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Mr John Barakat
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7 Kellett Street
POTTS POINT NSW 2011

Mr Timothy Bali
Director, Diamond Events Pty Ltd
Business Owner
Déjà Vu Kings Cross

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Dear Sirs

**Disciplinary Complaint under Part 9 of the *Liquor Act 2007* in relation to
Déjà Vu, Kings Cross and John Barakat, Licensee**

INTRODUCTION

1. The abovementioned disciplinary complaint (**Complaint**) under Part 9 of the *Liquor Act 2007* (**Act**) made by Mr Anthony Keon, (then) Acting Director of the Compliance Division of the Office of Liquor, Gaming and Racing (**OLGR**) in his capacity as delegate of the Secretary (**Secretary**) of NSW Trade and Investment (**Complainant**) was received by the Independent Liquor and Gaming Authority (**Authority**) on 13 March 2014.
2. The Complaint concerns the licensed premises known as "Déjà Vu", located at 7 Kellett Street, Potts Point (the **Premises**). An on-premises liquor licence number LIQO624004412 attaches to the Premises, which has the designated primary purpose of a "restaurant".
3. The licence has the benefit of an extended trading authorisation (**ETA**) that enables the sale or supply of liquor on the Premises to continue beyond the standard licensed trading hours prescribed by section 12 of the Act. In this case, licensed trading may occur from 7:00am to 3:00am the following morning on Monday through Saturday and from 7:00am to 12:00 midnight on a Sunday.

4. The licence is also endorsed with an authorisation under section 24(3) of the Act (known in the industry as a "primary service authorisation") which allows liquor to be sold or supplied for consumption on the licensed premises to individual patrons otherwise than with, or ancillary to, another designated product or service (**PSA**). In the case of an on-premises licence for a restaurant, the PSA enables liquor to be sold or supplied to individual patrons with or without the service of a meal.
5. As of the date of the Complaint, the owner of the freehold in the Premises was Mr James Farrugia (**Premises Owner**). Mr Farrugia remains the Premises Owner at this time.
6. As of the date of the Complaint, the licensee of the Premises was Mr John Barakat (**Licensee**) and the manager of the Premises was Mr Dominic Kaikaty. Mr Barakat held the licence from 25 January 2013 until 30 June 2014, as discussed below.

[The Authority notes that Mr Kaikaty is described by the Complainant as the "manager" in the lay sense of the word, as distinct from an "approved manager" who would be appointed pursuant to section 66 of the Act. An approved manager is a natural person who is responsible under the Act, for a licensed premises when a licence is held by a corporation.]

7. The corporate business owner of the licensed business operating on the Premises at the time of the Complaint was Diamond Events Pty Limited (**Business Owner**), whose sole director is Mr Timothy Bali.
8. Since the date of the Complaint, the Licensee, Mr John Barakat, was disqualified from being a licensee of any licensed premises for a period of three (3) months by Downing Centre Local Court from 7 August 2014.
9. Mr Barakat was later disqualified from holding a liquor licence for a period of five years on 25 November 2014. This action was taken by Downing Centre Local Court by way of the imposition of an additional penalty pursuant to Part 10 of the Act by reference to the multiple serious contraventions of licensing legislation that were before the Court on that occasion.
10. Since the Complaint was made to the Authority, as discussed below, the Premises Owner proceeded to terminate the lease by giving notice to the Business Owner on 2 April 2014. The Premises was vacated by the Business Owner on 16 April 2014.
11. Upon assuming possession of the Premises in his capacity as Premises Owner, Mr Farrugia applied to have the licence transferred to him as an owner in possession. A transfer of the licence to Mr Farrugia was provisionally approved by the Authority on 30 June 2014.
12. On 24 August 2014, Mr Grant Collins lodged an application to transfer the licence from Mr Farrugia to himself. This transfer was provisionally approved with effect from 22 October 2014 and confirmed on 1 April 2015.
13. As of the date of this letter, Mr Farrugia remains the Premises Owner and Mr Grant Collins holds the licence and the current business owner occupying the Premises is Boutique Bar Concepts Pty Ltd

THE COMPLAINT MATERIAL

14. The Complaint seeks that the Authority exercises its power under Part 9 of the Act to take disciplinary action against Mr John Barakat in his capacity as licensee of the Premises. The Complainant also requests that certain action be taken in relation to the licence itself.
15. The Complaint comprises a twenty-seven (27) page letter setting out the Particulars of each ground of the Complaint, all of which are grounds that may potentially be relied upon by a complainant under section 139(3) of the Act.
16. The Complaint is accompanied by a Brief of Evidence, consisting of several hundred pages of submissions, evidence and other material upon which the Complainant relies (**Brief of Evidence**). This material has been prepared by OLGR, a large part of which comprises reports sourced from the NSW Police Computerised Operational Policing System database (**COPS Reports**) detailing numerous adverse incidents which the Complainant alleges are directly attributable to the Premises or to the operation or management of the Premises.

[The Authority notes that COPS Reports typically comprise contemporaneous reports entered into the NSW Police Computerised Operational Policing System database by individual Police officers. COPS Reports usually provide a narrative of observations made by Police while engaging the person or persons who are the subject of the Event in question and may also record reports of the incident provided to Police by the victim of an alleged offence or witnesses to the Event. COPS Reports will usually indicate the time and date when the Event occurred and (if the Event is alcohol related) the extent to which the person(s) engaged with by Police were affected by alcohol.]

17. Other material upon which the Complainant relies includes copies of the liquor licence attaching to the Premises at various points in time; communications between the Authority, the Complainant and the interested parties; statements of evidence by Police officers and OLGR Inspectors; documentation recording the issue of Penalty Notices by Police and Compliance Notices by OLGR; Court Attendance Notices and the associated facts sheets; OLGR records of the compliance and regulatory history of the Premises; some monthly sales records and till records for the Premises; OLGR Guidelines and Fact Sheets; still photographs from security cameras at the Premises; Facebook posts uploaded by staff at the Premises and other miscellaneous documents gathered during the course of the investigation.

Background Information

18. By way of background, the Complainant notes that the Premises is located within the Kings Cross precinct as defined by Schedule 2 to the Act (**Kings Cross Precinct**) and as such, the licence is subject to special licence conditions under Part 5A of the *Liquor Regulation 2008* (**Regulation**).
19. The Complainant further notes, by way of background, that the Licensee has been the subject of two Notices issued by the Secretary under section 102A of the Act dated 2 August 2013 and 10 January 2014 and a direction made by the Secretary under section 75 of the Act dated 10 January 2014, all of which concerned the business trading as "Déjà Vu" that has been conducted on the Premises.

Grounds for Complaint

20. The full text of the nine (9) grounds of the Complaint (**Grounds**) as specified in the Complaint dated 13 March 2014 is set out below, along with a summary of the evidence and particulars alleged by the Complainant in support of each Ground.

GROUND ONE

21. **Ground One – s.139(3)(a)**

That the licensee, John Barakat, while holding a licence, has been convicted of an offence under this Act or the regulations or of an offence prescribed by the regulations.

Particular 1

22. On 4 April 2013, Police attended the Premises in relation to an incident in which a male patron of the Premises was allegedly assaulted and injured on 3 April 2013. Police requested to view the incident register for the venue. Police noted that no record of the incident had been made in the incident register. Dominic Kaikaty, the manager of the Premises, acknowledged to the attending Police that he knew about the incident. Police issued Penalty Notice No. 4919296131 in relation to the Licensee's failure to comply with the licence condition imposed by clause 53J of the Regulation, which requires that staff members of the venue immediately contact Police and preserve the crime scene once they become aware of an act of violence resulting in physical injury. The Licensee elected to have this matter determined by a Court. The matter was heard at the Downing Centre Local Court and on 3 December 2013, the Licensee was convicted and fined \$1,100 for the offence.

Particular 2

23. At about 12:25am on 7 April 2013, Police attended the Premises and observed three patrons standing at the bar, each holding a small shot glass. All three patrons then drank the shot in one gulp. Police issued Penalty Notice No. 4919296113 in relation to the Licensee's failure to comply with the licence condition imposed by clause 53F of the Regulation, which requires shots not to be sold or supplied on the Premises during the weekend late trading period. The Licensee elected to have this matter determined by a Court. The matter was heard at the Downing Centre Local Court and on 3 December 2013, the Licensee was convicted and fined \$550 for the offence.

Particular 3

24. On 20 April 2013, Police attended the Premises and inspected the physical positioning of the CCTV cameras within the Premises. Police identified that certain areas were not covered by CCTV – in particular, a large portion of the southern side of the rear bar area and a small area in the corridor outside the kitchen were not covered. Police issued Penalty Notice No. 4919295104 in relation to the Licensee's failure to comply with the licence condition imposed by clause 53H of the Regulation, which requires CCTV systems to be maintained on the subject premises. The Licensee elected to have this matter determined by a Court. The matter was heard at the Downing Centre Local Court and on 3 December 2013, the Licensee was convicted and fined \$550 for the offence.

Particular 4

25. At about 1:10am on 25 April 2013, Police attended the Premises and in the courtyard observed a male patron and a female patron each drinking from a glass bottle of *Tooheys Extra Dry* beer. The two patrons stated to Police that they had purchased the drinks from the Premises bar a short time earlier. The attending Police then spoke to the business owner, Mr Timothy Bali, and to the manager, Mr Dominic Kaikaty. Neither the business owner nor Dominic Kaikaty attempted to remove the glass bottles from the two patrons. The two patrons were then observed to enter the Premises bar still holding the glass bottles. Again, no effort was made to remove the glass bottles until Police pointed out to the business owner that the glass bottles should be removed.
26. Police issued the Licensee with Penalty Notice No. 4919296150 in relation to the Licensee's failure to comply with the licence condition imposed by clause 53E of the Regulation, which requires drinks sold for consumption on the premises not to be served in a glass and that glasses be removed from patrons during the relevant late trading period. The Licensee elected to have this matter determined by a Court. The matter was heard at the Downing Centre Local Court and on 21 February 2014, the Licensee was convicted and fined \$1,100 for the offence.

Particular 5

27. On 7 April 2013, Police attended the Premises and observed that no mandatory "under 18" signage was displayed around the bar. The sign was located on an open doorway of the front of the Premises that was on such a slant that the sign could not be clearly read. Police issued Penalty Notice No. 4919296122 in relation to the Licensee's failure to comply with clause 31(1) of the Regulation (requiring that the prescribed notice be displayed on licensed premises). The Licensee elected to have this matter determined by a Court. The matter was heard at the Downing Centre Local Court and on 21 February 2014, the Licensee was convicted and fined \$300 for the offence.

Particular 6

28. On 31 May 2013, Police attended the Premises and noted that they could not see any prescribed "under 18" sign on display. Upon closer inspection, Police identified that the sign was hanging on a wall near the bar, but had been almost completely obstructed by a newly installed flat screen TV. Police issued Penalty Notice No. 4919296169 in relation to the Licensee's failure to comply with clause 31(1) of the Regulation (requiring that the prescribed notice be displayed on licensed premises). The Licensee elected to have this matter determined by a Court. The matter was heard at the Downing Centre Local Court and on 21 February 2014, the Licensee was convicted and fined \$300 for the offence.

Particular 7

29. On 1 August 2013, two minors (aged 15 and 17 years of age) attended the Kings Cross Precinct. Whilst walking in the Precinct, the two minors were approached by a promoter of the Premises who invited them to attend the Premises. The two minors continued walking around the Precinct until they met two females and decided to attend the Premises.
30. Both minors entered the Premises without being requested to supply any evidence of proof of age documents to Premises staff. Whilst inside the Premises, the two minors were served and supplied liquor totalling 10 shots, six beers and one vodka lemonade. During the course of the night, the 17 year old minor became extremely intoxicated and

vomited five times inside the Premises toilet. He later collapsed on the footpath directly outside the Premises where he was kicked by a Premises promoter and told, "Oi, get up, fuck off". A short time later, the 17 year old caught a taxi home, leaving the 15 year old behind.

31. At about 1:00am on 2 August 2013, the 15 year old attended Kings Cross Police Station seeking help as he was unable to get home and had lost his friend.
32. Police issued the Licensee with Penalty Notice Nos. 4922852909 and 4922852918 in relation to the offence of supplying liquor to a minor on licensed premises. The Licensee elected to have the matters determined at the Downing Centre Local Court and on 5 March 2014, the Licensee was convicted and fined \$1,100 for each offence.

GROUND TWO

33. **Ground Two – s.139(3)(b)**

That the licensee of the premises, John Barakat, has failed to comply with any of the conditions to which the licence is subject.

Particular 1

34. In support of this Ground, the Complainant relies upon the matters alleged in Particulars 1 to 4 and 7 of Ground One and also the matters set out below.

Inspections by Police

Particular 2

35. At about 8:30pm on 26 January 2013, Police inspected the Premises and identified the following:
 - (a) Police inspected the Premises' CCTV and determined that one of the CCTV servers was displaying a time one hour ahead of real time. Police issued a Compliance Notice in relation to the Licensee's failure to comply with the licence condition imposed by clause 53H of the Regulation, which requires a licensee to maintain CCTV systems on the licensed premises
 - (b) Police conducted an audit of the Premises. The Responsible Service of Alcohol (RSA) Certificate for the Licensee could not be produced upon inspection. Police issued a Compliance Notice in relation to this failure to comply with liquor legislation.

[The Authority notes that this is a requirement of clause 40(2A) of the Regulation.]

Particular 3

36. At about 1:00am on 30 March 2013, Police inspected the Premises and identified the following:
 - (a) Police entered the rear door on Madison Lane which leads into the bar of the Premises and saw three people standing behind the bar holding 750mL glass bottles of alcohol to their mouths from which they appeared to be drinking. Police also noticed a male patron standing behind the bar. At the time the male patron

was behind the bar, there were numerous glass bottles to which he had access. Police issued the Licensee with Penalty Notice No. 4919296178 in relation to the Licensee's failure to comply with the licence condition imposed by clause 53E of the Regulation, which requires drinks sold for consumption on the premises not to be served in a glass and that glasses be removed from patrons during the general late trading period. The Licensee elected to have this matter determined by a Court. The matter is listed before the Downing Centre Local Court to be heard on 14 March 2014

- (b) Police spoke to two females inside the licensed premises and asked them what they had been drinking. The first female said that she had "...a shot of alcohol". The second female said she had "...one vodka, wine and soda and two shots". Police issued the Licensee with Penalty Notice No. 4919296187 in relation to the Licensee's failure to comply with the licence condition imposed by clause 53F of the Regulation, which requires "shots" not to be sold or supplied at the premises during the weekend late trading period. The Licensee elected to have this matter determined by a Court. The matter is listed before the Downing Centre Local Court to be heard on 14 March 2014
- (c) During the inspection, the business owner of the Premises, Timothy Bali, identified himself to Police as the person in charge of the licensed premises. Nothing on the business owner's clothing identified him as carrying out RSA duties. In light of the intoxication levels of the patrons of the Premises, Police observing patrons located behind the bar helping themselves and information provided by patrons that the alcohol they had consumed was free of charge, Police determined that no person was responsible for supervision and monitoring intoxication. Police issued the Licensee with Penalty Notice No. 4920650058 in relation to the Licensee's failure to comply with the licence condition imposed by clause 53G of the Regulation, which requires, in the case of a class 2 subject premises, the licensee to ensure that at least one RSA Marshal is carrying out RSA duties on the premises during the weekend late trading period. The matter is listed before the Downing Centre Local Court to be heard on 14 March 2014
- (d) The business owner informed Police that the CCTV system was not operating because the Premises was closed. At this time, patrons were still at the Premises. Police issued the Licensee with Penalty Notice No. 4919296196 in relation to the Licensee's failure to comply with the licence condition imposed by clause 53H of the Regulation, which requires the licensee to maintain CCTV systems on the premises which operate continuously from opening time until one hour after the premises is required to close. The Licensee elected to have this matter determined by a Court. The matter is listed before the Downing Centre Local Court to be heard on 14 March 2014
- (e) The business owner informed Police that the Premises was closed and he was there having a few drinks with a few friends. As the front door of the Premises was locked, access to the Premises was only available via a rear lane and free alcohol was supplied to friends of the owner, Police determined that the Premises at this time was not accessible to the general public but only to friends of the business owner who had been invited there. Police issued the Licensee with Penalty Notice No. 4919296205 in relation to the Licensee's failure to comply with the licence condition imposed by section 28 of the Act, which requires the business carried out under an "on-premises" licence not to be limited to the sale and supply of liquor only to persons who have been invited to use or attend the licensed premises. The

Licensee has elected to have this matter heard before a Court. The matter is listed before the Downing Centre Local Court to be heard on 14 March 2014.

Particular 4

37. At about 12:25am on 7 April 2013, Police performed an audit of the Premises' CCTV and identified that there was not full CCTV coverage of the outdoor courtyard area, and that a tree branch was obstructing a large portion of the CCTV coverage of the front footpath. Police issued a Compliance Notice in relation to the Licensee's failure to comply with the licence condition imposed by clause 53H of the Regulation, which requires the licensee of the premises to maintain a CCTV system on the premises whose cameras must cover all publicly accessible areas (other than toilets) on the premises and the footpath immediately adjacent to licensed premises.

Particular 5

38. At about 7:50pm on 23 June 2013, Police attended the Premises and identified an intoxicated female patron slouched over and lying across another male. Police report that the female patron appeared to be extremely intoxicated and had her eyes closed with her top pulled down, almost exposing one of her breasts. Police assisted in escorting the female patron to a taxi in order for her friend to take her home. At the time of the incident, Police did not observe any patrons consuming food and the kitchen was empty and unused.
39. After numerous unsuccessful attempts to discuss the above matter with the Licensee, on 27 September 2013, the Licensee advised Police that he declined to participate in a record of interview by reason that he "...wasn't there at the time so there is not much I can say". Police issued the Licensee with Penalty Notice No. 4922857720 in relation to permitting intoxication on the licensed premises.

Inspections by OLGR officers

Particular 6

40. On 21 April 2013, OLGR Inspectors Paul Newman and Kate Hanley conducted an inspection of the Premises to test compliance with the Kings Cross special licence conditions prescribed by Part 5A of the Regulation and general compliance with the requirements of the Act.
41. Inspectors conducted an audit of the Premises' incident register and established that not all required incidents were being recorded in the register. OLGR issued Penalty Notice No. 3042904480 in relation to the Licensee's failure to comply with the licence condition imposed by clause 53I of the Regulation, which requires the licensee to record certain incidents in an approved incident register.

Particular 7

42. On 8 June 2013, OLGR Inspectors Sarina Wise (**Inspector Wise**) and Darren Duke (**Inspector Duke**) conducted an inspection of the Premises to test compliance with the Kings Cross special licence conditions prescribed by Part 5A of the Regulation and general compliance with the requirements of the Act.

Particular 8

43. At approximately 12:08am on 8 June 2013, Inspector Wise approached the bar area to purchase shots in order to test compliance with the Kings Cross special licence conditions prohibiting the sale and supply of shots after midnight. Inspector Wise was able to purchase two shots of liquor served by Dominic Kaikaty. He served a single shot in two spirit glasses that contained ice that filled a quarter of the glasses.

Particular 9

44. In a conversation with Inspectors Wise and Duke on 8 June 2013 and during an interview conducted by Inspector Wise and Inspector Duke with Dominic Kaikaty on 1 August 2013, he conceded that he had served shots in breach of the licence condition imposed by clause 53F of the Regulation, which prohibits shots of liquor being sold or supplied on the premises after 12:00 midnight.

Particular 10

45. Subsequently, Inspector Wise issued the Licensee with Penalty Notice No. 3051002534 and Penalty Notice No. 3051002525 in relation to the above failure of the Licensee to comply with the licence condition imposed by clause 53F of the Regulation. The Licensee did not pay these fines and it is the Complainant's understanding that the Licensee is disputing these matters with the State Debt Recovery Office (**SDRO**).

Particular 11

46. On 19 January 2014, OLGR Inspectors Paul Rankin and Col Butler attended the Premises to test compliance with the Kings Cross special licence conditions prescribed by Part 5A of the Regulation and general compliance with the requirements of the Act. During the inspection, it was identified that the RSA Marshal was not wearing any clothing that identified him as an RSA Marshal. OLGR issued a Court Attendance Notice to the Licensee in relation to his failure to comply with clause 53G of the Regulation, which requires any person conducting RSA Marshal duties to be readily identifiable.

GROUND THREE

47. **Ground Three – s.139(3)(c)**

That the licensee of the premises, John Barakat, has failed to comply with any of the conditions to which any authorisation or approval held by the licensee under the Act is subject.

Particular 1

48. Liquor licence LIQO624004412 in respect of the Premises is an "on-premises" licence under Division 4, Part 3 of the Act. As such, the sale and supply of liquor must be ancillary to another product or service that is sold, supplied or provided to people on the licensed premises (section 24(1) of the Act) unless an exception under section 24(3) applies.

Particular 2

49. The licence is endorsed with a primary service authorisation allowing liquor to be sold or supplied for consumption on the licensed premises, otherwise than with or ancillary to

another product or service (pursuant to section 24(3)). This authorisation is subject to a condition under clause 19(1)(d) of the Regulation requiring liquor not be sold or supplied under the authorisation at any time when the primary purpose of the business or activity carried out on the licensed premises is, at that particular time, the sale or supply of liquor.

Particular 3

50. John Barakat has failed to comply with the above condition in that he has permitted the venue to be operated as a bar whereby the primary purpose of the business or activity carried out on the licensed premises is the sale and supply of liquor. The Complainant relies on the matters set out below in support of this Particular.

Inspections by Police

Particular 4

51. At about 1:30am on 25 May 2013, Police attended the Premises and observed a small number of patrons standing near the entrance and inside the venue. They did not see any patrons eating meals or sitting at the dinner tables eating meals. The kitchen area was closed. Police inspected the fridges and cool rooms and within the large cool room, Police did not find any fresh produce, meats, dried food or any other food that would usually be found in other restaurants. Police inspected the pantry and cupboards and identified the kitchen to have been stocked with the bare minimum of ingredients and there were no fresh ingredients as stated on the menu. The manager, Dominic Kaikaty, provided Police with a couple of till receipts which did not amount to any great sum of money.

Particular 5

52. At about 1:00am on 2 June 2013, Police conducted a business inspection of the Premises. Police observed four people outside the Premises and that the bar area of the Premises was busy. Inside the Premises, Police saw about four to five tables with some potato chips on them. Police did not see any other food being served and did not see any tables set for patrons to eat. Police also checked the kitchen and could only see chips being cooked.

Inspection by OLGR officers

Particular 6

53. On 8 June 2013, OLGR Inspectors Sarina Wise and Darren Duke attended the Premises and observed approximately 10 to 15 patrons in the courtyard area at the front of the Premises and approximately 60 patrons throughout the internal areas. The majority of the patrons were consuming beverages. At no time were patrons observed to be consuming food. Inspector Wise and Inspector Duke made observations of the kitchen window, where for about 15 minutes the only activity carried on was that of empty glasses being sent to the kitchen for cleaning, and trays with clean glasses being placed on the kitchen window by staff in the kitchen.

Particular 7

54. Inspector Wise and Inspector Duke observed that no food was being prepared in the kitchen. A male staff member, whom Dominic Kaikaty introduced to Inspector Wise and

Inspector Duke as "the chef", stated that during the last two hours, he had cooked two plates of chips.

Particular 8

55. At the time of this inspection, liquor was sold and supplied to patrons at the venue when it would appear that the primary purpose of the business, which ought not to be carried out on the Premises, was the sale and supply of liquor.

Particular 9

56. The sales of liquor at the Premises in May and June 2013 are significantly larger than sales of food. This is demonstrated by the Premises' sales records for May and June 2013 and till records for 24 and 25 May 2013 and 8 and 9 June 2013.

Particular 10

57. OLGR issued a Court Attendance Notice to the Licensee in relation to the above failure to adhere to the conditions of his primary service authorisation and conditions of the licence, in that (1) the Licensee permitted liquor to be sold and supplied in contravention of the condition imposed by clause 19(1)(d) of the Regulation to which the primary service authorisation held by a licensee under the Act is subject; and (2) the Licensee failed to comply with section 27(1) of the Act in that food was not available of a nature and quality consistent with the responsible service of alcohol. The matter is currently listed before the Downing Centre Local Court.

Particular 11

58. On 19 July 2013, in a conversation with City of Sydney Council Rangers on a separate matter, Dominic Kaikaty has been recorded as stating, "...We [the Premises] are a restaurant but later at night it's mainly just the bar and we stay open for longer".

GROUND FOUR

59. **Ground Four – s.139(3)(d)**

That the licensee of the premises, John Barakat, has failed to comply with any other requirement under this Act or the Regulations relating to the licence or the licensed premises.

Particular 1

60. In support of this Ground, the Complainant relies upon the matters alleged under Particulars 5 and 6 of Ground One and the matters set out in the Particulars to this Ground below.

Particular 2

61. On 7 September 2013, OLGR Inspectors Brett See and Paul Newman conducted an inspection of the Premises to test compliance with the Kings Cross special licence conditions prescribed by Part 5A of the Regulation and general compliance with the requirements of the Act.

62. During the inspection, the Inspectors observed four staff members sell and supply liquor to patrons. The Inspectors requested each staff member to produce their RSA competency card. One staff member could not produce his RSA competency card and stated to the Inspectors, "...I only did the course on Thursday and this is my first shift, I don't have the card yet". OLGR issued a Penalty Notice to the staff member and a Court Attendance Notice to the Licensee in relation to failure by the Licensee to comply with clause 40(2A) of the Regulation, which prohibits a licensee of licensed premises from permitting staff to sell or supply liquor without a valid RSA competency card.

Particular 3

63. On 18 January 2014, OLGR Inspectors Paul Rankin and Col Butler were conducting inspections in the Kings Cross Precinct when they observed Mr Timothy Bali, the business owner, hand a female person on the street a promotional card for the Premises. The Licensee had previously been issued a direction under section 75 of the Act which prohibited spruiking activities from being conducted more than three metres from the entrance to the Premises (the reasons for the issue of the section 75 direction are explained in Ground Six). The actions of the business owner were observed to occur about 80 metres from the Premises. OLGR issued a Court Attendance Notice to the Licensee in relation to failure by the Licensee to comply with a direction under section 75 of the Act.

GROUND FIVE

64. **Ground Five – s.139(3)(e)**

That the licensee, John Barakat, has failed to comply with a direction of the Director-General under this Act, within the meaning of s.139(3)(e).

Particular 1

65. On 18 January 2014, OLGR Inspectors Paul Rankin and Col Butler were conducting inspections in the Kings Cross Precinct when they observed Mr Timothy Bali, the business owner, hand a female person on the street a promotional card for the Premises. The Licensee had previously been issued a direction under section 75 of the Act by a delegate of the Secretary. The direction prohibited spruiking activities being conducted more than three metres away from the entrance to the Premises (the reasons for the issue of the section 75 direction are explained in Ground Six). The actions of the business owner were observed to occur about 80 metres from the Premises.

Particular 2

66. OLGR issued a Court Attendance Notice to the Licensee in relation to the above failure of the Licensee to comply with a direction under section 75 of the Act.

GROUND SIX

67. **Ground Six – s.139(3)(f)**

That the licensee of the premises, John Barakat, has engaged in conduct or activities that are likely to encourage misuse or abuse of liquor, such as binge drinking or excessive consumption.

Particular 1

68. On 3 June 2013, OLGR received a submission from Police requesting that the OLGR Director of Compliance consider exercising his powers under section 102A of the Act to restrict or prohibit suspected undesirable liquor promotions carried on or permitted at the Premises. Police also supplied information that alleged persons engaged by the venue to conduct spruiking duties had, whilst conducting those duties, assaulted a member of the public.

Particular 2

69. Representations made by Police, supported by extracts obtained from the Premises' Facebook page, indicated that the Premises had conducted the following liquor promotions:
- (a) "Here's what's at Déjà Vu: \$3.50 drinks all night!!! SHOTS, BEER, WIN"
 - (b) In relation to a Valentine's Day activity: "Everyone that comes gets their choice of a FREE glass of sparkling wine or a shot of our freaky Wet Pussy"

[The Authority notes that "Wet Pussy" is a type of alcoholic mixed drink or cocktail.]
 - (c) In relation to an activity conducted every Thursday: "Ladies[sic] night, free shot for single ladies".

Particular 3

70. A review by OLGR of the Premises' Facebook page identified the following further published statements:
- (a) "KEEP CALM. IT'S FRIDAY NIGHT. GET DRUNK" which appears next to a promotion for "\$3.50 DRINKS + FREE ENTRY all night".
 - (b) With reference to an animated picture depicting girls engaging in what appears to be illicit drug use inside toilets, the venue posted the following comment: "...Is this why the girls[sic] toilet is always busy, no matter which bar or club you are at??"

Particular 4

71. The Premises has also been involved in engaging "spruikers" to distribute business cards which promote cheap drinks and free entry to the Premises.

Particular 5

72. The above liquor promotions were conducted contrary to risk assessment advice provided in the OLGR *Liquor Promotion Guidelines* (the **Guidelines**), which expressly refer to the following promotions or activities as unacceptable risks and advise they should not be conducted:
- (i) Labelling or titling that is likely to promote irresponsible consumption
 - (ii) The provision of drink discounts of 50% or more

- (iii) An activity that has the potential for patrons to stockpile drinks to take advantage of the offer
- (iv) More than one free drink
- (v) Promotional cards, vouchers or incentives providing free or discounted drinks for consumption on the premises which are distributed away from the premises
- (vi) An activity that offers more than one free drink
- (vii) Promotions that extend for more than two hours or are conducted after 9:00pm for alcoholic drinks with alcohol content greater than 3.5%
- (viii) An activity that promotes an illegal/unlawful activity.

[Whilst the image and comments relating to drug use in the women's toilets are not expressly linked to a liquor promotion or activity, the Complainant contends that the image signals an "environment which may be unduly permissive" and contributes to an overall messaging on the Facebook page that may encourage misuse or abuse of alcohol.]

