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Dear Sirs and Madam

**Application to Revoke Extended Trading Authorisation
Under Section 51(9)(b) of the *Liquor Act 2007* – Silk Hotel, Newcastle West**

BACKGROUND

1. I refer to the abovementioned application dated 11 December 2013 (**Application**) made to the Independent Liquor and Gaming Authority (**Authority**) by Superintendent John Gralton in his capacity as delegate of the NSW Commissioner of Police (**Applicant**) regarding the licensed premises trading as "Silk Hotel", located at 635 Hunter Street, Newcastle West (the **Premises**).
2. The Premises engages in licensed trading pursuant to a "full" Hotel licence number LIQH400117485 which has the benefit of an extended trading authorisation (**ETA**) that enables the Premises to trade from 5:00am to 3:30am the following morning on Monday through Saturday and from 10:00am to 10:00pm on a Sunday.
3. The Application seeks that the Authority exercise its power under section 51(9)(b) of the *Liquor Act 2007* (**Act**) to revoke the ETA, with the result that the Premises would only be licensed to sell or supply liquor during those standard trading hours that are prescribed by section 12 of the Act, that is, from 5:00am until 12:00 midnight on Monday through Saturday and from 10:00am until 10:00pm on Sunday.
4. The Application comprises a Police Cover Submission, a list of late trading Hotels in the Newcastle Central Business District, an **Evidence Matrix** (being a spreadsheet summarising various adverse events linked by the Applicant to the Premises) and numerous annexures, including compliance information pertaining to the Premises,

statements of evidence, NSW Police Computerised Operational Police System (**COPS**) Reports prepared by Police officers after attending individual incidents, and other documents detailing individual adverse events upon which the Application is based.

5. As of the date of the Application, the owner of the freehold in the Premises was a company, Parking Towers International Pty Limited (**Premises Owner**) whose sole director is Mr Vasilis (Bill) Floros Moshos. The corporate licensee of the Premises is Silk Hotels Newcastle Pty Limited (**Licensee**) and its sole director is also Mr Vasilis Moshos. The corporate business owner of the Premises is Rightclick Holdings Pty Limited (**Business Owner**) and its director is Mr Georgios (George) Emmanouilidis.
6. At a conference convened by the Authority on 2 July 2014 (**Conference**), Mr Emmanouilidis advised the Authority that control of the Premises Owner had changed in that the company is now controlled by another corporate entity, DeallInvest Pty Limited, whose shareholders are Mr Emmanouilidis and Mr Vasilis Moshos' brother, Mr Antonios (Anthony) Moshos.
7. Although Mr Emmanouilidis made an application on 2 May 2014 to transfer the licence from Silk Hotels Newcastle Pty Limited to Rightclick Holdings Pty Limited (**Transfer Application**) that application has been subject to an objection from Police and no provisional or final decision has yet been made. At the time of this decision, Silk Hotels Newcastle Pty Limited (**Silk Hotels Newcastle**) remains the Licensee and Rightclick Holdings Pty Limited (**Rightclick**) remains the Business Owner.

DECISION IN BRIEF

8. Following the receipt of written submissions and additional material from the Applicant, the Licensee and the Business Owner, the Authority considered this matter at its meeting convened on 27 August 2014.
9. The Authority has decided to *revoke* the ETA pursuant to section 51(9)(b) of the Act. This decision will take effect at 12:01am on 11 October 2014.
10. Liquor applications comprise a high volume aspect of the Authority's jurisdiction and no doubt for this reason, the Act does not require the Authority to provide reasons for its decisions. However, the Authority has indicated in *Authority Guideline 7: Authority decision making and the provision of reasons for decisions* that it will consider providing reasons, on a case by case basis, subject to available resources.
11. On this occasion, and without purporting to repeat or summarise all of the submissions, arguments, contentions and other material put before the Authority, this letter provides a summary of the reasons for the Authority's decision.

LEGISLATION

12. The Government Licensing Service (**GLS**) record discloses that the type of liquor licence that attaches to the Premises is a "full" Hotel licence, of the kind provided for by section 15 of the Act.
13. Section 15 of the Act states that the primary purpose of the business carried out on the licensed premises must at all times be the sale of liquor by retail.
14. Standard licensed trading hours in New South Wales are prescribed by section 12 of the Act. They extend from 5:00am to 12:00 midnight on Monday through Saturday and from 10:00am to 10:00pm on Sunday.

15. At the time that the Application was made to the Authority, the Premises had the benefit of an ETA that permits licensed trading beyond standard hours. As noted above, the licensed business may potentially sell or supply liquor for consumption on the Premises from 5:00am to 3:30am the following morning on Monday through Saturday and from 10:00am to 10:00pm on Sunday.
16. The Authority notes that a full Hotel licence also permits the sale of liquor for consumption off premises, and the Act currently permits the sale of takeaway liquor from 5:00am until 10:00pm at the latest. The licensed business on the Premises is permitted to sell liquor for consumption off premises from 5:00am to 10:00pm Monday through Saturday and 10:00am to 10:00pm on Sunday.
17. Under section 49(2) of the Act, an ETA may be granted to certain types of licensed premises, including venues that have a full Hotel licence. Once in effect, such authorisation permits the licensed premises to trade for specified hours beyond those standard licensed trading hours that are prescribed by section 12 of the Act to which most licensed premises in New South Wales are subject.
18. Section 51(9)(b) of the Act confers upon the Authority the power to *vary* or *revoke* a licence related authorisation from time to time. This power may be exercised upon application from the licensee, the NSW Commissioner of Police or the Secretary of NSW Trade and Investment. The Authority may also vary or revoke an authorisation on the Authority's own initiative.
19. Section 51(9) states:

51 General provisions relating to licence-related authorisations

- (9) *An authorisation:*
 - (a) *Is subject to such conditions:*
 - (i) *as are imposed by the Authority (whether at the time the authorisation is granted or at a later time), or*
 - (ii) *as are imposed by or under this Act or as are prescribed by the regulations, and*
 - (b) *may be varied or revoked by the Authority on the Authority's own initiative or on application by the licensee, the Director-General or the Commissioner of Police.*

20. The Authority notes that section 51(9) does not specify any statutory criteria or test that structures the Authority's exercise of its power to vary or revoke an authorisation, although it is apparent that the Authority may receive guidance from the statutory objects prescribed by subsection 3(1) of the Act and it must have regard to the statutory considerations prescribed by subsection 3(2) of the Act.
21. When considering whether to revoke or vary the ETA, the test is whether the proposed administrative action is in the *public interest*, informed by the statutory objects and considerations prescribed by section 3 of the Act, 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.*

THE APPLICATION

22. Without purporting to recount here all of the submissions and attachments provided by the Applicant, the Applicant makes the following observations and contentions in the initial Application material:
- (i) Silk Hotels Newcastle is the holder of an hotelier's liquor licence number LIQH400117485. The Hotel primarily trades on Wednesday, Friday and Saturday nights, with the Premises recently opening throughout the day.
 - (ii) The licence has an ETA which enables the Premises to trade from 5:00am to 3:30am Monday to Saturday. The Premises is licensed to trade during standard hours only on a Sunday, from 10:00am to 10:00pm.
 - (iii) The Premises is located on "one level with three designated areas" being the "front, middle and rear/smoking area bars".
 - (iv) The Premises has a maximum patron capacity of 178 persons.
 - (v) The corporate Licensee of the Premises from 23 July 2013 to the date of the Application (11 December 2013) is Silk Hotels Newcastle Pty Limited. Mr Vasilis Moshos is the sole director and shareholder of this company. The Applicant notes that another company, Silk Hotels Pty Limited (the **Former Licensee**) previously held this position from 20 January 2010 until 22 July 2013. Mr Vasilis Moshos was the sole director and shareholder of that company as well. The Applicant notes that liquidators were appointed to the Former Licensee corporation on 10 April 2013.
 - (vi) The approved manager as of the date of the Application (11 December 2013) is Mr Joseph Lannutti, who was appointed by the Licensee, Silk Hotels Newcastle, on 8 October 2013. The previous approved manager of the Premises appointed by Silk Hotels Newcastle was Mr Vasilis Moshos, who was appointed on 20 January 2010 and was the approved manager until 7 October 2013.

[The Authority notes that Mr Lannutti ceased to be the approved manager of the Premises on 11 December 2013 and was replaced by Mr Vasilis Moshos on 12 December 2013.]
 - (vii) The Premises is located within the Newcastle CBD on the corner of Hunter and Steel Streets. The Applicant contends that this area of the CBD is known for alcohol related violence attributable to the operation of licensed premises.
 - (viii) The Applicant contends that the Premises "attracts a reasonably large amount of patrons" on Friday and Saturday nights, "especially from 10:00pm till [closing] time of 3:30am".
 - (ix) The Applicant notes that the liquor licence attaching to the Premises is subject to a number of conditions that were imposed as a result of an undue disturbance complaint made by Police under section 104 of the former *Liquor Act 1982* in relation to thirteen (13) hotels in the Newcastle CBD. Those complaints were based upon noise, patron behaviour and security matters. [The Authority notes that this undue disturbance complaint was determined by the former Liquor Administration

Board in April 2008]. The Applicant notes that as a consequence of that decision the Premises has a lockout time of 1:30am and a closing time of 3:30am.

- (x) The Applicant submits that the “large amount of alcohol affected patrons” in the area around the Premises and in the Newcastle CBD “creates resource issues for policing in that area”, and provides a map of the relevant areas of concern.
- (xi) The Applicant submits that data derived from the NSW Police Escalated Licensing Operational Response Model (**ELORM**) – which rates licensed venues according to certain categories of risk including intoxication, violence, malicious damage, stealing, underage offences, security offences and criminal intelligence reports – recorded the Premises as having an overall risk rating of “extreme” for the June to August 2013 quarter and that the preceding three quarters had risk ratings of “extreme”, “medium” and “high” respectively. The Applicant submits that the Premises “has consistently performed at these risk levels with no signs of abating”.
- (xii) Over the period from March 2010 to November 2013 (the **Relevant Period**) the Applicant contends that **46** assaults have occurred either on the Premises or within the vicinity of the Premises. The Applicant further contends that **38** incidents of assault were recorded as occurring after 12:00am, with **8** incidents of assault occurring before 12:00am. The Applicant submits that this indicates that “the issues relating to the [Premises] occur in their extended trading authorisation period”.
- (xiii) The Applicant states that Newcastle City Licensing Police have met with the approved manager and owner of the Premises, Mr Vasilis Moshos, on a number of occasions when they have highlighted that the “continual occurrence of assaults and intoxication levels were concerning” and that “no improvement or overt attempts to improve the manner of trade had been identified”.
- (xiv) The Applicant notes that Office of Liquor, Gaming and Racing (OLGR) Inspectors have also conducted audits and attended meetings with the Licensee and owner and have “expressed their concerns and recommendations to address those issues”.
- (xv) The Applicant provides details of meetings between Police and the approved manager of the Premises (Mr Vasilis Moshos from 20 January 2010 until 8 October 2013) in relation to breaches of licensing legislation during the period from 6 May 2010 to 2 October 2013.
- (xvi) The Applicant notes a Short Term Closure Order application made to the Authority under section 82 of the Act on 20 August 2013 which arose through the identification by Police of “serious breaches of the [Act], with minors being allowed on the Premises and being supplied with liquor”. The Applicant notes that this application was subsequently withdrawn by Police on the basis of the Licensee’s consent to the imposition of three (3) new ongoing licence conditions under section 53 of the Act requiring the posting of security guards after 9:00pm on every Friday, Saturday and those Sunday evenings preceding a Monday public holiday; the use of identification scanners; and the installation of CCTV on the Premises.
- (xvii) The Applicant notes that another Short Term Closure Order application was lodged with the Authority by Police on 22 October 2013 due to the identification by Police of a “serious breach” of the Act arising from the recent detection of permitting intoxication and minors on the Premises. The Authority imposed a 72-hour closure of the Premises from 5:00pm on Friday 25 October 2013.

