



Mr Sean Goodchild Director Compliance Operations, Liquor and Gaming NSW Level 9, 323 Castlereagh Street SYDNEY NSW 2000 <a href="mailto:sean.goodchild@liquorandgaming.nsw.gov.au">sean.goodchild@liquorandgaming.nsw.gov.au</a>	Tuggerah Lakes Golf Club Ltd 86 Shelly Beach Road SHELLY BEACH NSW 2261 <a href="mailto:GM@sbgc.com.au">GM@sbgc.com.au</a>	Mr Craig Ellis Former Secretary Tuggerah Lakes Golf Club Ltd
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21 November 2018

Dear Mr Goodchild

**Complaint reference No.** DOC18/223929  
**Matter** Disciplinary Complaint  
**Licence name** Shelly Beach Golf Club  
**Licence No.** LIQC300236161  
**Complainant** Mr Sean Goodchild, Director of Compliance Operations, Liquor and Gaming New South Wales  
**Premises** 86 Shelly Beach Road  
SHELLY BEACH NSW 2261  
**Issue** Fitness and propriety of Mr Craig Ellis, former Club Secretary  
**Legislation** Part 6A of the *Registered Clubs Act 1976*

**Decision on Complaint to the Independent Liquor and Gaming Authority in relation to Mr Craig Ellis, the former Secretary of the Tuggerah Lakes Golf Club Ltd (trading as Shelly Beach Golf Club), under Part 6A of the Registered Clubs Act 1976**

The Independent Liquor and Gaming Authority (“Authority”) has finalised a disciplinary complaint (“Complaint”) made on 29 March 2018 by Mr Sean Goodchild, Director Compliance Operations, Liquor and Gaming NSW (“LGNSW”) in his capacity as a delegate of the Secretary of the Department of Industry (“Secretary”).

The Complaint is made in relation to the Tuggerah Lakes Golf Club Ltd, which trades as Shelly Beach Golf Club (“Club”) and its now former Secretary, Mr Craig Ellis.

The Complaint is made under Part 6A of the *Registered Clubs Act 1976* (“Act”) and specifies one ground (“Ground”) that is available under section 57F(3)(g) of the Act against the former Secretary of the Club Mr Craig Ellis – that the secretary of the club or any member of the governing body of the club is not a fit and proper person to act as such.

The Authority has considered the Complaint material (briefly listed in Schedule A) and all submissions received (briefly listed in Schedule B) and is satisfied that Mr Ellis, now the former secretary of the Club, is **not** a fit and proper person to act as such. The Authority notes that Mr Ellis and the Club did not contest the Complaint.

Having considered final submissions from the Complainant and the Club, the Authority has determined to take the following disciplinary action under section 57H(2) of the Act:

1. Pursuant to section 57H(2)(g) of the Act, the Authority declares the former secretary Mr Craig Ellis to be ineligible to stand for election or to be appointed to, or to hold office in, the position of secretary or

member of the governing body (or both of these positions) of the Club, and all other registered clubs in New South Wales **for life** from the date of this letter.

2. Pursuant to section 57H(2)(a1) of the Act, the Authority orders Mr Ellis to pay to the NSW Department of Industry a monetary penalty in the amount of **\$11,000.00** within 28 days from the date of this letter.
3. Pursuant to section 57H(2)(e) of the Act, the Authority has imposed the following condition on the Club's licence with effect from the day after the date of this letter:

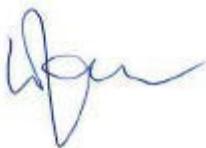
*The licensee must ensure that a CCTV system covers all publicly accessible areas of the Club (excluding toilets) and that the system retains all recorded footage for a period of not fewer than 28 days. The licensee must also provide any recordings made by the system to a Police officer, Council officer or Liquor and Gaming NSW inspector within 24 hours of any request to provide such recordings.*

4. Pursuant to section 57H(2)(i) of the Act, the Authority orders the Club to pay to the NSW Department of Industry **\$32,271.81**, in respect of the Secretary's costs in carrying out the investigation relating to this Complaint, within 28 days from the date of this letter.

Enclosed is a statement of reasons for the Authority's decision. Rights to seek review of this decision by the New South Wales Civil and Administrative Tribunal are noted at the end of the statement of reasons.

If you have any questions about this letter, please contact staff at the Authority's Reviews and Secretariat Unit via email at [ilga.secretariat@liquorandgaming.nsw.gov.au](mailto:ilga.secretariat@liquorandgaming.nsw.gov.au)

Yours faithfully



Philip Crawford  
**Chairperson**

For and on behalf of the Independent Liquor and Gaming Authority

## REASONS

### INTRODUCTION

1. On 29 March 2018, Mr Sean Goodchild, Director Compliance Operations, Liquor and Gaming NSW ("LGNSW"), delegate of the Secretary of the New South Wales ("NSW") Department of Industry ("Complainant") made a disciplinary complaint ("Complaint") to the Independent Liquor and Gaming Authority ("Authority") under Part 6A of the *Registered Clubs Act 1976* (NSW) ("Act") in relation to the Tuggerah Lakes Golf Club Ltd (trading as Shelly Beach Golf Club) ("Club"). The Club is currently trading at 86 Shelly Beach Road, Shelly Beach NSW 2261 ("Premises") under a club liquor licence LIQC300236161.
2. A OneGov licence record for the Club as at 21 September 2017 (provided at Exhibit E03 of the Complaint) is before the Authority and records that the Club has unrestricted trading hours for consumption on the premises and is licensed to sell liquor for consumption off the premises between 5:00 am and 11:00 pm Monday to Saturday and between 10:00 am and 10:00 pm Sunday. The venue has a gaming machine threshold of 34 with 34 gaming machine entitlements.

### Ground of Complaint

3. The Complaint specifies one ground of complaint ("Ground") that is available under section 57F(3)(g) of the Act and directed against the Club's former Secretary, Mr Craig Ellis - *that the secretary of the club or any member of the governing body of the club is not a fit and proper person to act as such.*
4. The Complainant alleges that Mr Ellis is not a fit and proper person on the basis of allegations specified in Particulars 1, 2, 3, 4 and 5 of the Complaint, which are discussed in more detail below in the Findings section of this letter.
5. According to a Deed of Release dated 22 December 2015 that is Exhibit E07 to the Complaint, Mr Ellis' employment with the Club ceased on 22 December 2015.
6. The Authority notes that section 57E(1)(a) of the Act provides that a reference to a secretary of a registered club includes a reference to a person *who was the secretary of the club.*

