
FILE NO: A21/0018747

COMPLAINANT: [REDACTED]

LICENSED PREMISES: Towradgi Beach Hotel, Fairy Meadow - LIQH400106866

ISSUES: Whether the quiet and good order of the neighbourhood of the licensed premises is being unduly disturbed.

LEGISLATION: *Liquor Act 2007*

SECTION 81 DECISION

Under Section 81 of the *Liquor Act 2007* (the Act) I, John Coady, Manager, Regulatory Interventions, Liquor & Gaming NSW, a delegate of the Secretary of the Department of Enterprise, Investment and Trade, in relation to the complaint made in respect to Towradgi Beach Hotel, Fairy Meadow have decided to take **no further action**.

REASONS FOR DECISION

Legislative framework

1. Section 79 of the Act provides that a prescribed person may complain to the Secretary, that the quiet and good order of the neighbourhood of the licensed premises is being unduly disturbed because of the manner in which the business of the licensed premises is conducted, or 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. For the purpose of section 79 of the Act, a person who has standing to make a complaint includes a person who is a resident in the neighbourhood of the licensed premises and is authorised in writing by two or more other residents.
3. Section 80 of the Act enables the Secretary to deal with a complaint by way of written submissions from the licensee and any other person the Secretary considers appropriate. After dealing with the complaint, section 81 of the Act provides that the Secretary may decide to impose, vary or revoke licence conditions, issue a warning, or take no action.

4. In exercising functions under the Act, the Secretary must have regard to the Objects set out in section 3 of the Act and must have regard to the matters set out in section 3(2) which are:
 - (a) the need to minimise harm associated with the misuse and abuse of liquor;
 - (b) the need to encourage responsible attitudes and practices towards the promotion, sale, supply, services 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; and
 - (d) the need to support employment and other opportunities in the –
 - (i) live music industry, and
 - (ii) arts, tourism, community and cultural sectors.

The Complaint and background information

The complaint

5. On 31 March 2021, [REDACTED] (the complainant) of [REDACTED] Towradgi lodged a section 79 noise disturbance complaint with Liquor & Gaming NSW (L&GNSW) alleging undue disturbance to the quiet and good order of the neighbourhood caused by the Towradgi Beach Hotel (the Hotel). The complainant lodged the complaint as a resident authorised by two other residents.
6. The complainant alleges loud music played from approximately 12 amplified speakers in the outdoor beer garden causes disturbance. The disturbance is alleged to occur into the early hours of the morning and on most days of the week, however Friday, Saturday and Sunday can be the worst times for noise. The complainant further states patrons leaving the Hotel shout, argue and occasionally damage property.
7. The complaint submits there have been operational changes to the Hotel, including the construction of a bar in the beer garden, a large TV screen and several speakers installed, the occasional DJ playing until the early hours, the construction of seating booths, and hosting trivia on Tuesdays.
8. Included with the complaint is a letter addressed to Wollongong City Council (Council) dated 19 March 2021. The letter outlines the structural developments that have been completed in the Hotel's beer garden including a bar, housing booths, giant TV screen, placement of approximately 14 speakers and hosting regular live music. The complainant references Development Application (DA) DA-2008/1498, which was submitted by the Hotel in 2008, seeking to have the beer garden converted into an outdoor entertainment area and was subsequently refused by Council. The complainant alleges the beer garden is operating as an entertainment area and the construction of the facilities in the beer garden have been completed without Council approval. Also attached to the letter is a copy of the floor plan of the beer garden and aerial screen shots of the Hotel and beer garden.

9. The complainant seeks as a desired outcome the removal of the speakers and TV screen from the beer garden area and a review of the Hotel's trading hours.
10. On 26 April 2021, a second disturbance complaint was lodged under section 79 of the Act by another nearby resident, [REDACTED], authorised by two other residents. The complaint raised similar allegations as the first complaint, submitting the disturbance from amplified music and bass commenced after the Hotel reopened following refurbishments. It is alleged the disturbance continues beyond midnight and on some occasions, it is not possible to sit outside, have windows open, watch TV or sleep in their residence.
11. On 28 April 2021, the complainant and [REDACTED] consented to the two complaints being merged, with the complainant remaining as the principal complainant.

The venue, licence details, compliance history

12. The Hotel holds a full hotel licence and is located at 170 Pioneer Road, Fairy Meadow. On 12 August 2009, Oscars Hotels Pty Ltd commenced as the licensee [REDACTED]. [REDACTED] The current approved manager is [REDACTED] (the approved manager), commencing on 11 June 2019.
13. The Hotel holds three authorisations relating to an extended trading authorisation, a minors area authorisation and a minors function authorisation. The Hotel's trading hours for consumption on premises are 5:00am to 3:00am, Monday to Saturday and from 8:00am to midnight on Sundays. The Hotel is also permitted to do takeaway sales between 5:00am to midnight, Monday to Saturday and from 8:00am to midnight on Sundays.
14. The Hotel's licence is subject to a number of conditions, including a complaint proceedings condition, LA10 noise condition, four conditions relating to the minors functions authorisation and three conditions relating to the use of car park. Under Condition 350, liquor may only be sold or supplied in the car park areas of the Hotel during functions, occasions or events for consumption on the licensed premises. No liquor shall be sold or supplied in unopened cans or bottles. Condition 400 requires at least one security guard to be engaged when any function, occasion or event is held in the car parking area and up to 250 patrons are expected to attend. For every 100 patrons or part thereof expected to attend the function, occasion, or event, one additional licensed security guard is required. Additionally, Condition 410 requires staff to regularly patrol the car park area when liquor is sold or supplied to ensure that minors are not permitted access to liquor.
15. L&GNSW records show two complaints were lodged against the Hotel in 2022, relating to a violent incident and the failure to provide free water. Between October 2019 and December 2021, seven complaints were lodged against the Hotel relating to noise, predominantly from live music. Five of the complaints were received over a short period of time from December 2020 to February 2021 and were dealt with conjointly.

16. L&GNSW engaged with the approved manager regarding the noise complaints, who advised that the Hotel has a direct phone line for complaints, 10 security guards are employed to patrol the car park and ensure patrons leave the Hotel quietly, managers patrol the perimeter and conduct spot checks measuring noise, and all music is run through the Hotel's house system which is controlled by management. Following the remedial engagement, L&GNSW determined to take no further action in respect to the complaints.
17. On 6 March 2021, the approved manager further advised L&GNSW that additional voluntary measures had been employed to mitigate noise including meeting with the strata committee of a nearby apartment complex to discuss noise concerns, moving the patron queue in a direction away from the apartment complex, an undertaking to order and erect signage reminding patrons to leave the Hotel quietly and providing the approved manager's personal contact details to the secretary of the strata committee to promptly address any complaints.