- (xviii) The Applicant argues that Mr Vasilis Moshos is “either in denial or does not wish to address the issues at the [Premises], often becoming difficult to engage during meetings”. The Applicant contends that Mr Moshos “often blames Police for the venue’s issues and will avoid assisting Police in their investigations”, on most occasions offering a “no comment” response to any questions put to him regarding the Premises, irrespective of whether or not an offence has been detected.
- (xix) The Applicant submits that it is “obvious due to the ongoing issues” that the owners of the Premises and Mr Vasilis Moshos “do not have patron safety or managing a legitimate/successful business as a priority”.
- (xx) The Applicant notes that the Premises “has been subject to a number of infringement notices and Court Attendance Notices” issued by Police and OLGR Inspectors since March 2010.
- (xxi) The Applicant is “concerned” that the approved manager (as of 11 December 2013), Mr Joseph Lannutti – who has only held the position since 8 October 2013 – has “never controlled or managed a venue with extended trade or such a high risk venue as [the Premises]”. The Applicant contends that the only training Mr Lannutti has undertaken is “in-house training from [Mr Vasilis Moshos]”.
- (xxii) The Applicant notes that Mr Vasilis Moshos is still a director of Silk Hotels Newcastle, and that the approved manager (as of 11 December 2013), Mr Joseph Lannutti, liaises with Mr Moshos if he needs any assistance.
- (xxiii) The core of the Applicant’s case for revoking the ETA attaching to the licence is the occurrence of a number of adverse events (**Events**) during the Relevant Period that Police contend have *occurred on the Premises* or that Police have *linked to the Premises* and that Police attribute to the exercise of the ETA.
- (xxiv) The Applicant provides and refers to an Evidence Matrix. This is an Excel format spreadsheet that accompanies the Application and that summarises the facts of a total of **162** Events. Of these, the Applicant contends that **151** Events comprising assaults, street offences, steal from person offences and liquor licensing issues occurred during extended trading hours.

[The Authority notes that the Applicant has marked in yellow on that Evidence Matrix those matters that the Applicant attributes to the exercise of the ETA.]

- (xxv) These Events were recorded primarily in COPS Reports prepared by individual reporting Police officers. The Applicant provides the full text of all COPS Reports of Events summarised in the Evidence Matrix, comprising some several hundred pages of material.

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

- (xxvi) The Applicant submits that a review of COPS data of Events during the Relevant Period discloses that there were **151** Events involving assault, street offences, steal from person offences or liquor legislation offences linked to the Premises, and the “majority” of these occurred during extended trading hours.
- (xxvii) The Applicant submits that of the **46** assault Events, **8** incidents occurred in the 7:00pm to 12:00am time period, while **38** occurred between 12:00 midnight and 4:00am.
- (xxviii) The Applicant submits that within the Relevant Period, the Premises has also been *linked* to a number of incidents of assault, intoxication, liquor licensing detections and breaches of the *Local Government Act*, and the “majority” of these have occurred during the hours authorised for extended trading.
- (xxix) The Applicant submits that, despite the Licensee and Premises Owner having been informed, on a number of occasions, of Police concerns regarding the levels of violence and intoxication occurring in relation to the Premises, “little has been done in relation to alleviating the serious risk to public health and safety”. The Applicant submits that this has been demonstrated by the number of incidents related to intoxication and violence that have occurred each week since March 2010.
- (xxx) The Applicant contends that despite “continuing attempts” to engage the Licensee and Premises Owner, there has been “no improvement in their business practices” and that the “continual flaunting of conditions indicates a propensity for the Licensee and owners to continue the behaviour and lack of compliance”. The Applicant also contends that the frequency of events of intoxication and violence both in and near the Premises continues, and therefore so does the “threat to public safety”.
- (xxxi) The Applicant contends that persons utilising public spaces near the venue are also in “clear and imminent risk due to the continuing behaviour of the patrons of the Premises, directly linked to the inability of the Licensee, Premises Owner and staff to comply with even the most basic of conditions and regulatory requirements”.
- (xxxii) The Applicant submits that the revocation of the ETA is “in the best interests of the public”.
- (xxxiii) The Applicant recognises that the removal of the ETA will place a financial burden on the Premises, which “might be significant”. The Applicant submits, however, that the “overriding factor should be the cost that this venue is placing on the community through its failure to prevent alcohol related harm” both at and surrounding the Premises. The Applicant submits that the harm to the community and victims “far outweigh[s] the personal financial consideration for this business”.
- (xxxiv) The Applicant contends that the “disturbance to the community and injuries to the public” remain at “an unacceptable level”.
- (xxxv) The Applicant submits that the Premises has been designated as a “Level 1” declared premises for the purposes of schedule 4 to the Act by reason of the “frequency and seriousness of assaults, intoxication and liquor licensing breaches” occurring on or near the Premises.

[The Authority notes that since November 2008 the [now] Secretary of NSW Trade and Investment (**Secretary**) has administered a scheme for the classification of all licensed premises in NSW for the purposes of schedule 4 to the Act (**Scheme**). Venues that are recorded as having had 19 or more acts of violence on premises during a relevant preceding 12 month calendar or financial year, as the case may be, (**Round**) are classified as "Level 1" declared premises. Venues recorded as having had between 12 and 18 acts of violence on premises during a relevant period are classified as "Level 2" declared premises. Venues recorded as having had between 9 and 11 acts of violence on premises during a relevant period are classified, for administrative purposes, as "Level 3" venues. Special licence conditions attach to Level 1 and Level 2 declared premises through the operation of schedule 4 to the Act. No special licence conditions attach to Level 3 venues but those venues are placed on notice of their classification by the Secretary.

The Authority notes that, at the time of the Application, the Premises was classified as a "Level 1" declared premises and, at the time of this decision, the Premises is classified as a "Level 2" declared premises and is subject to special licence conditions under schedule 4 to the Act.]

- (xxxvi) The Applicant notes that, although additional conditions have been included on the licence, the Premises still continues to report a "high" number of assaults.
- (xxxvii) The Applicant contends, on the basis of the Events summarised in the Evidence Matrix, that numerous adverse incidents are "directly attributable" to the Premises or to the operation/management of the Premises, and that the following patterns can be identified:
- Numerous incidents of assault
 - Multiple incidents of intoxicated patrons from the Premises committing street offences, including public urination
 - Repeated risk demonstrated with regard to contraventions of public health requirements (including overflowing toilets and rats on the ceiling) and public safety requirements (fire safety measures not complied with)
 - Reluctance or inability of the management, including Mr Moshos in his capacities as previous approved manager and the Former Licensee of the Premises (Silk Hotels Pty Limited), to introduce strategies to respond to identified risks to patron, community and Police safety
 - Multiple breaches of licence conditions.
- (xxxviii) The Applicant also submits that the Licensee, Premises Owner and approved manager (Mr Vasilis Moshos) have demonstrated an "inability or unwillingness" to meet the objects of the Act as contained within subsection 3(1), and that the Licensee of the Premises and Premises Owner have "failed to have due regard" to the considerations prescribed by subsection 3(2) of the Act.
- (xxxix) The Applicant contends that the overall social impact of removing the ETA will "not be detrimental" to the local or broader community.
- (xl) The Applicant contends that "incidents of intoxication, violence and harm that can be directly attributed to the Premises will cease" as a result of revoking the ETA.
- (xli) The Applicant submits that there are "numerous other hotels and other on-premises licensed venues with ETAs in the Newcastle [CBD] area" with the following licensed closing times:
- Customs House (3:00am)
 - Queens Wharf Brewery (3:30am)

- Great Northern Hotel (3:30am)
- Crown and Anchor Hotel (3:00am)
- Lucky Country Hotel (to reopen shortly – 3:00am)
- Hotel CBD (3:00am)
- MJ Finnegan's (2:30am)
- The Argyle House (3:30am)
- King Street Hotel (3:30am)
- Cambridge Hotel (3:30am)
- Clarendon Hotel (3:00am)

and a further seven (7) late trading hotels situated in the suburb of Hamilton, within two (2) kilometres from the Premises:

- Beaumont Exchange Hotel (3:00am)
- Northern Star Hotel (3:00am)
- Kent Hotel (3:00am)
- Sydney Junction Hotel (5:00am)
- Station Hotel (3:00am)
- Gateway Hotel (3:00am)
- Wickham Park Hotel (3:00am).

- (xlii) The Applicant contends, on the basis of the evidence and material provided with the Application, that the Premises “does not adequately manage or successfully operate its extended trading authorisation” and that the ETA attaching to the licence should therefore be revoked.

BUSINESS OWNER SUBMISSIONS DATED 14 APRIL 2014

23. On 3 March 2014, the Authority issued an invitation to the corporate Business Owner, Rightclick, to make submissions on both the Application and a separate disciplinary complaint made by Police in relation to the Premises under section 139 of the Act (**Complaint**) that were simultaneously being considered by the Authority. The sole director and shareholder of Rightclick, Mr Georgios Emmanouilidis, provided submissions to the Authority in relation to both of these matters on 14 April 2014.
24. Briefly, those submissions may be summarised as follows:
- (i) Rightclick became the “relevant licensee” of the Premises on 25 March 2014 under section 61(3) of the Act, when it “removed” the incumbent licensee, Silk Hotels Newcastle. Georgios Emmanouilidis is the director of Rightclick and lodged a Notice of Appointment of Manager with OLGR on 16 April 2014, nominating himself as manager.
 - (ii) Mr Emmanouilidis submits that the Authority and the Applicant were notified of the “removal” of Silk Hotels Newcastle as the licensee of the Premises via an email dated 27 March 2014. Mr Emmanouilidis submits that Silk Hotels Newcastle remains the “only respondent” to the Application.
 - (iii) The Applicant has “not suggested” that Rightclick should be a “respondent” to the Application. Mr Emmanouilidis submits that “there would appear to be good reason” for this, and that there is “no reference to any adverse conduct issues of Rightclick or myself in the Application”.
 - (iv) If the Application to revoke the ETA attaching to the licence were granted by the Authority, it would not affect the interests of Silk Hotels Newcastle, but “could only affect the interests of Rightclick and the community of Newcastle itself”.

Mr Emmanouilidis submits that, if Police wish to continue with the Application, then “they would have to do so with Rightclick as the respondent”.