### BACKGROUND

7. The Particulars alleged in this Complaint are set out in the Findings below. Briefly, Mr Ellis' alleged lack of fitness and propriety arises from conduct committed while he was the Club's Secretary/General Manager. The Complainant contends, and it is not in dispute, that Mr Ellis acted in that role from 17 January 2008 until his termination on 22 December 2015. A copy of employment contracts for Mr Ellis are provided with the Complainant's Exhibit E04 which specify Mr Ellis being employed as the General Manager, with his duties including performing the legal role of Club secretary as described in the Club's constitution.
8. The Complaint primarily concerns conduct arising from the attendance on the Club Premises of a patron, Mr Bernard Nash ("Patron") on 13 October 2011. Exhibit 05 to the Complaint Material comprises a transcript of the sentencing hearing for Mr Ellis on 20 October 2017 before Judge Stephen Norrish QC in the matter of *R v Ellis* [2017] NSWDC 318 ("District Court Judgement"). The Authority refers to and accepts the following information provided in paragraphs 1 to 21 and 91 of the District Court Judgement. The Authority is satisfied as to the occurrence of the following matters, on the balance of probabilities, for the purposes of this Complaint:
9. On 13 October 2011, the Patron was drinking on the Premises and schooners of beer were served to him at 3:53 pm, 4:10 pm, 4:27 pm, 4:48 pm, 5:12 pm, 5:34 pm and 6:03 pm. The Patron was stopped by Senior Constable Michael Hicks of Tuggerah Lakes Highway Patrol to conduct a random breath test after the Patron was seen exiting the Club.
10. Senior Constable Hicks of NSW Police attended the Club to try and obtain CCTV footage relating to the Patron's presence in the Club and the alcohol he had consumed. The officer was subsequently told that the footage would not be released until a formal written request was made. On 24 November 2011 the officer sent a letter to the licensee/secretary/manager of the Club seeking video footage between 5:00 pm and 7:00 pm on 13 October 2011 for the "investigation of the following offence – permitted intoxicated person".
11. Mr Ellis instructed Ms Kennedy, a Club employee to "give them entry, exit and first three purchases" and Ellis edited a version of the CCTV footage. Ultimately Senior Constable Hicks was given that

version of the CCTV that contained footage of the Patron entering and exiting the Club, and obtaining drinks at 3:53pm, 4:27pm and 5:34pm only.

12. The Patron was prosecuted for driving under the influence of alcohol and resisting an officer in the execution of his duty. The Court found that although the tampering of evidence by Mr Ellis apparently played no *direct* role in the Patron's acquittal, it did play an indirect role because by not providing the evidence sought by Police this affected the prosecution of the Patron. The Court found that the Patron gave evidence that, having regard to the *unedited* video evidence, was clearly untrue. The drink driving, and resist arrest charges were ultimately dismissed by Wyong Local Court on 18 May 2012.
13. The Patron then commenced a civil claim against NSW Police for wrongful arrest, assault and malicious prosecution. On 16 September 2013, while conducting its defence, the State of NSW procured the issue of a Subpoena from the Court addressed to the "Proper Officer" of the Club, seeking production of CCTV footage of the Club from 13 October 2011 and any documents or information relating to the Patron, which would include any registers kept of any benefits that he had received from the Club on 13 October 2011.
14. The Court found that Mr Ellis answered this subpoena and took responsibility for what was produced, but he once again produced edited CCTV footage which only showed the Patron obtaining alcohol (beer) at 3:15pm, 4:10pm, 4:27pm which is at odds with the original footage provided to Senior Constable Hicks.
15. Mr Ellis also produced written records relating to the Patron's attendance at the Club, including a Membership Ledger Activity record relating to all of the subsequent purchases of liquor. The Court noted that Mr Ellis "admitted or conceded knowingly a number of purchases that had been made on that date were excluded from the ledger" and Police obtained the full ledgers, which showed the "true number, or at least a larger number, of purchases of full strength beer" made by the Patron on 13 October 2011.
16. The Court noted that on 10 June 2015, in the matter of *Nash v State of New South Wales* Gibson J of the District Court found in favour of the Patron in respect of his claims of wrongful arrest, assault and malicious prosecution and ordered that NSW Police pay damages in the sum of \$124,958 and the Patron's legal costs.
17. Furthermore, the Court notes that Mr Ellis wrote a letter of complaint to the Local Area Commander of NSW Police or some senior officer on or about 6 February 2012. This resulted in Senior Constable Hicks being the subject of an internal investigation, which the Court observed "was not appropriate given the true facts of the case" in that the Police officer had "not been responsible for any serious wrong doing". The Court noted that the Senior Constable was not suspended following this disciplinary investigation and "nor should he have been".
18. On 16 November 2015 Mr Ellis was arrested on the Club Premises following receipt of information received from Club staff about Mr Ellis' conduct with respect to evidence produced by Mr Ellis in response to the subpoena in the Patron's civil claim. The Court notes that after originally contesting a charge under section 319 of the *Crimes Act 1900* (NSW) ("Crimes Act") for perverting the course of justice, in August 2017 Mr Ellis changed his plea to guilty after the charges were amended to offences against section 317(a) of the Crimes Act for tampering with evidence.
19. On 20 October 2017 Norrish J sentenced Mr Ellis to 22 months imprisonment, with a non-parole period of 10 months. His Honour directed that Mr Ellis be released from prison to parole at the expiry of the non-parole period, which was 19 August 2018.

### **Summary of findings**

20. Having regard to all of the material before it, the Authority finds that Particulars 1 to 5 of the Ground of Complaint are established.
21. The Authority is satisfied, on the basis of those findings, that the former Secretary of the Club, Mr Ellis, is not a fit and proper person to act as such.

### **COMPLAINT MATERIAL**

22. A list of the material, comprising a six-page official disciplinary complaint form, a one-page cover letter, a sixteen page complaint letter ("Complaint Letter") and thirteen exhibits of material in support of the Complaint is set out in Schedule A to this letter ("Complaint Material").

## CONSULTATION ON THE COMPLAINT

### Show Cause Notice

23. On 18 April 2018, the Authority issued a Show Cause Notice via the Authority's Reviews and Secretariat Unit ("Authority Secretariat") and provided a copy of the entire bundle of Complaint Material to the Club and Mr Ellis.
24. At the time of issuing the Show Cause Notice Mr Ellis was serving a term of imprisonment for the District Court convictions and sentencing on 20 October 2017 noted above. The Authority sought the assistance of the Commissioner of Corrective Services NSW ("Commissioner") to serve the Show Cause Notice and Complaint Material upon Mr Ellis.
25. On 24 April 2018, the Authority Secretariat received email confirmation from the Commissioner's office that Mr Ellis had been served with that material on 23 April 2018.

### Brief Response from Club on Complaint

26. On 9 May 2018, Mr Scott Armstrong, the current General Manager of the Club, provided a brief submission via email to the Authority Secretariat and advised that the Club would not be contesting the Authority's Show Cause Notice.

### No Submission from Mr Ellis

27. At the time of issuing this letter the Authority has not received any submission in response to the Show Cause Notice from Mr Ellis.

## FINDINGS

28. A disciplinary complaint under Part 6A of the Act is an administrative matter and findings are made to the civil standard of proof. However, in accordance with the principle enunciated by the High Court of Australia in *Briginshaw v Briginshaw* (1938) 60 CLR 336, the seriousness of the allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are matters that are relevant to deciding whether an allegation has been proved on the balance of probabilities.

### Findings on Ground 1 – Mr Craig Ellis, former Secretary

29. Ground 1, being the sole Ground of Complaint, alleges that Mr Craig Ellis the former secretary of the Club is not a fit and proper person to act as such. Paragraph 23 of the Complaint alleges that Mr Ellis is not fit and proper on the basis that he does not have the requisite honesty, character or integrity to act as a member of a governing body or secretary of a registered club.

