



Mr Tony Hatzis
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Dear Mr Hatzis

**Application for Revocation of Licence Condition
The Bank Hotel, Sydney**

I am writing to you about the application made on 10 December 2014 by Asteri Holdings Pty Limited to the Independent Liquor and Gaming Authority regarding premises located at 42 Darlinghurst Road, Potts Point trading as "The Bank Hotel".

The Application seeks the revocation of a licence condition on the hotel's liquor licence pursuant to section 53 of the *Liquor Act 2007* for the Premises.

The Authority considered the Application at its meeting on 16 December 2015 and after careful consideration of the Application material and submissions made in relation to the Application, the Authority has decided to *refuse* the Application pursuant to section 53(2)(a) of the Act.

Authority staff informally notified the outcome by email on 18 December 2015.

The Authority notes that while an application under section 53 of the Act would not ordinarily require a community impact statement, the Authority has in this case required pursuant to section 48(2) of the Act, the submission of a Category B Community Impact Statement.

Accordingly, the Authority is required under section 48(5) of the Act to be satisfied that the overall social impact of granting the Application would not be detrimental to the local or broader community. The Application has been refused by reason that Authority was not satisfied as to this requirement in respect of the local community.

The purpose of this letter is to notify the Authority's reasons for refusing the variation of licence condition, in the context of a high volume liquor jurisdiction where the notification and publication of reasons is required as soon as practicable.

Yours faithfully

Micheil Brodie
Chief Executive

31 January 2016

STATEMENT OF REASONS

INTRODUCTION

1. On 10 December 2014 the Independent Liquor and Gaming Authority (Authority) received an (Application) regarding premises located at 42 Darlinghurst Road, Potts Point trading as "The Bank Hotel" (Premises).
2. The Application is made by Mr Manthos Papadopoulos as the sole Director/Secretary of Asteri Holdings Pty Limited (Applicant) and seeks the revocation of a licence condition on its liquor licence pursuant to section 53 of the *Liquor Act 2007* (Act) in respect of the licence for the Premises.
3. The Application seeks to remove the condition that currently exists on the licence of the hotel:

No live entertainment involving strippers or table dancers is to be permitted on the premises.
(the Adult Entertainment Condition)
4. The licensee of the Premises, business owner and premises owner is a corporation, Asteri Holdings Pty Limited.
5. The current licensed trading hours for the Premises are from 07:00am to 05:00am Monday through Sunday.
6. However, while the Premises may have previously enjoyed those trading hours, amendments to the Act legislated during 2014 now provide that all relevant venues within a "freeze precinct" as specified under the Act, must cease service of alcohol at 3:00am and observe a 1:30am "lockout" (preventing the admission of any further patrons after 1:30am but enabling those who are on the premises at that time to remain until close of trade).
7. Being a hotel licensed venue, the Premises is also licensed to sell or supply liquor for consumption off the Premises. The OneGov licence record indicates that the Premises is currently licensed to sell takeaway liquor between 7:00am and 12:00 midnight Monday to Sunday.
8. However, while the Premises may have previously enjoyed those licensed trading hours for takeaway liquor sales, amendments to the Act which commenced during February 2014 now prevent the sale or supply of liquor for consumption off any licensed premises in NSW after 10:00pm on any evening.
9. The CIS provided with the Application advises that the Applicant purchased the property of the Premises during June 2013. The Applicant advises, in its capacity as the Premises owner, that it has been unsuccessful in procuring a suitable tenant since that date.
10. According to submissions from the Applicant's legal representative, Mr Hatzis, the Premises have been vacant since late December 2014.
11. The Applicant advises that settlement of the sale of the property of the Premises occurred during June 2013. Authority records indicate that on 13 June 2013 the Authority received and the incoming Premises Owner sought the transfer of the licence to Asteri Pty Limited.

12. The transfer of the licence was approved on a provisional basis only on 26 June 2013 but in a letter to the Applicant's former solicitor, Mr Ryan Watts of the law firm, Slater and Elias dated 29 October 2013 the Authority directed that Asteri Holdings Pty Limited undertake a Category B Community Impact Statement (CIS) in respect of the proposed transfer.
13. The Authority advised that it required a CIS by reason that Asteri Holdings Pty Limited was associated with the then operator (lessee) of the Bada Bing Nightspot, a prominent adult entertainment strip club on licensed venue also located in Kings Cross.
14. The Authority notes by way of background that the Applicant in this matter, Mr Manthos Papadopoulos, was the director of the operator (lessee) of Bada Bing, Marathon Enterprises Pty Limited.
15. The Authority further notes that Bada Bing had been the subject of an extensive application made by NSW Police during 2013 alleging that staff and patrons of the business had given rise to numerous incidents of crime and disturbance during late trading hours. This had resulted in the Authority determining, in a decision dated 11 December 2013 to reduce the extended licensed trading hours of those premises pursuant to section 51(9) of the Act.
16. On 10 January 2014, the Authority's Chief Executive, Mr Micheil Brodie, wrote to the Applicant's former solicitors Slater and Elias advising that the Authority remains concerned that the Police application in respect of Bada Bing may result in a change of business practices at the Bank Hotel.
17. Mr Brodie required the Applicant to complete and furnish a CIS with respect to the proposed use of the Bank Hotel by 16 March 2014 for the purpose of informing the Authority's decision to confirm the transfer of the licence transfer (which had at that time been approved on a provisional basis).
18. Mr Brodie noted, that in the alternative the Authority would accept the Bank Hotel's undertaking that no strippers or table dancers would be permitted on the Hotel premises. Mr Brodie notes that such undertaking would not be enforceable.
19. On 31 January 2014, Mr Hatzis advised that he was now acting for the Applicant, advising that Applicant is prepared to accept the imposition of an enforceable licence condition on the licence (per s53(1)(b)) that no strippers/table dancers on premises. He added that the Applicant didn't wish to make any submissions in respect of imposing this condition if the Authority does not require a CIS.
20. In light of the Applicant's offer to have the Adult Entertainment Condition imposed on the licence, the Adult Entertainment Condition was imposed by the Authority with the licensee's consent.
21. The Application now before the Authority seeks to revoke the Adult Entertainment Condition.
22. The Applicant now contends that it had "little or no choice" to accept the Adult Entertainment Condition when it was imposed by the Authority. The Applicant contends that it is unable to lease the Premises to a third party and this is due to the "restrictive" nature of the Adult Entertainment Condition.

23. The Applicant further submits that the condition is "unreasonable" in that many premises in Kings Cross currently operate as strip clubs.
24. On 6 March 2015, the Authority invited the Applicant to provide a submission on the proposed business model for the hotel business to be conducted on the Premises and submissions why the Authority should not use its discretion under the Act to require the provision of a CIS in respect of this Application, as it raised concerns that the Premises would provide live entertainment in the form of strippers.
25. On 27 March 2015, the Applicant provided a 7-page submission, which the Authority notes did not provide a great deal of clarity as to the proposed business model for the hotel nor substantial reasons why the Authority should not exercise its power under section 48(2) of the Act to require the provision of a CIS.
26. On 4 May 2015 and again on 22 May 2015 the Authority requested the Applicant to furnish a Category B CIS in relation to this Application to revoke the Adult Entertainment Condition.
27. On 11 November 2015, the Applicant furnished a Category B CIS, which is discussed below.
28. The Authority considered the Application and further submissions and material before it at its meeting on 16 December 2015. After careful consideration of the matter the Authority has decided to *refuse* the Application pursuant to section 53(2)(a) of the Act.
29. Staff assisting the Authority informally advised the Authority's decision by email on 18 December 2015. This letter serves to provide a formal record of the decision to refuse the Application.

MATERIAL BEFORE THE AUTHORITY

30. Liquor Licence Application Form dated 2 December 2014 received by the Authority on 10 December 2014.
31. Modification Approval Application D/2005/2222/F issued by the City of Sydney (Council) on 21 July 2014. This document, provided by the Applicant records the grant of consent to amend condition 6 of the DA, 'Hours of Operation – Sensitive Uses' to renew the existing trial hours of 12:00 midnight to 5:00am Monday through Sunday.
32. Plan of Management for the Premises dated February 2014. This Plan, provided by the Applicant addresses, *inter alia*, the purpose of the Plan; the site and locality; hours of operation; patron capacity; signage; amenity of neighbourhood; noise; behaviour of patrons and responsible service of alcohol; Kings Cross precinct provisions; senior staff and security management; CCTV; exclusion of persons from Premises; control on number of patrons; deliveries and waste removal; maintenance; removal of liquor in open containers; house policy; alcohol sales data; and plan amendments.
33. Submission from Sydney City Council dated 9 December 2014 provided to the Applicant during the CIS consultation. Council briefly advises that it has "no matters of concern with this application".
34. Email from Police to staff assisting the Authority dated 5 February 2015. Police submit that its position "remains unchanged in the relatively few months this condition has been imposed".
35. Police submit that they hold the following concerns with granting the Application:

(1) The business carried on under the Bada Bing Nightspot liquor licence will be transferred to the Bank Hotel Sydney.

(2) The Bank Hotel Sydney will commence strip-club style entertainment.

There is an established link between the two venues. Police have noted numerous occasions where former or current managers of the Bada Bing Nightspot (being John Turcott, Dimitri Papadoplous [sic] and Steven Lekoski) have been engaged as managers of the Bank Hotel Sydney.

Whilst Kyriacos (Gary) Papadopoulos has been removed as a Director from Asteri Holdings Pty Limited, he retains a financial interest in the company through his share holdings. Kyriacos is a business owner of the Bada Bing Nightspot.

The initial concern was that the owners/managers of the Bada Bing Nightspot would seek to circumvent the recent reduction in the licensed trading hours of that venue by transferring the business to the Bank Hotel Sydney – which is not subject to such a reduction. Although current lock-out and cessation of trade regulations have nullified the potential impact of such a transfer, this remains a live concern for the future.

Although the applicant maintains there is no intention to commence strip-club style entertainment at the Bank Hotel Sydney that remains the only logical conclusion for such an application. Such entertainment held under the utilisation of the minors area authorisation and regulation of the nature of entertainment (audience participation, full nudity, etc.) which is not adequately addressed with the current licence conditions.

At the very least, police would ask the Authority to require the completion of a Community Impact Statement to address this new form of entertainment or require some undertaking from the licensee that police/OLGR be notified of any change in the nature of the entertainment 8 weeks in advance so that the appropriate licence conditions can be sought.

36. Letter from the Applicant's solicitor to staff assisting the Authority dated 10 February 2015. Mr Hatzis sought the expedition of the assessment report relating to the Application. Mr Hatzis notes that the Premises were purchased in mid-2013 at a cost in excess of \$5 million and that the Premises were leased until 10 December 2014 when the hotel operator vacated the Premises.
37. Mr Hatzis submits that the condition previously imposed on the venue is "creating financial hardship for our client and is deterring other potential tenants from taking a lease of the premises".
38. Email from Applicant solicitor to staff assisting the Authority dated 12 February 2015. Mr Hatzis provides a letter from Ms Evonne Glinellis, a business agent of Network Infinity, in support of the 10 February 2015 letter requesting expedition. Ms Glinellis notes that Network Infinity act as agents for the Applicant to lease out the Premises and submits that there is "an interested party that we are in negotiations with that have expressed great concern over the conditions to the license [sic] that does not allow strippers or table dancers". Ms Glinellis adds that their concern is that the condition "covers a broad array of restrictions and interpretation and is a most unusual condition".
39. Ms Glinellis submits that this interested party may take on the lease if the condition is lifted but are not prepared to wait 6-12 weeks for the answer.
40. Ms Glinellis concludes with the following submission:

The demographics of the area make it extremely difficult to find any interested parties to take on the risks of assigning a lease in this location with the change in the new laws. They are reputable publicans and are attracted by the low price, quality and scale of the property. Our clients are currently suffering financial pressure with their asset and we have full confidence in achieving the result they need if the condition was lifted within this month.
41. Letter from Mr Micheil Brodie, Authority Chief Executive, to Applicant solicitor dated 6 March 2015. In response to the above letter from Mr Hatzis dated 10 February 2015.