Particular 6

73. With respect to the identified liquor promotions and activities carried on or permitted at the Premises, on 2 August 2013, the OLGR Director of Compliance issued the Licensee with a Notice under section 102A of the Act. The Director of Compliance determined that certain activities were likely to encourage the misuse and abuse of liquor. The Notice prohibits the Licensee from carrying on, or permitting on the licensed premises any activity that involves:
- (a) The sale or supply of liquor promoted on drink cards, promotional cards, flyers, print media, website, social media or any similar marketing material (distributed on or away from the Premises) which include the terms "shots", "shooters", "blasters", "bombs", "get drunk" or any other similar variation of those words that may encourage irresponsible, rapid or excessive consumption
 - (b) The sale or supply of liquor promoted on drink cards, promotional cards, flyers, or any similar marketing material (distributed on or away from the Premises) which promotes discounted drinks or drinks set at a price that encourages irresponsible, rapid or excessive consumption
 - (c) The provision of free drinks to patrons unless no more than one free drink is provided per patron per trading period.

Particular 7

74. On 5 September 2013, OLGR received an anonymous complaint from a person who stated that they were a licensed operator in Kings Cross and feared repercussions if identified. Key points raised in the complaint were the following:
- (a) On Wednesdays, female spruikers offer 30 shots for \$50. These offers are only verbal in nature

- (b) The spruikers do not wear clothing that readily identifies them as agents of the venue
- (c) The spruikers hand out promotional cards which allow a patron to obtain one free drink on entry as well as promoting the sale of shots for \$2.50.

Particular 8

75. On the same day, Police wrote to the Secretary in regard to alleged undesirable liquor promotions being undertaken by the Licensee in respect of the Premises. Police provided COPS Event Reports of certain incidents and signed statements which they submit demonstrated that the Licensee was engaging in activities that appeared to subvert the intent of the previously issued section 102A Notice, by having spruikers verbally promote the sale and supply of \$2 shots in the King Cross Precinct.

Particular 9

76. On 10 January 2014, after considering submissions made by the Licensee, the OLGR Acting Director of Compliance issued the Licensee with the following:
- (a) An additional Notice under section 102A of the Act prohibiting the sale and supply of discounted shots and a direction prohibiting the spruiking of shots
 - (b) A direction under section 75 of the Act restricting spruiking activities to, amongst other things, only occur within three metres of the entrance to the Premises and a requirement for persons conducting these duties not to touch members of the public.

GROUND SEVEN

77. **Ground Seven – s.139(3)(i)**

That the licensee of the premises, John Barakat, is not a fit and proper person to be a holder of a licence, within the meaning of section 139(3)(i).

Breaches of the Act and Regulations

Particular 1

78. In the 13 month period since John Barakat commenced as licensee of the Premises on 25 January 2013, he has failed to comply with numerous licence conditions and with other requirements under the Regulation. The circumstances of these failures are set out in Grounds Two to Five inclusive of this Complaint.

Particular 2

79. In respect of the above failures, Police have issued John Barakat with the following Penalty and Compliance Notices:
- (a) Penalty Notice No. 4919296178 in relation to the contravention of the condition imposed by clause 53E of the Regulation on 30 March 2013
 - (b) Penalty Notice No. 4919296187 in relation to the contravention of the condition imposed by clause 53F of the Regulation on 30 March 2013

- (c) Penalty Notice No. 4920650058 in relation to the contravention of the condition imposed by clause 53G of the Regulation on 30 March 2013
- (d) Penalty Notice No. 4919296196 in relation to the contravention of the condition imposed by clause 53H of the Regulation on 30 March 2013
- (e) Penalty Notice No. 4919296205 in relation to the contravention of the condition imposed by section 28 of the Act on 30 March 2013
- (f) Penalty Notice No. 4919296131 in relation to the contravention of the condition imposed by clause 53J of the Regulation on 4 April 2013
- (g) Penalty Notice No. 4919296113 in relation to the contravention of the condition imposed by clause 53F of the Regulation on 7 April 2013
- (h) Penalty Notice No. 4919296104 in relation to the contravention of the condition imposed by clause 53H of the Regulation on 20 April 2013
- (i) Penalty Notice No. 4919296150 in relation to the contravention of the condition imposed by clause 53E of the Regulation on 25 April 2013
- (j) Penalty Notice No. 4919296122 in relation to a breach of clause 31(1) of the Regulation on 7 April 2013
- (k) Penalty Notice No. 4919296169 in relation to a breach of clause 31(1) of the Regulation on 3 May 2013
- (l) Penalty Notice No. 4922857720 in relation to a breach of section 73(1)(a) of the Act on 23 June 2013
- (m) Penalty Notice No. 492852909 in relation to a breach of section 117(2) of the Act on 1 August 2013
- (n) Penalty Notice No. 4922852918 in relation to a breach of section 117(2) of the Act on 1 August 2013
- (o) Compliance Notice in relation to a breach of the licence condition imposed by clause 53H of the Regulation on 26 January 2013
- (p) Compliance Notice in relation to the failure by the Licensee to produce a valid RSA certificate on 26 January 2013
- (q) Compliance Notice in relation to a breach of the licence condition imposed by clause 53H of the Regulation on 7 April 2013.

80. The Licensee has elected to have all of the above Penalty Notices determined by a Court and these matters have either been determined or are currently listed for hearing before the Downing Centre Local Court.

Particular 3

81. In respect of the failures described in Particular 1 above, OLGR has issued John Barakat with the following Penalty and Court Attendance Notices:

- (i) Penalty Notice No. 3042904480 in relation to the contravention of the condition imposed by clause 53I of the Regulation on 21 April 2013
- (ii) Penalty Notice No. 3051002534 in relation to the contravention of the condition imposed by clause 53F of the Regulation on 8 June 2013
- (iii) Penalty Notice No. 3051002525 in relation to the contravention of the condition imposed by clause 53F of the Regulation on 8 June 2013
- (iv) Court Attendance Notice dated 27 September 2013 in relation to the breach of section 9(1)(a) of the Act on 8 June 2013
- (v) Court Attendance Notice dated 27 September 2013 in relation to the contravention of clause 40(2A) of the Regulation on 7 September 2013
- (vi) Court Attendance Notice dated 3 March 2014 in relation to the contravention of a direction under section 75 of the Act on 18 January 2014
- (vii) Court Attendance Notice dated 3 March 2014 in relation to the contravention of the condition imposed by clause 53G of the Regulation on 19 January 2014.

Breaches of the *Gaming and Liquor Administration Act 2007*

Particular 4

- 82. On 10 December 2013, OLGR Inspectors Karen McCluskey and James Shand issued a Notice to Produce under section 21 of the *Gaming and Liquor Administration Act 2007* to the Licensee requesting the production of information and/or records to assist with the investigation of suspected breaches of the Act which were identified at the Premises on 7 December 2013. The Notice requested production of CCTV footage, a plan of management, sales records and written procedures on the distribution of promotional material. The Licensee sought, and was granted, an extension on the date by which such material was to be produced to OLGR. On the date that the records were due to be produced to OLGR, the Licensee supplied OLGR with a USB drive containing the requested CCTV footage. The Licensee did not produce the other records requested in the Notice.
- 83. OLGR advised the Licensee that the USB did not contain all the records and requested that the outstanding records be supplied to OLGR. The Licensee did not respond.

Particular 5

- 84. On 19 January 2014, OLGR Inspectors Paul Rankin and Col Butler conducted an inspection of the Premises and identified a breach (outlined in particular 15 of Ground Two). Inspector Butler issued the Licensee with a Notice to Produce under section 21 of the *Gaming and Liquor Administration Act 2007* for certain records pertaining to the breach.
- 85. The Licensee responded to the Notice to Produce, however the records produced were not correct in that the CCTV footage did not capture the entire time period requested and the staff roster produced did not relate to the night in question. OLGR advised the Licensee of the deficiencies in the material produced and further requested compliance with the Notice to Produce. The Licensee did not respond.

Particular 6

86. In respect of the above mentioned failures of the Licensee, OLGR has issued the Licensee with the following Court Attendance Notices:
- (a) Court Attendance Notice dated 4 March 2014 in relation to the contravention of section 34(1) of the *Gaming and Liquor Administration Act 2007* in regard to a Notice issued on 10 December 2013
 - (b) Court Attendance Notice dated 4 March 2014 in relation to the contravention of section 34(1) of the *Gaming and Liquor Administration Act 2007* in regard to a Notice issued on 19 January 2014.

Promotional activities likely to encourage misuse or abuse of liquor

Particular 7

87. Since John Barakat commenced as licensee of the Premises, there have been promotional activities carried out on the Premises that are in contravention of the Guidelines and likely to encourage misuse and abuse of liquor such as binge drinking or excessive consumption. These promotional activities have been described in Ground Four of this Complaint. In respect of these activities, OLGR has issued the Licensee with two Notices under section 102A of the Act and one direction under section 75 of the Act.

Acts of violence

Particular 8

88. On or about midnight on 3 April 2013, a male patron was assaulted at the Premises. Initially the business owner and Dominic Kaikaty denied to Police that they had any knowledge of the incident and no record of the incident was made in the Premises' incident register.

Particular 9

89. On 10 May 2013, two persons, namely Mr Jesse Brewer and Mr David Kaikaty, who were engaged by the business on the Premises to distribute promotional material, allegedly assaulted a member of the public. The Complainant contends that this demonstrates John Barakat's inability to adequately supervise and control the promotional activities. Police have since informed the Complainant that Mr Jesse Brewer has been convicted for assault in relation to the above incident.

Particular 10

90. At about 7:00pm on 25 January 2014, a patron of the Premises violently assaulted a pedestrian walking in the vicinity of the Premises. As a result of the assault, the victim sustained bleeding and swelling to his face. The patron was arrested a short time later and observed to be heavily intoxicated and under the influence of both alcohol and a prohibited drug.

Other matters

Particular 11

91. On 25 May 2013, Police reviewed John Barakat's Facebook page and noticed that he had published the following comment: "Fuc u kings Cross police!" [*sic*]. Dominic Kaikaty also 'liked' this comment via Facebook.

Particular 12

92. On 31 December 2013, Police reviewed the Premises' Facebook page and observed an entry posted by "Dylan Dvs" which was offensive toward the Kings Cross Local Area Command. The photograph was a group shot of the Premises staff, including the Licensee (John Barakat), business owner (Timothy Bali) and Dominic Kaikaty, all posing with their middle fingers positioned in an offensive manner toward the camera. A caption was linked to the photograph which read: "On behalf of #DEJAVU kingscross we would like to say a big #FUCKYOU to Kings Cross Police LAC #kingscross #staff #police #LAC #taskforce #pigs #dogs #ftp #ftw #baws #nofilter".
93. Several days later, Police engaged with the venue, which resulted in the Licensee posting a retraction message on the venue's (Déjà Vu) Facebook page. The Licensee told Police that the photograph was not posted on the venue's Facebook page and was the result of a rogue staff member who undertook these actions of his own accord and with respect to which the Licensee had no knowledge. It is the Complainant's contention that the Licensee only posted the retraction after Police engaged with him about the matter. Furthermore, the Licensee, the Premises, Dominic Kaikaty and other staff members were "tagged" in the photograph via Facebook and had "liked" the photo and caption when it was originally posted.

Particular 13

94. John Barakat's attitude toward regulatory authorities has been less than professional at times. This is evident from his interaction with OLGR Inspectors on 7 September 2013 when a staff member was observed to serve liquor without an RSA competency card. When the matter was brought to the attention of Mr Barakat, he became aggressive and abusive toward OLGR Inspectors, banging his hands on the counter and shouting during the inspection.

Particular 14

95. John Barakat has permitted the Premises to be managed and operated by Dominic Kaikaty, who has previously, as the licensee of the Eye Bar in Kings Cross, been found by the Authority not to be a fit and proper person to hold a licence under the Act and has been disqualified by the Authority from holding a liquor licence for five years commencing on 6 December 2011. Due to the above disqualification, Dominic Kaikaty was not appointed as an [approved] manager under section 66 of the Act, but was engaged in the position of a general manager which the Complainant contends satisfies the definition of a "close associate" within the meaning of section 5 of the *Gaming and Liquor Administration Act 2007*.

Particular 15

96. At about 7:00pm on 25 January 2014, a patron of the Premises violently assaulted a pedestrian walking in the vicinity of the Premises. As a result of the assault, the victim

sustained bleeding and swelling to his face. The patron was arrested a short time later and observed to be heavily intoxicated and under the influence of both alcohol and a prohibited drug.

97. Enquiries by Police reveal the patron was consuming alcohol and smoking inside the Premises for a period of approximately one hour before the assault. Whilst inside, the patron was observed to have been talking with Dominic Kaikaty and the business owner.
98. On 17 February 2014, Dominic Kaikaty attended the Kings Cross Police Station to provide the CCTV footage requested by Police for the incident. Mr Kaikaty was hesitant in complying with the Notice as he advised Police that the POI involved in the assault was a "friend". Mr Kaikaty also requested Police drop the charges against the Licensee if he handed over the CCTV footage. Police are continuing to investigate this matter.

Particular 16

99. At about 12:55am on 2 February 2014, Police were patrolling Kellett Street, Potts Point when they observed a patron run out of the Premises and vomit onto the footpath whilst he held on to a light pole to keep himself upright. Police approached the patron and report he was well affected by alcohol as he was stumbling, unsteady on his feet, slurring his speech and continuously vomiting. The patron was issued with a Move-on Direction, however he was later identified urinating in a public place a short distance from the Premises.
100. On 15 February 2014, Police attended the Premises and inspected the incident register. Police report that the incident register was fraudulently altered to make reference to the intoxication incident. Police are continuing to investigate this incident for possible breaches under the Act.

GROUND EIGHT

101. **Ground Eight – s.139(3)(r)**

That public entertainment has been conducted on the licensed premises otherwise than in accordance with any requirements under the *Environmental Planning and Assessment Act 1979* relating to the use of the premises for public entertainment.

Particular 1

102. On 20 December 2000, development consent U00-00926/AFB/FMM/116227 was issued by the then South Sydney Council for the internal fit-out and use of the Premises as a restaurant and place of public entertainment.

Particular 2

103. The development consent was made subject to development consent conditions which included restrictions on noise from patrons and amplified entertainment.

Particular 3

104. On 2 July 2013 at 1:17am, as a result of an inspection of the Premises by a Council Ranger, John Barakat was issued with a Noise Abatement Direction under the provisions of section 276 of the *Protection of the Environment Operations Act 1997*.

Particular 4

105. On 19 July 2013 at 11:35pm, Council received a complaint from a nearby resident alleging there were unacceptable levels of noise and amplified music coming from the Premises. Council Rangers inspected the complainant's residence and, after conducting observations of the Premises, determined the level of noise was not in accordance with the development consent issued on 20 December 2000.

Particular 5

106. On 4 August 2013 at 12:03am, Council Rangers attended the Premises after receiving a complaint from a nearby resident alleging there were unacceptable levels of noise and amplified music coming from the Premises. Council Rangers inspected the complainant's residence and noted the level of noise being emitted from the Premises was causing the floor to vibrate. After conducting noise testing, Council Rangers determined the level of noise was not in accordance with the development consent issued on 20 December 2000.

Particular 6

107. Section 76A(1)(b) of the *Environmental Planning and Assessment Act 1979* provides that specified development may not be carried out except in accordance with consent, and the relevant environmental planning instrument. Development consent was required to be obtained in relation to this development under the relevant environmental planning instruments, being the *Leichhardt Local Environmental Plan 2000*.

[The Authority notes that the *Leichhardt Local Environmental Plan 2000* was superseded by the *Sydney Local Environmental Plan 2012* in December 2012.]

108. Section 125(1) of the *Environmental Planning and Assessment Act 1979* provides that a person who fails to comply with the requirements of that Act is guilty of an offence.

Particular 7

109. City of Sydney Council has advised the Complainant that the above offences were heard before the Downing Centre Local Court on 29 January 2014 and the business owner, Mr Timothy Bali, was convicted of both offences (occurring on 20 July 2013 and 4 August 2013) and was fined \$16,200.

Particular 8

110. On 10 and 15 December 2013, Police attended the Premises and observed that the Premises breached a development consent condition which imposes a maximum capacity of 78 persons (including staff). The business owner, Timothy Bali, was given a warning for the breach identified on 10 December 2013 and a Penalty Notice for the offence identified on 15 December 2013.

Particular 9

111. At 10:50pm on 28 February 2014, an authorised officer issued the business owner, Timothy Bali, with a Noise Abatement Direction for the level of amplified music emitted by the Premises.

GROUND NINE

112. **Ground Nine – s.139(3)(s)**

That the licence has not been exercised in the public interest within the meaning of section 139(3)(s).

Breaches of the Act and Regulation

Particular 1

113. Since commencing as licensee in respect of the Premises on 25 January 2013, John Barakat has failed to comply with a number of licence conditions and other provisions of the Regulation and has incurred fines in relation to the above contraventions. In respect of the above contraventions, Police and OLGR officers have issued the Licensee with seventeen (17) Penalty Notices, four (4) Court Attendance Notices and three Compliance Notices.

Particular 2

114. John Barakat has permitted the Premises to be used as a bar/nightclub where the primary purpose of the business carried out on the Premises is the sale and supply of liquor, in contravention of the condition imposed by clause 19(1)(d) of the Regulation to which the primary service authorisation held by John Barakat under the Act is subject. The Complainant refers to the matters set out in Ground Three of this Complaint in support of this Particular.

Breaches of the *Gaming and Liquor Administration Act 2007*

Particular 3

115. Since commencing as licensee in respect of the Premises on 25 January 2013, John Barakat has failed to comply with two Notices to Produce issued under section 21 of the *Gaming and Liquor Administration Act 2007*. In respect of the above contraventions, OLGR has issued the Licensee with two Court Attendance Notices.

Promotional activities likely to encourage misuse or abuse of liquor

Particular 4

116. Since John Barakat commenced as licensee of the Premises, there have been promotional activities carried on through the Premises' Facebook page and through "spruikers" which, having regard to the complete circumstances, are likely to encourage misuse and abuse of liquor such as binge drinking and excessive consumption. Details of these promotional activities are provided in Ground Six of this Complaint. In respect of the above promotional activities outlined in Ground Six, OLGR has issued the Licensee with two Notices under section 102A and one direction under section 75 of the Act.

Acts of violence

Particular 5

117. The Complainant relies upon the matters set out in Particulars 8, 9 and 10 of Ground Seven in support of this Particular.

Drug related matters

Particular 6

118. On 10 May 2013, when apprehended by Police for an assault on a pedestrian whilst undertaking duties for the Premises, Mr Jesse Brewer [who the Authority notes is a staff member engaged by the Premises to distribute promotional material] was found in possession of marijuana. Police advised the Complainant that Brewer was convicted of an offence under the *Drug Misuse and Trafficking Act 1985*.

Particular 7

119. On 1 March 2013, Dominic Kaikaty, while apprehended by Police in the Premises in relation to a Warrant, was subjected to a search by Police. Police located in his possession six small re-sealable bags, each containing a quantity of cocaine. Consequently, Dominic Kaikaty was convicted of an offence under the *Drug Misuse and Trafficking Act 1985*.

Particular 8

120. During an inspection of the Premises on 30 March 2013, OLGR Inspectors Kate Hanley and Karen McCluskey observed a patron of the Premises to be in possession of what appeared to be a prohibited drug.

Particular 9

121. During an inspection of the Premises on 24 May 2013, OLGR Inspectors James Shand and Leonie Gibson observed a person who represented herself as an off-duty staff member to converse with a male patron in relation to what appeared to be a prohibited drug.

Particular 10

122. On 22 March 2013, Police were conducting a covert operation within the Kings Cross Local Area Command when they commenced negotiations with Jesse Brewer for the supply of cocaine. At the time, Jesse Brewer was employed as a promoter with the Premises and was engaging in these duties in the Kings Cross Precinct.
123. Jesse Brewer and covert Police returned to the Premises and Police were supplied with a small bag of cocaine. Jesse Brewer was later convicted of an offence under the *Drug Misuse and Trafficking Act 1985*.

Particular 11

124. Between August 2013 and December 2013, Police conducted a covert operation within the Kings Cross Local Area Command, targeting employees of licensed premises. During this operation, Mr Storm Graham was employed by the Premises as a venue promoter and on three separate occasions supplied covert Police with prohibited drugs inside the Premises.

Other matters

Particular 12

125. John Barakat employed Mr David Kaikaty (brother of Dominic Kaikaty) and Jesse Brewer to engage in spruiking activities for the Premises. Police have also identified David Kaikaty and Jesse Brewer on the Premises conducting duties at other times. David Kaikaty and Jesse Brewer were involved in a physical altercation with a member of the public whilst conducting duties on behalf of the venue. Jesse Brewer was later found in possession of a prohibited drug. On a separate occasion, David Kaikaty abused and threatened Police in the Kings Cross Precinct.

Particular 13

126. John Barakat has permitted the Premises to be managed and operated by Dominic Kaikaty, who has previously, as the licensee of the Eye Bar in Kings Cross, been found by the Authority not to be a fit and proper person to hold a licence under the Act, and has been disqualified by the Authority from holding a licence for five years commencing on 6 December 2011. Due to the above disqualification, Dominic Kaikaty was not appointed as a manager of the Premises pursuant to section 66 of the Act, but was engaged in the position of a "general manager", which the Complainant contends satisfies the definition of a "close associate" within the meaning of section 5 of the *Gaming and Liquor Administration Act 2007*.

COMPLAINANT'S RECOMMENDATIONS ON DISCIPLINARY ACTION

127. Without purporting to recount here all of the submissions and attachments provided by the Complainant, the Complaint letter dated 13 March 2014 makes the following key submissions in support of the Complainant's request for disciplinary action:

Complainant's Submissions on Grounds One to Five

128. The Complainant's request for disciplinary action in respect of the above Grounds is warranted as the Licensee, John Barakat, has been convicted for offences under the Act and has failed to comply with various licence conditions and other requirements under the Act and Regulation.
129. The Complainant notes that the Licensee has been convicted of eight offences under the Act and Regulation at the Downing Centre Local Court.
130. The Complainant notes that since commencing as licensee of the Premises, during the period between 25 January 2013 and 4 March 2014, the Licensee has been issued with a total of seventeen (17) Penalty Notices, four Court Attendance Notices and three Compliance Notices issued by Police and OLGR. The majority of the Notices have been issued in respect of instances of the Licensee failing to comply with conditions of the licence, most of which are special conditions under Part 5A of the Regulation. The Notices have also been issued for other serious breaches under the Act including supplying liquor to minors, supplying liquor to intoxicated persons and failing to comply with a direction of a delegate of the Secretary. Alarming, the first failure to comply with a licence condition was identified by Police on 26 January 2013, the day after John Barakat commenced as licensee of the Premises.
131. The Complainant submits that in addition to the above contraventions, inspections conducted at the Premises by Police on 25 May 2013 and 2 June 2013 and by OLGR

officers on 8 June 2013 have detailed instances where the Premises was operated as a bar with the primary purpose of the business or activity carried out on the Premises being the sale and supply of liquor. OLGR has issued a Court Attendance Notice to the Licensee for a breach of the condition imposed by clause 19(1)(d) of the Regulation to which the primary service authorisation conferred on the licence is subject.

132. The Complainant submits that the Licensee has failed to comply with a direction made by a delegate of the Secretary under section 75 of the Act. The direction prohibited spruiking activities being conducted more than 3 metres from the entrance to the Premises. The direction was issued to ensure the Licensee retained appropriate supervision of spruiking activities conducted by staff of the Premises, and fundamentally, to reduce the risk of harm to the public – both from violent acts (which had previously been committed by persons engaged by the venue to conduct such activities) and harm from the misuse and abuse of liquor. The Complainant submits that a "serious example" of the harm posed to the public by this activity is the incident involving intoxicated minors on the Premises on 1 August 2013. Notably, the minors were enticed to attend the venue after a venue promoter engaged with them in the Kings Cross Precinct and handed them a promotional card.
133. In relation to the incident where the Licensee failed to comply with the section 75 direction, the Complainant submits that it is "concerning" that (the director of the Business Owner) Mr Timothy Bali, was the individual identified as conducting the spruiking activities (approximately 80 metres from the Premises). This behaviour throws significant doubt on the management of the Premises and the Premises' overall compliance culture.
134. The Complainant submits that the "wide spectrum" of underlying offences, including serious breaches involving the supply of liquor to minors and intoxicated patrons, evidences a "general disregard" for the liquor legislation by the Licensee. The risks associated with this disregard are "amplified" by the fact that the licence is operated in the Kings Cross Precinct, which is renowned for high levels of alcohol related violence and anti-social behaviour.
135. Without purporting to recount here all of the submissions and attachments provided by the Complainant, the Complaint letter dated 13 March 2014 makes the following key submissions in support of the Complainant's request for disciplinary action:

Complainant's Submissions on Grounds One to Five

136. The Complainant's request for disciplinary action in respect of the above Grounds is warranted as the Licensee, John Barakat, has been convicted for offences under the Act and has failed to comply with various licence conditions and other requirements under the Act and Regulation.
137. The Complainant notes that the Licensee has been convicted of eight (8) offences under the Act and Regulation at the Downing Centre Local Court.
138. The Complainant notes that since commencing as licensee of the Premises, during the period between 25 January 2013 and 4 March 2014, the Licensee has been issued with a total of seventeen (17) Penalty Notices, four (4) Court Attendance Notices and three (3) Compliance Notices issued by Police and OLGR. The majority of the Notices have been issued in respect of instances of the Licensee failing to comply with conditions of the licence, most of which are special conditions under Part 5A of the Regulation. The

Notices have also been issued for other serious breaches under the Act including supplying liquor to minors, supplying liquor to intoxicated persons and failing to comply with a direction of a delegate of the Secretary. Alarming, the first failure to comply with a licence condition was identified by Police on 26 January 2013, the day after John Barakat commenced as licensee of the Premises.

139. The Complainant submits that in addition to the above contraventions, inspections conducted at the Premises by Police on 25 May 2013 and 2 June 2013 and by OLGR officers on 8 June 2013 have detailed instances where the Premises was operated as a bar with the primary purpose of the business or activity carried out on the Premises being the sale and supply of liquor. OLGR has issued a Court Attendance Notice to the Licensee for a breach of the condition imposed by clause 19(1)(d) of the Regulation to which the primary service authorisation conferred on the licence is subject.
140. The Complainant submits that the Licensee has failed to comply with a direction made by a delegate of the Secretary under section 75 of the Act. The direction prohibited spruiking activities being conducted more than three metres from the entrance to the Premises. The direction was issued to ensure the Licensee retained appropriate supervision of spruiking activities conducted by staff of the Premises, and fundamentally, to reduce the risk of harm to the public – both from violent acts (which had previously been committed by persons engaged by the venue to conduct such activities) and harm from the misuse and abuse of liquor. The Complainant submits that a "serious example" of the harm posed to the public by this activity is the incident involving intoxicated minors on the Premises on 1 August 2013. Notably, the minors were enticed to attend the venue after a venue promoter engaged with them in the Kings Cross Precinct and handed them a promotional card.
141. In relation to the incident where the Licensee failed to comply with the section 75 direction, the Complainant submits that it is "concerning" that (the director of the Business Owner) Mr Timothy Bali, was the individual identified as conducting the spruiking activities (approximately 80 metres from the Premises). This behaviour throws significant doubt on the management of the Premises and the Premises' overall compliance culture.
142. The Complainant submits that the "wide spectrum" of underlying offences, including serious breaches involving the supply of liquor to minors and intoxicated patrons, evidences a "general disregard" for the liquor legislation by the Licensee. The risks associated with this disregard are "amplified" by the fact that the licence is operated in the Kings Cross Precinct, which is renowned for high levels of alcohol related violence and anti-social behaviour.

Complainant's Submissions on Ground Seven

143. The Complainant submits that John Barakat is "not a fit and proper person to hold a liquor licence". In support of this submission, the Complainant relies upon the common law principles on fitness and propriety of a licensee.
144. The question of fitness and propriety is not at large but should be directed to the nature and purpose of the activities that a person undertakes or will undertake. A consideration of whether a person is fit and proper involves an assessment of their knowledge, honesty and ability in the context of the role they are seeking to undertake. In *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321, Toohey and Gaudron JJ said at 380:

...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 the 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 indication of likely future conduct) or reputation (because it provides 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.

145. Matters such as the person's character, reputation, criminal history, the nature of offences and any other improper conduct are matters to be evaluated in determining whether that person is fit and proper to carry on a profession or occupation. In addition, being fit and proper means having a requisite knowledge of the Act under which the person is to be licensed and obligations and duties imposed thereby (*Ex parte Meagher* (1919) 36 WN 175 and *Sakellis v Police* (1968) 88 WN (pt1) (NSW) 541).
146. The Complainant submits that in the short period since John Barakat became licensee of the Premises, he failed to comply with a number of licence conditions on numerous occasions. He failed to comply with other requirements under the Act and the Regulation and has failed to comply with a condition of the primary service authorisation to which the licence is subject, in that the Premises is being run as a bar where it would appear that the primary purpose of the business was the sale and supply of liquor. The Complainant contends that the Licensee has committed the "most serious" offences under the Act, including supplying liquor to minors and intoxicated persons.
147. The Complainant submits that John Barakat, whilst licensee of the Premises, has also failed to comply with requirements under the *Gaming and Liquor Administration Act 2007* and the *Environmental Planning and Assessment Act 1979*.
148. In addition, the Complainant submits that the irresponsible conduct of promotional activities; the attitude portrayed to regulatory authorities (including the publication of offensive material on social media sites promoting negative comments toward Police); the instances of staff and patrons offering or being in possession of prohibited drugs; and the attempt to initially conceal an incident in which a patron was assaulted on the Premises demonstrate the Licensee's inability to adequately supervise and control the activities at the Premises in accordance with the liquor legislation and the expectations, needs and aspirations of the community.
149. The Complainant submits that John Barakat has not demonstrated the degree of knowledge of the law or competence that would be expected of a liquor licensee. The risks of harm presented to the community from the respondent's deficiencies is amplified by the fact that he is operating a late trading licence in a high risk precinct that is renowned for a higher level of alcohol related violence and anti-social behaviour.