### Fitness and Propriety at General Law

30. It is well established at common law for the purposes of licensing that to be "fit and proper" a person must have a requisite knowledge of the Act (or Acts) under which he or she is to be licensed and the obligations and duties imposed thereby: *Ex parte Meagher* (1919) 36 WN 175 and *Sakellis v Police* (1968) 88 WN (Pt 1) (NSW) 541. Being fit and proper normally comprises the three characteristics of "honesty, knowledge and ability": *Hughes & Vale Pty Ltd v NSW* (No 2) (1955) 93 CLR 127.
31. Where a person has been convicted of offences, the decision maker must consider the circumstances of those convictions and the general reputation of the person apart from the convictions and the likelihood of repetition – *Clearihan v Registrar of Motor Vehicle Dealers in the ACT* (1994) 117 FLR 455
32. In *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321, the High Court of Australia has held that:

*The expression 'fit and proper person' standing alone, carries no precise meaning. It takes its meaning from its context, from the activities in which the person is or will be engaged and the ends to be served by those activities. The concept of 'fit and proper' cannot be entirely divorced from the conduct of the person who is or will be engaging in those activities. However, depending on the nature of those activities, the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed that it will not occur, or*

*whether the general community will have confidence that it will not occur. The list is not exhaustive but it does indicate that, in certain contexts, character (because it provides an indication of likely future conduct) or reputation (because it provides an indication of public perception as to likely future conduct) may be sufficient to ground a finding that a person is not fit and proper to undertake the activities in question.*

### **Ground 1 Particular 1: Honesty**

33. The Authority is satisfied, as alleged in paragraph 24 of the Complaint Letter, that Mr Ellis pleaded guilty and was convicted of two counts of the offence of *tamper with evidence with intent to mislead a judicial tribunal* (which the Authority notes is an offence against section 317(a) of the Crimes Act) before the District Court in Sydney on 20 August 2017. This finding is made on the basis of the *JusticeLink* record of convictions at Exhibit E08 of the Complaint and as noted at paragraphs 1-5 of the District Court Judgement at Exhibit E05.
34. The Authority notes, according to paragraphs 2-4 of the District Court Judgement, that the first of these offences occurred between 13 October 2011 and 9 May 2012 while the second occurred between 16 September 2013 and 18 October 2013. As noted above, employment contracts at Exhibit E04 and a Deed of Release at Exhibit E07 establish that Mr Ellis was employed as the Club's Secretary/Manager between 17 January 2008 and 22 December 2015 and thus held this role at the times that he committed these offences.
35. The Authority is further satisfied that, as alleged at paragraph 26 of the Complaint Letter, Mr Ellis knowingly provided "false, misleading and dishonest information" with the intention of misleading two judicial proceedings.
36. The Authority makes its findings on the basis of the information provided in the following paragraphs of the District Court Judgement at Exhibit E05:
  - a. [At paragraph 2]: "Craig Martin Ellis pleaded guilty in this court as I understand it in August 2017 to two charges on the indictment that was presented by the Crown. The first count alleged that he between the 13<sup>th</sup> day of October 2011 and the 9<sup>th</sup> day of May 2012 at Wyong in the State of New South Wales with intent to mislead the judicial tribunal, namely the Local Court, in a judicial proceeding, namely the prosecution of Bernard Nash suppressed or concealed closed circuit television footage knowing that it may be required as evidence in a judicial proceeding. This is an offence contrary to s317(a) *Crimes Act* 1900 and I am informed by the Crown carries a maximum penalty of 10 years".
  - b. [At paragraph 4]: Mr Ellis "pleaded guilty to a second count alleging that he between the 16<sup>th</sup> day of September 2013 and the 18<sup>th</sup> day of October 2013 at Gosford in the State of New South Wales with the intent to mislead a judicial tribunal, namely a District Court in a judicial proceeding, namely a civil proceeding brought by Bernard Nash against the State of New South Wales suppressed or concealed closed circuit television footing and loyalty ledgers knowing that it (sic) may be required as evidence in a judicial proceeding. This is an offence contrary to the same provisions I earlier identified and has the same maximum penalty".
  - c. [At paragraph 14]: NSW Police, through telephone intercepts and other means, recorded Mr Ellis saying, amongst other things, in one conversation "I didn't give him what he needed for his conviction".
  - d. [At paragraph 16]: Another telephone intercept reveals that Mr Ellis "made an admission about deliberately not giving Senior Constable Hicks the material that was requested".
37. On the uncontested material relied upon by the Complainant, the Authority is satisfied that the allegations in Particular 1 of the Ground are established for the purposes of this Complaint.

### **Ground 2 Particular 2: Integrity**

38. The Authority is further satisfied, as alleged at paragraph 27 of the Complaint Letter, that Mr Ellis has been convicted of two counts of "*tamper with evidence with intent to mislead a judicial tribunal*". This finding is made on the basis of the *JusticeLink* record of conviction at Exhibit E08 and paragraphs 1-5 of the District Court Judgement at Exhibit E05.
39. The Authority is also satisfied, on the basis of paragraphs 2-4 of the District Court Judgement that one of the counts for which Mr Ellis was convicted concerned providing false evidence to NSW Police in

the prosecution of the Patron, while the second concerned providing false evidence under subpoena to the State of NSW during the course of civil proceedings.

40. The Authority is satisfied, on the information in the District Court Judgment, that the allegation in paragraph 28 of the Complaint Letter is established in that, at the time of the original incident in 2011 Mr Ellis was of the belief that NSW Police were conducting an investigation into the Club for permitting intoxication. At paragraph 11 of the District Court Judgment, Norrish J noted:

"I have an exhibit that was at the trial, signed by Mr Hicks, dated 24 November 2011 in the following terms:

'To the Licensee/Secretary Manager

I am officially placing a form of demand upon you as the Licensee/Secretary Manager to supply to me the following information.

This form of demand is in accordance with s110 of the *Liquor Act 2007* – s58 of the Registered Clubs Act.

The information is required in the investigation of the following offence – permitted intoxicated person.

The required information/documents are:

Video footage from 5pm on 13 October 2011 to 7pm on the 13 October 2011 covering the location of: All areas of the interior of Tuggerah Lakes Golf Club around the bar area and the car park' ".

41. The Authority accepts, as alleged at paragraphs 29 and 30 of the Complaint Letter, that it was the contention of Mr Ellis that at the time of the *first offence* that he had provided misleading evidence in order to protect the reputation of the Club. The Authority notes and accepts the observation made by the Court at paragraph 26 of the District Court Judgment that:

"Although I accept that in relation to count one that his primary concern in respect of his actions was the protection of the reputation of the club thinking that the Nash incident might cause a 'black mark', as he described it, being made against the club this was substantially misguided and seriously wrong thinking on his part. I point out he had an obligation as the General Manager to co-operate with police on purported licence enquiries, particularly if they claimed to be conducting an investigation. Although I note he gave evidence about legal advice he had sought concerning the character of this investigation and as I understand his evidence the club had a spotless record which he was very anxious to protect."

