenity for residents to repetitive low frequency noise".
61. Police provide a number of observations made by licensing officers attending the Premises following the making of a noise complaint. Police submit that on these occasions, officers have deemed the noise in question to be either "inaudible, or observed [that] the voices of people were louder than the music".
62. Police advise that during the past twelve months, no noise complaints received by Police in relation to the hotel have been substantiated.
63. Police submit that they have "very little evidence" that supports this Complaint but that it "would be wrong to assume from these observations that there is no disturbance to the residents of Manly Cove and surrounds".
64. Police submit that in order to "truly appreciate the nature and scope of this complaint", professional technical sound assessments should be undertaken, both in residents' homes and in the broader environment.
65. Police contend that there may be an "assumption" that the source of noise and disturbance is the hotel, when in fact the noise may have "multiple sources".
66. In the absence of professional sound assessments, Police submit that the "next most efficacious way forward is to have frequency/sound control devices fitted to amplifiers in the [hotel] that fetter the broadcast of the lower disruptive frequencies of sound".
67. In respect of the other suggested points for resolution put forth in the Complaint, Police submit that these are matters that should be reserved for "those with specialist technical knowledge".
68. Police advise that since February 2014, OLGR has received seven complaints in respect of the hotel, five of which have been finalised. The remaining two investigations are to be finalised pending the resolution of the Complaint.
69. Police observe that the operators of the hotel take a "professional approach to their surroundings, and have taken reasonable steps to address noise complaints at a considerable cost".
70. Police further submit that the operators of the hotel have considered the quiet and good order of their environment to a degree of satisfaction that is "acceptable" to Police.

Submission to OLGR from Mr Andrew Wennerbom of *Lands Legal* on behalf of the licensee dated 4 November 2014

71. In a submission to OLGR apparently made in response to receiving notice of the Complaint, Mr Wennerbom notes that the hotel has engaged the services of Mr Steven Cooper of The Acoustic Group, who has previously provided various acoustic reports to both the NSW Land and Environment Court (LEC) and the Authority.
72. Mr Wennerbom submits that historically, Mr Cooper has encountered resistance from residents and indifference in relation to conducting noise tests. Mr Wennerbom further submits that the issue of noise was extensively reviewed by the LEC and residents have sought to adopt a different test from that imposed by the LEC and adopted by the Authority.
73. Mr Wennerbom submits that it is important that the Authority "play a role in setting the parameters of any future testing" so that it is not unfairly challenged and expenses are thrown away.
74. Mr Wennerbom requests that the Premises be given a further 30 days, until 7 December 2014, to respond to the Authority in order for such an acoustical report to be undertaken and submits that this accords with the LEC's ruling to conduct another "summer" time noise test.
75. The licensee contends through Mr Wennerbom that he met with residents and local Licensing Police on 13 February 2014. At that meeting, the licensee advised all parties that he was engaging a sound company and had received two quotes to install a new system which would limit noise in accordance with the LA10 noise criteria. The licensee contends that a temporary stand-alone sound system was previously in place so the hotel had some music, but that it was agreed that the bass speakers would be turned off until the quote for the new system was approved. The licensee contends that this new sound system was installed in March 2014 and residents indicated that the noise "seemed to be much better".
76. The licensee further contends through Mr Wennerbom that the Manly Cove Alliance subsequently contacted the licensee to say that they were still experiencing issues.
77. The licensee contends that a meeting was held between the Alliance, hotel management and Council where the licensee suggested that he trial closing the main doors and moving the main entrance to the southern facing entrance. The licensee further agreed to send hotel management staff to an "affected resident's house" on 23 May 2014, but the manager of the hotel was ultimately told not to attend as there were "no issues" and that the noise disturbance must have had to do with "atmospheric conditions" on the night in question.
78. Mr Wennerbom submits that it is difficult to see how a licensed premises could be held responsible for "atmospheric conditions".
79. The licensee contends that he did not receive any correspondence from the Alliance for approximately two months, and so the licensee emailed them "to see if things were OK". The licensee notes that during these two months, the hotel had hosted the "biggest international DJ with a sellout night and no issues were raised by residents". However, the licensee contends that within a week of sending this email, he began to receive emails from the Alliance complaining of noise disturbances.

80. The licensee contends that Licensing Police frequently attend the Premises and have "not once indicated that noise was an issue". The licensee understands that Council are conducting or have conducted independent acoustic testing at affected residents' homes, but he "has not heard" the outcome of those tests.
81. The licensee notes that following acoustic testing by Mr Steven Cooper, the hotel was recently successful in the New South Wales Land and Environment Court in obtaining approval to build an awning on its eastern deck so it could trade in that area until 12:00 midnight with plastic blinds closed at 10:00pm.
82. The licensee also notes that there is currently development consent in place to build two restaurants upstairs above the Premises which will be owned and tenanted by the hotel's management.
83. The licensee expresses concern that there "may be a hidden agenda to outline that noise is already excessive in the wharf precinct and [the hotel] is the scapegoat".
84. The licensee contends that since learning of potential issues with local residents, the licensee has voluntarily implemented the following measures:
 - a) Installed a new sound system angled down away from residents.
 - b) Installed a limiter set at LA10 noise criteria.
 - c) Removed the bass speaker.
 - d) Closed the doors to the eastern deck an hour earlier than required.
 - e) Closed the main doors and moved the entrance to the most northern entrance on busy nights to eliminate the door opening and closing.
 - f) Engaged with residents in person and constantly via email.
 - g) Engaged with residents, Council and Police.
 - h) Set up the sound system to fade down volume levels after 10:00pm until close.
 - i) Set up the sound system to mute at 10:00pm on deck areas.
85. Mr Wennerbom then provides submissions from the licensee in response to four dated complaints made to OLGR.
86. The licensee submits that the complaints received by the hotel on 29 September 2014 relate to a private function held on the Premises where a band had a trumpet player who "could not be put through the [sound] system". The licensee contends that the hotel immediately dealt with the issue once alerted to the issue by Police. The licensee acknowledges that these were "valid complaints".
87. The licensee submits that no complaints were made to the hotel on the night of 28 September 2014 and that there were no Police visits regarding noise disturbance. The licensee submits that all emails were sent on Tuesday 30 September 2014 or the following Wednesday and that this suggests that support is "being drummed up from an email sent to a group list with no basis for claims" and that local residents are not emailing the Alliance "without being prompted".
88. The licensee submits that there are no recorded complaints made to the hotel or Police on the night of 31 August 2014, but that email complaints were received the Monday after the alleged noise disturbance. The licensee submits that this suggests that the complainant on that occasion received "a prompt from the Alliance to complain, whether founded or not". The licensee submits that there is evidence that "another venue" may be responsible for the noise heard by residents. [The Authority notes that the licensee does not name this "other venue", nor does he specify the nature of that evidence.]

89. The licensee notes that two complaints were made by local residents and co-founders of the Alliance, Mr Roger James and Mr Brad Pedersen on 8 June 2014 (the Queen's Birthday long weekend).
90. The licensee notes that an email from Ms Jasmine Capdor states that Police arrived at her home at 9:15pm and did not deem the noise to be offensive.
91. The licensee submits that the majority of the complaints received concern times prior to 10:00pm and that noise levels of 5dB above background noise are allowed during this time.
92. The licensee submits that:

...the residents' expectation that no noise be audible before midnight is misguided.
93. The licensee submits that the majority of complaints refer to objections to the development approval (including those relating to, for example, the wharf precinct, crowd noise and New Year's Eve) and that these are "not noise complaints made at a particular time to the venue or to Police; they are in relation to the flyers distributed to residents".
94. Mr Wennerbom concludes with the submission that the hotel has gone "above and beyond its licence conditions to appease the neighbours at significant costs to the hotel"; that the complainants "fail to contact the hotel if there is an issue"; and that Licensing Police and Council "have found no issue" with the hotel.