42. Mr Brodie addresses the origins of the Adult Entertainment Condition, noting that on 13 June 2013, the Authority received an application to transfer the liquor licence for the Premises to Tectonic Pty Limited.
43. On 26 June 2013, that transfer application was provisionally approved and the Applicant's solicitor at that time was advised by email on 9 July 2013. The email notifying the provisional transfer stated that this matter would be reviewed for confirmation after 60 days or such longer period as the Authority may determine. The letter further advised that the Applicant would be notified if information was received that raised any concerns about the provisional transfer.
44. On 30 September 2013 the Authority received a submission from LAS Lawyers, the solicitors acting on behalf of Sapphire Suites Pty Limited. Sapphire Suites Pty Limited owns the premises known as Bada Bing, located at 70A Darlinghurst Road, Darlinghurst.
45. LAS Lawyers submitted that:

In previous submissions we raised the point that interests associated with the lessee had recently acquired the freehold of the Bank Hotel at 42 Darlinghurst Road Kings Cross and that these parties intend to operate a similar style of operation from that premises to the current Bada Bing operation.
46. Mr Brodie provided Mr Hatzis with relevant attachments, including copies of ASIC company extracts for companies interested in the Bada Bing premises and the current Premises. Those documents support the submission by LAS that there is an association between the current operator of Bada Bing and Asteri Holdings Pty Limited, the new owners of the Premises.
47. On the basis of this information and in light of the fact that the Bada Bing venue currently provides live entertainment in the form of strippers, Mr Brodie advised that the Authority is concerned that the hotel may operate in a similar fashion to Bada Bing.
48. As a result of those concerns, on 29 October 2013, the Authority requested a Category B CIS be provided in order to ensure that the association between the operators of Bada Bing and the Premises did not result in the similar style of operation without the consultation of the community and stakeholders.
49. Mr Brodie further noted that on 31 January 2014, Mr Hatzis' office had confirmed the Applicant's consent to the imposition of a condition upon the licence pursuant to section 53(1)(b) should the Authority not press for the production of a CIS in relation to the transfer application.
50. Mr Brodie submitted that the current Application raises the Authority's concerns as to use of the hotel for the purposes of adult entertainment once again. Mr Brodie invited Mr Hatzis to provide a submission about the proposed business model of the hotel to be conducted on the Premises and submissions why the Authority should not use its discretion under the Act to require a CIS in respect of this Application. Mr Hatzis was also provided with a copy of the Police submission dated 5 February 2015 and invited to provide comment.
51. Letter from Applicant solicitor to Authority dated 27 March 2015. Mr Hatzis submits that while the letter from the Authority dated 6 March 2015 correctly recounts "some" of the background circumstances that led to the imposition of the Adult Entertainment Condition, other background facts are also relevant.

52. Mr Hatzis begins by submitting that the Authority gave the Applicant a choice to either carry out a CIS in respect of the provisional transfer or agree to the imposition of the Adult Entertainment Condition.
53. Mr Hatzis then briefly notes the history of the purchase of the Premises by Asteri Holdings Pty Limited and submits that if his client company did not agree to the condition it would have "run the risk that the licence transfer would be refused".
54. Mr Hatzis submits that this would have resulted in the licence reverting back to the vendor of the property, or an order that the licence not be able to be exercised until a further order of the Authority.
55. Mr Hatzis submits that in those circumstances his client "had little or no choice" but to accept the Adult Entertainment Condition.
56. Second, Mr Hatzis notes the leasing history of the Premises and submits that the Premises have been unsuccessfully leased to a number of operators. Mr Hatzis contends that the difficulty his client has faced is due to the Premises being located in the "heart of the Kings Cross CBD" among a number of premises that offer adult entertainment.
57. Mr Hatzis submits that "there is a public expectation that, in this part of Sydney, this form of entertainment will be available to patrons". Mr Hatzis adds that this public expectation is reflected in the City of Sydney's 'Adult Entertainment and Sex Industry Premises Development Control Plan 2006' which contains the following statement:

Adult entertainment and sex industry premises have a long history within the City of Sydney Local Government Area and have become an established and accepted feature of some areas...It is...important that land use planning controls seek to reduce any negative impacts whilst allowing the development of adult entertainment and sex industry premises in suitable locations.
58. Mr Hatzis submits that the Adult Entertainment Condition "renders it impossible for any third party operator to offer this form of entertainment".
59. Mr Hatzis provides a letter from one of the joint letting agents, Network Infinity, attesting to those difficulties (noted above) and a letter from the other joint agent, Metro Commercial, which recommends an adult entertainment use.
60. Mr Hatzis submits that, based on the material contained within the Authority's letter, it appears there are three discrete areas of concern which underlie the subject conditions. Those concerns are:
 - (a) *A concern (expressed by the premises owner of Bada Bing in late 2013) that the operators of Bada Bing would move that business to the Bank Hotel.*
 - (b) *A concern that the operators of the Bada Bing might defeat the proposed order of the Authority to wind back the trading hours of the Bada Bing, by relocating that business to the Bank Hotel (which has a 5.000 am licence); and*
 - (c) *A concern (expressed by Police) that if stripping/table dancing entertainment is to be provided, that there be appropriate controls, as there are in other venues in Kings Cross.*
61. Mr Hatzis begins by submitting that the concerns expressed in (a) and (b) are "largely redundant" and that Police concerns in (c) "have validity and require appropriate measures to be put in place".

62. In response to the first concern, Mr Hatzis notes the background leasing history of the Bada Bing and submits that contrary to the fears expressed by its premises owner, Mr Saleh, its operators exercised an option to renew the lease.
63. Mr Hatzis attached a copy of the current lease for a term of four years, which will remain current until at least late 2017. Mr Hatzis adds that the purpose of the Application is "not to facilitate a future relocation of the Bada Bing business, but to enable Asteri Holdings Pty Limited to derive a full commercial income from the letting of the Bank Hotel to a third party tenant, in the same way that other landlords of other hotels in the precinct can realise full value by letting their hotels".
64. In order to remove any residual concerns that the Authority may have about the operations of Bada Bing being relocated to the Premises, Mr Hatzis provided consent on behalf of the Applicant and the sole director of Bada Bing, Mr Kyriakos Papadopoulos, for a condition to be imposed to the following effect:
- Kyriakos Papadopoulos (also known as Gary Papadopoulos) born 3 July 1969, shall have no direct or indirect interest or otherwise in the day to day operation and management of the licensed premises and shall not be permitted on the licensed premises while they are open and trading.*
65. In response to the second concern, Mr Hatzis notes that following a draft determination by the Authority it was proposed that the hours of the Bada Bing be limited to no later than 3.00am. As a result, Mr Saleh was concerned that the operators of the Bada Bing might effectively overcome the proposed Authority decision by relocating the business to the Bank Hotel. As such, Mr Hatzis submits that the second concern is redundant due to the passing of legislation in early 2014 which provides that all relevant venues in Kings Cross must cease service of alcohol at 3:00am, with a 1:00am lockout.
66. In response to the third concern, Mr Hatzis submits that there is some validity in the Police submission in seeking to ensure that there are appropriate controls in place if entertainment in the form of stripping/table dancing is to occur at the Premises.
67. As such Mr Hatzis provided consent on behalf of his client to the following conditions:
- Whilst ever strippers/table dancers perform at the Hotel:*
- 1. Entertainers who leave the stage area are to wear at least a G-string.*
 - 2. Any place within the licensed premises in which entertainment is provided shall not be partitioned so as to prevent observation of the activity in place (i.e. any private room cannot include a door which would prevent someone seeing into the room).*
 - 3. All media advertising or other promotional materials shall advise that the entertainment is of a sexually explicit nature.*
 - 4. No person under the age of 18 is to be permitted entry into the premises.*
 - 5. No audience participation is to be permitted.*
68. Mr Hatzis then makes a number of submissions in support of the argument that condition "5" need not go further so as to prohibit "touching of any kind".
69. First, Mr Hatzis submits that a "no touching" condition is not required in order to conform to current community standards". Mr Hatzis submits that the conditions previously imposed by the former Licensing Court in the 1980's and 1990's prohibited touching of any kind between performers and patrons.
70. Mr Hatzis notes that the Queensland controls on entertainment and developed by that state's Liquor Regulator and Police Commissioner in 2002 do not prohibit touching.

71. Second, Mr Hatzis notes that the Queensland Crime and Misconduct Commission expressed the view in 2005 in their publication, "Regulating Adult Entertainment", that physical touching of a non-sexual nature is not obscene or indecent, whereas touching of a sexual nature may well be. Mr Hatzis submits that there is "substance" to such a distinction and that there is no need for a prohibition for "no touching" in order to conform with current community standards.
72. Mr Hatzis concludes by submitting that the "revocation of the subject condition will therefore remove an unnecessary and unwarranted commercial handicap on the current freehold owners, will assist the premises to meet public expectations, will facilitate the conduct of entertainment which is appropriate having regard to the character of the area, and all done in a way which is controlled and specifically designed to prevent indecent conduct".
73. Mr Hatzis adds that "as the Authority has imposed similar controls upon the very recent transfer of the licences of other venues intended to be used for striptease entertainment (including Velvet Underground and Iguana Bar) without requiring a CIS, so too is it appropriate for the Authority to remove the subject condition and substitute instead the conditions proffered in this submission".
74. Letter from Authority Chief Executive to Applicant solicitor dated 4 May 2015. In response to the above letter dated 27 March 2015, Mr Brodie notes that it indicates that there may be a level of public expectation for a premises located in the Kings Cross CBD to offer live entertainment involving strippers or table dancers to patrons.
75. However, this does not remove the Authority from its obligation to take the relevant steps to ensure that the removal of the Adult Entertainment Condition will not create any adverse impact on the local community.
76. Mr Brodie notes that in his letter dated 6 March 2015, the Authority invited the Applicant to provide a submission about the proposed business model of the Premises and why the Authority should not use its discretion under the Act to request a Category B CIS.
77. Mr Brodie notes that in the letter from Mr Hatzis dated 27 March 2015, Mr Hatzis indicated that to satisfy the concerns expressed by Police, the Applicant is prepared to offer a set of conditions consistent with the provision of entertainment in the nature of "stripping"/table dancing.
78. Mr Brodie notes that no further information was supplied to provide clarity around the proposed business model of the hotel business or substantial reasons as to why the Authority should not request a CIS from the Applicant.
79. Mr Brodie advises that on the basis of the information before the Authority and the concerns expressed by Police, the Applicant is requested to complete a CIS to further assist the Authority in its consideration of the impact of removing the Adult Entertainment Condition.
80. Email from Applicant solicitor to Authority Chief Executive dated 5 May 2015. Mr Hatzis submits that in order to expedite matters, the Applicant has agreed to the imposition of a licence condition that reads: "no audience participation or touching is permitted". Mr Hatzis submits that this restriction on touching has been accepted by the Applicant "in order to make the premises lettable [sic] to intending operators".