42. The Authority is further satisfied, as alleged in paragraph 31 of the Complaint Letter that the District Court found that the degree of criminality and dishonesty involved with Mr Ellis' conduct in respect of the *second* count was *increased* due to Ellis knowing by that time that the Club was *not* being investigated and accordingly there remained *no* threat to the Club's reputation.
43. At paragraph 29 of the District Court Judgment the Court found "two acts involved in the criminality" involved with the second count - both the editing of the CCTV footage and falsifying the ledger records of the club. The Court found that Ellis was "fearful that his earlier misconduct not be uncovered and was primarily seeking to protect himself. The reputation of the club no longer was an issue". The Authority accepts these observations.
44. As alleged in paragraph 32 of the Complaint Letter, the Authority is satisfied, having regard to the statements made by his Honour at paragraphs 17 and 29 of the District Court Judgment that evidence before the Court established that Mr Nash and Mr Ellis were acquaintances; that Mr Nash instructed Mr Ellis via text message to ensure that, when submitting evidence in response to the 2013 subpoena to "make sure everything tallies" and that Mr Ellis chose to protect his own interests by making sure that the false information continued to tally so that his earlier misconduct would not be uncovered, regardless of the impact on the judicial process. The Authority notes and accepts the observations of the Court that this was a "serious failure of judgement and character".
45. On the uncontested material relied upon by the Complainant, the Authority is satisfied that the allegations in Particular 2 of the Ground are established.

### Ground 1 Particular 3: Character

46. Paragraph 34 of the Complaint Letter contends that Mr Ellis' character is "generally demonstrated" in matters set out in the other Particulars of the Complaint. The Authority is satisfied, on the basis of paragraph 24 of the District Court Judgment, which refers to evidence presented in Court, that Mr Ellis admitted that he decided not to provide unedited CCTV footage to Police in late 2011 and that he did in fact provide edited footage in early 2012.
47. The Authority accepts, as alleged in paragraph 36 of the Complaint Letter, that the Court found that Mr Ellis originally decided to protect the Club's reputation but (as set out at paragraph 27 of the District Court Judgment) Mr Ellis's conduct in "misleading the investigation for the benefit of his employer it must be said is only marginally less serious than misleading a court" and Mr Ellis "must have known, however, in providing the footage to the Senior Constable in due course that the material was used or could be used for court purposes. He must have also known, one would have thought, that if it was favourable to Mr Nash it might end up not being used in the prosecution of Mr Nash".
48. As alleged in paragraphs 36 to 39 of the Complaint Letter, the Authority is satisfied that during coercive interviews with LGNSW Inspectors, the Club's finance manager Ms Alison Devries on 22 November 2017 ("Devries Interview"), Club Captain Mr Peter Sliwinski on 22 November 2017 ("Sliwinski Interview") and Club Treasurer Mr David Newman on 21 November 2017 ("Newman interview") indicated that the personal character of Mr Ellis influenced his conduct and criminality. The Authority accepts the following uncontested statements about Mr Ellis' character with respect to his attitude towards law enforcement and is satisfied that this played some role in his commission of his criminal offences:
- Ms Devries' statement "Because Craig is very arrogant and doesn't like police" (Question 424 of Exhibit E09 of the Complaint – the Devries Interview)
  - Ms Devries' statement "I think he was worried that he was going to get charged with something, and I really think that that's why he did what he did" (Question 427 of Exhibit E09 of the Complaint – Devries Interview)
  - Mr Sliwinski's statement "My opinion is that he's very strong-headed and I think he would have taken offence to the original demands from the police officer" (Question 179 of Exhibit E10 of the Complaint – the Sliwinski Interview)
  - Mr Newman's statement "He's got a huge ego. He had a huge ego. I think that's what got him into trouble in the first place" (Question 131 of Exhibit E11 of the Complaint – the Newman Interview)
  - Mr Newman's statement "The policeman came up here and the two of them bumped chests, and the policeman thumped Craig in the chest and said "I want that and I want it now." And you didn't do that to Craig ... So by the time the copper got, came, went away and came back, Craig was never going to give him what he wanted" (Questions 132 of Exhibit E11 of the Complaint – Newman Interview).
49. The Authority accepts, as alleged in paragraph 40 of the Complaint Letter, that the level of personal animosity held by Mr Ellis towards Senior Constable Hicks was evidenced in the letter of complaint that Ellis wrote to Senior Constable Hicks' superior officers during February 2012 about Senior Constable Hicks' conduct. This complaint followed upon the initial actions taken by Mr Ellis to provide *edited* CCTV footage of relevant events on the Club premises.
50. The Authority accepts that as a result of this letter, Senior Constable Hicks was subjected to an unwarranted internal Police investigation as noted at paragraph 21 of the District Court Judgment.
51. The Authority accepts the Complainant's allegations, at paragraph 41 of the Complaint Letter, that the actions of Mr Ellis also placed Club staff in an extremely difficult situation when Ellis provided staff, including Ms Sharyn Kennedy and Ms Katie Stenberg, with clear instructions to tamper with evidence which eventually resulted in Ms Kennedy and Ms Stenberg reporting these actions to Police. These allegations are established by the information recorded in paragraph 14 of the 11 December 2015 report prepared for the Club by Indrele Workplace Consulting ("Indrele Report") (Exhibit E06 of the Complaint), which observed that: "Ms Kennedy indicated that Mr Ellis instructed her to only provide information to the police if a subpoena or letter of demand was produced, and only to supply the entering, exit and first three drinks that Mr Nash purchased".

52. This conduct was reflected in findings made by the Court at paragraph 13 of the District Court Judgement whereby his Honour Norrish J observed that Mr Ellis instructed Ms Kennedy, via email on 21 December 2011, to “give them [CCTV evidence of] entry, exit, and first three purchases”.
53. The Authority further notes the information at paragraph 15 of the Indrele Report (Exhibit E06 of the Complaint) which records that Ms Stenberg indicated that she was asked by Mr Ellis to put the video footage on to a DVD, which she then handed to Mr Ellis and that Ellis “requested her to put some, but not all of the files onto the DVD”. The Authority accepts this information, including that Ellis made comments about “technically” not having to “give the disk to police”.
54. On the uncontested material relied upon by the Complainant, the Authority finds that the allegations in Particular 3 of the Ground are established.

