



**ACCEPTANCE OF UNDERTAKING
PURSUANT TO SECTION 133F OF THE LIQUOR CONTROL REFORM ACT 1998**

Licensee: JDOT PTY LTD

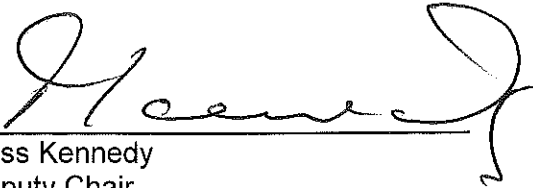
Licence: Limited Licence 36141537

Premises: Bomboras Torquay, 48 The Esplanade, Torquay, 3228

On 27 October 2016 the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) received an application for internal review of the decision of the Commission's delegate to grant limited licence 36141537 (**the Licence**) to JDOT Pty Ltd (**the Licensee**) in respect of premises known as Bomboras Torquay located at 48 The Esplanade, Torquay (**the Premises**).

On 12 December 2016 the Licensee, by its director Thomas R McGrath, provided an undertaking pursuant to s. 133F of the *Liquor Control Reform Act 1998* (**the LCR Act**).

The undertaking meets the requirement in s. 133F(1)(a) of the LCR Act of being made in relation to a matter where the Commission is exercising a function, being the internal review application. The Commission, being the Commission on review for the internal review application, hereby accepts the undertaking given by the Licensee:



Ross Kennedy
Deputy Chair

Dated: 24 January 2017

The undertaking is comprised of the following documents:

- Acceptance of undertaking dated 24 January 2017;
- Undertaking dated 12 December 2016 executed by Thomas R McGrath, director of JDOT Pty Ltd; and
- Copy of acoustic report (DL1470-2) dated 26 October 2016.

Undertaking under section 133F of the *Liquor Control Reform Act 1998 (Vic)*

This undertaking is given to:

The Victorian Commission for Gambling and Liquor Regulation.

by:

JDOT Pty Ltd (Licensee)

c/- John Larkins

Room 10XX

Jarndyce Chambers

Level 10, 271 William Street

Melbourne 3000

Undertaking pursuant to s133F(1)(a) of the *Liquor Control Reform Act 1998*

The Licensee undertakes to comply with the acoustic report prepared by Acoustic Control Pty Ltd dated 26 October 2016 and, in particular, the noise control recommendations set out in such report'

Date: 12 December 2016



Director of JDOT Pty Ltd

Acoustic@ontrol

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PROJECT: 48 The Esplanade
Torquay, Victoria


SUBJECT: Tavern (Pop-up Bar)
Application no. 15/0408
SEPP N-2 Compliance
Report/Recommendations

CLIENT: JDOt Pty Ltd

DATE: 26 October 2016

REPORT NO.: DL1470-2

Reference	Description	Originator	Date	Comments
DL1470-2	PDF	DL	25/10/16	Issue B

PLANNING & ENVIRONMENT ACT 1987	
SURF COAST PLANNING SCHEME	
Amended Plan Endorsed under Condition... ² ...of	
Permit.....15/0408.....	dated.....28/10/16.....
Signed..... 	
Date 4/11/16	For and on behalf of the Council of the Surf Coast Shire
Sheet No.....17/17.....	of.....17/17.....sheets.

SURF COAST SHIRE

3 NOV 2016

PLANNING
DEPARTMENT

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PLANNING & ENVIRONMENT ACT 1987

SURF COAST PLANNING SCHEME

Amended Plan Endorsed under Condition.....of

Permit.....dated.....

Signed.....

PLANNING DEPARTMENT

Date / /

For and on behalf of the

Council of the Surf Coast Shire

Bar) SEPP N-2 Compliance

Report No. 1470-2

Sheet No. of.....

page 2

1 INTRODUCTION

This report has been prepared in relation to amplified music noise control for the pop up bar at 48 The Esplanade, Torquay.

A permit was granted allowing the temporary use of the deck area at subject site for a Tavern (Pop-up Bar) over the period 31 October 2016 to 16 April 2017 between the following hours:

- 2 The Tavern may operate only between the following hours:
 - (a) Between 31 October 2016 and 25 December 2016:
 - (i) Thursday to Sunday – Between 1:00pm until 9:30pm
 - (b) Between 26 December 2016 and 26 January 2017
 - (i) Monday to Sunday – Between 1:00pm until 9:30pm
 - (c) Between 28 January 2017 and 16 April 2017:
 - (i) Thursday to Sunday – Between 1:00pm until 9:30pm

The planning permit for the use of the land and development works (permit number 15/0408) requires the following conditions relating to noise control:

- 6 *To provision of entertainment on the Tavern premises shall be limited to pre-recorded background music or live musical entertainment by no more than two performers using acoustic instruments at levels no higher than background music. This condition may not be amended by the responsible authority under Division 1A of the Planning and Environment Act 1987 (Section 85(1A) of Planning and Environment Act 1987).*
- 7 *Live musical entertainment must not be provided after 8pm and for more than 3 hours in total in any one day. This condition may not be amended by the responsible authority under Division 1A of the Planning and Environment Act 1987 (Section 85(1A) of Planning and Environment Act 1987).*
- 8 *Before the music can be provided on the site a qualified acoustic expert must prepare an acoustic report and a copy must be provided to the Responsible Authority that assesses compliance with State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2 and makes recommendations, as appropriate, to achieve compliance and reduce the amenity impact on residential properties. The recommendations of the acoustic report must be approved by Council in writing and once approved must be implemented to the satisfaction of the Responsible Authority at all times that music is provided on the Tavern premises. The recommendations of the report must not conflict with Condition 7 or any other condition of this permit.*
- 9 *The maximum music noise level emitted from the premises shall not exceed levels specified in the State Environment Protection Policy (Control of Noise from Public Premises) No. N-2.*

Acoustic Control Pty Ltd conducted noise testing at the site using amplified music on Thursday 13/10/16 during the day. Long term noise logging was also carried out at 76 The Esplanade to establish background levels over a 1 week period between 6/10/16 – 13/10/16. The purpose of conducting the noise testing and background measurements was to determine the maximum permitted noise levels at the subject site for compliance with SEPP N-2 limits at the nearest house to the north west, and to determine appropriate noise control measures to enable compliance with the limits.

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Note: Refer to the glossary in appendix 1 for definition of acoustic terms used throughout this report.

2 SITE DESCRIPTION

The subject site is located at 48 The Esplanade, Torquay on the east (beach) side of The Esplanade. The subject site is zoned public park and recreation (PPRZ) with surrounding residential zoned land.

The open area the Tavern has existing raised decking, fixed tables & benches and pergola structure. There is an existing Kiosk (Bomboras kiosk) and fishing clubroom below the proposed Tavern area.

The nearest residential properties/houses are located to the north west approximately 100m away. Directly across the road to the west is parkland and to the south west is the Torquay bowls club. Refer to the site aerial photograph in figure 1 below.