- (v) Mr Emmanouilidis refers to *McGuinness v State of New South Wales* (2009) NSWSC 40 and contends that “the power to impose or change licence conditions can only be exercised after the relevant licensee has been given a reasonable opportunity to be heard and his or her submissions considered”.
- (vi) Mr Emmanouilidis then refers to *Slatter v Railway Commissioners (NSW)* (1931) 45 CLR 68; [1931] HCA 13 and *Boreland v Docker & Ors* [2007] NSWCA 94 and submits that the liquor licence was “never the property of [Silk Hotels Newcastle]” and that “a licensee’s conduct can only affect the licence itself, whilst soever the licensee has the authority to sell liquor under the licence itself”.
- (vii) Mr Emmanouilidis submits that the Application was lodged by Police “as a result of alleged concerns to community safety that would continue if the [ETA] were to remain whilst [Silk Hotels Newcastle] and its approved managers Mr Moshos and Mr Lannutti had the authority” to sell liquor by retail on the licensed premises for consumption on or away from the licensed premises pursuant to section 14 of the Act.
- (viii) Mr Emmanouilidis submits that the Application lodged by the Applicant contained “no concerns associated with Rightclick or myself” with respect to the authorisation conferred by a Hotel licence under section 14 of the Act.
- (ix) Mr Emmanouilidis contends that all the Police concerns as to “resolution and remedial action” and “licensee’s response of identified risk” refer to Silk Hotels Newcastle, Mr Moshos or Mr Lannutti and that “no determination adverse to Rightclick’s interests can be made” by the Authority in relation to the Application before it.
- (x) Mr Emmanouilidis submits that Rightclick has been the lessee and business owner of the licensed premises since 2013 and that there is “no evidence as to any conduct of Rightclick or attempts by Police to discuss and resolve concerns with either Rightclick or myself”.
- (xi) Mr Emmanouilidis submits that “there is no assertion that Police have informed Rightclick as business owner or myself” of their concerns, and that there is “no reference to Rightclick or myself having been engaged by Police in any process whatsoever”.
- (xii) Mr Emmanouilidis notes that Rightclick only “started” as Business Owner in 2013 and that Mr Emmanouilidis was overseas from October 2013 to January 2014, so that Rightclick “simply cannot provide submissions in relation to the alleged incidents described by Police”.
- (xiii) Mr Emmanouilidis submits that Rightclick “has adopted a position of understanding of Police concerns” by “removing” Silk Hotels Newcastle as licensee of the Premises.
- (xiv) Mr Emmanouilidis submits that he “understands” what his obligations are as approved manager and states that he “cannot and will not be away from the licensed premises where to do so would breach my obligations or detrimentally [a]ffect my business concerns”.

- (xv) Mr Emmanouilidis submits that upon receiving notice of Police concerns with the Licensee and Mr Vasilis Moshos in his capacity as approved manager of the Premises as contained within the Application and Complaint on 3 March 2014, he has taken “direct and swift action” in response to those concerns in the form of removing Mr Moshos' company (Silk Hotels Newcastle) as the Licensee, engaging in “fruitful and encouraging” discussions with Newcastle Police regarding issues with the Premises and “researching Authority decisions on compliance issues generally”.
- (xvi) Mr Emmanouilidis refers to the Authority decision concerning the *Bada Bing Night Spot, Kings Cross* (11 December 2013), noting that one of the issues raised by the Authority in that decision was that “personnel may change” in that the licensees and approved managers who were a source of the concerns could simply be reappointed at a later date. Mr Emmanouilidis submits that “no such concerns may exist” in this Application as Mr Moshos was disqualified from being an approved manager of any licensed premises for a period of twelve (12) months by order of Newcastle Local Court on 31 March 2014 (after Rightclick “removed” Silk Hotels Newcastle as licensee).
- (xvii) Mr Emmanouilidis notes that the disciplinary Complaint empowers the Authority to “take action to ensure Mr Moshos could have no further involvement with any licensed premises beyond 31 March 2015”.
- (xviii) Mr Emmanouilidis submits that the *Bada Bing* decision was venue specific, whereas the concerns with the Application and Complaint in relation to these Premises are “person specific, that is, there is an alleged failure of particularly one (1) individual to properly exercise the [authorisation]” conferred by section 14 of the Act.
- (xix) Mr Emmanouilidis contends that “there has been no allegation made and can thereby be no finding by the Authority that the nature of the venue itself or entertainment facilities offered are against the public interest”.
- (xx) Mr Emmanouilidis notes that the licensed premises at 635 Hunter Street, Newcastle West has operated since 1937, when Newcastle was “a much smaller community”.
- (xxi) Mr Emmanouilidis submits that the Applicant “implicitly decr[ies] that the nature of the venue and/or entertainment offered is of a concern” and that the accusation by the Applicant is that the alleged assaults and incidents that instigated the Application and Complaint “are directly linked to the inability of the licensee, [Premises] owner and staff to comply with even the most basic of conditions and regulatory requirements”.
- (xxii) Mr Emmanouilidis contends that, through the “voluntary conduct” of Rightclick, the concerns of the Applicant in the Application have been “taken seriously” and have been “resolved”.
- (xxiii) Mr Emmanouilidis states that he is “provisionally approved” to be manager of the licensed premises. He states that he has a degree in Economics, a Master of Business Administration and a Master of International Business and that he has “never been involved in a failed business venture” and is “qualified and experienced to manage businesses on a much larger scale than a hotel”. Mr Emmanouilidis submits that he has “made a decision and commitment to

manage this hotel” and that he “will not risk [his] exemplary reputation by allowing any previous management or staff failings to remain”.

- (xxiv) Mr Emmanouilidis also notes his intention to “actively participate” in the Newcastle/Hamilton Precinct Liquor Accord “with a view to being involved in policy making and management” and submits that a person with such “extensive tertiary qualifications and management experience” as himself “would only benefit” the Newcastle liquor industry.
- (xxv) Mr Emmanouilidis submits that the “clear statutory language of the [Act], common sense and fairness principles” dictate that neither the Newcastle community nor Rightclick as “licensee” (*sic*) can or should be “punished” through the conduct of [Silk Hotels Newcastle] and its approved manager as the public interest “would simply not be served” in doing so.
- (xxvi) Mr Emmanouilidis submits that the licence for the Premises has operated from “at least midnight to 3:00am since 1937” (*sic*) and that the ETA was automatically endorsed under the Act in July 2008 to “allow the Premises to retain the pre-existing trading hours that would otherwise have been reduced under the operation of the standard trading period prescribed for hotel licences” by section 14 of the Act.
- (xxvii) Mr Emmanouilidis contends that the reason for the automatic endorsement of the ETA in 2008 is contained in the explanatory notes to the Act, which evince a Parliamentary intention to “continue” and “preserve existing trading entitlements and authorisations”.
- (xxviii) Mr Emmanouilidis submits that “late trading venues offer obvious community benefit and consumer choice” and refers to the Authority decision concerning the *Ashfield Hotel, Ashfield* (5 March 2014) which states that there are “consumer benefits and convenience offered to the community by having...late trading licensed venues available”.
- (xxix) Mr Emmanouilidis notes that there are numerous late night eateries, fast food and shopping facilities in the immediate vicinity of the Premises, along with one (1) other late trading licensed business, being the King Street Hotel.
- (xxx) Mr Emmanouilidis contends that, if the ETA for the Premises were revoked, it would “operate as a restraint of trade in the Newcastle inner city area” as there would be a “de facto monopoly on liquor sales from midnight to 3:00am granted to the King Street Hotel and this would have [an] obvious effect on consumer choice and cost of liquor sales”.
- (xxxi) Mr Emmanouilidis submits, in respect of alcohol consumption and public safety, that the “importance of the ‘walking distance’ monopoly cannot be understated” as limiting the options for licensed premises within walking distance of the Premises “could only encourage persons who are potentially affected by alcohol to drive, where they otherwise would not do so”.
- (xxxii) Mr Emmanouilidis submits that the “obligation is on the Applicant to establish that granting an application to vary the [ETA] is in the public interest” as noted in the Authority decision concerning *NaruOne, Sydney* (25 February 2014).
- (xxxiii) Mr Emmanouilidis concludes that even if the Application was “properly” made against Rightclick as the “relevant licensee” (*sic*) and the “licensee to whom the

authorisation relates" (*sic*), the Applicant would then have to establish, on the balance of probabilities, that it is in the "public interest" to revoke the ETA where:

- a. Parliament has expressly stated that principal purposes of the Act, which evidence community intention and public interest, are to "continue" and "preserve" trading entitlements that existed for licensed premises prior to July 2008.
- b. The Authority has advised the community in decisions made to date that it believes late trading venues offer "consumer benefits and convenience...to the community".
- c. The revocation of the ETA would operate as a restraint of trade and grant a "walking distance" monopoly to the King Street Hotel.
- d. There are "objective public safety concerns" attached to a "walking distance" monopoly being granted to the King Street Hotel.
- e. The Premises has operated with a late trading entitlement providing public benefit from midnight to 3:00am since 1937.
- f. As the Premises has operated as a licensed hotel from midnight to 3:00am for nearly eighty (80) years, the removal of the late trading entitlement would "necessarily and significantly detrimentally affect the social fabric of the community".
- g. Rightclick is the licensee which has the authority under the licence "to sell liquor by retail on the licensed premises".
- h. Rightclick became aware of this Application and Police concerns as to the conduct of the former licensee (being Silk Hotels Newcastle) and approved managers in early to mid-March 2014.
- i. Rightclick removed the former licensee (Silk Hotels Newcastle) and approved manager (Mr Vasilis Moshos) allegedly causing Police concern approximately two (2) weeks following receipt of the Application, on 25 March 2014.
- j. Rightclick notified the Applicant on 27 March 2014 of the "removal" of Silk Hotels Newcastle as licensee, and that Rightclick had since become the licensee of the Premises.
- k. Rightclick has "engaged in discussions" with Police since 27 March 2014.
- l. "No complaint" has been made by the Applicant as to Rightclick's conduct as licensee or Business Owner of the licensed premises.
- m. Rightclick's position, which is "not denied" by the Applicant, is that it "will not ever allow" Mr Moshos to have a relevant position of control at the Premises.
- n. There is no "personnel may change" concern that applies should the ETA remain, by reason that Mr Moshos has been banned from being an approved manager for twelve (12) months and any more permanent restrictions on Mr Moshos can be applied by the Authority through the concurrent part 9 Complaint.

- o. The response by Rightclick in removing Silk Hotels Newcastle as the licensee “accords with the objects of the Act” to allow the balanced development, in the public interest, of the liquor industry through a flexible and practical regulatory system with minimal technicality and formality.
- p. The response of Rightclick in removing Silk Hotels Newcastle as the licensee and Mr Moshos as the approved manager of the Premises “obtains a more durable response” to Police concerns as such persons cannot be involved in the sale of liquor on the premises *at all* (emphasis added), whereas the Application before the Authority simply seeks to *limit* (emphasis added) the involvement of such persons in the sale of liquor on the Premises.
- q. The “provisionally approved” (*sic*) manager of the Premises (Mr Georgios Emmanouilidis) has “extensive business management experience and tertiary qualifications” in economics and business management that will “ensure any prior failings of management will not further occur”.
- r. The Applicant had not provided any updated information to the Authority on the “critical issue” of Rightclick becoming the licensee of the Premises, despite the obligation of the Applicant to do so “both on a common sense basis and where failure to provide such information may result in criminal penalty”.

