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Dear Mr Kennedy

**Potential Third Strike under Part 9A of the *Liquor Act 2007*
South West Rocks Country Club, South West Rocks**

On 20 January 2015, the Authority received a bundle of evidence or material under the cover of a letter from Mr Sean Goodchild, Acting Director of Compliance, Office of Liquor, Gaming and Racing (OLGR) in his capacity as delegate of the Secretary of (then) NSW Trade and Investment (now a function within the jurisdiction of the NSW Department of Justice).

The OLGR material informed the Authority that on 25 November 2014, the South West Rocks Country Club trading at 2 Sportsman Way, South West Rocks NSW 2431 (Club) had reportedly committed a prescribed offence for the purposes of the *Three Strikes* disciplinary scheme in Part 9A of the *Liquor Act 2007* (Act).

The prescribed offence arose through the breach of a licence condition regarding CCTV that had been previously imposed upon the Club's liquor licence by a delegate of the Secretary on 14 August 2013 by way of a remedial measure imposed pursuant to section 144E(1)(a) of the Act after a first strike had been incurred against the Club's licence.

At its meeting on 30 April 2015, the Authority considered the OLGR material and all submissions received in relation to that material and determined **not** to incur a third strike pursuant to Part 9A of the Act. The Authority also determined that no remedial action should be taken in respect of the Club at this time. The Authority informally notified the parties of this decision via email dated 16 June 2015.

Under section 36C of the *Gaming and Liquor Administration Act 2007*, the Authority is required to publish statements of reasons with respect to those types of decisions prescribed by clause 6 of the *Gaming and Liquor Administration Regulation 2008*. The attached statement of reasons has been prepared in the context of a high volume liquor jurisdiction that requires the publication of statements of reasons as soon as practicable.

If you have any enquiries about this decision, please contact the Authority's General Counsel, Mr Bryce Wilson via email at bryce.wilson@ilga.nsw.gov.au.

Yours faithfully

Micheil Brodie
Chief Executive

- 1 SEP 2015

STATEMENT OF REASONS

INTRODUCTION

1. On 20 January 2015, the Independent Liquor and Gaming Authority (Authority) received a bundle of material under the cover of a letter of that date from Mr Sean Goodchild, Acting Director of Compliance, Office of Liquor, Gaming and Racing (OLGR) in his capacity as delegate of the Secretary (Secretary) of (then) NSW Trade and Investment (now a function within the jurisdiction of the NSW Department of Justice).
2. OLGR notified the Authority of the “commission”, on 25 November 2014, of a prescribed offence within the meaning of Part 9A of the *Liquor Act 2007* (Act) in relation to the licensed premises known as “South West Rocks Country Club” trading at 2 Sportsman Way, South West Rocks (Club).
3. The Authority notes that a club liquor licence number LIQC300238679 currently attaches to the Club, which permits the sale or supply of liquor for consumption on and off the Club premises. The licence also allows the Club to operate gaming machines.
4. Notwithstanding that the licensed business has a club licence which pre-dates the commencement of section 11A of the Act and enables the Club to engage in the unrestricted sale or supply of liquor for consumption on the Club premises, the Authority notes that the Club does not usually elect to trade beyond midnight. The Club premises also incorporate a golf course, bowling greens and tennis courts.
5. At the time the OLGR material was received, Authority licensing records indicated that the current licensee of the business operating on the Club premises is a company limited by guarantee, South West Rocks Country Club Pty Ltd (Licensee). The approved secretary appointed by the Licensee is Mr David Cunningham (Approved Secretary).
6. There are currently two strikes in force against the Club’s liquor licence. Details of the circumstances in which the first and second strikes against the licence were incurred are provided below – as well as a summary of the facts of the further prescribed offence that is now subject to consideration.

OVERVIEW OF THE *THREE STRIKES* SCHEME

7. The disciplinary regime provided by Part 9A was inserted into the Act by the *Liquor Amendment (3 Strikes) Act 2011*. Part 9A provides a supplementary scheme for taking disciplinary action against participants in the liquor industry that is separate from, and does not limit, the pre-existing disciplinary provisions contained in Part 9 of the Act.
8. While incurring a “first strike” is an automatic process, once a “prescribed offence” is deemed to have been “committed” in accordance with section 144C of the Act, a decision to incur either a second or third strike is at the discretion of the relevant decision maker – and may not be made until consultation with a range of third parties has occurred and all relevant statutory considerations have been taken into account.
9. With regard to first and second strikes, the primary decision maker is the Secretary of what is now the NSW Department of Justice. Those decisions are reviewable by the Authority. With regard to third strikes, the primary decision maker is the Authority. The Authority’s decisions with respect to third strikes are reviewable on the merits by the New South Wales Civil and Administrative Tribunal (NCAT).

10. The Scheme is reasonably complex, with provisions designating, *inter alia*:
 - (a) those offences against the Act that are deemed to be *prescribed offences* which may potentially form the basis of a strike
 - (b) the circumstances in which a *relevant person* is deemed to have *committed a prescribed offence* in relation to a liquor licence for the purposes of the Scheme
 - (c) the parties who must be consulted before a decision maker (the Secretary in respect of a second strike or the Authority in respect of a third strike) may decide that a second or third strike should be *incurred*
 - (d) discretionary factors that must be considered before a decision maker may decide that a second or third strike should be *incurred*
 - (e) the circumstances in which a strike commences, or ceases, to be *in force* against a licence.

11. Briefly, for a *strike* to be incurred, a relevant person must first *commit a prescribed offence* in relation to the licensed premises in question.

12. The definition of a *prescribed offence* is provided by section 144B of the Act and identifies eleven types of offences. Relevantly to this matter, the section states:

144B Definitions

prescribed offence, in relation to a licence, means an offence against any of the following provisions of this Act (or a provision of this Act or the regulations that is prescribed by the regulations) that was committed on or in relation to the premises to which the licence relates:

- (a) section 9 (sale or supply of liquor contrary to licence), but only where the offence relates to the sale or supply of liquor on or in relation to the premises outside of the trading hours for those premises,
- (b) section 11(2) (breach of licence condition) but only in respect of conditions imposed under Division 3 or 4 of Part 6, section 144E or clauses 2A–5 or 7 of Schedule 4,
- (c) section 73(1)(a) or (b) (permitting intoxication or indecent, violent or quarrelsome conduct),
- (d) section 73(2) (selling or supplying liquor to an intoxicated person),
- (e) section 74((1)(b) or (2) (permitting the sale, possession or use of a prohibited plant or drug),
- (f) section 75(3) (failure to comply with a direction given by the Director-General),
- (g) section 82(6) (failure to comply with a short-term closure order),
- (h) section 84(7) (failure to comply with a long-term closure order),
- (i) section 102A(2) (failure to comply with a notice issued by the Director-General),
- (j) section 117(1), (2) or (8) (selling or supplying liquor to a minor or allowing such sale or supply),
- (k) section 149 (licensees and managers liable for act of employees etc.) in respect of a contravention of section 73(2), 75(3) or 117(1) or (2).