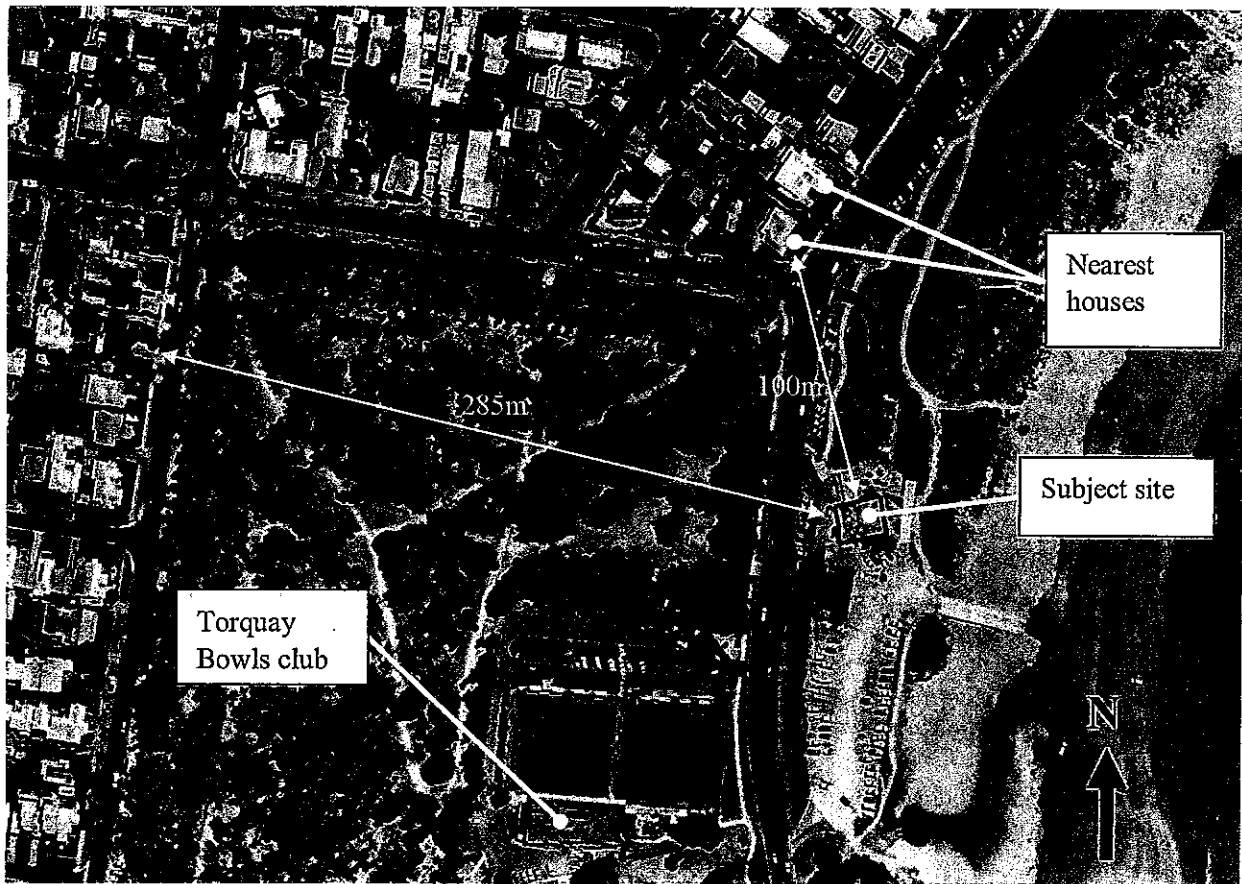


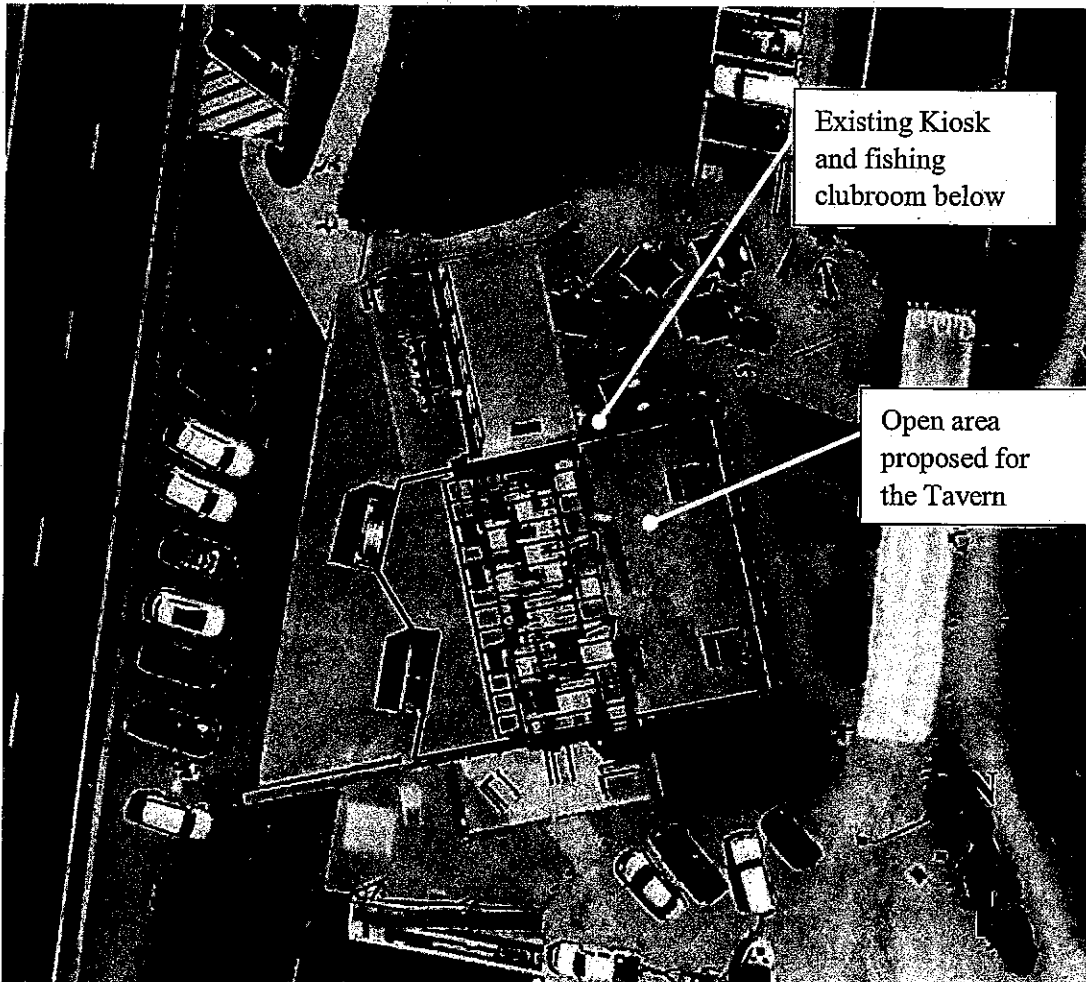
Figure 1 – site aerial

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Refer to figure 2 below showing a close up aerial view of the subject site.



Refer to figure 2 – close up aerial view of the subject site.

Refer to figures 3-4 showing views from the open deck area looking west and north west.