81. Letter from Authority Chief Executive to Applicant solicitor dated 22 May 2015. Mr Brodie notes the email from Mr Hatzis on 5 May 2015 and the letter dated 27 March 2015 which proffered the imposition of conditions upon the licence should the Application be granted.
82. Mr Brodie submits that in the absence of a CIS, the Authority is not satisfied that the removal of the condition will not be detrimental to the well-being of the local or broader community. The Applicant is directed under section 48(2)(f) of the Act to complete a Category B CIS to further assist the Authority in its consideration of the impact of removing the Adult Entertainment Condition.
83. Notice of Intention to Apply for a Liquor Licence or a Licence Authorisation dated 22 May 2015. A copy of this Notice, provided by the Applicant, states that its purpose is the "Change of liquor licence condition by revoking the following condition "no live entertainment involving strippers or table dancers is to be permitted on the premises".
84. In describing the type of liquor-related activity proposed by the Application, the notice sets out a brief background to the subject condition and notes the five conditions that the Applicant has agreed will be imposed upon the licence if the Application is granted (noted above).
85. The notice states that the Premises features a full commercial kitchen and is presently unoccupied "due to an inability to find tenants" and that "some proposed tenants have discontinued their interest in the premises after being told that adult entertainment cannot form a part of their business model at any time".
86. The notice adds that "given the character of the area, proposed tenants have expressed a preference for including adult entertainment in their business models".
87. The notice notes that "no adult entertainment will be visible from outside the Premises".
88. The notice concludes by stating that the "revocation of the subject condition will remove an unnecessary commercial handicap on the owners, will assist the venue to meet public expectations (as many patrons attending the area wish to attend venues offering adult entertainment), will facilitate the conduct of entertainment which is appropriate having regard to the character of the area and all done in a way which is controlled and specifically designed to prevent indecent conduct".
89. The notice was accompanied by a Google Maps image of the Premises and its surrounding neighbourhood showing the area served by the notice of intention.
90. The following submissions and responses were received in response to the notice of intention:
91. Submission from Council to the Applicant's solicitor during the CIS consultation process dated 28 May 2015. Council reiterated its 9 December 2014 submission.
92. Submission from Council to the Office of Liquor, Gaming and Racing (OLGR) dated 19 June 2015. In this submission Council submits that it "wishes to advise that the previous comments are formally retracted and that Council objects to the removal of the existing conditions".
93. Council submits that the extent of the proposed change of use of the premises is "unclear".

94. Council submits that the proposed change in business model would require a change in use on the DA Consent from a "Hotel" to a "Restricted Premises" and that the Premises does not have development consent to operate as a restricted premises.
95. Council advise that the Premises will require separate development consent for a change of use to be approved prior to the proposed activity commencing.
96. Applicant solicitor file note regarding telephone submission from local resident received on 22 May 2015 during CIS consultation. Mr Hatzis notes that at this time he received a telephone call from a woman named "Aditi" who said she has lived in Kings Cross for "some years".
97. Mr Hatzis notes that the caller states that she "does not support the debasing and objectification of women which occurs in strip clubs" and that "she can do nothing in respect of existing venues but says that we have enough objectification of women at the moment and that the applicant should please not proceed with this application".
98. Email from local resident Ms Bruce of Darlinghurst Road (located across the street from the Premises) dated 26 May 2015 to Applicant solicitor during CIS consultation. Ms Bruce submits that she opposes the change in the current licence at the Premises and that the existing condition should remain in place.
99. Email from local businesswoman, Ms Singer (located approx. 100m from the Premises) dated 30 May 2015 to Applicant solicitor during CIS consultation. Ms Singer submits that her business is "in full agreement with the revocation of this condition" and that "late night entertainment enhances the area and helps other businesses".
100. Email from Mr Woodhouse, President of the Potts Point and Kings Cross Heritage Conservation Society dated 22 May 2015 to Applicant solicitor during the CIS consultation. Mr Woodhouse requested Mr Hatzis to advise the proposed hours of operation on the Premises; the names of the proprietors; patron capacity at the Premises; and information as to how the Applicant intends to ensure no strippers/dancers are visible from the exterior if the door is opened to allow patrons in.
101. Email from Mr Hatzis to Mr Woodhouse dated 22 May 2015. In response to the above email from Mr Woodhouse, Mr Hatzis provided a number of submissions. First, Mr Hatzis submits that there is no change to the existing hours of operation and that the Premises has a 24-hour licence but is subject to a 1:30am lockout and 3:00am cease service of alcohol.
102. Second, Mr Hatzis notes that the Application is made by Asteri Holdings Pty Limited and that the company has been unsuccessful in leasing out the Premises and hopes it will be more successful if the restrictive condition is removed. Third, Mr Hatzis notes that the patron capacity remains "unchanged".
103. Fourth, Mr Hatzis submits that he does not presently have details of how the no-visibility provision will be achieved but that he expects it will be a matter for the ultimate operator.
104. Email from Mr Woodhouse to Applicant solicitor dated 23 May 2015. In response to the above email from Mr Hatzis, Mr Woodhouse provided the following submissions:
 - 1) *Where does it stipulate the proposed hours for each day including public holidays in your notice? A 24-hour licence does not mean the hours of operation proposed are 24 hours a day. The currently advertised hours are: Good Friday 12noon-10pm, Christmas Day 12noon-10pm, Otherwise Mon-Fri 7am-5am. Are these the hours proposed?*
 - 2) *Your point 2 is otiose.*

- 3) *The notice provided by you states "The following describes the proposed premises including...Maximum number of patrons". Why is this information not provided as required? Is the maximum number 750?*
 - 4) *Your admission in point 4 is noted. Currently, there is no known way of satisfying this condition for this premise in this location.*
 - 5) *Is the licensee Cathy Downie?*
 - 6) *We note you have deliberately not answered our question 2. Who are the directors of Asteri Holdings Pty Limited?*
 - 7) *Do any of your clients associated with this application have any criminal associations or backgrounds?*
 - 8) *Your application refers to the character of the area. What is the geographical area and its boundaries you refer to?*
 - 9) *Where is it defined?*
 - 10) *Where is the evidence to substantiate your claim that "many patrons attending the area wish to attend [sic] venues offering adult entertainment"?*
 - 11) *How is this relevant in terms of measuring impacts?*
105. Letter from Mr Hatzis to Mr Woodhouse dated 28 May 2015. In response to the above email from Mr Woodhouse, Mr Hatzis notes that the permitted trading hours, identity of the registered proprietor, identity of the current licensee and persons associated and patron capacity of "500 persons" will remain unchanged.
106. Mr Hatzis submits that the "only change that is sought by the grant of the Application is to permit entertainment in the form of strippers and/or table dancers".
107. Mr Hatzis submits that he does not agree with Mr Woodhouse's conclusion that it will not be possible to ensure that such entertainers are not visible from the street as this is a matter for the ultimate operator to determine.
108. In respect of the public benefits espoused by the Applicant, Mr Hatzis submits that he does not propose to provide "a metes and bounds description of the area generally described as 'Kings Cross'".
109. Mr Hatzis adds that the "fact that the area contains a number of adult entertainment venues which – as observation demonstrates – are well patronised and well attended, is cogent evidence that 'many patrons attending the area wish to attend venues offering adult entertainment'".
110. Email from Mr Woodhouse to Applicant solicitor dated 28 May 2015. In response to the above letter from Mr Hatzis, Mr Woodhouse provided the following submission:
- So if you are unable to guarantee that the operator can ensure the venue will not be visible from the outside, since it is a matter for the operator, how can you disagree with our conclusion? Your replies are generally evasive, unhelpful and illogical or just plain juvenile.*
111. Submission from Mr Woodhouse to Applicant solicitor dated 21 June 2015. Mr Woodhouse provided the following submission objecting to the Application:
- 1) *The changes are inconsistent with the subject site's current Plan of Management.*
 - 2) *You [sic] client has an employee [sic] on the street seeking signatures on a petition about which members of the public are misled. He is telling the public your application it is [sic] only to lift prohibitive restrictive conditions without advising them it is for support of a sex club, which is what he told me and others. This is an omission by lying. That Petition can therefore be disregarded as being biased and prejudiced and is not indicative of anything relevant to the application.*
 - 3) *There has not been sufficient notification. Individuals in high-rise apartment blocks nearby have not been advised: over 2,000 people live within 100 metres of the subject site.*

- 4) *There is no indication, and you refuse to provide information about, which "area" you refer to when you claim this application benefits the area or is in line with the characteristics of the area. We submit the proposal is detrimental to the locality area. The locality is defined by the City of Sydney's DCP section 2, 2.4.7 which requires development to "retain Darlinghurst and Bayswater Road as a precinct which support a mix of daytime commercial and retail uses". This proposal is a development according to your letter dated 28th May 2015 – see page 2 Attachment A. This proposal does not stimulate or support daytime activities: it related primarily to night-time uses. The locality is also a geographical area defined by section 4A of the Liquor Act and Schedule 2. The subject site is within the Kings Cross lockout freeze zone. It is therefore already within an alcohol-violence sensitive zone. The subject site is currently vacant and has been for about a year. Any consent of acceptance of the Notice will add more alcohol to an area already saturated with alcohol outlets. It will therefore be "detrimental to the well-being of the local or broader community", a legal criterion (section 48(5) Liquor Act).*
- 5) *Your application is misleading: it fails to provide information about the number of patrons or specific hours of operation as required by the form. The Notice is deficient and cannot be the sound basis of any future application.*
- 6) *The Notice is by a company whose directors have been linked with crime and previous non-compliance of Liquor Licence requirements. There is therefore very little chance, if any, that any application, if successful, will be complied with. The Directors of Asteri Holdings are listed in the attached company extract, Attachment B. Asteri Holding's Directors have a history of flouting liquor laws and are linked to the notorious Bada Bing Nightclub, recently sanctioned by ILGA.
 Mr Kyriacos Papadopoulos is a Director of Bada Bing Premises (point 12 of the [linked] decision). Mr Manthos Papadopoulos was/is a Director of Bada Bing premises (point 184 of the [linked] decision). One of its workers, Dimitri Papadopoulos, a member of the Papadopoulos family, has a criminal history [news article link attached]. Both the above two Directors are also Directors of Asteri Holdings Pty Limited, your clients in this case. Steve Stavrou is also a Director and Secretary of Asteri Holdings. He is/was connected with the infamous Porkys Sex Club at 77 Darlinghurst Road [news article link attached]. The bribes were captured on film [two links attached].
 The Directors of Asteri Holdings do not have the integrity or are of sufficiently good repute to run a sex club in Kings Cross. Any application is not in the public interest and will be "detrimental to the well-being of the local or broader community", a legal criterion (section 48(5) Liquor Act). In addition, The Bank Hotel site also has a history of non-compliance with Council DA conditions. Whether it claims to have new owners or not is irrelevant: the Plan of Management is the same.*
- 7) *The application is another Bada Bing in disguise, to replace that club which is closed. It involves changes of uses from a vacant site to new sex club uses and therefore requires DA consent from the City of Sydney Council BEFORE OLGA can consider this Notice of Intention. No DA consent has been sought or granted from or by council. The applicant's Notice of Intention therefore cannot proceed and is premature.*
- 8) *There will be increased noise in a primarily residential area.*
- 9) *The character of the locality/area does not justify this type of premise: there is nothing else like it in Kings Cross, a geographically area defined in the Liquor Act. The applicant's inability to find another tenant or general economic downturn due to lockouts is not a relevant consideration: that is a financial matter involving rental/mortgage costs beyond the scope of OLGA's consideration.*
- 10) *There will be more: noise; anti-social activities; on-street queuing; violence; alcohol-related crime; anti-social activities; drain on public resources including council rangers, NSW Environmental Protection Authority (noise complaints), police, ambulance, hospitals, court resources and jails. It will therefore be "detrimental to the well-being of the local or broader community", a legal criterion (section 48(5) Liquor Act).*
- 11) *The hours are excessive for this dense inner-city area: over 1,000 residents live within 100m of the site.*
- 12) *The subject site currently has a max. patron limit of 500 patrons or staff. However, this figure does not account for a daily four-fold turnover of patrons, the industry average: up to 2,000 people may therefore be loitering around the site in any 24-hour period: excessive and dangerous. It will therefore be "detrimental to the well-being of the local or broader community", a legal criterion (section 48(5) Liquor Act) in terms described above.*
- 13) *The applicant claims the sexual activities will not be visible from the street. However, both sets of the front doors are glass and when opened will allow interior visibility, especially when both*

sets of doors are opened to allow patrons both in and out at the same time. The applicant admits this condition cannot be guaranteed. The application is unsustainable.