13. Section 144C sets out those circumstances in which a *prescribed offence* is *deemed* to have been committed for the purposes of the Scheme. The section states:

144C Committing a prescribed offence

- (1) For the purposes of this Part, a person commits a prescribed offence if:
 - (a) a court convicts the person for the offence (whether or not it imposes any penalty), or
 - (b) an amount is paid under a penalty notice in respect of the offence, or
 - (c) a penalty notice enforcement order under the Fines Act 1996 is made against the person in respect of the offence.
- (2) However, if:
 - (a) the conviction is overturned on appeal, or
 - (b) the person elects, after an amount is paid under the penalty notice, to have the offence dealt with by a court, or
 - (c) the penalty notice, or the penalty notice enforcement order to the extent that it applies to the penalty notice, is withdrawn or annulled,

- any strike based on the conviction, penalty notice or enforcement order is revoked and any remedial action taken as the result of the strike ceases to have effect.*
- (3) *Prescribed offences that are committed in relation to a particular licence within a single 24 hour period are taken, for the purposes of this Part, to be a single prescribed offence.*

Requirements for a First, Second or Third Strike

14. Under the Scheme, a first strike is automatically incurred once a prescribed offence has been committed.
15. By contrast, incurring a second or third strike is a discretionary matter, requiring that an assessment be made by the relevant decision maker as to whether the strike *should* be incurred, having regard to the seriousness of the harm that *may* have resulted from, or been associated with, the commission of the prescribed offence and a number of other statutory considerations listed below.
16. The decision whether or not a second strike should be incurred is made by the Secretary, while the decision whether or not a third strike should be incurred is made by the Authority.
17. For a first strike to be incurred, section 144D(1) prescribes that there must be *no strike* already incurred in relation to the liquor licence and that a relevant person must commit a prescribed offence.
18. For a second strike to be incurred, section 144D(2) prescribes that a relevant person must have committed a prescribed offence in circumstances where *one strike* is already in force in relation to the licence.
19. The Secretary must then decide whether a second strike *should* be incurred, taking into account:
 - (a) the seriousness of any harm that may have resulted from, or been associated with, the commission of the offence; and
 - (b) any other matter that may be prescribed by the regulations [the Authority notes that the *Liquor Regulation 2008* (Regulation) does not prescribe any such matters for the purposes of this section of the Act].
20. For a third strike to be incurred, section 144D(3) prescribes that a relevant person must have committed a prescribed offence in circumstances where *two strikes* are already in force in relation to the licence.
21. The Authority must then decide whether a third strike *should* be incurred, taking into account:
 - (a) the seriousness of any harm that may have resulted from, or been associated with, the commission of the offence; and
 - (b) any other matter that may be prescribed by the regulations [the Authority notes that the Regulation does not prescribe any such matters for the purposes of this section of the Act].
22. Section 144G(2)(a) of the Act then lists those third parties who must be notified and invited to make a submission, within a specified period of at least 21 days, when a decision maker (the Secretary or the Authority, as the case may be) makes a reviewable decision. They include:
 - (i) the licensee;
 - (ii) the approved manager (if any);

- (iii) any person whose name is provided to the Authority as an “interested person” in the business if notified to the Authority under section 41 or section 55 of the Act, and the owner of the licensed premises;
- (iv) if the decision is whether a third strike should be incurred – each former licensee or manager of the business who may be adversely affected by the decision; and
- (v) any other person prescribed by the regulations [the Authority notes that the Regulation does not prescribe any other parties for the purposes of this section of the Act].

23. Furthermore, section 144G(2)(b) of the Act requires a decision maker to notify and have regard to any submissions received within the specified time period from:

- (i) the New South Wales Police Force;
- (ii) the Office of Liquor, Gaming and Racing within the Department of Justice; and
- (iii) the New South Wales Bureau of Crime Statistics and Research (BOCSAR) within the Department of Justice.

Further statutory considerations for second and third strikes

24. Section 144G(2)(c) of the Act provides a list of statutory considerations which a decision maker must take into account, to the extent that the decision maker considers them relevant to a decision whether to incur a second or third strike:

144G Matters to be considered by the Secretary and Authority

- (2) ...
- (a) ...
 - (i) *whether the licensed premises were “declared premises” within the meaning of Schedule 4 to the Act at the time when the offences that caused a strike are alleged to have been committed;*
 - (ii) *the size and patron capacity of the licensed premises and how this may impact on the ability of the licensee or manager to prevent the commission of prescribed offences;*
 - (iii) *the history and nature of the commission of prescribed offences by relevant persons in relation to the licence or on or in relation to the licensed premises;*
 - (iv) *the history and nature of violent incidents that have occurred in connection with the licensed premises;*
 - (v) *whether other action would be preferable;*
 - (vi) *whether there have been changes to the persons who are the licensee, manager or business owner;*
 - (vii) *whether there have been changes to the business practices in respect of the business carried on under the licence;*
 - (viii) *any other matter prescribed by the regulations [the Authority notes that no such matters are prescribed by the Regulation at the time of this decision letter].*

25. Section 144G(3) provides that nothing in section 144G prevents a decision maker from taking into account “...any other matter that the decision maker thinks is relevant to the proper making of a decision under this Part”.

Expiry of Strikes

26. Pursuant to section 144D(4) a strike *comes into force* on the day upon which the prescribed offence that caused the strike is *deemed* to have been committed. This is not the same as the date when the offence actually occurred.

27. That is, once a second or third strike has been determined, the strike comes into force from the date of conviction for the prescribed offence, the date of payment of any Penalty Notice issued in respect of the offence, or the date when the State Debt Recovery Office (SDRO) issues a Penalty Notice Enforcement Order in respect of an unpaid Penalty Notice for the offence, as the case may be. However, section 144D(5) provides that a

strike against a licence *expires* three (3) years after the day upon which it came into force.

BACKGROUND TO THE CONSIDERATION OF THE POTENTIAL THIRD STRIKE

28. The Authority has before it Mr Goodchild's letter to the Authority dated 20 January 2015 (OLGR Letter), which attached the following material:
 - (a) Annexure A: Flowchart prepared by OLGR outlining the history of the prescribed offences committed pursuant to section 144C of the Act, giving rise to the first and second strikes against the licence
 - (b) Annexure B: First strike remedial action decision document (First Strike Remedial Decision) and second strike decision document (Second Strike Decision)
 - (c) Annexure C: Reports sourced from the NSW Police Computerised Operational Policing System (COPS) database, NSW Police data and SDRO data for prescribed offences occurring on the Club premises.
29. The OLGR letter, read together with Annexures A, B and C, discloses the following sequence of events:

First Strike

30. On 11 January 2013, a first prescribed offence of *licensee permit intoxication on the licensed premises* contrary to section 73(1)(a) of the Act was detected as occurring at the Club by NSW Police.
31. On 11 February 2013, a Penalty Notice was issued in relation to the prescribed offence.
32. On 7 March 2013, this Penalty Notice was paid by the Club, resulting in a first strike being automatically incurred against the licence, pursuant to section 144C of the Act.
33. On 2 May 2013, the legal representative for the Club, Mr David Kennedy of the law firm CBP Lawyers made a submission in response to a proposal from OLGR to impose remedial conditions on the Club's licence in relation to the first strike.
34. The Club submitted that it had paid the Penalty Notice "...as a commercial decision without having taken advice on the implications and at the time of payment did not appreciate the strict consequences".
35. The Club further submitted that the imposition of the OLGR proposed remedial measure, being a requirement to implement a Plan of Management, would be a "...redundant duplication of the voluntary plan of management that the Club has entered into with the Police already that reflects what the Club now has adopted as its own standard management policy and procedures in any event".
36. The Club then made further submissions on 3 May 2013, 10 May 2013 and 17 May 2013 which provided CCTV footage and advised of more recent communication with Police.
37. As noted above, in the First Strike Remedial Decision dated 14 August 2013, a delegate of the (then) Director General of NSW Trade and Investment determined to impose a new condition upon the licence pursuant to section 144E(1) of the Act.
38. This condition required that a Plan of Management addressing certain prescribed subject matters be developed and implemented by the Club by 30 September 2013 (Plan of Management Condition).

39. The Plan of Management would be available for immediate inspection by NSW Police or OLGR inspectors from that date forward.