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Figure 3 –open deck area looking west

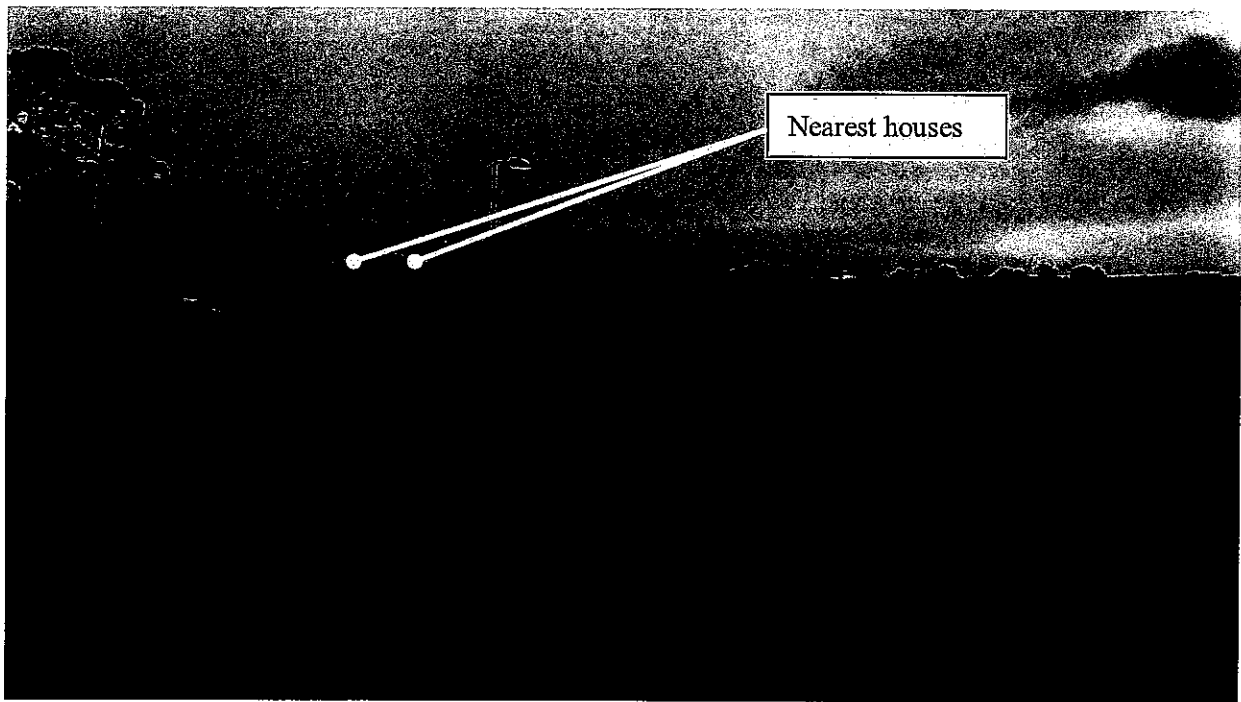


Figure 4 – open deck area looking north west

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3 TAVERN (POP-UP BAR)

The proposed tavern will operate as an open-air bar with a converted shipping container used as a sheltered bar. A portable disabled toilet will be provided adjacent to one of the existing service towers and a 2m high batten fence will be provided on the north western side of the site. Refer to figure 5 below showing the proposed layout.