- 14) *The notice relates to a site that, if proceeded with, will add to the cumulative impacts of the current alcohol-driven activities in the local and broader areas. It will therefore be "detrimental to the well-being of the local or broader community", a legal criterion (section 48(5) Liquor Act). The area is in 'recovery' mode after the successful introduction of lockouts yet the proposed premise will use the night-time economy to butcher the day-time economy. The development will reverse the positive effects of lockouts and concomitant crime reduction: it is an anachronism and traduces the streetscape in a heritage zone. The application, if proceeded with, would therefore be counter to the state government's public policy and will be "detrimental to the well-being of the local or broader community", a legal criterion (section 48(5) Liquor Act).*
 - 15) *The NSW Police Force Kings Cross Local Area Command, the local State Member, Alex Greenwich MP (Member for Sydney), the 2011 Residents' Association, local shopkeepers, individual residents and a petition do not support this application. The proposal has created adverse media comment and created a groundswell of local concerns and objections. See Attachment C. It will therefore be "detrimental to the well-being of the local or broader community", a legal criterion (section 48(5) Liquor Act).*
 - 16) *The proposal will have adverse, social, environmental and economic impacts and is unsustainable. It will be "detrimental to the well-being of the local or broader community", a legal criterion (section 48(5) Liquor Act).*
 - 17) *The proposal is against the public interest generally.*
112. Email submission from a local resident (name requested not to be disclosed and address not provided) dated 15 June 2015 made to the Applicant solicitor during the CIS consultation. The writer provided the following submissions in objection to the Application:

I do not support this proposal. It is in my, and I am sure many other residents' opinion that permitting further adult entertainment venues around Kings Cross will be harmful to the local community. I applaud the hard work and commitment the NSW Government and police force, as well as local Council, have invested into the area by making Kings Cross and surrounds safer and more enjoyable for residents and visitors. However, the removal of liquor licence restrictions on The Bank Hotel premises is in complete contradictory to what the authorities and local community is striving to achieve over the past years. It will not only lead to yet another venue for alcohol, lewd behaviour and possible drug convictions, but also one that will inevitably cause late night disturbances for residents including music and patron noise. The community impacts from the proposal being approved would be 100% negative.

113. Submission from Mr J Anderson (address not provided) dated 16 June 2015 to the Applicant solicitor during the CIS consultation. Mr Anderson provided the following submissions in objection to the Application.

Potts Point is a strong and vibrant community which is currently undergoing a gentrification, allowing its residents to live in an environment in which they feel safe and protected. Liquor licensing laws and restrictions play a big part in this change and have achieved greater results in terms of reduction of crime, alcohol driven violence and general anti-social behaviour. To grant a reprieve for The Bank Hotel, purely to meet the financial interests of the owners, would undermine the great work which has gone into changing the area and would potentially lead to a greater relaxing of liquor licensing of venues in the area, allowing it once again to become a dangerous and unwelcoming place to live.

Adult entertainment venues like this one are more likely to attract large groups such as buck parties, who have a much higher likelihood to abuse alcohol or drugs and engage in anti-social behaviour. These groups may be able to be controlled while they are in the adult entertainment venues, however once they leave the venue and walk through the surrounding neighbourhood, they may vandalise surrounding property, disturb residents with screaming and shouting and can become violent with other late night patrons or local residents. This sort of behaviour does not benefit the community and adds no value at all to the area as a whole.

Potts Point is already one of the highest density housing areas in Australia and it continues to grow with more and more residents moving in, this means a greater need for dining, social and other recreational facilities. Strip clubs do not meet the needs of this new community and I find it hard to believe that with such a large and growing population, this space cannot find a suitable tenant which is

not in the 'adult entertainment' space. With more and more families and children residing in Potts Point, it is now more important than ever to take into consideration the large negative effects that late night adult entertainment venues have on residential communities and no longer bow to the short term financial interests of businesses who are only interested in exploiting the area as a commercial red light district.

114. Submission from Ms H Crossing, Convenor of the 2011 Residents' Association, dated 19 June 2015 made to the Applicant solicitor during the CIS consultation.
115. Ms Crossing advises that the 2011 Residents Association (Residents Association) is a group of residents representing the 2011 postcode.
116. The Residents Association "strongly object to the proposed application for the above cited amendment to the liquor Licence for the Bank on the grounds that we see it as being anachronistic and inappropriate, given the positive improvements that have occurred in Kings Cross since the introduction of changes to licensing laws in February 2014".
117. Ms Crossing provides a background to the Kings Cross neighbourhood and submits it was once a "sophisticated rendezvous for Sydneysiders seeking good food, latest trends in fashion and a creative artistic cultural lifestyle". Ms Crossing submits that this changed with the advent of the Vietnam War and the use of the area as staging points for soldiers and eventually became "the target destination for drug dealers and organised crime". Ms Crossing adds that the recent decade has experienced alcohol-fuelled violence and criminal behaviour which has led to the stretching of public and hospital resources.
118. Ms Crossing submits that "despite years of complaints to all tiers of government the community went unheard and unacknowledged until the tragic deaths of two young men who were violently and senselessly killed on a night out in Kings Cross". Ms Crossing submits that following the passing of legislation by the NSW Government there has been a 40% drop in violent assaults and residents have experienced a "dramatic reduction in noise and increased safety as they can now move about their neighbourhood without fear".
119. Ms Crossing adds that at the most recent Police and Community meeting in Kings Cross on 4 June 2015, Police Superintendent Michael Fitzgerald announced that the Kings Cross LAC had seen a 48% decline in alcohol-related violence in Kings Cross in the 12 months since the introduction of the legislation.
120. Ms Crossing submits that clubs, hotels and other venues are "still able to trade profitably, but no longer at the expense of the NSW community or to the detriment of residents". Ms Crossing adds that the "few remaining 'sex clubs' are like dinosaurs; out of touch with their environment and unwilling or unable to adapt" and that "in their place are new restaurants, cafes and retail outlets catering for the residents and not intoxicated crowds of weekend revellers".
121. Ms Crossing submits that the suburb is on a "new path" and notes that there has been an increase in residential development and an influx of new residents.
122. Third, Ms Crossing outlines the Application and submits that the Applicant intends to have "strippers or table dancers in G-strings performing on stage, at tables, and at 'private booths'". Ms Crossing submits that residents "view this as a concerning and retrograde step for their community; it appeals to the lowest common denominator of patron and would be an anachronism in the current social climate, and in light of the increased focus on residential development".

123. Ms Crossing submits that RA objects to the granting of the Application for the following reasons:

- 1) *Kings Cross has changed, and for the better. It has taken 10 years of lobbying on the part of residents, Police and the State Government to make this a safer neighbourhood for families, workers, visitors and individuals. We want to preserve and improve the level of safety that has been achieved, not see it reversed.*
- 2) *The type of venue that is proposed, and its location on the main strip of Darlinghurst Rd, would once again serve to attract large crowds of intoxicated, unruly and potentially violent people onto the streets of Kings Cross. The venue is likely to reintroduce anti-social behaviour and potentially increased noise from people and motor traffic cruising the streets in search of voyeuristic pleasure.*
- 3) *The introduction of the lockout laws into Kings Cross has resulting in a dramatic improvement in the daytime economy in Darlinghurst Road, and a quietening of the alcohol-based night-time economy. New restaurants have been launched and a diverse range of businesses have been opened including a new gym, health food store, pharmacies and clothes shops. Venues that are still trading have adapted to the new restrictions on opening hours and last drinks. To re-introduce a sex club would only result in the loss of all that has been achieved. New mainstream businesses are at risk of failing if their customers are intimidated by patrons of the proposed new strip club.*
- 4) *The applicant is Asteri Holdings Pty Limited. This company was also listed as the licensee of BadaBing nightclub in a decision (link to the decision provided) by Mr Chris Sidoti, Chair of ILGR [sic], dated 11 December 2014 (ILGR ref: L274). In this case there is ample evidence of serious liquor licence breaches and criminal activity occurring over a number of years. Mr Manthos Papadopoulos, through his position with Asteri Holdings, was a director of BadaBing and is a director and manager of the Bank. Based on this history, questions must be raised as to the suitability of Asteri Holdings and those associated to be granted any alterations to the liquor licence for the venue known as 'The Bank'.*

The 2013 submission by Police, and acknowledged by ILGR [sic], against Asteri Holdings as licensee listed over 100 liquor licence breaches at BadaBing, which ought to raise doubts about that company, and its director Mr Papadopoulos, running a new venue at the Bank. The submission also records the extraordinary admission by Mr Papadopoulos that "it is likely that the issues identified with respect to which the BadaBing has operating [sic] in the past will present in relation to the operation of the Bank Hotel" (pg 77, xxii).

In another recent ILGR [sic] judgment in relation to "Déjà vu" nightclub in Kings Cross dated 11 December 2013 (link to the decision provided) and referenced above, fall into the same category and can therefore be considered "relevant matters that go to a general assessment" when considering the current application by Asteri Holdings with regard to the Bank. In the judgment with regard to Déjà Vu, the Authority noted, "Mr.....poses an unacceptable drain upon regulatory resources" and that "Mr... 's involvement in the liquor industry has come at some significant cost to the community through the law enforcement resources expended by Police and OLGR, Court time and the investigation and prosecution of repeat complaints to this Authority". (para 250).

124. Ms Crossing submits that drawing from the above mentioned cases, Asteri Holdings Pty Limited, in their association with Bada Bing have "already been proven 'an unacceptable drain upon regulatory resources' and responsible for 'significant cost to the community through law enforcement resources expended by Police and OLGR, Court time and the investigation and prosecution of repeat complaints'".

125. Submission from Ms J Campbell, Senior Manager of NSW Family & Community Services (FACS), dated 27 May 2015 made to the Applicant solicitor during the CIS consultation. FACS did not provide a response in relation to the Application and noted it would not be providing input into the submission.

126. Submission from Mr R Beetson. General Manager of St Vincent's Health Australia (St Vincent's), dated 29 May 2015 made to the Applicant solicitor during the CIS consultation. St Vincent's (who the Authority note operate St Vincent's Hospital in Darlinghurst, close to Kings Cross) submit that "Whilst there is currently no evidence that

demonstrates venues that provide late trading adult entertainment increase the likelihood for attracting cohort populations that engage in the harmful consumption of alcohol, we have, however, experienced first-hand the associated harms arising from such venues through our emergency presentations".

127. St Vincent's submit that there is a "responsibility by businesses, such as those managed by your applicant, to continue satisfying the community that the condition changes will not be detrimental to the well-being of the local or broader community".
128. Submission from NSW Roads & Maritimes Services (RMS) dated 1 June 2015. RMS commented on the potential road safety impacts of granting the Application and notes its concern to reduce the incidence of road crashes involving drivers, riders and pedestrians who are impaired by alcohol. RMS advise that between 2009-2013 alcohol impairment was a factor in 2.6% of all crashes in Sydney, with 50% of alcohol related crashes resulting in a casualty. RMS add that within the Sydney Local Government Area (LGA) there were 29 alcohol-related crashes resulting in 16 casualties including one fatality. RMS recommend that countermeasures to prevent and decrease the likelihood of alcohol involvement in road crashes in the Potts Point area should be discussed in the approval process. RMS recommend that should the Application be approved, the licensee attend the LGA's liquor accord and that public education material focused on drink drive and pedestrian alcohol issues be displayed at the Premises.
129. Submission from local resident P McFarlane of an apartment building located across the street from the Premises dated 5 June 2015 made to the Applicant solicitor during the CIS consultation. Mr McFarlane requested a copy of the Applicant's CIS and provided the following submissions in objection to the Application:
 - 1) *The applicant has not provided details on their Notice of the number of patrons or specific hours of operation as required by the form. The notice is inadequate.*
 - 2) *There has not been adequate notification. Residents in my building opposite the subject site have not been notified. I only became aware of the Notice by attending a community meeting by chance. The applicant is evading scrutiny and breaching Liquor Licensing Regulation 7.*
 - 3) *No plan of management is provided: it cannot be properly assessed.*
 - 4) *The change of conditions are deliberately unclear. Will strippers be naked when not on stage? Will sex be performed in observable rooms?*
 - 5) *Asteri Holding's [sic] Director/s have a criminal history and are linked to the notorious Bada Bing Nightclub, recently sanctioned by OLGA. The Directors are recidivists and cannot be trusted to comply with current or future conditions. The site has a history of non-compliance of Council DA conditions.*
 - 6) *The application is development and involves changes of uses to new, sex club uses and therefore requires DA consent from the City of Sydney Council BEFORE ILGA can consider this Notice of Intention. No DA consent has been sought or granted from or by council. The Notice of Intention cannot proceed and is premature.*
 - 7) *There will be increased noise in a residential area.*
 - 8) *The character of the area does not justify this type of premise: there is nothing else like it in Kings Cross. The applicant's inability to find another tenant is not an EVAT consideration: that is a financial matter involving rental costs.*
 - 9) *There will be more anti-social activities, on-street queuing, violence and alcohol-related crime.*
 - 10) *The hours are excessive: over 1,000 residents live within 100m of the site.*
 - 11) *There will be a drain on public resources including Sydney Council compliance staff. The EPA (re: noise) and police and ambulance resources.*
 - 12) *The subject site currently has a max. patron limit of 500 patrons. However, this figure does not account for a daily four-fold turnover of patrons, the industry average: up to 2,000 people may be loitering around the site in any 24-hour period: excessive and dangerous.*
 - 13) *The applicant claims the sexual activities will not be visible from the street. However, both sets of the front doors are glass and when opened will allow interior visibility, especially when both*

sets of doors are opened to allow patrons both in and out at the same time. The applicant admits this condition cannot be guaranteed. The application is unviable.