Submissions

18. Between 31 March 2021 and 20 April 2022, various material was received from parties to the complaint, including NSW Police, Council, the Hotel and the complainant. The material that is before the delegate is set out in **Annexure 1** and is summarised below.

Police submission

19. On 11 May 2021, a submission was received from Police in relation to the complaint. Police advise that the Hotel is located close to Wollongong CBD and is one of the busiest licensed premises in the district. It is submitted that the Hotel attracts large crowds typically on Friday, Saturday, and Sunday nights, with a broad demographic of patrons aged between 18 to 35 years old.
20. Police submit the Hotel recently completed a major renovation that involved the beautification of the outdoor beer garden and the introduction of DJs on the outdoor deck since re-opening. Further, the Hotel has become extremely popular since the renovation. Police note that there has been a number of relatively new high rise residential buildings constructed in the area, some less than 100 metres from the Hotel, and it is submitted that there has been an increase in noise complaints regarding excessive noise emanating from the Hotel.
21. Police advise that in the previous three months, 34 high visibility inspections were conducted at the Hotel with the following incidents being recorded:
 - 1 fail to quit offence (patron failing to leave premises when asked by staff) with legal action recorded.

- 1 assault with legal action recorded.
 - 1 drink spiking incident with legal action.
 - 3 licensing offences with compliance notices issued.
 - 1 drug detection with legal action.
 - 1 street offence detected (female urinating in the car park) with a warning issued.
 - 11 person searches conducted on the premises.
22. Police further submit that following a review of the Police CAD system, five entries were identified involving the Hotel, including two relating to excessive noise.
23. Police advise that on 22 February 2021, they engaged with a resident concerning noise emanating from the Hotel. Police state that the resident alleged noise at the Hotel had significantly increased since the renovations were completed, with the Hotel installing at least 10 outdoor speakers in the beer garden. Police recorded the complaint (COPS Event E78090370) and engaged with the approved manager concerning the complaint.
24. Police advise that on 26 February 2021, they engaged with another resident, who is the strata manager of a nearby apartment complex, concerning anti-social behaviour from patrons of the Hotel. Police state that the resident alleged Hotel patrons were observed urinating in public and engaging in anti-social behaviour including fighting and offensive language. Police recorded the complaint (COPS Event E78649332) and engaged with the approved manager. Police patrolled the Hotel's southern fence line and observed amplified music playing in the beer garden, however deemed that it was not offensive.
25. Police submit that to avoid future disturbance complaints, the Hotel should not be permitted to play amplified music in the beer garden after 10:00pm. Police state that by implementing this strategy, it will have a positive impact on the neighbourhood and the local amenity will be maintained.

Council submission

26. On 18 May 2021, Council provided a submission in response to the complaint. Council advised that several complaints had been received in relation to music and patron noise at the Hotel occurring late into the night and early in the morning. As a result, Council issued the Hotel a Development Control Order and two Notices of Intention to give a Development Control Order under the *Environmental Planning & Assessment Act 1979* in relation to unauthorised structure and their subsequent use.
27. Included with the submission is a copy of the Development Control Order and Notice of Intention, summarised below:

Development Control Order No 3 (NO-2020/376)

Issued to Oscars Hotels Pty Ltd on 14 May 2021 and requires the building owner demolish and remove the timber pergola situated within the front terrace area. Reasons for the order are that the construction and installation of the timber pergola has been completed without development consent when required and that the timber pergola has a floor area of 30 square metres and a height of 3.9 metres, which does not meet relevant development standards.

Notice of Intention to give a Development Control Order No 1 & Order No 3 (NO-2021/176)

Issued to Oscars Hotels Pty Ltd on 14 May 2021 and proposes two orders to stop the use of the 'O Bar' and 'Beach Bar' and to demolish and remove the 'O Bar' and 'Beach Bar'. The proposed order notes that the use of the 'O Bar' and 'Beach Bar' has exceeded the restricted consent period of 12 months from the endorsement date of Development Consent RD-2018/588/A, and no application has been provided to Council to extend the period of the consent. Further, an audit of all applications for the Hotel found that the construction of the 'O Bar' and 'Beach Bar' are considered unlawful and an attempt to legitimise the structures was refused in Building Certificate Application BC-2017/78. Additionally, the operations of the 'O Bar' and 'Beach Bar' are affecting the amenity of the neighbourhood.

Notice of Intention to give a Development Control Order No 1, Order No 3, and Order No 11 (NO-2021/177)

Issued to Oscars Hotels Pty Ltd on 14 May 2021 and proposes three orders to stop the use of the beer garden as an entertaining area, to demolish the unapproved timber decks and to comply with planning approval DA-2007/133 dated 27 March 2007, specifically Condition 11 relating to noise nuisance. The proposed order notes that an inspection of the beer garden found the construction of the two large timber decks to be unlawful and required development consent. The order also notes the beer garden is being used as an entertainment area without development consent and is affecting the amenity of the neighbourhood.

Hotel response to complaint

28. On 11 June 2021, a submission was received from [REDACTED] of Hatzis Cusack Lawyers on behalf of the Hotel and the approved manager in response to the complaint.
29. The submission advises that upon receipt of the complaint, the Hotel owner commissioned Renzo Tonin & Associates to conduct acoustic testing at the Hotel against the LA10 noise condition. Mr [REDACTED] from A & M Consultants was also appointed to conduct covert surveillance at the Hotel, including observations regarding disturbances and any recommendations for reducing the potential for disturbance. Included with the submission is a copy of the noise compliance report from Renzo Tonin & Associates, dated 9 June

2021 (the Acoustic Report) and the report from [REDACTED] dated 6 June 2021 (the Surveillance Report).