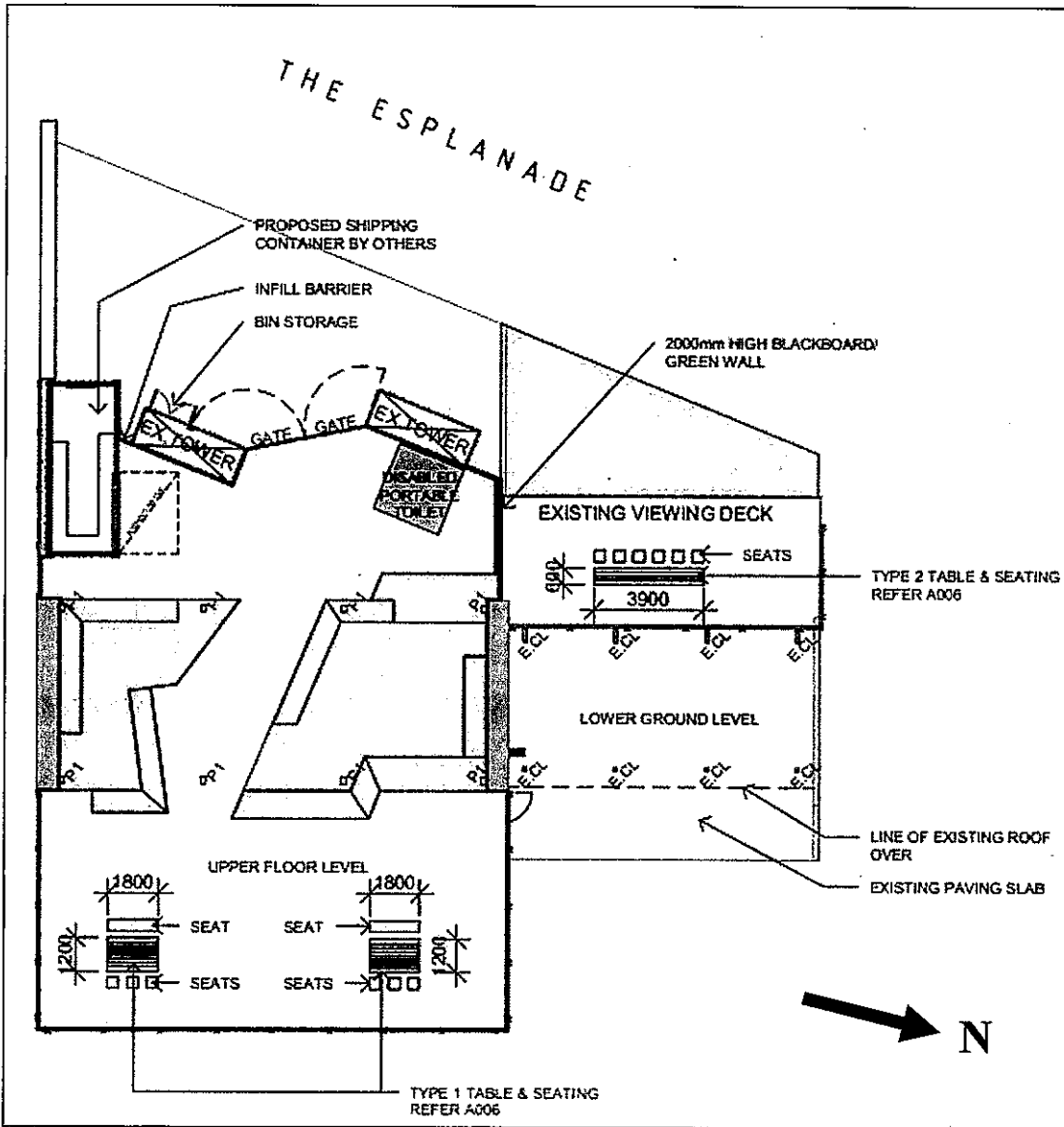


Figure 5 – Proposed layout

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The permitted hours of use are as follows:

- 2 *The Tavern may operate only between the following hours:*
- (a) *Between 31 October 2016 and 25 December 2016:*
- (i) *Thursday to Sunday – Between 1:00pm until 9:30pm*
- (b) *Between 26 December 2016 and 26 January 2017*
- (i) *Monday to Sunday – Between 1:00pm until 9:30pm*
- (c) *Between 28 January 2017 and 16 April 2017:*
- (i) *Thursday to Sunday – Between 1:00pm until 9:30pm*

There will be a restriction of 96 patrons permitted within the area of the Tavern at any one time.

Provision of entertainment on the Tavern premises shall be limited to pre-recorded background music or live musical entertainment by performers using acoustic instruments (amplified or non-amplified). Live musical entertainment must not be provided after 8pm and for no more than 3 hours total in any one day.

The maximum music noise level emitted from the premises shall not exceed levels specified in the State Environment Protection Policy (Control of Noise from Public Premises) No. N-2.

4 BACKGROUND NOISE LEVELS

Existing background noise levels at the nearest residences to the north will be predominately influenced by:

- Vehicle traffic flow along The Esplanade
- Ocean noise
- Coastal wind speed and direction

Short term measurements

Short term noise monitoring was carried out adjacent to the nearest north west house (71 The Esplanade) using a hand held precision sound level meter (SVAN 979 Type 1 sound level meter) on Thursday 13th October, 2016, between 12.25pm and 12.35pm. During this period, traffic flow along The Esplanade was moderate and constant. Wind conditions was slight South Westerly wind.

	L_{Aeq}	L_{A10}	L_{A90}
71 The Esplanade	66	66	53

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The L₉₀ spectrum was as follows:

L ₉₀ dB	A	Octave Freq. Band, Hz						
		63	125	250	500	1K	2K	4K
53	53	50	48	48	49	45	35	

Previous results obtained earlier in the year on Sunday 1st May, 2016, between 3.15pm and 3:40pm were as follows:

	L _{Aeq}	L _{A10}	L _{A90}
71 The Esplanade	60-62	64-66	49-51

Long term monitoring

Long term background noise monitoring was carried out in the front yard of 76 The Esplanade, Torquay with an unattended type 2 noise logging device (RTA Technology RTA-02) measuring 15minute statistics between Thursday 6/10/16 and Thursday 13/10/16. The results (L₉₀, dB(A)) were as follows:

Table 4.1

	Range 1pm- 8pm	ave.	Range 8pm-9.30pm	Ave.
Thurs, 6/10/16	47-51	50	43-47	45
Fri, 7/10/16	47-54	51	45-50	46
Sat, 8/10/16	48-53	50	46-50	47
Sun, 9/10/16	45-53	48	38-43	41
Mon, 10/10/16	43-50	46	38-40	39
Tues, 11/10/16	45-56	51	42-46	44
Wed, 12/10/16	51-56	53	50-51	51
Average over 7 days		50		45

The long term monitoring results obtained at 71 The Esplanade showed variations of up to 85 dB (typically) across the daily L₉₀ (15min) background levels between 1pm-8pm and up to 5 dB between 8pm-9.30pm. The average background level was 50 dB(A) L₉₀ between 1pm-8pm and 45 dB(A) L₉₀ between 1pm-8pm .

5 NOISE CRITERIA (SEPP N-2)

Music noise from the Tavern will be required to comply with State Environment Protection Policy No. N-2 "Control of Music Noise from Public Premises" (SEPP N-2). This policy sets limits for music noise that must be met at the nearest residential properties.

The goal of SEPP N-2 is to protect residents from levels of music noise that may affect the amenity of noise sensitive areas while recognising the community demand for a wide range of music entertainment facilities. SEPP N-2 applies to all public premises and seeks to protect beneficial uses of noise sensitive areas from music noise emitted from those premises.

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For SEPP N-2 noise assessments, the prescribed noise limits are based on the emergence of noise events above the background noise level, described by the measures such as ($L_{oct10} - L_{oct90}$), rather than on absolute noise level. The reason behind this is that music noise, particularly low frequency bass beat, can be extremely annoying and disruptive to sleep if clearly audible, even at relatively low sound pressure levels.

For the day/evening period, the L_{Aeq} dB(A) effective noise level must not exceed $L_{A90} + 5$ dB(A). For the night period, the L_{oct10} dB effective noise level must not exceed $L_{oct90} + 8$ dB (for octave frequency bands 63Hz-4KHz). In subjective terms, only a small amount of music noise is permitted to be audible over the assessment period/interval.

For public premises operating more than 3 times per week, the applicable day/evening and night periods are set as follows:

Table 5.1

Day	Application time	
	Day/evening limit ¹ applies	Night limit ² applies
Monday-Thursday	9am – 10pm	10pm-9am (following morning)
Friday	9am – 10pm	10pm-10am (following morning)
Saturday	10am – 10pm	10pm-12 midday (following day)
Sunday	12pm – 9pm	9pm – 9am (following morning)

1. Day/evening limit = music noise (L_{Aeq}) must not exceed the background level (L_{A90}) by more than 5 dB.
2. Night limit = Music level (L_{oct10}) not to exceed the L_{oct90} background level by more than 8 dB in any octave band from 63Hz-4KHz.

The site surveys and long term monitoring indicate that the background levels can vary day to day. This makes setting an absolute limit based on the background level slightly difficult due to the changing condition/level.

In our opinion, the typical worst case scenario will be sound propagation under a downwind condition i.e. south west wind. This may also have the effect of increasing the background level as the ocean noise will also carry further.

In addition, the tavern is most likely to be the busiest during weekend and holiday periods, and this is most likely to coincide with more local traffic in the area, which again will increase the background level and subsequently the noise limit.

Therefore, based on the above considerations, Acoustic Control Pty Ltd believes adopting the average background levels as basis for determining SEPP N-2 limit will provide a satisfactory outcome for protection of the amenity of the nearest residences.

The following limits shall apply:

Monday to Saturday

Up to 8pm - Music level (L_{Aeq}) not to exceed 50-55 dB(A).

8pm- 9.30pm - Music level (L_{Aeq}) not to exceed 45-50 dB(A).

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Sunday

Up to 8pm - Music level (L_{Aeq}) not to exceed 50-55 dB(A).

8pm- 9pm - Music level (L_{Aeq}) not to exceed 45-50dB(A).