- 14) *The area is in 'recovery' mode after the successful introduction of lockouts: the site will use the night-time economy to butcher the day-time economy. The development is anachronistic and traduces the streetscape in a heritage zone.*
 - 15) *The NSW Police Force Kings Cross Local Area Command, the local State Member, Alex Greenwich MP (Member for Sydney), Clover Moore, Lord Mayor of Sydney Council, the local 2011 Residents' Association, the Potts Point and Kings Cross Heritage Conservation Society, local shopkeepers, individual residents and a large petition do not support this application. The proposal is against the public interest.*
 - 16) *The proposal has adverse, social, environmental and economic impacts and is unsustainable, is contrary to ILGA's EVAT criteria and will be 'detrimental to the well-being of the local or broader community' (section 48(5) Liquor Act).*
 - 17) *The proposal is against the public interest.*
130. Second submission from Mr McFarlane dated 5 June 2015. Mr McFarlane deleted point 5 from his first submission and provided the same evidence as contained in respect of point 6 of Mr Woodhouse's 21 June 2015 submission. On the basis of this information, Mr McFarlane submits that the "Directors of Asteri Holdings do not have the integrity or are of sufficiently good repute to run a sex club in Kings Cross".
131. Submission from local residents, Mr and Mrs J and E McPherson, of Orwell Street (located approximately 270m from the Premises) dated 22 June 2015 made to the Applicant solicitor during the CIS consultation. Mr and Mrs McPherson provided the following submissions in objection to the Application:
- We strongly object to any relaxation of current liquor licence conditions of the former Bank Hotel at 42 Darlinghurst Road Kings Cross. The site has been vacant for ages, possibly over a year. As such the conditions have lapsed. The notice issued by the solicitor provides insufficient detail and is deliberately evasive. There has been no public notice in any newspaper. If considered or approved it will turn this site into a sex nightclub attracting the same clientele as the infamous Bada Bing nightclub nearby, also owned by the same owners, who are behind Asteria [sic] Holdings Pty Limited. OLGR can no confidence [sic] it will be any better run. The site will attract bucks' nights by the thousands. It will create chaos on our streets in a prime residential area and become a major compliance problem just as the Bada Bing was, which resulted in a landmark ILGA case. The proposal implied within the notice of intention is against the public and local community interests.*
132. Submission dated 22 June 2015 from local resident, M Boulton, of Springfield Avenue (located approx. 140m from the Premises) made to the Applicant solicitor during the CIS consultation. Mr Boulton provided the following submission in objection to the Application:
- I object to this sex club which is being run by the Bada Bing operators, an underbelly of criminality. The idea is totally out of character with the area's future characteristics and will only add to alcohol-related problems. Please advise as to why no-one in buildings 1-3 Springfield Avenue Potts Point, about 50 metres from this lewd proposal, have been notified.*
133. Email from Mr Hatzis to Mr Boulton dated 22 June 2015. In response to the above email. Mr Hatzis noted that the area served with Notices did not include 1-3 Springfield Avenue, as that building is located more than 100m from the Premises.
134. Email from Mr Boulton to Mr Hatzis dated 23 June 2015. In response to the above email, Mr Boulton provided the following submissions:
- There is no geographical limit to the area to be served. We are about 140 metres from the subject site and are potentially affected by it. There is nothing prohibiting serving 1-3 Springfield Avenue if it is 101 metres from the subject site. There is nothing in any OLGR or Liquor Act regulation specifying that 100 metres is the absolute maximum limit for service. If you think that the general 'area' is a relevant*

consideration, as per your submission in your Notice of Intention, then I submit we are in that 'area'. Your approach to area is subjective. The NSW Liquor Act requires OLGR to determine your case and consider all relevant impacts which may be "detrimental to the well-being of the local or broader community" as per section 48(5). I am in that local community and my well-being is threatened and therefore should be served, as should others, also not served. My neighbours at 11 and 13 Springfield Avenue within 100 metres of 42 Darlinghurst Road say that they have also not been served: your 100 metre quarantine zone for service is artificial and designed to limit responses. I request that this email be acknowledged and form part of my previous submission.

135. Submission to the Authority from a delegate of the Secretary of the (then) NSW Trade and Investment, now the Department of Justice dated 16 June 2015, by an officer within the Compliance Section of OLGR.
136. OLGR note the licensed trading hours, the ETA on the licence allowing trade until 5:00am Monday through Sunday on the following day, that the primary purpose of the hotel licence attaching to the Premises is the sale and supply of liquor for consumption on or away from the licensed premises, and that it caters for up to 500 persons. In this context, OLGR assess the venue as a "high risk operation".
137. OLGR note that the radial density of licensed premises within the suburb of Potts Point is "well above" the State average.
138. OLGR submit that NSW Bureau of Crime Statistics and Research (BOCSAR) data indicates that from January 2014 to December 2014:
 - a) the rate of *alcohol related assaults* (domestic and non-domestic) that occurred within the suburb of Potts Point was 3106 (per 100,000 population) compared to a rate of 311 (per 100,000 population) for NSW as a whole.
 - b) the rate of *alcohol related disorderly offences* that occurred in Potts Point was recorded during this period at 2718 (per 100,000 population) compared to 100 (per 100,000 population) for NSW as a whole.
139. OLGR submit on the basis of this data that Potts Point appears to have an "extreme concentration of alcohol-related anti-social behaviour".
140. OLGR note that Police object to the Application on the basis of the connection between the interested parties involved in both the Bada Bing and the Premises and the likelihood that the Premises will commence operating with strip-club style entertainment.
141. OLGR further note that Council objects to the Application on the basis that the proposed change in business model would require a change in use on the DA Consent from a "Hotel" to a "Restricted Premises". OLGR note that Council has stated that the Premises does not have development consent to operate as a restricted premises.
142. OLGR note the two submissions received from the Residents Association group and Mr Boulton in opposition to the Application which indicate that if the condition was removed, the impact on the neighbourhood would be negative and that the proposed business model would add to the alcohol-related problems.
143. OLGR submit that it acknowledges that there has been a "significant amount of concern and/or objections" raised by local stakeholders and residents and that these concerns are of a "reasonable nature and it would not be prudent to disregard them".
144. OLGR submit that a review of its Compliance Branch records disclosed that Penalty and Compliance notices were issued in December 2014 relating to conditions pursuant to the Kings Cross Precinct. [The Authority notes that no further specificity was provided as to

whom these Penalty Notices were issued and the offences that were the subject of those Notices].

145. OLGR advises that it "does not support or object to" the granting of the Application based upon the proposed business model and location factors. Nevertheless, OLGR observe that "it would appear that the local and broader community strongly oppose the Application" which may ultimately impact upon the Authority's final determination.
146. Statutory Declaration sworn by Mr R Scott on 29 July 2015. Mr Scott is a casual employee of the law firm Hatzis Cusack Lawyers and was engaged on 22 May 2015 by this law firm to serve the notice of intention upon neighbouring occupiers around 42 Darlinghurst Road, Potts Point.
147. Mr Scott declares that he was able to serve notices in the mailboxes of all premises in all buildings in the service areas except for premises located in security apartment buildings at 5, 7 and 11 Springfield Avenue.
148. Mr Scott submits that upon telephoning Mr Hatzis to inform him of the difficulty in obtaining access to these buildings, Mr Hatzis informed him that he would address letters on that day to each of the above apartments in those three buildings.
149. Mr Scott notes that a resident of the Wintergarden Apartments claims they did not receive a notice. In response to this allegation Mr Scott recalls his memory of serving this building and submits that while he does not specifically recall placing the notices in the mailboxes of this specific building, he is "very confident" that he did so.
150. In response to the resident residing at 1-3 Springfield Avenue who also alleges they did not receive a notice, Mr Scott declares this building is located outside a 100m radius.
151. In response to the resident residing at 11 Springfield Avenue, Mr Scott declares that he believes that the occupants of that building were served by letters sent by Mr Hatzis on 22 May 2015.
152. Lastly, in response to the resident residing at 13 Springfield Avenue, Mr Scott declares that he believes he did serve notices at this building.
153. Statutory Declaration sworn by Mr Hatzis on 11 November 2015. Mr Hatzis submits that he prepared letters to the occupiers of 5, 7 and 11 Springfield Avenue (annexed to the declaration) and that these were sent out on the same day.
154. Category B CIS Form dated 11 November 2015 and supporting material.
155. The CIS contains the above mentioned submissions received from the Applicant's notice of intention distributed to stakeholders. Mr Hatzis provides a number of responses in respect of these submissions.
156. First, in response to the submission from Mr Anderson, Mr Hatzis submits that the submission "misapprehends the nature of the application". Mr Hatzis notes that the primary purpose of a hotel licence must be and remain to be the sale and supply of liquor.
157. Mr Hatzis submits that it is "unreasonable to require that adult entertainment not be performed in a Hotel" and it is "all the more unreasonable to expect that adult entertainment would not be prohibited from a hotel in the Kings Cross".

158. Mr Hatzis cites a passage from the City of Sydney's '*Adult entertainment and sex industry premises development control plan 2006*' as evidence to support Council's policy of considering Kings Cross as an area appropriate for adult entertainment.
159. Mr Hatzis further submits that as shown by the large number of signatures favouring the grant of the Application (noted below), prohibiting such entertainment from Kings Cross is "against the weight of public expectations".
160. Second, in response to the submission received from Ms Gwynn, Mr Hatzis submits that it is "unreasonable to require the retention of a condition which helps to render a hotel unviable, on the grounds that, if the Hotel were to trade, there may be a greater level of anti-social behaviour than is presently the case with the hotel closed".
161. Mr Hatzis refers to the DA for the Premises and the existing liquor licence conditions which impose controls to minimise any impacts on surrounding occupiers.
162. Mr Hatzis submits that the objects of the liquor legislation recognise that a balanced decision requires considerations of competing interests. In this regard, Mr Hatzis submits that it is "unreasonable" for local residents to expect that there should be "no instances of disturbances" emanating from the Premises and that there are conditions both already in place and proposed by the Applicant to mitigate any potential impacts.
163. Mr Hatzis further submits that the Premises have been part of the area for 10 years and that the "wider public would reasonably demand and expect that the Hotel facility should remain open and available to them".
164. In reference to the supporting submission provided by the Applicant from a local business owner, Ms Singer, Mr Hatzis submits that this is an example of how the granting of the Application will meet the object set out in section 3(1)(c) of the Act, namely to contribute to the responsible development of allied industries.
165. In response to the submission received from Ms Bruce, Mr Hatzis notes that there are no reasons provided for his opposition to the Application other than a wish that the Adult Entertainment Condition remain on the licence.
166. With regard to the telephone conversation with a member of the local community, Ms Aditi, Mr Hatzis submits that this conversation "reflects the views of some persons who oppose adult entertainment on moral or philosophical grounds" but that there "appears to be a large and significant proportion of the population who demand or expect such entertainment be made available to them".
167. With regard to the brief submission received from FACS, Mr Hatzis noted that no input would be provided from this organisation.
168. In response to the submission received from the local resident Mr McFarlane, Mr Hatzis provides submissions in respect of each of the 17 grounds of objection that he raises. In summary, these submissions are as follows:
 - a) On the issue of patron capacity of the Premises, Mr Hatzis submits that if this were an application for the grant of a new licence then the question of patron capacity and the intended actual trading hours of operation "would be important" and that the Premises has existed in the community for many years with their hours posted on the entrance doors.
 - b) On the issue of notification of persons in the area, Mr Hatzis submits that the notice of intention was served on approximately 800 neighbouring occupiers on 22 May 2015 and refers to the statutory declaration provided by Mr Scott (noted above).