30. The submission argues that the Hotel owner has sought objective and independent professional advice as to whether the Hotel might be causing undue disturbance and what, if any, actions ought to be undertaken to mitigate the potential for undue disturbance.
31. The Acoustic Report states that Renzo Tonin & Associates was engaged to measure noise emanating from the normal operation of the outdoor entertainment area of the Hotel against the LA10 noise criteria. The Acoustic Report notes that the outdoor area of the Hotel is approximately 1650m² and consists of a beer garden, a bar, covered seating area, semi enclosed dining, a TV screen, a sound system for background music and a children's playground area.
32. The Acoustic Report details acoustic testing conducted at the Hotel on Friday 14 May 2021 from 7:30pm until 12:30am. The results of the Acoustic Report conclude that noise from the outdoor entertainment area did not comply with the LA10 noise condition at the nearest residential boundaries to the north and west of the Hotel. The exceedances were primarily due to children playing in the outdoor play area during peak trading hours and the bass component of music emanating from the beer garden. The Acoustic Report outlined a number of measures to address the noise exceedances including implementing acoustic treatment to the outdoor area such as absorptive materials over reflective surfaces, noise screening around the children's playground and to the northern end of the beer garden and repositioning the outdoor speakers.
33. The submission refers to the recommendations in the Acoustic Report and advises that following discussions between the Hotel owner and the acoustic engineer, the recommended measures can be undertaken within six weeks and probably without the need for development consent. It is further proposed that additional acoustic testing will be undertaken once the recommended works have been completed at the Hotel.
34. The Surveillance Report outlines the results of covert observations conducted by [REDACTED] at the Hotel on Saturday 22 May 2021, between 9.00pm and 3.00am and on Saturday 5 June 2021, between 10.00pm and 3.00am. The surveillance was conducted on a covert basis both internally and externally, with the date and time of the surveillance period selected to assess the Hotel's operations, closing procedures and community impact during busy trade periods.
35. The Surveillance Report notes that the main location for patrons during the surveillance period was the beer garden and main bar of the Hotel. Approximately 50-100 patrons were present in these areas until midnight, with music being played inside the main bar area and through speakers in the beer garden, but at a much lower volume. The large TV screen was operating however no volume was detected. It was further noted that by

11:30pm the northern part of the beer garden was cordoned off and closed to patrons. On both evenings during the surveillance period, by midnight under half of the patrons counted at 10:00pm were still present at the Hotel.

36. The Surveillance Report states that at least seven security guards and two RSA Marshals were deployed on both evenings during the surveillance period, with two security guards observed patrolling the beer garden area. Further observations were made of the Hotel's closing procedures, with a focus in the car park and surrounding area to assess the activity of exiting patrons. It was noted that on Saturday 22 May 2021, between midnight and closing time, only a limited and infrequent security presence was detected in the car park. As a result, it is recommended that one or more security guards be deployed on busy evenings to patrol the car park after midnight to minimise the potential for loud or anti-social behaviour and to manage patron egress.

37. The Surveillance Report concludes that apart from a few isolated instances of patrons talking loudly for short periods whilst waiting for transport or companions, there was no detection of any unreasonable activity or noise issues from exiting patrons during closing procedures. Further, it is submitted that the instances cited could not reasonably be expected to be heard from hundreds of metres away inside private residences. The Surveillance Report also details external observations made along Edgar Street on both evenings during the surveillance period at 10:45pm and 11:30pm respectively. On both occasions, no noise emanating from the Hotel was audible at the location. The Surveillance Report states that the physical positioning and layout of the Hotel, and the strategies developed by the Hotel appear effective in managing patrons.

38. The submission advises that the Hotel owner undertakes to act in accordance with the recommendation in the Surveillance Report and provides the following undertaking:

On Friday and Saturday nights (and on any other night when musical events are held at "Waves") at least one security guard is to be permanently deployed, from 11 PM until the last patron has departed the vicinity of the Hotel, to patrol the Hotel carpark."

39. The submission refers to the complainant's allegations relating to approval from Council regarding the use of the outdoor area and structures, submitting that as these are issues for Council and outside the Secretary's jurisdiction, they will not be addressed at any length. However, the submission refutes the complainant's assertion that the use of the beer garden and courtyard area for entertainment lacks any necessary development consent and states Council approval was issued for the construction of the Beach Bar under DA RD-2018/588/A.

40. The submission provides that moving forward the Hotel should be allowed a reasonable period to implement the recommendations from the Acoustic Report and to undertake further acoustic testing against the LA10 noise criteria. The submission proposes:

- to offer the undertaking above in paragraph [38], effective immediately;
- that the Hotel will undertake all actions necessary to implement the recommendations contained in the Acoustic Report;
- By 30 July 2021, the Hotel reports to L&GNSW as to what works have been carried out, and what if any works remain to be carried out, in order to comply with those recommendations; and
- By 20 August 2021, the Hotel lodge an additional report from the acoustic engineer testing compliance with the LA10 noise condition.

Further material and update from the Hotel

41. On 25 November 2021, an update was provided by Hatzis Cusack Lawyers on behalf of the Hotel. The submission advises that following the Hotel's submission of 11 June 2021 being provided to L&GNSW, the Hotel went into lockdown (associated with the COVID-19 pandemic), and only recommenced trading in mid-October.

42. Following recommencement of trade, the Hotel commissioned [REDACTED] to conduct further surveillance of the Hotel's operations. Included in the submission is a copy of the second report prepared by [REDACTED], dated 24 October 2021 (the Second Surveillance Report).

43. The Second Surveillance Report states that [REDACTED] was commissioned by the Hotel owner to conduct a covert audit of the Hotel's operations to assess management procedures, patron behaviour, any detected issues arising from the Hotel trading, and a specific focus on the impact the operation of the Hotel has on the local community. The Second Surveillance Report outlines the results of covert observations conducted by [REDACTED] at the Hotel on Saturday 23 October 2021, between 10.00pm and 1.00am.

44. The Second Surveillance Report states that the activities at the Hotel were similar to the activities observed at the Hotel during the inspection in May 2021. However, it is noted that the main difference observed was the increase in patronage, with approximately 450 patrons present at the Hotel at 10:00pm. Patrons were observed to be evenly congregated throughout all areas of the Hotel, including outside in the beer garden, on the covered terrace and in cabanas along the eastern boundary. A DJ was observed playing music in the main bar area of the Hotel with speakers located in the beer garden playing music at a much lower level, allowing for comfortable conversation. It is noted that the speakers located in the northern end of the beer garden, near the children's playground, were turned

off. The music was audible from the car park but faded considerably towards Pioneer Street and was not audible on Edgar Street. The DJ entertainment ceased at 11:45pm.

