



Mr Joel Murdoch C/o Mr Matthew Lindeman Lindeman Lawyers DX 7418 Port Macquarie NSW 2444 [REDACTED]	Superintendent Paul Fehon C/o Senior Constable Dean Magennis Mid North Coast Licensing Port Macquarie Police Station 1 Hay Street Port Macquarie NSW 2444 [REDACTED]
Ms Eline Wante Licensee Botanic Wine Garden Shop 3, Garrison Building 26 Clarence Street Port Macquarie NSW 2444 [REDACTED]	The Trustee for Chung and Murdoch Trust Business & Premises Owner Botanic Wine Garden [REDACTED]

3 September 2020

Dear Mr Murdoch,

<b>Complaint reference No.</b>	DF18/006884
<b>Matter</b>	Disciplinary Complaint
<b>Licence name</b>	Botanic Wine Garden
<b>Licence No.</b>	LIQO660033618
<b>Premises</b>	Shop 3, Garrison building 26 Clarence Street Port Macquarie NSW 2444
<b>Complainant</b>	Superintendent Paul Fehon, Mid North Coast Local Area Command, as a delegate of the Commissioner of Police.
<b>Respondents</b>	Mr Joel Murdoch
<b>Issue</b>	Whether the grounds of the complaint have been established
<b>Legislation</b>	Part 9 of the <i>Liquor Act 2007</i> (NSW)

**Findings on Complaint to the Independent Liquor and Gaming Authority in relation to Mr  
Joel Murdoch under Part 9 of the *Liquor Act 2007* (NSW)**

On 28 August 2018, Superintendent Paul Fehon, Mid North Coast Local Area Command, as a delegate of the Commissioner of NSW Police ("Complainant"), made a disciplinary complaint ("Complaint") under Part 9 of the *Liquor Act 2007* (NSW) ("Act") to the Independent Liquor and Gaming Authority ("Authority").

The Complaint is made against Mr Joel Murdoch, the former licensee and current trustee of the business owner and premises owner of Botanic Wine Garden (LIQO660033618), an on-premises licensed restaurant that operates from premises located at Shop 3, Garrison Building, 26 Clarence Street, Port Macquarie NSW 2444 ("Premises").

The Authority completed its consideration of the Complaint at its Board meeting on 12 August 2020 and has determined to take the following action:

- **Impose** the following new conditions upon licence LIQO660033618 pursuant to section 141(2)(e) of the Act, commencing effect 28 days after the date of this decision:

*No Staff Drinking While Premises Open to Public*

*The licensee, staff and Mr Joel Murdoch may not drink on the Premises while the Premises is open to the public.*

*CCTV*

- 1) *The licensee must maintain a closed-circuit television (CCTV) system on the premises in accordance with the following requirements:*
    - (a) *the system must record continuously from opening time until one hour after the premises is required to close (or, in the case of a premises that is not required to cease trading, continuously at all times),*
    - (b) *recordings must be in digital format and at a minimum of six (6) frames per second,*
    - (c) *any recorded image must specify the time and date of the recorded image,*
    - (d) *the system's cameras must cover the following areas:*
      - (i) *all entry and exit points on the premises,*
      - (ii) *the footpath immediately adjacent to the premises, and*
      - (iii) *all publicly accessible areas (other than toilets) within the premises.*
  - 2) *The licensee must also:*
    - (a) *keep all recordings made by the CCTV system for at least 30 days,*
    - (b) *ensure that the CCTV system is accessible at all times the system is required to operate pursuant to clause 1(a), by at least one person able to access and fully operate the system, including downloading and producing recordings of CCTV footage, and*
    - (c) *provide any recordings made by the system to a police officer or Liquor and Gaming NSW inspector within 24 hours of any request by the police officer or Liquor and Gaming NSW inspector to provide such recordings.*
- **Disqualify** the former licensee Mr Murdoch, from holding a liquor licence, under section 141(2)(f) of the Act, for a period of five years from the date of this decision.
  - **Reprimand** Mr Murdoch pursuant to section 141(2)(m) of the Act.

Enclosed is a statement of reasons for this decision. Information about rights of review are provided at the conclusion of the reasons. If you have any questions about this letter, please contact the Authority Secretariat 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

## INTRODUCTION

1. On 28 August 2018, Superintendent Paul Fehon of the Mid North Coast Local Area Command, a delegate of the Commissioner of NSW Police ("Complainant"), made a disciplinary complaint under Part 9 of the *Liquor Act 2007* (NSW) ("Act") to the Independent Liquor and Gaming Authority ("Authority").
2. The complaint was made in relation to Mr Joel Murdoch, the former licensee and current trustee of the corporate business owner and premises owner of a licensed business trading as Botanic Wine Garden (LIQO660033618), an on-premises licensed restaurant that operates from premises located at Shop 3, Garrison Building, 26 Clarence Street Port Macquarie NSW 2444 ("Premises").

## GROUND OF COMPLAINT

3. The Complaint specifies two grounds ("Grounds") that are available under section 139(3) of the Act.
4. Ground 1 refers to section 139(3)(a) of the Act and alleges that the former licensee Mr Murdoch has, while holding a licence, been convicted of an offence under the Act or the regulations (or under the former Act) or of an offence prescribed by the regulation.
5. Ground 2 refers to the fitness and propriety of Mr Murdoch but specifies two separate subsections of section 139(3) of the Act, being:
  - (a) Section 139(3)(i) of the Act - that the former licensee, Mr Murdoch, is not a fit and proper person to be the holder of a licence.
  - (b) Section 139(3)(m) of the Act - that "the close associate is not a fit and proper person to be a close associate of a licensee".

[The Authority notes that section 139(3)(m) of the Act actually states: "that a person who is interested in the business, or in the conduct or profits of the business, carried on under the licence is not a fit and proper person to be so interested"].

## COMPLAINT MATERIAL

6. The Complaint comprises a one-page cover letter signed by the Complainant dated 3 August 2018 ("Cover Letter") and an eight-page complaint submission letter ("Complaint") specifying particulars of the Grounds of Complaint, accompanied by five attachments labelled Annexures "A" to "E" described in the attached Schedule 1 (collectively, the "Complaint Material").