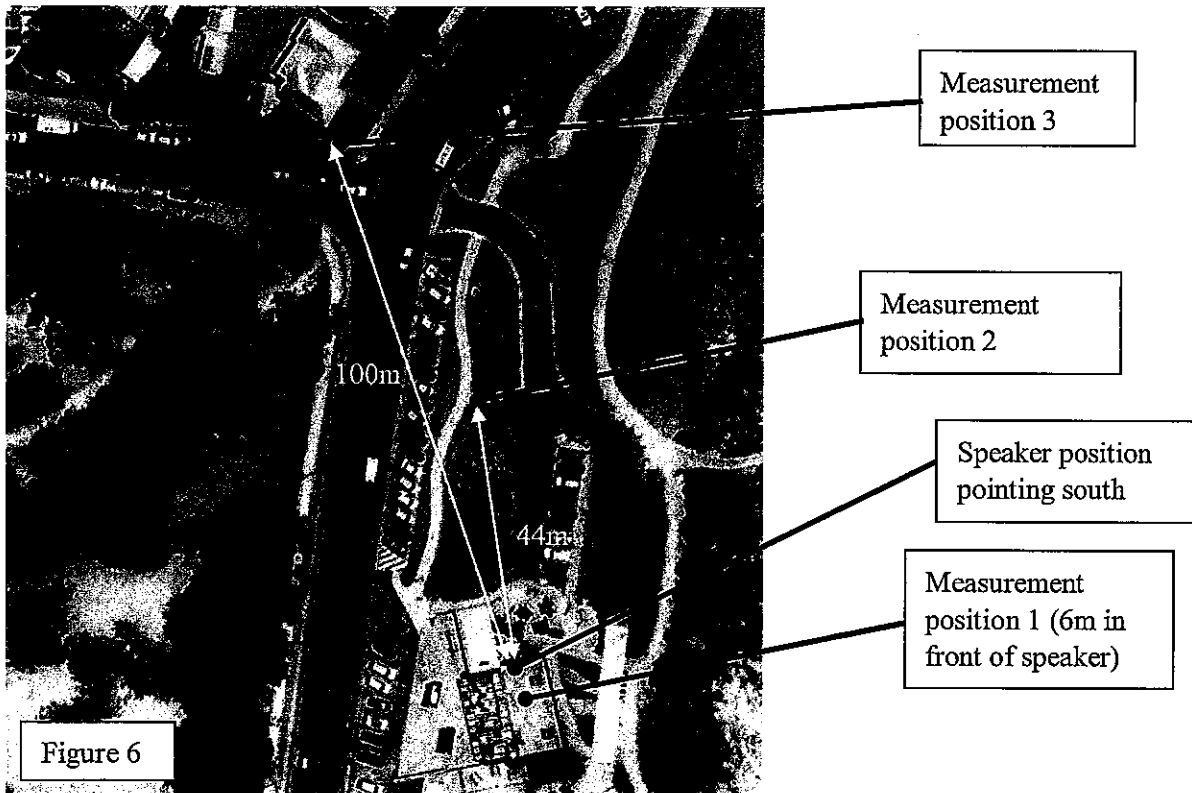
9pm- 9.30pm - Music level (L_{occ10}) not to exceed the following:

	Octave Freq. Band, Hz						
	63	125	250	500	1K	2K	4K
L_{10} dB	52	49	46	46	46	42	28

6 NOISE REDUCTION TESTING

Acoustic Control Pty Ltd visited the site on Thursday 13th October 2016 between 11am and 1pm and carried out noise reduction testing with an amplified music source. This involved generating preset music programme source in the tavern area and taking corresponding readings outside the nearest residence to the north. Measurements were also conducted at a derived mid point to provide another point of reference.

The speaker source was a PA speaker similar to ones commonly used for sound reinforcement and public address. The speaker was placed in the tavern area as indicated in figure 6 below, pointing south. This will be the preferred location and speaker orientation for the live performers. Testing was done under a gentle south easterly wind. This would be considered worst case scenario for sound propagation to the nearest residences (down wind condition).



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The noise reduction results obtained from the testing are shown the tables below.

Table 6.1: Noise levels results

Location	Noise Level, L ₁₀ dB (lin)								
	Octave band centre frequency								
	A	63	125	250	500	1k	2k	4k	Hz
1 (6m in front)	91	90	94	87	86	87	87	77	dB
2 (44m behind)	64	70	69	63	64	59	55	48	dB
3 (100m behind)	54	58	63	55	54	48	46	36	dB

Table 6.2: Noise reduction results

	Noise Reduction, dB								
	Octave band centre frequency								
	A	63	125	250	500	1k	2k	4k	Hz
Loc. 1 – Loc. 3	37	20	31	32	32	39	41	41	dB
Loc. 1 – Loc. 2	27	32	25	24	22	28	32	29	dB

The noise reduction values, together with the derived SEPP N-2 limits, allow precise determination of the maximum indoor venue music levels:

Maximum tavern levels = SEPP N-2 limits + noise reduction values (Loc. 1- Loc. 3)

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7 NOISE CONTROL RECOMMENDATIONS

Table 7.1 below shows the maximum noise levels (L₁₀ octaves) for the various types of music.