Second Strike

40. The OLGR Letter dated 20 January 2015 also provides a copy of the Second Strike Decision. This document indicates that on 1 March 2013, a further prescribed offence of *licensee permit intoxication on the licensed premises* contrary to section 73(1)(a) of the Act was detected by NSW Police.
41. A Penalty Notice was issued on 5 April 2013. A Penalty Notice Enforcement Order was issued by SDRO on 23 June 2013 in respect of that Penalty Notice. Upon SDRO taking this administrative enforcement action, the requirements of section 144C were satisfied and the prescribed offence was deemed to have been committed. This enabled the consideration of the Secretary's discretion to incur a second strike against the licence.
42. On 28 June 2013, OLGR invited written submissions from the relevant parties as to whether a second strike should be incurred. Submissions were sought from the Licensee and Approved Secretary of the Club. Submissions were also sought from NSW Police and BOCSAR.
43. Following a request by Mr Kennedy on behalf of the Club, an extension was granted until 9 September 2013 for the Club to make submissions on the potential second strike.
44. On 9 September 2013, Mr Kennedy of CBP Lawyers made a lengthy submission on behalf of the Club. Mr Kennedy submitted that "...it would not be appropriate for the Director General to decide that a second strike should be incurred against the Club's licence, on a proper assessment of the (lack of) any resultant harm from the specific incident and the (lack of) seriousness of any harm associated with the specific incident – section 144D(2)(c)".
45. Mr Kennedy also submitted that the Club had "...extensively cooperated with local Police and implemented a range of measures...in order to improve practices and procedures, including ongoing staff training in RSA protocols" and had entered into a local licensing agreement dated 13 March 2013 which provided for, *inter alia*, a 10:00pm lockout on Friday and Saturday nights, the engagement of security guards at the Club on Friday and Saturday nights and whenever entertainment is provided, stricter enforcement of dress regulations and improved late night food offerings.
46. On 8 April 2014, a delegate of the Secretary decided, in the Second Strike Decision, that a second strike *should* be incurred in respect of the offence detected as occurring at the Club on 1 March 2013.
47. Although the decision incurring the second strike was not made until 8 April 2014, by the operation of section 144D(4), that second strike was deemed to have come into force when the relevant prescribed offence was deemed to have been committed – that is, on 23 June 2013.

Evidence that two strikes are in force

48. As part of administrative arrangements for the administration of the Scheme, SDRO routinely notifies OLGR of the payment status of Penalty Notices that have been issued in relation to licensed premises in NSW.

49. The Authority is satisfied, on the basis of the OLGR Second Strike Decision letter dated 8 April 2014, that the second strike remains in effect at the time of this decision and notes that the decision to incur a second strike against the Club's licence was not the subject of any application for review by the Authority.
50. The Authority is further satisfied, on the basis of business records published on the online *Three Strikes Register* at www.olgr.nsw.gov.au/pdfs/threestrikesregister.pdf that two strikes are currently in force with regard to the licence attaching to the Club as at the time of this decision letter.

POTENTIAL BASIS FOR A THIRD STRIKE

51. The Authority is satisfied, and it is not contested, that two strikes continue to be in force against the licence at this time. What is disputed by the current Licensee of the Club is whether the Authority should determine that a third strike *should* now be incurred against the licence.
52. As noted above, on 8 April 2014, a second strike was determined to be incurred against the licence following the commission of a prescribed offence on 1 March 2013.
53. The OLGR Letter dated 20 January 2015 indicates that a subsequent prescribed offence was detected by NSW Police on 30 August 2014, while two strikes were already in force.
54. As noted above, section 144B provides the definition of prescribed offences, for the purposes of Part 9A of the Act. Section 144B(b) provides that a prescribed offence includes a breach of licence conditions, but only in respect of conditions imposed under Division 3 or 4 of Part 6 of the Act, section 144E of the Act or clauses 2A-5 or 7 of Schedule 4 to the Act.
55. In this instance, the potential third strike concerns a failure to comply with a licence condition regarding CCTV that was imposed pursuant to section 144E(1)(a) of the Act. The condition was imposed following the First Strike Remedial Decision dated 14 August 2013 which required the Club to develop and implement a *Plan of Management* for the Club by 30 September 2013.
56. Accompanying the OLGR Letter is an undated document entitled *3 Strikes Narratives*. This appears to be an extract from a Computerised Operational Policing System (COPS Report) created by NSW Police. COPS Reports typically provide a contemporaneous narrative of an event observed by Police, or witness reports provided to Police of an incident, or both.
57. The narrative provided in the COPS Report notes that the "CCTV condition" had been developed on 13 March 2013 following consultation between Inspector Kim Fehon and Mr David Cunningham, the Approved Secretary of the Club. The consultation "...centred around addressing intoxication levels at the club as well as other compliance issues and the drinking culture".
58. The COPS Report continues that on 13 March 2013, the Approved Secretary signed an (apparently voluntary) agreement with Police which included an undertaking relating to the CCTV system and surveillance abilities. The undertaking states as follows:

An in Venue CCTV system must operate in accordance with the Policies and Standards approved by the Director of Liquor and Gaming. In addition the system is to capture images of:

- (a) *all licensed areas inside the Club including the outdoor smoking and gaming areas*
- (b) *front entrance and stairs of the Club.*

59. The COPS Report continues that following the First Strike Remedial Decision, the Club developed a *Plan of Management* sometime around 30 September 2013.
60. Page 3 of the Club's *Plan of Management* refers to a *Voluntary Licensing Agreement* between Police and the Club and states that "...the Club will continue to observe the Voluntary Licensing Agreement entered into with the NSW Police dated 13 March 2013 – Attachment 5 is a copy, in addition to anything else provided for by this Plan".
61. The Authority is satisfied that the undertaking as to CCTV coverage, which was initially included in the *Voluntary Licensing Agreement*, then became incorporated into the *Plan of Management* and ultimately acquired the force of a licence condition pursuant to the First Strike Remedial Decision.
62. The COPS Report notes that on 24 May 2014, Mid North Coast Licensing Police "...had reason to ask for the CCTV footage after a fail to leave incident in the club bar area". The Report further notes that it was "...apparent from the CCTV footage received that the area was not covered which was contrary to the *Local Licensing Agreement* and Plan of Management Condition".
63. Following this incident on 24 May 2014, the Approved Secretary attended a meeting at the Port Macquarie Police Station with Superintendent Paul Fehon on 16 June 2014 where it was "...expressed by licensing Police and the [Local Area Commander] that the club was facing a possible third strike and that there were still issues which needed attention", with one such issue being compliance with CCTV requirements.
64. The COPS Report notes that the Club had "...installed four new camera's[sic] last year and a further four this month after Police concerns bringing the total to 29 camera's[sic]". It is further noted in the Report that the Approved Secretary "...later followed up with correspondence from the meeting advising Police of his intention to implement further strategies to reduce intoxication and anti-social behaviour issues".
65. However, the Report continues that on Friday 29 August and Saturday 30 August 2014, licensing Police and OLGR officers conducted covert and overt inspections of the Club.
66. During a visit on the evening of 30 August 2014, Club Supervisor Matthew Yalouris showed Police the CCTV monitor in the office area of the Club. Police observed approximately 28 cameras operating but it was evident that "...there were still some licensed areas that were accessible to the public which were not covered by surveillance" – in particular, the hallway leading from the auditorium through to the sign-in registry in the foyer.
67. On 26 September 2014, the Club's Approved Secretary participated in an electronically recorded interview with Senior Constable Dean Magennis of Mid North Coast Licensing Police.
68. The COPS Report notes that following the interview, "...it was agreed that sufficient evidence existed for action to be taken for the offence of 'licensee fail to comply with licence conditions'". The COPS Report then notes that on 31 October 2014, a Penalty Notice was issued by NSW Police in respect of the apparent failure of the Club to abide by the CCTV licence condition on 30 August 2014.
69. While OLGR have not provided the Authority with a copy of the Penalty Notice issued by Police on 31 October 2014, the SDRO Report that accompanies the OLGR Letter records that the Penalty Notice was paid on 25 November 2014, which meant that as of 25 November 2014, the prescribed offence had been committed for the purposes of

144C of the Act – thus triggering consideration of the Authority’s discretion under section 144D(3) of the Act to determine whether a third strike should be incurred against the Club’s liquor licence.

70. [The Authority notes that OLGR did not provide the Authority with a copy of a NSW Police COPS report in the usual form relating to the incident occurring on the Club premises on 30 August 2014.]