- Mr Hatzis further submits that Ms Bruce lives in the same apartment block as Mr McFarlane and that this supports Mr Scott's sworn declaration.
- c) On the issue of the Plan of Management for the hotel, Mr Hatzis submits that the existing Plan of Management for the Premises is "not relatively different to the Plan of Management previously approved by Council".
 - d) On the issue of whether the adult entertainment would be visible from outside the premises, Mr Hatzis submits that the conditions proffered by the Applicant make it clear that strippers must wear at least a G-string and that sex performed in observable rooms would "clearly" amount to prohibited indecent conduct under the Act.
 - e) On the issue of the Applicant's criminal history, Mr Hatzis submits that the last offence recorded against the sole director of the Applicant company, Mr Manthos Papadopoulos, occurred more than 15 years ago and that no offence has been recorded against Mr Stavrou over the last 10 years.
 - f) On the issue of the Applicant's probity, Mr Hatzis notes that Police did not object to the fitness of either man (Mr Papadopoulos and Mr Stavrou) to be associated with the licence of the Premises when the Applicant company first acquired the Premises.
 - g) Mr Hatzis adds that the shareholdings of these men and Mr Kyriacos Papadopoulos were disclosed to the Authority and the "fact that these shareholders have ongoing interests in other licensed premises means they have a greater stake in ensuring that any conditions applying to the Bank Hotel are fully met and complied with".
 - h) Mr Hatzis further submits that no enforcement action "of any type" in respect of non-compliance with conditions of development consent have been taken by Council against the Applicant company since it acquired the Premises.
 - i) With respect to the alleged requirement for a different development approval to be obtained for the proposed use of the Premises, Mr Hatzis refers to his submissions in response to Council (which the Authority has set out below).
 - j) With the respect of the impact of the premises, Mr Hatzis submits that any operating venue "will to some extent draw upon public resources" and that the need for regulatory oversight is a factor taken into when determining whether to approve hotel developments". Mr Hatzis notes that Council has granted a DA for the proposed use of the Premises as a hotel.
 - k) On the issue of patrons queuing outside, Mr Hatzis submits that in the "unlikely event that capacity is reached" the DA prohibits patrons from queuing on the street (DA condition 12(c)) and requires the Premises to prevent loitering (DA condition 12(a)).
 - l) On the issue of whether adult entertainment is visible from the street, Mr Hatzis submits that this is a matter for the Applicant to ensure.
 - m) Lastly, Mr Hatzis submits that there is no sound basis for proffering the apprehension that the revocation of the condition will be deleterious to the area's day-time economy and that this is not supported by the submission of Ms Singer.
169. In response to the submission from St Vincent's, Mr Hatzis submits that "all trading hotels, to some extent, will contribute to alcohol-related harms". Mr Hatzis describes as "particularly significant" that St Vincent's submits that there is no evidence showing that the provision of adult entertainment, even in late-trading venues, increases the likelihood of such harms. Mr Hatzis submits that the Applicant company "embraces" the responsibility to ensure that the revocation of the Adult Entertainment Condition will not detrimental to the well-being of the local or broader community and has proffered licence conditions in this regard.
170. In response to the submission received from RMS, Mr Hatzis submits that the data would be relevant if the Application were for the grant of a new liquor licence.

171. In response to the final submission received from Council, Mr Hatzis submits that while he is unaware as to what has informed Council's change of position, it "appears reasonable to assume" that this change may be informed by some local residents' claims that the hotel may operate as a "sex club" if the Adult Entertainment Condition is removed.

172. Mr Hatzis submits that under the terms of the City of Sydney's Local Environmental Plan 2012 (LEP), the Premises are not and cannot be a "restricted premises". The definition of a "restricted premises" in the LEP is as follows:

*Restricted premises means premises that, due to their nature, restrict access to patrons or customers over 18 years of age, and includes sex shops and similar premises, **but does not include a pub, hotel or motel accommodation, home occupation (sex services) or sex-services premises.***

173. Mr Hatzis submits that the LEP defines a "pub" as follows:

Pub means licensed premises under the Liquor Act 2007 the principal purpose of which is the retail sale of liquor for consumption on the premises, whether or not the premises includes hotel or motel accommodation and whether or not food is sold or entertainment is provided on the premises.

174. Mr Hatzis submits that development consent has been issued for use of the Premises as a hotel. The Premises has the benefit of a hotel licence and thus the Premises are, by definition, a "pub" according to the LEP definition.

175. In response to the submission from the Residents Association, Mr Hatzis submits that the Applicant company "seeks to operate within the additional controls legislated by Parliament in 2014" and there is "no evidence" that the new adult entertainment venues which have commenced operation in recent months have in "any way blunted or retarded the significant reduction in assaults that have been achieved over the last year".

176. Mr Hatzis submits that Mr Papadopoulos has made "no admissions" with respect to the continued operation of the Bada Bing enterprise on the hotel Premises. This was an allegation made by Mr Saleh, the premises owner of Bada Bing.

177. In response to the submission from a local resident Mr Boulton, Mr Hatzis submits that the 100m radius was chosen by the Applicant precisely to comply with the requirements of clause 6 of the *Liquor Regulation 2008*.

178. Petition provided by Applicant entitled 'Petition to Allow Adult Entertainment at the Bank Hotel Kings Cross'. The petition contains 360 signatures and describes the Application in the following terms:

We, the undersigned, support the Application by Asteri Holdings Pty Limited to remove a condition on the liquor licence of The Bank Hotel, Potts Point which presently prohibits performances by strippers and/or table dancers. We understand that if the application is granted, other conditions will be imposed on the licence (similar to those imposed on other adult entertainment venues) to guard against indecent conduct taking place at the Hotel. The Bank Hotel is located in Kings Cross, which is an area well known for featuring adult entertainment venues. Such venues have been an accepted feature of Kings Cross for many years. The Bank Hotel is presently vacant. In our view the inclusion of adult entertainment at the Hotel is a positive development which can only help to enliven Kings Cross. We fully support the application.

179. Statutory Declaration sworn by Mr Russell Rodger on 25 June 2015. Mr Rodger describes his approach in discussing and obtaining signatures for the petition. Mr Rodger declares that the "vast majority (more than 80% in my estimation) agreed to sign and proceeded to sign the petition".

180. Mr Rodger submits that in the course of discussing the general nature of the Application with people, some of the comments that he received included comments such as:
- a) *I'm sick of the gentrification of the area*
 - b) *I'm pro-strippers*
 - c) *I'm sick of the nanny state mentality*
 - d) *We must restore Kings Cross*
 - e) *I'm sick of people coming in and trying to change the place*
 - f) *I've lived here for many years and I like it how it is.*
181. In addition to the 139 signatures on the petition, Mr Rodger annexes a further 11 pages with 130 further signatures.
182. Mr Rodger declares that these signatures were not obtained by him but, in his observation and understanding, were obtained by a number of employees of the (adult entertainment) venue known as "Showgirls".
183. Mr Rodger notes that a director of Showgirls, Mr Manthos Papadopoulos, is a director of the company that owns the Premises (Astari Holdings Pty Limited). Mr Rodger submits that his understanding is that the signatures on that further petition are from local business owners, Showgirls' employees and customers, as well as local residents.
184. NSW Bureau of Crime Statistics and Research (BOCSAR) crime data for the City of Sydney LGA regarding incidents of liquor offences, malicious damage to property, assault (domestic assault) and assault (non-domestic assault) offences for the calendar year 2014.
185. Liquor licensing data sourced from Authority licensing records noting the licence type and address for all registered club, hotel and packaged liquor licenced premises for the suburbs of Darlinghurst, East Sydney, Edgecliff, Elizabeth Bay, Kings Cross, Paddington, Potts Point, Rushcutters Bay, The Rocks, and Woolloomooloo,
186. SEIFA data published ABS for the City of Sydney LGA, the Darlinghurst suburb and postcode 2011.

LEGISLATION

187. In determining the Application, the Authority has considered the relevant provisions of the Act, including the statutory objects and considerations that are prescribed by section 3 which states:

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.*

188. Section 53 provides the Authority with the power to impose, vary or revoke licence conditions:

53 Authority may impose, vary or revoke licence conditions

- (1) Without limiting any other provision of this Act, the Authority may at any time:
 - (a) on application by the Secretary or the Commissioner of Police, or
 - (b) on the Authority's own initiative impose conditions on a licence.
- (1A) The conditions that may be imposed by the Authority on a licence under this section include, but are not limited to, conditions:
 - (a) prohibiting the sale or supply of liquor on the licensed premises before 10 am or after 11 pm (or both), and
 - (b) restricting the trading hours of, and public access to, the licensed premises.
 - (2) The Authority may at any time:
 - (a) on application by the licensee, the Secretary or the Commissioner of Police, or
 - (b) on the Authority's own initiative, vary or revoke a condition of a licence that has been imposed (or taken to have been imposed) by the Authority under this Act.
 - (3) An application under subsection (1) or (2) must:
 - (a) be in the form and manner approved by the Authority, and
 - (b) in the case of an application by a licensee-be accompanied by the fee prescribed by the regulations, and
 - (c) be accompanied by such information and particulars as may be prescribed by the regulations, and
 - (d) if required by the regulations to be advertised-be advertised in accordance with the regulations, and
 - (e) comply with such other requirements as may be approved by the Authority or prescribed by the regulations.
 - (4) The Authority must not impose a condition on a licence after it has been granted, or vary or revoke a condition that has been imposed (or taken to have been imposed) by the Authority, unless the Authority has:
 - (a) given the licensee a reasonable opportunity to make submissions in relation to the proposed decision, and
 - (b) taken any such submissions into consideration before making the decision.
 - (5) Any person may, subject to and in accordance with the regulations, make a submission to the Authority in relation to an application under this section to vary or revoke a condition to which a licence is subject.
 - (6) If any such submission is made to the Authority, the Authority is to take the submission into consideration before deciding whether or not to vary or revoke the licence condition.