45. The Second Surveillance Report notes that by midnight the number of patrons at the Hotel had reduced by more than half, and by 1:00am there was less than 50 patrons present. It is noted that poor weather conditions may have influenced this departure, however it is submitted that the ratio of patrons leaving the Hotel during this time is consistent with prior observations made in May 2021.
46. The Second Surveillance Report states that nine security guards and three RSA marshals were observed at the Hotel, above industry standard. Two security guards were tasked to permanently patrol the car park area, with the guards observed engaging with patrons waiting for ride share or taxis to facilitate quieter behaviour. It is concluded that no unreasonable or offensive noise emission was detected emanating from the Hotel, and no anti-social or criminal behaviour from patrons was detected in the vicinity of private residences.
47. The submission contends that the Hotel is complying with the undertaking provided in the initial submission dated 11 June 2021, to deploy at least one security guard to actively patrol the car park on Friday and Saturday nights. This was also noted in the Second Surveillance Report.
48. The submission further outlines that the Hotel has implemented the following measures to address noise exceedances identified in the Acoustic Report:
 - (a) The children's play area closes earlier, at 7.30pm each day (and earlier outside of daylight savings periods);
 - (b) A sub-woofer speaker previously located in the beer garden (and which was identified as causing a substantial degree of bass noise) has been removed;
 - (c) The Hotel has installed a new digital sound system, with built in noise limiters, that have been calibrated;
 - (d) A number of speakers have been removed from the beer garden area, with the remaining speakers re-angled downwards to reduce the projection of sound; and
 - (e) DJ entertainment has ceased in the beer garden area.
49. It is submitted that since the implementation of the above measures and re-opening in mid-October 2021 the Hotel has not received any noise complaints. The Hotel intends to commission a further acoustic report to determine if these measures achieve compliance with the LA10 noise criteria or if further works are necessary.
50. The submission advises that the Hotel undertakes to trade only in the manner set out above, with those measures implemented, and the previous undertaking regarding the provision of security guards patrolling the car park.

51. The submission also advised that the Hotel had commenced proceedings in the Land and Environment Court seeking court permission for the maintenance of outdoor decking and a pergola. The submission notes that it was Council's view that the above structures required express development consent. The proceedings were listed for hearing in March 2022.
52. The submission concluded by requesting further time to conduct acoustic testing to assess the effectiveness of the measures implemented during summer trading conditions. It was submitted that given the difficulty in procuring acoustic engineers at that time, the upcoming holiday period and the desirability of undertaking testing during a peak trading period, it was proposed such a report be provided by the end of January 2022.

Further material and submission from Council

53. On 10 December 2021, Council advised it had received three new complaints relating to noise from music at the Hotel until midnight on Friday 10 December and Saturday 11 December 2021. The noise was alleged to be emanating from the Waves Nightclub inside the Hotel, with the complaints alleging that the music and bass was so loud it resulted in difficulty in sleeping and watching television even with windows closed.
54. On 15 December 2021, a further submission was sought from Council as an update to its initial submission, dated 18 May 2021.
55. On 13 January 2022, a further submission was received from Council. The submission states that in September 2020 and February 2021, several complaints were received in relation to the illegal building of structures in the beer garden area at the Hotel. In the few weeks following the completion of those structures, several complaints were received relating to excessive noise and loud music.
56. As a result, Council subsequently issued two Development Control Orders (NO-2021/177 and NO-2020/376) requiring the Hotel to demolish and remove two large timber decks and to demolish and remove one pergola, all identified as being unlawfully built. Council also issued an order to comply with Development Consent DA-2007/133.
57. Council advises that in June 2021, the owners of the Hotel lodged an appeal with the Land and Environment Court for order NO-2021/177 and NO-2020/376 to be revoked. On 27 August 2021, Council was party to a Section 34 Conciliation Conference with the Hotel owners under *the Land and Environment Court Act 1979* which was terminated without any agreement being reached. As a result, the Hotel's appeals against the orders were to proceed to hearing on 1 and 2 March 2022. The outcome of those proceedings is discussed further from paragraph 84 below. Council reaffirmed that the construction and use of the timber decks and pergola remained unlawful, and the impacts to the surrounding residents by way of excessive noise causing nuisance were not resolved.

58. Council requested L&GNSW consider placing restrictions on entertainment at the Hotel until all matters were resolved in the Land and Environment Court in March 2022. The suggested conditions included no live music (including DJs) in the beer garden at any time and no music (including background music through speakers) in the beer garden after 10pm on any day.
59. Council further advised that during this period four applications were lodged by the Hotel seeking consent for the established structures and the continued use of the timber decks and pergola. All four applications were either refused or were deemed refused and were also subject to appeals by the Hotel. These appeals were also to be heard in the Land and Environment Court on 1 and 2 March 2022.

Complainant final submission and other material

60. On 13 January 2022, the complainant was invited to provide a final submission in response to the submissions received from the Hotel, Police and Council. The complainant's final submission and supporting material was received in full on 16 February 2022.
61. The complainant's submission includes a letter from a resident dated 28 January 2022 outlining their concerns regarding the operation of the Hotel, a statutory declaration from a resident dated 28 January 2022 alleging that disturbance from the Hotel persisted until 2:00am on numerous occasions between February and March 2021 and a letter from L&GNSW to the complainant relating to the results of a request access to information under the *Government Information (Public Access) Act 2009*. The submission material also includes two separate petitions signed by residents, an extract of six emails in support of the online petition and video footage showing DJ entertainment playing both inside the Hotel and in the beer garden and video recordings taken from YouTube that relate to promotional material for the Hotel.
62. The first petition is signed by 60 residents and seeks that L&GNSW and Council issue orders in response to excessive noise and patron behaviour at the Hotel. The petition seeks orders that reduce the Hotel's trading hours to standard trading hours, reduce the intensification of the beer garden, require music outside to cease at 9.30pm and to be moved inside the Hotel, to have insulation installed to prevent noise travelling and for the large TV screen in the beer garden to be removed. A second online petition signed by 26 residents is similar in nature however seeks security patrols to cover the Hotel including the beer garden, the carpark area and adjoining streets, to reduce the Hotel's trading hours to 12:00am and that the Hotel comply with regulations relating to noise and security concerning the operation of Waves Nightclub.
63. The complainant provides context to the operations of the Hotel and previous owner. It is submitted that Gravanis Nominees Pty Ltd purchased the Hotel in 2002 and completed

alterations and additions, both inside and outside of the Hotel. In 2008, Gravanis Nominees Pty Ltd submitted DA-2008/1498 to Council that sought approval for outdoor entertainment. The complainant submits DA-2008/1498 was refused by Council and provides a copy of the determination notice, noting the reason for the refusal of the proposed development was that the proposal was expected to produce unacceptable and excessive noise levels to surrounding residents with resultant loss of amenity.