Submission to OLGR from Ms Anita Ugarkovic, Manager Regulatory Services, Land Use and Sustainability Division, Manly Council dated 14 November 2014

95. Council notes that initial complaints regarding the hotel were made in January 2014 and that to date several complaints have been formally lodged with Council, but the majority of residents are voicing their concerns through the Alliance. Council adds that it has been provided with "noise diaries" from four different residents.
96. Council notes that its officers have consulted with representatives of the Alliance and the licensee on several occasions in an attempt to mitigate the noise issues raised by residents.
97. Council notes that it has been informed by the hotel that noise limiters have been set on sound equipment on the Premises. Council further notes that information obtained from *Slave International* (an independent design and engineering consultancy firm engaged by the hotel) does not indicate whether noise emitted from the Premises complies with LA10 levels.
98. Council states that its officers have conducted late-evening inspections of the Manly CBD area to monitor noise issues as well as employing night rangers who can be contacted by residents in the event of a noise disturbance.
99. Council submits that to date it has been "unable to obtain sufficient evidence to prove an offence is occurring".
100. Council submits that at a previous meeting held with Police and Mr Brad Pedersen of the Alliance, it was concluded that residents can contact night rangers or Police in the event of noise disturbance. Council notes that Mr Pedersen believes that this arrangement is "not effective" as night rangers and Police have investigated previous noise disturbances but deemed them not to be "offensive".

101. Council advises that issues pertaining to noise disturbances from the Premises have been discussed by Councillors and a motion was passed for Council to engage an acoustic consultant to conduct a noise measurement and determine compliance at the Premises.
102. Council provides a table of development consents and Court approvals that limit the manner in which the hotel may operate on the Premises (for planning purposes). Council advises that there are no development applications pending determination for the Premises.
103. Council also advises that the recent development approval issued pursuant to a decision of the LEC on 22 November 2013 has not as yet been activated by reason that physical works must be carried out prior to the commencement of trade during extended hours.
104. Council advises that the conditions stipulated on this development approval are as follows:
 - a) The 12-month trial period permitting the operation of the eastern deck of the Premises from 10:00pm to 12:00 midnight is to commence from the date of issue of an occupation certificate for the physical works.
 - b) The *Plan of Management* for the hotel is to be amended to incorporate the changed hours of operation on the eastern deck and other conditions on the development consent for use of the Premises. A copy of the *Plan of Management* is to be provided to Council and Police prior to the issue of a construction certificate. Non-compliance with the *Plan of Management* is to be considered a breach of the conditions on the development consent.
 - c) Existing maximum patron numbers and conditions relating to use of the Premises as set out in DA238/2002 are to continue with the exception of hours of operation on the eastern deck.
 - d) The blinds on the eastern deck are to be rolled down from 10:00pm each day until close of business on the same day and at other times during inclement weather.
 - e) Patrons on the eastern deck are not to be served after 11:30pm and the eastern deck is to be closed to customers from 12:00 midnight.
 - f) The LA10 noise level emitted by patrons and the playing of music on the hotel Premises as measured at the boundary of any residential premises shall not exceed the background noise level by more than 5dB when measured in octave bands from 31.5Hz to 8000Hz centre frequencies. The LA10 noise level may be taken as the average maximum deflection of a sound level meter.
 - g) The LA10 noise level emanating from mechanical noise on the hotel Premises shall not exceed the RBL background noise level as defined in the industrial *Noise Policy* by more than 5dB as measured at the boundary of any residential premises.
 - h) External sound amplification equipment or loudspeakers must not be used for the announcement, broadcast, playing of music (including live music) or similar purpose.
 - i) The exterior bar area (also known as the Jetty Bar) is not to be served after 9:30pm and is to be closed to customers by 10:00pm every night.
105. Council submits that during monitoring and investigation of the alleged noise disturbance emanating from the Premises, Council officers have observed that noise from "another late-night venue in the immediate vicinity" was "excessive".
106. [The Authority notes that this other late-night venue is not specified by Council.]

107. Council then provides the following submissions in response to the main points raised by the Complainant and other Manly Cove residents:

- 1 *No audible noise in residential premises*
Council Officers have discussed this with a representative of the Manly Cove Alliance (Mr Brad Pedersen) on several occasions. Offensive noise is determined on a set of criteria pertaining to the level, nature, characteristics, frequency and duration of the noise and is not automatically determined if a noise is audible. Enforcing [a condition requiring] no audible noise is a stricter requirement than the noise-specific conditions of consent and therefore Council cannot enforce this.
- 2 *Residents are hearing and are being affected by bass noise when the music is turned down low, and music which is also clearly audible when it is turned up loud*
These characteristics of the noise disturbances are consistent for each person whom has lodged a complaint with Council.
- 3 *88 complaints made over 8 months from 35 individuals affected by the noise*
Council has not received this magnitude of formal complaints from residents in the area. The complaints regarding Manly Wharf Hotel were first received by Council in January 2014. Further complaints received from this date have been intermittent, with supporting information at times being vague. The information provided to Council (email correspondence and noise diaries) contains various complaints made by residents about the noise on particular nights.
- 4 *Crowd noise*
Council Officers have not investigated any complaints raised regarding crowd noise. This matter has been directed to Manly Police Officers.
- 5 *Noise disturbances are irregular and can occur any night from 6:00pm to 12:00 midnight*
This is consistent with the information provided by other residents in relation to the hotel; however it has been pointed out to Council by those other residents that weekends are typically the worst for noise disturbances.
- 6 *Noise disturbances have been an issue for 10 years; the matter was more appropriately handled by previous management of the premises*
The complaints regarding Manly Wharf Hotel have only been raised to Council within the past year.

108. Council provides the following submissions in response to the stated expectations of the Complainant and other Manly Cove residents in relation to this Complaint:

1. *Noise limiters on sound systems so the noise cannot be heard in residential premises*
Information provided by Manly Wharf Hotel has identified limiters are operational on sound equipment however it is difficult to ascertain from this information whether equipment currently complies with noise-specific conditions of consent. As [a condition requiring] no audible noise is not enforceable by Council, further investigations are to be made to verify levels against noise-specific conditions (i.e. LA₁₀ noise condition).
2. *External speakers removed*
Council has no objection to the removal of the external speakers however Council has not verified that the speakers have been the cause of "offensive" noise.
3. *No other sound system is to be used – musicians providing their own equipment*
Whilst it has not been confirmed by residents, Council suspects noise disturbances are exacerbated by musicians providing their own sound equipment which is therefore not controlled by the noise limiters used by the hotel. Conditions of consent do not prohibit this; however Council would support a restriction being placed to that effect. It should be noted that all sound equipment should be directed via the noise limiters.
4. *Air lock on entrance to act as noise attenuation*
Concern raised by residents that noise is worsened through the opening and closing of the main entrance. This again can only be enforced through conditions of consent. Should it be found that the premises is not operating in accordance with noise-specific conditions of consent, further consultation would be required of the occupier with an acoustic consultant to ensure appropriate measures are implemented that will resolve any identified breaches. If it was found that an appropriate "air lock" at the entrance was required Council would support this initiative.

5. *Limit on patrons permitted in external jetty bar*

This again would be enforced under conditions of consent and liquor licence regarding maximum patron capacity. Noise as a result of patrons in this area would also relate to noise-specific conditions of consent. It is Council's opinion that the number of patrons on the jetty bar area should be regulated.