189. The power to direct an Applicant to complete a Community Impact Statement is contained in section 48(2)(f). In respect of the Application, the relevant provisions of section 48 include:

48 Community impact

- (1) The object of this section is to facilitate the consideration by the Authority of the impact that the granting of certain licences, authorisations or approvals will have on the local community, in particular by providing a process in which the Authority is made aware of:
 - (a) the views of the local community, and
 - (b) the results of any discussions between the applicant and the local community about the issues and concerns that the local community may have in relation to the application.
- (2) In this section: "relevant application" means any of the following:
 - (a) an application for a hotel licence, club licence, small bar licence or packaged liquor licence,
 - (b) an application under section 59 for approval to remove a hotel licence, club licence, small bar licence or packaged liquor licence to other premises,
 - (c) an application for an extended trading authorisation in relation to a hotel licence, club licence, small bar licence or packaged liquor licence,
 - (d) an application for an extended trading authorisation in relation to an on-premises licence (but only if the authorisation will result in trading at any time between midnight and 5 am),

- (e) *an application for an extended trading authorisation in relation to a producer/wholesaler licence (but only if the authorisation will result in retail trading at any time between midnight and 5 am),*
 - (f) *any particular application (or class of application) that is required by the Authority to be accompanied by a community impact statement,*
 - (g) *any other application of a kind prescribed by the regulations or made in such circumstances as may be prescribed by the regulations, but does not include any application for an extended trading authorisation in relation to a special occasion (as referred to in section 49 (5) (b) or (5A) or 49A (3) (b)).*
- (3) *A relevant application must be accompanied by a community impact statement.*
...
- (4) *The community impact statement must:*
- (a) *be prepared in accordance with the regulations and any requirements of the Authority, and*
 - (b) *be in the form approved by the Authority.*
- ...

SOCIAL IMPACT TEST

190. Under section 48(5) of the Act, the Authority *must not* grant a licence, authorisation or approval of a kind prescribed by section 48(2) of the Act unless the Authority is satisfied, having regard to the CIS and any other matter the Authority is made aware of during the Application process, that the overall social impact of the licence, authorisation or approval in question being granted *will not be detrimental* to the local or broader community.

191. Section 48(5) states:

48 Community impact

- (5) *The Authority must not grant a licence, authorization or approval to which a relevant application relates unless the Authority is satisfied, after having regard to:*
- (a) *the community impact statement provided with the application, and*
 - (b) *any other matter the Authority is made aware of during the application process (such as by way of reports or submissions), that the overall social impact of the licence, authorization or approval being granted will not be detrimental to the well-being of the local or broader community.*

192. The CIS usually provides the Authority with information about the views of relevant stakeholders and other aspects of the local community in which the proposed licensed premises is to be located. This includes, for example, the proximity of the licensed premises to hospitals or health facilities, nursing homes, schools and churches.

LOCAL AND BROADER COMMUNITIES

193. As noted in Authority *Guideline 6: Consideration of Social Impact*, the Authority will identify the relevant "local" community by reference to the locality in which the licensed premises is situated, while the "broader" community will usually be the local government area in which the licensed premises is situated.

194. For the purposes of this Application, the Authority is satisfied that the relevant "local community" comprises the community located within the state suburb of Potts Point while the "broader community" comprises the community in the City of Sydney LGA.

APPLICANT SUBMISSIONS ON OVERALL SOCIAL IMPACT

195. In the CIS, the Applicant made the following submissions and contentions as to the overall social impact of granting the Application:

The present application is being made in order that the premises may be rendered viable for letting as a hotel, with a full range of entertainment option available to its operators. Several other premises in the general vicinity (including Vegas Hotel and Empire Hotel) provide entertainment of an adult nature. Attachment "B" comprises advertisements of recent adult entertainment promotions conducted at those premises.

What is more, there are a number of suburban hotels throughout Sydney which offer entertainment of this nature. "Attachment "C" is a list of venues published on bombshells.com.au website. "Bombshells" promotes itself as an agency for providing strippers to licensed venues and to private clients. The significance of the list of venues is that it shows that entertainment in the form of "strippers" is widely provided in hotels across Sydney and many suburban locations.

The provision of entertainment in hotels (including adult entertainment/strippers) is an ordinary incident of a hotel use. Contrary to claims made by certain submitters opposing the grant of the current application, the provision of such entertainment does not change the character of a suburb, nor does it transform the premises concerned into a "sec club" (as is colourfully put by some submitters).

Any hotel which provides adult entertainment must ensure that, at all times:

- *The primary purpose of the business remains the sale or supply of liquor: Section 22 Liquor Act 2007; and that*
- *Indecent conduct is not permitted to occur on the premises: section 73 Liquor Act 2007.*

In the present case, the applicant proffers conditions – which are conditions requested by Police and which are typical of conditions imposed on adult entertainment venues generally –specifically to guard against indecent conduct.

...

Granting the present application is in the public interest and will best fulfil the objects of the legislation.

...

Even if the present application were to be refused, the premises could still trade as a hotel and could still offer many forms of ancillary entertainment.

The point of the present application is to enable the Hotel to provide a particular form of ancillary entertainment, namely adult entertainment. That form of entertainment is offered in many other hotels across NSW and has traditionally been offered from several venues in Kings Cross. Indeed Council's own planning documents identify Kings Cross as a location suitable for the provision of such entertainment.

...

Despite the opening of two adult entertainment venues in Kings Cross in recent months (namely Iguana's and Doll House) there is no evidence that these new venues have caused any overall increase in assaults or anti-social behaviour. On the contrary, the rate of overall reduction of alcohol-related assaults has continued apace.

There is evidence before the Authority (in the form of a petition signed by 360 people) that the grant of the present application will meet public demands and expectations. It is significant to note that at least 230 of those petitioners live in the general vicinity of Kings Cross/Potts Point and near surrounds.

...

Allowing such entertainment to occur – but with tailored controls which are applied to all other Kings Cross adult entertainment venues – will further the balanced development of the liquor industry. The hotel has had difficulty trading viably, in large part due to the subject condition. Revoking the subject condition will remove an impediment to viability.

Removing the condition is likely to enhance the music, entertainment, tourism and hospitality industries, by making it more likely that the Hotel would trade and therefore support performers, musicians and food and beverage staff."

REASONS

196. The Authority has critically examined the Application and all the material before it pertaining to that Application and has decided to refuse the Application pursuant to section 53(2)(a) of the Act.

197. The Authority is not satisfied, on the material before it, that the overall social impact of granting the Application would not be detrimental to the local or broader community within the meaning of section 48(5) of the Act.
198. The Authority is required to be satisfied as to the overall social impact test in this instance by reason that, having required the Applicant to furnish a CIS, the Application is deemed to be a "relevant application" for the purposes of section 48(2) of the Act and requires consideration of the social impact test in section 48(5).

Overall Social Impact

199. Determining the overall social impact of granting the Application requires a degree of speculation about what is likely to occur in the event that the Application is granted – albeit speculation that is informed by the prevailing circumstances in the relevant local and broader communities.
200. The Authority is satisfied, for the purpose of this Application and consistent with Authority Guideline 6 and its usual practice that the relevant "local" community is the community within the state suburb of Potts Point, while the relevant broader community is the community within the City of Sydney LGA.

Positive Benefits

201. The Applicant has contended that a number of positive benefits will flow to the community from granting the Application. These include:
- a) Meeting a public expectation and interest for the provision of adult entertainment in Kings Cross
 - b) Relieving financial hardship for the Applicant by allowing the Premises to compete with neighbouring adult entertainment venues
 - c) Furthering the balanced development of the liquor industry
 - d) Enhancing the music, entertainment, tourism and hospitality industries, by making it more likely that the Premises would trade and thereby support performers, musicians and food and beverage staff.
202. The Applicant has provided a petition containing 360 signatures in support of the granting of the Application. This provides some evidence that granting the Application will promote the object of section 3(1)(a) of the Act in that it will meet the "desires, expectations and needs" of the local and broader community.
203. However, the Authority notes that the petition includes signatures from persons not residing in the local or broader community.
204. For example, the petition contains signatures from persons residing in the suburbs of Leichardt, Glebe, Redfern, Randwick and West Ryde.
205. Of the legible signatures, 127 indicate persons residing in the Sydney LGA and 111 indicate persons residing in the Potts Point suburb.
206. As such, the petition carries less weight in support of the submission that the granting of the Application will meet the desires, expectations and needs of the relevant local community of Potts Point or the broader community of the Sydney City LGA.
207. The Authority notes the Applicant's submission that there is a "public expectation" within the Kings Cross to have venues which offer adult entertainment. Authority licensing records indicate the following licensed premises providing adult entertainment.

208. The Authority accepts that historically, Kings Cross (within Potts Point) has served as a "red light" area of Sydney. Potts Point and the Sydney LGA continue to provide a very high concentration of licensed premises serving local residents, city workers and tourists alike.
209. However, the Authority also accepts, on the basis of the detailed and informed local resident submissions (who will be the persons most affected by the grant of the Application) that this local community is a densely populated residential area, subject to considerable recent gentrification and that in the recent year residents have experienced a "dramatic reduction" in noise and an increase in safety.
210. The extent of positive benefit offered by another licensed premises with adult entertainment is a matter of contention in the submissions before the Authority.
211. The Authority notes that the area continues to provide a high concentration and range of licensed venues, including many that are open later in the evening, and several licensed venues with adult entertainment.
212. The submissions made by persons who live in the local community (including, notably, representative groups such as the 2011 Residents Action Group) indicate strident local opposition to the Application.
213. While the Applicant's petitions have demonstrated a good deal of public expectation for Kings Cross to have venues which offer adult entertainment, there is also strident local opposition expressing a desire or expectation among those who actually live in this densely populated local community, that alcohol related anti-social conduct in Kings Cross be more closely regulated, along the lines introduced by the February 2014 law reforms.
214. The submissions made by local residents and local representative groups have been presented in a more detailed and persuasive manner than the "pro forma" views of petitioners, likely because local residents have to live with the operations of late trading licensed premises, whereas visitors to adult entertainment venues may have a more tenuous relationship to the local community.
215. The Authority makes this observation noting that many of the signatures on the petitions provided by the Applicant are from persons living outside of the local and broader community. Those petitioners are given less weight.
216. Furthermore, the Applicant's own submissions (including the information provided about the agency "Bombshells") indicate that the provision of adult entertainment in Sydney is decentralising beyond Kings Cross. The Authority is aware through its frequent recourse to the Authority's licensing records for NSW and the conduct of licensing regulation, that there are adult entertainment licensed premises in the Sydney CBD, in suburban Sydney and in regional locations.
217. This process of decentralisation of late night adult entertainment beyond the Kings Cross Precinct may well be influenced by the licensing legislation reforms implemented by the NSW Government in February 2014 (including 3 am closing times and 1:30 am lockout requirements in the Sydney CBD and Kings Cross Precincts) or by commercial decisions to bring that type of entertainment to other parts of Sydney and NSW in order to take advantage of demand in those locations. Whatever the cause, the Authority is satisfied that Kings Cross/Potts Point no longer holds a monopoly on adult entertainment in Sydney.

218. In conclusion, when assessing the positive benefits to the relative communities, the Authority has no difficulty accepting the proposition that there will a financial benefit to the *individual licensed business* and those interested in the Premises from removing the Adult Entertainment Condition from the licence, by making it easier to let the hotel to those business owners who may only want to pursue an adult entertainment venue.
219. However, the Adult Entertainment Condition does not in any way prohibit the Premises from operating as a full service hotel – providing all the usual liquor, gaming and potentially a host of other hospitality services on the Premises. The Authority notes that the Adult Entertainment Condition does not prevent the Premises from trading as a hotel and thus serving the primary purpose of a hotel licensed premises as specified by section 15 of the Act.
220. There are 8 hotels currently operating in Potts Point. While the Applicant’s evidence from its realtors provides some support for the proposition that the Adult Entertainment Condition discourages certain potential business operators from letting the Premises, it does not support the proposition that the site is not otherwise viable as a hotel, which is the type of licensed premises the Applicant has acquired.
221. The number and diversity of the great many licensed premises, including hotels, general bars, restaurants and nightclubs that are still operating in the local and broader community supports an inference to the contrary.
222. The Authority is not satisfied, on the evidence provided that the Applicant has established that the site is not viable as a hotel unless it can also provide strippers. The primary purpose of any hotel licensed premises is the sale of liquor by retail for consumption on and off the premises. The primary purpose of a hotel is not the conduct of adult entertainment.
223. The Authority has considered the Applicant’s submission that the granting of the Application will further the balanced development of the liquor industry, an object of section 3(1)(b) of the Act.
224. However, the Applicant has not, with any great degree of specificity, explained how the business model of this venue will differ from the existing venues in the local and broader community that provide adult entertainment.
225. As noted by the Applicant, the following licensed premises designated as adult entertainment venues are located in the local community:
- a) Velvet Underground
 - b) Iguana Bar
 - c) Bada Bing
 - d) Dream Girls
 - e) Showgirls
 - f) Porky’s Nightspot and
 - g) Strippers.
226. While the Applicant is silent as to the availability of licensed premises in the broader community of the Sydney LGA, the Authority is aware, through its frequent recourse to licensing records and regulatory matters that there are several licensed premises providing adult entertainment in the nearby Sydney CBD.
227. The number and range of licensed premises in the local and broader community who are providing adult entertainment objectively diminish the cumulative benefit, of facilitating another venue with strippers or adult entertainment in this location. It is not as though

the Applicant is bringing adult entertainment to a local or broader community that does not already have access to it.