**Ground 1 Particular 4: Indrele Report – Misuse of Club Property**

55. Following the arrest of Mr Ellis in November 2015, the Club engaged Indrele Workplace Consulting to conduct an internal investigation into the conduct of Mr Ellis. Exhibit E06 of the Complaint comprises the Indrele Report which establishes a number of less serious, but material, factual matters pertaining to Mr Ellis’ conduct as the Club’s Secretary/Manager in the months leading up to his arrest.
56. The Authority accepts the allegations in paragraph 44 of the Complaint Letter that: Mr Ellis was utilising a company car beyond the terms of his contract; that the Club incurred significant fuel and travel costs for the personal benefit of Mr Ellis; Mr Ellis would regularly incur substantial sums in fuel expenses and toll expenses in travel to Sydney; there were unexplained absences from his place of employment and about his travels; and given the location of the Club and Mr Ellis’ place of residence the costs were well in excess of that deemed reasonable especially considering that no toll roads exist in the local area.
57. The Authority also accepts the following information and observations provided in the Indrele Report which are adverse to an assessment of Mr Ellis’ honesty and ability as the Club’s Secretary/Manager:
  - Indrele found it “highly questionable” whether Mr Ellis was actually required to travel to Sydney 44 times in 9 months for work purposes. As observed by Indrele, the trips to Sydney become even more questionable when assessing the time records of the last toll coming to Sydney (Sydney Harbour Bridge toll), and the first toll leaving Sydney (Eastern Distributor). Based on the Indrele analysis, it was often the case that Mr Ellis would be in Sydney for less than 40 minutes, or even less than 30 minutes, when taking other factors into account” (Paragraph 2 of the Indrele Report).
  - Mr Ellis was incurring significantly high fuel costs overall, which raises “serious questions” about Mr Ellis’ activities and whereabouts during working hours. Indrele consider the frequent travel to Sydney to be highly questionable, but a further analysis of fuel costs suggests that there is “significant other travel” (Paragraph 7 of the Indrele Report).
  - There is strong evidence to suggest that Mr Ellis lied to other management employees about his whereabouts on a regular basis. Ms Devries provided a list of dates whereby Ellis provided “specific excuses” as to his whereabouts, which were clearly false, based on toll confirmation of his travel to Sydney. At the same time, it was explained that Ellis sometimes provided more “general excuses” to management employees about his whereabouts/travels, or alternatively made no communication at all. Indrele conclude that evidence of “dishonesty” raises questions about Mr Ellis’ true whereabouts during working hours (Paragraph 9 of the Indrele Report).
58. The Authority is further satisfied, as alleged at paragraph 45 of the Complaint Letter and at paragraph 27 of the Indrele Report that: Mr Ellis’ behaviour over the 6-12 months preceding this Report had become “erratic, unusual and unpredictable” and that “his mood swings created an uncomfortable working environment”.
59. On the uncontested material relied upon by the Complainant, the Authority finds that the allegations in Particular 4 of the Ground are established. While these matters involve a degree of subjective assessment by Indrele and the staff reporting their concerns to Indrele, the travel claims provide an objective basis for discerning some lack of honesty or at least a lack of diligence with respect to use of Club resources. These are factual matters that are adverse to an assessment of Mr Ellis’ honesty and ability - albeit warranting considerably less weight than the convictions that are the subject of Particulars 1 to 3.

## Particular 5: Character and Ability

60. The Authority accepts the general contention, at paragraph 46 of the Complaint Letter, that Mr Ellis created an unhealthy working environment that included instances of bullying and harassment. This conclusion is reached on the basis of the Authority's acceptance of the following information provided in the Indrele Report:

- Paragraph 11 of the Indrele Report records that, in response to Ms Devries and Ms Kennedy approaching Ellis about Club staff member Mr Banning [whose then role is unclear from this report] increasing expenses on the staff card, Ellis sent an email to the entire management team which seemed to be a "retaliation" to their whistle blowing, stating that the Club's marketing and finance managers "will now work hours of 9:00am to 5:30pm" - despite Stenberg and Devries having previously established "flexible working arrangements" in connection with their caring responsibilities.
- Paragraph 12 of the Indrele Report records Mr Ellis suggesting to Ms Kennedy that she needed to establish a "surveillance policy" because she had "no right" to observe staff. Ms Kennedy responded by pointing out the employee in question (Mr Banning) was actually "off duty" at the relevant time that she made the observation.
- Paragraph 17 of the Indrele Report records the allegation that Ellis had said to Ms Kennedy on more than one occasion words like "you better keep your dog on a lead" by reference to Mr Walter (the Club's facility manager). Mr Walter had confronted Ellis about this, who conceded that he had made the comment, but vowed not to say it again.
- Paragraph 18 of the Indrele Report records that Mr Walter suggested that Ellis had threatened him with his employment if Mr Walter was questioned by police with regard to matters concerning the Patron, Mr Nash. Ellis told Walter that it was "illegal" for Walter to say anything to Police about the "Mr Nash matter".
- Paragraph 24 of the Indrele Report concludes: "There was strong evidence to suggest that Mr Ellis conducted himself in an inappropriate manner toward Ms Devries during the October 2015 management meeting. This included swearing at the meeting toward Ms Devries and shouting at her. [Ms] Stenberg indicated that she advised Mr Ellis that his conduct was completely inappropriate at the meeting, despite feeling a little uncomfortable in doing so".
- Paragraph 27 of the Indrele Report records that it was suggested by numerous persons Ellis' behaviour over the past 6-12 months had become "erratic, unusual and unpredictable". Some persons interviewed even suggested that his mood swings created an "uncomfortable working environment". Ms Stenberg commented about "receiving text messages from Mr Ellis at unusual times" and provided some evidence of this.

61. The Authority is further satisfied, as alleged in paragraphs 47 to 53 of the Complaint Letter, that during coercive interviews between LGNSW Inspectors and Club President Mr Allan Arkins on 21 November 2017 ("Arkins Interview"); Club Treasurer Mr David Newman on 21 November 2017 (Newman Interview); Club Golf Professional Mr Peter Cliff on 22 November 2017 ("Cliff Interview") and Club Finance Manager Ms Alison Devries on 22 November 2017 (Devries Interview), staff made the following statements about Mr Ellis' character and ability:

- "Craig was good at numbers. He was good at policy. He was good at a whole range of things. He wasn't very good at relating to people. Ah, he, he had issues with the interpersonal skills and he, he was asked to come and present to a group of ladies ah, on a very simple matter and finished up getting up and storming out, you know?" (Question 176 of Exhibit E12 of the Complaint – Arkins Interview)
- "He was fine as long as he got his own way. He was fine as long as you didn't argue with him. Um, as I said, he was, he had a super ego. He was a very intelligent man, believe it or not, for someone who was that stupid" (Question 156 of Exhibit E11 of the Complaint – Newman Interview)
- "But the staff were scared to talk to any directors in case we spoke to Craig or mentioned it to Craig, and then Craig would have been very vindictive, which we knew he could be" (Question 157 of Exhibit E11 of the Complaint – Newman Interview)
- "He was always someone that played, ah, not played, that's the wrong way to describe him, um, liked intellectual games. He liked showing how smart he was" (Question 32 of Exhibit E13 of the Complaint – Cliff Interview)
- "But he was of a big enough frame and he certainly, ah, quite often would let his emotions get the better of him" and "maybe he didn't think before he said stuff at times. So yeah, he, he, he

could, he could be considered an intimidating sort of person" (Questions 36-37 of Exhibit E13 of the Complaint – Cliff Interview)

- "And, you know, for me to, yeah, it was going to be really hard, because if nothing happened, I'd still have to work with him, and he was very volatile. He was, you know, he, he was abusive towards staff quite often. Never me, up until a little bit later. Um, but, yeah, he was, he was intimidating" (Question 102 of Exhibit E09 of the Complaint – Devries Interview)
- "I think, I think Craig manipulated them quite well. 'Cause when Craig first got here, he was really good. He, he had some great ideas, and he, you know, got the revenues going up and, and he was really good", "But I think he stayed too long. He got bored. He even said to me a few times, you know, 'I sort of don't really know what I can do here. I'm bored.' And then that's when he lost his way. And so the board, you know, thought he was, he was really good" (Questions 104-105 of Exhibit E09 of the Complaint – Devries Interview).