Table 7.1: Range of different music styles and typical music levels:

Music Style	Typical music level, L ₁₀ dB (63Hz-4KHz)	Description
1. Background Music	85-90dB low frequencies 80-85 dB mid frequencies	Light amplified background music or entertainment by performers using acoustic instruments (amplified or non-amplified). Suitable for cafes, bars and lounges where conversation can take place easily.
2. Moderate	95-100 dB low frequencies 85-90 dB mid frequencies	Moderately amplified recorded music, either pre-recorded music or DJ operated recorded music. Suitable for bars and function rooms with moderately amplified music. 2-3 piece bands permitted but levels must be monitored and controlled.
3. High	100-105 dB low frequencies 90-95 dB mid frequencies	Moderate-high amplified recorded music, either pre-recorded music or DJ operated recorded music. Live music also permitted (2-4 piece live bands). Suitable for bars, function rooms and night clubs with a dance floor.
4. Very Loud	105-110 dB low frequencies 95-100 dB mid frequencies	DJ operated loud dance music or live rock band. Suitable for bars and nightclubs well away from residential areas and/or sound insulated venues with dance music or live rock band.

Note: low frequencies = 63-250Hz, mid frequencies = 500Hz-1Khz (1/1 octave band)

Based on the determined SEPP N-2 permissible noise limits, it has been determined that amplified music up to music style 1-2 will be permitted for this site up to 8pm. This will allow the use of background music and entertainment by performers (live music) using acoustic instruments, amplified in accordance with recommendations below. Loud, 2-3 piece bands will not be permitted.

The following recommendations shall apply in respect to the type/location of speaker system, location of performers and maximum noise levels at the tavern:

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Live music

Performers/musicians should set up on the north east side of premises and face in a southerly direction. Two PA speaker are permitted. The PA speakers should be self powered, two-way speaker design (horn plus 15inch cone or smaller). No supplementary subwoofer should be used. The speakers can be stand mounted approximately 1m above the ground but must be pointed in southerly direction away from the residences to the north. The equaliser settings on the speaker should be set to 'flat' ie no bass boost. The typical maximum sound pressure level for live music ceasing at 8pm should not exceed 92-93 dB(A) L₁₀ when measured 6m in front of the speakers.

Permanent background music speakers

Permanent background music speakers can be mount to the overhead timber structures that span the area north-south. No more than 6 speakers should be used. The speakers should be small weather proof /outdoor speakers such as the ones already in use in the downstairs café area. The speakers must be pointed/aimed downwards (towards the ground). Two can be placed at the southern end, another two at the northern end and a further two speakers on the eastern edge beam pointing downwards in an easterly direction. The volume setting on the amplifier must be set such that the typical maximum sound pressure level does not exceed 85 dB(A) L₁₀ with programme music when measured 2m from the speaker on axis. After 8pm, the typical maximum sound pressure level must be reduced to 80 dB(A) L₁₀ with programme music when measured 2m from the speaker on axis. A sound level meter should be used to assist in the set-up of the amplifier volume settings, one setting for 85 and another for 80 dB. The venue duty manager should be in charge of adjusting the volume knob at 8pm between the two settings.

Noise level checking

This needs to be done before the music commences. A hand held sound level meter must be used purchased from an electronics store (such as Jcar Electronics). Phone apps are not recommended for this task due to their typical poor low frequency response. The sound meter should have fast and slow time constant and A-weighting. Before purchasing, the make and model details should be submitted to Acoustic Control Pty Ltd for approval.

Ensure the sound level meter is set to A weighting (not C) and 'slow' time constant. A staff member should assist the performers at the start of the session by doing a 'sound check and calibration'. This will involve the performers playing a song and adjusting the master level on the speaker so that the sound meter shows 92-93 dB(A) on the typical maximum read-outs or needle/bar graph deflections (if applicable). The level should be checked approximately 6m in front of the PA speakers every hour by the venue duty manager.

In accordance with condition 7 of the planning permit, live music must ceased at 8pm and must not exceed 3 hours total in any one day.

Refer to the figure 7 below.

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APPENDICES

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APPENDIX 1: ACOUSTIC TERMINOLOGY

Definitions And Descriptions

- dB(A)** Decibels recorded on a sound level meter which has had its frequency response modified electronically to an international standard to quantify the average human loudness response.
- L₉₀ dB(A)** The noise level exceeded for 90% of the measurement duration. The L₉₀ noise level is indicative of the lower noise levels in a fluctuating noise environment and is often used to describe the background noise level in noise assessments.
- L₁₀ dB(A)** The noise level exceeded for 10% of the measurement duration. The L₁₀ noise level is indicative of the upper noise levels in a fluctuating noise environment and is often used to describe the typical maximum noise events.
- L₁ dB(A)** Commonly described as a value close to the maximum noise level observed but not the actual highest. It is the noise level exceeded for 1% of the measurement duration.
- L_{eq} dB(A)** L_{eq} is defined as the equivalent sound level and is the continuous steady state sound level that would contain the same sound energy as the time-varying sound level being measured. It is often the noise parameter used to assess environmental noise.
- L_{max} dB(A)** The maximum noise level observed in the environment.

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