LICENSEE SUBMISSIONS DATED 14 APRIL 2014

- 25. On 14 April 2014, Mr Vasilis Moshos provided brief submissions to the Authority in response to the Authority’s invitation to address the Application and the disciplinary Complaint before the Authority. The Authority notes that Mr Moshos did not provide any detailed analysis of the material upon which the Applicant relies in support of this Application.
- 26. Mr Moshos’ submissions primarily address the Complaint rather than the Application. Briefly, the key contentions and submissions may be summarised as follows:
 - (i) On 25 March 2014, Silk Hotels Newcastle was “removed” as the licensee of the licensed premises known as “Silk Hotel”, situated at 635 Hunter Street, Newcastle West.
 - (ii) Mr Moshos submits that “the complaint against [the Licensee] would appear to be resolved by its removal as licensee” and that “any concerns as to its conduct as licensee would be properly considered in the application process should it subsequently make an application in the future to be a licensee of licensed premises”.
 - (iii) Mr Moshos advises that on 31 March 2014 at Newcastle Local Court, there were fifteen (15) charges listed for hearing against him in relation to his conduct as approved manager of the Premises. There was also an application for additional penalty, being the Application to revoke the ETA.
 - (iv) Mr Moshos advises that “by agreement between myself and NSW Police”, six (6) charges were dropped, and a plea of guilty was entered for the remaining nine (9) charges. Mr Moshos advises that “an aspect of this agreement was that I be disqualified from being an approved manager of licensed premises for a period of twelve (12) months” until 31 March 2015.

- (v) Mr Moshos submits that Police would no longer be able to rely upon the incidents the subject of the six (6) charges that were dropped by Police.
- (vi) Mr Moshos also advises that there was “no agreement” as to the fines that would be imposed upon him in relation to the guilty pleas. He contends that Magistrate Jennifer Atkinson noted that some of the charges were “trivial or technical”. He advises that the matters before the Court on 31 March 2014 resulted in the imposition of a fine of **\$4,800.00**, which Mr Moshos describes as “relatively minor”.
- (vii) Mr Moshos submits that the Authority should not make any determination on the Complaint at all, as “the agreement with Police has effectively ousted any purpose in doing so”.
- (viii) In the alternative, Mr Moshos submits that the Authority should not make any determination that “would be contrary to, or allow for any adverse consequences in excess of the twelve (12) month disqualification that is already in place and is the subject of the agreement with Police”.

CONFERENCE ON 2 JULY 2014

- 27. In response to the requests made by the Premises Owner and Business Owner, a conference was convened by the Authority on 2 July 2014 for the purpose of discussing any issues arising from the Application and the Complaint (**Conference**).
- 28. At the Conference, Police were represented by Ms Jennifer Degotardi and Mr James York of Henry Davis York, Ms Margaret Hayman Johnson, a solicitor at the NSW Police Office of General Counsel, Superintendent John Gralton, Commander of Newcastle City Police and Sergeant Wayne Buck, Licensing Supervisor for the Greater Newcastle Region.
- 29. Although Mr Emmanouilidis had indicated shortly prior to the Conference that he would be accompanied by his “company’s legal counsel” on the day of the Conference, Mr Emmanouilidis attended alone. Mr Moshos did not attend the Conference.
- 30. At the commencement of the Conference, prior to the Authority hearing oral submissions from Police and Mr Emmanouilidis, Mr Emmanouilidis advised the Authority (for the first time) that in addition to being the sole director and shareholder of the corporate Business Owner, Rightclick, he was now (as of 21 March 2014) the director of the corporate Premises Owner, Parking Towers International Pty Limited (**Parking Towers**), by reason of a transaction involving changes in the ownership and control of that company.
- 31. Mr Emmanouilidis advised the Authority (for the first time) that Mr Vasilis Moshos was no longer a director or shareholder of Parking Towers and that Mr Vasilis Moshos had divested himself of any financial or other interest in that company. Mr Emmanouilidis also advised the Authority (for the first time) that as of 21 March 2014, Mr Emmanouilidis and Mr Antonios (Anthony) Moshos, the brother of Mr Vasilis Moshos, now each possess a 50% shareholding in a company known as DeallInvest Pty Limited, which in turn is the sole shareholder in Parking Towers.
- 32. Mr Emmanouilidis stated to the Conference that he had “evicted” Mr Vasilis Moshos and the Licensee company (Silk Hotels Newcastle) on 25 March 2014 under section 61(3) of the Act after being made aware of the Application and Complaint.

33. Mr Emmanouilidis stated to the Conference that he had made an application to the Authority to transfer the licence from Silk Hotels Newcastle to Rightclick. This was lodged on 7 May 2014.
34. The Authority notes that (as disclosed in the Complaint) Mr Vasilis Moshos had been the sole director and shareholder in the Premises Owner, Parking Towers, since 20 January 2010. Furthermore, in the purported appointment of Mr Emmanouilidis as approved manager on 16 April 2014 and in the Transfer Application filed on 2 May 2014 seeking to transfer the licence from Silk Hotels Newcastle to Rightclick, the Premises Owner identified on the application forms was Parking Towers, with no mention of the change in control of the Premises Owner company in that correspondence.
35. The Chairperson of the Authority noted during the Conference that Mr Emmanouilidis' application to transfer the licence from Silk Hotels Newcastle to Rightclick had yet to be determined – either provisionally or otherwise. Consequently, at the time of this decision, Silk Hotels Newcastle remains the Licensee of the Premises and the last appointed approved manager was Mr Vasilis Moshos.
36. The Chairperson further noted that, since Mr Moshos was disqualified by the Newcastle Local Court on 31 March 2014 from being the approved manager of any licensed premises for a period of twelve (12) months, there is currently no approved manager appointed by the Licensee in place at the Hotel – and there has not been any approved manager in place since 31 March 2014 – thus rendering the Licensee potentially in breach of the Act due to its failure to have a nominated approved manager.
37. Mr Emmanouilidis advised the Conference that the Premises has been closed since “early March” 2014, prior to the findings of Newcastle Local Court in regard to Mr Vasilis Moshos. Mr Emmanouilidis said that the hotel had been closed “out of respect for all the trouble and respect for the Police of Newcastle and respect for the [Authority]” until a determination had been made on the Application and Complaint currently before the Authority.
38. The Chairperson further noted that Mr Russell Richardson, licensee of the King Street Hotel, had recently provided a written submission to the Authority on 5 June 2014 advising that his company had contracted to purchase the Premises and the business operating on the Premises, subject to the satisfactory resolution of the Application and Complaint before the Authority.
39. Mr Emmanouilidis told the Authority that this contract was still on foot and that it was his intention to effect, with Mr Richardson's cooperation, the proposed arrangement for the sale of the Premises and of the Hotel business operating on the Premises.
40. Superintendent John Gralton then advised the Conference of correspondence he had received from Mr Richardson's lawyers dated 2 July 2014 advising that Mr Richardson now intends to rescind the contract for the purchase of the Premises and the licensed business operating on the Premises. The Authority's Chief Executive advised the Conference that the Authority had received similar advice that morning.
41. Briefly, the oral submissions made by Ms Jennifer Degotardi (a partner from Henry Davis York) on behalf of the Applicant were as follows:
 - (i) The section 51 Application and the section 139 disciplinary Complaint are based on a “long history of offences which have caused Police concern”.
 - (ii) The Applicant contends that the potential sale or otherwise of the Premises to another entity is not a matter for Police, and that the Authority's focus should be the

history and the offences which have given rise to this Conference and whether or not those incidents are breaches which justify granting the Application and establishing the Complaint under, respectively, sections 51 and 139 of the Act.

- (iii) The Applicant notes that the transfer of the lease to Rightclick as the owner of the licensed business operating on the Premises occurred in July 2013. Police submit that since then, all of the issues or offences linked to the Premises have remained “unchanged”.
 - (iv) The Applicant submits that over the period from March 2010 until November 2013, there were **46 assaults** that had occurred on or around the Premises, and **82%** or **38** of those had occurred later than 12:00am. The Applicant contends that this demonstrates a “sustained history of breaches of the Act” with “multiple offences [occurring] during the extended trade period”.
 - (v) Police note that the disciplinary Complaint has been made against Silk Hotels Pty Limited, Silk Hotels Newcastle and Mr Vasilis Moshos. That Complaint is not focussed on Rightclick at this time.
- 42.** Briefly, the oral submissions made by Superintendent Gralton on behalf of the Applicant during the Conference were as follows:
- (i) Despite Police attempting “on numerous occasions” to rectify the behaviour of the Premises through observing the operation of the Premises, conducting numerous meetings, entering into local licensing agreements (voluntary arrangements with the Licensee), making applications for Short Term Closure Orders and improving the CCTV equipment on the Premises, the behaviour and the anti-social behaviour and the assaults “just didn’t seem to abate”.
 - (ii) Superintendent Gralton submits that Police have “done everything in our power” to try and rectify or change the behaviour of the Premises and the environment of the Premises, but it “hasn’t changed”.
 - (iii) The Applicant contends that the Premises and the people that are engaged in and around the management of the Premises “do not have the capacity to operate it in a way that can reduce those anti-social behaviour incidents occurring”.
- 43.** Following Superintendent Gralton’s oral submissions, the Chairperson of the Authority put to Ms Degotardi that the cancellation or suspension of the licence pursuant to the Complaint or the revocation of the ETA pursuant to the Application would clearly have an impact on the profitability of the licensed business. The Chairperson asked how much, if any, weight should be given to that consideration when the Authority made its determination on these matters.
- 44.** In response, Ms Degotardi noted that Rightclick had assumed the lease of the Premises in July 2013. Although Rightclick was not the licensee since that time, it had “controlled the premises from which the Licensee was operating” in its capacity as business owner.
- 45.** Ms Degotardi submitted to the Authority that this fact was relevant insofar as the incidents occurring on or around the Premises during extended trading hours were an “ongoing problem” with the Hotel in circumstances in which Rightclick was “not an entirely new party”.
- 46.** Mr Emmanouilidis then made oral submissions to the Conference that may be summarised as follows:

- (i) Rightclick “never received any documentation” regarding the Application or the Complaint until March 2014 and it did not have knowledge of the issues affecting the Premises until this time.
- (ii) Upon receiving notification of the Application and Complaint, Rightclick “took immediate action” and “removed the bad people straightaway”.
- (iii) Mr Emmanouilidis states that Silk Hotels Newcastle was “removed” from being the Licensee of the Premises and that Mr Moshos was “removed” from being the approved manager of the Premises and from having “any kind of involvement with anything that’s got to do with the building, the business or the licence”.
- (iv) Although Mr Emmanouilidis’ company has controlled the business since July 2013, he states that he “realised that there were some issues, [but] I didn’t realise the size of them” and reiterated that “there was never any documentation directed to Rightclick Holdings”.
- (v) Mr Emmanouilidis concedes that he “should have known” about the full extent of the prosecutions that Police were conducting and that, if he had known, he “would have taken action earlier”.
- (vi) Mr Emmanouilidis states that he has not operated any late trading hotels prior to July 2013, but was previously employed on the Premises before he acquired the licensed business operating on the Premises and “was present on many occasions” including between the hours of midnight and 3:00am while working at the Hotel.
- (vii) Mr Emmanouilidis argues that over the past few years, the Premises has “had a good trade overall” in that it has never been declared as a “Level 1” or “Level 2” premises for the purposes of schedule 4 to the Act.