## CONSULTATION

### *Show Cause Notice dated 18 December 2018*

7. On 18 December 2018 the Authority's Reviews and Secretariat Unit ("Authority Secretariat") sent a letter to Mr Murdoch, inviting him to show cause as to why disciplinary action should not be taken on the basis of the Grounds of Complaint ("Show Cause Notice").
8. On this date the Authority Secretariat also sent to the then licensee, Mr Andrew Philip Christian, and the business owner (who is also the premises owner), the Trustee for Chung and Murdoch Trust, an invitation to make submissions as to why disciplinary action should not be taken on the basis of the Grounds of Complaint.
9. These letters specified a timetable for the filing of evidence or other material and submissions from the parties with a copy provided to the Complainant.

### *Submission on Merits of Complaint dated 29 January 2019*

10. Mr Murdoch first contacted the Authority Secretariat on 18 December 2018 enquiring about the nature of this matter, advising that he was no longer the licensee and had recently served three months imprisonment. The Authority Secretariat advised that the Show Cause Notice has been issued in respect of this formal Complaint under the Act and that he should seek legal advice.
11. On 29 January 2019 Mr Murdoch provided a 12-page legal submission of that date through his solicitor Mr Matthew Lindeman of Lindeman Lawyers addressing the merits of the Complaint ("Murdoch Submission"). This was accompanied by a one-page cover letter and 11 attachments labelled "Table 1" and "Annexure A" to "Annexure J" as described in Schedule 1 below.
12. Police made no submission in reply to the Murdoch Submission, although they have later followed up with a short email dated 22 August 2019 briefly noting Mr Murdoch's convictions and custodial sentence, that he is still in a position of control of the Premises and seeking an update on the matter.
13. Without repeating all of this material the Authority has considered all of the contentions and submissions made in response to the Complaint and the key contentions are detailed in the findings section of this letter below.

### *Further Information Sourced by Authority Secretariat*

14. The Authority gave preliminary consideration to this matter at its Board meeting of 17 April 2019. However, communication of the Authority's findings has been subject to an inadvertent administrative delay in light of the Authority's competing commitments.
15. In light of the time that has now elapsed since the Complaint was made, the Authority Secretariat has sourced the following regulatory records by way of an update which are before the Authority:
  - OneGov licence record for Botanic Wine Garden LIQO660033618 as at 10 June 2020.
  - OneGov search for Mr Murdoch dated 10 June 2020.
  - JusticeLink search for Mr Murdoch dated 10 June 2020.(collectively the "Updated Searches").

### **FINDINGS ON COMPLAINANT BACKGROUND FACTS**

16. A disciplinary complaint under Part 9 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.

### **Background Information**

17. The Authority accepts the following uncontested contentions made in the "Background Information" paragraphs 1 to 8 of the Complaint, on the basis of the NSW Alcohol Related Crime Information Exchange licensed premises details as of 25 June 2018 (Complaint Annexure A) supplemented by OneGov licensing records current as of 10 June 2020 ("Licence Records"):

- The Premises is subject to an on-premises restaurant liquor licence LIQO660033618 (with a primary service authorisation) for the Botanic Wine Garden situated at Shop 3 Garrison Building, 26 Clarence Street, Port Macquarie NSW 2444.
  - The Premises has been licensed since 1 June 2017.
  - The business owner at the time of the Complaint (and at this time) is The Trustee for Chung and Murdoch Trust, with Mr Murdoch the Trustee.
  - Mr Murdoch held the role of licensee from 1 June 2017 until he relinquished this position on 12 December 2017.
  - At the time of lodging the Complaint, the licensee was Mr Andrew Philip Christian.
18. The Authority further accepts the uncontested contentions in the Background Information paragraphs of the Complaint:
- The Premises is in an area called The Glass House Forecourt, situated in a public space with a thoroughfare to Port Central Shopping Centre. There are many businesses located within this area, including another restaurant next door and several others within 50 metres. The forecourt is regularly used for markets.
  - The Premises is approximately 12 m x 5 m in size with a 7 m x 7 m outdoor dining area which is leased off the council for use. It is situated within an Alcohol-Free Zone designated by the local council.
  - The Premises initially opened without a liquor licence and traded for one month in this fashion. Since obtaining the liquor licence night-time and weekend trading periods are favoured by its patrons.
19. The Authority accepts the following further contentions in the Murdoch Submission, with the supporting evidence or information noted in parentheses where provided:
- The Premises sells food to the public from inside the Premises and within an adjoining outdoor area and sells quality wines and a full range of liquor for consumption on the Premises [Murdoch Annexures A and B – the menu and drinks/wine list].
  - The outdoor dining area is licensed to sell or supply liquor for consumption on the Premises from 10:00 am until 11:00 pm Monday through Saturday, whilst the indoor dining area is licensed to trade until 12:00 Midnight. Both areas commence licensed trading at 10:00 am Sunday until 10:00 pm [Licence Records].
  - The outdoor area seats 40 and the indoor area seats 35 [Murdoch Annexure C – photographs of the venue].
  - Service at the venue is provided to patrons a la carte by means of table service. There are ten employees at the venue, which includes two apprentices. The venue maintains its primary purpose as a restaurant through its mode of service, the quality of food available and compliance with its regulatory obligations [uncontested information provided in the Murdoch Submission].
20. The Authority also accepts, as contended in Table 1 to the Murdoch Submission that Mr Murdoch relinquished his position as licensee as a result of the drink driving charge. Mr Murdoch sought counselling of a period of two months in 2018 and has acknowledged that the business is better served by having Andrew fulfil the important statutory position of licensee.

### **Initial Police Concerns and the Plan of Management**

21. At paragraphs 9 to 14 of the Complaint, the Complainant makes a number of contentions regarding the concerns Police allegedly identified with Mr Murdoch's fitness and propriety at the time the licence was applied for. At paragraphs 15 to 17 of the Complaint, the Complainant makes contentions regarding the plan of management/security management plan for the venue.