Submission to OLGR from the Complainant dated 13 December 2014

Response from Complainant to the submission from the licensee

109. The Complainant argues that the "conspiracy theory" put forward by the licensee that residents are prompted every Monday by the Alliance to complain about noise is "completely incorrect" and "simply irrational".
110. The Complainant contends that residents have stopped complaining directly to the *licensee* about noise problems by reason that complaining to the hotel did not change the situation and was "pointless".
111. The Complainant contends that the licensee has been "dismissive" or has blamed other factors (such as other venues, the weather and people partying on the beach) to explain noise disturbances emanating from the hotel.
112. The Complainant alleges that the licensee has "played games with the residents", such as the occasion when the licensee offered to send a manager to an affected resident's home on 23 May 2014 while keeping the bass noise at a deliberately low level.
113. The Complainant contends that since filing the Complaint, residents have been disturbed by bass noise from the hotel on "several occasions (most weekends)".
114. The Complainant contends that she informed the licensee directly about noise problems on 19 and 26 October 2014, but received three "dismissive" emails in return. Following that, the residents have decided not to complain to the licensee, as it is "pointless".
115. The Complainant concedes that there were few complaints made during the winter months, but disagrees with the licensee's submission that there were *no* noise complaints for a period of two months from 23 May 2014.
116. In this regard, the Complainant further notes the submission from the licensee that it received complaints on 8 June 2014. The Complainant submits that the quiet weeks that have occurred during the winter months "proves that the [hotel] can play music at a level that residents are happy with."
117. The Complainant disagrees with the licensee's contention that residents were disturbed by a trumpet player on 29 September 2014, and instead contends that this disturbance was caused by "incessant and extremely loud bass noise". The Complainant agrees, however, that the hotel acted swiftly to stop the bass noise after several complaints to Police by residents on that occasion.
118. In respect of complaints concerning noise disturbance on 31 August 2014, the Complainant notes that correspondence with the authorities acknowledged that noise was coming from *both* the hotel *and* the nearby *Skiff Club* [which the Authority notes is located approximately 700 metres away from the Premises].
119. The Complainant describes the licensee's contention that residents "fail to contact the hotel if there is an issue" as a "ridiculous statement". The Complainant contends that

from January to August 2014, the Alliance contacted the licensee numerous times via email about noise issues; that residents met with the licensee in person; and residents offered on several occasions to work with the licensee to "try and agree on an acceptable bass level".

120. The Complainant submits that in making this disturbance complaint the residents now seek a "formal and permanent solution" by reason that they are now "sick of" feeling as if they are responsible for managing the hotel's noise issues and being asked to "prove" that there is a problem.
121. The Complainant "acknowledges and thanks" the licensee for the measures undertaken by the hotel to mitigate noise disturbances, but submits that residents are still aggrieved.
122. The Complainant contends that "this noise problem" started at the same time as when Mr Justin Tynan took over as licensee of the hotel. The Complainant contends that Mr Tynan was installed as manager to "transform the hotel into a nightclub-type venue".
123. The Complainant submits that the hotel business is a "bass-thumping DJ scene plonked in the middle of a residential area in a natural amphitheatre".
124. In response to the submission from the licensee that the hotel has spent considerable amounts of money addressing noise issues, the Complainant submits that "all that would have been required was for him to test out different bass levels together with residents".
125. The Complainant further contends that some residents have spent thousands of dollars installing double-glazed windows on their homes in an unsuccessful attempt to block noise emitted from the Premises.

Response from Complainant to the submission from Police

126. This section of the Complainant submission is stated to have been prepared by Mr Brad Pedersen, a local resident and co-founder of the Alliance who has been liaising with Manly Police.
127. Mr Pedersen alleges that the relationship between Police and Council has been "unprofessional" and "dismissive of residents".
128. Mr Pedersen contends that there is a "close relationship" between Police and the licensee that is evident in email exchanges, with Police describing residents as "vexatious" and disclosing the identities of complainants to the licensee.
129. However, Mr Pedersen then agrees with the Police submission that any noise analysis must occur inside the residents' homes by reason that bass noise can be quiet at 100 metres away from the venue at ground level, yet "grossly offensive" at 200 metres away high up in residential apartments.
130. Mr Pedersen submits that street level readings are "worse than useless" in judging offensive noise and refers to a website that details how sound can bend up and over water [the Authority notes that this is a reference to a website maintained by Georgia State University in the United States of America – <http://hyperphysics.phy-astr.gsu.edu/hbase/sound/refract.html#c1>].
131. Mr Pedersen also agrees with the Police submission that Police records as to disturbance from the Premises are "unreliable" as there may be a tendency of

underreporting. Mr Pedersen describes this as a "gross understatement" and contends that Manly Police have "systematically underreported complaints" and argues that their records are a "disgrace".

132. Mr Pedersen submits that:

... Manly Police have been acting as advocates for [the hotel], breached Police protocols by providing the identities of phone complainants to the licensee, and systematically denied the real number of complaints in an unrelenting attempt to discredit resident complainants. This has all been documented.

Response from Complainant to the submission from Council

133. In response to the submission from Council, the Complainant notes Council's statement that information obtained from *Slave International* does not indicate whether noise emitted from the hotel's sound equipment is compliant with noise-specific conditions. The Complainant questions why Council has not been "actively seeking verification of compliance" with those requirements.
134. The Complainant also expresses concern regarding the conduct of a Council officer, and provides an email from Mr Pedersen dated 23 November 2014 to that officer which raises several issues with Council's submission to OLGR.
135. The Complainant concludes by submitting that, following consultation with other affected residents, the "only way forward" is to have acoustic technicians test different bass levels at the hotel in consultation with affected residents.

File note prepared by OLGR officer James Shand dated 9 January 2015

136. This note records observations of the Premises, the Complainant's residence and the nearby *Skiff Club* [which the Authority notes is located approximately 700 metres away from the Premises] conducted by OLGR inspectors James Shand and Dimitri Argeres on Sunday 21 December 2014.

Emails between OLGR officers Rick Walton and Darren Duke dated 23 and 27 January 2015

137. These emails record the details of a meeting between OLGR inspectors Col Butler and Rick Walton and Mr Pedersen at Mr Pedersen's residence on the evening of 24 January 2015. The OLGR inspectors also attended the Premises and recorded their observations on that occasion.

File note prepared by OLGR officer Darren Duke dated 12 February 2015

138. This file note records the details of a telephone conversation between OLGR officer Darren Duke and Mr Steven Cooper of The Acoustic Group on 12 February 2015. Briefly, Mr Cooper advised Officer Duke that noise testing had been conducted at two private residences near the Premises on Sunday 8 February 2015. Testing at the second residence showed non-compliance with the OLGR LA10 criteria, but Mr Cooper stated that this non-compliance was "due to music noise and was not related to patron noise".

Email communication between residents and OLGR officers between January and March 2015

Email from Mr Pedersen to OLGR officer Darren Duke dated 27 January 2015

139. In this email, Mr Pedersen advises that he called two OLGR inspectors at around 11:00pm on "Saturday night" [24 January 2015] as there was some "minor bass noise" from the hotel. However, by the time the inspectors reached his residence, the music from the hotel "had been turned down and it was inaudible".

Email from the Complainant to Officer Duke dated 9 February 2015

140. The Complainant advises that Mr Cooper conducted noise monitoring at two residences on 8 February 2015. The Complainant submits that the noise disturbance was "at low-medium level" and that Mr Cooper "failed the hotel" as it was exceeding the noise criteria outside a nearby complainant's residence. The Complainant also advises that loggers were installed in two residences on "Friday last week" [6 February 2015] and will be removed and analysed some time "this week".

Email from the Complainant to Officer Duke dated 2 March 2015

141. The Complainant submits that on the first weekend following Mr Cooper's assessment, the hotel was "wonderfully quiet". However, since that weekend, the Complainant contends that there has been "low-level noise disturbance" on and off the weekends, as well as during the week, with "occasional medium-level disturbance".
142. The Complainant submits that the noise problem is "multifaceted" and that:
- a) The outdoor speakers should be removed
 - b) Setting limiters on the hotel's noise equipment to reduce and limit the excessive bass levels "would go a long way to solving the conflict".

Email from Mr Pedersen to Officer Duke dated 8 March 2015

143. Mr Pedersen contends that the hotel was "annoying residents" on Sunday 8 March 2015 and that he went down to the Premises at around 8:30pm that night and noticed that bass noise was coming "predominately [*sic*] from the outdoor speakers around the jetty bar section at the rear of the hotel".

Email from OLGR officer James Shand to OLGR officer Dimitri Argeres dated 16 March 2015

144. This email records the observations made by OLGR officers James Shand and Dimitri Argeres while conducting inspections of the hotel, the *In Situ* bar [which the Authority notes is located approximately 500 metres away from the Premises] and the *Skiff Club* [which the Authority notes is located approximately 700 metres away from the Premises] on 15 March 2015.