Complainant's Submissions on Ground Eight

150. The Complainant submits that John Barakat has not only demonstrated a continued history of non-compliance with liquor legislation, including special licence conditions introduced by the NSW Government to tackle alcohol related violence in the Kings Cross Precinct, but also a continued history of non-compliance with the *Environmental Planning and Assessment Act 1979*.

151. Upon review of the material provided by City of Sydney Council and Police, it is evident that the Licensee and the director of the Business Owner have shown a "total disregard" for the conditions of the Premises' development consent, namely, restrictions on the level of noise and amplified music that can be emitted. This disregard has caused undue disturbance to surrounding residents. The dismissive attitude displayed by Premises staff is evident from their responses to investigating Council Rangers in saying: "...What do they [surrounding residents] expect – they live in a nightclub district".
152. The Complainant submits that public entertainment has been conducted on the licensed premises otherwise than in accordance with any requirements under the *Environmental Planning and Assessment Act 1979* relating to the use of the Premises for public entertainment. This action has not only caused undue disturbance to the surrounding community, but signals a permissive environment and demonstrates a poor compliance culture.

Complainant's Submissions on Ground Nine

153. The Complainant submits that the licence is not exercised in the public interest when considering the objects of the Act, identified in section 3 as follows:

3 *Objects of Act*

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

- (a) *to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community,*
- (b) *to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality,*
- (c) *to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.*

(2) *In order to secure the objects of this Act, each person who exercises functions under this Act (including a licensee) is required to have due regard to the following:*

- (a) *the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),*
- (b) *the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,*
- (c) *the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.*

154. The Complainant submits that the breaches of licence conditions (including special licence conditions under Part 5A of the Regulation), non-compliance with requirements under the Act and Regulation, failing to comply with directions under the Act and committing offences under the *Gaming and Liquor Administration Act 2007* and the *Environmental Planning and Assessment Act 1979* are inconsistent with the expectations and needs of the community.
155. The Complainant notes that this Complaint refers to a number of instances where the primary purpose of the Premises was the sale of liquor in contravention of the condition to which the primary service authorisation attaching to the licence is subject. Reference is made to the fact that on a number of occasions, the Premises was found not to be equipped to supply a genuine meal. Further, the manner in which the Premises operate is not conducive to a typical restaurant atmosphere. The Premises focusses its trade to the late evenings of weekends, therefore attracting a large patronage which has no intention of consuming a meal. During a number of inspections, Police and OLGR have found the Premises to be heavily congested with patrons standing and consuming liquor.

The Premises manager, Dominic Kaikaty, has even informed Council Rangers that the Premises operates more like a bar during late trade.

156. The cheap liquor offered at the Premises and promotions carried out by the Premises are contrary to risk assessment advice provided in the OLGR Guidelines and encourages irresponsible, rapid and excessive consumption of alcohol. Such practices are not in the public interest.
157. Advertising cheap drinks in order to encourage attendance at the Premises in an area known to have high rates of alcohol related crime and anti-social behaviour accompanied by slogans on the Premises' Facebook page such as "Keep calm. It's Friday. Get drunk", does not encourage responsible attitudes and practices toward the promotion, sale, supply, service and consumption of liquor.
158. The targeting of "single" women for a "free shot" in the context of a venue geared toward providing cheap liquor in an area associated with anti-social behaviour and alcohol related crime indicates a disregard for responsible and prudent practices.
159. The image of an animated picture depicting girls engaging in what appears to be illicit drug use inside toilets which was posted on the Premises' Facebook page, signals an environment which may encourage the use of drugs on premises, is unduly permissive, demonstrates a disregard for responsible conduct of licensed premises in accordance with community expectations and signals an appetite for high risk behaviour by patrons.
160. This Complaint also refers to instances where staff have either been charged by Police or convicted by a Court for drug related matters identified inside the Premises. The Complaint also refers to instances where OLGR Inspectors have observed patrons in possession of what Inspectors believed to be a prohibited drug with an off-duty staff member who attempted to facilitate the purchase of a prohibited drug for a patron.
161. This Complaint also refers to acts of violence on the Premises and by persons engaged by the Premises to distribute promotional material. Relevantly, staff at the Premises initially attempted to conceal an incident involving an act of violence which occurred on or about midnight on 3 April 2013.
162. The recidivism of the Licensee's offending and irresponsible attitude toward liquor promotions is illustrative of the disregard the Licensee displays toward the liquor regulations and the OLGR Guidelines. The Complainant submits that it is clear that the operation of the licence presents an "enormous and unacceptable risk" to public safety.
163. For the reasons set out above, the Complainant concludes that the Authority should take the following disciplinary action against John Barakat under section 141 of the Act:
 - (i) In respect of Grounds Two to Seven and Ground Nine, it is requested that the Authority order, under section 141(2)(c), Mr John Barakat to pay, within such time as is specified in the Order, a monetary penalty not exceeding 200 penalty units
 - (ii) In respect of Grounds One to Nine inclusive, it is recommended that the Authority cancel, under section 141(2)(a), the licence or alternatively, cancel, under section 141(2)(d), the primary service authorisation and extended trading authorisation held by John Barakat as licensee under the Act
 - (iii) In respect of Grounds One to Nine inclusive, it is requested that the Authority order, under section 141(2)(l)(i) of the Act, that the Licensee pay the amount of any costs

incurred by the Secretary in carrying out any investigation or enquiry under section 138 of the Act in relation to John Barakat.

164. The Complainant notes that a separate disciplinary complaint under section 139 of the Act has been made to the Authority in relation to Mr Dominic Kaikaty, who the Complainant contends is a "close associate" of the Licensee, John Barakat.

SUBMISSION FROM JOHN BARAKAT DATED 1 AUGUST 2014

165. On 17 April 2014, the Authority issued a notice to the Licensee, Mr Barakat, inviting him to show cause as to why disciplinary action should not be taken against him on the basis of all the Grounds specified in the Complaint. That Show Cause Notice requested any written submissions by 15 May 2014.
166. On 12 May 2014, Mr Ronny Malouf, a solicitor, requested an additional 28 days from that date to make submissions due to his receiving late instructions from the Licensee. Mr Malouf advised that he was also acting for Mr Dominic Kaikaty in relation to the separate complaint against him. That extension was granted by the Authority's Chief Executive.
167. On 10 June 2014, Mr Malouf sought a further extension of 21 days. The Chief Executive granted that further extension on the basis that Mr Malouf file submissions addressing the merits of the case against his client by 1 July 2014.
168. However, Mr Malouf failed to make any submissions by this time and his latest request was to make submissions by 21 July 2014.
169. Contrary to Mr Malouf's representations to the Authority's General Counsel, no submissions were made by him, notwithstanding the repeat extensions of time granted to him.
170. On 23 July Mr Malouf was given a final warning to complete submissions by 28 July 2015. On 28 July 2015 Mr Malouf provided late advice to the Authority that his clients (Mr Barakat and Mr Kaikaty) had ceased instructing him. Mr Malouf was advised that his clients had until 1 August 2015 to make submissions directly to the Authority.
171. On 1 August 2014, Mr Barakat provided by email to the Authority what purported to be his own submissions to the Authority addressing each Ground of the Complaint.

[The Authority notes that these submissions refer to Mr Barakat in the third person.]

172. Several annexures were provided to these submissions of 1 August 2014, including email correspondence between himself and Police, the Authority and OLGR; photographs of various parts of the Premises and other miscellaneous items; screenshots of the Premises' Facebook page and Facebook event pages; responses to previously issued show cause notices from the Secretary regarding alleged non-compliance with directions under section 75 and section 102A of the Act; the drinks menu for the Premises; the pricing structure for drinks at the Premises and comparisons with other venues; promotional material used by staff at the Premises and several different versions of the Plan of Management implemented by the Premises.
173. Briefly, Mr Barakat's observations and contentions in response to the Complaint may be summarised as follows:

- (i) Mr Barakat is a father of two with a current Security Master Licence under the name "All Class Security Pty Limited". His appointment as licensee of the Premises was his first role as the licensee of a licensed venue
- (ii) The Premises is currently closed and Mr Barakat does not wish to pursue another position as a liquor licensee. He is currently returning to security operations
- (iii) Mr Barakat contends that declaring him to be "not a fit and proper person to hold a liquor licence" or disqualifying him from holding a licence will create a "devastating chain reaction" that will ultimately place him in unemployment and render him unable to hold a security licence
- (iv) Mr Barakat submits that he is a fit and proper person, however it is "unfortunate" that he took this role as licensee during a time when "...personal and financial issues collided", making it impossible for him to be present on the Premises at all times and for him to "...exude his full potential"
- (v) Mr Barakat submits that while he is "...fully aware of his responsibilities for any issues" surrounding a liquor licence over which he has control, it is "important" for the Authority to understand that most of these issues identified by the Complainant occurred at a time when he "...was not present, nor in full control of [the] Premises". Mr Barakat states that he is now left to pay a "...multitude of fines and legal fees"
- (vi) Mr Barakat contends that any further action against him is "...completely unwarranted and unnecessary"
- (vii) Mr Barakat contends that local authorities "would agree" that his presence on the Premises would mean that there were "no issues" and that his presence on the Premises was "highly encouraged". He contends that he is "knowledgeable and understanding" of the requirements and responsibilities of a licensee and "...always ensured that strict compliance was in order"
- (viii) Mr Barakat submits that his "inability" to reconcile his "...personal, financial and licensing duties" was a "hindrance" and that it would be a "grave injustice" should he be "penalised" any further.

174. The specific submissions made by Mr Barakat in response to each Ground of Complaint may be summarised as follows:

Barakat on GROUND ONE

175. Mr Barakat notes that he has been convicted of offences under the Act and offences prescribed by the Regulation. However, he submits that all of these offences relied upon by the Complainant are "...the most technical offences and not of the more serious kind". He submits that these offences are "one-off" offences that do not show a "...pattern of frequency or re-occurring [*sic*] issues".

Barakat on Particular 1 of Ground One

176. This incident involved an alleged assault and injury occurring on the Premises on 3 April 2013 and a failure of the Licensee to contact Police immediately and preserve the crime scene. Mr Barakat contends that this occurred when he was not present at the Premises. Mr Barakat submits that there was "...no issue of intoxication or whether this matter was alcohol related". Mr Barakat submits that Police attended the Premises

shortly after this incident occurred and "...were given full cooperation and provided with CCTV footage on the spot". He contends that this matter was "later rectified" by ensuring the presence of a security guard on extra days of the week, and "has never occurred again". Mr Barakat notes that he elected to have this matter heard at the Downing Centre Local Court and was issued a penalty of \$1,100. Mr Barakat submits that the magistrate did not give him a "greater penalty" which could have been up to \$11,000 or 12 months' imprisonment. Mr Barakat submits that the seriousness of the offence is reflected in the determined conviction penalty by the Court, which is of the "lowest scale possible".

Barakat on Particular 2 of Ground One

177. This incident involved the service of liquor in glass vessels contrary to a licence condition. Mr Barakat contends, according to CCTV footage, that Police attended the Premises at around 12:08am, not 12:25am as stated by the Complainant. Mr Barakat submits that the employee who served shots to three patrons during the weekend late trading period conceded that she had made an "honest mistake". Mr Barakat elected to have this matter heard at the Downing Centre Local Court and was issued a fine of \$550. He submits that the seriousness of the offence is reflected in the determined conviction penalty, which in this case, is said to be "lower than the lowest possible scale" - the lowest being \$1,100 and the highest being \$11,000 or up to 12 months' imprisonment.

Barakat on Particular 3 of Ground One

178. Mr Barakat submits that this matter concerned the Licensee's alleged failure to adequately maintain CCTV systems as detected by Police on 20 April 2013. Mr Barakat describes this as "one of the most confusing" matters as the only issue mentioned by Police during that business inspection was the CCTV camera displaying the incorrect time stamp, which was one hour ahead of real time. Mr Barakat notes that Police issued a Compliance Notice to the Licensee in relation to that matter. Mr Barakat contends that between 26 January 2013 and 20 April 2013, the Premises' CCTV camera positions and systems "did not change at all", however as Licensee he was still prosecuted almost four months after the inspection for an issue that "...could have been rectified on the first day", had it been brought to his attention that this particular viewing angle did not meet the requirements of the licence condition. Mr Barakat contends that when this was brought to his attention, it was "...immediately changed in the presence of Police to their satisfaction", but Police still issued a Penalty Notice. Mr Barakat elected to have this matter heard at the Downing Centre Local Court and was issued a fine of \$550. Mr Barakat submits that the seriousness of the offence is reflected in the determined conviction penalty, which he describes as "lower than the lowest possible scale" - the lowest being \$1,100 and the highest being \$11,000.

Barakat on Particular 4 of Ground One

179. Mr Barakat submits that this incident concerned the service of liquor in glass vessels contrary to a licence condition on 25 April 2013. Mr Barakat submits that the two patrons involved were "unfortunately" served two glass bottles of beer by a "trainee employee", contrary to a condition of the licence mandating that drinks sold for consumption on the Premises during the general late trading period not be served in a glass vessel. Mr Barakat refers to a Plan of Management for the Premises dated January 2013 and advises that since the Premises commenced trading, "...all glassware has been made of polycarbonate plastic". Mr Barakat elected to have this matter heard at the Downing Centre Local Court and was issued a fine of \$1,100. He submits that the seriousness of the offence is reflected in the determined conviction penalty, which he describes as the "lowest possible scale" – the lowest being \$1,100 and the highest being \$11,000.

Barakat on Particular 5 of Ground One

180. Mr Barakat submits that this matter concerned the failure to display a mandatory "under 18" sign on 7 April 2013. Mr Barakat submits that this matter has "baffled me completely" as the sign was only two metres away from where the front service counter was positioned, and the slant of the door was in such a position that the sign could clearly be seen. He elected to have this matter heard at the Downing Centre Local Court and was issued a fine of \$300. Mr Barakat submits that the seriousness of the offence is reflected in the determined conviction penalty, which he describes as "lower than the lowest possible scale" - the lowest being \$1,100 and the highest being \$11,000.

Barakat on Particular 6 of Ground One

181. Mr Barakat submits that this matter involved another failure to display a mandatory "under 18" sign. Mr Barakat describes this as "...as ridiculous as [the offence described above in Particular 5]". He elected to have this matter heard at the Downing Centre Local Court and was issued a fine of \$300. Mr Barakat submits that the seriousness of the offence is reflected in the determined conviction penalty, which he describes as "lower than the lowest possible scale" - the lowest being \$1,100 and the highest being \$11,000.
182. Mr Barakat argues that all of the above offences [alleged in Ground One, Particulars 1-6] are "of the lowest scale" and are "...simple offences that [have] caused no harm or threat to the health and safety of the community".

Barakat on Particular 7 of Ground One

183. Mr Barakat submits that this incident involved the supply of liquor to minors on the Premises on 1 August 2013. He contends that he "...does not tolerate this sort of behaviour" (minors on the Premises) and "is loathed" [*sic*] at the fact that this has occurred on a licensed premises for which he is responsible. Mr Barakat contends that he was not present on the Premises at the time of the incident, nor was Mr Bali (director of the Business Owner) or the appropriate management staff. Mr Barakat contends that the incident occurred on a Thursday, which is the Premises' "most quiet" day and at a time when there was only one staff member working in the kitchen and only one staff member at the bar/on the floor. Mr Barakat submits that he was "...let down and embarrassed" by the employee who served alcohol to the minors. Mr Barakat submits that although he is no longer a licensee, he "...will endeavour to keep this as a lesson learned and hopes that the young males involved are safe and looked after". Mr Barakat elected to have this matter heard at the Downing Centre Local Court and was issued a fine of \$1,100 for each of the two offences. He submits that the seriousness of the offence and the Court's perception of the context surrounding the circumstances of this offence are reflected in the penalty, which he describes as the "lowest possible scale" - the lowest being \$1,100 and the highest being \$11,000.
184. Mr Barakat submits that it is "important" to note the penalties imposed by the Local Courts as the Courts have the power to impose penalties "...up to 10 times the original amount" of a Penalty Notice issued by Police, in addition to the options of issuing Community Service Orders, suspended sentences, imprisonment or disqualifying a licensee for up to 12 months. Mr Barakat further submits that the Court has not exercised its power to increase the penalty in relation to the above matters.
185. Mr Barakat submits that as a result of the above matters, he has accumulated \$6,100 in fines, plus Court costs and legal fees. He argues that it is "completely unwarranted" to

"unduly penalise" him any further and that "...none of the above constitutes a Ground for this Complaint".

Barakat on GROUND TWO

186. Mr Barakat argues that for this Ground to be established there must be a "frequent amount" of failures to comply with any of the conditions to which the license is subject and a "complete disregard" for the licensing legislation. Mr Barakat submits that the Complainant has failed to establish this Ground.
187. Mr Barakat makes submissions in response to each particular of Ground Two which may be summarised as follows:

Barakat on Particular 2 of Ground Two

188. Mr Barakat submits that on the very first trading day, being 26 January 2013, Police were invited to the Premises by the head of the security company to audit the venue before it commenced trading. He submits that there was an "error" with the time displayed on the CCTV cameras, which was "rectified on the spot".
189. Mr Barakat submits that an issue concerning his own RSA Certificate arose in that Mr Barakat's competency card was "not yet on him". He submits that there was a "debate" at that time as to whether interim RSA Certificates would suffice. Mr Barakat contends that Police indicated that they would return and advise him on this matter, but they "never did". Mr Barakat submits that he is "surprised" that this incident has been "listed as a Compliance Notice" and contends that Compliance Notices were "never issued" in respect of either matter and that these matters were "...simply a discussion" between Mr Barakat and Police.

Barakat on Particular 3 of Ground Two

190. Mr Barakat submits that this matter arose from a business inspection made by Police on 30 March 2013. It is currently before the Court and unlike other matters where Mr Barakat has pleaded guilty, a "not guilty" plea has been entered in respect of this matter, which has already been part heard. Mr Barakat submits that this matter should not be taken into account by the Authority "until a final verdict is made". He submits that the alleged breaches of the Kings Cross special licence conditions which are the subject of this matter (such as inadequate CCTV, no clearly identifiable RSA Marshal, the sale or supply of shots after midnight and the sale or supply of liquor in glass vessels after midnight) occurred on Good Friday and at a time when Mr Barakat was not present on the Premises. Mr Barakat contends that (the director of the Business Owner) Mr Timothy Bali, allowed drinks to be sold on the Premises without the availability of food and contrary to the Kings Cross special licence conditions. He contends that a finding that these breaches were committed turns upon whether or not alcohol was sold that evening, and submits that these charges will "fail to be proven" as the Premises was not trading at that particular time. Mr Barakat "anticipates" that the Court will return with a "not guilty" verdict in respect of these charges.

Barakat on Particular 4 of Ground Two

191. Mr Barakat submits that this matter concerned a failure with regard to compliance with CCTV requirements occurring on 7 April 2013. Mr Barakat contends that this matter is similar to the incident outlined in Particular 3 of Ground One, whereby Police have made numerous inspections and various requests for CCTV footage; yet it was not until

4 April 2013, some three months after operating the business, that the issue was raised by Police. Mr Barakat submits that the matter was dealt with by way of Compliance Notice and draws a comparison with the matter outlined in Particular 3 of Ground One, which was "...dealt with harshly by way of Penalty Notice". Mr Barakat "understands" that it is his responsibility to detect these issues, but submits that if Police were unable to detect such issues on numerous occasions, then Mr Barakat can "...hardly be declared [either] ignorant [or] incompetent".

Barakat on Particular 5 of Ground Two

192. Mr Barakat submits that this matter involved an intoxicated patron on the Premises on 23 June 2013. He submits that it is the venue's "one and only" Penalty Notice issued in respect of intoxication on the Premises during the entire 15 month period in which Mr Barakat held the licence. Mr Barakat contends that he was "not present" on this particular day and "could not comment" on this matter to Police. He submits that the female patron in question had been detected as intoxicated by an employee of the Premises and was not served any beverages on the Premises that evening. He contends that the patron was "given time to recuperate" before being ejected from the Premises and it is "unfortunate" that Police arrived while staff "...thought they were performing a duty of care". Mr Barakat submits that there is "...no worrying pattern of intoxicated persons on the Premises" and that the context of this matter cannot contribute to a finding on this Ground of Complaint.

Barakat on Particular 6 of Ground Two

193. Mr Barakat submits that this matter concerned a failure by the Licensee to record incidents in the incident register on 21 April 2013. He submits that this Particular is "correct" in that there were some "minor" incidents not copied from the security incident register to the Premises' own register. Mr Barakat contends that he had been given the "wrong advice" - namely, so long as an incident was recorded in the security incident register, there was no need to have it also recorded in the venue's incident register. Mr Barakat contends that he "immediately rectified" this issue upon being notified by an OLGR Inspector that his understanding was incorrect, even delivering a copy of the Premises' incident register soon after, to have it reviewed and approved by the same OLGR Inspector. Mr Barakat submits that the Penalty Notice for this incident has "never been contested" and the fine is "currently being paid off". He contends that this type of offence, for a first time licensee within the first few months in such a role, could be seen as part of a "teething process" which has never been repeated. Mr Barakat submits that this matter has been a "lesson learned" and has not caused any "harm or disruption to the health and safety of the community". The Licensee contends that this breach is "completely technical in nature" and should not form part of a Ground of this Complaint.

Barakat on Particulars 7 to 10 of Ground Two

194. Mr Barakat submits that these matters (involving a covert business inspection whereby OLGR Inspectors were served shots of liquor by Mr Dominic Kaikaty, the manager of the Premises, contrary to the Kings Cross special licence conditions on 8 June 2013) "did in fact occur". However, he contends that Mr Kaikaty "immediately (within seconds) rectified this issue" by approaching the OLGR Inspectors (who he thought were patrons at the time) and advising them that he had made a mistake in that he had not added a mixer to their drinks.

195. Mr Barakat contends that it was only after Mr Kaikaty returned with the cups filled with mixers to these patrons that they revealed to him that they were OLGR Inspectors.

Mr Barakat submits that he elected to go to Court but due to a "lack of funds" he was "...no longer able to afford to defend these matters" and has entered a guilty plea. Mr Barakat understands that in the "most technical sense", these drinks were in fact served without a mixer but submits that Mr Kaikaty's "rectifying" the issue is a "mitigating circumstance". Mr Barakat submits that the \$5,000 fines issued against him by the Court are "extremely unfair" based upon the circumstances and that this "...does not meet with previous precedence" [*sic*] of other matters for which he was penalised. Mr Barakat submits that he is currently pursuing an appeal against the severity of the penalties ordered by the Court and argues that it is "unfair" to penalise someone if the "mistake" had been rectified prior to the OLGR Inspectors revealing their identities. Mr Barakat requests that the Authority place no weight upon these matters.

Barakat on Particular 11 of Ground Two

196. Mr Barakat submits that this incident involved an RSA Marshal not wearing clothing that identified him as an RSA Marshal on 19 January 2014. He argues that this is the "most debatable issue" as there are no specific guidelines as to what exactly constitutes "identifiable clothing". Mr Barakat submits that the RSA Marshal had a clear name tag that read "RSA Host" and in smaller writing: "Please Drink Responsibly". Mr Barakat refers to a photograph of the name tag that has been provided as an annexure to his submissions and submits that this photograph should "more than suffice" to establish the identity of an RSA Marshal. He contends that it will be "nearly impossible" for a magistrate to find that a name tag does not serve the purpose of "identifying" the RSA Marshal.
197. Mr Barakat argues that the context of the above matters "...clearly demonstrates the level of grey areas" in the licensing legislation, where issues are "open to interpretation" and are "...often dealt with at the discretion of the officer dealing with the matter". Mr Barakat argues that these matters are all "debatable" based upon the context in which they had occurred, and "...do not show a recurring pattern of worrying behaviour" on his part as the Licensee of the Premises.

Barakat on GROUND THREE

198. Mr Barakat's submissions in response to each particular of Ground Three may be summarised as follows:

Barakat on Particular 4 of Ground Three

199. Mr Barakat submits that this business inspection by Police on 25 May 2013 - during which no patrons were sighted eating meals and the kitchen area was closed - is a "complete exaggeration" to make the venue "appear at its worst". Mr Barakat contends that the Premises was due to close within 30 minutes of the time that Police attended the venue, and that this matter is a "...complete fabrication of their real observations" as dockets for purchases are "...constantly thrown out throughout the night" so it is "understandable" that there may have only been a few point of sale receipts for light meals left in the kitchen that did not display amounts of money. Mr Barakat argues that Police "...need to be fairer with their observations" and not exaggerate simply to make a venue "look bad".

Barakat on Particular 5 of Ground Three

200. Mr Barakat refers to this business inspection of the Premises on 2 June 2013 (which the Authority notes include Police observations of no people dining nor tables set, with only

chips being prepared in the kitchen). Mr Barakat contends that this inspection occurred "...at the very end of the night" and argues that "...light meals are still genuine meals". He questions the claims made by Police and submits that this matter is "...another attempt to make the venue appear in the most negative light".

Barakat on Particulars 6 to 10 of Ground Three

201. Mr Barakat contends that Déjà Vu "was a restaurant" and "proudly so". Mr Barakat contends that on the day that OLGR Inspectors attended the Premises on 8 June 2013, a function for approximately 30 people (which equates to about 40 per cent of the venue's capacity) was held on the Premises and the guests stayed for drinks afterwards. Mr Barakat contends that he has already contacted the host of that event and the chef on that evening, who have both "...volunteered to appear in Court" and explain that the group had a full five course dinner and stayed back for drinks.
202. Mr Barakat contends that the chef on the Premises on that day was Mr Adham Aston, who owns his own catering company called "Aston Catering" and is currently competing in the "Chefs' Culinary Competition", representing his new employer, "Wenty Leagues Club". Mr Barakat notes that Mr Aston appeared in the local newspaper, the *Parramatta Advertiser*, and refers to photographs and screenshots of the Parramatta Advertiser Facebook page. Mr Barakat reiterates his contention that the venue was "proudly a restaurant" and that no observations made at "1:00am" can change that fact.
203. Mr Barakat contends that due to "personal and financial reasons", he ultimately changed his not guilty plea to a plea of guilty. He submits there had been a "shift" during the evening which "changed the nature of the business" and "understands" that at all times when running a restaurant, the sale of food must be the primary activity of the business, not the sale of liquor. He submits that he has "learned and matured" from this experience and that his decision not to defend this prosecution "shows a great deal of courage".
204. However, Mr Barakat now "wishes" to appeal this matter and refers to two Local Court cases which he contends have similar facts, *R v Kaikaty* and *R v Major*. Mr Barakat refers to the transcript of *R v Kaikaty* (which has been attached as an annexure to his submissions) and contends that a reasonable period of time over which Police might make such inferences about the nature of a licensed business is "...over a month period, not just a 'snapshot'". He submits that the licensed premises that was the subject of the *Kaikaty* case, being the Eye Bar in Kings Cross, has "never been successfully proven" in a Court to have been operating as a bar rather than as a restaurant and that Mr Barakat "should not have pleaded guilty" to this matter. Mr Barakat contends that his "...lack of funds to successfully defend this matter" should not help place more weight on the Complainant's allegations but rather "give the Authority a better understanding of what might have been" if only he "had the funds to defend this matter".

Barakat on Particular 11 of Ground Three

205. In response to the allegation that Mr Kaikaty told Sydney City Council Rangers on 19 July 2013 that "we [the Premises] are a restaurant but later at night it's mainly just the bar and we stay open for longer", Mr Barakat is "advised" by Mr Kaikaty that he did not make this comment. Mr Barakat requests the Authority to have an "open mind" in respect of Ground Three and submits that he has been "...hindered by the lack of funds to successfully defend these matters". Mr Barakat contends that his "...inability to defend these matters should not constitute guilt" for the purposes of this Complaint and that Ground Three should not be established.

Barakat on GROUND THREE

206. Mr Barakat's submissions in response to each particular of Ground Three may be summarised as follows:

Barakat on Particular 4 of Ground Three

207. Mr Barakat submits that this business inspection by Police on 25 May 2013 - during which no patrons were sighted eating meals and the kitchen area was closed - is a "complete exaggeration" to make the venue "appear at its worst". Mr Barakat contends that the Premises was due to close within 30 minutes of the time that Police attended the venue, and that this matter is a "...complete fabrication of their real observations" as dockets for purchases are "...constantly thrown out throughout the night" so it is "understandable" that there may have only been a few point of sale receipts for light meals left in the kitchen that did not display amounts of money. Mr Barakat argues that Police "...need to be fairer with their observations" and not exaggerate simply to make a venue "look bad".

Barakat on Particular 5 of Ground Three

208. Mr Barakat refers to this business inspection of the Premises on 2 June 2013 (which the Authority notes include Police observations of no people dining nor tables set, with only chips being prepared in the kitchen). Mr Barakat contends that this inspection occurred "at the very end of the night" and argues that "light meals are still genuine meals". He questions the claims made by Police and submits that this matter is "...another attempt to make the venue appear in the most negative light".

Barakat on Particulars 6 to 10 of Ground Three

209. Mr Barakat contends that Déjà Vu "was a restaurant" and "proudly so". Mr Barakat contends that on the day that OLGR Inspectors attended the Premises on 8 June 2013, a function for approximately 30 people (which equates to about 40 per cent of the venue's capacity) was held on the Premises and the guests stayed for drinks afterwards. Mr Barakat contends that he has already contacted the host of that event and the chef on that evening, who have both "volunteered to appear in Court" and explain that the group had a full five course dinner and stayed back for drinks.

210. Mr Barakat contends that the chef on the Premises on that day was Mr Adham Aston, who owns his own catering company called "Aston Catering" and is currently competing in the "Chefs' Culinary Competition", representing his new employer, "Wenty Leagues Club". Mr Barakat notes that Mr Aston appeared in the local newspaper, the *Parramatta Advertiser*, and refers to photographs and screenshots of the Parramatta Advertiser Facebook page. Mr Barakat reiterates his contention that the venue was "proudly a restaurant" and that no observations made at "1:00am" can change that fact.