22. The Authority accepts the Complainant's uncontested information at paragraph 9 that while the initial licence application for Botanic Wine Garden was made by the trustee company Chung and Murdoch Trading, it was evident that Mr Murdoch would personally have an active hand in running the business, since he was identified as the business manager and had applied to hold the licence. The Authority also accepts the Complainant's uncontested information that Dr Chung is a "silent partner" and he did not attend any meetings with Police.
23. The Authority accepts the Complainant's uncontested contention at paragraph 10 of the Complaint that in his application for the licence, Mr Murdoch identified several previous places of employment within the liquor industry, being:
- 1/3/2015 to 1/2/2016 Maroubra Sports club / General manager.
  - 8/4/2014 to 20/4/2015 Middle Harbour Yacht Club / Bar manager.
  - 11/5/2011 to 1/5/2012 Il Patio / General manager Licensee.
  - 1/5/2012 to 12/4/2014 East Village Hotel Darlinghurst / General manager.
24. At paragraph 11 of the Complaint, the Complainant contends that Police raised concerns that Mr Murdoch's personal record for alcohol related offences made him a "high-risk" candidate for a liquor licence, warranting serious consideration of his fitness and propriety. The Complainant here refers to Annexure B to the Complaint, being the NSW Police Force Criminal History Bail Report and Criminal Infringement Notice History for Mr Murdoch obtained on 19 December 2017.
25. The Authority notes that while Mr Murdoch agrees that Sergeant Lawrie discussed Mr Murdoch's drink driving record with him in a meeting, Mr Murdoch submits that they "did not discuss how the convictions might affect anyone's view on whether he was fit and proper to start the business or be the Licensee" [Murdoch Table 1].
26. The Complainant further contends at paragraph 12 that on 29th March 2017 Mr Murdoch met licensing police attached to the Mid North Coast to discuss his licence application, the business and management plan and his fitness to hold a licence or become approved manager of licensed premises. During this meeting Police raised their concerns about the risk of him committing further alcohol related offences and Mr Murdoch gave assurances that he did not have a problem with alcohol and agreed to provide a Plan of Management in support of his licence application.
27. At paragraph 13, the Complainant contends that Mr Murdoch verbally undertook to Police that whether on or off duty he would not drink alcohol on the Premises. The Complainant here refers to Annexure C to the Complaint, being the Plan of Management and Security Management Plan for the Botanic Wine Garden dated 10 December 2016 ("December 2016 Plan").
28. At Table 1 of the Murdoch Submission Mr Murdoch denies that he made this guarantee to Police. Instead, Mr Murdoch submits that on 14 July 2017 he finished work for the day, staff closed the venue and proceeded to pack up all the outdoor furniture and when they were finished they asked him if they could leave. Mr Murdoch admits that he made a mistake as the venue was then closed to the public and he was entertaining some guests. The drinks served were in non-compliance; however, he paid the fines and relinquished his role as licensee due to the matter.

29. At paragraphs 15 and 16 of the Complaint, the Complainant contends that the December 2016 Plan (Complaint Annexure C) was apparently adapted from a licensed restaurant in Kings Cross and not designed for the Premises, but included the following *Staff Beverage Consumption Policy*:
- “At no time will staff be permitted to consume beverages of an alcoholic nature when on shift. Provision for free soft drink and water will be made to all staff. Members of staff found in breach of the staff Beverage Consumption Policy will face immediate termination of their employment (Staff Policy)”
30. The Complainant contends at paragraph 17 that Police consented to Mr Murdoch’s application on the basis that he adhere to this Plan.
31. In Table 1 of the Murdoch Submission Mr Murdoch submits that there is no evidence in the Complaint that the Premises has an “ongoing issue” of improper management. Mr Murdoch cites the following passage from an environmental planning case *Hemmes Trading Pty Ltd v Council of the City of Sydney* [2010] NSWLEC 1124 at 71:
- “... it would be reasonable to accept that if there was general compliance with the Plan of Management then the premises could be seen to have good management. The Plan of Management represents those matters capable of being addressed by management consistent with their legal obligations ... In my view, the test of good management includes how management responds at the time of the incident and how management responds through ongoing or revised management practices. Conversely, poor management may include a large number of unacceptable incidents or whether there was a consistent pattern of unacceptable incidents”
32. Mr Murdoch submits that the Police material indicates that the Premises has remained consistently compliant with its regulatory requirements over a significant period of time. Thus, the Plan of Management has operated to mitigate the risks at the venue.
33. The Authority accepts that there is some discrepancy between Police and Mr Murdoch as to what was discussed at the initial meeting with Police. However, the Authority accepts that Mr Murdoch’s drink driving record was discussed and that Police squarely raised their concerns with the impact his personal record may have on his fitness and propriety as a licensee.
34. Although the December 2016 Plan (Complaint Annexure C) was not incorporated as a licence condition, the Staff Policy was relied on by Mr Murdoch and his business when seeking the licence.

## FINDINGS ON GROUNDS OF COMPLAINT

### Ground 1

35. Ground 1 refers to section 139(3)(a) of the Act and alleges that the former licensee, Mr Murdoch, is not a fit and proper person to be the holder of a licence.
36. Section 139(3)(a) of the Act states:
- (3) *The grounds on which a complaint in relation to a licensee, manager or close associate may be made are as follows—*
- (a) *that the licensee or manager has, while holding a licence or managing licensed premises, been convicted of an offence under this Act or the regulations (or under the former Act) or of an offence prescribed by the regulations,*
37. Ground 1 pertains to conduct that is alleged to have occurred on 14 and 15 July 2017. As noted above, Mr Murdoch held the role of licensee from 1 June 2017 until he relinquished

this position on 12 December 2017. The Authority is satisfied that the conduct that is the subject of Ground 1 occurred whilst Mr Murdoch held the licence.

38. The Authority notes that although at the time of the Complaint Mr Murdoch no longer held the licence, section 137(1)(a) of the Act provides that a reference in part 9 of the Act to a licensee includes a reference to a former licensee.
39. The Authority notes that Mr Murdoch concedes to receiving “three tickets in relation to the events of the evening”, while submitting that “one of which does not relate to intoxication” [Murdoch Table 1].
40. As contended at paragraph 23 of the Complaint, three Penalty Notices were issued to Mr Murdoch for three offences against the Act. Complaint Annexure D provides the following:
  - NSW Police Force Penalty Notice 4939121981 issued to Mr Murdoch for licensee permit intoxication on licensed premises on 14 July 2017 in the amount \$1100. [The Authority notes that section 73(1)(a) of the Act makes it an offence for a licensee to permit intoxication on the licensed premises].
  - NSW Police Force Penalty Notice 4942183025 issued to Mr Murdoch for licensee sell/supply liquor to intoxicated person on 14 July 2017 in the amount of \$1100. [The Authority notes that section 73(2) of the Act makes it an offence for a licensee to sell or supply liquor to an intoxicated person on the licensed premises].
  - NSW Police Force Penalty Notice 4939121990 issued to Mr Murdoch for licensee supply liquor not in accordance with authority on 14 July 2017 in the amount of \$1100. [The Authority notes that section 9(1)(b) of the Act makes it an offence for a licensee to sell or supply liquor, or cause or permit liquor to be sold or supplied otherwise than in accordance with the authority conferred on the licensee by or under the Act].