Submission from the licensee to OLGR dated 1 April 2015

145. Mr Wennerbom submits that the licensee is currently reviewing the recommendation of the acoustic assessment report provided by Mr Cooper with *Slave International* to overcome the noise issues identified by Mr Cooper. The licensee contends that the hotel has already undertaken to implement the following initiatives to prevent noise disturbance:

- a) *Slave International* is to provide a diagram of the sound system to indicate the presence of limiters, covering all sound generated on site.
- b) The sound system limiter is to be lowered for Sundays, excluding Sundays which are followed by a public holiday Monday.
- c) *Slave International* is to provide a block diagram of the sound system identifying the location of the limiters and listing the settings that have been established for those limiters with respect to the OLGR noise criteria.
- d) The licensee has already commissioned an inspection of the roof area which confirmed that no noise was escaping through that area.
- e) *Slave International* is to identify whether the system has a resonant frequency at or around 63Hz which seems to be the "offending frequency on Sundays" and have this addressed.
- f) The licensee will introduce a new procedure where it will shut the main doors and eastern deck doors at 7:00pm (instead of the current time of 9:00pm) and move the entrance to the Sports Bar on Friday, Saturday and Sunday nights.
- g) The licensee will have the jetty bar noise limit dropped by 3dB and limited in accordance with the recommendation by Mr Steven Cooper.

Email from Mr Pedersen to Officer Duke dated 6 April 2015

146. Briefly, Mr Pedersen's email alleges that residents were "disturbed by bass noise" from the hotel during Easter. The noise occurred on Saturday and Sunday nights [4 and 5 April 2015], with the noise on Sunday night being "particularly offensive".

Reply email from Officer Duke to Mr Pederson dated 8 April 2015

147. Officer Duke's reply to Mr Pedersen advises that both the hotel's final submission on the Complaint and a further acoustic assessment report are due on Wednesday 15 April 2015 and that as soon as they are received, OLGR "will be looking at expediting the matter" in light of the residents' concerns.
148. Officer Duke also advises that he has forwarded Mr Pedersen's concerns to the hotel's solicitor and that, should there be issues of disturbance on particular nights, residents should immediately contact NSW Police or on-duty Council inspectors in the first instance as they are able to attend the venue and deal with any issues at the time of the event.

Submission from the licensee to OLGR dated 15 April 2015

149. This brief submission letter from Mr Wennerbom on behalf of the licensee contends that the hotel has implemented the following initiatives to resolve noise complaints:
- a) The sound system operated by the hotel will be lowered by 3dB on Sundays (excluding Sundays which are followed by a public holiday Monday) with a noise limiter put in place.
 - b) The jetty bar noise will be lowered by 3dB at all times with a noise limiter put in place.
 - c) The eastern deck doors and the main door will be closed at 7:00pm on Sunday evenings for a trial period of six months [the dates of this trial period are not specified] to see if that makes any difference to noise levels emanating from the Premises.
 - d) The roof area has been inspected and no noise leakage has been detected from the venue through the roof ducting.

- e) The sound experts have confirmed that there is no resonant frequency at or around 63Hz as the hotel has no "sub" [an apparent reference to a "subwoofer"] in place which carries this frequency.
- f) The "sub" [an apparent reference to a "subwoofer"] has been removed in any event.
- g) Whenever a DJ is operating behind the decks at the hotel, the noise limiter will still override the DJ and the DJ does not have the ability to manipulate the sound level.

150. Mr Wennerbom states that *Slave International* is currently preparing a new block plan showing the above changes, which will be placed in the hotel's compliance folder within 21 days. A copy will be forwarded to OLGR when this is drafted.

Acoustic Assessment Report prepared by The Acoustic Group dated 15 March 2015

151. Attachment 1 to Mr Wennerbom's letter of 15 April 2015 is an acoustic assessment report prepared by Mr Steven Cooper dated 15 March 2015. This report summarises acoustic testing undertaken on 19 December 2014, being in the summer period as required by Council, and found "full compliance with [the] OLGR before 12:00 midnight criterion".

Acoustic Assessment Report prepared by The Acoustic Group dated 25 March 2015

152. Attachment 2 to Mr Wennerbom's letter of 15 April 2015 is an acoustic assessment report prepared by Mr Steven Cooper dated 25 March 2015. This report summarises acoustic testing undertaken on 8 February 2015 and concludes that on that occasion, "low frequency emissions exceeded the permitted noise criteria" [the Authority notes that this report does not specify whether this exceedance refers to the OLGR pre-midnight or post-midnight criteria, but it would appear to refer to the pre-midnight criteria of the LA10 noise control requirement].

153. The report also identifies the following concerns:

- a) The lower ambient background noise level on Sunday nights compared to Friday and Saturday evenings means the sound system needs to be adjusted to cater for Sunday night operations.
- b) Mr Cooper was unable to indicate whether the presence of limiters covered all areas of sound associated with the hotel or whether the limiters have been set at the correct levels.
- c) Some noise may be due to a breakout from ductwork on the roof of the hotel, causing excessive noise.
- d) OLGR and the LEC use different noise criteria.

Manly Wharf Hotel block diagram report prepared by Slave International (undated)

154. Attachment 3 to Mr Wennerbom's letter of 15 April 2015 is a block diagram report for the hotel prepared by *Slave International*. This report was completed in conjunction with The Acoustic Group's report in relation to concerns about noise emanating from the Premises. Mr Wennerbom submits that this diagrammatic report shows that "the correct limiters are in place with respect to OLGR criteria".

Email to OLGR from the Complainant dated 30 April 2015 in response to the licensee's final submission and acoustic assessment reports

155. The Complainant reiterates her contention that the problem for neighbouring residents is "bass noise" and submits that if the authorities require the Premises to "lock in the bass noise at a lower, acceptable level, then the problem will be solved".
156. The Complainant notes that in the acoustic assessment report by Mr Cooper dated 25 March 2015, there is "some ambiguity" as to which standards of acceptable noise levels should be applied.
157. The Complainant submits that the "most stringent standards" should be applied due to the number of complaints against the hotel; the "massive escalation" in complaints under new management; and the "special amphitheatre qualities of Manly Cove".
158. The Complainant contends that the hotel has a "track record of staying quiet for a while after being approached by authorities, only to later return to its bad habits". As a result, the Complainant now seeks a "permanent solution" so that the hotel cannot "fiddle with" its noise requirements, particularly during the summer months.
159. The Complainant submits that Mr Cooper's report of 25 March 2015 "contained a lot of 'science'" but was based on "some incorrect assumptions".
160. The Complainant argues that these incorrect assumptions include an assumption that "noise from the [hotel] affects different residents differently" in that some residents have reported that Fridays and Saturdays represent the biggest problem, while others have been more disturbed on Sundays.
161. In response to this, the Complainant contends that during 2014, residents were "regularly disturbed at any night of the week".
162. The Complainant contends that Mr Cooper did not attend the Premises when it was "blasting its bass noise" and that the hotel was aware that it was being assessed for compliance when these readings were taken.
163. The Complainant contends that the cause of the alleged noise disturbance:

...was not the level of ambient background noise; the cause was a badly managed hotel sound system, a total disregard for the impact on residents, a total disregard for resident complaints, and a failure to properly police this hotel.
164. On the basis of the ongoing complaints about the hotel, the Complainant, on behalf of the Alliance, requests that the Alliance be given "priority access to OLGR inspectors and/or acousticians in case the bass noise problems reoccur". Further, the Alliance requests that OLGR "make known to the hotel that residents will have that priority access".

Email from OLGR officer Karen Beale to OLGR officer Karen Wilkinson dated 9 June 2015

165. This email records the observations made by (unnamed) OLGR officers while conducting inspections of the hotel, *In Situ* bar [which the Authority notes is located approximately 500 metres away from the Premises], *Vine* Double Bay and *ivy* (Sydney) on 5 June 2015.

Email from Mr Pedersen to Officer Duke dated 22 July 2015

166. In this email, Mr Pedersen notes that there have been "no noise complaints over the past few months" and that residents are "incredibly grateful".
167. However, Mr Pedersen questions whether the Complaint has been finalised and raises a concern over whether the hotel will remain compliant with its noise requirements over the summer months.

Reply email from Officer Duke to Mr Pederson dated 22 July 2015

168. Officer Duke's email in reply thanks Mr Pedersen for the update and advises that OLGR is currently reviewing all the material and conducting an internal meeting to deliberate over the most appropriate approach to deal with the Complaint under the Liquor Act, including whether or not permanent controls will be imposed upon the hotel licence to ensure ongoing compliance during the summer months.