64. The complainant submits that seven months later, Gravanis Nominees Pty Ltd sold the Hotel to Oscars Hotels Pty Ltd. The complainant contends Oscars Hotels Pty Ltd was determined to make the beer garden an outdoor entertainment area and over a number of years completed works including placing 14 speakers around the beer garden, building a bar in the beer garden, enclosing the north facing back deck and incorporating a bar and function room, installing a giant TV screen, building a large cabana, and building an expansive deck in the beer garden with lounge seating and a DJ area.
65. The complainant submits the Hotel has succeeded in making the beer garden an outdoor entertainment area. The complainant submits the Hotel's strategy is to do improvements and alterations in a 'clandestine manner' with no development application, bypassing Council requirements and any objections by residents. It is alleged that if discovered, the Hotel would then submit a development application seeking the continued use of the alteration or addition made. The complainant provides a number of promotional videos relating to the entertainment offerings at the Hotel recorded from YouTube and a video recording taken from mobile phone on 26 January 2021 to show the constructed deck, a DJ, speakers, and giant TV screen in the beer garden at the Hotel.
66. The complainant submits the southern third of the Hotel is the Waves Nightclub that hosts live bands and DJ entertainment. Due to the proximity of residential apartment towers near the Hotel, repeated complaints have been made to Police regarding excessive noise from Waves Nightclub, the beer garden, the carpark area and from behaviour of patrons leaving the Hotel and travelling south along the footpath in front of the three residential towers. It is submitted that patrons leaving the Hotel cause disturbance from conversing, laughing, screaming, singing, and arguing which can last until 3.00am.
67. The complainant submits they do not dispute the readings in the Acoustic Report but expresses concern that the acoustic readings were not taken at the two locations that share a boundary with the Hotel, being a residential apartment tower and new housing allotments on the western side. Further, concern is raised regarding the sample size, noting that the readings were only taken over a five-hour period.
68. In relation to the Surveillance Report, the complainant contends that having reviewed the photographs taken by [REDACTED] at the Hotel, a conclusion can be made that the Hotel was comparatively quiet. The complainant for comparison provides two videos taken at

the Hotel on Sunday 13 June 2021 at 7:29pm, on the Queen's Birthday weekend. The complainant also notes that during [REDACTED] inspection on 23 October 2021, some rain occurred over the course of the night which would have contributed to reduced numbers at the Hotel. The complainant further submits that using a sample size for surveillance and acoustic testing that doesn't give a statistically significant level of confidence cannot be used as rebuttal to Police and Council noise complaint records that go back a decade.

69. The complainant submits that since 2002, the following improvements and additions have been made to the Hotel;

- (a) An extended trading authorisation allowing liquor sales until 3.00am;
- (b) The largest beer garden/entertainment area in Wollongong containing a bar, cabana style cubicles, lounge seating, large screen TV and music through multiple speakers;
- (c) Seven separate bars;
- (d) A carpark which can accommodate 340 cars,
- (e) A children's play area;
- (f) A nightclub (Waves Nightclub) which can accommodate 1,450 people;
- (g) Overnight accommodation;
- (h) A bottle shop;
- (i) Oscars Grill;
- (j) A pizzeria;
- (k) TAB facility; and
- (l) Function room

70. The complainant argues that one would expect a hotel of this size and facilities to be located in an entertainment precinct, and not a small suburb located 5 kilometres north of Wollongong. The complainant acknowledges that while [REDACTED] experience at the Hotel for meals and leisure is enjoyable, the noise complaints coming from residents in the residential apartment towers to the south of the Hotel, the caravan park to the east and residents to the north, evidence the extent to which the Hotel is abiding by its LA10 noise condition.

Hotel final submission and other material

71. On 23 February 2022, the Hotel was invited to provide a final submission in response to the submissions received from Council and Police and the complainant's final submission. A submission was provided by Hatzis Cusack Lawyers on 16 March 2022.

72. The submission contends that the Secretary must determine disturbance complaints having regard to the legislative framework and statutory criteria. Further, all decision makers are required to have regard to the objects of the Act which include that the operation of a licensed premises does not detract from the amenity of community life,

contributes to the development of live music, entertainment, tourism and hospitality industries as well as supporting employment and other opportunities in these sectors.

73. It is submitted that the Hotel is a significant provider of opportunities to the live music industry. The submission includes a letter from [REDACTED] of the Live Music Office providing support and recognition that the Hotel is one of the leading venues and employer of musicians in the Illawarra region. Letters are also provided from WME Music and The Harbour Agency acknowledging the Hotel's invaluable contribution to the live music industry over the years and the importance of the Hotel for the development of Australian live music, particularly in the Illawarra region.
74. The submission advises the Hotel was purchased by interests associated with the present business owners in 2002 and therefore has been under the same ownership for approximately 20 years. During that time the site of the Hotel has not expanded however the existing land has been progressively enclosed to help contain noise spill by moving entertainment and patron noise indoors.
75. The submission states that since 2002, there has been significant residential development to the south and west of the Hotel, and to a lesser extent to the east. The submission references aerial photos of the Hotel provided by the complainant and submits a number of neighbouring apartment complexes were not yet constructed in 2002. The submission includes a street view photo of the closest apartment complex to the Hotel, said to be completed circa 2019. The submission argues this is a case where significant multi-storey residential development has been constructed in and around a long-standing open-air entertainment hotel which is an integral part of the Illawarra live music, arts and entertainment scene.
76. The submission includes a letter from two residents of an apartment complex located adjacent to the Hotel. The residents offer support to the Hotel and submit they were aware of the Hotel's entertainment program when purchasing their apartment over five years ago and since taking up residence, they have not experienced any issues with noise or actions from the Hotel. The submission argues that the letter differs from the opinions of undue disturbance alleged by the complainant, and that the residents state from their experience the current management of the Hotel is very effective.
77. Reference is also made to another letter endorsed by 23 residents of the Manta Apartments which shares a boundary with the Hotel. The letter offers support to the Hotel and states that the Hotel was built long before a number of residential developments and those who purchased were well aware of the proximity to the Hotel and its live music focus. It is submitted that the Hotel is well managed, and the residents have no concerns with noise in relation to the Hotel.