[The Authority notes that at the time of this determination, the Premises has been declared a “Level 2” premises for the purposes of schedule 4 to the Act.]
- (viii) It was put to Mr Emmanouilidis by the Authority’s General Counsel that the recent changes in ownership of the corporate Premises Owner were a “sham” or an attempt to evade regulatory action. In reply, Mr Emmanouilidis simply denied this and stated that he “wouldn’t come to a meeting here with the [Authority] and the Police to create a fake picture or illusion” and that he “took immediate action” in relation to removing the Licensee (Silk Hotels Newcastle) and approved manager (Mr Vasilis Moshos) and is “obviously looking toward the future” with respect to the proposed sale of the business and the property in the Premises to Mr Russell Richardson’s company.
- (ix) Mr Emmanouilidis reiterated his previous submission that the Premises has been trading as a Hotel until 3:00am since 1937 (*sic*) and that it is “in the public interest [for] the people of Newcastle especially” for the Premises to retain the ETA attaching to the licence. In response to this statement, the Chairperson of the Authority noted that this was incorrect and that it was “not possible” for a licensed venue such as the Premises to trade until 3:00am “in 1937 or in 1967 or in 1987”.
- (x) Mr Emmanouilidis submits that, if the ETA were to be revoked, a “monopoly of premises” would be created in the area – that is, the nearby King Street Hotel and other late trading licensed businesses in the immediate vicinity would have a “monopoly” on liquor sales between midnight and 3:00am.

- (xi) Mr Emmanouilidis submits that “the whole problem [was] created” because of “just one or two people”, and that he has done “everything I could in my power to remove this element” and that, following the removal of the corporate Licensee and the approved manager (Mr Vasilis Moshos), “the bad element has been removed once and for all”.
 - (xii) Mr Emmanouilidis submits that “it is good for [the ETA attaching to the licence] to be there” and that “it is in the public interest to have late night venues so people can go and enjoy their drink”.
 - (xiii) Mr Emmanouilidis told the Conference that completing his tertiary studies in business management and international business was the catalyst for his decision to acquire the business in July 2013 as he “realised [he had] the capacity to make it work” and he believed it was “not a bad investment idea”.
 - (xiv) Mr Emmanouilidis notes that the Premises was up for sale in July 2013 at the time that he acquired the business.
47. The Chief Executive noted the numerous outcomes recommended by Police in the Complaint and questioned whether some outcomes were considered more of a priority to Police than others.
48. In reply, Ms Degotardi submitted that the intention of Police was to “ensure that people who are not...fit to hold a licence, aren’t operating licensed premises” and that there is no suggestion that one of the outcomes sought in the Complaint is “better” than another option. The Police position is “more focussed on the removal of Silk Hotels Newcastle and Mr Moshos as [entities] who are involved in licensed premises”.
49. In relation to the section 51 Application, Ms Degotardi noted that this matter is directed against the *licence of the Premises itself* and on that basis Police are “firmly of the view” that Rightclick, as the entity that has been legally in control and occupation of those Premises, is “not able to avoid responsibility for those things that have happened since July 2013” as since that time, nobody else can enter the Premises except with its express permission.
50. Ms Degotardi submitted that the preferred outcome for Police would be that Silk Hotels Newcastle “in its various incarnations” is prevented from being a licensee, and that the ETA attaching to the licence of the Premises should be revoked so that the Premises is no longer a late trading venue. Police submit that this would protect the community from the harm that in the long run has been emerging from the operation of the Premises in its current format.
51. When questioned by the Chairperson about Mr Moshos’ recent disqualification by the Newcastle Local Court from being an approved manager of any licensed premises, Ms Degotardi submits that this disqualification for twelve (12) months by the Court is “only a temporary measure” and that this Order “did not deal with the full range of matters” that Police believe are relevant to the Application and Complaint now before the Authority.
52. Mr Emmanouilidis then made the following final oral submissions to the Conference:
- (i) Neither Mr Emmanouilidis nor Rightclick was ever mentioned in the Application or the Complaint, and “Police never had a problem with me, they never pulled me aside to tell me anything”.

- (ii) Mr Emmanouilidis submits that his studies at Newcastle University have furnished him with “enough knowledge to be able to manage a business through my degrees”.
- (iii) Mr Emmanouilidis submits that he had “done the best [he] could” by removing the people and the entities the subject of the Police Application and Complaint, and notes that he “would have done it earlier” had he known the full extent of the Application and the Complaint.
- (iv) Mr Emmanouilidis submits that the Hotel operating on the Premises “belongs to Newcastle” and that it “has got a right to exist”.
- (v) Mr Emmanouilidis advises that he has recently joined Newcastle NOW, a Local Government funded group where “local people just [discuss how] to improve the city”. He submits that he is “trying to turn the situation around...by trying to be part of our local community”.

53. Ms Degotardi then made the following final oral submissions on behalf of the Applicant:

- (i) The section 139 Complaint is made against Silk Hotels Pty Limited, Silk Hotels Newcastle and Mr Vasilis Moshos. There is a “long list of supporting evidence” as to why that Complaint is justified.
- (ii) Police “acknowledge” that Rightclick is not a respondent to the section 139 Complaint.
- (iii) The Applicant submits that the abovementioned entities are “not the proper people to be associated with holding licences or being approved managers”.
- (iv) Unlike the Complaint, the section 51 Application is not made on the basis of the conduct of any *individual natural persons or entities*, but the adverse incidents that have occurred in relation to the Premises and the times at which they have occurred. Police submit that the “majority” of the offences attributed to the Premises have occurred during extended trading hours and that an ETA is therefore “no longer appropriate for these premises” and should be revoked.
- (v) Police submit that the Business Owner, Rightclick, is relevant to the section 51 Application in that Rightclick is the tenant holding the occupation rights to the Hotel premises.

FURTHER INFORMATION FROM BUSINESS OWNER DATED 9 AND 18 JULY 2014

- 54. Following the advice given by the Business Owner at the Conference regarding the acquisition of an interest in the Premises Owner by Rightclick, on 9 July 2014 Mr Emmanouilidis provided the Authority with documentary records of this acquisition. That material includes a scanned copy of the stamped contract for sale of the Hotel for the sum of \$100,000.00 dated 30 November 2012 and a share sale agreement dated 3 December 2013.
- 55. On 9 July 2014 Mr Emmanouilidis also provided the Authority with an email attaching a copy of a Duties Notice of Assessment for \$2,290.71 issued by the New South Wales Office of State Revenue (**OSR**) dated 9 July 2014.
- 56. This document was provided in response to a question raised by Police and relayed to Mr Emmanouilidis on 7 July 2014 that stamp duty would be payable on the transaction

effecting the acquisition by Rightclick of the freehold in the Premises. This question arose by reason that the evidence initially provided to the Authority by Mr Emmanouilidis on 7 July 2014 did not indicate that the transaction had been stamped.

57. Mr Emmanouilidis states in an email to the Authority dated 9 July 2014 that he was “unaware” that stamp duty was payable on the above transactions until the matter was raised by the Authority on 7 July 2014. He also states that, upon explaining the reason for the delay in stamping, the Newcastle office of the OSR waived the interest component of \$290.71 and that no penalties for late payment were applied to the transaction.
58. On 9 July 2014, Mr Emmanouilidis provided the Authority with a Statement of Academic Record for his Master of Business Administration from the University of Newcastle. This was in response to an email enquiry from the Authority’s General Counsel for a copy of his transcript and an explanation of his claim made during the Conference that his university qualifications had furnished him with “enough knowledge to be able to manage a business”. The Authority had requested Mr Emmanouilidis to clarify whether his studies had extended to liquor licensing legislation.
59. Mr Emmanouilidis states in his email dated 9 July 2014 that “the course requirements generally afforded me an understanding of the role of government intervention, both legislative and administrative, insofar as they apply to industries affected by licensing issues”, but that his MBA did not specifically provide him with any education on liquor licensing legislation.
60. In his email dated 9 July 2014, Mr Emmanouilidis concedes that prior to March 2014 Rightclick had a “more passive role” with regard to licensing issues, but that, since Rightclick had applied to become the licensee of the Premises, Mr Emmanouilidis has “undertaken a comprehensive review” of the liquor and gaming legislation and relevant Authority decisions. Mr Emmanouilidis also advises that he has completed Responsible Service of Alcohol and Responsible Conduct of Gambling courses as mandated under New South Wales liquor licensing legislation, and that the Premises is a member of the Newcastle/Hamilton Precinct Liquor Accord (**Newcastle Liquor Accord**).
61. On 18 July 2014, Mr Emmanouilidis sent another email to the Authority attaching a news article published in the *Newcastle Herald* entitled ‘Silk Hotel refocuses after second strike’ (17/07/2014).
62. The article reports that, while the Premises has now incurred two “strikes” under part 9A of the Act and, as of 1 June 2014, is a “Level 2” declared venue for the purposes of schedule 4 to the Act, Mr Emmanouilidis advises the *Newcastle Herald* that he has “sacked all the managers since the second incident and closed the hotel in March for renovations”, and notes his intention to “re-establish the longstanding reputation” that the building had when it was known as “The Family Hotel” and is considering reverting to that name.

FURTHER INFORMATION FROM THE APPLICANT DATED 21 AND 31 JULY 2014

63. The Complaint filed with the Authority on 17 February 2014 includes a table summarising all the offences attributed to the operation of the Premises during the Relevant Period (**Offence Summary Table**) under the Act, the *Liquor Regulation 2008* (**Regulation**), the *Gaming and Liquor Administration Act 2007* (**GLAA**), the *Gaming Machines Act 2001* and the *Gaming Machines Regulation 2010* (**GMR**).

[The Authority notes that the Applicant relies upon that Offence Summary Table in relation to both the section 51 Application and the section 139 Complaint that are pending determination.]