RESPONSE TO CONSULTATION ON THE POTENTIAL THIRD STRIKE

71. On 15 February 2015, the Authority sent a copy of the OLGR Letter dated 20 January 2015 and its annexures to the Club and the other parties requiring consultation, with an invitation to make submissions as to whether a third strike should be incurred against the licence.
72. Submissions were sought from the Club, OLGR, BOCSAR and Port Macquarie Police. Submissions were invited by 9 March 2015. Pursuant to its usual practice, BOCSAR confirmed that it did not propose to make a submission in relation to this matter.
73. On 9 March 2015, Mr Kennedy contacted the Authority and requested an extension of time to provide submissions in reply on behalf of the Club. A short extension until 11 March 2015 was granted by the Authority.
74. On 9 March 2015, NSW Police provided a submission in relation to the matter, which was forwarded to Mr Kennedy via email.
75. On 10 March 2015, Mr Kennedy advised the Authority that much of the Police submission had taken “...the Club completely by surprise”. Mr Kennedy requested that the Club be allowed until 2 April 2015 to respond to the Police submission. Later that day, the Authority advised Mr Kennedy that Part 9A of the Act contemplates 21 days for submission and as such, the Club should provide a response within 21 days of receiving the new Police submission.

No Further Submission from OLGR

76. On 20 February 2015, the Compliance and Enforcement Division of OLGR notified the Authority that they had no information to add by way of further submissions in relation to this matter.

Submission from NSW Police dated 9 March 2015

77. On 9 March 2015, Senior Constable Dean Magennis of the NSW Police, Mid North Coast Local Area Command made a submission to the Authority comprising the following evidence or material:
- (a) Submission from Sergeant John Lawrie, Mid North Coast Licensing Coordinator attached to Port Macquarie Police Station, in respect of the proposed decision to incur a third strike dated 9 March 2015
 - (b) Data from the NSW Police Alcohol Related Crime Information Exchange (ARCIE) database - Licensed Premises Overview noting all incidents linked to the Club between January 2013 and March 2015
 - (c) ARCIE data - Total breakdown of incidents linked to the Club between January 2013 and March 2015
 - (d) ARCIE data - Licensed Premises Overview noting all incidents occurring within the Club between January 2013 and March 2015

- (e) ARCIE data - Total Breakdown of Incidents occurring within the Club between January 2013 and March 2015
 - (f) Escalated Licensing Operational Response Model (ELORM) Licensed Premises Summary for the period between December 2013 and February 2015
 - (g) Affidavit signed by Senior Constable Dean Magennis dated 9 March 2015.
78. Police note that after the occurrence of the second strike offence, the Approved Secretary was invited by Police to enter into a *Local Licensing Agreement* with Police (the Agreement).
79. This process then became part of the *Plan of Management* that followed the issue of the First Strike Remedial Decision.
80. Police submit that despite the creation of this Agreement, the Approved Secretary and a Director of the Club (who is not named in the document) attended Port Macquarie Police Station where the Local Area Commander, Superintendent Paul Fehon and licensing Police addressed them about compliance by reason that there were still issues with the CCTV coverage on the Club premises.
81. Police submit that these ongoing CCTV issues detected by Police had demonstrated instances of non-compliance with the Agreement.
82. By way of background, Police contend that in late 2014, a joint intervention with OLGR involving a front line responsible service of alcohol (RSA) workshop for staff, security and licensees was conducted in the South West Rocks area.
83. This intervention was held at the Club and staff members of the Club were “highly represented” at the training. The intervention sought to “...change the drinking culture and subsequent alcohol related crime in the South West Rocks area”.
84. Police submit that following the intervention, covert and overt enforcements were conducted on all South West Rocks licensed premises, including the Club.
85. Police submit that during a covert audit on 30 August 2014, the Club was found to be in breach of its *Plan of Management* that had been developed following the First Strike Remedial Decision due to a breach of the CCTV requirements.
86. As noted in the COPS Report (provided with the OLGR Letter), Police observed approximately 28 cameras operating but noted some licensed areas that were accessible to the public, but were not covered by surveillance. This included the hallway leading from the auditorium through to the sign-in registers in the foyer.
87. Police submit that the Club has had “...a considerable amount of time to achieve the areas of compliance in the *Plan of Management*, however had failed to do so”.
88. However, Police note that the Club has in recent times “...worked very hard to achieve compliance and reduce their intoxication issues” and that this includes “...changing poor behaviour and culture associated with intoxication and being asked to leave”.
89. Police contend that on 26 December 2014, two minors were able to enter the Club premises, despite identification scanning and security scrutiny. Police submit that one minor had used their older sister’s identification and the other minor had used an expired card of a friend who was attending the Club at the time. Police contend that both minors had accessed alcohol.

90. The minors were detected on the Club premises by security staff who presented them to Police onsite. Police submit that this matter has not yet been resolved, but the Club has been asked "...to explain how one person can be scanned in twice as there appears to be no safeguards".
91. Police submit that they have also asked the Club to explain why an expired driver's licence was accepted as a valid form of identification. Police accept, however, that Boxing Day is the busiest day of the year at the club and that it is equivalent to a New Year's Eve sized evening.
92. Police submit that while the Club "...has improved with its compliance and performance as a whole, there still exists opportunities to possible[sic] formalise [the Agreement] and *Plan of Management* with some standalone conditions such as CCTV security arrangements".
93. Police propose that stringent conditions be considered by the Authority with respect to Boxing Day trade as this "...appears to generate most the[sic] club's incidents, or in lieu of that, the consideration for reduced trading hours for that day, perhaps 9:00pm after meal time".
94. Police submit that it is not their intention to see a third strike imposed upon the Club's licence. Rather, the elimination of trade on Boxing Day and other workable conditions would see further compliance from the club and a reduction in alcohol related issues.
95. Police provide data regarding incidents *linked to* the Club between January 2013 and March 2015. They submit that this data shows that the most frequently occurring category of incidents linked to the Club during this period concerned breaches of *licensing legislation* (30 out of a total of 101 incidents).
96. The next most frequently occurring category of incident fell under the category of *powers – person search* (15 out of a total of 101 incidents) and then *assault* (10 out of a total of 101 incidents).
97. Police submit that this data shows that incidents *linked to* the Club disproportionately occur on Fridays and between the hours of 9:00pm and 12:00 midnight.
98. In addition, Police provide data regarding incidents that occurred *within* the Club between January 2013 and March 2015. They submit that this data shows that the most frequently occurring category of incidents within the Club during this period concerned breaches of *licensing legislation* (29 out of a total of 80 incidents).
99. The next most frequently occurring category of incidents is *powers – person search* (15 out of a total of 80 incidents) and then *assault* and *fraud* (both categories recorded 7 out of a total of 80 incidents). Police submit that this data shows that incidents occurring *on the premises* disproportionately occur on Thursdays and Fridays between 9:00pm and 12:00 midnight.
100. Lastly, Police provide a record of the institution of proceedings under the Act by Police against the Approved Secretary, Mr David Cunningham. This record is supported by an affidavit sworn by Senior Constable Dean Magennis dated 9 March 2015 and discloses the following adverse incidents:
 - (a) 17 March 2008: 3 x Infringement Notices – Permit, as club secretary, intoxication on club premises in respect of "The Gaels Club" in Kingswood
 - (b) 17 March 2008: Infringement Notice – Permit minor in bar area of "The Gaels Club" in Kingswood

- (c) 18 June 2010: Verbal warning – Licensee permit intoxication on licensed premises
- (d) 14 October 2011: Infringement Notice – Licensee permit intoxication on licensed premises
- (e) 14 October 2011: 5 x Compliance Notices – Breach of club rules under sections 30(1), 30(2) and 30(2A) of the *Registered Clubs Act 1976*
- (f) 17 August 2012: Compliance Notice – Not displaying gambling contact cards clearly seen when playing
- (g) 17 August 2012: Compliance Notice – Fail to make player information available
- (h) 18 August 2012: Infringement Notice – Club not display prescribed notice of player obligations
- (i) 26 December 2012 – 10 x Infringement Notices – Breach of club rules under sections 30(1), 30(2) and 30(2A) of the *Registered Clubs Act 1976*
- (j) 11 January 2013: Infringement Notice – Licensee permit intoxication on licensed premises
- (k) 11 January 2013: Compliance Notice – Licensee permit intoxication on licensed premises
- (l) 30 August 2014: Infringement Notice – Licensee fail to comply with conditions of licence.