211. Mr Barakat contends that due to "personal and financial reasons", he ultimately changed his not guilty plea to a plea of guilty. He submits there had been a "shift" during the evening which "changed the nature of the business" and "understands" that at all times when running a restaurant, the sale of food must be the primary activity of the business, not the sale of liquor. He submits that he has "learned and matured" from this experience and that his decision not to defend this prosecution "...shows a great deal of courage".

212. However, Mr Barakat now "wishes" to appeal this matter and refers to two Local Court cases which he contends have similar facts, *R v Kaikaty* and *R v Major*. Mr Barakat

refers to the transcript of *R v Kaikaty* (which has been attached as an annexure to his submissions) and contends that a reasonable period of time over which Police might make such inferences about the nature of a licensed business is "...over a month period, not just a 'snapshot'". He submits that the licensed premises that was the subject of the *Kaikaty* case, being the Eye Bar in Kings Cross, has "...never been successfully proven" in a Court to have been operating as a bar rather than as a restaurant and that Mr Barakat "should not have pleaded guilty" to this matter. Mr Barakat contends that his "...lack of funds to successfully defend this matter" should not help place more weight on the Complainant's allegations but rather "...give the Authority a better understanding of what might have been" if only he "...had the funds to defend this matter".

Barakat on Particular 11 of Ground Three

213. In response to the allegation that Mr Kaikaty told Sydney City Council Rangers on 19 July 2013 that "...we [the Premises] are a restaurant but later at night it's mainly just the bar and we stay open for longer", Mr Barakat is "advised" by Mr Kaikaty that he did not make this comment. Mr Barakat requests the Authority to have an "open mind" in respect of Ground Three and submits that he has been "...hindered by the lack of funds to successfully defend these matters". Mr Barakat contends that his "...inability to defend these matters should not constitute guilt" for the purposes of this Complaint and that Ground Three should not be established.

Barakat on GROUND FIVE

214. Mr Barakat's submissions in response to each particular of Ground Five may be summarised as follows:

Barakat on Particulars 1 and 2 of Ground Five

215. In respect of this matter, regarding the Licensee's failure to comply with a direction under section 75 of the Act on 18 January 2014, Mr Barakat relies upon the response provided to Particular 3 of Ground Four. He submits that he "...never personally failed to comply" with any such direction, and although he is "solely responsible as licensee", he "was not present" on this particular occasion and "did not have full control" of the Premises. Mr Barakat also refers to his "personal circumstances" as outlined in the background information to his written submissions.

Barakat on GROUND SIX

216. Mr Barakat's submissions in response to each particular of Ground Six may be summarised as follows:

Barakat on Particulars 4 to 6 of Ground Six

217. In respect of these matters, which concern liquor promotions that may encourage the misuse or abuse of alcohol, Mr Barakat refers to Annexure M to his written submissions (his response to a show cause notice issued by OLGR on 17 June 2013 under section 102A of the Act) which he submits addresses the issues raised in Particulars 1 to 6 of Ground Six.

Barakat on Particulars 7 to 9 of Ground Six

218. In respect of these matters, which concern liquor promotions of 2 August 2013 and 5 September 2013, the Licensee refers to Annexure N to his written submissions (his

response to a show cause notice issued by OLGR on 5 September 2013 under sections 75 and 102A of the Act) which he submits addresses the issues raised in Particulars 1 to 6 of Ground Six.

Barakat on GROUND SEVEN

Barakat on Particulars 1 to 6 of Ground Seven

219. Mr Barakat submits that this is the "most important Ground of all" and the Authority must have regard to the meaning of the expression "fit and proper person" as discussed in *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321 at 380.
220. Mr Barakat submits that he has proven to be a fit and proper person. He contends that "while he was on the Premises", he "...maintained strict guidelines and adherence to liquor laws" and has "constantly improved" on his management style; taking into account that this is his first role as a licensee and the Premises is a venue that is "...subject to high scrutiny".
221. Mr Barakat submits that "issues" that have occurred in the past are "less likely to reoccur" [*sic*] as he has "never" committed the same offence twice and on the few occasions where the same offence has been committed more than once in respect of the Premises, Mr Barakat contends that these repeat offences occurred at times when he "...did not have full control or management of the business and the staff". Mr Barakat submits that his Master Licence for All Class Security Pty Limited "remains one of his greatest strengths" as he has "never" received a single Penalty Notice, Compliance Notice, Court action, or any other kind of disciplinary action in relation to that licence.
222. Mr Barakat submits that his criminal record is also of "grave importance" as he had "never" been convicted of any type of criminal offence prior to his engagement as licensee of this particular venue. He submits that his "good character" clearly identifies him as a "model citizen", and one who is a fit and proper person to hold any licence.
223. Mr Barakat refers to Annexure O to his submissions, which is a character reference dated 26 July 2014 from Mr Andrew Khoury, a licensed electrician and a managing supervisor with Sydney Electrical Communications Group Pty Limited.
224. Mr Barakat submits that fitness and propriety concerns having a "...requisite knowledge of the Act under which the person 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 (pt1) (NSW) 541. He submits that being fit and proper "normally comprises the three characteristics of honesty, knowledge and ability" – *Hughes and Vale (No 2) Pty Ltd v State of NSW* (1955) 93 CLR 127, 156-7.
225. Mr Barakat contends that he has "proven to be honest" by reason of his criminal record and the character reference provided by Mr Andrew Khoury.
226. He contends that he has proven to be "knowledgeable" of the liquor laws and that the few breaches that occurred at the Premises in his presence were a result of "...genuine misdirection, miscommunication and wrong advice", as set out in his submissions in response to Ground Four.
227. Mr Barakat submits that he has demonstrated the degree of knowledge of the law or competence that the Authority should expect of a reasonably competent liquor licensee.

228. He submits that he has the ability to be a licensee, as demonstrated by his ability to hold and maintain a Security Master Licence and that it is "unfortunate" that his "lack of presence" on the Premises due to "personal and financial commitments" has "...hindered him from performing his duties as licensee to his greatest potential".
229. Mr Barakat submits that "...where a person has been convicted of offences, the decision maker must consider the circumstances of those convictions, the general reputation of the person apart from the convictions and the likelihood of repetition" – *Clarahan v Register of Motor Vehicle Dealers in the ACT* (1994) 17 FLR 445.
230. Mr Barakat argues that the convictions recorded against him are "not particularly pertinent" to this Complaint as they have occurred on occasions when he was not "in full control" of the Premises.
231. While Mr Barakat concedes that he must "accept full responsibility" for those breaches, he has already been prosecuted to the "full extent" of the law and is currently paying "copious amounts" of fines and legal fees that have "...devastated his already troublesome financial situation" and are placing his young family "...in danger of being homeless".
232. Mr Barakat submits that any disciplinary action taken by the Authority as a result of this Complaint should be "...reasonable and proportionate to the facts found by the Authority and the context in which they occurred". He argues that his history of offences "...does not carry those of the most serious offences" and that there is "...no immediate concern to the health and safety of the community".
233. Mr Barakat submits that "unduly penalising" him will "have no benefit to the public interest", but will only have a devastating effect on him and his young family if adverse action is taken against him.
234. Mr Barakat submits that the Authority should take into consideration his conviction penalties for each breach of licence condition recorded in the Complaint. He argues that the Authority "must accept" that "no significant fines" were imposed by the Local Court for those matters, reflecting the seriousness with which the Court regarded these offences; and the context in which they occurred was "on most occasions" of the "lowest scale possible".

Barakat on Particulars 7 to 10 of Ground Seven

235. Mr Barakat submits that the Premises has "never" seen the type of serious events to which any of the "declared premises" for the purposes of Schedule 4 to the Act typically would be exposed. He argues that this is an "important factor" as one cannot be declared "not a fit and proper person" or be disqualified from holding a licence if the venue for which he is responsible "...has not been categorised in any list of high offenders with serious breaches against the [Act]".
236. In respect of the directions issued to him by the Secretary of NSW Trade and Investment under section 102A and section 75 and in respect of the Short Term Closure Order issued by the Authority against the Premises on 28 March 2014, Mr Barakat submits that these matters "...should not automatically be accepted as proven for the purposes of this Complaint".
237. Mr Barakat refers to Particular 9 of this Ground of the Complaint, where the Complainant states that these matters demonstrate Mr Barakat's "...inability to adequately supervise

and control the promotional activities". Mr Barakat submits that he has already conceded that it was not his lack of management, but his "lack of presence" on the Premises which led to these types of incidents occurring. Mr Barakat argues that this is a "...highly prejudicial statement" made by the Complainant, which should be "disregarded".

Barakat on Particulars 11 to 13 of Ground Seven

238. In relation to the material published on Facebook, Mr Barakat contends that he and Mr Kaikaty both used Facebook to "like" the photograph in question [which the Authority notes was a group shot of the Premises staff, including the Licensee, the director of the Business Owner and Dominic Kaikaty, all posing with their middle fingers positioned in an offensive manner toward the camera] before the caption [which read: "On behalf of #DEJAVU kingscross we would like to say a big #FUCKYOU to Kings Cross Police LAC #kingscross #staff #police #LAC #taskforce #pigs #dogs #ftp #ftw #baws #nofilter"] was added to the photograph.
239. However, Mr Barakat submits that there is "no contesting" that the photograph and caption were both "posted" by "an individual" who Mr Barakat contends was "not a senior employee" of the Déjà Vu business and who had "no official authorisation" to express the views of Mr Barakat or the Déjà Vu business.
240. Mr Barakat contends that whether or not the retraction was made after Police engaged with Mr Barakat is "up for debate". He submits that whilst he has shared some "rather disturbing comments" on Facebook, those comments identified by the Complainant were shared on Mr Barakat's "own private page" and Mr Barakat contends that he did not "tag" any official Déjà Vu Facebook page or that of any other employee.
241. Mr Barakat submits that his "venting" on Facebook was the result of what he felt was "...constant harassment and unfair treatment" - and he identifies, for instance, the incident involving a failure to comply with a licence condition regarding maintenance of an RSA register in Ground Four of the Complaint. Mr Barakat submits that this was a "very harsh punishment" in the form of a Court Attendance Notice. Mr Barakat contends that he was "furious at the conflicting advice" given by the OLGR Inspector, who he submits returned only to penalise him for a matter in which Mr Barakat had "...begged for advice and to be given a straightforward answer". Mr Barakat submits that this particular Court Attendance Notice [referred to in Ground Four] should be "reviewed and withdrawn" as a result of the material provided with this submission.

Barakat on Particular 14 of Ground Seven

242. In response to this Particular, which concerns Mr Barakat's engagement of Mr Dominic Kaikaty (a disqualified person) to manage Déjà Vu, Mr Barakat contends that Mr Kaikaty "used the knowledge" as a former licensee to learn from his mistakes but not to have his influence on this business. Mr Barakat contends that Mr Kaikaty was "...never declared a senior manager" and was only "appointed as a bar supervisor" and that it was his "...previous relations with Police and overall knowledge" that "...forced him to play the role of a manager" while assisting Police or OLGR Inspectors with their enquiries. Mr Barakat contends that the management of the restaurant was "...always in the hands of" Mr Barakat or Mr Timothy Bali.
243. Mr Barakat submits that it was "never the intention or desire" to have Mr Kaikaty appointed as manager of the Premises under section 66 of the Act, and contends that Mr Kaikaty was never "engaged in a position of general manager" as alleged by the Complainant - a statement which Mr Barakat contends is "...nothing but the assumption

of the Complainant to further capitalise on any matter which may be prejudicial" to the Licensee in these proceedings.

Barakat on Particular 15 of Ground Seven

244. In respect of this alleged assault of a pedestrian by a patron of the Premises on 25 January 2014, Mr Barakat contends that Mr Kaikaty "advises" him that a friend of Mr Kaikaty had attended the Premises. Mr Kaikaty noticed that this male was not feeling well and decided it would be best to put him in a taxi and send him home. Upon ejecting the male from the Premises, the male "became violent and assaulted a bystander" outside the Premises. It was later discovered that the male, who was subsequently arrested for assault, had been under the influence of an illicit drug (MDMA) and had "acted without self-control". Mr Barakat submits that Mr Kaikaty believed he was "doing the right thing" in ejecting his friend and "...pleaded with Police not to take action against the venue" as he did not want any "unwanted attention" coming to the venue. Mr Barakat submits that Mr Kaikaty "acted alone" and that his behaviour "should not reflect poorly" on Mr Barakat as licensee for the purposes of this Complaint.

Barakat on GROUND EIGHT

245. Mr Barakat submits that this Ground of the Complaint "has no merit whatsoever". While the Complainant refers to several instances of noise complaints, Mr Barakat contends that these alone "fail to satisfy" the Ground, which requires that a form of public entertainment was being conducted at the time of these complaints. Mr Barakat submits that "simple amplified music" (for instance, music being played by an iPod) does not constitute a form of "public entertainment".

246. Mr Barakat contends that the building housing the Premises is an "...extremely old, terrace style property, with high, thin ceilings and no insulation" and submits that "...any noise could be deemed offensive if it is audible in any habitual room".

247. Mr Barakat contends that on any occasion that the Premises was open for trade, the above neighbours would "complain constantly" and that any attempt to mitigate the issues with the tenants above was "met with hostility", making it "extremely difficult" for the Premises to address these issues.

248. Mr Barakat contends that there were also "several building defects" which could have contributed to noise travelling more easily throughout the building, leading Mr Bali to form the belief that even though the music was "...constantly kept at reasonable levels, the structure of the building made it nearly impossible" to adhere to the noise conditions.

249. Mr Barakat refers to annexures to his written submissions, being email correspondence between Mr Bali and the Premises Owner, Mr Farrugia, regarding noise complaints and the structure of the building. Mr Barakat refers to email correspondence between Mr Bali and real estate agents (also annexed to his submissions) seeking to relocate the above tenants to other residences and compensate them for their moving expenses. Mr Barakat argues that these noise complaints were made by the residents of only one unit out of the six separate units situated above the Premises.

Barakat on GROUND NINE

250. Mr Barakat concedes that at times, the licence "...may not have been exercised in the public interest within the meaning of section 139(3)(s)". However, he argues that one must assess whether the Licensee was "responsible" for those particular occasions

because "...one cannot prosecute an individual licensee without evidence that it was due to his negligence".

Barakat on Particulars 1 to 5 of Ground Nine

251. With respect to particulars 1 to 5 of Ground Nine which concern alleged breaches by the Licensee of the Act, the Regulation and the *Gaming and Liquor Administration Act 2007*; promotional activities likely to encourage the misuse or abuse of liquor; and acts of violence occurring on the Premises since commencing as licensee on 25 January 2013, the Mr Barakat relies upon his earlier submissions on matters that he submits are "regurgitated" by the Complainant in support of this Ground.

Barakat on Particular 6 of Ground Nine

252. Mr Barakat submits that it is "clear" from the evidence provided in support of this Particular that not a single drug related matter could be directly connected with either Mr John Barakat (as Licensee) or Mr Timothy Bali (as director of the Business Owner) of the Premises. Mr Barakat argues that "...one cannot assume full control of their subordinates' actions", especially those who are working outside the Premises.

253. Mr Barakat contends, in respect of the covert Police operations, that the Complainant has "made no attempt" to obtain CCTV footage to determine from where Mr Jesse Brewer obtained the prohibited drugs that were supplied to Police, as alleged in Particular 10 of Ground Nine.

254. Mr Barakat submits that the Complainant has "...failed to make any substantial connection" between the drug activities stated and the Licensee for the purposes of this Complaint and submits that this drug activity is of "no relevance" to this Complaint.

255. Mr Barakat submits that although it is a "disturbing matter", the lack of any substantial evidence connecting drug activities with the Licensee is a clear indication that "...absolutely no weight can be placed on this issue" and that this matter cannot form part of any Ground of the Complaint.

256. Mr Barakat argues that he "...cannot possible [*sic*] control the personal behaviour of his staff members and cannot be prosecuted for their misdeeds". He refers to the most current version of the Premises' Plan of Management (attached as an annexure to his submissions) and submits that, with the assistance of local Police, Mr Barakat as licensee implemented a Drug Prevention Policy for the Premises, which is referred to in that document.

Barakat on Particular 12 of Ground Nine

257. In response to the alleged assault of a member of the public by Mr David Kaikaty and Mr Jesse Brewer, Mr Barakat submits that Mr David Kaikaty (the brother of Dominic Kaikaty) has "never been" an employee of the Premises, and would only "hang around" the venue in support of his brother.

258. Mr Barakat submits that the actions of David Kaikaty "should not be a reflection" on himself. Mr Barakat notes that although David Kaikaty once had a Long Term Banning Order in place against him, it was rescinded due to the fact that David Kaikaty "...did not engage in alcohol related violence".

Barakat on Particular 13 of Ground Nine

259. In response to the Complainant's contention that Mr Dominic Kaikaty was engaged in the position of a general manager of the Premises, Mr Kaikaty refers to his earlier submissions with regard to Dominic Kaikaty's employment at the Premises in respect of this matter.

Barakat's submissions seeking "leniency"

260. Mr Barakat requests that his case be "treated on [its] merits". He submits that in his 35 years of life he has "never" been convicted of any criminal offence, has shown his ability to maintain a Security Master Licence and is a "man of good repute". Mr Barakat submits that while he is "unlikely" ever to take another role as licensee, declaring him "not a fit and proper person" or disqualifying him from holding a liquor licence will "...create a ripple effect that will see him out of employment". Mr Barakat contends that he is "unlikely to reoffend" and that the Complainant "has shown no real evidence" to support the allegation that he is a "threat to the public interest". He submits that the Complainant's request for disciplinary action should be denied as it is "unwarranted and unnecessary".

261. On 21 December 2014, Mr Barakat and Mr Kaikaty contacted the Authority by email requesting the opportunity to make a further round of written submissions on the respective complaints against them to deal with recent outcomes in Local Court prosecutions and/or appeals to the District Court. The Authority's Chief Executive granted an extension until 5 January 2015 to do so.

262. That deadline was not observed.

263. On 5 January 2015, Mr Barakat and Mr Kaikaty again contacted the Authority by email requesting further time to make submissions on the respective complaints against them to deal with recent outcomes in Local Court prosecutions and/or appeals to the District Court. The Authority's Chief Executive gave them a further extension until 19 January 2015 to do so.

264. That deadline was not observed.

265. On 11 February 2015, Mr Barakat and Mr Kaikaty were advised that the Authority would be shortly determining the Grounds of Complaint and that any final submission on the Grounds must be made by 12 February 2015.

266. No further submissions were made by either Mr Barakat or Mr Kaikaty.

SUBMISSION FROM THE PREMISES OWNER DATED 8 AUGUST 2014

267. On 18 July 2014, the Authority issued an invitation to the Premises Owner, Mr James Farrugia, to make written submissions on the Complaint before the Authority. The Premises Owner's legal representative, Mr Dion Manca from LAS Lawyers, provided detailed submissions to the Authority on 8 August 2014.

268. Mr Manca also provided several annexures to the Premises Owner's written submissions, including photographs of the interior of the Premises; a copy of the surrender of lease notice issued to the corporate Business Owner, Diamond Events Pty Limited, on 2 April 2014; and the Government Licensing Service (GLS) record for liquor licence number LIQO624004412 current as of 9 July 2014.

269. Briefly, the key observations and contentions made by the Premises Owner's legal representative may be summarised as follows:

- (i) The Complaint is dated 13 March 2014 and "...numerous circumstances have since changed" in relation to the Premises, namely termination of the lease of the Premises and "removal" of both the Licensee and Business Owner
- (ii) The recommendation made by the Complainant that the Authority should impose a condition upon the licence restricting certain persons from accessing the Premises, at least until such time that the final decision is made in relation to the Complaint, was in fact implemented by the Authority on 30 June 2014
- (iii) The Premises Owner submits that he "proceeded with" a termination or surrender of lease notice to the then lessee, Diamond Events Pty Limited, on 2 April 2014 and the Premises was "vacated" by the lessee on 16 April 2014. The persons who are now excluded from entry to the Premises by operation of conditions imposed upon the licence on 30 June 2014 did not enter or remain on the Premises after 16 April 2014 and this is a result of the Premises Owner's "proactive actions"
- (iv) The Premises Owner notes that the Authority has a range of actions that may be taken in relation to a disciplinary complaint pursuant to section 141(2) of the Act. The Premises Owner requests that the Authority consider the direct impact that any action may have on the current Premises Owner in light of the change in circumstances, the proposed future operation of the Premises and importantly, having regard to the fact that the Premises Owner is "an absolutely innocent third party" who has had "nothing to do with" the incidents or circumstances arising from the operation of the Premises in the recent past which form the factual basis of the Grounds of the Complaint
- (v) The Premises Owner is in the process of obtaining a new tenant for the operation of the Premises
- (vi) The Premises Owner submits that adverse findings against the Licensee and Business Owner, as alleged in the Complaint, "...should not result in an unjust outcome" for the Premises Owner, who is already "suffering significant impacts"
- (vii) The Premises Owner's legal representative contends that the facts and submissions relied upon in support of the request for disciplinary action "...relate specifically to the manner in which the Premises has been operated by the Licensee and Business Owner in the past" and "...do not at all reflect on the Premises Owner" who only recently purchased the Premises and ensured that the persons subject to the Complaint vacated the Premises
- (viii) The Premises Owner notes that he has previously written to the Authority and to OLGR and seeks that this correspondence be assessed by the Authority as part of this submission.

Premises Owner's Update on Licensed Premises

270. In the Premises Owner's submissions, the Premises Owner's legal representative confirms that Mr John Barakat was the former licensee of liquor licence number LIQO624004412.

271. On or about 30 June 2013, the Premises Owner, Mr James Farrugia, purchased the freehold to the Premises subject to a lease granted to the Business Owner, Diamond Events Pty Limited, which was for a term of five (5) years, commencing on 1 January 2013. Therefore, the Premises Owner purchased the property on the basis that the business was currently operating on the Premises pursuant to its liquor licence. The Premises Owner "inherited" the existing tenant from the vendor.
272. In January 2014, the Premises Owner was contacted by Senior Constable Michael Foot from Kings Cross Police Station. The Premises Owner was informed of his responsibility to notify the Authority in relation to any change of ownership and of current "compliance issues" occurring at the Premises.
273. The Premises Owner's representative then refers to an attached chronology of interactions between Senior Constable Michael Foot and the Premises Owner, prepared by Senior Constable Foot, as previously forwarded to the Complainant.
274. The Premises Owner submits that "further issues became evident" to the Premises Owner as a result of the operation of the business on the Premises by the Licensee and Business Owner.
275. The Premises Owner contends that he continued to stay in contact with Senior Constable Foot and additionally contacted the City of Sydney Council (**Council**), specifically Ms Lisa Hughes, Area Coordinator and Mr Simon Anton, Late Night Compliance Officer.
276. The Premises Owner became aware that OLGR proposed to designate the Premises as a "High Risk Venue", at which point the Premises Owner contacted OLGR Program Coordinator, Mr Mark Bessant, for further information.
277. The Premises Owner contends that on or about 28 March 2014, the Premises Owner discovered that the Authority had issued a Short Term Closure Order suspending the Premises from trading for a period of 72 hours. The Premises Owner states that he then contacted OLGR, Council and NSW Police, confirming that he would proceed with a termination or surrender of lease notice to the lessee, Diamond Events Pty Limited. The lessee's last day of trade was 6 April 2014 and the lessee vacated the Premises on 16 April 2014. The Premises Owner continued to stay in contact with Snr Constable Foot during this process and arranged a meeting at the Premises after it was vacated.
278. As a result of this action to terminate the lease, the Premises Owner was left with a property that was "...severely damaged, unclean, and substantial items in the Premises kitchen/bar had been stolen". The Premises Owner contacted NSW Police and a theft was recorded as having occurred during the Police inspection.
279. The Premises Owner has subsequently lodged a liquor licence transfer application in his capacity as an owner in possession and continues to hold the liquor licence as licensee at the time of this submission.
280. The Premises Owner notes that the liquor licence was suspended by an order of the Local Court on Monday 7 July 2014 for a period of three months until Monday 6 October 2014 as a result of Court proceedings against the Licensee, Mr Barakat. The Premises Owner was not a party to the same proceedings, however he has been "significantly affected financially" from that licence suspension, preventing trade at the Premises and preventing the Premises Owner from finalising the lease for the proposed new tenant at the Premises. After becoming aware of this suspension, the Premises

Owner contacted OLGR. However, staff at OLGR were unable to assist by reason that it was the Court's decision to suspend the licence.

281. During the licence suspension period, the matter involving the Licensee was re-listed for hearing on 7 August 2014. The Premises Owner attended these proceedings, where it was confirmed that it was not the magistrate's intention to suspend the actual licence number LIQO624004412. Rather, the intention was that Mr Barakat personally be disqualified from holding a liquor licence for a period of three months. The magistrate rectified the Orders and the suspension relating to liquor licence number LIQO624004412 was revoked.
282. The liquor licence LIQO624004412 is therefore no longer suspended and the Premises Owner's legal representative notes that the Premises Owner now intends to proceed with finalising the lease with the proposed new tenant, pending the determination by the Authority on the subject Complaint.
283. The Premises Owner has a proposed new tenant, Mr Grant Collins. At the time of this submission a lease has not yet been finalised, pending the result of the disciplinary Complaint against the Licensee and the Business Owner.
284. The Premises Owner submits that this Complaint has the potential to cause the Premises Owner, an "innocent party" to this action, "significant financial losses" if the licence is cancelled, or if the PSA and/or the ETA is revoked as requested by the Complainant.

Premises Owner's Response to the Grounds of Complaint

285. The Premises Owner's legal representative "confirms" that the Grounds of the Complaint are "directly related" to the actions of the Licensee (Mr John Barakat) and the Business Owner (Diamond Events Pty Limited, whose sole director was Mr Timothy Bali).
286. The Premises Owner contends that the Licensee and Business Owner are "...no longer associated with the Premises" as a result of the Premises Owner terminating the previous Business Owner's lease and ensuring that the Premises was vacated by the previous operators in April 2014.
287. The Premises Owner submits that each of the nine Grounds of the Complaint rely upon particulars of alleged conduct by the Licensee and his employees (and to some extent, the Business Owner), but none relate to any acts or omissions of the Premises Owner.
288. Grounds One to Seven inclusive directly relate to the Licensee personally. The Premises Owner submits that this is "important" when considering the nature of appropriate disciplinary action to be taken if it is found that the Grounds of the Complaint are established.
289. The Premises Owner contends that he has "no knowledge" of the operation of the Premises or the conduct that is now complained of as forming the basis for the Grounds of Complaint, and is therefore unable to provide any comment as to the Grounds of the Complaint.
290. The Premises Owner submits that the fact that the Complainant has not alleged any Grounds that relate to the acts or omissions of the Premises Owner, as a "close associate" of the Licensee, is "fundamental" to the decision that the Authority must make in relation to the nature of the disciplinary action to be taken (if any). This is said to

support the position that the Authority should not take any action which would impact the licence itself or any authorisations attaching to the licence, by reason that such action would not adversely impact on anybody but the Premises Owner, who is described as an "innocent third party".

291. The Premises Owner submits that taking such action against the licence would be "...contrary to the objects of the Act and the public expectations" that only those persons responsible for poor management of licensed premises and those who have committed offences should be the subject of adverse consequences of those actions, rather than "...innocent third parties who have nothing to do with such conduct", such as the Premises Owner, who is "merely a property investor".
292. The Premises Owner notes that it was open to the Complainant to allege grounds of complaint that a close associate (being the Business Owner or the Premises Owner) was not fit to be a close associate. The Premises Owner submits that "...nothing in the particulars of the Complaint" would suggest that such a ground against the Premises Owner would have "...any reasonable prospects of success", however there is "substantial material" to support such a ground being alleged against the director of the Business Owner, Mr Bali.
293. The Premises Owner submits that it is "extremely inappropriate" to seek disciplinary action be taken that extends "beyond the scope" of addressing the particular conduct of the Licensee and which adversely affects the interests of other parties, particularly "innocent parties" such as the Premises Owner. This is a "powerful reason" for the Authority to decline to take action to cancel the licence, the ETA or the PSA.
294. The Premises Owner contends that he purchased the Premises on or about 30 June 2013. A major portion of the incidents referred to in the Grounds of the Complaint occurred while the Licensee and Business Owner occupied and operated the Premises.
295. The Premises Owner contends that he was "genuinely unaware", after purchasing the Premises, that the Business Owner and Licensee were not complying with the Act and Regulation. No disclosure had been made by the vendor to the Premises Owner about such matters prior to the sale, and the Premises Owner contends that such matters "...are not generally easily able to be ascertained" by way of due diligence enquiries.
296. The Premises Owner submits that he had "...absolutely nothing to do with the operation of the business" and "no interest at all" in the business at material times when the matters identified in the Grounds of Complaint occurred. The Premises Owner "acted proactively" in light of the non-compliance by the Business Owner and Licensee of the Premises, requiring that the Premises be vacated by those persons in April 2014.
297. The Premises Owner submits that the proposed action of cancelling the licence or "cancelling" the ETA and/or PSA "will only negatively affect" the Premises Owner and not the Licensee or the Business Owner.
298. The Premises Owner submits that cancelling the licence will not only send a "...strong message to all licensees" as stated by OLGR Executive Director Mr Paul Newson, but "highlights" that all premises owners within the industry "will not be supported after encountering problematic operators".
299. The Premises Owner submits that he purchased the Premises subject to the licensed business operating there and contends that he "carried out the appropriate measures" to

have that business removed from the Premises after becoming aware of the "serious breaches".