64. Police list all Penalty Notices that have been issued in respect of the Premises and all prosecutions commenced by way of Court Attendance Notice against the Licensee, approved manager or other relevant person, and the final outcome of each Penalty Notice (if paid, not paid or defended in Court) or Court prosecution brought by Police, as the case may be.
65. The Authority understands, on the basis of Police submissions, that, when a Penalty Notice has been described by Police as subject to "enforcement action", this refers to the issue of a Penalty Notice Enforcement Order by the State Debt Recovery Office (**SDRO**), which is empowered to take a range of administrative recovery action with regard to unpaid Penalty Notices. The issue of a Penalty Notice Enforcement Order satisfies the Authority that the recipient of a Penalty Notice has neither paid the Notice nor elected to defend the Notice in Court.
66. On 21 July 2014 Police provided an updated Offence Summary Table current as of that date. The updated Offence Summary Table provides the following information:

#	DATE	OFFENCE	PARTICULARS	LEGAL PROCESS	OUTCOME	DEFENDANT	SDRO STATUS
OFFENCES DETECTED BY NSW POLICE OFFICERS DURING RELEVANT PERIOD							
1	13/03/10	Licensee fail to comply with conditions of licence	Not make entry of assault in incident register	Penalty Notice No. 4024344840	\$1,150 Fine	Vasilis Floros MOSHOS	Not paid Enforced
2	13/03/10	Licensee fail to comply with conditions of licence	RSA certificate of licensed security guard not in RSA register	Penalty Notice No. 4024344830	\$1,150 Fine	Vasilis Floros MOSHOS	Not paid Enforced
3	30/04/10	Licensee fail to comply with conditions of licence	Not make entry of assault in incident register	Penalty Notice No. 4019195804	Court imposed Fine \$1,293	Silk Hotels Pty Limited	Paid in Full
4	30/04/10	Licensee fail to comply with conditions of licence	Not make entry of assault in incident register	Penalty Notice No. 4019195813	Court imposed Fine \$1,293	Silk Hotels Pty Limited	Paid in Full
5	08/05/10	Licensee fail to comply with conditions of licence	RSA certificate of licensed security guard not in RSA register	Penalty Notice No. 4019195831	Court imposed Fine \$993	Silk Hotels Pty Limited	Paid in Full
6	08/05/10	Licensee fail to comply with conditions of licence	RSA certificate of licensed security guard not in RSA register	Penalty Notice No. 4019195822	Court imposed Fine \$993	Silk Hotels Pty Limited	Paid \$971, remainder written off by SDRO
7	29/05/10	Licensee not display prescribed notice in licensed premises	No Liquor sign visible behind the bar	Penalty Notice No. 4019195840	Paid \$220	Silk Hotels Pty Limited	Paid in Full
8	17/09/11	Licensee allow minor enter/remain in bar area of Hotel	Minor observed on the premises	Penalty Notice No. 4030835638	\$1,100 Fine	Silk Hotels Pty Limited	Not paid Enforced

#	DATE	OFFENCE	PARTICULARS	LEGAL PROCESS	OUTCOME	DEFENDANT	SDRO STATUS
OFFENCES DETECTED BY NSW POLICE OFFICERS DURING RELEVANT PERIOD							
9	03/03/12	Licensee fail to comply with conditions of licence	Not make entry of assault in incident register	Penalty Notice No. 4030835710	\$1,100 Fine	Silk Hotels Pty Limited	Not paid Enforced
10	12/05/12	Licensee fail to comply with conditions of licence	Not make entry of assault in incident register	Penalty Notice No. 4030835820	\$1,100 Fine	Silk Hotels Pty Limited	Not paid Enforced
11	27/05/12	Licensee fail to comply with conditions of licence	Breach of 1.30am lockout	Court Attendance Notice No. H48514712	\$1,100 Fine	Silk Hotels Pty Limited	Enforced
12	27/05/12	Licensee fail to comply with conditions of licence	Breach of 1.30am lockout	Court Attendance Notice No. H48514712	\$1,100 Fine	Silk Hotels Pty Limited	Enforced
13	27/05/12	Licensee fail to comply with conditions of licence	Breach of 1.30am lockout	Court Attendance Notice No. H48514712	\$1,100 Fine	Silk Hotels Pty Limited	Enforced
14	27/05/12	Licensee fail to comply with conditions of licence	Breach of 1.30am lockout	Court Attendance Notice No. H48514712	\$2,100 Fine	Silk Hotels Pty Limited	Enforced
15	27/05/12	Licensee fail to comply with conditions of licence	Breach of 1.30am lockout	Court Attendance Notice No. H48514712	\$2,100 Fine	Silk Hotels Pty Limited	Enforced
16	27/05/12	Licensee fail to comply with conditions of licence	Breach of 1.30am lockout	Court Attendance Notice No. H48514712	\$2,100 Fine	Silk Hotels Pty Limited	Enforced
17	27/05/12	Licensee fail to comply with conditions of licence	Breach of 1.30am lockout	Court Attendance Notice No. H48514712	\$2,100 Fine	Silk Hotels Pty Limited	Enforced
18	27/05/12	Licensee fail to comply with conditions of licence	Breach of 1.30am lockout	Court Attendance Notice No. H48514712	\$2,100 Fine	Silk Hotels Pty Limited	Enforced
19	27/05/12	Licensee fail to comply with conditions of licence	Breach of 1.30am lockout	Court Attendance Notice No. H48514712	\$2,100 Fine	Silk Hotels Pty Limited	Enforced
20	08/06/12	Refuse to comply with requirement under section 34 GLAA 2007	Breach of form of demand	Court Attendance Notice No. H48514712	\$500 Fine	Silk Hotels Pty Limited	Enforced

#	DATE	OFFENCE	PARTICULARS	LEGAL PROCESS	OUTCOME	DEFENDANT	SDRO STATUS
OFFENCES DETECTED BY NSW POLICE OFFICERS DURING RELEVANT PERIOD							
21	13/07/13	Fail to keep register of RCG certificate pursuant to clause 61 GMR	RCG certificate of staff member not in RCG folder	Penalty Notice No. 4920248255	\$550 Fine	Silk Hotels Pty Limited	Enforced
22	28/07/13	Licensee not display prescribed notice in licensed premises	No Liquor sign visible at point of entry	Court Attendance Notice No. H52954628	Withdrawn at Court	Vasilis Floros MOSHOS	N/A
23	13/07/13	Licensee fail to comply with conditions of licence	Fail to install CCTV on entry/exit point	Court Attendance Notice No. H52954628	\$1,000 Fine	Vasilis Floros MOSHOS	
24	12/07/13	Licensee allow minor enter/remain in bar area of Hotel	Minor observed on the premises	Court Attendance Notice No. H52954628	Withdrawn at Court	Vasilis Floros MOSHOS	N/A
25	12/07/13	Licensee allow minor enter/remain in bar area of Hotel	Minor observed on the premises	Court Attendance Notice No. H52954628	Withdrawn at Court	Vasilis Floros MOSHOS	N/A
26	13/07/13	Licensee fail to comply with conditions of licence	Breach of 1.30am lockout	Court Attendance Notice No. H52954628	\$300 Fine	Vasilis Floros MOSHOS	
27	06/07/13	Licensee fail to comply with conditions of licence	Fail to supply CCTV in accordance with licence condition	Court Attendance Notice No. H52954628	Section 10A Conviction	Vasilis Floros MOSHOS	N/A
28	23/06/13	Licensee fail to comply with conditions of licence	Licensee fail to ensure CCTV was in operating order prior to trade	Court Attendance Notice No. H52954628	\$1,000 Fine	Vasilis Floros MOSHOS	
29	26/07/13	Refuse to comply with requirement under Section 34 GLAA 2007	Breach of form of demand	Court Attendance Notice No. H52954628	Withdrawn at Court	Vasilis Floros MOSHOS	N/A
30	13/07/13	Licensee allow liquor to be sold/supplied to minor	Minor was supplied and consumed liquor within the premises	Court Attendance Notice No. H52954628	\$1,000 Fine	Vasilis Floros MOSHOS	
31	13/07/13	Licensee allow liquor to be sold/supplied to minor	Minor was supplied and consumed liquor within the premises	Court Attendance Notice No. H52954628	\$1,000 Fine	Vasilis Floros MOSHOS	
32	01/09/13	Licensee fail to comply with conditions of licence	Not make entry of assault in incident register	Court Attendance Notice No. H52905407	Withdrawn at Court	Vasilis Floros MOSHOS	N/A

#	DATE	OFFENCE	PARTICULARS	LEGAL PROCESS	OUTCOME	DEFENDANT	SDRO STATUS
OFFENCES DETECTED BY NSW POLICE OFFICERS DURING RELEVANT PERIOD							
33	29/09/13	Licensee fail to comply with conditions of licence	Breach of 1.30am lockout	Court Attendance Notice No. H52905407	Withdrawn at Court	Vasilis Floros MOSHOS	N/A
34	29/09/13	Licensee fail to comply with conditions of licence	Breach of 1.30am lockout	Court Attendance Notice No. H52905407	Withdrawn at Court	Vasilis Floros MOSHOS	N/A
35	29/09/13	Licensee fail to comply with conditions of licence	Patron not identification scanned prior to entry	Court Attendance Notice No. H52905407	\$500 Fine	Vasilis Floros MOSHOS	
36	29/09/13	Licensee fail to comply with conditions of licence	Approved Manager not present at the venue during extended trade	Court Attendance Notice No. H52905407	Section 10A Conviction under the <i>Crimes (Sentencing Procedure) Act 1999</i>	Vasilis Floros MOSHOS	N/A
OFFENCES DETECTED BY INSPECTORS FROM THE OFFICE OF LIQUOR, GAMING AND RACING							
37	29/05/10	Licensee fail to comply with conditions of licence		Penalty Notice No. 3016951457	\$1,100 Fine	Vasilis Floros MOSHOS	Enforced
38	03/07/10	Fail to comply with requirement under clause 23 GMR 2010	Fail to make player information brochures available to patrons	Penalty Notice No. 3042900044	\$550 Fine	Vasilis Floros MOSHOS	Enforced
39	03/07/10	Fail to comply with requirement under section 49(3) Gaming Machines Act 2001	Fail to ensure patrons can access self-exclusion scheme	Penalty Notice No. 3042900053	\$1,100 Fine	Vasilis Floros MOSHOS	Enforced
40	03/07/10	Fail to comply with requirement under section 95(2) of the Act	Licensee alter name of premises without approval or endorsement	Penalty Notice No. 3042900026	\$55 Fine	Vasilis Floros MOSHOS	Enforced
41	03/07/10	Fail to comply with requirement under clause 52 GMR 2010	Hotel not make available to patrons problem gambling counselling services	Penalty Notice No. 3042900062	\$1,100 Fine	Vasilis Floros MOSHOS	Enforced
41(a)	03/07/10	Fail to comply with requirement under clause 54 GMR 2010	Fail to display gambling contact cards in accordance with legislation	Penalty Notice No. 3042900035	\$550 Fine	Vasilis Floros MOSHOS	Enforced
42	17/09/11		Responsible adult leave minor unaccompanied in hotel	Penalty Notice issued by Police – Offence #8	\$330 Fine		

#	DATE	OFFENCE	PARTICULARS	LEGAL PROCESS	OUTCOME	DEFENDANT	SDRO STATUS
OFFENCES DETECTED BY NSW POLICE OFFICERS DURING RELEVANT PERIOD							
43	17/02/12	Fail to comply with requirement under clause 59(4) GMR 2010	Employ/continue to employ person without recognised RCG certification	Penalty Notice No. 3050197417	\$1,100 Fine	Silk Hotels Pty Limited	Enforced
44	17/02/12	Fail to comply with requirement under clause 54 GMR 2010	Not display gambling contact cards clearly seen when approaching bank of gaming machines	Penalty Notice No. 3050197408	\$550 Fine	Silk Hotels Pty Limited	Enforced

67. On 31 July 2014, the legal representative for the Applicant provided the Authority with copies of the objections Police had previously made to Authority licensing staff on 27 May 2014 in relation to the application to transfer the licence from Silk Hotels Newcastle to Rightclick (**Objection**).