78. The submission provides an email from the Hotel's former licensee, [REDACTED], to Council dated 1 April 2015 requesting consideration for noise amelioration measures be built into the proposed development of the nearby Bel Air Tower residential apartments, reflecting the fact that the Hotel offers live music and other entertainment. Among the measures sought were double glazing of all exterior windows and doors and additions to the current noise abatement wall. The submission contends these requests appear to have gone unheeded by Council.
79. The submission advises that due to the COVID-19 lockdown it was impossible for the Hotel to undertake further acoustic testing in the time frame initially intended. However, the Hotel engaged Renzo Tonin and Associates to undertake acoustic testing during the mid-summer holiday period when patron numbers were at a peak. The second acoustic report was prepared, dated 11 February 2022 (the Second Acoustic Report) and included in the final submission material. The Second Acoustic Report was also provided to the Land and Environment Court as part of proceedings commenced by the Hotel in relation to the construction of two timber decks and a pergola within the beer garden.
80. The Second Acoustic Report states that Renzo Tonin & Associates was engaged to respond to the Statement of Facts and Contentions with respect to the proceedings in the Land and Environment Court relating to Building Information Certificates and Development Applications for use of the timber decks and pergola in the beer garden. The Second Acoustic Report outlines the results of long-term unattended noise monitoring undertaken at residences to the north, west and south of the Hotel between Friday 21 January and Tuesday 1 February 2022. The Hotel remained in operation during the noise logging period.
81. Operational noise from the Hotel was examined using noise modelling, attended on site measurements and the use of noise loggers. The Second Acoustic Report details the assessment of noise emanating from the beer garden, using noise logger levels captured between 11pm-12am on Saturday 22 January 2022, and the projected noise levels of the beer garden when at a predicted maximum capacity of 300 patrons. It was identified that the primary noise from the Hotel was attributed to patron noise, and it was noted that with the beer garden at full capacity there will be exceedances of the LA10 noise criteria at all times of the day. The exceedances increase later in the night as background noise levels drop, and noise criteria becomes more stringent (post-midnight).
82. The Second Acoustic Report states that to achieve compliance with noise criteria, changes to the beer garden would be required. This would likely require music levels to be controlled and building works in the form of partial enclosure of the beer garden. The Second Acoustic Report also recommends that the noise limiter installed in the Hotel's sound system be set to a nominated level, so it does not exceed conversational noise

levels within the beer garden. It is further noted that it is unlikely the timber decks and pergola increase operational noise by a perceptible amount, and the removal of these structures is unlikely to provide acoustic benefit.

83. The submission advises that after receiving the Second Acoustic Report in February 2022, the Hotel immediately commenced discussions with Council with a view to implement appropriate interim measures and to design a long-term solution to mitigate the effects of patron noise and achieve compliance with the LA10 noise criteria. Included with the submission was a preliminary design of the proposed acoustic shielding works involving the substantial enclosure of the beer garden.
84. The submission advises that the discussions with Council resulted in a resolution of the Land and Environment Court proceedings on the basis of a formal agreement made between the Hotel and Council with proposed consent orders. The submission provides a copy of the consent orders filed in the proceedings at the Land and Environment Court, signed and dated 3 and 4 March 2022.
85. The submission lists the following as a summary of the agreement/proposed consent orders reached with Council:
- (a) The use and construction of the two timber decks and pergola is approved, subject to certain minor fire upgrade works being carried out to those structures.*
 - (b) The Hotel must lodge a development application with Council within 8 months from the date of the Land and Environment Court order for the carrying out of building works for the purpose of meeting LA10 standards for noise emitted from the beer garden area. In other words, the orders compel the Hotel to prepare and lodge a DA with Council within 8 months for acoustic shielding of the beer garden area.*
 - (c) The beer garden area is permitted to operate only between 10.00 am to midnight 7 days a week, with a "carve out" for people who are in the course of leaving the Hotel and awaiting transport and for those ingressing/egressing the Hotel.*
 - (d) All doors leading from the internal areas of the Hotel building to the beer garden (except for 2) must be closed from midnight and remain closed until all patrons leave the Hotel.*
 - (e) No background music after 11.30 pm Friday, Saturday and before public holidays and no background music after 10.30 pm all other days.*
 - (f) No live music or DJ in the open-air beer garden at any time, with the exception that, on 2 afternoons a week, live music may be played by a soloist, duo or trio, provided that performances end no later than 6.00 pm and amplifying equipment be connected to the Hotel sound limiter and calibrated in accordance with an acoustic engineer's recommendation to achieve LA10 noise compliance for that music noise. No drums are permitted in those performances.*

- (g) Maximum 12 speakers in the beer garden, all lowered and angled towards the ground.*
- (h) All speakers in the beer garden to be connected to the sound system and noise limiter.*
- (i) Use of children's play area permitted only between 10.00 am and 9.00 pm 7 days a week with no live music or DJ in that area at any time.*
- (j) All party or courtesy buses to wait in the northern end of the carpark.*
- (k) All party or courtesy buses to turn off engines while waiting.*
- (l) Acoustic lining to be installed to the underside of the covered deck area.*

86. The submission notes that pursuant to Order 2 in the above proceedings, compliance with the above measures will be taken as being compliance with the relevant noise control standard. It is submitted the orders and agreements reached with Council represent an agreement to undertake permanent long-term building works to provide appropriate acoustic shielding of the beer garden area. Further, as this process will take time to design, assess, obtain approval and construct, the interim measures will ameliorate and mitigate impacts on residents affording them an appropriate standard of amenity. It is submitted that these measures impose very significant constraining effects on the Hotel's operations and is an incentive for the Hotel to complete construction of the acoustic shielding works so the limitations may later be relaxed.

87. It was anticipated that upon construction of the acoustic shielding works, further acoustic testing would be undertaken to establish compliance with the LA10 noise criteria, and the acoustic report could be provided to the Secretary.

88. The submission proposed that the Secretary accept the undertakings given by the Hotel to comply with the consent orders agreed with Council, pending the construction of the acoustic shielding works. The submission also proposed to adjourn the matter to 15 September 2023, being the date by which it was envisioned that acoustic shielding works will be completed and acoustically tested. The submission contends this course of action is expressly envisaged by section 81(1)(c) of the Act and best balances the legislative objects in the circumstances of the matter.

89. The submission also addresses the concept of 'undue disturbance' and refers to a matter considered in the Western Australia Court of Appeal where it is stated that the term conveys an objective test of what noise could be reasonably expected to be tolerated by neighbours. It is argued that in determining what amounts to undue disturbance, it must be taken into consideration that the Hotel has traded from its existing premises for many years and that most affected residences have only been recently constructed. Further, neighbouring residents were fully aware of the nature of activities being undertaken in the Hotel's beer garden. The submission reiterates that since 2002, when the Hotel was acquired by the current business owner, the Hotel has provided live music and other entertainment in its open-air areas.

90. On 20 April 2022, Hatzis Cusack Lawyers provided further submission material in relation to the court proceedings. It was advised that on 14 April 2022, the Land and Environment Court made orders in the form previously agreed to between the Hotel and Council. A copy of the Court's decision was provided with the submission.
91. The submission quotes paragraph [33] of the Court decision, stating that the Land and Environment Court was persuaded by the interim measures that impose a substantial restriction on the current operation of the Hotel and the beer garden and are likely to create a strong impetus to lodge a development application. Additionally, the implementation of the conditions attached to any future development consent will likely result in the Hotel being compliant with the LA10 noise criteria and undoubtably benefit residents. In the meantime, the interim obligations imposed by the orders will provide respite to the residents and improve their residential and acoustic amenity.