Email correspondence between Mr Pedersen and OLGR officer Karen Wilkinson between September and November 2015

Email from Mr Pedersen to Officer Wilkinson dated 28 September 2015

169. In this email, Mr Pedersen alleges that residents "were disturbed both Saturday and Sunday [26 and 27 September 2015] by medium levels of bass noise". Mr Pedersen submits that residents across the road on 38 East Esplanade are "probably the most affected" and that other residents around Manly Cove have reported a "similar increase in bass noise, particularly on Saturdays". Mr Pedersen proposes that OLGR carry out an inspection on a Saturday night at around 8:00pm from two locations, being (1) outside 38 East Esplanade and (2) along the harbourside pathway and then up onto the driveway of 1 Osborne Road.

Email from Officer Wilkinson to Mr Pedersen dated 29 September 2015

170. In this email, Officer Wilkinson advises that OLGR is currently in the finalisation stages of the section 79 Complaint and that OLGR has arranged a meeting with the hotel "this week" to go through the measures the hotel has taken to assist in reducing noise and to discuss future expectations with regard to compliance with noise requirements.

Email from Mr Pedersen to Officer Wilkinson dated 4 November 2015

171. In this email, Mr Pedersen alleges that residents were once again disturbed by bass noise from the hotel on the afternoon of Tuesday 3 November 2015 and that there was a "large young crowd there for a Melbourne Cup event". Mr Pedersen submits that the bass noise was "constant over some hours" and that he and other residents attended the hotel to confirm that the hotel was the source of the noise.

Email from Officer Wilkinson to Mr Pedersen dated 5 November 2015

172. In this email, Officer Wilkinson seeks clarification of the alleged noise disturbance and advises that OLGR met with the licensee on Thursday 1 October 2015 to discuss noise related measures and initiatives. Officer Wilkinson states that while she is not currently in a position to disclose the final decision on the Complaint, she can advise that OLGR intends to "place some controls on the licence".

Email from Mr Pedersen to Officer Wilkinson dated 5 November 2015

173. In this email, Mr Pedersen provides further details of the alleged noise disturbance on 3 November 2015. He contends that the disturbance "began around 3:00pm" and continued until "around 5:00 or 6:00pm". Mr Pedersen states that the main entrance doors of the hotel were open, but submits that even if they were closed "the bass noise was so loud it still would have been disturbing".
174. Mr Pedersen states that no one contacted the hotel on that occasion. The residents "long ago" gave up communicating with the licensee, Mr Tynan, as he has "always been utterly dismissive of resident complaints" and it is "pointless" for residents to try to negotiate with him.

File note prepared by OLGR officer Karen Wilkinson dated 1 October 2015

175. This file note contains details of a meeting between OLGR officers Owen Rogerson and Karen Wilkinson and the licensee Mr Tynan on 1 October 2015 in relation to the ongoing Complaint. Briefly, the licensee confirmed that both sets of noise reducing measures set out in the hotel's submissions of 4 November 2014 and 15 April 2015 were still being applied to normal trade. The licensee also showed the OLGR officers the external speakers on the eastern side which had been disconnected and the position of the internal limiter, which the licensee advised he was unable to access and therefore unable to manipulate.

Acoustic Report from The Acoustic Group dated 20 October 2015

176. In this report, Mr Cooper states that, with respect to maintaining compliance with the noise restriction conditions on the licence, the "principal acoustic issue" is related to music emissions from the hotel.
177. In summary:
- a) Mr Cooper's testing found the need to identify the basis of a resonant frequency at or around 63Hz and undertake the appropriate rectification, in that he did not consider the discrete frequency that could be detected was one of a limiter setting, unless a limiter has a parametric equaliser.
 - b) The resonant frequency could be the result of the provision of additional low frequency speakers that do not incorporate any vibration isolation.
 - c) Mr Cooper recommended that the noise limiters controlling the sound system should be reduced by 3dB for Sunday to Thursday nights inclusive.
 - d) Mr Cooper did not find any compliance issues with the sound system for the external jetty, but did note that the level of music after 10:00pm was higher than that recorded previously. Mr Cooper suggested that the controls for that area incorporate a 3dB reduction.
 - e) In relation to patron noise, Mr Cooper did not have an issue with the eastern deck, the main door or the open doors at the southern end of the building. Mr Cooper notes that the hotel currently closes the eastern deck at or around 9:30pm so as to ensure that the eastern deck does not create an acoustic issue after 10:00pm, and recommends that that practice continue.

SECTION 53 APPLICATION

178. Separately to the above mentioned complaint process under consideration by the Compliance section of OLGR (now LGNSW), the licensee had made an application to

the Authority on 15 April 2014 seeking to vary the existing Conditions "210" and "220" on the licence that had restricted use of the eastern deck of the Premises (Section 53 Application).

179. An email dated 30 September 2015 notes that an Authority Delegate (the Manager of Licensing) decided to *approve* the Section 53 Application on 24 September 2015 (Authority Delegate Decision). This decision gave rise to what is now Condition "3060" on the licence.
180. In summary, the Section 53 Application comprises the following key documents:
 - a) Change Liquor Licence Condition Application Form signed by the licensee, Mr Justin Anthony Tynan and dated 15 April 2014.
 - b) Several submissions from local residents in relation to the Section 53 Application dated between April and May 2014.
 - c) Submission from NSW Police in relation to the Section 53 Application dated 29 April 2014.
 - d) Submission from OLGR Compliance Branch in relation to the Section 53 Application dated 23 July 2014.
 - e) Decision of the New South Wales Land and Environment Court in *Quarantine Investments Co Pty Ltd v Manly Council* [2013] NSWLEC 1222 dated 22 November 2013.
 - f) Correspondence between Authority staff and *Lands Legal* on behalf of the licensee.
 - g) Submission from *Lands Legal* on the Section 53 Application in response to the submissions from Police and the complaints from residents, and further information requested by Authority staff dated 26 August 2014.
 - h) Further submission from *Lands Legal* on the Section 53 Application dated 5 August 2015 including the acoustic assessment reports prepared by The Acoustic Group dated 15 March 2015 and 25 March 2015 respectively and the block diagram for the hotel prepared by *Slave International*.
 - i) Information in relation to the hotel sourced from the OLGR Compliance Branch database, accessed on 12 August 2015.
 - j) Final submission from *Lands Legal* on the Section 53 Application dated 11 September 2015.
 - k) Email from Authority staff dated 30 September 2015 advising that the Section 53 Application has been approved by the Authority Delegate with the new conditions to commence effect from 24 September 2015.
 - l) Copy of the *OneGov* liquor licence record for the hotel as at 30 September 2015.

APPLICATION FOR REVIEW DATED 16 DECEMBER 2015

181. The Review Application material comprises the following:
 - a) A brief submission letter on behalf of the licensee's legal representative, Mr Wennerbom
 - b) The Review Application Form signed by the licensee of the hotel, Mr Justin Anthony Tynan, dated 16 December 2015
 - c) A copy of the *OneGov* licence record for the Premises as at 11 December 2015.
182. As noted above, Mr Wennerbom submits that the Authority should review Condition "4" specified in the Reviewable Decision which prevents any use of the eastern deck of the hotel after 9:30pm and prescribes a maximum patron capacity of 80 persons for that area of the hotel at all other times.

183. The Review Application material is brief and it is not specified whether the Review Applicant (the licensee) seeks that this condition be revoked or varied. It is apparent that the basis for questioning the necessity of Condition "4" is the Review Applicant's proposal that certain works be completed on the Premises, along with the imposition by the Authority Delegate of Condition "3060" on the licence, which now provides that once certain evidence of those works is provided to the Authority, the restrictions imposed on use of the eastern deck of the hotel will cease effect.
184. The Authority notes that it is not clear from the Review Applicant's submissions when those building works will actually be completed.