[The Authority notes that Police rely on those submissions in relation to the section 51 Application and Complaint that are pending determination.]

68. The Objection is made on the basis that the sole director of Rightclick, Mr Georgios Emmanouilidis, has been involved in the running of (or been present at, in some official capacity) the Premises during the Relevant Period upon which the Application and Complaint before the Authority are based.
69. The Objection comprises a one (1) page Cover Submission signed by Detective Acting Inspector Robert Waugh and a further 89 pages of supporting evidence or other material, being the full text of 31 COPS Reports that note Mr Emmanouilidis as being present at the Premises at the time of each incident reported in the COPS Report.
70. Briefly, the Cover Submission makes the following observations and contentions:
- (i) Police note that there is currently a section 51 Application and a section 139 disciplinary Complaint before the Authority in relation to the Premises.
 - (ii) Police object to the transfer of the licence from Silk Hotels Newcastle to Rightclick, as the sole director of Rightclick, Mr Georgios Emmanouilidis, "has been connected with the running of the Silk Hotel since September 2010".
 - (iii) Police submit that Mr Emmanouilidis "has been spoken to by Police" from 2010 until August 2013 as he has been "the person spoken to during business inspections or a victim of assault and witness to assaults at the Hotel".
 - (iv) Police "hold grave concerns" that, if the Transfer Application is granted by the Authority, then the Premises would "continue to run and continue to show non-compliance of the *Liquor Act 2007*, and continue to be a venue with a high number of assaults and anti-social behaviour connected with the running of the Premises".
 - (v) Police submit that the Transfer Application should not be provisionally approved "until all current applications before [the Authority] are finalised".

FINAL SUBMISSIONS FROM BUSINESS OWNER DATED 8 AUGUST 2014

71. The Authority provided Mr Emmanouilidis and Mr Moshos with the updated Police Offence Summary Table and copies of the Police Objection to the Transfer Application (**Police Objection Material**) and invited any final submissions on those matters as they concern the Application and Complaint before the Authority.
72. No submission was made by Mr Moshos.
73. On 8 August 2014, Mr Emmanouilidis made the following further submissions to the Authority:
- (i) The Applicant has compiled an Evidence Matrix where there are 125 COPS Events that the Applicant has referred to as being relevant to issues in the Application and Complaint.
 - (ii) In the Objection, there are 31 COPS Events that the Applicant has referred to as being relevant to issues pertaining to the licence in the transfer application.
 - (iii) Only two (2) of these 31 COPS Events referred to in the transfer application are also relied upon by the Applicant in the 125 COPS Events considered in the Evidence Matrix submitted on 11 December 2013 in support of the Application and Complaint.
 - (iv) Mr Emmanouilidis submits that over four (4) years, there has been contact between Police and himself at the Premises on 31 occasions, yet on only two (2) of these occasions have Police “suggested that there has been any conduct by *any* persons in or about the [Premises] that give rise to cause for concern on licensing issues”.
 - (v) Mr Emmanouilidis concedes that, as he advised at the Conference on 2 July 2014, he “had a presence at times at the [Premises] as an employee” before Rightclick became Business Owner in late 2012 or early 2013. However, he submits that the objective Police records “do not establish that [his] presence was a cause for concern”, but rather that he had a “positive and productive influence at the Hotel”.
 - (vi) Mr Emmanouilidis refers to several of the COPS Events relied upon by the Applicant in the Objection and submits that, “for all COPS Events where an inspection was undertaken by Police and I was the contact person, Police invariably state there were ‘no issues’ of concern identified at the licensed premises”.
 - (vii) Mr Emmanouilidis also submits that “nowhere in either the [Application or Complaint or Objection] do Police suggest that I was ever contacted in relation to issues of concern or that my conduct was a cause for concern in their dealings with me”.
 - (viii) Mr Emmanouilidis “understands” that the Authority conducts itself in an “informal manner and is not bound by the rules of evidence”, but submits that the Authority “does take guidance from the ‘rules of evidence’ and judicial principles”.
 - (ix) Mr Emmanouilidis refers to the “fundamental principle” in *Australian Securities and Investments Commission v Hellicar* [2012] HCA 17 that “disputed questions of fact must be decided by a Court according to the evidence that the parties adduce, not according to some speculation about what other evidence might possibly have been led”.

- (x) Mr Emmanouilidis “does not understand why” the Applicant contends that “the venue will continue to...show non-compliance of the *Liquor Act* and continue to be a venue with a high number of assaults and anti-social behaviour connected with the running of the Premises”, when an analysis of the evidence provided in support of this opinion “directly contradicts any basis for the Police to have such an opinion” and is “mere speculation”.
- (xi) Mr Emmanouilidis concludes by expressing his intention to “work with Police to make [the Premises] the 'leading light' of establishments in the Newcastle CBD” and submits that “the facts tendered by Police show that this is an attainable goal”.

EVIDENCE MATRIX

- 74. The core of the Applicant's case for revoking the ETA is set out in an “Evidence Matrix” submitted with the Application, which is a spreadsheet summarising **162** adverse incidents or Events that the Applicant has linked to the operation of the Premises or its patrons.
- 75. These Events linked to the Premises are detailed in COPS Reports, which the Authority notes typically comprise contemporaneous reports entered into the NSW Police Computerised Operational Policing System database by individual Police officers.
- 76. COPS Reports usually provide a narrative of observations made by Police while engaging the person or persons who are the subject of the Event in question and may also record reports of the incident provided to Police by the victim of an alleged offence or witnesses to the Event. COPS Reports will usually indicate the time and date when the Event occurred and (if the Event is alcohol related) the extent to which the person(s) engaged with by Police were affected by alcohol.
- 77. The Authority has identified those Events that it is satisfied have occurred, on the balance of probabilities, *and* that are reasonably attributable to the exercise of the ETA in light of the Authority's own analysis of the available supporting evidence or other material provided by the Applicant for each Event.
- 78. The Authority notes that neither Mr Moshos nor Mr Emmanouilidis have provided any detailed response to the Events attributed by Police to the exercise of the ETA.
- 79. The Authority has read the full text of COPS Reports and any other material pertaining to each of the Events relied upon by Police. In determining which Events to find and accept as relevant, the Authority was conscious that the Application concerns the public interest in maintaining the extended trading period at the Premises. The Authority has only had regard to those Events that occurred during the extended trading period or related to the attraction of participants in the Events to the extended licensed trading period exercised by the business operating on the Premises.
- 80. Not all of the “found” Events involved matters occurring on the Premises. By way of explanation, for the purposes of this decision the Authority has proceeded on the basis that:
 - 1. Incidents involving disturbance, public urination and other “offensive behaviour” Events occurring off the Premises should be attributed only if:
 - a. there is sufficient evidence or material that the last place of consumption of alcohol was the Premises **AND**
 - b. there is reasonable proximity in time to the last consumption at the Premises **AND**

- c. there is reasonable proximity in distance between the place of occurrence of the event and the Premises.
2. A “move on” direction or licensing offence committed by a person off the Premises should be attributed only if:
 - a. there is sufficient evidence or material that the Person of Interest (POI) was on the Premises or seeking access to the Premises during late hours **AND**
 - b. the POI was engaging in alcohol related disturbance or other significant misconduct in a public place prompting Police intervention **AND**
 - c. there is reasonable proximity in time between when the POI was on or at the site of the Premises and the extended trading period **AND**
 - d. there is reasonable proximity in distance between the place of occurrence of the event and the Premises.
 3. In determining the Application, the Authority is concerned as to whether, on the balance of probabilities, alcohol related violence or anti-social conduct actually occurred and, if so, whether there is a reasonable nexus between that occurrence and the exercise of the ETA. The fact that an incident also involved the licensee or its servants or agents doing what the law required of them is relevant, but does not exclude that incident from the Authority’s consideration in the context of a section 51 application. The Authority’s concern is whether alcohol related violence or anti-social conduct *actually occurred* and, if so, whether there is a reasonable nexus between that occurrence and exercise of the ETA, not simply how the licensee acted, unless the licensee or staff also acted improperly.
- 81.** In summary, of the **162** Events presented by Police in the initial Application, the Authority is satisfied that **96** Events are reasonably attributable to the exercise of the ETA. These 96 “found” Events occurred over a period extending from March 2010 to November 2013 (the **Relevant Period**).
- 82.** Briefly, the “found” Events attributable to the ETA over the Relevant Period and noted in the Evidence Matrix may be broken down into the following Event categories:

EVENT CATEGORY	EVIDENCE MATRIX NUMBER
Assault (31)	#5, #10, #12, #14, #16, #21, #28, #31, #34, #38, #39, #57, #59, #66, #68, #69, #86, #89, #90, #92, #98, #109, #111, #115, #117, #125, #146, #150, #159, #160, #162
Licensing offences, including fail to quit licensed premises or the vicinity (22)	#2, #3, #4, #7, #19, #24, #35, #36, #46, #63, #74, #75, #87, #95, #102, #112, #124, #127, #132, #149, #155, #158
Street offences (16)	#1, #17, #20, #25, #27, #29, #40, #42, #45, #53, #55, #64, #81, #82, #93, #97
Move on directions (12)	#9, #26, #30, #41, #44, #47, #48, #76, #78, #80, #122, #131
Crowd control/management – riot and affray (5)	#15, #56, #60, #129, #140
Intoxicated persons (4)	#37, #77, #105, #113
Business inspections (3)	#22, #79, #83
Assault Police (2)	#43, #67
Miscellaneous – remain on enclosed lands (1)	#11

- 83.** The Authority is satisfied, on the basis of the COPS Reports contained in the Police Objection Material provided to the Authority in response to Mr Emmanouilidis’ application to transfer of the licence to his company, that a further two (2) incidents of assault were recorded as occurring on or near the Premises *and* were attributable to the exercise of the ETA, as evident from COPS Event numbers E52748819 and E180032194.

84. The Authority is also satisfied that one (1) further incident involving an adverse business inspection in relation to the failure of the Licensee to provide security guards in accordance with the conditions of the licence occurred over the Relevant Period and was attributable to the exercise of the ETA, as evident from COPS Event number E138007598.
85. The Authority is satisfied, on the basis of all of the COPS Reports and accompanying material provided by the Applicant, that a *total* of ninety nine (99) found Events occurring over the Relevant Period are reasonably attributable to the exercise of the ETA attaching to the licence.