Submission in Reply from Club dated 11 March 2015

101. On 11 March 2015, Mr Kennedy provided a submission to the Authority on behalf of the Club, comprising the following evidence or material:
- (a) Legal submission from Mr Kennedy as to whether a third strike should be incurred, dated 11 March 2015
 - (b) Statutory declaration signed by the Club’s Approved Secretary in support of the legal submission dated 11 March 2015
 - (c) Legal submission from Mr Kennedy in respect of the earlier consideration on whether a second strike should be incurred, dated 9 September 2013
 - (d) Legal submission from Mr Kennedy in respect of the previous consideration on whether remedial conditions should be incurred, dated 2 May 2013
 - (e) Current *Plan of Management* for the Club
 - (f) *Risk Management Plan* for Boxing Day
 - (g) Extracts of minutes of the Club’s Operations and Security meetings held every Monday where RSA matters and safety operations of the Club are reviewed
 - (h) *Hahn Light* promotion that the Club has been running for approximately seven months prior to this submission. The object of the promotion is to encourage patrons to drink light beer on Friday nights (the busiest evening at the Club)
 - (i) A letter from the Club to Police [the Authority notes that this letter is undated but the Approved Secretary noted in his statutory declaration that it was forwarded to Police shortly after an Operation and Security meeting on 16 June 2014]
 - (j) Special event drink service notices and posters, that are placed throughout the Club on the occurrence of a special event or if an event is flagged as possibly problematic with regard to RSA
 - (k) An example of the type of risk management plan that the Club applies for special events
 - (l) The RSA editorial in the Club’s *Christmas magazine* 2014 written by the Approved Secretary and sent to all members of the Club
 - (m) A screen print of the RSA declaration which is “loop-screened” on the in-house TV at the Club
 - (n) Photos of the CCTV system currently in operation at the Club
 - (o) Copies of the *Incident Register* at the Club for the month leading up to the preparation of the statutory declaration by the Secretary which the Club submits represents a “real world reflection of the Club’s operations”

- (p) RSA notice to all staff exhibited on the staff noticeboard and near where staff clock in each day
 - (q) Copies of the Approved Secretary's reports regarding the operation of the *Plan of Management* to the Club Board of Directors for November 2014 and December 2014
 - (r) Copy of Club RSA Policy from the staff handbook that all staff are required to sign and acknowledge receipt
 - (s) Copy of the noticeboard at the Club premises where the main RSA policy is exhibited.
102. In its legal submission dated 11 March 2015, the Club made a number of submissions in respect of the Authority's discretion to incur a third strike. The Club submits that "...in all the circumstances, it is not appropriate that a third strike should be incurred against the Club's licence".
 103. The Club submits, in the alternative, that if the Authority resolves to incur a third strike against the licence, then the "...only appropriate action for the Authority to take would be the imposition of a condition on the Club's licence pursuant to section 144F(4)(e) that reflects on the face of the licence, the commitment that the Club has already undertaken in its own *Plan of Management* to have full CCTV coverage for all parts of its licensed premises accessible by patrons".
 104. The Club requests the Authority to consider its submissions "...not just in relation to the possibility of action against the Club itself but also in relation to the possibility of action against the Approved Secretary [David Cunningham]".
 105. The Club makes a number of submissions in respect of the Penalty Notice dated 25 November 2014 regarding the Club's failure to comply with conditions of the licence.
 106. The Club submits that while the material provided to the Authority by Mr Sean Goodchild in the OLGR Letter includes *Police Briefing Notes*, it does not include an actual COPS Report in relation to the circumstances of the Penalty Notice.
 107. The Club submits in respect of the third strike COPS Report that the "...compilation of that material is attributed but the sources are not".
 108. The Club submits that it is inappropriate for the Authority to rely upon unattributed summary notes in relation to such a potentially serious matter.
 109. The Club submits that the "...narrative either ought not be received or should be heavily discounted". The Club relies upon the statutory declaration by the Approved Secretary in this regard.
 110. The Club submits that while it does not seek to trivialise the Three Strikes process or the issue of any Penalty Notice, "...the particular Penalty Notice in this context is at the very lowest end of the scale" as there is "...absolutely no suggestion that the Penalty Notice relates directly to, for example, intoxication or a situation where any actual harm was suffered or was immediately likely to be suffered".
 111. The Club contends that "...the lack of a single CCTV camera covering the particular area was very unlikely to have created any substantive issue of a risk of harm, especially when there were 28 other cameras in the premises at the time".
 112. In relation to the context of the proposed third strike, the Club submits that the Penalty Notice does not relate to any violent or quarrelsome behaviour, actual or threatened and

there is "...no allegation of violent or quarrelsome incidents in connection with the Club or in the vicinity of the Club's premises".

113. The Club contends that it has a strong RSA culture and that the "...Police themselves now identify the Club as a 'poster boy' for responsible service". The Club submits that in relation to RSA, there is abundant un-contradicted evidence that the Club at all material times to date and continuing, is highly compliant.
114. The Club further submits that the Penalty Notice should not lead the Authority to have concerns that the Club is not fully, continuously and appropriately attentive to all RSA matters.
115. Noting that OLGR have decided not to provide further submissions in addition to the OLGR Letter notifying the Authority of the matter, the Club submits that it is "...clear that the OLGR and the Director General [now Secretary] have not suggested that a third strike should be incurred against the Club and by logical extension, that they do not urge the Authority to take any of the potential actions that are provided for under section 144F(4)".
116. The Club adds that the lack of any OLGR submission is more notable because OLGR officers were present at the Club on the occasion that the prescribed offences giving rise to the issue of the Penalty Notice were detected.
117. In relation to the environment of the Club, the Club submits that its premises are situated approximately 40 kilometres away from Kempsey and that the Club is largely isolated. The Club contends that there is only one other club licensed business in South West Rocks apart from its own operation.
118. The Club contends that the venue employs 40 employees and is the biggest employer in the town. The facilities of the Club include an 18-hole golf course, four tennis courts and three bowling greens.
119. In its submission dated 9 March 2015, the Club also addresses the statutory considerations that the Authority is required to consider under section 144G(2)(c) of the Act as follows:
 - (a) The Club is not a declared premises within the meaning of Schedule 4 to the Act
 - (b) The licensed area of the Club is approximately 3,000m² comprising an entrance foyer, a main bar, sports bar, bistro, restaurant, gaming floor, coffee shop and a modern function area/auditorium (approximately 360m², single level, no stage). The Club submits that while the licensed area is a *fairly modest operation*, there is no suggestion of size creating a 'span of control' problem either in relation to RSA or otherwise
 - (c) The Club relies upon the above submissions in relation to the history of the venue and the nature of the relevant offence now under consideration
 - (d) On the question of whether any other action would be preferable, the Club submits that the Authority "...should conclude that no other action is warranted and especially that no other action is reasonably necessary for the purpose of preventing the commission of any future prescribed offence by a relevant person in relation to the Club's licence"
 - (e) The Club submits that there is no history of violent incidents in connection with the licensed premises
 - (f) The Club adds that the two incidents that led to the incurring of the first and second strikes were isolated and have been addressed in prior submissions and the attached statutory declaration from the Approved Secretary. The Club contends

that this material is un-contradicted by Police or OLGR or by any other material before the Authority