#### *Conclusion on Ground 1*

41. At page 3 of the Murdoch Submission he accepts that the 3 offences in Ground 1 have been established in that he has paid the fines specified in these notices.
42. The Authority notes that section 150(4)(b) of the Act states that when an amount is paid under section 150 of the Act in respect of penalty notices issued to a person, the person is for the purpose of Part 9 of the Act, taken to have been convicted of the offence to which the penalty notice relates.
43. The Authority is satisfied that Ground 1 is established in that whilst holding the licence Mr Murdoch was convicted of an offence under the Act or the regulations (or under the former Act) or of an offence prescribed by the regulations.

#### **Ground 2**

44. Ground 2 has been specified by reference to two potential grounds of Complaint, with a common set of particulars for both aspects of this Ground.
45. First, the Complainant contends that the “licensee of the premises is not a fit and proper person to be the holder of a license within the meaning of section 139(3)(i) of the Act”. Second, that the “close associate is not a fit and proper person to be a close associate of a licensee within the meaning of section 139(3)(m) of the Act”.
46. The Authority notes that these respective provisions actually state the following:

*(3) The grounds on which a complaint in relation to a licensee, manager or close associate may be made are as follows—*

...



*(i) that the licensee is not a fit and proper person to be the holder of a licence (whether for the same reason as that set out in section 45(5) or otherwise) or the manager is not a fit and proper person to be the manager of the licensed premises (whether for the same reason as that set out in section 68(4A) or otherwise),*

*...*

*(m) that a person who is interested in the business, or in the conduct or profits of the business, carried on under the licence is not a fit and proper person to be so interested,*

47. The Complainant states at paragraph 27 of the Complaint that to support Ground 2, the Complainant relies upon the matters set out in Ground 1 along with the following evidence.

*The Circumstances of Mr Murdoch's Alcohol Related Traffic Convictions*

48. As contended at paragraph 18 of the Complaint, the Authority finds that on 15 July 2017 Mr Murdoch left the Premises at 12:46 am and was stopped by Police at 12:50 am. When subjected to a breath analysis he returned a positive test for alcohol. Mr Murdoch was subsequently charged pursuant to section 110(5) of the *Road Transport Act 2013 No 18* for the offence of recording a high range of prescribed concentration of alcohol in his blood ("High Range PCA") [Complaint Annexure E – Certificate of Conviction (specifically E.4)].
49. The Authority further accepts, as contended at paragraphs 19, 20 and 21 of the Complaint that the following day Police investigated the events preceding this arrest and obtained CCTV footage [Complaint Annexure F ("CCTV Footage")] from the Premises which depicted the following events, as summarised by the Complainant at paragraph 21:
- 21:07:42 Mr Murdoch drinking cocktail behind bar.
  - 21:33:20 Mr Murdoch pours glass red wine takes sip then gives to chef.
  - 21:49:00 Mr Murdoch drinking his own glass of red wine.
  - 22:02 Chef leaves.
  - 22:11:00 Mr Murdoch gets himself another glass of red wine.
  - 22:16 Female patron climbing on top of furniture, Mr Murdoch clapping.
  - 22:18 Another female patron climbs on top of furniture.
  - 22:34 Last staff member leave, Mr Murdoch remains with 4 female patrons.
  - 22:35 Licensee finishes his drink, starts to drink a patron's drink.
  - 22:44.25 Patron falls off stool onto floor - Mr Murdoch assists her up.
  - 22:47 Patron who fell over continues drinking alcohol.
  - 22:49 Mr Murdoch smoking in restaurant.
  - 22:53 Patron behind bar.
  - 22:55 Female patron carrying tray around above her head then drops it on floor.
  - 22:57 Patron squatting on floor then falls over.
  - 23:02 Mr Murdoch struggles to pour himself a drink then lights cigarette.
  - 23:12 Patrons dancing on tables.
  - 23:26:10 Mr Murdoch supplies a cocktail to female patron (3 hours after food stopped)
  - 23:27 Mr Murdoch serves himself another wine
  - 23:37 Mr Murdoch tops up his own wine glass.
50. The Authority accepts the contention at paragraph 22 that Mr Murdoch can be seen from the CCTV Footage consuming and supplying alcohol with 4 other female patrons. All persons viewed on the footage could be seen to be unsteady on their feet, swaying, dropping trays, falling off stool, dancing on furniture, dancing and grinding bodies against one another and consuming each other's drinks with indifference. The Authority accepts the contention that their conduct evidenced clear signs of intoxication for all persons present.