62. Having regard to the material before it, the Authority finds the allegations in Particular 5 of the Ground to be established. The evidence and material provided in support of Particular 5 establish with respect to Mr Ellis' knowledge and ability that he was an intelligent man who made positive contributions to the technical and business development aspects of his role as Club Secretary. However, he was also an intimidating and volatile character who engaged in a degree of bullying and abusive conduct towards his staff. This conduct runs contrary to reasonable expectations of a Chief Executive Officer of a modern community-based enterprise.
63. Staff accounts with respect to Mr Ellis' arrogance and vindictive behaviour are consistent with the lack of respect demonstrated by Mr Ellis when tampering with evidence produced in response to civil proceedings, and his egregious pursuit of a complaint against a Police officer arising from the same matter. While the matters established by Particular 5 warrant less weight than the criminal convictions, they provide further insights into Mr Ellis' character and are adverse to an assessment of his ability to manage a modern registered Club. Mr Ellis has not taken the opportunity to contest this character evidence, nor provide any positive evidence with respect to his honesty, knowledge and ability to serve as the secretary of a registered club in New South Wales.

#### **Fitness and proprietary**

64. Having regard to the material before it and in the absence of any submissions from the Club and Mr Ellis addressing the merits of the Complaint, the Authority is satisfied that the Ground of Complaint is established. The Club's former secretary, Mr Craig Ellis, is not a fit and proper person to act as such, in that he has not demonstrated the degree of honesty and ability reasonably expected of a person exercising that role.

#### **SUBMISSIONS ON DISCIPLINARY ACTION**

65. On 11 October 2018 the Authority sent to the parties a detailed letter notifying its findings on the Grounds of Complaint ("Findings Letter"), inviting final submissions confined to the question of what, if any, disciplinary action should be taken in light of those findings.
66. On 17 October 2018 the Complainant sent a short submission to the Authority seeking that the Authority order the disqualification of Mr Ellis from holding a position as a club secretary or member of a club governing body for such period as the Authority deems appropriate; impose a new condition on the Club's liquor licence requiring it to maintain a CCTV system covering all publicly accessible areas excluding toilets and retain the footage for 28 days (with clause 95 of the *Liquor Regulation 2018* (NSW) providing guidance as to an appropriate CCTV condition); impose a monetary penalty on the Club and Mr Ellis as the Authority deems appropriate and order the Club to pay the Secretary's costs on the investigation giving rise to the Complaint in the sum of \$32,271.81.
67. Briefly, the Complainant seeks disqualification of Mr Ellis in light of the seriousness of his conduct and to send a signal to others in the industry as to the consequence of his actions. The CCTV condition is sought to prevent future misconduct by the licensee or others with respect to the use and retention of CCTV footage. The Complainant also seeks a monetary penalty against the Club and Mr Ellis by reason of the seriousness of Mr Ellis' conduct – conceding that the Board was unaware of Mr Ellis' actions while submitting that the Board is "bound" by the actions of its Chief Executive Officer. Finally, the Complainant provides a summary of how it has incurred the costs sought in respect of the investigation giving rise to this Complaint.
68. The Club made a final submission to the Authority through Ms Helen Carayannis, solicitor, H&R Workplace Strategies on 20 October 2018. Very briefly, the Club supports the Complainant proposal that Mr Ellis be disqualified from a regulated position for such period as the Authority thinks fit and

advises that it has already implemented a CCTV system of the kind sought by the Complainant while not objecting to the Authority ordering that this occur.

69. With respect to the question of a monetary penalty, the Club submits that Mr Ellis had engaged in a course of conduct (with respect to tampering of evidence) that was completely outside of the scope of his employment and it was a condition of his contract that he comply with the law. The Board was unaware of his conduct and implemented an investigation when it became aware of the matter. The Club does not accept that Mr Ellis was motivated by a desire to protect the Club and contends that the findings of the workplace investigation with respect to misuse of Club assets indicate that Mr Ellis was acting in disregard for the Club's interests.
70. The Club submits that it has already suffered significant financial and reputational impact arising from the conduct of Mr Ellis and Mr Nash, including adverse media coverage on Sydney commercial radio station 2GB, costs of obtaining professional representation and diversion of staff from the Club's core business. The Club further contends that the matter has caused substantial stress for staff and their families and a loss of Club membership and confidence among membership.
71. The Club contends that a monetary penalty or costs order would impact the Club's ability to support local organisations and junior golf, further damage the Club's brand and place further pressure upon the Club's resources in circumstances when the Club has suffered trading losses of \$320,000.00 in the last year on account of the conduct of Mr Ellis and the Club's patron Mr Nash. Further penalties will impede the Club's ability to refurbish the Premises impacting members of the community who use its facilities.

## **DECISION ON DISCIPLINARY ACTION**

72. The Authority has given further consideration to the Complaint and all of the material before the Authority, including the final round of submissions on disciplinary action provided by the Complainant and the Club.
73. Section 57H of the Act provides the powers of the Authority to take disciplinary action in the event that a complaint is established. The section states:

### **57H Disciplinary powers of Authority**

- 1) The Authority may deal with and determine a complaint that is made to it under this Part.
- 2) If the Authority is satisfied that any of the grounds on which the complaint was made apply in relation to the registered club or the person who is the secretary or member of the governing body of a registered club, the Authority may decide not to take any action or may decide to do any one or more of the following:
  - (a) order the club to pay a monetary penalty not exceeding 2,500 penalty units within such time as is specified in the order,
  - (a1) order the person to pay a monetary penalty not exceeding 100 penalty units within such time as is specified in the order,
  - (b) suspend the club's licence for such period as the Authority thinks fit,
  - (c) cancel the club's licence,
  - (d) suspend or cancel any authorisation held by the registered club under this Act,
  - (e) impose a condition on the club's licence or on any authorisation held by the club under this Act,
  - (f) remove the person from office as the secretary of the club or as a member of the governing body of the club,
  - (g) declare that the person or any other specified person is, for such period as is specified by the Authority, ineligible to stand for election or to be appointed to, or to hold office in, the position of secretary or member of the governing body (or both of those positions) of:
    - (i) the club, and
    - (ii) if the Authority so determines – all other registered clubs or such other registered clubs as are specified (or as are of a class specified) by the Authority,
  - (h) appoint a person to administer the affairs of the club who, on appointment and until the Authority orders otherwise, has, to the exclusion of any other person or body of persons, the functions of the governing body of the club,
  - (i) order the registered club or person to pay the amount of any costs incurred by:
    - (i) the Secretary in carrying out any investigation or inquiry under section 35A in relation to the club or person, or

- (ii) by the Authority in connection with the taking of disciplinary action against the club or person under this section.
- 3) Any monetary penalty or costs ordered to be paid under subsection (2) are payable to the Secretary.
74. The Authority's disciplinary jurisdiction provided by Part 6A of the Act is protective, rather than punitive in nature. As held by the New South Wales Supreme Court in *Seagulls Rugby League Football Club Ltd v Superintendent of Licences* (1992) 29 NSWLR 357 (at paragraph 373):
- The over-riding purpose of the jurisdiction is the protection of the public, and of members of clubs by the maintenance of standards as laid down in the Act.*
75. Nevertheless, as observed by Basten JA of the New South Wales Court of Appeal in *Director General, Department of Ageing, Disability and Home Care v Lambert* (2009) 74 NSWLR 523 ("*Lambert*"), while disciplinary proceedings are protective, that is not to deny that orders made by disciplinary bodies may nonetheless have a *punitive effect*. His Honour observed that a Court (and hence a regulatory decision maker such as the Authority) should be mindful that a protective order is reasonably necessary to provide the required level of public protection.
76. At paragraph 83 of the judgment in *Lambert*, Basten JA states that the "punitive effects" may be relevant to the need for protection in that:
- ...in a particular case, there may be a factual finding that the harrowing experience of disciplinary proceedings, together with the real threat of loss of livelihood may have opened the eyes of the individual concerned to the seriousness of his or her conduct, so as to diminish significantly the likelihood of repetition. Often such a finding will be accompanied by a high level of insight into his own character or misconduct, which did not previously exist.*
77. At paragraph 85 of the judgment, Basten JA observes that:
- ...the specific message of the disciplinary cases explaining that the jurisdiction is entirely protective is to make clear that the scope of the protective order must be defined by the reasonable needs of protection, as assessed in the circumstances of the case.*
78. The Authority further notes that when determining the nature of the appropriate disciplinary action, the conduct of the respondent to a complaint *up until its final determination* is relevant and should be taken into account: *Sydney Aussie Rules Social Club Ltd v Superintendent of Licences* (SC (NSW) Grove J, No. 16845 of 1990, unreported BC9101830).