- (g) The Club submits that there have been no relevant changes to the persons who are the licensee, manager or business owner of the Club
 - (h) The Club submits that the Club always reasonably address[es] matters in relation to responsible service of alcohol and that Police consider the Club to be a poster boy for RSA
 - (i) The Club submits that there are no other matters prescribed by the Regulation to be taken into account nor guidelines prescribed by the Regulation as to how the matters referred to in section 144G(2)(c) of the Act are to be taken into account by the Authority for the purposes of this decision.
120. The Club also makes a number of specific submissions in relation to the discretion to incur a third strike, as follows:
121. The Club notes that under the Act, the only specific matter that the Authority is directed to take into account is the "...seriousness of any harm that may have resulted from, or been associated with the commission of 'the' offence".
122. The Club submits that this is a reference to the specific offence in question. As such, the Club contends that there is "...hardly anything for the Authority to take into account under that specific head and certainly far from enough to make it appropriate to incur a third strike against the licence".
123. The Club argues that the legislation did not intend for the *occurrence of a third strike event* to lead to the *automatic incurring of a third strike* against a licensee. As such, the Club notes that the legislation anticipates circumstances where it would not be appropriate for a third strike to be incurred despite the occurrence of a relevant event.
124. The Club argues that "...it is unlikely that there would be ever a case more compelling than the Club's in this case, where the Authority might decide not to incur a third strike".
125. The Club then makes a number of submissions in relation to possible remedial action that may be taken against the venue. It submits that the "...only action that the Authority might take is to impose the CCTV condition as a direct condition of the licence" and that beyond this, there is "...nothing at all in the relevant offence or the wider circumstances that ought lead to the conclusion that any of the other actions are thus reasonably necessary".

Statutory Declaration by the Approved Secretary dated 11 March 2015

126. The Club has provided a statutory declaration signed by the Approved Secretary, Mr David Cunningham, dated 11 March 2015 in support of its legal submission.
127. In relation to the CCTV condition on the licence, the Approved Secretary states the following:

We were in frequent contact with the local licensing police (and they with us) over the periods from the middle of 2013 through to the time of the relevant incident in relation to the progress of the Club in further updating its CCTV system.

By letter from the Police dated 5 April 2013, the Police advised me that '...and we will continue to work with the Club to ensure that for example, no future compliance issues occur'.

At all times I was mindful that ultimately it is a subjective decision as to whether particular CCTV coverage is adequate. Hence I was concerned to have the input of the Police as the Club proceeded with that upgrade programme.

The Police were aware of the additional CCTV cameras that the Club installed and I kept in reasonably close contact with the Police regarding the Club's intentions to implement further strategies to reduce intoxication and antisocial behaviour issues. In that regard, for example, see the copy of the Club letter to the local licensing police of about 16 June referred to below.

It was thus the Club's and my understanding at the time of the relevant penalty notice, that the Club had an appropriate and adequate upgraded CCTV system that met the requirements of the Voluntary Agreement that the Club in turn had adopted in its own Plan of Management; and, equally important, that the Police were likewise satisfied.

It was a complete surprise when the penalty notice matter was raised with me as a result of an inspection that I understand involved not just local police but also police or officials from Newcastle who, as I understand, had not previously been in the Club's premises.

The Police Narrative document suggests that the relevant penalty notice related to some broad Club 'failure to have CCTV footage'. That was not the understanding conveyed to me by Police at the time and further, there has been no suggestion to me of any such systemic failure by the Club.

Rather my understanding from the Police at the time is that the penalty notice related specifically and exclusively to the official from Newcastle taking the view that there ought to have been a further camera in the hallway leading from the auditorium through to the foyer.

The Police narrative describes that area as the "critical part of the premises that needs to have CCTV coverage. It is the walkway that leads to the auditorium and the walkway through which any person ejected from that part of the Club would be taken".

I acknowledge that there was no CCTV coverage of that area although as noted above, my understanding was that in fact did not mean that the Club was not in compliance with its commitment firstly because for the reasons noted elsewhere in this declaration, my understanding was that the Club was in fact compliant and secondly, there had not previously been any suggestion from Police to the contrary despite the circumstances noted above.

Since the penalty notice, the Club has now very substantially added to the previous CCTV system and we now have 40 CCTV cameras operating at all times throughout the licensed premises. Both the OLG and the local Police are fully aware of what I might call over-saturation coverage.

The Board of Directors and all staff are fully informed of and involved in the implementation and monitoring of the Club's Plan of Management for the responsible service of alcohol. For example, the minutes of our weekly Operations and Security meetings (representative samples referenced below) are distributed to each of the directors as well as all Club Supervisors, Coordinators and Managers.

Whilst I accept that the literal requirement of the condition accepted by the Club is CCTV coverage of 'all licensed areas', the Club was mindful that could never be read entirely literally. I have outlined already how the Club approached the analysis and compliance with the requirement.

In relation to the walkway, the fact is that it is a wide and well lit walkway of a modest length that is plainly in view of the foyer. It leads to the auditorium and the Sports Bar. The auditorium is used infrequently for the occasional big show. There are no bars in the hallway itself and patrons do not drink in the hallway.

The Club has no incident of a responsible service of alcohol nature in relation to the auditorium or that walkway nor any incident of harm or violence in those areas.

I am aware that the payment against the penalty notice carries a statutory implication. However, the decision not to contest the penalty notice was made in good faith as it seemed neither to be in the public interest nor in the community or commercial interests of the Club to contest the notice.

Supplementary Submission from the Club dated 31 March 2015

128. On 31 March 2015, Mr Kennedy provided a supplementary submission to the Authority on behalf of the Club in response to the Police submission dated 9 March 2015.
129. This submission comprises the following:
 - (a) Supplementary legal submission from *CBP Lawyers* in response to the Police submission dated 9 March 2015
 - (b) Statutory declaration signed by a Director and the President of the South West Rocks Country Club Ltd, Mr Robert Hogan, dated 30 March 2015
 - (c) Statutory declaration signed by the Approved Secretary, Mr David Cunningham, dated 31 March 2015

- (d) Copy of the minutes of a meeting between Mr Hogan and Sergeant John Lawrie of Mid North Coast Licensing Police on 16 December 2014.
130. In its submission, the Club notes that Police do not recommend that a third strike be incurred against the licence. The Club further notes that Police foreshadow possibly proposing additional conditions upon the licence in the future.
 131. The Club makes a number of submissions in the event that the Police recommendation for future conditions is read as a recommendation for the imposition of additional conditions now.
 132. The Club argues that there is no need to impose further conditions on the licence. The Club further submits that the Police submission is made in general terms and thus the Club can only respond accordingly:
 133. First, the Club notes that there is a suggestion of a possible additional condition or conditions to formalise the local licensing agreement and *Plan of Management* and to formalise some standalone conditions such as CCTV and security agreements.
 134. In response to this, the Club submits that the existing licence conditions “...already have the effect of making both the Club’s *Plan of Management* and also its voluntary undertaking with Police, a formal condition of its licence”.
 135. The Club further submits that this is the very basis of the infringement notice that has triggered consideration of whether a third strike should be incurred as it related to a condition arising from undertakings with Police which were adopted in the Club’s *Plan of Management*.
 136. Second, the Club submits that it is “completely taken by surprise” in relation to the matter now raised by Police in their suggestion that stringent conditions be considered for Boxing Day.
 137. The Club contends that there were “...no incidents on that night and Police were very happy with both the [*Plan of Management*] and the way it was executed”. The Club relies upon the statutory declaration of the Approved Secretary in this regard.
 138. The Club submits that there is no evidence of any need for the imposition of reduced trading hours for Boxing Day and that reduced hours would have an adverse impact in terms of social order in the community.
 139. The Club submits that persons looking for a night out on Boxing Day would “...lose the ability to partake of[sic] the well-managed and supervised facilities of the Club and there would be little or nothing else on offer in the township”.
 140. Third, in respect of the ARCIE incident breakdown data provided by Police, the Club submits that while the total number of incidents is low, there are some parts of the materials provided that do not appear to be reconcilable.
 141. In this regard, the Club submits that while it was known that there had been a few incidents at the premises, the total recorded incidents have left the Licensee and Approved Secretary extremely surprised. The Club submits that these figures do not accord with matters raised by Police with the Local Liquor Accord.
 142. Notwithstanding this, the Club submits that “...in all the circumstances, the Club did not want to waste the time of the Police or the Authority by pressing for further particulars”

and that it is presumed that the Authority "...will be particularly concerned to have regard to the ELORM History that has been provided by the Police".