51. At paragraphs 28 to 38 of the Complaint the Complainant provides details of Mr Murdoch's personal convictions for alcohol related traffic offences, three of which occurred prior to him obtaining the licence.
52. There is some minor discrepancy between the Complainant description of the events and the Certificates of Convictions and the Authority prefers the Certificates at Complaint Annexure E. The Authority accepts the summary of facts recorded in those records:
- On 14 February 2008 Mr Murdoch was convicted of *Drive with High Range PCA* for events occurring on 13 November 2007. The certificate states that Mr Murdoch had a high range prescribed concentration of alcohol reading 0.170 and was sentenced to perform 80 hours of community service work. A plea of guilty was accepted and Mr Murdoch was ordered to pay court costs. The court disqualified Mr Murdoch from holding a driver's/rider's licence for 30 months.
  - On 4 February 2013 Mr Murdoch was convicted of *Drive with Middle Range PCA* for events occurring on 5 July 2012. The certificate records that Mr Murdoch had a middle range prescribed concentration of alcohol reading .121 and plead guilty. Mr Murdoch was sentenced to an intensive correction order for 6 months, court costs and a driver's/rider's licence disqualification period of 18 months. The Authority notes the uncontested contention by the Complainant that prior to being arrested, Mr Murdoch had informed police that he had been drinking at the restaurant he manages and that he had consumed three drinks, however could not dictate what size they were, nor over what period he had consumed them.
  - On 4 February 2013 Mr Murdoch was convicted of *Drive on Road While Suspended* and *Drive With High Range PCA* for events occurring on 5 August 2012. The certificate records that Mr Murdoch had a high range prescribed concentration of alcohol reading 0.162 and plead guilty to both charges. Mr Murdoch was sentenced to an intensive correction order for 12 months (concurrent with the other sentences being served), court costs and a driver's/rider's licence disqualification period of 30 months. The Authority notes the uncontested contention by the Complainant that Mr Murdoch had stated he consumed 7 drinks including beer and wine whilst consuming Chinese food.
  - On 30 November 2017 Mr Murdoch was convicted of "Drive with high range PCA – 2<sup>nd</sup> + off" for events occurring on 15 July 2017. The certificate records that Mr Murdoch had a high range prescribed concentration of alcohol reading 0.188. The sentence is recorded as "Sentence Appeal Upheld – Order Varied". Mr Murdoch was sentenced to a term of imprisonment of 15 months (commencing on 18 October 2017 and expiring on 17 January 2019) with a non-parole period of 3 months (to be released on supervised parole on 17 January 2018). The court also made a Mandatory Interlock Order under section 211 of *Road Transport Act 2013*. Mr Murdoch was disqualified for the minimum period from holding any driver licence under section 211(1)(a) and must hold an interlock driver licence for the minimum period under section 211(1)(b). The Authority notes the uncontested contention by the Complainant that Mr Murdoch was stopped by police after leaving his work place the Botanic Wine Garden.
53. The Authority also accepts the contention at paragraph 39 of the Complaint [see Complaint Annexure E – Certificates of Conviction (Specifically E.4)] that at the time of the Complaint, Mr Murdoch was on parole.

#### *Breach of Plan of Management*

54. The Authority accepts the contention at paragraph 41 of the Complaint that Mr Murdoch supplied a Plan of Management in support of the application for the licence which included the Staff Policy noted above – see section 4.1.1 of the December 2016 Plan (Complaint Annexure C).

55. Mr Murdoch contends that no staff actually consumed alcohol on the Premises during work hours and that he should have maintained a staff member on duty as he had finished for the night [Murdoch Table 1].
56. However, since Mr Murdoch was, at the time of the events contended in Ground 1, the licensee of the Premises and section 91(1) of the Act makes the licensee responsible at all times for the personal supervision and management of the conduct of the business of the licensed Premises under the licence, his personal failure to observe the Staff Policy is relevant to an assessment of his fitness and propriety.
57. The Complainant contends at paragraph 42 that, at the time of these breaches, the licensed business had only been in operation for 3 months and had only been licensed for 2 months.
58. Licence Records before the Authority establish that the licence has a recorded start date of 1 June 2017 while the events the subject of Ground 1 occurred on the Premises on 14 July 2017. The CCTV Footage (Complaint Annexure F) records Mr Murdoch consuming alcohol on the Premises at time stamps 21.07.42, 21.49.00 and 22.11.00.
59. The Authority is satisfied that the licensed business contravened the Staff Policy in the Plan of Management, while noting that compliance with the Plan was not a condition of the licence. It remains relevant to the assessment of Mr Murdoch's honesty and ability as a licensee.

#### *Breaches of smoking laws*

60. The Authority also accepts the contentions at paragraphs 45 to 52 of the Complaint that the CCTV Footage (Complaint Annexure F) recorded Mr Murdoch smoking inside the Premises whilst patrons were present and the licensed premises was open.
61. This contravenes section 7 of the *Smoke-free Environment Act 2000 No.69* – which makes it an offence to smoke in a smoke-free area. The Authority notes that sections 6 and 6A of the *Smoke-free Environment Act 2000 No 69* prescribes smoke-free areas for enclosed public places and outdoor public areas respectively. The Authority is satisfied that this conduct occurred at times recorded in time stamps 22:49:00; 23:02:00; 23:15:00; 23:40:50; and 23:46:50 of the CCTV Footage (Complaint Annexure F).
62. Mr Murdoch admits in Table 1 to the Murdoch Submission that he smoked inside the venue on the night in question. He characterises this conduct as a mistake, but the Authority finds it to be another instance of personal non-compliance with respect to a matter that a reasonably diligent licensee and licensed business owner should be aware of, on a day to day basis.

#### *Mr Murdoch's Submissions on Ground 2*

63. Mr Murdoch submits that the Complaint erroneously attempts to establish two Grounds in one, the Complainant has not established that action should be taken against Mr Murdoch as a close associate, the Complaint lacks specificity as it is unclear as to whether it is in relation to a licensee, close associate or a person interested in a business.
64. Specifically, in reaching a finding on Ground 2, the Authority has taken into consideration the three "threshold issues" that Mr Murdoch raises at pages 6 to 10 of the Murdoch Submission:
  - (a) The Complaint material seeks to include two Grounds within one under the auspice of "fit and proper".
  - (b) The Complainant has not established that Mr Murdoch is a close associate of the licensee.
  - (c) Section 139(3)(m) of the Act does not refer to a close associate.

65. Mr Murdoch submits that no disciplinary action should be taken against Mr Murdoch as a close associate. After referring to section 139(3)(m) of the Act, Mr Murdoch submits that it is unclear what this aspect of Ground 2 is based on, since none of the Complaint Material addresses Mr Murdoch's role as a close associate or interested person in any detail.
66. Mr Murdoch submits that fitness and propriety is a "fluid concept" and that:
- Section 141 of the Act provides that the Authority has the power to disqualify an individual from holding a licence. However, there is nothing within section 45 that prevents someone previously found to be not fit and proper from making a further application.
  - The test described by Dixon CJ, McTiernan and Webb JJ in *Hughes & Vale Pty Ltd v NSW (No 2)* (1955) HCA 28 at [9] must be read within its context. Specifically, the circumstances of each case must be assessed holistically.
  - Similarly in *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321 at [380] Toohey and Gaudron JJ held that the test of fitness and propriety must include an assessment of any relevant changes of circumstances.
  - The evidence relied upon by the Complainant does not show that at this point in time Mr Murdoch is not a fit and proper person to be a licensee.
  - Conversely, the evidence provided by Mr Murdoch provides a current assessment of his fitness and propriety which includes: his resignation of the position; his participation in community events; his otherwise clean disciplinary record within the liquor industry; reviews of the Premises; evidence of the licensee (Murdoch Annexure H); evidence of Dr Chung (Murdoch Annexure I); letter from psychologist Bernard Coady (Murdoch Annexure J); updated plan of management (Murdoch Annexure D) and insight he has shown in relation to the PCA offence.
67. Furthermore, Mr Murdoch submits that if he is a close associate, no evidence has been provided to establish that he has had a negative impact on the regulatory compliance of the Premises.