300. The Premises Owner submits that if the Authority considers that the operation of the business by the Licensee and Business Owner is "...unacceptably adverse to the public interest", then revocation of the ETA and/or PSA is "not an appropriate solution" as it impacts on persons other than the operators who are responsible for those same adverse impacts.
301. The Premises Owner submits that the "more appropriate" course of action would be direct disciplinary action against those persons "responsible for the adverse impacts", which would prevent adverse impacts upon the interests of the Premises Owner, who is an "innocent party" in this matter.
302. The Premises Owner contends that proceeding in this manner would "...in fact comply with the objects of the Act" on the basis that the persons responsible for the adverse impacts would be disciplined appropriately, and interested parties could "...contribute to the development of the industry", which is in the public interest.
303. The Premises Owner contends that he has a proposed "responsible tenant" who will sell and supply liquor in a "responsible manner" and "...contribute to the development of related industries...within the local community".
304. The Premises Owner submits that there is "no pressing need" to take action in respect of the licence or authorisations attaching to the licence by reason that the source of the matters giving rise to the Complaint - namely, the Licensee and the corporate Business Owner - has now been "eliminated".
305. The Premises Owner submits that it would be "unreasonable" to take action in respect of the licence in these circumstances. The Authority "ought to be satisfied" that these parties are no longer involved with the operation of the Premises and the matters the subject of the Complaint are "unlikely to be repeated".
306. The Premises Owner submits that there are "a number of alternative actions" that the Authority has at its disposal to deal with this Complaint in an "effective and targeted measure" that does not adversely affect the interests of the Premises Owner.

Premises Owner's Submissions against Taking Action against the Licence

Significant Financial Impact on Premises Owner

307. The Premises Owner contends that the disciplinary action under section 141(2)(d) of the Act proposed by the Complainant will "directly and significantly impact" the Premises Owner financially in that the Premises Owner's commercial interests and the property will be "considerably less attractive" to prospective tenants.
308. The Premises Owner contends that it is "very likely" that the Premises Owner's property will "significantly devalue" if the licence, ETA and/or PSA is cancelled. Further, a continued suspension and/or cancellation of the PSA or ETA will "hinder" the Premises Owner from obtaining an experienced responsible operator to carry on a business at the site of the Premises, and may "...attract operators with little or no experience" in the local community.

309. The Premises Owner contends that cancellation of the licence or revocation of the ETA and/or PSA will have "significant adverse impacts" upon a number of parties and should only be considered in "extreme circumstances". The prospects of leasing the property with trading hours restricted to midnight are "poor" and the comparative rent would be "significantly less" than the rent previously received.
310. Further, it is "not in the public interest" to take measures which have the potential to "...destroy businesses and livelihoods", particularly when the Premises Owner carried out measures to ensure that the Premises would not "operate detrimentally to the local community" by ensuring that the Licensee and Business Owner vacated the Premises. The Premises Owner contends that the Premises Owner acted in a "proactive manner", communicating with NSW Police, City of Sydney Council and OLGR in respect of matters "detrimentally" affecting the Premises and the local community.

Current Licensee vs Previous Licensee

311. The Premises Owner submits that the Complaint is made against Mr John Barakat (the Licensee) and Diamond Events Pty Limited (the Business Owner). The Premises Owner transferred the licence as owner in possession after requiring the Business Owner to vacate the Premises. The Premises Owner submits that any disciplinary action under section 141 should be taken against the persons detailed in the Complaint, not the current licensee and Premises Owner as of the date of this submission - Mr James Farrugia.

Impact on Industry

312. The Premises Owner submits that the "potential wider impacts" of the disciplinary action proposed by the Complainant upon the liquor, tourism, entertainment and hospitality industries should be "acknowledged".
313. The Premises Owner submits that if an outcome results from the Complaint that affects an innocent third party, who does nothing more than own property which has the benefit of a liquor licence, which is operated by a licensee and business owner in such a manner that requires disciplinary action to be taken in respect of the licence which "...effectively devalues the asset substantially and reduces the available income to be derived from the asset", this will "substantially undermine" the confidence of investors in the industry and credit providers to the industry.
314. The Premises Owner submits that a decision to cancel the licence or cancel the PSA and/or ETA will "...likely discourage further development and/or investment in the industry" as a result of disciplinary action taken by the Authority against innocent parties within the industry.

Premises Owner's Contentions on the Future Operation of the Premises

315. The Premises Owner states that he is currently preparing to lease the Premises to Mr Grant Collins. Mr Collins is an "established and experienced operator" who set up the "White Hart" in Neutral Bay, which received "glowing reviews". The proposed new operation is a "high quality restaurant venue" with predominantly table service for drinks to accompany food.
316. The Premises Owner "intends" that the Premises, under the proposed new lease, will be operated in a manner which is "...professional, upmarket and compliant with the regulatory obligations imposed" upon it.

317. The Premises Owner submits that the Premises Owner has sought out a "professional tenant" to operate the Premises with a focus on providing the local community with a "trending eatery".
318. The Premises Owner has "no intention" of leasing the Premises to any business operator who is contemplating a nightclub operation or who will operate in a manner in which the former business operators occupied the Premises.
319. The Premises Owner contends that since January 2014, the Premises Owner has been in "direct contact" with Senior Constable Michael Foot from Kings Cross Police Station, "building a strong working relationship" with Police. The Premises Owner submits that the Premises Owner seeks that this relationship continue, allowing the Premises to operate in a "responsible" manner, thus "benefiting" the local community.

Premises Owner's Submissions on Objects of the Act

320. The Premises Owner submits that the Authority should have regard to the "serious financial ramifications" that potentially flow to "innocent third parties" as a result of taking such disciplinary action. Further, the Premises Owner contends that taking such action, if it would lead to "...adverse financial outcomes for innocent third parties", would clearly be contrary to the objects of the Act as it is "totally out of balance" to impose significant sanctions of the nature of cancellation of a licence or revocation of an ETA and/or PSA, particularly when "innocent third party investors" into the liquor industry will suffer "direct serious financial consequences" and the persons responsible will not be impacted by the consequences of the same disciplinary action. The Premises Owner submits that this is "entirely inconsistent" with the balanced development of the liquor industry as it would serve to "seriously undermine" the confidence of investors into the liquor industry and the providers of finance to the industry.
321. The Premises Owner argues that the objects of the Act recognise that the liquor, hospitality, tourism, entertainment and live music industries are "valuable economic drivers" of the State and "important for the culture and amenity" of residents of the State. The Premises Owner submits that the disciplinary action proposed and the effect that it may have on the Premises Owner is "contrary to these objects" and will detrimentally impact innocent third parties, not the persons responsible.

Premises Owner's Conclusions

322. The Premises Owner submits that the "majority" of the facts and submissions provided by OLGR justify the taking of some form of disciplinary action. However, such action should be imposed against those responsible for the adverse impacts and breaches, not innocent parties such as the Premises Owner. The Premises Owner submits that there is evidence that the Premises Owner "was not involved" with the operation of the business on the Premises at the time when "numerous" breaches took place.
323. The OLGR recommendation of cancelling the licence or cancelling the ETA and/or PSA will only "negatively impact" the Premises Owner and not those responsible for the matters the subject of the Complaint.
324. The Premises Owner submits that the "„appropriate course of action for the Authority" is to impose sanctions which directly affect those responsible for the adverse impacts and behaviour referred to in the Complaint.

325. The Premises Owner notes that the Authority has an "extensive range" of disciplinary powers pursuant to section 141 of the Act, and submits that the following actions would be "appropriate measures" in order to prevent future licensees and business owners from operating irresponsibly and negatively affecting the local community:
- (i) Pursuant to section 141(2)(c) of the Act, order the Licensee (Mr Barakat) to pay a monetary penalty (which should be substantial having regard to the conduct complained of)
 - (ii) Pursuant to section 141(2)(f) of the Act, disqualify the Licensee (Mr Barakat) from holding a licence for such period as the Authority thinks fit
 - (iii) Pursuant to section 141(2)(j) of the Act, disqualify a close associate (the Business Owner - Diamond Events Pty Limited) from being a close associate of a licensee for such period as the Authority thinks fit
 - (iv) Pursuant to section 141(2)(k) of the Act, disqualify a close associate (the Business Owner – Diamond Events Pty Limited) from holding a licence for such period as the Authority thinks fit
 - (v) Pursuant to section 141(2)(g) of the Act, withdraw a manager's approval to manage licensed premises (in respect of any manager approved and found to be acting in such a capacity at the time that the conduct complained of supporting the Grounds occurred)
 - (vi) Pursuant to section 141(2)(h) of the Act, disqualify the manager from being the manager of licensed premises (in respect of any manager approved and found to be acting in such a capacity at the time that the conduct complained of supporting the Grounds occurred)
 - (vii) Pursuant to section 141(2)(l) of the Act, order the Licensee (Mr Barakat) or close associate (the Business Owner - Diamond Events Pty Limited) to pay the amount of any costs incurred by the Director-General or the Authority.
326. The Premises Owner submits that the above action will provide "...both specific and general deterrence" and protect the public interest in ensuring that "rogue operators" are excluded from the industry, while permitting venues to remain as viable businesses for the community to resort to and responsible venue operators to continue to develop and supporting ancillary industries thereto and not adversely affecting the interests of innocent parties.
327. The Premises Owner submits that he is "genuine" in his desire to ensure that the Premises operate in accordance with the requirements and public policy of the relevant legislation and in a manner which "...does not create negative impacts on the local community".
328. The Premises Owner proposes to require future lessees of the Premises to enter into "strict lease covenants" regarding responsible management and conduct of the business, with rights afforded to him to take action against the lessee for default of such obligations, including termination of the lease. Further, the Premises Owner "would consent" to the imposition of "...reasonable administrative conditions on the licence" in consultation with Police and OLGR officers to ensure that any future tenants operate the Premises in a "responsible manner".

329. The Premises Owner requests that if the Authority is considering taking action which would impact upon the interests of the Premises Owner - including but not limited to cancellation of the licence or cancellation of the ETA and/or PSA - that a stay as to the effective commencement of any such action be ordered for a "short period" so as to allow the Premises Owner to seek appropriate interim preservation or stay orders and to prosecute an application for judicial or administrative review of any such decision.

FINDINGS ON GROUNDS OF COMPLAINT

330. As this is an administrative matter, the Authority's findings are made on the civil standard of proof (the balance of probabilities) although the Authority is mindful of the need to take care when fact finding in response to allegations of the commission of offences or other serious moral wrongdoing pursuant to the principle in *Briginshaw v Briginshaw* (1938) 60 CLR 336.
331. The Authority notes that on 9 December 2014, OLGR provided the Authority with a table of matters which detail all of the Court outcomes and Penalty Notice outcomes for John Barakat, as of that date. The Authority makes the following findings on each Ground of Complaint:

Findings on GROUND ONE

332. The Authority is satisfied, on the basis of its licensing records that Mr Barakat was the licensee of the Premises from 25 January 2013 to 30 June 2014.
333. The Authority is satisfied that Mr Barakat has been convicted of a number of offences against the Act or Regulations while he was still the Licensee of the Premises.
334. With regard to Particular 1 of Ground One, the Authority is satisfied, on the basis of the information provided in the Complaint and JusticeLink records of Court outcomes provided by OLGR to the Authority on 9 December 2014, that on **3 December 2013**, John Barakat was convicted at Downing Centre Local Court for the offence of failing to comply with a condition of the licence, imposed by the operation of clause 53J of the Regulation, requiring that a licensee of licensed premises in the Kings Cross Precinct must notify Police immediately upon being made aware of an incident on the premises involving an act of violence, for which he received a fine of \$1,100. While this Ground turns upon the date of conviction, this offence was committed on 3 April 2013, while John Barakat held the licence.
335. With regard to Particular 2 of Ground One, the Authority is satisfied, on the basis of the information provided in the Complaint and JusticeLink records of Court outcomes provided by OLGR to the Authority on 9 December 2014, that on **3 December 2013**, John Barakat was convicted at Downing Centre Local Court for the offence of failing to comply with a condition of the licence, imposed by the operation of clause 53F of the Regulation, prohibiting the sale or supply of "shots" of liquor on licensed premises in the Kings Cross Precinct during the general late trading period, for which he received a fine of \$550. While this Ground turns upon the date of conviction, this offence was committed on 7 April 2013, while John Barakat held the licence.
336. With regard to Particular 3 of Ground One, the Authority is satisfied, on the basis of the information provided in the Complaint and JusticeLink records of Court outcomes provided by OLGR to the Authority on 9 December 2014, that on **3 December 2013**, John Barakat was convicted at Downing Centre Local Court for the offence of failing to comply with a condition of the licence, imposed by the operation of clause 53H of the

Regulation, requiring that a licensee of licensed premises in the Kings Cross Precinct maintain a CCTV system on the premises in accordance with the Regulation, for which he received a fine of \$550. While this Ground turns upon the date of conviction, this offence was committed on 20 April 2013, while John Barakat held the licence.

337. With regard to Particular 4 of Ground One, the Authority is satisfied, on the basis of the information provided in the Complaint and JusticeLink records of Court outcomes provided by OLGR to the Authority on 9 December 2014, that on **21 February 2014**, John Barakat was convicted at Downing Centre Local Court for the offence of failing to comply with a condition of the licence, arising from the operation of clause 53E of the Regulation, prohibiting the service of liquor on licensed premises in the Kings Cross Precinct in glass vessels during the general late trading period, for which he received a fine of \$1,100. While this Ground turns upon the date of conviction, this offence was committed on 25 April 2013, while John Barakat held the licence.
338. With regard to Particular 5 of Ground One, the Authority is satisfied, on the basis of the information provided in the Complaint and JusticeLink records of Court outcomes provided by OLGR to the Authority on 9 December 2014, that on **21 February 2014**, John Barakat was convicted at Downing Centre Local Court for the offence of failing to display a prescribed notice on the licensed premises in that a notice prohibiting the sale or supply of liquor to minors was not visible behind the bar, contrary to clause 31(1) of the Regulation, for which he received a fine of \$300. While this Ground turns upon the date of conviction, this offence occurred on 7 April 2013, while John Barakat held the licence.
339. With regard to Particular 6 of Ground One, the Authority is satisfied, on the basis of the information provided in the Complaint and JusticeLink records of Court outcomes provided by OLGR to the Authority on 9 December 2014, that on **21 February 2014**, John Barakat was convicted at Downing Centre Local Court for the offence of failing to display a prescribed notice on the licensed premises in that a notice prohibiting the sale or supply of liquor to minors was not visible behind the bar, contrary to clause 31(1) of the Regulation, for which he received a fine of \$300. While this Ground turns upon the date of conviction, this offence occurred on 3 May 2013, while John Barakat held the licence.
340. With regard to Particular 7 of Ground One, the Authority is satisfied, on the basis of the information provided in the Complaint and JusticeLink records of Court outcomes provided by OLGR to the Authority on 9 December 2014, that on **5 March 2014**, John Barakat was convicted at Downing Centre Local Court for two counts of the offence of supplying liquor to minors on licensed premises contrary to section 117(2) of the Act, for which he received a fine of \$1,100 for each count. While this Ground turns upon the date of conviction, these offences occurred on 1 August 2013, while John Barakat held the licence.

Findings on GROUND TWO

341. The Authority is satisfied, as alleged by the Complainant, that the Licensee of the Premises, John Barakat, while holding the licence to the Premises, has failed to comply with conditions to which the licence is subject.
342. The Authority notes that Particular 1 of Ground Two refers to the same allegations as made in Particulars 1-4 and 7 of Ground One, in addition to certain other specified matters in Ground Two.

343. The Authority is satisfied that Particular 1 of Ground Two is established on the basis of the Authority's findings on the evidence or material with respect to Particulars 1-4 and 7 of Ground One, as noted above.
344. With regard to Particular 2(a) of Ground Two, concerning an inspection by Police of the Premises' CCTV servers on **26 January 2013**, the Authority is satisfied that the Licensee, John Barakat, was issued a Compliance Notice for failing to comply with the licence condition imposed by clause 53H of the Regulation which requires a licensee of licensed premises in the Kings Cross Precinct to maintain a CCTV system on the licensed premises. This Particular is established on the basis of the copy of that Compliance Notice which has been provided in the OLGR Brief of Evidence.
345. With regard to Particular 2(b) of Ground Two, concerning an audit of the Premises by Police on **26 January 2013**, the Authority is satisfied that the Licensee, John Barakat, was issued a Compliance Notice for failing to produce his RSA Certificate upon request by Police. [The Authority notes that this is a contravention of clause 40(2A) of the Regulation.] This Particular is established on the basis of the copy of that Compliance Notice which has been provided in the OLGR Brief of Evidence.
346. With regard to Particular 3(a) of Ground Two, the Authority is satisfied, on the basis of the information provided in the Complaint and JusticeLink records of Court outcomes provided by OLGR to the Authority on 9 December 2014, that on 8 December 2014, John Barakat was convicted at Downing Centre Local Court for the offence of failing to comply with a condition of the licence, imposed by the operation of clause 53E of the Regulation, prohibiting the service of liquor in glass vessels on licensed premises in the Kings Cross Precinct during the general late trading period, for which he received a fine of \$1,100. This offence was committed on **30 March 2013**, while John Barakat held the licence.
347. With regard to Particular 3(b) of Ground Two, the Authority is satisfied, on the basis of the information provided in the Complaint and JusticeLink records of Court outcomes provided by OLGR to the Authority on 9 December 2014, that on 8 December 2014, John Barakat was convicted at Downing Centre Local Court for the offence of failing to comply with a condition of the licence, imposed by the operation of clause 53F of the Regulation, prohibiting the sale or supply of "shots" on licensed premises in the Kings Cross Precinct during the general late trading period, for which he received a fine of \$1,100. This offence was committed on **30 March 2013**, while John Barakat held the licence.
348. With regard to Particular 3(c) of Ground Two, the Authority is satisfied, on the basis of the information provided in the Complaint and JusticeLink records of Court outcomes provided by OLGR to the Authority on 9 December 2014, that on 8 December 2014, John Barakat was convicted at Downing Centre Local Court for the offence of failing to comply with a condition of the licence, imposed by the operation of clause 53G of the Regulation, which requires, in the case of class 2 subject premises, the licensee to ensure that at least one RSA Marshal is carrying out RSA duties on licensed premises in the Kings Cross Precinct during the weekend late trading period, for which he received a fine of \$1,100. This offence was committed on **30 March 2013**, while John Barakat held the licence.
349. With regard to Particular 3(d) of Ground Two, the Authority is satisfied, on the basis of the information provided in the Complaint and JusticeLink records of Court outcomes provided by OLGR to the Authority on 9 December 2014, that on 8 December 2014, John Barakat was convicted at Downing Centre Local Court for the offence of failing to

comply with a condition of the licence, imposed by the operation of clause 53H of the Regulation, requiring a licensee of licensed premises in the Kings Cross Precinct to maintain a CCTV system on the premises which operates continuously from opening time until one hour after the licensed premises is required to close, for which he received a fine of \$1,100. This offence was committed on **30 March 2013**, while John Barakat held the licence.

350. With regard to Particular 3(e) of Ground Two, the Authority notes that the alleged offence of failing to comply with the condition of the licence imposed through the operation of section 28 of the Act, which requires the business carried out under an "on-premises" licence not to be limited to the sale and supply of liquor only to persons who have been invited to use or attend the licensed premises, was dismissed by Downing Centre Local Court on 8 December 2014. This Particular is *not* established.
351. With regard to Particular 4 of Ground Two, concerning an audit of the Premises' CCTV by Police on **7 April 2013**, the Authority is satisfied that the Licensee, John Barakat, was issued a Compliance Notice for failing to comply with the licence condition imposed by clause 53H of the Regulation, which requires the licensee of licensed premises within the Kings Cross Precinct to maintain a CCTV system on the premises whose cameras must cover all publicly accessible areas (other than toilets) on the premises and the footpath immediately adjacent to the premises. This Particular is established on the basis of the copy of that Compliance Notice which has been provided in the OLGR Brief of Evidence.
352. With regard to Particular 5 of Ground Two, the Authority is satisfied, on the basis of the information provided in the Complaint and JusticeLink records of Court outcomes provided by OLGR to the Authority on 9 December 2014, that on 25 November 2014, John Barakat was convicted at Downing Centre Local Court for the offence of permitting intoxication on licensed premises, contrary to section 73(1)(a) of the Act, for which he received a fine of \$1,100. This offence was committed on **23 June 2013**, while John Barakat held the licence.
353. With regard to Particular 6 of Ground Two, the Authority is satisfied, on the basis of business records provided by SDRO to OLGR and provided by the Complainant to the Authority on 9 December 2014, that Mr John Barakat was issued Penalty Notice No. 3042904480 by OLGR Inspectors on **21 April 2013** in relation to failing to comply with a condition of the licence, imposed through the operation of clause 53I of the Regulation, requiring that a licensee of licensed premises in the Kings Cross Precinct record certain incidents in an approved incident register. The Authority is satisfied that this Penalty Notice for \$1,100 was paid, which is deemed by section 150 of the Act to be a conviction for the purposes of a disciplinary complaint under Part 9 of the Act.
354. With regard to Particular 7 of Ground Two, the Authority is satisfied, on the basis of the statements made by OLGR Inspector Sarina Wise dated 14 June 2013 (**Wise Statement**) and OLGR Inspector Darren Duke dated 17 June 2013 (**Duke Statement**), that on 8 June 2013, OLGR Inspectors Sarina Wise and Darren Duke conducted an inspection of the Premises to test compliance with the Kings Cross special conditions prescribed by Part 5A of the Regulation and general compliance with the requirements of the Act.
355. Particular 8 of Ground Two alleges that at approximately 12:08am on **9 June 2013**, Inspector Wise was able to purchase two shots of liquor served by Dominic Kaikaty in contravention of a special licence condition imposed by the Regulation. The Authority is satisfied that this Particular is established, on the basis of the Wise Statement and the Duke Statement.

356. Particular 9 of Ground Two alleges that Dominic Kaikaty conceded that he served shots in breach of the licence condition imposed by clause 53F of the Regulation, which prohibits shots to be sold or supplied on licensed premises within the Kings Cross Precinct after midnight. The Authority is satisfied that this Particular is established, on the basis of the Wise Statement, the Duke Statement, and the record of interview between Inspectors Wise and Duke and Dominic Kaikaty on 1 August 2013 (**Kaikaty Interview**).
357. Particular 10 of Ground Two alleges that Inspector Wise issued two OLGR Penalty Notices to Mr Barakat, regarding the failure of the Licensee to comply with the condition of the licence imposed by clause 53F of the Regulation, which prohibits shots to be sold or supplied on licensed premises within the Kings Cross Precinct after midnight. However, the Authority notes, on the basis of SDRO outcomes for John Barakat provided by OLGR to the Authority on 9 December 2014, that these Penalty Notice Nos. 3051002534 and 3051002525 were subsequently *annulled* by the SDRO. This Particular is *not* established.
358. With regard to Particular 11 of Ground Two, the Authority is satisfied, on the basis of the information provided in the Complaint and JusticeLink records of Court outcomes provided by OLGR to the Authority on 9 December 2014, that on 12 August 2014, John Barakat was convicted at Downing Centre Local Court for the offence of failing to comply with a condition of the licence, imposed through the operation of clause 53G of the Regulation, requiring that RSA Marshals carrying out supervisory duties on licensed premises in the Kings Cross Precinct wear readily identifiable clothing, for which he received a fine of \$3,000. This offence was committed on **19 January 2014**, while John Barakat held the licence.

Findings on GROUND THREE

359. The Authority is satisfied, as alleged by the Complainant, that the Licensee of the Premises, John Barakat, has failed to comply with conditions to which any authorisation or approval held by the licensee under the Act is subject.
360. With regard to Particular 1 of Ground Three, the Authority accepts, on the basis of the GLS (now known as OneGov) licence record, that the liquor licence attaching to the Premises is an "on-premises" licence under Division 4 of Part 3 of the Act. As such, the sale and supply of liquor must be ancillary to another product or service that is sold, supplied or provided to people on the licensed premises, unless an exception under section 24(3) of the Act applies (primary service authorisation).
361. With regard to Particular 2 of Ground Three, the Authority accepts, on the basis of the GLS (now known as OneGov) record, that the licence attaching to the Premises is endorsed with a primary service authorisation, which allows liquor to be sold or supplied for consumption on the licensed premises, otherwise than with or ancillary to another product or service. However, this authorisation is subject to a condition imposed by clause 19(1)(d) of the Regulation requiring that liquor not be sold or supplied under the authorisation at any time when the primary purpose of the business or activity carried out on the licensed premises is, at that particular time, the sale or supply of liquor.
362. With regard to Particular 3 of Ground Three, the Authority is satisfied, as alleged by the Complainant and on the basis of the following evidence or material as set out below, that the Licensee of the Premises, John Barakat, while holding the licence to the Premises, failed to comply with conditions to which an authorisation or approval held by the licensee under the Act is subject – being the condition imposed by section 27(1) of the Act and the condition imposed by clause 19(1)(d) of the Regulation.

363. With regard to Particular 4 of Ground Three, the Authority accepts, on the basis of the information provided in the Complaint and the narrative of NSW Police COPS Event number E51464475, that on **25 May 2013**, Police attended the Premises and noted that there were no patrons eating meals, and that the kitchen area was closed. Police conducted an inspection of the kitchen, fridges and cool rooms, and observed that there was no fresh produce, meats, dried food or any other food that would usually be found in other restaurants; nor were there any fresh ingredients in the kitchen, as stated on the menu.
364. With regard to Particular 5 of Ground Three, the Authority accepts, on the basis of the information provided in the Complaint and the narrative of NSW Police COPS Event number E51887766, that on 2 June 2013, Police conducted a business inspection of the Premises and observed that the bar area of the Premises was busy and that the only food being prepared and served on that occasion were plates of potato chips.
365. With regard to Particular 6 of Ground Three, the Authority accepts, on the basis of the information provided in the Complaint, the Wise Statement and the Duke Statement, that on 8 June 2013, OLGR Inspectors Sarina Wise and Darren Duke attended the Premises and observed that the majority of the patrons were consuming beverages. At no time were patrons observed to be consuming food. Inspector Wise and Inspector Duke made observations of the kitchen window and noted that the only activity carried on was that of empty glasses being sent to the kitchen for cleaning and trays with clean glasses being placed on the kitchen window by staff in the kitchen.
366. With regard to Particular 7 of Ground Three, the Authority accepts, on the basis of the information provided in the Complaint, the Wise Statement and the Duke Statement, that on this occasion, no food was being prepared in the kitchen. The Authority accepts that the designated "chef" on the Premises stated to the Inspectors that he had cooked two plates of chips within the last two hours.
367. With regard to Particular 8 of Ground Three, the Authority is satisfied, as alleged by the Complainant and on the basis of the information provided in the Complaint, the Wise Statement and the Duke Statement, that at the time of the inspection by OLGR Inspectors Wise and Duke, liquor was sold and supplied to patrons at the venue when the primary purpose of the business was in fact the sale and supply of liquor.
368. With regard to Particular 9 of Ground Three, the Authority is satisfied, as alleged by the Complainant and on the basis of the Premises' sales records for the months of May and June 2013 and the Premises' "till" records for the periods from 24-25 May 2013 and 8-9 June 2013, that the sales of liquor on the Premises were significantly greater than the sales of food during the same periods.
369. With regard to Particular 10 of Ground Three, the Authority accepts, on the basis of the information provided in the Complaint, that OLGR issued a Court Attendance Notice to the Licensee, John Barakat, in relation to the failure to adhere to the conditions of the primary service authorisation and conditions of the licence, in that (1) the Licensee permitted liquor to be sold and supplied in contravention of the condition imposed by clause 19(1)(d) of the Regulation to which the primary service authorisation is subject; and (2) the Licensee failed to comply with section 27(1) of the Act, in that food was not available of a nature and quality consistent with the responsible service of alcohol.
370. The Authority's satisfaction with respect to Particular 10 of Ground Three is further supported by the recording of the following relevant convictions against the Licensee, as

evidenced by JusticeLink records of Court outcomes provided by OLGR to the Authority on 9 December 2014:

- (i) On 7 July 2014, John Barakat was convicted at Downing Centre Local Court for the offence of selling liquor not in accordance with the conditions of the PSA contrary to section 9(1)(a) of the Act, for which he received a fine of \$3,666. This offence was committed on **8 June 2013**, while John Barakat held the licence
- (ii) On 7 July 2014, John Barakat was convicted at Downing Centre Local Court for the offence of selling or supplying liquor on licensed premises where food of a nature and quantity consistent with the responsible sale, supply and service of alcohol was not made available, contrary to section 27(1) of the Act, for which he received a fine of \$3,666. This offence was committed on **8 June 2013**, while John Barakat held the licence.

371. With regard to Particular 11 of Ground Three, the Authority accepts, on the basis of the information provided in the Complaint and the Prosecutor's Statement of Facts in the matter of *City of Sydney Council v Diamond Events Pty Limited*, that on 19 July 2013, Dominic Kaikaty was recorded as stating to City of Sydney Council Rangers that, "...We [the Premises] are a restaurant but later at night it's mainly just the bar and we stay open for longer".

372. In conclusion, the Authority is satisfied, on the basis of the above evidence or material, that at the times of business inspections conducted at the Premises by Police and OLGR during May and June 2013, the Premises was not operating in accordance with the condition imposed upon the primary service authorisation by clause 19(1)(d) of the Regulation, which stipulates that liquor may not be sold or supplied under the primary service authorisation at any time when the primary purpose of the business or activity carried out on the licensed premises is, at that particular time, the sale or supply of liquor.

373. The Authority is also satisfied, on the basis of the above evidence or material, that at these times, the Premises was not operating in accordance with the condition of the primary service authorisation imposed by section 27(1) of the Act, requiring that food of a nature and quality consistent with the responsible sale, supply and service of alcohol is made available whenever liquor is sold or supplied under the PSA. Ground Three is established.

Findings on GROUND FOUR

374. The Authority is satisfied, as alleged by the Complainant, that the Licensee of the Premises, John Barakat, while holding the licence to the Premises, has failed to comply with other requirements under the Act or the Regulation relating to the licence or the licensed premises.

375. The Authority notes that Particular 1 of Ground Four refers to the same allegations as made in Particulars 5 and 6 of Ground One, in addition to certain other specified matters in Ground Four.