### **Disciplinary Action Against Mr Ellis**

79. The Authority notes that Mr Ellis has not responded to the Show Cause Notice nor made any further submissions in response to the Complaint, including the Findings Letter. There are no positive submissions or evidence before the Authority going to Mr Ellis' fitness and propriety, nor has he elected to address the question of what disciplinary action is appropriate in the current circumstances.

### **Declaration of ineligibility for election or appointment under section 57H(2)(g)**

80. The Complainant sought a "substantial" period of disqualification from Mr Ellis holding a regulated role with a registered club to send a "strong" message to the industry. The Authority finds that Mr Ellis' conduct was so serious that, looking forward, it cannot give its imprimatur to him serving in a position of responsibility with respect to a registered club again.
81. Mr Ellis' misleading conduct with respect to the production of CCTV and other Club records in response to a compulsory Court process demonstrates a wanton disregard for the legal system that is at odds with the most basic expectations of any person in a position of responsibility for what is a substantial community-based enterprise.
82. The licensing system relies upon the honest handling of club records and CCTV footage when they are called upon, as this material may assist in ensuring the safety of staff and patrons of a venue. The proper maintenance and handling of CCTV footage frequently serves an important collateral purpose whenever law enforcement action (including with respect to criminal matters) is taken affecting persons who have been on licensed premises. It goes without saying that there is a strong public interest for those in charge of registered clubs to inform the criminal or civil justice system when required to do so.

83. Mr Ellis' misconduct was apparently designed to obscure the level of alcohol consumption by a patron of the Club on an afternoon in which the patron was intercepted for drink driving. In doing so, Mr Ellis engaged in conduct that was contrary to the harm minimisation objects and statutory considerations in section 3 of the *Liquor Act 2007* (NSW).
84. However, the ramifications of his actions went well beyond the Club's record with respect to the responsible service of alcohol. The misleading evidence provided by Mr Ellis had a snowballing effect - from improperly affecting a Local Court prosecution against the Club's Patron, to improperly affecting substantial civil proceedings commenced by that Patron against the State of New South Wales, to causing an unwarranted internal disciplinary process by NSW Police against the officer who intercepted the Patron after drinking at the Club. Mr Ellis must have been aware of the mounting consequences of his misconduct yet exacerbated the initial dishonesty by not taking steps to correct the misrepresentation when he could have. But for the action of relatively junior staff members in reporting the matter to Police, the misconduct may never have come to light.
85. The Authority has taken into consideration the fact that Mr Ellis has now incurred a substantial criminal penalty by way of a significant term of imprisonment in respect of which he is still on parole. Mr Ellis lost his longstanding employment with the Club.
86. Nevertheless, disciplinary action under the Act serves a broader protective purpose. The consequences of Mr Ellis' misconduct were so serious that it warrants the strongest regulatory response. Disqualifying Mr Ellis from acting as a secretary or director of this Club and any registered club in New South Wales will not only protect the community by removing him from eligibility to hold a regulated position but send a clear message to others in the industry as to the consequences of engaging in misleading conduct when producing evidence that may be held by a registered club in response to a compulsory legal process.
87. On the material before it, the Authority considers it appropriate to declare, pursuant to section 57H(2)(g) of the Act, that Mr Craig Ellis is ineligible to stand for election or to be appointed to, or to hold office in, the position of secretary or member of the governing body (or both of these positions) of the Club, and all other registered clubs in New South Wales for **life** from the date of this letter.

#### Monetary penalty pursuant to section 57H(2)(a1) of the Act

88. The Authority has taken into account the seriousness of the misconduct which gave rise to Mr Ellis' criminal conviction. While Mr Ellis engaged in unlawful conduct, his production of evidence in response to a compulsory Court process was not *unrelated* to his role as Chief Executive. He was apparently responsible for approving what would or would not be produced to third parties in response to subpoenas, notices to produce and the like. His misconduct also had a substantial impact upon the conduct of civil, criminal and disciplinary proceedings which adversely affected third parties.
89. The Authority finds Mr Ellis' conduct to be of the most serious nature and warrants the imposition of the maximum monetary penalty available in respect of an individual when determining a disciplinary complaint under Part 6A of the Act – being 100 penalty units or \$11,000.00. The purpose of this penalty is to communicate to others in the industry the regulatory consequences of a club secretary engaging in this degree of dishonesty with respect to evidence produced in response to a compulsory legal process.
90. However, the Authority accepts the Club's contention that the Board was unaware of this conduct. Mr Ellis was primarily responsible for the misconduct, which did not involve any systemic failure on the part of management, but a discrete and wrongful direction given to junior staff to provide a selection of footage that Mr Ellis had determined should be released. Once two relatively junior staff members (Ms Kennedy and Ms Steinberg) took their concerns to Police, the Club properly commissioned an independent investigation resulting in Mr Ellis' termination.
91. The Club has not been specific as to the extent to which Mr Ellis' conduct (as distinct from trading performance) has factored in the Club's most recent financial position - which the Authority accepts resulted in an annual loss of \$320,000.00. Nor has the Club been specific as to the extent of membership loss directly attributed to this scandal. This affects the weight that may be given to those submissions. Nevertheless, procuring an investigation by an independent consultant and obtaining legal advice on this matter will likely have come at some substantial cost to the Club. The Authority accepts that there has been adverse media coverage which has damaged the Club's reputation and caused stress and embarrassment for staff, particularly since the misconduct in question was at the hands of the Club's Chief Executive. The Authority accepts that this matter has caused some significant diversion of staff time away from attending to core business.

92. Noting that the Authority will impose a licence condition making CCTV coverage and retention enforceable and the Club will pay the Secretary's costs on the investigation giving rise to this Complaint, the Authority does not consider that there is any public interest in imposing a monetary penalty upon the Club itself under section 57H(2)(a) of the Act.

Impose licence condition under section 57H(2)(e) of the Act

93. The Authority accepts that it would assist in the future regulation of CCTV on the Club Premises if a new condition is imposed upon the licence making CCTV coverage enforceable as a condition of the licence. This will ensure that the Club's licensee/secretary and staff are aware of the importance of maintaining CCTV coverage and retention for a period of 28 days, should CCTV be required. The Authority accepts the Club's advice that it has already taken steps along the lines recommended by the Complainant with respect to its CCTV but finds that a licence condition will be preferable in that it will make CCTV coverage and retention enforceable under the licence.
94. The Complainant has not sought any requirements with respect to the minimum technical specifications of the CCTV system and the Authority has decided to impose the new condition substantially in accordance with the proposal described in the Complainant's final submissions. It would be open to the Secretary to seek variation of the condition at some future time, pursuant to section 53 of the *Liquor Act 2007 (NSW)*, should the Secretary consider that further specification is appropriate.
95. The Authority has decided to impose, with effect from the date of this letter, a condition upon the Club's licence in the below terms to commence effect from the day after the date of this letter.