### *Conclusions on Ground 2*

68. 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.
69. 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
70. 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.*

71. Section 139(3)(i) of the Act refers to the fitness and propriety of a licensee “whether for the same reason as that set out in section 45(5) or otherwise”. The Authority notes that section 45(5A) provides the following non-exhaustive statutory criteria when determining the fitness and propriety of a licensee:

*(5A) Without limiting subsection (3)(a), in determining whether an applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates, the Authority is to consider whether the applicant—*

*(a) is of good repute, having regard to character, honesty and integrity, and*

*(b) is competent to carry on that business or activity.*

72. In making a finding on Mr Murdoch’s fitness and propriety, the Authority has had regard to the character references provided by Mr Andrew Christian (a licensee employed by the business at the time of Complaint, now a former licensee) and Dr Steven Chung (an owner of Botanic Wine Garden) at Annexures H and I of the Murdoch Submission. The weight given to those submissions is somewhat reduced by reason that they are persons associated with the licensed business.
73. The Authority has also considered a letter in Annexure J to the Murdoch Submission from psychologist Mr Bernard Coady, who advises that he consulted with Mr Murdoch “regularly” between 1 May 2018 and 13 July 2018 and finds that Mr Murdoch had been experiencing “reactive stress” to setting up this business and used alcohol as a way of coping with that stress. Mr Coady opines that Mr Murdoch’s stress levels have now decreased and he is at little risk of abusing alcohol in the future.
74. The Authority has taken into account the absence of any further evidence of alcohol related misconduct since the matters specified in the Complaint. However, a licensee who drinks in response to the stress of running a licensed business may be inherently unsuited to running such business and is, in any event, not excused from permitting intoxication or contravening a business policy that requires staff not to drink on duty especially when such a policy is proffered to Police and the Authority to allay probity concerns and obtain a liquor licence.
75. Mr Murdoch has a substantial adverse record of alcohol related traffic offences and liquor offences indicating a willingness to break the law and potentially endanger the lives and safety of others. His drink driving has already resulted in substantial penalties, culminating in 3 months imprisonment - reflecting the relative seriousness of these matters.
76. Mr Murdoch denies giving specific verbal undertakings to Police that he will not drink on the Premises. Accepting this denial, the Authority is nevertheless satisfied that Mr Murdoch was responsible for the Staff Policy, which was provided to the Authority and Police to secure the licence.
77. The Authority accepts that but for the Staff Policy, Police would have opposed the initial licence application. The licence, which was granted under delegation, may not have been granted over Police objection, given Mr Murdoch’s problematic record of offences.

78. The Authority finds that the first part of Ground 2 is established in that Mr Murdoch is not a fit and proper person to be the holder of a licence within the meaning of section 139(3)(i) of the Act. The Authority is satisfied that Mr Murdoch has not demonstrated the character, honesty or ability expected of a liquor licensee during recent times.
79. However, the Authority does not find the second part of Ground 2 to be established - by reason of the confusing manner in which it was framed. While it may well be that the reference to "section 139(3)(m)" was an error, this aspect of the Complaint was directly challenged in the Murdoch Submission and the Complainant did not take the opportunity to clarify the point.
80. The Act requires that a disciplinary complaint under Part 9 of the Act be in writing and "specify" the grounds of complaint. Out of caution, given some scope for confusion regarding the manner in which this aspect of the Complaint was advanced, the Authority finds that this part of Ground 2 is not established.

## **INVITATION TO MAKE SUBMISSIONS ON DISCIPLINARY ACTION**

### *Complainant Contingent Submissions on Disciplinary Action*

81. At paragraphs 53 to 65 of the Complaint, the Complainant makes a number of contingent submissions on the question of disciplinary action.
82. First, action on Grounds 1 and 2 is warranted because Murdoch has been convicted of offences against the Act, as well as further serious alcohol related driving offences. These offences are "related to each other" and occurred within months of the Premises opening for business.
83. Second, Mr Murdoch's prior experience as a "general manager" of licensed premises would have required him to have a working knowledge of legislative requirements and harm minimisation strategies. This was a pre-requisite to operating any licensed premises.
84. Third, the Complainant submits that whilst in a position of authority (as licensee) Mr Murdoch permitted and took part in intoxication on the Premises. The seriousness of this conduct is underscored by the following facts and circumstances surrounding the events of 14 July 2017 and 15 July 2017:
- Four patrons were significantly intoxicated on the Premises.
  - Mr Murdoch was significantly intoxicated on the Premises.
  - Mr Murdoch supplied liquor to the intoxicated persons.
  - Mr Murdoch breached the Plan of Management (Staff Policy).
  - Mr Murdoch drove from the Premises intoxicated.
  - The breaches occurred within 3 months of operating.
85. Fourth, prior alcohol related convictions were identified by Police when Mr Murdoch sought the licence for the Premises. Of significance is that he denied he had a problem with alcohol. The Complainant contends that this prompted the provision by Mr Murdoch of the Staff Policy to mitigate this risk.
86. Mr Murdoch then consumed alcohol on the Premises contrary to the Plan to a degree that he was significantly affected by alcohol and in driving from the Premises put the safety of himself and other road users at significant risk. His conviction and gaol sentence for drink driving establishes the seriousness of his actions and the poor judgement he displayed as a licensee and a person with a vested interest in the Premises