376. The Authority is satisfied that Particular 1 of Ground Four is established on the basis of the Authority's findings on the evidence or material with respect to Particulars 5 and 6 of Ground One, as noted above.

377. With regard to Particular 2 of Ground Four, the Authority accepts, on the basis of the information provided in the Complaint and the file note of OLGR Compliance Officer Paul Newman dated 19 September 2013, that on 7 September 2013, OLGR Inspectors Brett See and Paul Newman conducted an inspection of the Premises to test compliance with the Kings Cross special conditions prescribed by Part 5A of the Regulation and general compliance with the requirements of the Act.
378. The Authority is satisfied that during this inspection, the OLGR Inspectors observed that one staff member could not produce his RSA Competency Card. OLGR issued a Penalty Notice to the staff member and issued a Court Attendance Notice to John Barakat in relation to the failure of the Licensee to comply with clause 40(2A) of the Regulation, which prohibits a licensee of licensed premises from permitting staff to sell or supply liquor without a valid RSA Competency Card.
379. With regard to Particular 3 of Ground Four, the Authority is satisfied that on 18 January 2014, OLGR Inspectors Paul Rankin and Col Butler observed the business owner of the Premises, Mr Timothy Bali, hand a female person on the street a promotional card for the Premises. The Licensee had previously been issued a direction under section 75 of the Act which prohibited spruiking activities being conducted more than three metres from the entrance to the Premises.
380. The Authority is satisfied that the business owner was observed to be conducting these spruiking activities approximately 80 metres from the Premises. OLGR issued a Court Attendance Notice to John Barakat in relation to the failure of the Licensee to comply with a direction under section 75 of the Act.
381. The Authority is further satisfied that Ground Four is established on the basis of the recording of the following relevant convictions against the Licensee, as evidenced by JusticeLink records of Court outcomes provided by OLGR to the Authority on 9 December 2014:
- (i) With regard to Particular 2 of Ground Four, the Authority notes that on 7 July 2014, John Barakat was convicted at Downing Centre Local Court for the offence of permitting staff at the Premises to sell or supply liquor without holding current recognised RSA certification, contrary to clause 40(2A) of the Regulation, for which he received a fine of \$400. This offence occurred on **7 September 2013**, while John Barakat held the licence
 - (ii) With regard to Particular 3 of Ground Four, the Authority notes that on 12 August 2014, John Barakat was convicted at Downing Centre Local Court for the offence of failing to comply with a direction under section 75(3) of the Act, for which he received a fine of \$1,500. This offence occurred on **18 January 2014**, while John Barakat held the licence.

Findings on GROUND FIVE

382. The Authority is satisfied, as alleged by the Complainant, that the Licensee of the Premises, John Barakat, while holding the licence to the Premises, has failed to comply with a direction of the Director-General (now Secretary) under the Act.
383. With regard to Particular 1 of Ground Five, the Authority accepts, on the basis of the information provided in the Complaint and particularly a copy of the direction provided by the Complainant, that the Licensee was issued a direction under section 75 of the Act by

a delegate of the Secretary on 10 January 2014, prohibiting spruiking activities from being conducted more than 3 metres from the entrance to the Premises.

384. The Authority is satisfied, on the basis of the information provided in the Complaint and particularly the statement of OLGR Inspector Paul Rankin dated 28 February 2014 (**Rankin Statement**), that on 18 January 2014, the director of the Business Owner, Mr Timothy Bali, was observed by OLGR Inspectors Paul Rankin and Col Butler to be conducting spruiking activities approximately 80 metres away from the Premises.
385. With regard to Particular 2 of Ground Five, the Authority accepts, on the basis of the information provided in the Complaint and particularly a copy of the Court Attendance Notice provided by the Complainant, that OLGR issued a Court Attendance Notice dated 3 March 2014 to the Licensee, Mr Barakat, in relation to the above failure to comply with a direction made under section 75 of the Act.
386. The Authority's satisfaction with regard to Particular 2 of Ground Five is further supported by JusticeLink records of Court outcomes provided by OLGR to the Authority on 9 December 2014, which indicate that on 12 August 2014, John Barakat was convicted at Downing Centre Local Court in respect of the offence of failing to comply with a direction made under section 75 of the Act, for which he received a fine of \$1,500. This offence occurred on **18 January 2014**, while John Barakat held the licence.

Findings on GROUND SIX

387. The Authority is satisfied, as alleged by the Complainant, that the Licensee of the Premises, John Barakat, while holding the licence to the Premises, has engaged in conduct or activities that are likely to encourage misuse or abuse of liquor, such as binge drinking or excessive consumption.
388. With regard to Particular 1 of Ground Six, the Authority accepts, on the basis of the information provided in the Complaint and the submission from Police dated 29 May 2013 in relation to the undesirable promotion of liquor at the Premises, that Police requested OLGR to consider exercising its powers under section 102A of the Act to restrict or prohibit suspected undesirable liquor promotions carried on or permitted at the Premises, as evidenced by screenshots of the Premises' Facebook page. The Authority accepts the information, supported by the contemporaneous narrative recorded by NSW Police in COPS Event number E51382912, which indicates that Mr David Kaikaty and Mr Jesse Brewer were engaged by the Premises to conduct those spruiking activities.
389. With regard to Particulars 2 and 3 of Ground Six, the Authority is satisfied, as alleged by the Complainant and on the basis of the information provided in the Complaint and the submission from Police dated 29 May 2013, supported by screenshots of the venue's Facebook page, that the Déjà Vu licensed business operated on the Premises conducted the following liquor promotions or made the following representations:
- (a) "Here's what's at Déjà Vu: \$3.50 drinks all night!!! SHOTS, BEER, WINE..."
 - (b) In relation to a Valentine's Day activity: "Everyone that comes gets their choice of a FREE glass of sparkling wine or a shot of our freaky Wet Pussy..."

[The Authority notes that "Wet Pussy" is a type of alcoholic mixed drink or cocktail.]

- (c) In relation to an activity conducted every Thursday: "Ladies[sic] night, free shot for single ladies".
 - (d) "KEEP CALM. IT'S FRIDAY NIGHT. GET DRUNK", which appears next to a promotion for "\$3.50 DRINKS + FREE ENTRY all night".
 - (e) With reference to an animated picture depicting girls engaging in what appears to be illicit drug use inside toilets, the venue posted the following comment: "Is this why the girls[sic] toilet is always busy, no matter which bar or club you are at??"
390. With regard to Particular 4 of Ground Six, the Authority is satisfied, as alleged by the Complainant and on the basis of the information provided in the Complaint and the submission from Police dated 29 May 2013, that the Premises engaged "spruikers" to distribute business cards which promote cheap drinks and free entry to the Premises.
391. With regard to Particular 5 of Ground Six, the Authority is satisfied, as alleged by the Complainant and on the basis of the information provided in the Complaint and screenshots of the Premises' Facebook page contained within the accompanying OLGR Brief of Evidence, that the licensed business either carried out or permitted the publication of undesirable or unacceptable liquor promotions, contrary to risk assessment advice contained in the *OLGR Liquor Promotion Guidelines*.
392. With regard to Particular 6 of Ground Six, the Authority is satisfied, on the basis of information provided in the Complaint and in particular a copy of the Notice provided by the Complainant, that a Notice under section 102A of the Act was issued by the OLGR Director of Compliance to the Licensee on 2 August 2013, prohibiting the Licensee from carrying on or permitting on the licensed premises any promotional activity that encourages irresponsible, rapid or excessive consumption of liquor – such as heavily discounted drinks or the provision of more than one (1) free drink per patron per trading period.
393. With regard to Particular 7 of Ground Six, the Authority accepts, on the basis of the information provided in the Complaint and the contemporaneous file note recorded by OLGR Senior Compliance Officer Ryan Williams, that on 5 September 2013, OLGR received an anonymous complaint from a person who stated that they were a licensed operator in Kings Cross and feared repercussions if identified. The key allegations made in this complaint were:
- (a) On Wednesdays, female spruikers offer 30 shots for \$50. These offers are only verbal in nature
 - (b) The spruikers do not wear clothing that readily identifies them as agents of the venue
 - (c) The spruikers hand out promotional cards which allow a patron to obtain one free drink on entry as well as promoting the sale of shots for \$2.50.
394. With regard to Particular 8 of Ground Six, the Authority accepts, on the basis of the information provided in the Complaint and the submission from Kings Cross Local Area Command Police dated 3 September 2013, that Constable Michael Foot wrote to the Secretary with regard to alleged undesirable liquor promotions being undertaken by the Licensee. Constable Foot provided NSW Police COPS Reports and signed statements by Police officers which demonstrated that despite the issue of the section 102A Notice on 2 August 2013, the Premises was engaging in promotional activities that encouraged

the irresponsible, rapid or excessive consumption of liquor, by having spruikers verbally promote the sale and supply of \$2 "shots" in the Kings Cross Precinct.

395. The Authority is satisfied that the Licensee was engaging in activities that appeared to subvert the intent of the previously issued section 102A Notice by having spruikers verbally promote the sale and supply of \$2 shots in the Kings Cross Precinct.
396. With regard to Particular 9 of Ground Six, the Authority is satisfied, on the basis of the information provided in the Complaint and in particular, copies of the direction and Notice provided by the Complainant in the accompanying Brief of Evidence, that on 10 January 2014, an additional Notice under section 102A of the Act was issued to the Licensee by the OLGR Acting Director of Compliance, prohibiting the sale or supply of discounted shots and a direction prohibiting the spruiking of shots. A direction under section 75 of the Act was also issued on this date, prohibiting spruiking activities from being conducted more than 3 metres from the entrance to the Premises and establishing a requirement for persons conducting these activities not to touch members of the public.
397. The Authority is satisfied and notes with concern that on 18 January 2014, within days of the issue of the section 75 direction, the director of the Business Owner, Mr Timothy Bali, was observed to be conducting spruiking activities a distance of approximately 80 metres away from the Premises. The Authority is satisfied, as contended by the Complainant, that this disregard for the liquor legislation casts significant doubt on the ability of management personnel of the licensed business to fulfil their requirements under the Act and the Premises' overall compliance culture. As licensee, Mr Barakat is ultimately responsible for the compliance of the licensed business.
398. The Authority notes that the JusticeLink records of Court outcomes provided by OLGR to the Authority on 9 December 2014 indicate that on 12 August 2014, John Barakat was convicted at Downing Centre Local Court for the offence of failing to comply with a direction under section 75(3) of the Act, for which he received a fine of \$1,500. This offence occurred on 18 January 2014, while John Barakat held the licence.
399. The Authority is satisfied that Ground Six of the Complaint has been established. This conclusion is reached on the basis of information provided by the Complainant and Police, including COPS Event Reports, signed statements and Facebook screenshots, all of which satisfy the Authority that the promotions carried on at the Premises and the representations published on the Facebook page of the licensed business encouraged the irresponsible, rapid or excessive consumption of liquor.

Findings on GROUND SEVEN

400. The Authority is satisfied, on the basis of the information provided in the Complaint and the evidence or material set out below, that the Licensee of the Premises, John Barakat, is not a fit and proper person to be a holder of a licence, within the meaning of section 139(3)(i) of the Act.
401. With regard to Particular 1 of Ground Seven, the Authority is satisfied that in the 13 month period since John Barakat commenced as licensee on 25 January 2013, he has failed to comply with numerous licence conditions and other requirements under the Act and Regulation, as set out below in Particulars 2(a) through 2(q) of Ground Seven.
402. With regard to Particular 2(a) of Ground Seven, the Authority is satisfied, on the basis of the information provided in the Complaint and JusticeLink records of Court outcomes provided by OLGR to the Authority on 9 December 2014, that on 8 December 2014,

John Barakat was convicted at Downing Centre Local Court for the offence of failing to comply with a condition of the licence, imposed by the operation of clause 53E of the Regulation, prohibiting the service of liquor in glass vessels on licensed premises in the Kings Cross Precinct during the general late trading period, for which he received a fine of \$1,100. This offence was committed on **30 March 2013**, while John Barakat held the licence.

403. With regard to Particular 2(b) of Ground Seven, the Authority is satisfied, on the basis of the information provided in the Complaint and JusticeLink records of Court outcomes provided by OLGR to the Authority on 9 December 2014, that on 8 December 2014, John Barakat was convicted at Downing Centre Local Court for the offence of failing to comply with a condition of the licence, imposed by the operation of clause 53F of the Regulation, prohibiting the sale or supply of "shots" on licensed premises in the Kings Cross Precinct during the general late trading period, for which he received a fine of \$1,100. This offence was committed on **30 March 2013**, while John Barakat held the licence.
404. With regard to Particular 2(c) of Ground Seven, the Authority is satisfied, on the basis of the information provided in the Complaint and JusticeLink records of Court outcomes provided by OLGR to the Authority on 9 December 2014, that on 8 December 2014, John Barakat was convicted at Downing Centre Local Court for the offence of failing to comply with a condition of the licence, imposed by the operation of clause 53G of the Regulation, which requires, in the case of class 2 subject premises, the licensee to ensure that at least one RSA Marshal is carrying out RSA duties on licensed premises in the Kings Cross Precinct during the weekend late trading period, for which he received a fine of \$1,100. This offence was committed on **30 March 2013**, while John Barakat held the licence.
405. With regard to Particular 2(d) of Ground Seven, the Authority is satisfied, on the basis of the information provided in the Complaint and JusticeLink records of Court outcomes provided by OLGR to the Authority on 9 December 2014, that on 8 December 2014, John Barakat was convicted at Downing Centre Local Court for the offence of failing to comply with a condition of the licence, imposed by the operation of clause 53H of the Regulation, requiring a licensee of licensed premises in the Kings Cross Precinct to maintain a CCTV system on the premises which operates continuously from opening time until one hour after the licensed premises is required to close, for which he received a fine of \$1,100. This offence was committed on **30 March 2013**, while John Barakat held the licence.
406. With regard to Particular 2(e) of Ground Seven, the Authority notes that the alleged offence of failing to comply with the condition of the licence imposed through the operation of section 28 of the Act, which requires the business carried out under an "on-premises" licence not to be limited to the sale and supply of liquor only to persons who have been invited to use or attend the licensed premises, was *dismissed* by Downing Centre Local Court on 8 December 2014. This Particular is *not* established.
407. With regard to Particular 2(f) of Ground Seven, the Authority is satisfied, on the basis of the information provided in the Complaint and JusticeLink records of Court outcomes provided by OLGR to the Authority on 9 December 2014, that on 3 December 2013, John Barakat was convicted at Downing Centre Local Court for the offence of failing to comply with a condition of the licence, imposed by the operation of clause 53J of the Regulation, requiring that a licensee of licensed premises in the Kings Cross Precinct must notify Police immediately upon being made aware of an incident on the premises

involving an act of violence, for which he received a fine of \$1,100. This offence was committed on **3 April 2013**, while John Barakat held the licence.

408. With regard to Particular 2(g) of Ground Seven, the Authority is satisfied, on the basis of the information provided in the Complaint and JusticeLink records of Court outcomes provided by OLGR to the Authority on 9 December 2014, that on 3 December 2013, John Barakat was convicted at Downing Centre Local Court for the offence of failing to comply with a condition of the licence, imposed by the operation of clause 53F of the Regulation, prohibiting the sale or supply of "shots" of liquor on licensed premises in the Kings Cross Precinct during the general late trading period, for which he received a fine of \$550. This offence was committed on **7 April 2013**, while John Barakat held the licence.
409. With regard to Particular 2(h) of Ground Seven, the Authority is satisfied, on the basis of the information provided in the Complaint and JusticeLink records of Court outcomes provided by OLGR to the Authority on 9 December 2014, that on 3 December 2013, John Barakat was convicted at Downing Centre Local Court for the offence of failing to comply with a condition of the licence, imposed by the operation of clause 53H of the Regulation, requiring that a licensee of licensed premises in the Kings Cross Precinct maintain a CCTV system on the premises in accordance with the Regulation, for which he received a fine of \$550. This offence was committed on **20 April 2013**, while John Barakat held the licence.
410. With regard to Particular 2(i) of Ground Seven, the Authority is satisfied, on the basis of the information provided in the Complaint and JusticeLink records of Court outcomes provided by OLGR to the Authority on 9 December 2014, that on 21 February 2014, John Barakat was convicted at Downing Centre Local Court for the offence of failing to comply with a condition of the licence, arising from the operation of clause 53E of the Regulation, prohibiting the service of liquor on licensed premises in the Kings Cross Precinct in glass vessels during the general late trading period, for which he received a fine of \$1,100. This offence was committed on **25 April 2013**, while John Barakat held the licence.
411. With regard to Particular 2(j) of Ground Seven, the Authority is satisfied, on the basis of the information provided in the Complaint and JusticeLink records of Court outcomes provided by OLGR to the Authority on 9 December 2014, that on 21 February 2014, John Barakat was convicted at Downing Centre Local Court for the offence of failing to display a prescribed notice on the licensed premises in that a notice prohibiting the sale or supply of liquor to minors was not visible behind the bar, contrary to clause 31(1) of the Regulation, for which he received a fine of \$300. This offence was committed on **7 April 2013**, while John Barakat held the licence.
412. With regard to Particular 2(k) of Ground Seven, the Authority is satisfied, on the basis of the information provided in the Complaint and JusticeLink records of Court outcomes provided by OLGR to the Authority on 9 December 2014, that on 21 February 2014, John Barakat was convicted at Downing Centre Local Court for the offence of failing to display a prescribed notice on the licensed premises in that a notice prohibiting the sale or supply of liquor to minors was not visible behind the bar, contrary to clause 31(1) of the Regulation, for which he received a fine of \$300. This offence was committed on **3 May 2013**, while John Barakat held the licence.
413. With regard to Particular 2(l) of Ground Seven, the Authority is satisfied, on the basis of the information provided in the Complaint and JusticeLink records of Court outcomes provided by OLGR to the Authority on 9 December 2014, that on 25 November 2014,

John Barakat was convicted at Downing Centre Local Court for the offence of permitting intoxication on licensed premises, contrary to section 73(1)(a) of the Act, for which he received a fine of \$1,100. This offence was committed on **23 June 2013**, while John Barakat held the licence.

414. With regard to Particular 2(m) of Ground Seven, the Authority is satisfied, on the basis of the information provided in the Complaint and JusticeLink records of Court outcomes provided by OLGR to the Authority on 9 December 2014, that on 5 March 2014, John Barakat was convicted at Downing Centre Local Court for two counts of the offence of supplying liquor to minors on licensed premises contrary to section 117(2) of the Act, for which he received a fine of \$1,100 for each count. These offences were committed on **1 August 2013**, while John Barakat held the licence.
415. With regard to Particular 2(n) of Ground Seven, the Authority is satisfied, on the basis of the information provided in the Complaint and JusticeLink records of Court outcomes provided by OLGR to the Authority on 9 December 2014, that on 5 March 2014, John Barakat was convicted at Downing Centre Local Court for two counts of the offence of supplying liquor to minors on licensed premises contrary to section 117(2) of the Act, for which he received a fine of \$1,100 for each count. These offences occurred on **1 August 2013**, while John Barakat held the licence.
416. With regard to Particular 2(o) of Ground Seven, the Authority is satisfied that John Barakat was issued with a Compliance Notice by Police on 26 January 2013 in relation to failing to comply with a condition of the licence, imposed by clause 53H of the Regulation, requiring that a licensee of licensed premises in the Kings Cross Precinct maintain a CCTV system on the premises in accordance with the Regulation. The Authority is satisfied that this contravention was detected by Police on **26 January 2013**. A copy of the Compliance Notice has been provided by the Complainant.
417. With regard to Particular 2(p) of Ground Seven, the Authority is satisfied that John Barakat was issued with a Compliance Notice by Police on 26 January 2013 in relation to a failure to produce the RSA certificate of the Licensee, pursuant to clause 39D of the Regulation. The Authority is satisfied that this contravention was detected by Police on **26 January 2013**. A copy of the Compliance Notice has been provided by the Complainant.
418. With regard to Particular 2(q) of Ground Seven, the Authority is satisfied that John Barakat was issued with a Compliance Notice by Police on 7 April 2013 in relation to a failure to comply with a condition of the licence, imposed by clause 53H of the Regulation, requiring that a licensee of licensed premises in the Kings Cross Precinct maintain a CCTV system on the premises in accordance with the Regulation. The Authority is satisfied that this contravention was detected by Police on **7 April 2013**. A copy of the Compliance Notice has been provided by the Complainant.
419. With regard to Particular 3(a) of Ground Seven, the Authority is satisfied, on the basis of business records provided by SDRO to OLGR and provided by the Complainant to the Authority on 9 December 2014, that John Barakat was issued Penalty Notice No. 3042904480 by OLGR Inspectors on **21 April 2013** in relation to failing to comply with a condition of the licence, arising through clause 53I of the Regulation, requiring that a licensee of licensed premises in the Kings Cross Precinct record certain incidents in an approved incident register. The Authority is satisfied that this Penalty Notice for \$1,100 was paid, which is deemed by section 150 of the Act to be a conviction for the purposes of a disciplinary complaint under Part 9 of the Act.

420. With regard to Particular 3(b) of Ground Seven, the Authority notes, on the basis of SDRO outcomes for John Barakat provided by OLGR to the Authority on 9 December 2014, that Penalty Notice No. 3051002534 issued by OLGR for the alleged offence of failing to comply with a condition of the licence, imposed by the operation of clause 53F of the Regulation, which was committed on 8 June 2013, prohibiting the sale or supply of "shots" of liquor on licensed premises in the Kings Cross Precinct during the general late trading period, was subsequently *annulled* by the SDRO. This Particular is *not* established.
421. With regard to Particular 3(c) of Ground Seven, the Authority notes, on the basis of SDRO outcomes for John Barakat provided by OLGR to the Authority on 9 December 2014, that Penalty Notice No. 3051002525 issued by OLGR for the alleged offence of failing to comply with a condition of the licence, imposed by the operation of clause 53F of the Regulation on 8 June 2013, prohibiting the sale or supply of "shots" of liquor on licensed premises in the Kings Cross Precinct during the general late trading period, was subsequently *annulled* by the SDRO. This Particular is *not* established.
422. With regard to Particular 3(d) of Ground Seven, the Authority is satisfied, on the basis of the information provided in the Complaint and the Conviction Certificate dated 18 August 2014, that on 7 July 2014, John Barakat was convicted at Downing Centre Local Court for the offence of selling or supplying liquor in contravention of the conditions to which the licence is subject, pursuant to section 9(1)(a) of the Act, for which he received a fine of \$3,666. He was also ordered to pay OLGR's professional costs of \$5,000. This offence occurred on **8 June 2013**, while John Barakat held the licence.
423. With regard to Particular 3(e) of Ground Seven, the Authority is satisfied, on the basis of the information provided in the Complaint and JusticeLink records of Court outcomes provided by OLGR to the Authority on 9 December 2014, that on 7 July 2014, John Barakat was convicted at Downing Centre Local Court for the offence of permitting staff at the Premises to sell or supply liquor without holding current recognised RSA certification, contrary to clause 40(2A) of the Regulation, for which he received a fine of \$400. This offence was committed on **7 September 2013**, while John Barakat held the licence.
424. With regard to Particular 3(f) of Ground Seven, the Authority is satisfied, on the basis of the information provided in the Complaint and JusticeLink records of Court outcomes provided by OLGR to the Authority on 9 December 2014, that on 12 August 2014, John Barakat was convicted at Downing Centre Local Court for the offence of failing to comply with a direction under section 75(3) of the Act, for which he received a fine of \$1,500. This offence was committed on **18 January 2014**, while John Barakat held the licence.
425. With regard to Particular 3(g) of Ground Seven, the Authority is satisfied, on the basis of the information provided in the Complaint and JusticeLink records of Court outcomes provided by OLGR to the Authority on 9 December 2014, that on 12 August 2014, John Barakat was convicted at Downing Centre Local Court for the offence of failing to comply with a condition of the licence, arising through clause 53G of the Regulation, requiring RSA Marshals carrying out supervisory duties on licensed premises in the Kings Cross Precinct to wear readily identifiable clothing, for which he received a fine of \$3,000. This offence was committed on **19 January 2014**, while John Barakat held the licence.
426. With regard to Particular 4 of Ground Seven, the Authority accepts, on the basis of the information provided in the Complaint and in particular a copy of the Notice to Produce

provided by the Complainant, that on **10 December 2013**, OLGR Inspectors Karen McCluskey and James Shand issued a Notice to Produce under section 21 of the *Gaming and Liquor Administration Act 2007* (GALA) to the Licensee requesting the production of information and/or records to assist with the investigation of suspected breaches of the Act which were identified at the Premises on **7 December 2013**. The Notice requested production of CCTV footage, a plan of management, sales records and written procedures on the distribution of promotional material. The Licensee sought, and was granted, an extension on the date by which such material was to be produced to OLGR. On the date that the records were due to be produced to OLGR, the Licensee supplied OLGR with a USB drive containing the requested CCTV footage. The Licensee did not produce the other records requested in the Notice. OLGR advised the Licensee that the USB did not contain all the records and requested that the outstanding records be supplied to OLGR. The Authority is satisfied that the Licensee did not respond.

427. With regard to Particular 5 of Ground Seven, the Authority accepts, on the basis of the information provided in the Complaint and in particular a copy of the Notice to Produce provided by the Complainant, that on **19 January 2014**, OLGR Inspectors Paul Rankin and Col Butler conducted an inspection of the Premises and identified a breach (outlined in particular 15 of Ground Two). Inspector Butler issued the Licensee with a Notice to Produce under section 21 of the GALA for certain records pertaining to the breach. The Licensee responded to the Notice to Produce, however the records produced were not correct in that the CCTV footage did not capture the entire time period requested and the staff roster produced did not relate to the night in question. OLGR advised the Licensee of the deficiencies in the material produced and further requested compliance with the Notice to Produce. The Authority is satisfied that the Licensee did not respond.
428. With regard to Particular 6(a) of Ground Seven, the Authority is satisfied, on that on 12 August 2014, John Barakat was convicted at Downing Centre Local Court for the offence of failing to comply with a requirement under section 34(1) of the GALA, being a breach of a demand for the production of CCTV footage to Police, for which he received a fine of \$2,500. This offence occurred in respect of a notice issued on **10 December 2013**, while John Barakat held the licence.
429. With regard to Particular 6(b) of Ground Seven, the Authority is satisfied, on the basis of the information provided in the Complaint and JusticeLink records of Court outcomes provided by OLGR to the Authority on 9 December 2014, that on 12 August 2014, John Barakat was convicted at Downing Centre Local Court for the offence of failing to comply with a requirement under section 34(1) of the GALA, being a breach of a demand for the production of CCTV footage to Police, for which he received a fine of \$1,500. This offence occurred in respect of a notice issued on **19 January 2014**, while John Barakat held the licence.
430. With regard to Particular 7 of Ground Seven, the Authority is satisfied that since John Barakat commenced as licensee of the Premises, there have been promotional activities carried out on the Premises which are in contravention of the *OLGR Liquor Promotion Guidelines* and are likely to encourage misuse and abuse of liquor such as binge drinking or excessive consumption. These promotional activities have been described in Ground Six of this Complaint. The Authority is satisfied that Particular 7 of Ground Seven is established on the basis of the Authority's findings on the evidence or material with respect to Particulars 1 to 9 of Ground Six, as noted above.
431. The Authority notes that a delegate of the Secretary has twice issued Notices under section 102A of the Act prohibiting the Licensee from carrying on or permitting on the licensed premises any promotional activity that encourages irresponsible, rapid or

excessive consumption of liquor – such as heavily discounted drinks or the provision of more than one (1) free drink per patron per trading period. The Authority notes that a direction under section 75 of the Act was also issued to the Licensee on **10 January 2014**, prohibiting spruiking activities from being conducted more than 3 metres from the entrance to the Premises and establishing a requirement for persons conducting these activities not to touch members of the public.

432. The Authority notes with concern that on **18 January 2014**, within days of the issue of the section 75 direction, the director of the Business Owner, Mr Timothy Bali, was observed to be conducting spruiking activities a distance of approximately 80 metres away from the Premises. The Authority is satisfied, as contended by the Complainant, that this disregard for the liquor legislation casts significant doubt on the ability of management personnel to fulfil their requirements under the Act and the Premises' overall compliance culture.
433. The Authority is satisfied that Mr Barakat was aware of the numerous contraventions by staff at the Premises of the liquor legislation and the *Liquor Promotion Guidelines* and that he engaged with Police and OLGR Inspectors at various times during his tenure as licensee of the Premises. Despite this, Mr Barakat failed to implement sufficient measures to address those ongoing breaches of regulatory requirements, nor did he take sufficient measures to ensure strict compliance with the direction under section 75 of the Act, or the two Notices under section 102A of the Act.
434. With regard to Particular 8 of Ground Seven, the Authority is satisfied, on the basis of the information provided in the Complaint and the narrative of NSW Police COPS Event number E51248146, that on **3 April 2013**, a pedestrian passing by was assaulted by a patron of the Premises. Initially, the business owner and Dominic Kaikaty denied to Police that they had any knowledge of the incident and no record of the incident was made in the Premises' incident register.
435. With regard to Particular 9 of Ground Seven, the Authority is satisfied, on the basis of the information provided in the Complaint and the narrative of NSW Police COPS Event number E51382912, that on **10 May 2013**, Mr Jesse Brewer and Mr David Kaikaty were involved in a physical altercation with a member of the public in the near vicinity of the Premises whilst conducting promotional activities on behalf of the licensed venue.
436. With regard to Particular 10 of Ground Seven, the Authority is satisfied, on the basis of the information provided in the Complaint and the narrative of NSW Police COPS Event number E54155464, that on **25 January 2014**, a patron of the Premises violently assaulted a pedestrian walking in the vicinity of the Premises. As a result of the assault, the victim sustained bleeding and swelling to his face. The patron was arrested a short time later and observed to be heavily intoxicated and under the influence of both alcohol and a prohibited drug.
437. The Authority is therefore satisfied, on the basis of the information provided in the Complaint and the narratives of events provided by NSW Police COPS Reports within the OLGR complaint material, that there have been several instances during John Barakat's tenure as licensee of the Premises whereby staff or patrons of the Premises have been involved in acts of violence, of varying degrees of severity, either on or near the Premises.
438. The Authority is satisfied that Mr Barakat was made aware of these violent incidents and that he engaged with Police and OLGR Inspectors at various times during his tenure as licensee of the Premises. Despite this, Mr Barakat failed to implement sufficient

measures to address the occurrence of acts of violence or other anti-social conduct occurring on or near the Premises perpetrated either by staff or by patrons of the Premises.