INITIAL CONSULTATION ON THE REVIEW APPLICATION

185. On Tuesday 5 January 2016, the Authority's General Counsel sent the Review Application material via email to the Complainant and the two Authorising Residents nominated on the Complaint Form, Mr Phillip Nolan and Mr David Harrison. Mr Brad Pedersen, who is not listed on the Complaint Form as an authorising resident, was also forwarded a copy of this material by reason of his extensive communication with OLGR officers in relation to the Complaint.
186. General Counsel advised these parties that only Condition number "4" imposed by the Delegate in the Reviewable Decision was subject to review. The Complainant and Authorising Residents were provided with the Review Application material and also documents pertaining to the Section 53 Application and decision, by way of background to the current regulation of the eastern deck of the hotel.
187. In an email from the Authority's General Counsel to Ms Fiona Myatt of *Lands Legal* sent at 2:11pm on 5 January 2016, General Counsel enquired whether the Review Applicant sought *variation* or *revocation* of Condition "4" imposed by the Delegate. General Counsel also enquired whether it is the licensee's position that no restrictions will be required once the foreshadowed building works are completed, and when those building works are expected to be completed.
188. On 11 January 2016, Ms Myatt advised General Counsel that:

We are instructed by our client that it is sought for no restriction be required once the foreshadowed building works is completed [sic]. The works will be completed during the coming winter months.

COMPLAINANT RESPONSE TO CONSULTATION DATED 25 JANUARY 2016

189. The Complainant's substantive response to the Review Application is a 3-page submission letter dated 25 January 2016.
190. Briefly, the Complainant advises that the local residents "do not support" the hotel's application to revoke Condition "4" of the Reviewable Decision.
191. The Complainant argues that despite requests for clarification from the Authority, "it is still not clear" to residents how the Review Application might impact upon the other licence conditions to which the hotel is currently subject.
192. In this submission the Complainant acknowledges that the noise disturbance from the hotel has "improved in recent months" and that the hotel has been guided by the authorities to take several steps to address the issue.

193. However, the Complainant submits that this has only occurred "due to sustained pressure from residents". Despite the improvements, the Complainant submits that some residents "still experience intrusive bass noise too often, particularly on the weekends".

Complainant's Account of the Background to this Matter

194. By way of background, the Complainant contends that the hotel is a "serial offender when it comes to noise pollution". The Complainant contends that the hotel has had an "appalling impact" on the residents of Manly Cove and that this hotel has been "the subject of more written complaints than any other licensed premises in the entire history of Manly".
195. The Complainant contends that these "extreme noise issues" began just a few weeks after the current licensee, Mr Justin Tynan, commenced acting in that role. The Complainant refers to "OLGR document A14/388" [which the Authority notes is an apparent reference to a submission on the Section 53 Application from OLGR to the Authority dated 23 July 2014] and submits that Mr Tynan has a history of non-compliance and breaches of the legislation, not only at the Manly Wharf Hotel, but also as the licensee of *ivy* (Sydney) between 29 January 2007 and 13 June 2012.
196. The Complainant submits that Mr Tynan has "repeatedly dismissed" the noise complaints made by Manly Cove residents since becoming licensee of the hotel in late 2013 and that residents have given up complaining about noise problems directly to the hotel as this has "proved pointless".
197. The Complainant contends that Mr Tynan has only taken steps to mitigate the noise pollution when the authorities have "pressured" him to do so, and not out of any consideration for the residents.
198. The Complainant submits that residents are concerned that the "relative lack of noise pollution from the hotel in recent weeks" is simply a result of the licensee not wanting to jeopardise the Review Application that is currently before the Authority and that the noise "will simply ramp up again" once or if the licensee "gets what he wants".
199. The Complainant submits that "this has been the pattern by the hotel each time authorities have clamped down on it; a few weeks of quiet and then its [*sic*] business as usual".
200. The Complainant submits that despite two years of making complaints, a number of submissions on the section 79 Complaint and a complaint to the Ombudsman regarding "OLGA" [*sic*], the problem has still not been fully resolved.
201. The Complainant contends that "literally hundreds of residents have had the sanctity of their homes badly impacted"; that some residents have even moved out of Manly Cove to "escape" the hotel's bass noise; and other residents who have "decided to stay and fight" have spent thousands of dollars on double glazing.
202. The Complainant submits that Manly Cove is a "unique natural amphitheatre" where bass noise bounces off the water and into residents' homes, "making our living spaces and bedrooms unusable, not to mention our balconies".
203. The Complainant submits that local residents "have no problem with the normal noise one hears around a busy cove", but that the "incessant bass noise from the hotel invading the living spaces of residents is simply unacceptable".

Complainant's Response to the Review Application

204. The Complainant submits that the residents do not support the "watering down" of the Delegate's Condition "4" and submits that "nothing should change until the bass noise problem is fixed once and for all".
205. The Complainant is "particularly concerned" about any attempt by the hotel to keep any of the balcony doors open later than what is currently allowed if Condition "4" is "reversed" and the proposed PVC plastic sheeting on the balcony is installed.
206. The Complainant contends that this would be a "completely retrograde disaster that would enrage residents" and that "a sheet of plastic will be completely inadequate" in terms of preventing noise pollution when even the existing solid glass is failing. Revoking Condition "4" would only serve to "protract the conflict between the hotel and residents" and OLGR can expect further section 79 submissions if this occurs.
207. The Complainant and Manly Cove residents "strongly advise" the Authority to impose *further* conditions and restrictions on the operation of this hotel. The Complainant proposes that the following conditions be imposed upon the licence:
- a) All outdoor doors shut by 9:00pm, unless amplified music is to be played before that time that can be heard outside the hotel perimeter; then all doors should be closed.
 - b) The fire exit doors must also be kept closed (but not locked) when the other doors need to be closed.
 - c) For the same reason, the southern balcony doors should also be shut by 9:00pm or whenever any amplified music is being played (currently only the eastern balcony doors are shut at 9:00pm).
 - d) The bass limiter needs to be checked immediately to make sure it is properly locked in to the currently required settings.
 - e) Further restrictions should be placed on the music limiters, with testing carried out from within residents' homes.
 - f) The noise containment qualities of all the glass balcony doors should be improved with double glazing, or other appropriate acoustic absorption materials should be installed.
 - g) DJs and live musicians should not be allowed to use their own equipment/sound systems when performing at the hotel.
 - h) Speakers must not be installed and music not played in any outdoor area.
 - i) The current maximum limit of 80 patrons on the eastern deck should be maintained (and be more rigorously enforced, as it is regularly exceeded).

REVIEW APPLICANT SUBMISSIONS IN REPLY

208. The Complainant's submissions were forwarded to the Review Applicant's solicitors on 4 February 2016 with a request for any submissions in reply by 11 February 2016.
209. On 11 February 2016, Mr Wennerbom provided a concise submission on behalf of the Review Applicant.
210. Mr Wennerbom notes that the Review Application lodged by the licensee seeks the revocation of only Condition "4". The licensee *accepts* the imposition by the Delegate of Conditions "1", "2" and "3" in the Reviewable Decision.

211. Mr Wennerbom notes that the residents' source of frustration, as stated by the Complainant, primarily lies in the *bass noise* emanating from the hotel's sound system.
212. Mr Wennerbom submits that Condition "4" does not address any concern dealing with the bass noise. Condition "4" has been imposed by the Delegate as a "safeguard" as a consequence of a recommendation by Mr Cooper in his report of 20 October 2015 that the eastern deck be closed at or around 9:30pm so there is no acoustic issue after 10:00pm.
213. Mr Wennerbom submits that Mr Cooper's "fundamental recommendation" was to ensure that there be no acoustic issue after 10:00pm and that this can be achieved by leaving the existing licence condition [Condition "210"] in place, noting that no person is to be on the deck after 10:00pm.
214. Further, if no outdoor speakers are to be used after 10:00pm (as per Condition "2" of the Reviewable Decision), then Mr Cooper's ultimate goal of ensuring that there is no acoustic issue after 10:00pm will be satisfied.
215. Mr Wennerbom submits that the imposition of Condition "4" *penalises* the hotel without making any difference to the residents' concerns. Mr Wennerbom submits that at 10:00pm there should be no noise or patrons on the deck and that would resolve the acoustic issue noted by the Authority, whether patrons cease being in that area at 8:00pm, 9:30pm or 10:00pm.
216. Mr Wennerbom submits that the Authority should take comfort in the fact that it is not the *patrons* on the deck after 10:00pm that is the primary concern of this Complaint. He submits that the "overwhelming issue" identified by the residents is the *bass noise*.
217. It is for this reason that the hotel should not be "penalised a half hour of trade", although the licensee acknowledges that the hotel will have to compromise its trade between 9:30pm and 10:00pm to ensure that nobody is on the deck at 10:00pm.
218. The licensee notes the submission from the Complainant dated 25 January 2016 that the noise disturbance from the hotel has "improved in recent months". Mr Wennerbom submits that this demonstrates that the hotel is adhering to the conditions on its licence, particularly since the Christmas and New Year trading period represents the "busiest time of the year at the hotel".
219. In response to the Complainant's contention that the hotel is a "serial offender when it comes to noise pollution", Mr Wennerbom submits that the acoustic assessment reports prepared by Mr Cooper found that on the days on which inspections of the Premises were conducted, the hotel was compliant except on one Sunday visit. Mr Wennerbom submits that this is consistent with observations made by Police and the Authority.
220. The licensee submits that it is "not aware of any noise complaints or any application under section 79" lodged against the licensed premises known as "*ivy*" whilst Mr Tynan was licensee of that establishment between 29 January 2007 and 13 June 2012.
221. The licensee admits that there were other breaches at the *ivy* but no breaches which involved noise.
222. The licensee contends that during busy nights, the hotel has complied with its licence conditions "at an earlier time to what is stated in the condition", taking into consideration the residents in the area.