Costs order pursuant to section 57H(2)(i) of the Act

96. The Authority notes that the Complainant has sought an order that the Club pay the costs incurred by the Secretary in carrying out any investigation or inquiry under section 35A in relation to the Club in the sum of \$32,271.81.
97. The Club opposes a costs order on the general basis that it will cause financial prejudice and impede its ability to provide community support and refurbish facilities for its members, given that the Club had recorded a \$320,000.00 loss during the last year.
98. While the Authority accepts that the Club is in the financial position specified, the Secretary's costs have been adequately documented in the Complainant's final submissions and all Grounds agitated in the Complaint arising from the Secretary's investigation have been established. The regulatory scheme is dependent upon the Secretary incurring substantial public resources in the investigation of alleged non-compliance in relation to registered clubs and it is relevant that the Complaint primarily arises from misconduct at the hands of the Club's highest- ranking employee for which the Club must bear responsibility. The Authority is satisfied that it is appropriate that the Club pay the Secretary's full costs on the investigation.

**ORDERS**

99. Pursuant to section 57H(2)(g) of the Act, the Authority declares the former secretary Mr Craig Ellis to be ineligible to stand for election or to be appointed to, or to hold office in, the position of secretary or member of the governing body (or both of these positions) of the Club, and all other registered clubs in New South Wales **for life** from the date of this letter.
100. Pursuant to section 57H(2)(a1) of the Act, the Authority orders Mr Ellis to pay to the NSW Department of Industry a monetary penalty in the amount of **\$11,000.00** within 28 days from the date of this letter.
101. Pursuant to section 57H(2)(e) of the Act, the Authority has imposed the following condition on the Club's licence with effect from the day after the date of this letter:

*The licensee must ensure that a CCTV system covers all publicly accessible areas of the Club (excluding toilets) and that the system retains all recorded footage for a period of not fewer than 28 days. The licensee must also provide any recordings made by the system to a Police officer, Council officer or Liquor and Gaming NSW inspector within 24 hours of any request to provide such recordings.*

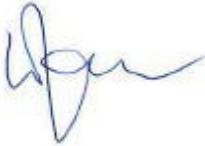
102. Pursuant to section 57H(2)(i) of the Act, the Authority orders the Club to pay to the NSW Department of Industry \$32,271.81 in respect of the Secretary's costs in carrying out the investigation relating to this Complaint, within 28 days from the date of this letter.

#### **REVIEW RIGHTS**

103. Pursuant to section 57L of the Act, an application for review of this decision may be made to the New South Wales Civil and Administrative Tribunal ("NCAT") by the Complainant, the Club or any person (Mr Ellis) against whom disciplinary action is taken by the Authority under Part 6A of the Act. An application for review should be made within 28 days of the date of notification of this decision.

104. Please visit the NCAT website at [www.ncat.nsw.gov.au](http://www.ncat.nsw.gov.au) or contact the NCAT Registry at Level 10, John Maddison Tower, 89-90 Goulburn Street, Sydney for further information.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Philip Crawford', is positioned above the printed name.

Philip Crawford

**Chairperson**

for and on behalf of the Independent Liquor and Gaming Authority

## Schedule A – Complaint Material

1. Liquor and Gaming New South Wales (“LGNSW”) completed disciplinary complaint against liquor licence or registered club form (comprising six pages), signed by Mr Sean Goodchild Director Compliance Operations as a delegate of the Secretary of the NSW Department of Industry (“Complainant”) dated 29 March 2018 (“Complaint”).
2. One-page cover letter from the Complainant to the Independent Liquor and Gaming Authority (“Authority”) Chairperson, dated 29 March 2018.
3. A 16-page letter comprising the disciplinary complaint submission (“Complaint Letter”) lodged by the Complainant on 29 March 2018. This document specifies the grounds of the Complaint and sets out a dramatis personae prepared by the Complainant, the Complainant’s chronology of events between 17 January 2008 and 20 October 2017 and a list of exhibits relied on as evidence in this Complaint. The following Exhibits have been provided with the Complaint Letter:
  - (i). Exhibit E01: Newspaper article from the Daily Telegraph by Sarah Crawford titled *Craig Martin Ellis: Golf boss jailed after drink driving deceit* dated 20 October 2017.
  - (ii). Exhibit E02: Newspaper article from the Daily Telegraph by Sarah Crawford titled *Mate faces jail over drink-driving deceit* dated 6 October 2017.
  - (iii). Exhibit E03: Onegov liquor licence record for the Shelly Beach Golf Club LIQC300236161 (“Club”) as at 21 September 2017.
  - (iv). Exhibit E04: Employment contracts between the board of directors of the Club and Mr Craig Ellis
  - (v). Exhibit E05: District Court Judgement of Judge S Norrish QC in *R v Ellis* [2017] NSWDC 318, dated 20 October 2017.
  - (vi). Exhibit E06: A six-page investigation report prepared by Indrele Workplace Consulting (a consultant engaged by the Club) in relation to Mr Craig Ellis dated 11 December 2015.
  - (vii). Exhibit E07: Deed of release between Mr Craig Ellis and the Club dated 22 December 2015.
  - (viii). Exhibit E08: Justice link record for *R v Ellis* held at Sydney Downing Centre on 20 October 2017, extracted 18 January 2018.
  - (ix). Exhibit E09: Transcript of the interview between LGNSW Inspectors and Ms Alison Devries (finance manager) dated 22 November 2017.
  - (x). Exhibit E10: Transcript of the interview between LGNSW Inspectors and Mr Peter Sliwinski (Club captain) dated 22 November 2017.
  - (xi). Exhibit E11: Transcript of the interview between LGNSW Inspectors and Mr David Newman (Club treasurer) dated 21 November 2017.
  - (xii). Exhibit E12: Transcript of the interview between LGNSW Inspectors and Allan Arkins (Club president) dated 21 November 2017.
  - (xiii). Exhibit E13: Transcript of the interview between LGNSW and Mr Peter Cliff (Club golf professional) dated 22 November 2017.

### **Schedule B - Submissions**

1. Show Cause Notice issued by the Independent Liquor and Gaming Authority (“Authority”) to the Shelly Beach Golf Club (“Club”) and Mr Ellis on 18 April 2018.
2. Email from the Commissioner of Corrective Services NSW dated 24 April 2018, advising that Mr Ellis had been served with a copy of the show cause notice and complaint material on 23 April 2018.
3. Email submission from the Club advising they would not be contesting the invitation to show cause, dated 9 May 2018.
4. Two-page final submission from Darren Duke A/Director Compliance Operations of Liquor and Gaming NSW dated 17 October 2018 providing submissions on the question of disciplinary action and attaching a one-page breakdown of the costs of the investigation.
5. Three-page final submission from Solicitor Helen Carayannis of H&R Workplace Strategies on behalf of the Club dated 20 October 2018 providing submissions on the question of disciplinary action.