439. With regard to Particulars 11 and 12 of Ground Seven, the Authority is satisfied, on the basis of the information provided in the Complaint and Facebook screenshots provided by OLGR in the Brief of Evidence, that John Barakat either posted or endorsed comments on social media that were immature, unprofessional and derogatory toward Kings Cross Local Area Command Police, in that:
- (i) On 25 May 2013, Police reviewed the Licensee's (John Barakat) Facebook page and noticed he posted the following comment: "Fuc u kings Cros police!" [*sic*]. Dominic Kaikaty "liked" this comment on Facebook
 - (ii) On 31 December 2013, Police reviewed the Premises' (Déjà Vu) Facebook page and observed an entry posted by a "Dylan Dvs" which was offensive toward the Kings Cross Local Area Command. The photograph was a group shot of the Premises staff, including the Licensee (Mr John Barakat), business owner (Mr Timothy Bali) and Mr Dominic Kaikaty, all posing with their middle fingers positioned in an offensive manner toward the camera. A caption was linked to the photograph which read: "On behalf of #DEJAVU kingscross we would like to say a big #FUCKYOU to Kings Cross Police LAC #kingscross #staff #police #LAC #taskforce #pigs #dogs #ftp #ftw #baws #nofilter"
 - (iii) Several days later, Police engaged with the venue, which resulted in the Licensee posting a retraction message on the venue's Facebook page. The Licensee told Police that the photograph was not posted on the Premises' Facebook page and was a result of a rogue staff member who undertook the actions of his own accord, and in respect of which the Licensee had no knowledge. However, the Authority accepts the Complainant's contention that the Licensee only posted the retraction after Police had engaged with him about the issue. The Authority accepts the Police contention that the Licensee (John Barakat), the Premises (Déjà Vu), Mr Dominic Kaikaty and other staff members were "tagged" in this photograph via Facebook and had "liked" the photograph and caption when it was originally posted.
440. The Authority does not accept the distinction made by Mr Barakat in his submissions that some of his conduct on social media was communicated through a personal Facebook page. At the time Mr Barakat elected to serve as a liquor licensee, it should have been self-evident to him that his conduct (including the publication of material on his personal Facebook page) may be relevant to an assessment of his character and ability to deal professionally with Police or other law enforcement agencies with respect to the operation of a high risk licensed venue in the Kings Cross Precinct.
441. The Authority is satisfied that John Barakat himself did not *post* to Facebook the photograph that was derogatory toward Kings Cross Local Area Command Police that is referred to in Particular 12 of this Ground. However, the Authority is satisfied that John Barakat was aware of and condoned this activity, as evident from his being "tagged" in this photograph and his "liking" the photograph and caption when it was originally posted on the venue's Facebook page.
442. To the extent that Mr Barakat claims that impugned conduct on the *venue's* Facebook page was not authorised by him, this demonstrates a lack of managerial control with

regard to the public communications and representations made to the community at large in the name of the licensed business in respect of which he was licensee.

443. With regard to Particular 13, the Authority is satisfied, as alleged by the Complainant and on the basis of the above evidence or other material, that John Barakat's attitude toward regulatory authorities has, at times, been unprofessional.
444. With regard to Particular 14, the Authority is satisfied, on the basis of the information provided in the Complaint and the statements made in the Kaikaty Interview, that John Barakat has permitted the Premises to be managed and operated by Dominic Kaikaty.
445. The Authority notes that Dominic Kaikaty was previously, as the licensee of the Eye Bar in Kings Cross, found by the Authority not to be a fit and proper person to hold a licence under the Act and was disqualified by the Authority from holding a licence for five years commencing from 6 December 2011.
446. By reason of his disqualification, Dominic Kaikaty was not appointed as an approved manager of a licensed premises pursuant to section 66 of the Act, but was employed at the Premises as a "manager" in the lay sense of the word, which the Complainant alleges satisfies the definition of a "close associate" within the meaning of section 5 of the *Gaming and Liquor Administration Act 2007*.

[The Authority notes that there is a separate but related disciplinary complaint under section 139 of the Act on foot in relation to Mr Dominic Kaikaty and his alleged status as a "close associate" of the Licensee of the Premises within the meaning of section 5 of the *Gaming and Liquor Administration Act 2007*.]

447. The Authority is satisfied that Mr Barakat was disqualified from being a licensee of any licensed premises for a period of three (3) months from 7 August 2014. This action was taken by Downing Centre Local Court by way of the imposition of an additional penalty pursuant to Part 10 of the *Liquor Act 2007* by reference to the multiple contraventions of licensing legislation that were before the Court on that occasion. The Authority notes that the contraventions before the Court at that time were only some of the large number of contraventions that form the basis of this Complaint.
448. With regard to Particular 15 of Ground Seven, the Authority is satisfied, on the basis of the information provided in the Complaint and JusticeLink records of Court outcomes provided by OLGR to the Authority on 9 December 2014, that on 25 November 2014, Mr Barakat was convicted at Downing Centre Local Court for the offence of failing to comply with a condition of the licence, imposed by the operation of clause 53I of the Regulation, requiring the maintenance of an incident register on licensed premises in the Kings Cross Precinct, for which he received a Community Service Order of 50 hours. This offence was committed on **25 January 2014**, while John Barakat held the licence.
449. With regard to Particular 16 of Ground Seven, the Authority is satisfied, on the basis of the information provided in the Complaint and JusticeLink records of Court outcomes provided by OLGR to the Authority on 9 December 2014, that on 25 November 2014, Mr Barakat was convicted at Downing Centre Local Court for the offence of failing to comply with a condition of the licence, imposed by the operation of clause 53H of the Regulation, requiring that a licensee of licensed premises in the Kings Cross Precinct maintain a CCTV system on the premises in accordance with the Regulation, for which he received a Community Service Order of 50 hours (to be served cumulatively). This offence occurred on **2 February 2014**, while Mr Barakat held the licence.

Fitness and Propriety at General Law

450. 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 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.
451. 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: *Clarahan v Register of Motor Vehicle Dealers in the ACT* (1994) 17 FLR 44.
452. 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.*
453. The Authority notes that, according to his submissions, Mr Barakat holds a current Security Master Licence and has been employed in that industry for the past 10 years.
454. However, the Authority is not satisfied, on the material before it, that John Barakat has undertaken any further education or training in relation to acquiring knowledge of various statutory duties and prohibitions which the Premises must observe under the liquor legislation, beyond the minimum requirements of the legislation. The Authority does not accept Mr Barakat's submission that he has demonstrated, through his conduct as licensee, that he was "...knowledgeable and understanding of the requirements and responsibilities of a licensee and always ensured that strict compliance was in order". He clearly did not ensure that strict compliance was observed while responsible for the Premises.
455. Regardless of the extent of his *knowledge* of licensing requirements, the multiple contraventions of the liquor legislation found by the Authority to have occurred during the period in which Mr Barakat was the Licensee of the Premises satisfies the Authority that Mr Barakat has not demonstrated a degree of diligence with regard to regulatory compliance that one would expect from a reasonably diligent person in the position of licensee of a licensed premises.
456. That is, Mr Barakat has not demonstrated the *ability* to identify and take reasonable steps to ensure compliance by the licensed business with the key regulatory obligations arising under the liquor legislation.
457. The Authority does not accept Mr Barakat's repeated reliance upon contentions that he was not present at the time when licensing offences or other contraventions were

detected by law enforcement. As licensee, Mr Barakat is ultimately responsible for the regulatory compliance of the licensed premises.

458. The Authority is not satisfied that Mr Barakat took sufficient steps to ensure regulatory compliance at those times when he was absent, and this has resulted in the incidents of non-compliance that have been found by the Authority. It was Mr Barakat's choice to hold the licence of a venue that is a high risk licensed premises. Mr Barakat has not satisfied the Authority that he took steps commensurate with the risk of operating this type of licensed premises in the Kings Cross Precinct.
459. The risk of harm presented to the community from Mr Barakat's deficiencies with respect to compliance with the liquor legislation is exacerbated by reason that the on-premises (restaurant) licence has the benefit of a PSA and ETA, and the Premises is situated within a high risk precinct that is renowned for higher levels of alcohol related violence and anti-social behaviour.
460. The *JusticeLink* records of Court outcomes provided by OLGR to the Authority on 9 December 2014 in respect of the numerous Penalty Notices and Court Attendance Notices issued to the Licensee of the Premises demonstrate that Mr Barakat is responsible for a persistent and prolonged series of breaches of legislative standards in respect of the licensed business conducted on the Premises. These requirements are designed to ensure that the harm arising from the misuse and/or abuse of liquor is minimised. These are not isolated incidents or oversights, but constitute evidence or other material demonstrating a systemic failure of compliance.
461. All of these matters, considered cumulatively, satisfy the Authority that Ground Seven is established and the Licensee of the Premises, Mr John Barakat, is not a fit and proper person to hold a liquor licence in New South Wales.
462. The Authority has considered Mr Barakat's submissions to the effect that (some of) the penalties issued by the Courts were at the lower end of the scale of potential penalties. Nevertheless, the Authority is satisfied that Mr Barakat has also incurred fines that are quite substantial and that he was disqualified from holding a liquor licence in August 2014 for three months by way of an additional penalty issued under Part 10 of the Act.
463. In any event, even those "lower range" penalties issued by the Local Court, considered cumulatively, support a finding that Mr Barakat is not a fit and proper person.
464. The Authority notes that since the making of this Complaint, subsection 45(5A) provides that when the Authority is determining the fitness of an *applicant* for a liquor licence, the Authority must, without limitation, consider whether the licence applicant:
- (a) is of good repute having regard to character, honesty and integrity
 - (b) is competent to carry on "that business or activity".
465. The Authority is not persuaded that Mr Barakat's submissions going to his character and competence establish that he is a fit and proper person to hold a liquor licence. The overwhelming evidence and material before the Authority is to the contrary.

Findings on GROUND EIGHT

466. The Authority is satisfied, as alleged by the Complainant, that public entertainment has been conducted on the Premises otherwise than in accordance with the requirements

under the *Environmental Planning and Assessment Act 1979* (EPAA) relating to the use of the Premises for public entertainment.

467. With regard to Particulars 1 and 2 of Ground Eight, the Authority accepts, on the basis of the information provided by the Complainant and Council records, that development consent number U00-00926/AFB/FMM/11627 was issued by the then South Sydney Council for the internal fit-out and use of the Premises as a restaurant and place of public entertainment, subject to conditions which included restrictions on noise from patrons and amplified entertainment.
468. With regard to Particular 3 of Ground Eight, the Authority is satisfied, on the basis of the information provided in the Complaint and City of Sydney Council records, that on 2 July 2013 at 1:17am, John Barakat was issued with a Noise Abatement Direction pursuant to section 276 of the *Protection of the Environment Operations Act 1997*.
469. With regard to Particular 4 of Ground Eight, the Authority is satisfied, on the basis of the information provided by the Complainant and the Prosecutor's Statement of Facts in the matter of *City of Sydney Council v Diamond Events Pty Limited*, that on 19 July 2013 at 11:35pm, City of Sydney Council received a complaint from a nearby resident alleging that there were unacceptable levels of noise and amplified music emanating from the Premises. Upon inspecting the complainant's residence and conducting observations of the Premises, Council Rangers determined that the level of noise was not in accordance with the Premises' development consent issued on 20 December 2000.
470. With regard to Particular 5 of Ground Eight, the Authority is satisfied, on the basis of the information provided by the Complainant and the Prosecutor's Statement of Facts in the matter of *City of Sydney Council v Diamond Events Pty Limited*, that on 4 August 2013 at 12:03am, City of Sydney Council received a complaint from a nearby resident alleging that there were unacceptable levels of noise and amplified music emanating from the Premises. Upon inspecting the complainant's residence and conducting noise testing, Council Rangers determined that the level of noise was not in accordance with the Premises' development consent issued on 20 December 2000.
471. With regard to Particular 6 of Ground Eight, the Authority accepts, on the basis of the information provided in the Complaint, that section 76(1) of the EPAA provides that specified development may not be carried out except in accordance with consent, and the relevant environmental planning instrument – in this case, the *Leichhardt Local Environmental Plan 2000*. Section 125(1) of the EPAA provides that a person who fails to comply with the requirements of the Act is guilty of an offence.

[The Authority notes that the *Leichhardt Local Environmental Plan 2000* was superseded by the *Sydney Local Environmental Plan 2012* in December 2012.]

472. With regard to Particular 7 of Ground Eight, the Authority is satisfied, on the basis of the information provided by the Complainant and correspondence between OLGR and staff at the City of Sydney Council dated 30 January 2014, that the above matter in respect of the noise complaint made on 19 July 2013 was heard before Downing Centre Local Court on 29 January 2014 and the Business Owner, Diamond Events Pty Limited, was convicted of an offence under the EPAA and ordered to pay a fine of \$7,200. The Business Owner was also ordered to pay Council's professional costs of \$720 and witness expenses of \$208.
473. Also with regard to Particular 7 of Ground Eight, the Authority is satisfied, on the basis of the information provided by the Complainant and correspondence between OLGR and

staff at the City of Sydney Council dated 30 January 2014, that the above matter in respect of the noise complaint made on 4 August 2013 was heard before Downing Centre Local Court on 29 January 2014 and the Business Owner, Diamond Events Pty Limited, was convicted of an offence under the EPAA and ordered to pay a fine of \$9,000. The Business Owner was also ordered to pay Council's professional costs of \$720 and witness expenses of \$208.

474. With regard to Particular 8 of Ground Eight, the Authority is satisfied, on the basis of the information provided by the Complainant and the narratives of NSW Police COPS Event numbers E53485459 and E53470548, that on 10 December 2013 and 15 December 2013, the Premises breached a condition of its development consent imposing a maximum capacity of 78 persons on the Premises (including staff). The Business Owner, Diamond Events Pty Limited, was issued with a warning for the breach identified on 10 December 2013 and issued with Penalty Notice No. 4922857940 in relation to the breach identified on 15 December 2013.
475. With regard to Particular 9 of Ground Eight, the Authority is satisfied, on the basis of the information provided by the Complainant and City of Sydney Council records, that at 10:50pm on 28 February 2014, an authorised officer issued the Business Owner with a Noise Abatement Direction in relation to the level of amplified music emitted by the Premises pursuant to section 276 of the *Protection of the Environment Operations Act 1997*.
476. The Authority is satisfied that this Ground is established on the basis of the information provided in the Complaint and the evidence or material outlined above.

Findings on GROUND NINE

477. The Authority is satisfied, as alleged by the Complainant, that the licence has not been exercised in the public interest.
478. With regard to Particular 1 of Ground Nine, the Authority is satisfied, on the basis of the information provided in the Complaint and *JusticeLink* records of Court outcomes provided by OLGR to the Authority on 9 December 2014, that the Licensee of the Premises, John Barakat, since commencing as licensee in respect of the Premises on 25 January 2013, has been convicted at Downing Centre Local Court for numerous offences in respect of the following breaches of the Act and Regulation.
479. The Authority notes that Particular 1 of Ground Nine refers to the same allegations as made in Particulars 2(a) through 2(q) and Particulars 3(a) and 3(e) through 3(g) of Ground Seven, in addition to certain other specified matters in Ground Nine.
480. The Authority is satisfied that Particular 1 of Ground Nine is established on the basis of the Authority's findings on the evidence or material with respect to Particulars 2(a) through 2(q) and Particulars 3(a) and 3(e) through 3(g) of Ground Seven, as noted above.
481. With regard to Particular 2 of Ground Nine, the Authority is satisfied that Mr Barakat has permitted the Premises to be used as a bar or nightclub where the primary purpose of the business carried out on the Premises is the sale and supply of liquor, in contravention of the condition imposed by clause 19(1)(d) of the Regulation to which the PSA held by Mr Barakat under the Act is subject.

482. The Authority notes that Particular 2 of Ground Nine refers to the same allegations as made in Particulars 1 through 11 of Ground Three.
483. The Authority is satisfied that Particular 2 of Ground Nine is established on the basis of the Authority's findings on the evidence or material with respect to Particulars 1 through 11 of Ground Three, as noted above.
484. With regard to Particular 3 of Ground Nine, the Authority is satisfied that since commencing as licensee of the Premises on 25 January 2013, John Barakat has failed to comply with two Notices to Produce issued under section 21 of the GALA.
485. The Authority is satisfied that Particular 3 of Ground Nine is established on the basis of the information provided in the Complaint and *JusticeLink* records of Court outcomes provided by OLGR to the Authority on 9 December 2014, which indicate that on 12 August 2014, John Barakat was convicted at Downing Centre Local Court for the offence of failing to comply with a requirement under section 34(1) of the GALA, being a breach of a demand for the production of CCTV footage to Police, for which he received a fine of \$2,500. This offence was committed in respect of a notice issued on **10 December 2013**, while Mr Barakat held the licence.
486. The Authority is further satisfied that Particular 3 of Ground Nine is established on the basis of the information provided in the Complaint and *JusticeLink* records of Court outcomes provided by OLGR to the Authority on 9 December 2014, which indicate that on 12 August 2014, John Barakat was convicted at Downing Centre Local Court for the offence of failing to comply with a requirement under section 34(1) of the GALA, being a breach of a demand for the production of CCTV footage to Police, for which he received a fine of \$1,500. This offence occurred in respect of a notice issued on **19 January 2014**, while John Barakat held the licence.
487. With regard to Particular 4 of Ground Nine, the Authority is satisfied that since John Barakat commenced as licensee of the Premises on 25 January 2013, there have been promotional activities carried out both on the Premises' Facebook page and through "spruikers", which, having regard to the complete circumstances, are likely to encourage misuse and/or abuse of liquor, such as binge drinking or excessive consumption.
488. The Authority notes that a delegate of the Secretary twice issued Notices under section 102A of the Act prohibiting the Licensee from carrying on or permitting on the licensed premises any promotional activity that encourages irresponsible, rapid or excessive consumption of liquor – such as heavily discounted drinks or the provision of more than one (1) free drink per patron per trading period. The Authority notes that a direction under section 75 of the Act was also issued to the Licensee on 10 January 2014, prohibiting spruiking activities from being conducted more than 3 metres from the entrance to the Premises and establishing a requirement for persons conducting these activities not to touch members of the public.
489. The Authority is satisfied with respect to this Ground and notes with concern that on 18 January 2014, within days of the issue of the section 75 direction, the director of the Business Owner, Mr Timothy Bali, was observed to be conducting spruiking activities a distance of approximately 80 metres away from the Premises. The Authority is satisfied, as contended by the Complainant, that this disregard for the liquor legislation casts significant doubt on the ability of management personnel to fulfil their requirements under the Act and the Premises' overall compliance culture.

490. The Authority notes that Particular 4 of Ground Nine refers to the same allegations as made in Particulars 1 through 9 of Ground Six.
491. The Authority is satisfied that Particular 4 of Ground Nine is established on the basis of the Authority's findings on the evidence or material with respect to Particulars 1 through 9 of Ground Six.
492. With regard to Particular 5 of Ground Nine, the Authority is satisfied, on the basis of the information provided in the Complaint and the narratives of NSW Police COPS Reports contained within the accompanying OLGR Brief of Evidence, that since John Barakat commenced as licensee of the Premises on 25 January 2013, there have been several acts of violence or other anti-social conduct occurring on or near the Premises that have been perpetrated either by staff or by patrons of the Premises.
493. The Authority notes that Particular 5 of Ground Nine refers to the same allegations as made in Particulars 8, 9 and 10 of Ground Seven.
494. The Authority is satisfied that Particular 5 of Ground Nine is established on the basis of the Authority's findings on the evidence or material with respect to Particulars 8, 9 and 10 of Ground Seven.
495. The Authority is satisfied that Mr Barakat was made aware of these violent incidents occurring either on or near the Premises and that he engaged with Police and OLGR Inspectors at various times during his tenure as licensee of the Premises. Despite this, there is little by way of submissions from Mr Barakat identifying how he implemented sufficient measures and controls to address the risk of violence or other anti-social conduct occurring on or near the Premises perpetrated either by staff or by patrons. This is especially troubling in light of Mr Barakat's submissions to the effect that he was not on the Premises when offences occurred.
496. With regard to Particulars 6 through 11 of Ground Nine, the Authority is satisfied that prohibited drugs have been located either on the Premises or on the persons of staff employed by the Premises.
497. With regard to Particular 6 of Ground Nine, the Authority is satisfied, on the basis of the information provided in COPS Report E51382912, that on 10 May 2013, Mr Jesse Brewer and Mr David Kaikaty were involved in a physical altercation with a member of the public in the near vicinity of the Premises whilst conducting promotional activities on behalf of the licensed venue.
498. With regard to Particular 7 of Ground Nine, the Authority is satisfied, on the basis of the information provided in the Complaint, the narrative of NSW Police COPS Event number E744443490 and the Conviction Certificate for Dominic Kaikaty provided by the Complainant in respect of this offence, that subsequent to a search by Police of Mr Kaikaty's person on 1 March 2013, six (6) small re-sealable bags each containing a quantity of cocaine were detected. The Authority is satisfied, on the basis of the information provided in the Complaint and in Mr Kaikaty's submission addressing the merits of the Complaint, that on 13 February 2014, Mr Kaikaty was convicted at Downing Centre Local Court for the "Table 1" offence of supply of prohibited drugs under section 25(1) of the *Drug Misuse and Trafficking Act 1985*, for which he received an eight month suspended sentence pursuant to section 12 of the *Crimes (Sentencing Procedure) Act 1999*. A drug destruction order was also made.

[The Authority is satisfied, on the basis of *JusticeLink* records of Court outcomes provided by OLGR to the Authority on 20 November 2014, that Mr Kaikaty's appeal to the District Court was dismissed on 11 November 2014, and that the orders of the Local Court stand.]

499. With regard to Particular 8 of Ground Nine, the Authority is satisfied, on the basis of the information provided in the Complaint, the statement of OLGR Inspector Karen McCluskey dated 18 June 2013 (McCluskey Statement) and the statement of OLGR Inspector Kate Hanley dated 25 June 2013 (Hanley Statement), that on 30 March 2013, OLGR Inspectors Karen McCluskey and Kate Hanley observed a patron of the Premises to be in possession of what appeared to be a prohibited drug.
500. With regard to Particular 9 of Ground Nine, the Authority is satisfied, on the basis of the information provided in the Complaint and the file note recorded by OLGR Inspector James Shand dated 27 May 2013, that on 24 May 2013, OLGR Inspectors James Shand and Leonie Gibson observed a person who represented herself as an off-duty staff member to converse with a male patron of the Premises in relation to what appeared to be a prohibited drug.
501. With regard to Particular 10 of Ground Nine, the Authority is satisfied, on the basis of the information provided in the Complaint and the narrative of NSW Police COPS Event number E51452937, that on 22 March 2013, Mr Jesse Brewer, who was employed by the venue as a promoter at that time, supplied covert Police with 0.87 grams of cocaine. Mr Brewer was issued with a Court Attendance Notice by Police.
502. The Authority is satisfied, on the basis of the Conviction Certificate provided by OLGR, that an employee of the licensed business, Mr Jesse Brewer, was subsequently convicted of an offence under the *Drug Misuse and Trafficking Act 1985*, for which he was sentenced to six (6) months' imprisonment commencing 2 October 2013.
503. With regard to Particular 11 of Ground Nine, the Authority is satisfied that on three occasions between August 2013 and December 2013, staff of the licensed business conducted on the Premises supplied covert Police with prohibited drugs either inside or near the Premises.
504. The Authority is satisfied, on the basis of the information provided in COPS Report E53322413, that Mr Storm Graham, who was employed by the venue as a promoter at that time, supplied a patron of the Premises with 0.94 grams of cocaine.
505. The Authority is satisfied, on the basis of the information provided in COPS Report E53322413, that on 24 August 2013, Mr Graham supplied a patron of the Premises with ten (10) tablets of MDMA.
506. The Authority is satisfied, on the basis of the information provided in COPS Report E53322413 and the witness statement made by "Kase" (assumed name), that on 16 November 2013, Mr Graham supplied a patron of the Premises with 2 grams of cocaine.
507. The Authority notes with concern that on 22 March 2013 and on three occasions between August 2013 and December 2013, staff of the licensed business conducted on the Premises supplied covert Police with prohibited drugs either inside or near the Premises. While there is no evidence that Mr Barakat himself committed an offence in relation to prohibited drugs, and these matters are not decisive, they provide further

indicia of a lack of control over conduct on the licensed premises, especially in light of Mr Barakat's submission that he was not on the Premises when offences occurred.

508. With regard to Particular 12 of Ground Nine, the Authority is satisfied, on the basis of the information provided in the Complaint and the narrative of NSW Police COPS Event number E51382912, that on 10 May 2013, Mr Jesse Brewer and Mr David Kaikaty were involved in a physical altercation with a member of the public in the near vicinity of the Premises whilst conducting promotional activities on behalf of the licensed venue. The Authority is satisfied, on the basis of the Conviction Certificate provided by OLGR, that Jesse Brewer was later found in possession of a prohibited drug.
509. Also with regard to Particular 12 of Ground Nine, the Authority is satisfied, on the basis of the information provided in the Complaint and the narrative of NSW Police COPS Event number E51252345, that on 22 April 2013, David Kaikaty abused and threatened Police in the Kings Cross Precinct.
510. With regard to Particular 13 of Ground Nine, the Authority is satisfied, on the basis of the information provided in the Complaint that John Barakat has permitted the Premises to be managed and operated by Mr Dominic Kaikaty.
511. The Authority is satisfied, as alleged in Particular 13 of Ground Nine, that Mr Dominic Kaikaty was previously, as the licensee of the Eye Bar in Kings Cross, found by the Authority not to be a fit and proper person to hold a licence under the Act and was disqualified by the Authority from holding a licence for five (5) years commencing from 6 December 2011. By reason of his disqualification, Dominic Kaikaty was not appointed as an approved manager of a licensed premises pursuant to section 66 of the Act, but was employed at the Premises as a "manager" in the lay sense of the word, which the Complainant alleges satisfies the definition of a "close associate" within the meaning of section 5 of the *Gaming and Liquor Administration Act 2007*.

[The Authority notes that there is a separate but related disciplinary complaint under section 139 of the Act before the Authority in relation to Dominic Kaikaty's fitness to be a "close associate" of a liquor licensee arising from the conduct of the Déjà Vu business and other matters.]
512. The Authority is satisfied that the JusticeLink records of Court outcomes provided by OLGR on 9 December 2014 in respect of the numerous Penalty Notices and Court Attendance Notices issued to the Licensee of the Premises demonstrate a persistent and prolonged series of breaches of requirements of the Act that are designed to ensure that the harm arising from the misuse and/or abuse of liquor is minimised. These are not isolated incidents, or oversights, but evidence of a systemic failure of compliance.
513. Further in relation to this Ground, the Authority is satisfied that notwithstanding his brief tenure as licensee, John Barakat was disqualified from being a licensee of any licensed premises for a period of three (3) months from 7 August 2014. This action was taken by Downing Centre Local Court by way of the imposition of an additional penalty pursuant to Part 10 of the *Liquor Act 2007* by reason of the multiple contraventions of licensing legislation that were before the Court on that occasion. The Authority notes that the contraventions before the Court at that time were only some of the large number of contraventions that form the basis of this Complaint.
514. The Authority is satisfied, as alleged by the Complainant, on the basis of the regulatory record of the Premises, the convictions recorded against Mr Barakat in his capacity as licensee of the Premises, and the further evidence or material relied upon above, that the

licence has not been exercised in the public interest during the period when the Déjà Vu licensed business traded on the Premises.

515. When discerning the relevant "public interest" the Authority has been guided by the statutory objects and considerations in section 3 of the Act, in addition to the specific offence provisions within the Act and the conditions of the licence.

DISCIPLINARY ACTION

516. The Authority did not turn its mind to the question of disciplinary action until the Complainant and the interested parties (Mr John Barakat, Mr Timothy Bali and Mr James Farrugia) were given the opportunity to make a final round of written submissions addressing the Authority's dispositions on the Grounds of Complaint and the question of what, if any, disciplinary action should be taken as a consequence of this Complaint.

517. The Authority's preliminary findings on the Grounds of Complaint were notified to Mr Barakat, Mr Farrugia and Diamond Events Pty Ltd by letter from the Authority's Chief Executive dated 20 February 2015.

Final Submissions on Disciplinary Action from Complainant

518. On 6 March 2015, the Complainant made final submissions on disciplinary action. The Complainant submits that the disciplinary orders appropriate for the Authority to make are:
1. In respect to Grounds Two to Seven inclusive and Nine, under section 141(2)(c) of the Act, that John Barakat pay, within such time as is specified in the order, a monetary penalty not exceeding 400 penalty units given the aggravating circumstances (as defined in section 141(7) of the Act) disclosed in the Complaint
 2. In respect to Grounds One to Nine inclusive, under section 141(2)(l)(i) of the Act, that John Barakat pay the amount of **\$6,664.97**, being the costs incurred by the Office of Liquor, Gaming and Racing in carrying out the investigation under section 138 of the Act – the Authority notes that "Annexure A" attached to the Complainant's submission provides a schedule detailing the costs incurred by each OLGR officer involved in making, reviewing and finalising the Complaint
 3. In respect to Grounds One to Nine inclusive, disqualify, under section 141(2)(f) of the Act, John Barakat for life from:
 - a. Holding a licence;
 - b. Being the manager of licensed premises; and
 - c. Being a close associate of a licensee.
519. The Complainant submits that in relation to the proposed disciplinary order (1) above, a higher penalty "approaching the maximum" is warranted for the following reasons:
- The Complaint concerns contraventions of section 73 and section 74 of the Act
 - In light of the number and serious nature of offences, including multiple and recurring prescribed offences (deemed the most serious offences under the Act); offences involving the supply of liquor to minors, the supply of liquor to intoxicated patrons and the distribution of prohibited drugs on the licensed premises, these

factors, when considered in totality and in the short time frame of the Licensee's tenure at the licensed premises, are so serious as to warrant the taking of action that is available to the Authority when "circumstances of aggravation" exist

- The seriousness of the outcome of the contraventions that have been found in the Complaint includes, but is not limited to, serious public intoxication, a "culture of prohibited drug supply" on the licensed premises and instances of minors becoming "grossly intoxicated" from the supply of liquor on the licensed premises.