143. The Club further submits that while it is not clear whether the incidents recorded overstate the problem, these figures do not support the incurring of a third strike against the licence.
144. The Club notes that the Police ELORM report demonstrates that, on average, at all stages in the reporting period, the assessed risk in respect of the premises has been either non-existent or low. The Club notes that at no stage has the risk assessment in any risk area reached severe or extreme.
145. The Club notes that the assessment in the area of under-age was no risk throughout the period recorded except for a medium assessment in the last period. In this regard, the Club submits that the Authority should "...completely discount that particular assessment because of circumstances outlined in the supplementary statutory declaration of Mr Cunningham".
146. In support of this particular submission, the Club contends that the risk assessment of medium is based on "...two incidents that occurred on the same night where in fact, if anything, the circumstances demonstrate responsible management and service by the Club rather than any suggestion to the contrary".

Statutory Declaration by the Approved Secretary dated 31 March 2015

147. In support of the supplementary legal submission dated 31 March 2015, Mr Kennedy provides a further statutory declaration signed by the Approved Secretary, Mr David Cunningham, dated 31 March 2015.
148. In relation to the incidents that occurred on Boxing Day 2014, the Approved Secretary made the following declarations:

In my previous declaration [noted above] I referred to the Club's Risk Management Plan for Boxing Day that was adopted in the most recent Boxing Day.

That plan was duly implemented. I am proud that in part for that reason, there were no incidents on the night except as follows (and I take pride in the incidents mentioned below in fact reflect that the Club is doing the right thing).

The local licensing Sergeant John Lawrie in fact attended the Club's premises himself for several hours on last Boxing Day evening. He left before the Club was due to close saying words to the effect of the words noted in paragraph 41 of my previous declaration [that is, that the Club is "the poster boy for responsible service in our Command Area"].

In relation to the incidents apparently recorded concerning the Club, any incident connected with potential harm from the supply of alcohol is a concern and is something that we at the club takes[sic] seriously.

I do note that relatively speaking for premises our size, however[sic] the total number of reported incidents over time is relatively small. Even so the fact is that the Club has not been made aware of that number of incidents and without particulars all I can say is that nothing like that number of incidents has been raised with the Club nor does that accord with the Club's understanding or records.

The Club actively supports and participates in the Macleay Valley Liquor Accord. I also cannot reconcile the number of incidents referred to in the Police Submission with what has been reported to the Accord. In that regard for example annexed is a true copy of the meeting of the Accord members on 18 November 2014.

The ELORM History for the Club's premises provided by the Police refers to a current period risk assessment of "medium" for the risk area of underage drinking, based on two recorded incidents.

So far as I am aware that would be a reference to two 17 year olds who were found at the premises last Boxing Day. They gained entry by producing passable but fraudulently obtained proper photo ID.

For all that, the two minors were in fact detected inside the premises based on further personal observations – one by a Club security guard and the other by me personally. One was discovered after about 40 minutes on the premises, the other after about one hour. I am not aware whether they obtained alcohol but neither was intoxicated nor appeared even mildly affected by alcohol. It was in fact the Club that then referred both minors to the Police rather than just turning them out.

Statutory Declaration by Mr Robert Hogan dated 30 March 2015

149. In support of the further legal submission dated 31 March 2015, Mr Kennedy provided also provided a statutory declaration signed by a Director and President of the Club, Mr Robert Hogan, dated 30 March 2015.
150. Mr Hogan attached a copy of the minutes of a meeting between himself and Police Sergeant John Lawrie on 16 December 2014.
151. Mr Hogan declared that the meeting took place at his request because “...the Board and I are very mindful of the importance and need for the Club to be completely on top of issues in relation to the responsible service of alcohol”.
152. Mr Hogan added that “...whilst the Board and I receive regular reports from the CEO in relation to such matters and are witness to the extensive efforts made within the Club in relation to responsible service of alcohol, we were concerned to make sure that we have a full understanding of the views of Police directly from Police”.
153. The attached copy of the minutes of a meeting with Sergeant Lawrie note that Mr Hogan asked the Sergeant whether he was “...satisfied that all the recommendations that related to the strikes had been rectified”, to which Mr Hogan notes that Sergeant Lawrie answered “yes”.
154. The minutes of this meeting note that Mr Hogan asked the Sergeant whether “...there were any other issues that needed to be answered”, to which Mr Hogan noted that Sergeant Lawrie answered “no”.
155. The minutes further note that Mr Hogan asked the Sergeant whether “...all licensed premises in South West Rocks were treated equally by OLGR and the Police”, to which Sergeant Lawrie stated “yes” but that there were no reports of incidents occurring at the South West Rocks Surf Lifesaving Club [the only other club licensed premises in South West Rocks] and so Police rarely visited this venue and when they did there was no evidence of any anti-behaviour problems.
156. Lastly, the minutes note that the Sergeant had stated that he was “very happy” with the progress the Club had made in the past year toward controlling intoxication and that the Sergeant would forward a “favourable report” to OLGR if the possibility of a third strike became a reality.

DECISION ON REVIEW AND REASONS

157. The Authority has considered the OLGR Letter and all the submissions, evidence or other material before it pertaining to the potential incurring of a third strike against the licence.
158. *By reference to section 144G(2)(c)(i) of the Act, which requires a decision maker to consider whether the licensed premises were “declared premises” within the meaning of Schedule 4 when the offences that caused a strike are alleged to have been committed, the Authority is satisfied, on the basis of the material provided by OLGR, the submissions and evidence from the Club and the Authority’s consideration of Schedule 4 to the Act,*

that the Club is not currently a declared premises and was not a declared premises when the relevant prescribed offence was committed within the meaning of section 144C of the Act on 25 November 2014.

159. *By reference to section 144G(2)(c)(ii) of the Act, which requires a decision maker to consider the size and patron capacity of the licensed premises and how this may impact on the ability of the licensee or manager to prevent the commission of prescribed offences*, the Authority notes the findings made by a delegate of the Secretary in the Second Strike Decision that the Club is approximately 3,000m² and includes bowling greens, golf courses and tennis courts. However, the delegate also noted that there was no information before the Secretary at the time to suggest that the venue's size was a contributing factor in the commission of the prescribed offence. The Authority is satisfied as to those findings for the purposes of this decision.
160. The Authority is satisfied, on the material before it, that the size and patron capacity of the licensed premises has no impact on the ability of the Club to prevent the commission of prescribed offences on the Club premises.
161. *By reference to section 144G(2)(c)(iii) of the Act, which requires a decision maker to consider the history and nature of the commission of prescribed offences by relevant persons in relation to the licence or on or in relation to the licensed premises*, the Authority is satisfied, on the basis of the material provided by OLGR, that there is a recent history of prescribed offences committed on the Club premises, particularly in relation to offences of permitting intoxication on licensed premises. The occurrence of these offences has not been contested by the parties in this matter.
162. The Authority is satisfied, on the basis of the material before it, that the prescribed offence of *permitting intoxication on licensed premises* was detected as occurring on the Club premises on 11 January 2013. A first strike was incurred in respect of this offence on 7 March 2013 and a remedial condition pertaining to the development of a *Plan of Management* for the Club was imposed during August 2013.
163. The Authority is further satisfied, on the basis of the material before it, that a second instance of the prescribed offence of *permitting intoxication on licensed premises* was detected as occurring on the Club premises on 1 March 2013. A second strike was incurred in respect of this offence on 8 April 2014.
164. The Authority notes that two separate instances of the prescribed offence of *permitting intoxication on licensed premises* were detected as occurring on the Club premises within a very brief period of just eight weeks, in respect of which both a first strike and a second strike were incurred against the Club's licence. The repeated commission of prescribed offences relating to the permission of intoxication on licensed premises is of particular concern to the Authority.
165. However, the Authority notes that the prescribed offence of *failing to comply with a licence condition* regarding CCTV giving rise to the consideration of the potential third strike that is now before the Authority, which was detected at the Club on 30 August 2014, occurred almost a full year after the remedial condition commenced effect on 30 September 2013.
166. *By reference to section 144G(2)(c)(iv) of the Act, which requires a decision maker to consider the history and nature of violent incidents that have occurred in connection with the licensed premises*, the Authority is satisfied, on the basis of the Club's submissions and evidence and the findings made by a delegate of the Secretary in the Second Strike

Decision, that there is no evidence to indicate that there is any significant history of violent incidents that have occurred in connection with the Club premises.