87. The Complainant then submits that Mr Murdoch failed to demonstrate that he possesses the degree of knowledge of the liquor legislation, competence, character and integrity that would ordinarily be expected of a liquor licence holder in NSW.
88. The Complainant refers to the common law elements of honesty, knowledge and ability identified by Dixon CJ in *Hughes & Vale Pty Ltd v NSW* (1955) 93 CLR 127 [at 156], further consideration of fitness and propriety in *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321 [at 380] and the statutory considerations in section 45(5A) of the Act.
89. The Complainant contends at paragraph 63 of the Complaint that there is evidence to suggest that Mr Murdoch held the belief that he did not have a problem with alcohol. However, the honesty of those words is challenged when put into context with the recent and historical convictions for driving with prescribed concentrations of alcohol in his system.
90. The Complainant concludes at paragraph 64, contending that Mr Murdoch is not a fit and proper person in that:
- He has a business interest in the Botanic Wine Gardens.
  - He was at the time the appointed licensee of the Botanic Wine Garden.
  - He failed to comply with a condition of his licence.
  - He supplied liquor to four intoxicated persons.
  - He became intoxicated on the Premises, was arrested and charged for driving whilst under the influence of alcohol after leaving a licensed Premise.
  - He has a history of relevant criminal convictions for significant alcohol related offending.
91. It is further submitted at paragraph 65 of the Complaint that Mr Murdoch has not properly exercised his knowledge of the requirements expected of a licensee within the scope of community standards or the objects in section 3 of the Act. His poor judgement, criminal offending against the Act and the *Road Transport Act 2013*, indicate an “inability to honestly and competently” hold the positions of being a holder of a liquor license or hold a position of responsibility such as licensee, manager or similar.

#### *Mr Murdoch's Contingent Submissions on Disciplinary Action*

92. Mr Murdoch concludes the Murdoch Submission with commentary that the law requires the Authority to have regard to the individual circumstances of Mr Murdoch and to exercise its disciplinary power reasonably, based on the evidence.
93. At Table 1 of the Murdoch Submission, Mr Murdoch makes a number of submissions going to the question of disciplinary action. He denies telling Police that he had a problem with alcohol or that the Plan of Management was created in response to Police concerns (the Plan already having been drafted). He submits that the offences did not involve an element of dishonesty and that the Plan of Management is a risk management document, against which his performance as a licensee should be judged by reference to whether business practices evolve after an adverse event. He submits that his personal insight into the commission of PCA offences has been supported in the letter from a psychologist Mr Coady.
94. By reference to section 3 of the Act Mr Murdoch submits that:
- There is no evidence of any ongoing issues in relation to compliance at the Premises. Mr Murdoch has a long history of work within the industry and the breaches of the Act concern one night.

- The Authority has not been provided with any other evidence that the Premises is operating in a manner inconsistent with the expectations, needs and aspirations of this community.
- The evidence establishes that the licensed business contributes positively to the tourism and hospitality industries in Port Macquarie.
- Mr Murdoch took a number of steps following the offences of 14 July 2017 to ensure minimisation of harm. These included removing himself as licensee, taking steps to address the issues surrounding his offending and “accepting his punishment”.

95. Mr Murdoch concludes that there is no contemporaneous evidence to support disciplinary action against him at this time.

## **FINAL SUBMISSIONS ON DISCIPLINARY ACTION**

96. On 1 July 2020 the Authority issued a detailed letter notifying the above findings to the Complainant, Mr Murdoch, the current licensee Ms Wante and the business/premises owner - the Trustee for the Chung and Murdoch Trust.
97. The Authority noted that Mr Murdoch no longer holds the licence and Mr Murdoch is still in a position of influence with an ownership interest in the licensed business conducted on the Premises.
98. The Authority gave notice, subject to its consideration of final submissions, of its intention to elevate the Staff Policy to an enforceable licence condition to avoid any recurrence of the type of conduct that occurred on 14 July 2017 and impose its standard CCTV licence condition to reinforce the Staff Policy.
99. The Authority also gave notice that it was minded to disqualify Mr Murdoch from holding a liquor licence for a period of 5 years and issue a reprimand, by way of specific and general deterrence to other licensees who may engage in this kind of serious and repeated alcohol related misconduct.
100. Of the parties consulted, only Mr Murdoch made a final brief submission by way of a one-page letter to the Authority dated 27 July 2020. Mr Murdoch submits that: he has not had any further convictions since 2017, which shows that he has learned from his mistakes; he works six nights per week on the Premises and plays a hands-on role in training staff about the liquor licence, intoxication, Covid19 controls and food and wine service. Mr Murdoch states that he has worked in the hospitality industry for twenty years and built a well- respected local business over the past three years in Port Macquarie.

## **DISCIPLINARY ACTION**

101. In deciding whether any disciplinary action is appropriate the Authority has taken into account all of the statutory objects and considerations in section 3 of the Act, which states:

### **3 Objects of Act**

*(1) The objects of this Act are as follows—*

- (a) to minimise harm associated with the misuse and abuse of gambling activities,*
- (b) to foster responsible conduct in relation to gambling,*
- (c) to facilitate the balanced development, in the public interest, of the gaming industry,*
- (d) to ensure the integrity of the gaming industry,*
- (e) to provide for an on-going reduction in the number of gaming machines in the State by means of the tradeable gaming machine entitlement scheme.*

*(2) The Authority, the Minister, the Secretary, the Commissioner of Police and all other persons having functions under this Act are required to have due regard to the need for gambling harm*



*minimisation and the fostering of responsible conduct in relation to gambling when exercising functions under this Act.*

*(3) In particular, due regard is to be had to the need for gambling harm minimisation when considering for the purposes of this Act what is or is not in the public interest.*

102. The Authority's disciplinary jurisdiction provided by Part 8 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.*

103. 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.

104. 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.*

105. 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.*

106. 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).

107. Moreover, the Authority notes the observations of the South Australian Supreme Court in *Sobey v Commercial and Private Agents Board* 20 SASR 70 where Walters J held:

*"In my opinion what is meant by that expression is that the Applicant must show not only that he is possessed of a requisite knowledge of the duties and responsibilities evolving upon him as the holder of a particular licence ... but also that he is possessed of sufficient moral integrity and rectitude of character as to permit him to be safely accredited to the public ... as a person to be entrusted with the sort of work which the licence entails"*

108. The matters established by this Complaint may ordinarily move the Authority to consider a more extensive regulatory response. However, the Authority has taken into account the time that has elapsed without further Court outcomes since the latest misconduct, as confirmed by a *JusticeLink* search performed by the Authority Secretariat on 10 June 2020.