Land and Environment Court – Decision and Notice of Orders

92. The decision by the Land and Environment Court on 14 April 2022 relates to six separate appeals lodged by Oscars Hotels Pty Ltd in relation to the Hotel. The appeals relate to two open decks and a pergola structure that were constructed without development consent where such consent was required, within the existing outdoor beer garden at the Hotel. The appeals also relate to claimed non-compliance with a noise condition imposed under development consent (DA-2007/133) granted by Council on 27 March 2007.
93. The orders made by the Land and Environment Court revoke Development Control Order No 3 (NO-2020/376) that required the demolition of the pergola and timber decks. The orders also required Oscars Hotels Pty Ltd to provide Council with certifications that 'Key Compliance Matters' for the pergola and two decks have been completed, within 10 weeks from the date of orders or extended as agreed between the parties. Council would then be required to issue Building Information Certificates within 14 days.
94. Orders were also made relating to the use of the pergola and two decks in the beer garden. Development consent was granted to DA-2021/693 for the use of the pergola and development consent granted to DA-2021/695 for the use of the two decks, both subject to conditions. Additionally, DA-2021/695 also contains consent conditions requiring the sub-woofer and two mobile DJ speakers to be removed from the deck, and acoustic lining to be installed to the underside of the ceiling in the covered deck areas.
95. The conditions of consent include security to actively monitor patron behaviour in the parking lot and the following restrictions to be applied to use of the beer garden area:
- (a) *Permitted hours of operation: 10 am to midnight, seven days a week. Patrons who are in the course of entering and leaving the venue via the main entry point (marked with a blue arrow on Plan 'Beer Garden Area – red dotted outline 28/2/2022'); and patrons who are in*

- the course of leaving the venue and are awaiting transport near the entry point to the venue are permitted to be present in the beer garden for that purpose.*
- (b) All doors leading from the internal areas of the Hotel building to the beer garden area (except for 2) must be closed from midnight and remain closed until all patrons have left the Hotel.*
 - (c) No background music after 11.30pm Friday, Saturday and before public holidays; and 10.30pm all other days.*
 - (d) No live music or DJ at any time, with the exception that 2 afternoons each week live music may be played by a soloist, duo or trio provided that performances end no later than 6.00 pm and any amplifying equipment be connected to the Hotel's sound limiters system and calibrated in accordance with an acoustic engineers recommendation regarding sound power levels, so as to achieve compliance with Liquor and Gaming NSW Standard Noise Condition and provided that no drums are used during such performances.*
 - (e) A maximum of 12 speakers may be used in the beer garden and these are to be lowered and angled towards the ground.*
 - (f) All speakers within the beer garden are to be connected to the sound system with a noise limiter, calibrated to limit noise levels by qualified acoustic consultants.*

96. Consent conditions are also placed on the use of the children's playground area. The conditions restrict the permitted hours of operation from 10am to 9pm each day of the week and prohibit live music or DJs at any time. Reasons for the conditions relating to the use of the beer garden and the children's playground area include to ensure the protection of the amenity and character of land adjoining the Hotel and in the locality.

97. It is noted the consent conditions restricting the use of the beer garden and children's playground area were intended to be temporary measures imposed until the Hotel implements longer term acoustic measures to ensure the Hotel operates the outdoor areas in accordance with L&GNSW noise criteria. The orders further required the Hotel to lodge a development application with Council within eight months from the date of the orders that would propose building works as acoustic measures with the purpose of meeting the LA10 noise criteria with respect to noise from the beer garden. Further, if and when development consent is granted for acoustic works and the works are implemented, the development consents for DA-2021/693 and DA-2021/695 will be subject of a modification to remove the temporary restrictions.

Development Application – DA-2022/1349

98. On 15 December 2022, the Hotel lodged a development application with Council seeking consent for alterations and additions to construct a glasshouse structure with retractable roofs enclosing the southern part of the beer garden and a 3.5 metre wall enclosure around the northern part of the beer garden. The application was accepted by Council on 21 December 2022 and is currently in progress.

Statutory considerations of section 81(3) of the Act:

99. The Act requires that the Secretary have regard to the following statutory considerations.

The order of occupancy between the licensed premises and the complainant

100. The complainant resided at their residence for 17 years at the time of lodging the complaint in March 2021. The Hotel has operated under the current liquor licence since 29 October 1982. These facts are not disputed and while the current business owner, premises owner and licensee commenced on 12 August 2009, I consider the order of occupancy to be in favour of the Hotel.

Any changes in the licensed premises and the premises occupied by the complainant, including structural changes to the premises

101. It is evident there have been changes to the Hotel in recent years, specifically the construction of a pergola and two timber decks in the outdoor area. Council in their initial submission advise that the construction and use of these structures were unlawful, and the matter was subsequently dealt with in the Land and Environment Court. Police submit the Hotel recently completed a major renovation that involved remodelling the outdoor beer garden, and it is the complainant's assertion this includes the construction of a bar, installation of a large TV screen, speakers and lounge seating.

102. The complainant advises they have made changes to the layout of their residence so that the bedrooms are located at the back of the house.

Any changes in the activities conducted on the licensed premises over a period of time

103. Police in their submission advise that a DJ was introduced to the deck area after the Hotel re-opened post renovation works completed to the beer garden. Police also submit that the Hotel has become extremely popular since the renovations were completed. There is no indication of any other changes to the activities conducted at the Hotel over a period of time.

Findings and Decision

Undue disturbance

104. In deciding whether the Hotel has unduly disturbed the quiet and good order of the neighbourhood, I have balanced the submissions made by the complainant, the Hotel, Police and Council. I have also had regard to the particular context in which the Hotel operates and considered the decision by the Land and Environment Court on 14 April 2022.

105. It is reasonable to expect some level of noise will be generated from the normal operation of the Hotel, including noise from live and amplified entertainment and patrons both inside and outside. I do not consider this type of disturbance as undue in a general sense, considering the nature of the local environment and the development of residential properties in close proximity to the Hotel. However, it is evident that the remodelling and use of the outdoor areas coincide with the disturbance experienced by the complainant. I am satisfied that there is sufficient evidence before me to reasonably conclude the Hotel has, at times, unduly disturbed the quiet and good order of the neighbourhood.