167. *Section 144G(2)(c)(v) of the Act requires a decision maker to consider whether other action would be preferable.* The Authority has reviewed all of the material before it in relation to this matter and considered whether any other action would be preferable (to incurring a third strike). The Authority notes that the Police position is that a third strike should not be incurred against the licence, but that some further licence conditions should be imposed pursuant to section 53 of the Act in relation to limiting licensed trading on Boxing Day and other "...standalone conditions such as CCTV security arrangements".
168. The Authority is satisfied, on the basis of submissions and evidence from the Club and NSW Police, that the Club has engaged in regular consultation with Licensing Police and entered into a voluntary *Local Licensing Agreement* with Police dated 13 March 2013, which provided for, *inter alia*, a 10:00pm lockdown on Friday and Saturday nights, the engagement of security guards on the Club premises on Friday and Saturday nights and whenever entertainment is provided, stricter enforcement of dress regulations and improved late night food offerings.
169. The Authority is further satisfied, on the basis of submissions from NSW Police, that the Club participated in a joint intervention with OLGR and Police involving a front line RSA workshop for staff, security and licensees that was conducted in the South West Rocks area in late 2014.
170. In their submissions, Police note that the Club has "...improved with its compliance and performance as a whole" since the incurring of the second strike against the licence. The Authority notes and accepts the Police submissions in this regard.
171. The Authority has had particular regard to the statutory declarations provided by the Club in support of its submissions. The Authority accepts, as stated in Mr Hogan's statutory declaration dated 30 March 2015, that a meeting was held between Mr Hogan and Licensing Police in December 2014 at Mr Hogan's instigation to discuss the operation of the Club and to obtain a "...full understanding of the views of Police, directly from Police". At this meeting, Police expressed the opinion that the Club was considered to be the "poster boy" for responsible service of alcohol within the South West Rocks Local Area Command.
172. The Authority notes and accepts that the minutes of this meeting reflect that Police were satisfied that all the recommendations that related to the strikes had been rectified and that there were [no] other issues that needed to be answered by the Club in addressing its previous non-compliance with licence conditions.
173. The Authority is satisfied that Police stated that they were very happy with the progress the Club had made in the past year toward controlling intoxication on premises and that Police would forward a favourable report to OLGR if the possibility of a third strike became a reality.
174. However, the Authority notes that in their latest submission dated 9 March 2015, Police request some further licence conditions be imposed pursuant to section 53 of the Act in relation to limiting licensed trading on Boxing Day and other standalone conditions such as CCTV security arrangements.
175. The Authority has considered the circumstances in which the prescribed offence of failing to comply with a licence condition pertaining to CCTV was committed. The Authority

notes that 28 CCTV cameras were actually in operation when the prescribed offence was detected as occurring on the Club premises on 30 August 2014. The Authority accepts that in certain areas, including the main walkway to the Club's auditorium, there was not adequate CCTV coverage at that time.

176. The Authority accepts the Club's submission that since the payment of the Penalty Notice in respect of the prescribed offence that is now under consideration, the Club has substantially added to the previous CCTV system and now has 40 CCTV cameras operating at all times throughout the licensed premises.
177. The Authority is satisfied, on the basis of this submission, that both OLGR and local Licensing Police are aware of the new CCTV system. The Authority is of the view that the Club has satisfactorily addressed its non-compliance with the licence condition occasioning the consideration of a third strike.
178. *By reference to section 144G(2)(c)(vi) of the Act, which requires a decision maker to consider whether there have been any changes to the persons who are the licensee, manager or business owner,* the Authority is satisfied, on the basis of the Club's submissions and the information contained in the First Strike Remedial Decision and the Second Strike Decision, that at the time of determining this matter (at the Authority's meeting on 30 April 2015) there were no changes to the persons who were the licensee, manager or business owner of the Club.
179. *By reference to section 144G(2)(c)(vii) of the Act, which requires a decision maker to consider whether there have been any changes to the business practices in respect of the business carried on under the licence,* the Authority is satisfied, on the basis of the Club's submissions of 11 and 31 March 2015, that the Club has implemented a new CCTV system with 40 operating CCTV cameras that is fully compliant with its licence conditions.
180. The Authority is also satisfied, on the basis of the Club's submission dated 11 March 2015, that since the prescribed offence was detected on 30 August 2014, the Approved Secretary and Directors of the Club have continued to engage with local Licensing Police in order to address any issues of non-compliance with licence conditions.
181. The Authority is also satisfied that the Club has since improved its practices in relation to the responsible service of alcohol, staff training and security – representing significant changes in the management or business practices of the Club.

Does the Commission of the Recent Prescribed Offence Warrant a Third Strike?

182. The Authority has taken into account all of the material and submissions before it in relation to the potential third strike consideration currently before the Authority and the statutory considerations the Authority is required to address.
183. When determining whether a third strike should be incurred, the Authority must consider not only what harm *has* occurred in relation to the prescribed offence before the Authority, but what harm *may have resulted from*, or been associated with, this prescribed offence.
184. In this case, the prescribed offence at issue giving rise to the incurring of a third strike against the licence concerns a failure by the Club to comply with a licence condition regarding CCTV that was imposed pursuant to section 144E(1)(a) of the Act as a remedial condition in respect of a breach of section 73(1) of the Act in relation to

permitting intoxication on licensed premises that was detected as occurring on the Club premises on 11 January 2013.

185. With regard to the recent regulatory history of the Club, the Authority notes with concern that permitting intoxication on licensed premises was the prescribed offence giving rise to both the incurring of the first *and* the second strike against the licence.
186. However, the Authority notes that the prescribed offence at issue in this third strike consideration now before the Authority relates to the offence of *failing to comply with a licence condition* with regard to the CCTV system on the Club premises.
187. A failure to have an adequate CCTV system in place on licensed premises, in contravention of licence conditions, will usually be of considerable concern to the Authority, from a regulatory perspective. A failure to provide CCTV coverage may impede the ability of the licensee to deter alcohol related crime and for law enforcement to investigate such crime, potentially impeding the prosecution of serious offences.
188. Nevertheless, in this particular case, the Authority notes that the gap in CCTV coverage detected by Police did not occur in the context of investigating an adverse incident and was detected with respect to a part of the Club that was not problematic in terms of an absence of surveillance or a history of problematic conduct on the Club premises. Notably, Police do not seek that a third strike be incurred.
189. Moreover, the Police history of offences occurring on or at the Club does not indicate a significant recent history of violence on premises. There was substantial coverage observed by Police (28 cameras) at the time that the non-compliant camera was detected by Police on 30 August 2014. The Club has, since the incident, substantially increased its CCTV system with now 40 CCTV cameras operating at all times throughout the licensed premises.
190. In conclusion, having regard to the facts and circumstances of this case and the statutory considerations outlined above, the Authority has determined under section 144D(3) of the Act that a third strike *should not be incurred* against the licence.
191. The Authority has also determined that no remedial action should be taken in respect of the licence pursuant to Part 9A of the Act, and no separate action should be taken, pursuant to section 53 of the Act, to impose further conditions upon the licence.
192. The Authority is not satisfied that there is sufficient evidence before the Authority at this time to support taking ancillary action under section 53 of the Act to curtail Boxing Day licensed trading.
193. In making this decision, the Authority has had regard to the statutory objects and considerations provided by section 3 of the Act, which states 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 the harm associated with the 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.*



Micheil Brodie
Chief Executive

for and on behalf of the **Independent Liquor and Gaming Authority**

DATED: 1 / 9 / 2015