520. The Complainant submits that the Authority's preliminary findings on the Grounds of Complaint, as notified to the parties on 20 February 2015 indicate a "complete failure" of the Licensee's ability to implement appropriate systems and controls to ensure the venue is operated appropriately, and demonstrate a "blatant disregard for regulatory obligations".

521. The Complainant submits that "multiple prescribed and serious offences" were committed by the Licensee (including while a "strike" was already in force against the licence, for the purposes of the "three strikes" disciplinary scheme in Part 9A of the Act) and that this conduct "paints an alarming picture of the mismanagement of the Premises which resulted in a clear threat to the public interest". The Complainant submits that the fact that the Licensee was operating licensed premises in the highly regulated Kings Cross precinct "requires an even greater level of prudence and diligence" on the Licensee's behalf.

522. The Complainant contends that a "range of potential harms, both acute and chronic", have resulted from these contraventions and that these risks or threats were aggravated by the "patently permissive environment" manifesting in the repeated compliance failures of the Licensee, repeated issues with service of liquor to minors, non-observance of RSA practices, non-compliance with directions and positioning of the venue as a place to get cheap drinks.

523. The Complainant submits that the Licensee was afforded "ample" time to remedy this conduct following intervention by the Authority, OLGR, Police and Council; however the "failure" to do so serves to aggravate the risk of harm and demonstrates an "indifference to regulatory engagement and an inability to operate a licensed venue in accordance with community expectations".

524. Noting that "recidivist conduct" is involved, the Complainant submits that the potential harm in this instance extends beyond the immediate and evident harm to include the "potentially negative effect on industry and community confidence in the regulatory environment". The Complainant contends that the integrity of the regulatory regime and efficacy of regulatory intervention is "undermined" by repeat offending and that it is "not in the public interest" to have licensed venues operated in a manner that "presents an increased risk of contributing to alcohol related violence and disturbance in the community, whilst posing an unnecessary drain on regulatory resources".

Complainant recommendation on disqualification under section 141(2)(f) of the Act

525. The Complainant submits that the "extreme recidivism" clearly demonstrates that Mr Barakat was non-responsive to regulatory engagement, including previous remedial intervention and indicates a comprehensive failure to observe fundamental licence obligations and an inability to implement adequate management and compliance practices.

526. Based on the venue's history of serious offences, the fundamental failures around adequacy of management and compliance culture and the threat to the public interest (in particular, threats to public health and safety which culminated in a short term closure order), the Complainant submits that the likelihood of future contraventions is "extreme" should Mr Barakat remain in or re-enter the liquor industry. Other regulatory action has proven to be "ineffective" in changing behaviour, thus the Complainant submits that "...the only appropriate action is to disqualify Mr Barakat for life".

Complainant recommendation of no action against the licence

527. The Complainant now withdraws its recommendation (made in the initial Complaint letter dated 13 March 2014) that the Authority cancel, under section 141(2)(a) of the Act, the licence or alternatively, cancel, under section 141(2)(d) of the Act, the primary service authorisation and extended trading authorisation attaching to the licence.

528. The Complainant notes that since the lodging of the Complaint, the Premises Owner terminated the lease and the Premises was vacated by the former Business Owner (Diamond Events Pty Ltd) on 16 April 2014. The Complainant submits that the Premises Owner has "taken steps" to identify a "suitable" licensee to whom to lease the Premises and inspections undertaken by OLGR officers and discussions with Kings Cross Police "confirm" that the venue is being operated more responsibly and "conducting a lower risk business model".

Complainant on action against "interested persons"

529. The Complainant notes and supports the action proposed by the Authority in relation to Diamond Events Pty Ltd and Mr Timothy Bali as interested persons in the Déjà Vu licensed business.

Final Submissions on Disciplinary Action from the Premises Owner

530. The Authority's letter of 20 March 2015 invited the Premises Owner, Mr James Farrugia, to make a final round of written submissions on the question of disciplinary action before 19 March 2015.

531. On 10 March 2015, Mr Farrugia made a final submission on this matter by email to the Authority's General Counsel. Briefly, Mr Farrugia submits that:

- (i) In late September to early October 2014, the 6 x 6 year lease in favour of Boutique Bar Concepts Pty Ltd with Mr Grant Collins as director and licensee of the Premises was finalised. Mr Farrugia draws the Authority's attention to the fact that unlike the previous lease he "inherited" (in respect of the Déjà Vu licensed business), the director and business owner of Boutique Bar Concepts Pty Ltd is also the licensee of the Premises
- (ii) Mr Farrugia submits that this "full commercial lease" was prepared by a specialist liquor licence lawyer and that Mr Farrugia, as the Premises Owner "insisted" that Boutique Bar Concepts Pty Ltd execute a "Liquor Licence Deed" outlining "strict measures and remedies" to protect his business from these types of events occurring in the future
- (iii) Mr Farrugia submits that a "full upgrade and high quality refurbishment of the Premises" costing "in the order of \$350,000-\$400,000" was carried out by

Mr Collins and that the Premises recommenced trading [as "The Powder Keg Restaurant and Bar"] in late October 2014

- (iv) Since the submission made on Mr Farrugia's behalf by his legal representative on 8 August 2014, Mr Farrugia submits that "everything has progressed as I ensured it would". Mr Farrugia submits that he has kept OLGR and other authorities informed of "important developments" throughout this period and that this "confirms [his] integrity as a responsible Premises Owner"
- (v) Mr Farrugia submits that Grant Collins, who is an "internationally renowned bar consultant and mixologist", has been trading as business owner and licensee of the Premises for "over 4 months completely incident-free". Mr Farrugia notes that the time period over which Mr Collins has been trading captures the "busy" summer trading period
- (vi) Mr Farrugia submits that "upon physically monitoring the venue personally on numerous occasions as well as regular online searches", Mr Collins' venue presents as a "superior quality, high-end restaurant/bar operation with a food and beverage offering that attracts a high price bracket"
- (vii) Mr Farrugia further submits that the venue has been "well received" by local residents and patrons via "many reviews and online social media platforms". The venue is "highly publicised" throughout all media channels as a "high quality restaurant/bar venue", which Mr Farrugia contends "deter[s] the potential for any image transfer whatsoever from the previous operation, making it impossible for previous patrons to think the same type of venue/behaviour exists at that address". Mr Farrugia submits that the venue is a "sit down, table service only restaurant"
- (viii) Mr Farrugia refers to a telephone conversation between himself and Senior Constable Michael Foot of Kings Cross Licensing Police on 25 February 2015, whereby Kings Cross Police confirmed that "there has not been one issue with the Premises for Kings Cross Police" since the Premises was vacated by Diamond Events Pty Ltd in early 2014. Mr Farrugia also notes several quotes from Senior Constable Foot recorded during this conversation, including, *inter alia*: "not one issue"; "bona fide restaurant"; "totally different"; "I don't know why the Authority is still pursuing the licence" and "very dated application"
- (ix) Mr Farrugia submits that a telephone conversation between himself and Simon Anton, City of Sydney Council Late Night Officer on 25 February 2015 was "consistent" with the conversation with Senior Constable Foot, discussed above. Mr Farrugia notes several quotes from Mr Anton recorded during their conversation, as follows: "not so much as a phone call"; "I don't know why the Authority is still pursuing this matter"; "absolutely nothing, Council has had no calls since they have been running"; "no customer complaints" and "I can't see how there would be a problem". Mr Farrugia invites the Authority to confirm the above comments via written submissions from Senior Constable Foot and Mr Anton direct as part of this final submission process
- (x) Mr Farrugia submits that he spoke via telephone with OLGR Inspector Brett See on 27 February 2015, who confirmed that, similarly to Police and Council, OLGR "...have not received one single complaint" in relation to the business now operating on the Premises

- (xi) Mr Farrugia attaches a notice from OLGR dated 27 February 2015 indicating that a pending investigation into a proposed second strike against the licence (pursuant to Part 9A of the Act) had concluded. Mr Farrugia notes that a delegate of the Secretary determined that a second strike should not be incurred against the licence by reason of the "...current significant disciplinary action being taken against the former licensee and former close associate" and the "...substantial change in business model and demonstrated compliance since the new business operation commenced at the Premises"
- (xii) Given the response from the relevant authorities and the public, combined with previous comments from senior officers at OLGR stating that after the eviction of the previous Business Owner and Licensee (Diamond Events Pty Ltd and John Barakat) there was "no issue with the licence itself", Mr Farrugia questions whether there is "anyone who actually wants any action taken toward the licence at the Premises" and submits that "the answer is clearly no"
- (xiii) Mr Farrugia submits that the former Licensee, Mr Barakat, has been the subject of "specific serious disciplinary action" by the Local Court including "...fines, community service orders and disqualification from holding a licence for a period of 5 years". Mr Farrugia submits that the "punishments" handed down by the Local Court indicate that the Court has concluded that the "...commission of the offences was due to the specific compliance failures of the previous Licensee/Business Owner, not any other party"

[The Authority notes that this is an apparent reference to Mr Barakat's disqualification from holding the position of liquor licensee on 25 November 2014 as an additional penalty under Part 10 of the Act]

- (xiv) Mr Farrugia submits that the "threat of the past repeating itself at the Premises has been removed" by Mr Farrugia's terminating the lease of the Business Owner, "proactively evicting" the Licensee and "carefully selecting and installing a new experienced operator with an excellent reputation for responsible and professional hospitality service".
- (xv) Mr Farrugia submits that "other action is preferable to avoid innocent parties being punished" for the actions of those responsible. Mr Farrugia notes that there have been changes to the licensee, business owner, management and the physical Premises itself and submits that it is a "whole new operation with absolutely no association to the previous operators or Licensee who were responsible for the commission of the offences".
- (xvi) Mr Farrugia submits that the new operators are "experienced and professional, and have invested significant funds in establishing an entirely new business", with the full support of Mr Farrugia (which includes a "large lessor fitout contribution"). Mr Farrugia submits that this is an "extremely relevant and important consideration and should be afforded the upmost [*sic*] weight" when making a determination on disciplinary action
- (xvii) Mr Farrugia submits that he has the "full support" of Police and Council and that the new licensee has engaged in discussions with Police and Council and demonstrated that he is a "responsible operator"
- (xviii) Mr Farrugia submits that he and the new business owner/licensee have already been disadvantaged by the recording of the first "mandatory" strike against the

licence for conduct by the previous Licensee and Business Owner of the Premises. Mr Farrugia contends that this, along with the general history of offences caused by those unrelated parties, "impact[s] on the property value with reduced investor appeal due to negative stigma and a higher perceived risk moving forward" and that the new licensee "suffers higher ongoing business costs with an increase in annual licence fees" as a result

- (xix) Mr Farrugia submits that he and the new licensee, Mr Grant Collins, are "already incurring unjust punishment" and that Mr Farrugia has been "forced to spend significant sums of money on legal representation for submissions and issues not related to [his] actions"
- (xx) Mr Farrugia submits that it would be "particularly inequitable and unjust" if he and the new business owner/licensee (who each had "nothing to do with the Premises" at the time that the conduct giving rise to the commission of offences took place) were to "...suffer the consequences of incurring any restrictions on the licence at all". Mr Farrugia contends that this would also be "highly contradictory" to the recent actions, written notices and comments made by OLGR, Police, Council and the Local Court
- (xxi) Mr Farrugia concludes by noting that in addition to the submissions made above, he reiterates the submissions made on his behalf by his legal representative on 8 August 2014.

No Submissions on Disciplinary Action from Mr Barakat

- 532. The Authority's letter of 20 February 2015 invited Mr Barakat to make a final round of written submissions on the question of disciplinary action before 19 March 2015.
- 533. No further submissions were made by Mr Barakat.

No Submissions on Disciplinary Action from Diamond Events Pty Ltd

- 534. The Authority's letter of 20 March 2015 also placed the Business Owner, Diamond Events Pty Ltd on notice that the Authority was contemplating taking action under section 141(6) against Diamond Events Pty Ltd and its company director, Mr Timothy Bali as "interested persons" in the Déjà Vu licensed business. They were provided with the Complaint and submissions and invited to make written submissions on the question of what, if any disciplinary action should be taken before 19 March 2015.
- 535. No submissions were made by Diamond Events Pty Ltd or Mr Timothy Bali in response to this notice.

DECISION

Disciplinary Action against Mr John Barakat

- 536. The Authority has considered the submissions made by the Complainant and the Premises Owner in response to the Authority's findings on the Grounds of Complaint that were communicated to the interested parties on 20 March 2015.
- 537. The Authority accepts the uncontested final submissions on disciplinary action made by the Complainant that Mr Barakat has demonstrated "extreme recidivism" during his

tenure as licensee of a late trading licensed premises designated as a "high risk" licensed venue in the Kings Cross Precinct.

538. The Authority is satisfied on the material before it that Mr Barakat has shown complete disregard for the regulatory requirements imposed upon licensed premises in the Kings Cross precinct, resulting in a sequence of prosecutions and Penalty Notices that the Complainant has identified in the Grounds of this Complaint and that the Authority is satisfied have otherwise been established, on the basis of the *JusticeLink* records of Court outcomes provided by the Complainant in December 2014.
539. The Authority accepts the uncontested arguments on disciplinary action made by the Complainant to the effect that Mr Barakat has demonstrated, during his tenure as licensee of the Premises, that he was non-responsive to regulatory engagement and escalating forms of regulatory intervention. The Authority is satisfied that Mr Barakat has learned little from the sequence of Penalty Notices and prosecutions mounted against him and his conduct of the business indicates a comprehensive failure to observe fundamental licence obligations and an inability to implement adequate management and compliance practices.
540. The Authority notes that Mr Barakat has not seen fit to respond to the Complainant's submissions on disciplinary action, and did not respond to the Authority's proposed findings on the Grounds of Complaint.
541. The Authority does not accept Mr Barakat's arguments made in his submissions dated 1 August 2014 to the effect that the offences for which he has been charged are "technical" and "not serious" and do not demonstrate a pattern of offending.
542. The *JusticeLink* and SDRO business records of Court outcomes provided by the Complainant in December 2014 depict an escalating range of fines for offences covering the broad gamut of possible contraventions against the Act and Regulation.
543. Fines issued by the Downing Centre Local Court in Sydney in respect of offences pleaded in the Grounds of this Complaint vary in quantum and are not limited to the lower end of the range. They include: \$300 each for two separate instances of failing to display a prescribed notice on the Premises; \$400 for staff selling or supplying liquor without a valid RSA competency card; \$550 for serving shots of liquor during the late trading period; \$550 for failing to maintain a required CCTV system; \$1,000 for permitting intoxication on the Premises; \$1,100 for two separate instances of failing to observe glass restrictions; \$1,100 for serving shots of liquor during the late trading period; \$1,100 for failing to engage an RSA Marshal during the weekend late trading period; \$1,100 for failing to maintain a required CCTV system; \$1,100 for failing to notify Police of an incident of violence on the Premises; \$1,100 for failing to maintain an incident register; \$1,100 for permitting intoxication on the Premises; \$1,100 each for two counts of supplying liquor to minors on a licensed premises; \$1,500 for failing to comply with an OLGR direction under section 75 of the Act; \$1,500 for failing to comply with a Police Notice to Produce requesting CCTV footage; \$2,500 for another separate instance of failing to comply with a Police Notice to Produce requesting CCTV footage; \$3,000 for failing to engage a readily identifiable RSA Marshal at the Premises; \$3,666 for failing to comply with the requirements of the Primary Service Authorisation by which the Premises may serve liquor without a meal; and \$3,666 for failing to make available food of a nature consistent with the responsible service of alcohol.
544. More recently, the offences pleaded in respect of Ground Seven of this Complaint have given rise to orders from the Local Court against Mr Barakat that he serve 50 hours of

community service for not maintaining an incident register in accordance with the Regulation; another 50 hours for not observing CCTV requirements imposed by the Regulation and another 50 hours for a further instance of not maintaining an incident register. All of these were breaches of special licence conditions imposed by the Regulation upon late trading premises in the Kings Cross Precinct.

545. Furthermore, upon his conviction for the offences of failing to comply with the requirements of the Primary Service Authorisation pursuant to clause 19(1)(d) of the Regulation and failing to make available food of a nature consistent with the responsible service of alcohol pursuant to section 27(1) of the Act - which relate to Particular 10 of Ground Three of the Complaint - Mr Barakat was **disqualified** from holding a liquor licence for a period of three (3) months commencing 7 August 2014. This action was taken by Downing Centre Local Court by way of the imposition of an additional penalty pursuant to Part 10 of the *Liquor Act 2007* by reason of the multiple serious contraventions of licensing legislation that were before the Court on that occasion.
546. Mr Barakat's submissions dated 1 August 2014 include arguments that the offences and convictions against him were the product of his inability to resolve his "personal, financial and licensing duties" and that some of the offences occurred at times when he was not present on the Premises. Mr Barakat has also argued that he has not previously held a liquor licence and that he had family responsibilities that meant he was not present on the Premises when adverse incidents occurred.
547. Those submissions are completely unconvincing. Section 91 of the Act makes clear that the licensee is responsible "at all times" for the personal supervision and management of the conduct of the business operating on the licensed premises pursuant to a licence.
548. It was Mr Barakat's *choice* to acquire and continue to hold onto the licence of a high risk late trading licensed premises in the closely regulated Kings Cross precinct. If Mr Barakat was not present on the Premises at any times, for whatever reason, then it remained his responsibility to ensure that those who are on the Premises operate the licensed business in accordance with regulatory requirements.
549. Instead, the Premises was left under the management of Mr Dominic Kaikaty, a person who was at all relevant times disqualified from holding a liquor licence by a published decision of this Authority dated 6 December 2011.
550. The Authority agrees with the Complainant's uncontested final submission that other regulatory action has proven to be "ineffective" in changing Mr Barakat's behaviour. The sequence and range of multiple offences against the Act committed during fewer than 18 months of Mr Barakat holding the licence (the business having vacated the Premises in April 2014) indicates that repeated regulatory engagement and the issue of numerous Penalty Notices against Mr Barakat did not bring about a real change in conduct while the business was in operation. The fines and other orders issued by the Court in respect of the Déjà Vu business, including disqualification from Mr Barakat holding a licence for three months, demonstrates the escalating seriousness of his cumulative conduct, requiring the escalation of penalties issued against him.
551. The Authority notes with concern that Mr Barakat's submissions of 1 August 2014 diminish the seriousness of the offences for which he has been charged. Mr Barakat's submission that there is no basis for taking disciplinary action against him betrays a complete lack of understanding that the purpose of disciplinary action is the protection of the public interest, not whether the subject of the complaint should be "punished" further.

552. The Authority has taken into account Mr Barakat's arguments that a finding that he is not fit and proper to hold a liquor licence may have implications for his ability to hold a security industry licence. That may well be the case, but the Authority has determined this Complaint on its merits of the material before it and in accordance with the legislation. The Authority notes that Mr Barakat has now already been disqualified by the Court for five years and that the implications of the Authority's disciplinary action in this matter, if any, for his ability to hold a security licence is a matter for the security industry regulator.
553. Mr Barakat's failure to provide submissions in response to the Table of Offences provided by the Complainant on 9 December 2014 (notwithstanding his request for extensions of time to do so, which were granted), failure to make submissions in response to the Authority's preliminary dispositions on the Grounds of Complaint and failure to provide any submissions on the question of disciplinary action in response to the Authority's letter of 20 March 2015, satisfy the Authority that Mr Barakat does not take the regulatory process seriously. The Authority's findings with regard to the operation of Déjà Vu Facebook page in respect of the licensed business provide a further indication that Mr Barakat does not take his relationship with law enforcement seriously either.
554. The Authority does not accept the submission by Mr Barakat that he chose to plead guilty or not contest Penalty Notices for economic reasons. He has made an economic choice to acquire and hold and continue to hold the liquor licence for the Déjà vu business and has been found guilty of many offences for which he has either been prosecuted or (in the case of Penalty Notices) elected to defend in Court to little avail. While the Authority is required to consider the nature and circumstances of the commission of offences the Authority would require substantial evidence to displace a conviction recorded by a Local Court for an offence against the Act. Mr Barakat had the option of defending Local Court matters with or without legal representation and also had the option of appealing any convictions to the District Court. The Authority accepts the convictions and other orders issued against Mr Barakat and evidenced by the Complainant on their face. The Authority has assessed the cumulative impact of those penalties arising from Mr Barakat's conduct of the Déjà vu business.
555. Although not arising from any offence pleaded in support of a Ground of this Complaint, the updated Table of Offences and *JusticeLink* records provided by the Complainant to the Authority in relation to this Complaint on 9 December 2014 (put to Mr Barakat for submissions in reply) record that on 25 November 2014, the Downing Centre Local Court convicted Mr Barakat of yet another failure to observe CCTV requirements contrary to clause 53H of the Regulation. The Court ordered another 50 hours community service and, under section 148 of the Act, disqualified Mr Barakat from holding a liquor licence for a period of five (5) years.
556. The Authority's disciplinary jurisdiction under Part 9 of the Act serves a broader purpose than the powers of the Local Court to disqualify a person from the liquor industry under Part 10 of the Act.
557. While the fact that Mr Barakat is currently disqualified by the Court has been taken into account when determining disciplinary action on this Complaint, the Authority's disciplinary powers serve to protect the public interest in respect of the Act, whereas the powers of the Court are available by way of an additional penalty when a person is convicted of offences against the Act.

558. The Authority has considered whether Mr Barakat's current five year term of disqualification is sufficient to protect the public, and is satisfied that a much stronger regulatory response is now warranted.
559. The Complainant argues in this Complaint that Mr Barakat should be disqualified from holding a regulated position in the liquor industry as licensee, approved manager or close associate for life, by reason that other regulatory action taken against him has "proved ineffective". The Authority agrees with that proposition.
560. While disqualifying a person for life from an industry is a serious matter, it is an option that is available to the Authority, in the most serious cases, if that action is reasonably necessary to protect the public.
561. During his tenure as a liquor licensee that extended for fewer than 18 months, Mr Barakat has been convicted of numerous offences, including repeated offences that have been met with escalating and substantial fines. The sum of fines arising from offences that are the subject of the Grounds of this Complaint total in excess of \$25,000. They cover a broad range of offences provided by the Act and Regulation.
562. The regulatory response to Mr Barakat's misconduct as licensee of the Déjà Vu business has come at considerable cost to the community – principally through enforcement costs incurred by OLGR Inspectors, Police and the Courts.
563. Mr Barakat has not even seen fit to respond to the Complainant's proposal that he now face a substantial monetary penalty, that he pay OLGR's costs and that he be banned for life from holding regulated roles in the New South Wales liquor industry.
564. Mr Barakat commented in his submission of 1 August 2014 that he does not intend to hold a liquor licence again. On the material before it, the Authority cannot envisage any circumstance where Mr Barakat *should* participate as licensee, approved manager or close associate of any licensed business in this State again.
565. The Authority has considered the Complainant's request that Mr Barakat be required to pay the Secretary's costs in respect of the costs incurred by OLGR in carrying out the investigation under section 138 of the Act. The Grounds of Complaint have been established and material has been provided by the Complainant to the Authority explaining to the Authority's satisfaction how those investigative costs were incurred. The Authority is satisfied that it is in the public interest that Mr Barakat pay the costs incurred by OLGR in carrying out this investigation.
566. The Authority has considered the Complainant's request that Mr Barakat be ordered under section 141(2)(c) of the Act, to pay, within such time as is specified in the order, a monetary penalty not exceeding 400 penalty units by reason that there are aggravating circumstances (as defined in section 141(7) of the Act) established in this Complaint.
567. A monetary penalty issued under Part 9 of the Act serves a protective, rather than a punitive purpose. Having considered the quantum of relevant Penalty Notices and fines that have already been issued against Mr Barakat, the Authority does not consider that a monetary penalty of 400 penalty units is required now to serve a further, cumulative protective purpose. The Authority is satisfied that a substantial monetary penalty of 100 penalty units is sufficient to serve that purpose in the present circumstances.

Action against Diamond Events Pty Ltd and Mr Timothy Bali

568. On the material before it, given the number and breadth of offences committed by the licensee in respect of this licensed business over only 18 months of its operation, the Authority is satisfied that Diamond Events Pty Ltd and its sole director, Mr Timothy Bali, were more likely than not aware of the continuing failure of this business to observe its regulatory requirements.
569. If these parties were not aware, then they should have been aware of these adverse regulatory events and should have had in place supervisory and/or contractual mechanisms in place to be on notice of these developments.
570. On 20 March 2015, the Authority put Diamond Events Pty Ltd and Mr Bali on notice that it was contemplating taking action against them as persons interested in the Déjà Vu business and inviting submissions in reply.
571. No submissions were made by either party.
572. The Authority is satisfied that both Diamond Events Pty Ltd and Timothy Bali are persons interested in the Déjà Vu business within the meaning of section 137(3) of the *Liquor Act 2007*.
573. The nature and extent of licensing and other offences committed in relation to the licensed business demonstrates a lack of diligence on the part of the Business Owner to address these regulatory failings of its business by, for example, installing a new licensee and more diligent management.
574. Diamond Events Pty Ltd and Mr Bali must also share some responsibility for conducting a high risk late trading licensed business with a disqualified person (Mr Dominic Kaikaty) acting as a close associate of the licensee. The Business Owner should have been aware of Mr Kaikaty's disqualified status.
575. There is also some evidence, in the material before the Authority, that Mr Bali was present on the Premises at relevant times when events leading to regulatory action occurred – for example, the permission of intoxication on the Premises and the failure to observe licence conditions imposed by the Act and Regulation in relation to, *inter alia*, CCTV requirements, the service of alcohol in glass vessels during the late trading period and displaying prescribed notices on the Premises. The Authority is satisfied that Mr Bali himself was caught spruiking the business in defiance of a direction issued by OLGR under section 75 of the Act.
576. In the circumstances of this case, the Authority is satisfied that it is a reasonable measure, for the protection of the public, that Diamond Events Pty Ltd and its sole director, Mr Timothy Bali, be disqualified from participating in the New South Wales liquor industry as a person interested in a licensed business. In light of the serious regulatory failings of this licensed business, the Authority considers that a substantial period of disqualification is required and that period should be for a period of 10 years.

No Action against the Licence

577. The Authority notes that the Complainant has now withdrawn its initial submissions that the Authority take disciplinary action against the licence itself by revoking the extended trading authorisation and the primary service authorisation.

578. The Premises is now under the control of a new licensed business and tenant following the removal of the Déjà Vu business from the Premises and the Premises Owner taking possession in April 2014 - albeit only after the OLGR Complaint was made and served upon the Premises Owner.
579. It is potentially open to the Authority to take action in relation to a liquor licence, notwithstanding that there may be economic consequences to the premises owner when a licensed premises has been the subject of a serious recent history of non-compliance with licensing legislation.
580. A premises owner who takes its economic interests in a licensed premises seriously should have in place sufficient controls to preserve those interests. It should not require the notification of a disciplinary complaint to become aware of regulatory problems occurring at a licensed premises operated pursuant to a lease.
581. A responsible premises owner should have measures in place enabling the premises owner to become informed of adverse regulatory developments as they arise and, if necessary, intervene when a licensed premises is subject to repeated or serious regulatory action.
582. A disciplinary complaint is made against a licensed *premises*, not a particular *business*. It may not be a sufficient answer for a premises owner to point to its installation of a new tenant when considering whether a premises that has generated considerable regulatory problems should not have its licence modified pursuant to disciplinary action. However, having considered the submissions of the Premises Owner and the Complainant together and noting that the Complainant has now withdrawn its recommendation that the licence be subject to disciplinary action, the Authority does not propose to take action against the licence on this occasion.
583. In making this decision the Authority has considered all of the statutory objects and considerations prescribed by section 3 of the Act, and notes section 3(2)(a) - the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour); section 3(2)(b) - the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor and section 3(2)(c) - the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life. All of those considerations point to the permanent removal of Mr Barakat from the industry.

ORDERS

584. The Authority makes the following orders:
- (i) Pursuant to section 141(2)(c) of the Act, that Mr John Barakat pay to the Authority, within 28 days from the date of this decision, a monetary penalty of 100 penalty units
 - (ii) Pursuant to section 141(2)(l)(i) of the Act, that Mr John Barakat pay to the Authority, within 28 days from the date of this decision, the amount of **\$6,664.97**, being the costs incurred by the Office of Liquor, Gaming and Racing in carrying out the investigation under section 138 of the Act

- (iii) Pursuant to section 141(2)(f) of the Act, that Mr John Barakat be **disqualified for life** from:
- (a) Holding a licence
 - (b) Being the approved manager of licensed premises, and
 - (c) Being a close associate of a licensee

... in respect of any licensed business in New South Wales

- (iv) Pursuant to section 141(6) of the Act, Diamond Events Pty Ltd, ACN 161 595 535 is disqualified from being an interested person in a licensed business in the State of New South Wales for a period of ten (10) years from the date of this decision
- (v) Pursuant to section 141(6) of the Act, Mr Timothy Bali is disqualified from being an interested person in a licensed business in the State of New South Wales for a period of 10 years from the date of this decision.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'M Brodie'.

Micheil Brodie
Chief Executive

13 May 2015