109. Noting that Mr Murdoch remains active as a business owner of this restaurant and has spent 20 years as a licensee or manager of licensed premises, there is some utility in disqualifying him from holding a licence for a significant period of time. The Authority is satisfied that a five-year period of disqualification will provide an appropriate sanction, by way of general and specific deterrence to others in the industry who may engage in serious personal alcohol related misconduct while holding a liquor licence.
110. Mr Murdoch has not provided submissions or evidence that call into question the merits of the conditions that were put to him in the Findings Letter. The Authority is satisfied that these measures will reduce the risk of Mr Murdoch, or other staff, drinking on duty given the risk to the public interest that this has caused in the recent past.

## ORDERS

111. The Authority has determined to take the following action:

- **Impose** the following new conditions upon licence LIQO660033618 pursuant to section 141(2)(e) of the Act, commencing effect 28 days after the date of this decision:

### No Staff Drinking While Premises Open to Public

*The licensee, staff and Mr Joel Murdoch may not drink on the Premises while the Premises is open to the public.*

### CCTV

- 3) *The licensee must maintain a closed-circuit television (CCTV) system on the premises in accordance with the following requirements:*
- (a) *the system must record continuously from opening time until one hour after the premises is required to close (or, in the case of a premises that is not required to cease trading, continuously at all times),*
  - (e) *recordings must be in digital format and at a minimum of six (6) frames per second,*
  - (f) *any recorded image must specify the time and date of the recorded image,*
  - (g) *the system's cameras must cover the following areas:*
    - (iv) *all entry and exit points on the premises,*
    - (v) *the footpath immediately adjacent to the premises, and*
    - (vi) *all publicly accessible areas (other than toilets) within the premises.*
- 4) *The licensee must also:*
- (d) *keep all recordings made by the CCTV system for at least 30 days,*
  - (e) *ensure that the CCTV system is accessible at all times the system is required to operate pursuant to clause 1(a), by at least one person able to access and fully operate the system, including downloading and producing recordings of CCTV footage, and*
  - (f) *provide any recordings made by the system to a police officer or Liquor and Gaming NSW inspector within 24 hours of any request by the police officer or Liquor and Gaming NSW inspector to provide such recordings.*
- **Disqualify** the former licensee Mr Murdoch, from holding a liquor licence, under section 141(2)(f) of the Act, for a period of five years from the date of this decision.
  - **Reprimand** Mr Murdoch pursuant to section 141(2)(m) of the Act.

## REVIEW RIGHTS

112. Pursuant to section 144 of the Act, an application for review of the Authority's decision to take disciplinary action may be made to the NSW Civil and Administrative Tribunal ("NCAT") by the person against whom any disciplinary action is taken by the Authority in relation to the Complaint or the Complainant, by no later than 28 days of the Authority's decision.
113. For more information, please visit the NCAT website at [www.ncat.nsw.gov.au](http://www.ncat.nsw.gov.au) or contact the NCAT Registry at Level 9, John Maddison Tower, 86-90 Goulburn Street, Sydney.
114. Please contact the Authority Secretariat via [ilga.secretariat@liquorandgaming.nsw.gov.au](mailto:ilga.secretariat@liquorandgaming.nsw.gov.au) if you have any enquiries about this letter.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Philip Crawford', is enclosed in a thin black rectangular border.

Philip Crawford

**Chairperson**

For and on behalf of the Independent Liquor and Gaming Authority

## Schedule 1 – Complaint Material and Murdoch Submissions

### Complaint Material

1. One-page cover letter signed by Superintendent Paul Fehon, Mid North Coast Local Area Command, as a delegate of the Commissioner of NSW Police dated 3 August 2018.
2. An eight-page complaint submission letter specifying particulars of the grounds of complaint (“Complaint”), accompanied by the following five attachments:
3. Annexure A: NSW Alcohol Related Crime Information Exchange licensed premises details for LIQO660033618 (Botanic Wine Garden) as of 25 June 2018.
4. Annexure B: NSW Police Force Criminal History Bail Report and Criminal Infringement Notice History for Mr Joel Murdoch obtained on 19 December 2017.
5. Annexure C: Plan of Management and Security Management Plan for the Botanic Wine Garden dated 10 December 2016
6. Annexure D: NSW Police Force Penalty Notices -
  - 4939121981 issued to Mr Murdoch for licensee permit intoxication on licensed premises on 14 July 2017 in the amount \$1100 (Annexure D.1.1).
  - 4942183025 issued to Mr Murdoch for licensee sell/supply liquor to intoxicated person on 14 July 2017 in the amount of \$1100 (Annexure D.1.2).
  - 4939121990 issued to Mr Murdoch for licensee supply liquor not in accordance with authority on 14 July 2017 in the amount of \$1100 (Annexure D.1.3).
7. Annexure E: Certificate of Convictions relating to Mr Murdoch in the following matters –
  - 2007/00033241 (Annexure E.1).
  - 2012/00223840 (Annexure E.2).
  - 2012/00243269 (Annexure E.3)
  - 2017/00216291 (Annexure E.4).

### Murdoch Submission

8. A 12-page legal submission dated 29 January 2019 lodged by Mr Murdoch’s solicitor Mr Matthew Lindeman of Lindeman Lawyers addressing the merits of the Complaint. This was accompanied by a one-page cover letter and the following attachments:
9. Table 1: A Table containing Mr Murdoch’s responses to what he describes as the key areas of the Complaint.
10. Annexure A: Menu for the Botanic Wine Garden.
11. Annexure B: Drinks and wine list for the Botanic Wine Garden.
12. Annexure C: Photographs of the venue.
13. Annexure D: Botanic Wine Garden Alcohol Plan of Management (undated).
14. Annexure E: Reviews that detail the trade at the venue.
15. Annexure F: Article by Matt Attard dated 28 January 2019 published online by Port Macquarie News titled *Port Anglican Soup Kitchen taken over by Botanic Wine Garden on July 25*.
16. Annexure G: Article by Peter Daniels dated 28 January 2019 published online by Port Macquarie News titled *Restaurants, cafes urged to join DineSmart to help ease homelessness*.
17. Annexure H: Letter from Mr Andrew Christian (licensee of Botanic Wine Garden at the time the Complaint was lodged – now a former licensee) dated 15 January 2019.

18. Annexure I: Letter from Dr Steven Chung (joint owner of Botanic Wine Garden) undated.
19. Annexure J: Letter from Mr Bernard Coady (a psychologist who consulted with Mr Murdoch) dated 16 January 2019.
20. Final submission letter from Joel Murdoch dated 27 July 2020.