223. Mr Wennerbom contends that the hotel has installed noise limiters on the speakers, which are unable to be controlled by management staff at the hotel.
224. Mr Wennerbom disputes the Complainant's contention that some Manly Cove residents have even sold their homes and moved out to escape the hotel's bass noise, and submits that "no such evidence has been provided" to the hotel or to the Authority to indicate that that is the reason that those residents have left the area.
225. Mr Wennerbom notes that "80 plus complaints" (not complainants) were received over a two and a half year period, and submits that these complaints were often made by the same people.
226. Mr Wennerbom submits that the Authority is "aware of the propaganda leaflet that was distributed to residents" by the Manly Cove Alliance.
227. Mr Wennerbom notes that the building works and installation of the PVC blinds at the hotel was a condition imposed by the Land and Environment Court when granting the development application for the Premises.
228. The Court requested those measures after assessing the environment of the hotel and in order to ensure compliance with the noise requirements.
229. Mr Wennerbom reiterates that the Review Application currently before the Authority is only in relation to a review of Condition "4" and submits that "this is not a forum to raise any other issues or concerns with the Premises or to request additional conditions to be imposed on the licence".
230. Mr Wennerbom contends that many licensed premises and residents have been in conflict for the last 15 to 20 years, including the Manly Wharf Hotel. The issues have not arisen under Mr Tynan, but have been "ongoing with the local community and residents for many years".
231. Mr Wennerbom submits that he personally represented interests associated with the Merivale Group [the business owner of *ivy*] at the time that Mr Tynan was licensee of *ivy*, and to his recollection Mr Wennerbom does not believe that any noise complaints were issued against Mr Tynan as licensee. Mr Wennerbom contends that such suggestions by the Complainant are "mischievous at best and highly misleading at worst".
232. In summary, Mr Wennerbom submits that the noise issues sought to be remedied by all parties, including Mr Cooper, will be solved by no patrons being on the deck after 10:00pm and no speakers operating after that time.
233. The licensee submits that whether he clears the deck of patrons at 9:30pm or 9:45pm or 9:50pm, the issue will be solved on the basis that there is no noise emanating from the deck after 10:00pm.
234. Mr Wennerbom submits that Condition "4" of the Reviewable Decision "seeks to penalise the hotel beyond the main thrust of the complainants' concerns" about the bass noise levels and that these concerns are alleviated by the imposition of and adherence to a condition that no persons are on the deck after 10:00pm.
235. Mr Wennerbom submits that in the event that the Authority confirms the Reviewable Decision and Condition "4" remains on the licence, there would be "no incentive" for the

hotel to spend hundreds of thousands of dollars enclosing the deck area. It would also "defeat" the decision of the Land and Environment Court.

LEGISLATION

236. 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.
237. 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.
238. 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.*

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

240. When determining the review, the Authority 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

241. The Authority has considered all of the material that was before the Delegate and all of the additional material that has been provided over the course of this review.
242. The Authority is satisfied that the Complainant, Dr Persson has resided at her current address for 25 years, while the hotel has operated at its present site since 14 February 2003.
243. 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 Complainant.
244. The Authority is satisfied that there is no evidence of any structural changes made to either the hotel or the Complainant's residence, for the purposes of section 81(3)(b) of the Act, although further building works are foreshadowed by the hotel arising from the LEC judgment with regard to its conditional approval on the development of the Premises for the purposes of planning legislation.
245. The Authority notes and accepts the Complainant's contention that she has installed double glazing on her windows in an attempt to "mitigate the [noise] disturbance".
246. With regard to any recent change in the use of the Premises, a consideration to which the Authority must have regard under section 81(3)(c) of the Act, the Authority is satisfied that there has been a significant increase in noise complaints from local residents in relation to bass noise from the Premises since the current licensee and business owner commenced operation of the hotel.
247. On the basis of the Complaint material and the Complainant's submission dated 13 December 2014, the Authority considers it more likely than not that in late 2013 the Premises came under new management, who implemented significant changes in the hotel's business model and marketing. The Authority is satisfied that this change of business has brought with it an emphasis on dance music consistent with a "nightclub-type venue" and with it low frequency (bass) noise emissions, which have prompted an escalation of noise complaints.
248. The Authority is satisfied, on the basis of the Complaint material and the submissions by the Complainant and other local residents, that since late 2013 there has been an

increase in the number of patrons attending the Premises, in conjunction with the introduction of DJ and other amplified entertainment on the Premises.

249. While the licensee has emphasised that this Complaint is focussed on music noise emissions (and the Authority notes that the Complainant contends that "90%" of the problem is from music noise) there was also some mention in the initial Complaint of patron noise when the hotel is trading at full capacity.
250. The Authority is satisfied, on the basis of the Complaint material and submissions from the Complainant and Authorising Residents, that the alleged undue disturbance of particular concern is low frequency noise emissions from music on the Premises ("bass noise") audible from residents' homes.
251. The Authority is satisfied, on the basis of the material in the Complaint from Dr Persson and the submissions from numerous other close neighbours of the hotel provided in support of the Complaint, that the operation of the hotel has given rise to undue disturbance to the quiet and good order of the neighbourhood within the meaning of section 79 of the Act and this principally arises from low frequency music noise emissions from the hotel.
252. The report prepared by The Acoustic Group dated 25 March 2015 in relation to acoustic testing conducted on the Premises and surrounds on 8 February 2015 and the further acoustic assessment report prepared by The Acoustic Group dated 20 October 2015 support the proposition that music and/or bass noise emanating from the Premises is an issue of concern and requires regulation.
253. The Authority notes with concern, on the basis of the Complainant's submission dated 30 April 2015, that the acoustic testing has likely been conducted with the hotel business on notice of the testing, enabling the business to potentially adapt its conduct while being assessed.
254. However the Authority accepts, on the basis of the submissions from the licensee dated 4 November 2014 and 15 April 2015, that substantial remedial action has been voluntarily undertaken by the hotel business with a view to noise amelioration.
255. Nevertheless, the Authority is satisfied that there have been ongoing and credible complaints about occasional undue disturbance from music noise, particularly lower frequency noise, emanating from the hotel. Those complaints have persisted despite remedial action.
256. The Authority is satisfied, having considered the competing interests of the Complainant and the hotel as expressed in their respective submissions on the substantive review, and noting that the order of occupancy consideration prescribed by section 81(3)(a) of the Act is in favour of the Complainant, that the best way to reduce the scope for future undue disturbance, noting also the geography of the area, is for the eastern deck area of the hotel not to be used at all after 10:00pm with the licensee required to commence moving patrons in from that deck from 9:45pm.
257. This will provide a preferable balance between the hotel's ability to engage in licensed trading in a manner that is consistent with the expectations, needs and aspirations of the community in accordance with the statutory object of section 3(1)(a) of the Act and contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries in accordance with the statutory object of section 3(1)(c) of the Act; and the interests of nearby residents who have, the

Authority is satisfied, on the basis of the Complainant's submissions and the acoustic evidence, from time to time been unduly disturbed by low frequency noise emissions from music on the Premises.