228. The Authority is satisfied that were the Adult Entertainment Condition to be revoked the only "related industry" that would be likely developed to any substantial extent is the adult entertainment industry. There will be one more place in Sydney for strippers to perform. The Authority accepts that this type of venue may also service the desire of some visiting tourists to obtain this type of licensed entertainment, but its cumulative contribution to tourism is further constrained by the availability of this entertainment elsewhere in Kings Cross and the Sydney LGA.
229. That is, the Authority accepts that granting the Application will contribute, albeit to some modest extent to the development of "related industries" within the meaning of section 3(1)(c) of the Act.

Negative Impacts

230. The Authority is satisfied, on the basis of the 2014 BOCSAR *Report on Crime by Local Government Area and Alcohol Related Status for 2014* (based on data from July 2014 to June 2015), that the recorded rate for the City of Sydney LGA for alcohol related crime incidents well exceeds the average for NSW as a whole.
231. This no doubt reflects the City's concentration of licensed premises and the great many workers, residents and visitors that the many licensed premises in these communities cater for.
232. This BOCSAR Report indicates that in the Sydney LGA:
- a) the rate per 100,000 population of *alcohol related assault police* incidents was 85.2 compared with 18.2 for NSW as a whole
 - b) the rate per 100,000 population for *alcohol related domestic violence offences* was 213.3 compared with 122.6 for NSW as a whole
 - c) the rate of *alcohol related non-domestic violence related offences* was 796.6 compared with 144.0 for NSW as a whole.
233. In relation to the suburb of Potts Point, BOCSAR crime mapping data for the period from July 2014 to June 2015, reveal that the Premises is located in an extremely sensitive location in terms of concentration of prevailing crime impacts, in that within the Sydney LGA, the Premises is situated:
- a) within a high concentration "hotspot" for the occurrence of reported domestic assault
 - b) within a high concentration "hotspot" for the occurrence of reported non-domestic assault and
 - c) within a high concentration "hotspot" for the occurrence of malicious damage offences (noting that such matters may or may not be recorded as alcohol related and BOCSAR caution that it is difficult to discern the involvement of alcohol in property crimes when no perpetrator has been identified).
234. The Authority notes that while these crime rates are improving and trending downwards, the crime rates to which the broader community of the Sydney LGA are exposed remain well above NSW state average rates.
235. The Authority does not accept the submission that it is unreasonable for a hotel in Kings Cross not to be able to provide adult entertainment. Authority licensing records indicate that within the suburb of Potts Point alone there are a total of 98 liquor licences, of which there are:

- a) nine hotel licences
 - b) 79 on-premises licences
 - c) five packaged liquor licences
 - d) five producer wholesaler licences.
236. Of note, the license density rate (per 100,000) of hotel (full) licences for the 2011 postcode is 44.33 compared to the Sydney LGA rate of 5.90 and NSW rate of 30.36. The local community is well serviced by full hotel licensed premises.
237. With regard to the scale of the licensed premises, the Authority is satisfied, on the basis of the Application and submissions, that the hotel has an occupancy limit of 500 persons. It is a substantial full hotel licensed premises.
238. With regard to the type of licensed business, being a hotel, the primary purpose of this venue is the sale or supply of liquor by retail – that is, unlike adult entertainment venues operating on the basis of an on premises licence, the sale or supply of liquor is not ancillary to the provision of the adult entertainment. Liquor is the primary purpose of this type of licenced premises. That is, it is a relatively high impact licence type in respect of which the Applicant now proposes to facilitate the provision of live entertainment in the form of strippers.
239. The existing licensed trading hours of the Premises are very extensive. The hotel is licensed until 5:00am seven nights a week. While legislative controls operating across the Kings Cross Precinct will require the sale of liquor on the premises cease at 3:00am and that no new persons be admitted to the Premises after 1.30am, patrons will nevertheless be able to remain on the Premises across the entire expanse of the hotel's licensed hours.
240. The Premises is located in a well-established entertainment precinct. The Authority is satisfied that the Premises already constitutes a higher risk type of licensed premises (a full hotel with very late trading hours) operating in an objectively high risk location according to the crime data.
241. By removing the Adult Entertainment Condition, the Premises would be free to operate in the mode of a higher risk business model by providing live entertainment of this kind.
242. The Authority is satisfied that were the condition to be removed, the Hotel would become particularly attractive to groups of (particularly) men but also women, in various stages of intoxication, during late evening hours – including, as alleged by local residents, groups of men seeking this type of entertainment for the purposes of bucks nights and the like.
243. While the Applicant has made much of St Vincent's Hospital submission that it is not aware of any evidence that adult entertainment venues pose a greater risk in terms of the consumption of alcohol than other licensed premises, the Applicant glosses over St Vincent's advice (which the Authority accepts as credible) that:
- "we have, however, experienced first-hand the associated harms arising from such venues through our emergency presentations".
244. The director of the Applicant company will be aware (and as noted in submissions from the local residents and Police) of the Authority's 2013 findings, made on the basis of a substantial body of evidence provided by NSW Police, collated over several years, on the adverse social impacts arising from the operation of the nearby Bada Bing venue which was then operated by persons associated with the Bank Hotel. The Authority found adverse social impacts included gun violence, the presence of organised crime

figures, assaults committed by patrons and staff, patrons requiring ambulance treatment and hospitalisation at St Vincents Hospital, the intensive consumption of Police resources to monitor and respond to disturbance, noise and disturbance from patrons and prospective patrons arguing and fighting with security guards at the entry point and public intoxication by patrons after leaving the venue. These incidents all occurred during late trading hours in the streets of Potts Point.

245. The Authority's findings led to the Authority reducing Bada Bing's licensed trading hours in the Authority's published decision with regard to that premises determined in December 2013.
246. The Bank Hotel is not Bada Bing. The Application must be considered on its merits. Were the Adult Entertainment Condition to be revoked, it would be open to the operator of the hotel (whether the Premises Owner or a commercial tenant) to provide adult entertainment on this site.
247. Nevertheless, the Authority is satisfied, on the basis of that recent and relevant regulatory experience, that a substantial new licensed venue, operating in this location, with live adult entertainment, accommodating patrons over very late hours across the week, is more likely than not to attract groups of unruly men and women, in various states of intoxication, affected by drugs and alcohol, who will create substantial disturbance on or outside of the Premises and in neighbouring streets over time.
248. The Authority considers this to be a likely outcome even if the Hotel is very well managed inside the Premises and vigilant in denying entry to and ejecting intoxicated persons.
249. The Authority is satisfied, noting the challenging BOCSAR crime data for the local and broader community and its recent regulatory experience with the Bada Bing venue that adding adult entertainment to this Hotel will generate a considerable new "attraction factor" to the hotel for aggressive individuals who are tired and have been drinking over a prolonged period and in no fit state to enter licensed premises or who resist denial of entry or ejection from licensed premises.
250. It is this factor, combined with the culture of patrons who are likely to frequent adult venues (including bucks' parties and the like) that the overall social impact of granting the Application will be detrimental to the local community.
251. For the avoidance of doubt, the Authority does not consider adult entertainment to be obscene or beyond community expectations, but Police and residents of the local community have presented credible and persuasive opposition by reason of the considerable risk of public disturbance that attends the provision of licensed adult live entertainment. The Authority notes that they do not oppose the operation of the hotel per se.
252. While the Applicant has dismissed some local submitters as having a "philosophical" objection to strippers – those local submissions nevertheless form an expression of the "desires, aspirations and expectations" of the relevant local residential community. Community values ebb and flow, and communities become gentrified and evolve in character over time. Commercial hubs thrive and become less fashionable over time.
253. It is not unreasonable local residents to argue that this form of entertainment is "anachronistic". Local residents and resident groups, including a local historical society have made credible submissions that the area has evolved over time.

254. The Authority accepts that the local community is in transition again. Kings Cross was once a relatively bohemian area, prior to its evolution into a red light district in the 1970s and is now in the process of further evolving, through gentrification and increasing residential amenity, spurred on by the February 2014 legislative controls designed to reduce late night patron migration between licensed premises in the Kings Cross and Sydney CBD precincts.
255. There are clearly many people in the local and broader community who are drawn to the vibrancy of an entertainment district, while others in the local community seek a balance between entertainment and local amenity. Some local resident submitters are legitimately concerned about the creation of a new venue that, though its particular business model, is likely to attract unruly patrons or be patronised by crime figures.
256. As noted above, making a decision on overall social impact requires a degree of speculation, albeit speculation that is informed by relevant information about the local and broader communities (including crime data), the licence type, the scale of the premises, and the trading hours. Those factors are set out in Authority Guideline 6.
257. Having regard to these factors, and the Authority's recent experience in dealing with a nearby adult entertainment venue that was associated with the current owners of the Premises, the Authority is not satisfied that the overall social impact of granting this Application would not be detrimental to the local or broader community, particularly that part of the local community of Potts Point located in streets nearby the location of the Premises.
258. The Authority has taken into account the Applicant's proposal in its submission dated 27 March 2015, that the licence be subject to the following conditions –
- Whilst ever strippers/table dancers perform at the Hotel:*
1. *Entertainers who leave the stage area are to wear at least a G-string.*
 2. *Any place within the licensed premises in which entertainment is provided shall not be partitioned so as to prevent observation of the activity in place (i.e. any private room cannot include a door which would prevent someone seeing into the room).*
 3. *All media advertising or other promotional materials shall advise that the entertainment is of a sexually explicit nature.*
 4. *No person under the age of 18 is to be permitted entry into the premises.*
 5. *No audience participation is to be permitted.*
259. In addition, the Applicant, in its submission dated 5 May 2015, consented to an additional condition being imposed on the licence stating: "no audience participation or touching is permitted". Furthermore, the Applicant has offered that the licence be subject to a condition that Mr Gary Papadopolous not be involved with the Premises.
260. However, the issues of likely anti-social conduct and alcohol related disturbance that from the operation of a large hotel acquiring an adult entertainment capacity arises more from the likely conduct of patrons of this type of venue over time than any individual person who may be associated with ownership or management of the Premises or the business operating on the Premises.
261. In conclusion, having considered together the positive benefits and negative impacts found by the Authority to be likely to flow from granting the Authorisation, the Authority is not satisfied that the overall social impact of granting the Application will not be detrimental to the local community.

262. The Applicant has not satisfied the requirements of section 48(5) of the Act and for this reason the Application must be refused.
263. The Authority notes that there is a difference of opinion between the Applicant and Council as to whether further development consent is required should the operator of the Hotel seek to provide adult entertainment on the Premises. While noting the Applicant's submissions on the requirements of the Local Environmental Plan, the Authority does not need to make a finding on this issue by reason that the Application has been refused on another basis.
264. In making this decision the Authority has considered all of the statutory objects and considerations prescribed by section 3 of the Act. In making this decision in respect of this local and broader community the Authority has given weight to subsection 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) and subsection 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. Those factors militate against revoking the Adult Entertainment Condition.
265. The Application is refused under section 53(2)(a) of the Act.



Micheil Brodie
Chief Executive

31 January 2016