106. In making this decision I have placed significant weight on the findings of the Acoustic Report dated 9 June 2021 and the Second Acoustic Report dated 11 February 2022 as well as the decision by the Land and Environment Court on 14 April 2022. The Acoustic Report advises that music from the beer garden as well as noise from the children's playground exceeded the LA10 noise criteria. The Second Acoustic Report pertains to a noise assessment of patron noise from the beer garden and predicts exceedances of the LA10 noise condition at all times of the day when at full capacity.

107. I have also considered the decision by the Land and Environment Court relating to six appeals by the Hotel. The appeals by the Hotel relate to non-compliance with a noise condition imposed under an existing development consent and the construction and use of two timber decks and a pergola in the beer garden. In the decision, the Land and Environment Court accepts that the amenity of the residents in proximity of the Hotel was adversely affected and determined that interim measures were required to improve their residential and acoustic amenity.

Regulatory Outcome

108. In deciding the appropriate regulatory outcome is in this instance, I have considered the statutory considerations, the material set out in Annexure 1, and the above finding of undue disturbance. I have also had regard to the particular context in which the Hotel operates, taking into consideration the size and nature of the Hotel's operations, which includes a large outdoor area utilised by patrons.

109. I have had regard to the renovations made to the outdoor area, including the construction of two timber decks and pergola, an outdoor bar and lounge seating, as well as the entertainment offerings of background music, a large TV screen and outdoor speakers. I acknowledge these inclusions would likely increase the appeal of the Hotel and potentially increase its outdoor use. I also note that the focus of the complaint centres on noise from patrons and music emanating from the beer garden and have considered the Police submission highlighting increased patronage post renovation works. In this context, it is reasonable to expect significant responsibility lies with the Hotel to ensure its changes in operation do not unduly disturb the quiet and good order of the neighbourhood. While I

acknowledge the order of occupancy is in favour of the Hotel, this does not relieve the Hotel of the obligation to minimise noise and disturbance.

110. I acknowledge the Hotel is a significant contributor to the live music industry in the Illawarra region and that substantial residential development has occurred around the Hotel in recent years.

111. It is clear the Hotel has been responsive to the complaint and has sought independent and external technical advice regarding its noise emissions and appropriate measures to mitigate the potential for undue disturbance. It is evident the disturbance identified in the complaint is attributed to both patron noise and music emanating from the outdoor area of the Hotel. I am encouraged by the proactive steps taken by the Hotel to reduce its noise impact, including commissioning acoustic testing, the cessation of DJ entertainment in the outdoor area, removing a number of speakers in the beer garden, installing a new sound system with a built-in noise limiter and increasing security patrols in the car park area during peak periods while longer term acoustic solutions were being addressed.

112. Of significance to my decision is the outcome of proceedings between the Hotel and Council in the Land and Environment Court as it pertains to the use of the outdoor area and is relevant to the concerns raised in the complaint. The decision by the Land and Environment Court imposed a number of consent conditions restricting the use of the beer garden as well as the children's playground area. These conditions include no live music or DJs (with limited exceptions), background music to cease at 11:30pm on Friday and Saturday; and 10:30pm all other days, all speakers in the beer garden to be connected to a noise limiter calibrated by an acoustic consultant and limiting the hours of operation for the beer garden to midnight and for the children's playground to 9:00pm.

113. Importantly, I note these restrictions imposed are to ensure the protection of the amenity of the neighbourhood. Further they are intended to be temporary measures and applicable until such time as the Hotel carries out acoustic building works to achieve compliance with the LA10 noise criteria with respect to noise from the beer garden. Under the orders made by the Land and Environment Court, the Hotel was required to lodge a development application with Council within eight months of the decision that relate to proposed acoustic amelioration works. I acknowledge the Hotel has lodged a development application with Council outlining proposed building works including the construction of a glasshouse structure enclosing the southern part of the beer garden and a 3.5 metre wall enclosure around the northern part of the beer garden.

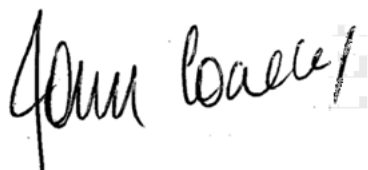
114. Having considered the statutory considerations and the material before me, I have determined to take no further action. In making this decision, I am satisfied the risk of undue disturbance is mitigated through the interim measures imposed on the Hotel by the Land and Environment Court. Additionally, I do not consider it appropriate in the

circumstances to take additional regulatory action during this transitional period and while the Hotel is in the process of obtaining the relevant approvals to complete acoustic works with the purpose of achieving ongoing compliance with the LA10 noise condition. This is intended to provide a permanent solution to the concerns of residents. I also note that the assessment and approval of the development application relating to the construction of acoustic works will be dealt with and determined by Council.

115. While I have determined to take no further action in this matter, I strongly remind the Hotel of its obligation to proactively manage and minimise any potential disturbance caused by the Hotel, both from internal and external areas. I strongly encourage the Hotel to continually monitor and assess the use of the outdoor area to minimise levels of disturbance. The Hotel should be aware that if fresh and direct evidence is presented demonstrating undue disturbance, it is open for the matter to be reconsidered and for formal regulatory action to be taken.

116. Finally, I am satisfied this decision is a proportionate and appropriate regulatory response to the disturbance identified in the complaint.

Decision Date: 17 January 2023



John Coady

Manager, Regulatory Interventions

Liquor & Gaming NSW

Delegate of the Secretary of the Department of Enterprise, Investment and Trade

Application for review:

Should you be aggrieved by this decision, you may seek a review by the Independent Liquor & Gaming Authority by an application which must be lodged within 28 days of the date of this decision, that is, by no later than **14 February 2023**. A \$500 application fee applies. Further information can be obtained from Authority Guideline 2 published at www.liquorandgaming.nsw.gov.au

In accordance with section 36C of the Gaming and Liquor Administration Act 2007 this decision will be published on the Liquor & Gaming NSW website at www.liquorandgamingnsw.nsw.gov.au

The Material before the delegate of the Secretary in making this decision comprises:

1. Copy of the liquor licence for Towradgi Beach Hotel dated 6 January 2023.
2. Section 79 Disturbance Complaint lodged by the complainant on 31 March 2021.
3. Submission from NSW Police received on 11 May 2021.
4. Submission from Wollongong Council received on 18 May 2021.
5. Hotel submission in response to the complaint received on 11 June 2021 and 25 November 2021.
6. Further submission material received from Wollongong Council on 10 December 2021 and 13 January 2022.
7. Final submission from complainant received on 16 February 2022.
8. Hotel final submission received on 16 March 2022 and 20 April 2022.
9. Decision by Land and Environment Court dated 14 April 2022 – Oscars Hotels Pty Limited v Wollongong City Council [2022] NSWLEC 1205.