258. Noting that certain parts of the hotel are authorised to engage in licensed trading until 1:00am on Monday through Saturday and until 12:00 midnight on Sunday, the Authority is satisfied that, in addition to noise restrictions and noise limitation measures of the kind determined by the Delegate of the Secretary in the Reviewable Decision, ceasing use of the exterior eastern deck at 10:00pm each night is a prudent measure that will better ensure that doors to the deck are not being continually opened, or held open, while patrons move between those areas, enabling music noise to escape the Premises and causing the LA10 noise control requirement to be exceeded.
259. The Authority notes that in November 2013, the New South Wales Land and Environment Court determined that the hotel must install an exterior awning and PVC plastic blinds on the eastern deck area of the hotel as a condition of the Court's approval for the hotel to trade on that area until 12:00 midnight, provided that the PVC plastic blinds are closed at 10:00pm.
260. However, the Authority is satisfied that not occupying the eastern deck at all after 10:00pm (with the exception of some inevitable availability of use of the doors for safety and egress of patrons) will best limit the potential for undue noise disturbance to occur to neighbouring residents due to noise emissions occurring when patrons move between different areas of the hotel.
261. The Authority is also satisfied that it is preferable, given the substantial recent history of noise disturbance complaints being made against the Premises, that the hotel maintain an 80-person limit on the exterior deck at those times when the deck is in use.
262. This measure will serve to prevent patron noise on the deck reaching such levels as to become a nuisance, reducing the scope for that source of noise to become an undue disturbance to local residents. It will also reduce the scope for pre-midnight noise emissions from the hotel to cause undue disturbance prior to 10:00pm.
263. The Authority is satisfied that these measures should apply on all seven (7) days of the week to ensure that noise levels do not reach a level of undue disturbance on weeknights when local residents have, if anything, a stronger claim to measures preventing undue disturbance from noise as many residents will have to go work the next day.
264. The Authority notes that it has only been requested to review Condition "4" of the Reviewable Decision, which imposes restrictions on the use of the exterior eastern deck of the hotel.
265. The Authority observes that the Reviewable Decision was reasonable, based on the evidence or material before the Delegate.
266. However the Authority is satisfied, having considered *both* the regulatory action taken by the Delegate of the Secretary in the Reviewable Decision dated 25 November 2015 and the separate but related action taken by an Authority Delegate on 24 September 2015, that it is preferable and in the public interest to rationalise the regulation of the hotel to produce a set of complementary conditions that regulate noise emissions from the hotel and better prevent the recurrence of undue disturbance in the future.

Notice of Proposed Action under Section 53 of the Act

267. In order to rationalise the section 53 licence conditions that were imposed by the Authority Delegate on 24 September 2015, the Authority is *minded* to take the following ancillary action under section 53(2)(b) of the Act, subject to final submissions from the licensee:

268. Revoke Condition "3020", which currently requires that:

The number of patrons allowed in the balcony area is limited to eighty (80). All patrons are to be moved off the balcony area by midnight every night. The balcony area is the external deck comprising an area commencing at a point seventeen (17) metres in an easterly direction from the eastern wall dividing the main bar and restaurant.

269. Revoke Condition "3030", which currently requires that:

The drop down clear PVC blinds around the perimeter of the awning, to be zippered at all sides, dropped down and to sit on the timber counter from 9:00pm every night. All doors leading to the balcony area, except the fire exit door are to be closed at 9:00pm.

270. The revocation of Condition "3030" is proposed on the basis that if a 10:00pm shutdown of the eastern deck is in place, the licensee should not (for the purposes of regulating disturbance under the Liquor Act) be put to the expense of installing the blinds from 9:00pm each night to provide one hour of acoustic benefit.

271. Vary Condition "3050", which currently requires that:

When amplified music or entertainment is provided, that it is connected to a noise limiter, such as a GASCOM, and the noise limiter is set at a noise level of 93dB(A), as measured at a point in that part of the premises where the amplified music or entertainment is being provided, which is beneath the noise limiter microphone and that an acoustic consultant regularly services the noise limiter.

272. The proposed variation of Condition "3050" will refer to and complement the noise limiter condition imposed by Condition "1" of the Reviewable Decision (Noise Limiter Condition).

273. The Authority notes that the Noise Limiter Condition is not subject to review and shall remain on the licence. It states:

Condition 1: Noise Limiter

At any time amplified music is conducted at the hotel, all amplifiers or noise generating equipment must be under the control of a noise limiter/s. The noise limiter/s must be tested by a suitably qualified acoustic consultant by November of each calendar year to ensure the levels comply with the LA10 noise criteria.

The acoustic test must be recorded in a report prepared by the acoustic consultant within 4 weeks of the testing. A copy of the report must be maintained at the premises and made available for immediate inspection by inspectors, NSW Police or council officers.

274. In light of this condition, the Authority proposes that the words of Condition "3050" be varied pursuant to section 53(2)(b) of the Act to instead supplement the Noise Limiter Condition with a view to better regulating music emissions, as follows:

Condition 3050

For the purposes of the Noise Limiter Condition on this licence a noise limiter such as a GASCOM will be set at a noise level of 93dB(A), as measured at a point in that part of the premises where the amplified music or entertainment is being provided, which is beneath the noise limiter microphone.

275. The action proposed in this letter will, in the Authority's view, provide a more harmonious regulatory response by simplifying the conditions currently imposed on the licence, reducing red tape and scope for confusion and better managing the potential for low frequency noise emissions from music to cause future undue disturbance to the quiet and good order of the neighbourhood within the meaning of section 79 of the Act.

DECISION ON REVIEW

276. The Authority has decided to take the following final administrative action to conclude this review pursuant to section 36A(4) of the *Gaming and Liquor Administration Act 2007*:

Vary Condition "4" of the Reviewable Decision so that it instead reads as follows:

Condition 4

Condition 210 varied from:

The number of patrons allowed in the balcony area is limited to eighty (80). All patrons are to be moved off the balcony area by 10:00pm on Thursday, Friday, Saturday and Sunday evenings. The balcony area is the external deck comprising an area commencing at a point seventeen (17) metres in an easterly direction from the eastern wall dividing the main bar and restaurant.

To:

The number of patrons permitted on the eastern deck is limited to 80. From 10:00pm no patrons are to be permitted on this area. Hotel staff are to commence moving patrons off the deck at 9:45pm.

277. The Authority notes that Conditions 1, 2 and 3 imposed by the Delegate in the Reviewable Decision were not subject to review and remain in effect.

278. 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.

PROPOSED SECTION 53 MEASURES

279. While the Application for Review has now been finalised, separately to the above decision, the Authority gives notice that it is minded, subject to final submissions from the licensee, to take the following administrative action pursuant to section 53(2)(b) of the Act:

- (a) Revoke Condition "3020" on the licence.
- (b) Revoke Condition "3030" on the licence.
- (c) Vary Condition "3050" on the licence so that it instead reads as follows:

Condition 3050

For the purposes of the Noise Limiter Condition on this licence a noise limiter such as a GASCUM will be set at a noise level of 93dB(A), as measured at a point in that part of the premises where the amplified music or entertainment is being provided, which is beneath the noise limiter microphone.

INVITATION TO LICENSEE TO MAKE SUBMISSIONS

280. Section 53(4) of the Act requires the Authority to give the licensee of a licensed premises a reasonable opportunity to make submissions on action that is proposed to be taken by the Authority pursuant to its powers under section 53(1)(b) or section 53(2)(b) of the Act.

281. To that end, the licensee is invited to make final written submissions on the proposed section 53 measures noted above within 14 days after the date of this decision.
282. Please address any written submissions to the Deputy Chairperson of the Authority, Mr David Armati and make those submissions **via email** to the Authority's General Counsel at bryce.wilson@ilga.nsw.gov.au.
283. If you have any enquires about this letter, please contact the Authority's General Counsel, Mr Bryce Wilson via email to bryce.wilson@ilga.nsw.gov.au.

A handwritten signature in black ink, appearing to be 'DB Armati', written in a cursive style.

DB Armati
Deputy Chairperson

DATED: 7 March 2016