REASONS

86. The Authority is satisfied, on the basis of the Police submissions, that the maximum patron capacity of the Premises is 178 persons. It is a medium scale licensed venue in relative terms that by choice trades primarily during the evening, and has only recently started to engage in daytime trading. That is, the mode of operation of the licensed business has typically been skewed toward night time patronage in recent times. The designated primary business activity, as recorded on the licence, specifies that the Premises operates as a "full" Hotel.
87. The Authority is satisfied on the balance of probabilities, having regard to the COPS Reports and other accompanying material provided by the Applicant and having considered the submissions from Mr Moshos and Mr Emmanouilidis, that 99 of the 162 Events that are indicated in the Evidence Matrix and other materials submitted by the Applicant actually occurred and are attributable to the Premises and relate directly to the exercise of the ETA (**found Events**). The criteria applied to determine attribution to the Premises and exercise of the ETA are set out in paragraph 80 above.
88. The Authority is satisfied that these found Events primarily occurred over a substantial and recent period of operation of the licensed business extending from March 2010 to November 2013. The Authority notes that the Hotel has not been trading since March 2014.
89. The Authority observes, generally, that the COPS Reports relied upon by Police comprise contemporaneous reports made by individual Police officers who have considerable experience in the assessment and identification of intoxicated persons.
90. Even if the Authority were not satisfied that all of the found Events had actually occurred, the number of found Events and their nature are such that the Authority would not come to any different determination of the public interest in the circumstances. The number of found Events is substantially more than sufficient to warrant the decision set out below.
91. The number of found Events and their nature give the Authority serious cause for concern as to the extent of alcohol related anti-social conduct (including but not limited to alcohol related violence) that is being caused or affected by or associated with the relevant extended trading period.
92. Mr Emmanouilidis has referred to the Scheme for "declared premises" under schedule 4 to the Act, arguing that the Premises has never been declared a "Level 1" or "Level 2" premises for the purposes of the schedule 4 Scheme.
[The Authority notes that as of 1 June 2014 the Premises is actually classified as a "Level 2" declared premises for the purposes of schedule 4 to the Act.]
93. However, Schedule 4 to the Act is only concerned with identifying and imposing special licence conditions upon licensed premises that experience the prescribed number of acts of

violence committed *on the premises* during the preceding "round", that is, the relevant 12-month period. That scheme is not concerned with other forms of alcohol related disturbance, such as acts of violence committed by patrons *after leaving a licensed premises*, or the broad spectrum of alcohol related anti-social conduct in which patrons of licensed premises may engage. Further, it is not concerned with a persistent pattern of anti-social behaviour over an extended period of time.

94. During the Relevant Period there has been a demonstrated and sustained history of violence perpetrated either on the Premises or near the entry to the Premises or in other public places instigated by the misconduct of the venue's late trading patrons or (in some cases) prospective late trading patrons.
95. Relevantly, the patrons of this venue are apparently regularly participating in a range of other alcohol related anti-social conduct that adversely impacts local amenity and gives rise to disturbance to the neighbourhood to an extent that requires the intervention of Police. This includes acts of offensive conduct committed off the Premises; public drunkenness committed off the Premises; quarrelsome or disorderly behaviour committed at or near the entry to the Premises; and failing to quit or leave the vicinity of the Premises when lawfully directed to do so by either venue security staff or Police.
96. The Authority notes with concern that the Premises has in recent months been the subject of three (3) applications for Short Term Closure Orders brought by Police under section 82 of the Act as a consequence of the detection of numerous serious breaches of the licensing legislation, including the sale or supply of liquor to minors and permission of intoxication on the Premises. These are all matters that are relevant to an assessment of whether the continuation of extended trading is in the public interest, given that the evidence before the Authority clearly establishes that extended trading brings with it an increased risk of the abuse of alcohol and the occurrence of alcohol related anti-social conduct as this Hotel trades into the early hours of the morning. The Authority is satisfied that over the Relevant Period the Premises and its patrons or prospective patrons have frequently been involved in adverse incidents that exhibit the potential for increased alcohol related harm, demonstrated by the number and nature of Events found by the Authority.
97. The Events found by the Authority are often marked by significant intoxication levels of the person or persons involved at the time those persons came into contact with Police – which is either while they are still on the Premises or, more commonly, shortly after their removal or departure from the Premises. The persons involved in the found Events are often recorded to have been engaging in drunken and disorderly conduct to an extent that requires intervention by Police.
98. Most of the alcohol related anti-social conduct that is depicted in the found Events occurred in neighbouring streets within the Newcastle central business district after patrons had been drinking on the Premises and had either left of their own accord or in some cases had been excluded due to their level of intoxication or misconduct.
99. Mr Emmanouilidis contends that the licensed business, over the past few years, has had a "good trade overall". However, the Application, Evidence Matrix, Offence Summary Table and accompanying material satisfies the Authority that numerous incidents involving non-compliance with licence conditions or other legislative requirements have been detected by Police or OLGR Inspectors and have resulted in the issue of numerous Penalty Notices or Compliance Notices (written warnings) in relatively recent times, from March 2010 to November 2013 – during both the current and former business ownership of the hotel that operates on the Premises and while Mr Emmanouilidis himself was employed at the Premises.

100. There are multiple Events found by the Authority where patrons who have been on the Premises during late hours have reached the point of intoxication and require removal from the Premises by venue staff, creating disturbance outside the Premises when refusing to accept their exclusion. In some cases they have been observed by Police to be intoxicated and it was the presence of Police that prompted the removal of the persons involved.
101. The large number of found Events involving intoxicated patrons engaging in offensive conduct, requiring Police intervention and creating disturbance demonstrates, in the Authority's view, that there is a persistent problem with patrons of the venue drinking to the point of intoxication, requiring their ejection. There is an apparent inability of the measures taken by the licensed Premises to manage that persistent problem during high risk late trading hours. The three applications made by Police for Short Term Closure Orders on the basis of permission of intoxication on the Premises and other serious breaches of the Act further satisfy the Authority of this view.
102. The found Events also disclose a persistent problem with alcohol affected patrons or prospective patrons who show little respect for venue security staff or Police when refused entry or directed to leave the Premises or its vicinity. These people are failing to quit and engaging in alcohol related acts of disturbance or offensive conduct to a point that creates disturbance and requires Police intervention.
103. In addition to those found Events involving patrons who have been on the Premises before engaging with Police, a minority of Events found by the Authority demonstrate a persistent problem with unruly persons who are apparently *attracted* to the venue by reason of the type of business that operates at this location and its late trading hours. Both men and women have engaged in acts of violence or disturbance, failing to quit the vicinity and/or resisting or impeding Police officers or venue security staff in the conduct of their duties.
104. Any licensed premises may generate patrons who are high spirited and become rowdy or make some noise before or after leaving the venue. However, over the Relevant Period this Premises has persistently generated and attracted patrons whose conduct during late hours is offensive, intimidating, disturbing to the quiet and good order of the neighbourhood and a risk to themselves and others – including Police, staff and contractors working on the Premises.
105. While the Licensee, Business Owner, its staff and its contractors are not *prima facie* "at fault" for denying entry to or ejecting intoxicated or aggressive persons, section 51(9)(b) of the Act, unlike the disciplinary provisions of the Act, is not directed to attributing "fault" to a licensee but rather toward the proper regulation, in the public interest, of liquor related authorisations attaching to individual licensed premises.
106. The Authority notes and accepts the current Business Owner's intention to "actively participate" in the Newcastle Liquor Accord, in which the Premises is a participant – however it is clear that found Events involving offensive conduct, licensing offences (committed by patrons as distinct from the licensee) and other acts of alcohol related disturbance requiring Police intervention have continued to occur notwithstanding Mr Emmanouilidis' acquisition of the business in July 2013.
107. Mr Emmanouilidis is not a stranger to the business. According to his own evidence he has worked on the Premises including during late hours since 2010. As the company director of the Business Owner, Mr Emmanouilidis has held rights to occupy the Premises since July 2013 and adverse Events have continued during that time. In particular Events that have instigated the making of three Short Term Closure Order applications have occurred while Mr Emmanouilidis' company has been the Business Owner.

108. The Authority further notes that the licence is already subject to the imposition of numerous conditions that were imposed by the former Liquor Administration Board in April 2008 in response to a disturbance complaint brought by Police against numerous late trading licensed venues in the Newcastle Central Business District. The Former Licensee (Silk Hotels Pty Limited) and approved manager (Mr Vasilis Moshos) have committed several breaches of a condition requiring the maintenance of a 1:30am lockout, notwithstanding the imposition of that licence condition, as evident from items #11 through #19 and item #26 of the Offence Summary Table and accompanying material.
109. The Applicant has established on the material before the Authority that the hotel business operating on the Premises has demonstrated a systemic disregard for compliance matters, as evidenced by a pattern of repeated offences committed by the Former Licensee, Silk Hotels Pty Limited, and its successor, the current Licensee Silk Hotels Newcastle – both of which were owned and controlled by Mr Vasilis Moshos, who was the sole director of both corporate entities at all relevant times.
110. The Authority is satisfied that the Applicant has also established a number of offences committed by Mr Vasilis Moshos in his capacity as approved manager of the Premises and his temporary replacement, Mr Joseph Lannutti, who was approved manager of the Premises from 8 October 2013 to 11 December 2013.
111. Additionally, the disqualification by Newcastle Local Court of the director of the Corporate Licensee and approved manager of the Premises, Mr Vasilis Moshos, from managing a licensed premises for a period of 12 months until 31 March 2015 due to a pattern of numerous recurring breaches of the gaming and licensing legislation satisfies the Authority that the adverse compliance and management record of the Premises is not merely an irregularity, but demonstrative of a systemic disregard for the regulatory regime currently in operation for licensed premises.
112. The Authority notes that this pattern of offences against the Act and breaches of the Regulation has continued since the acquisition of the Hotel business by Rightclick, a company that is owned and directed by Mr Georgios Emmanouilidis. On the basis of documents before the Authority, Mr Emmanouilidis acquired the business and took possession of the Premises on 23 July 2013.
113. The Application before the Authority is *licence* related. That is, it does not turn upon who is controlling the licence at relevant times, but whether the continuation of extended trading hours is in the public interest at this time.
114. The Authority accepts that Mr Emmanouilidis controls the hotel business and accepts, for the purposes of this decision, that Mr Emmanouilidis and the brother of Mr Vasilis Moshos, Mr Anthony Moshos, now control the sole shareholder in the Premises Owner company.
115. However, the matters found by the Authority are ongoing and extremely serious and the Authority is not satisfied that the measures taken by Mr Emmanouilidis – which primarily concern the removal of Mr Vasilis Moshos from involvement with the licensed business (a matter which was, in any event, mandated by an Order of Newcastle Local Court dated 31 March 2014) – provide a persuasive basis for refusing the Application.
116. The Authority is satisfied that granting this Application is in the public interest by reason of the number and nature of adverse found Events that the Authority has found to be attributable to the exercise of the ETA attaching to the licence over a prolonged period.
117. The Authority notes that the Police Objection Material provided to the Authority on 31 July 2014 includes some 31 COPS Reports establishing that Mr Emmanouilidis was on the

Premises when Police attended the Hotel for various purposes. 16 of those Reports concerned late trading hours. Mr Emmanouilidis conceded during the Conference that he was aware of some of the adverse matters relating to the exercise of the ETA and that he has worked at the Hotel during late hours since 2010 before acquiring the business.

118. The Authority is satisfied, on the basis of COPS Reports and other material provided by the Applicant that Mr Emmanouilidis is likely to have been on notice of at least some of the alcohol related disturbance incidents occurring during late hours and linked to the operation of the Premises or the conduct of its patrons as detailed in the Application. In fact in eight (8) cases Mr Emmanouilidis was the reported victim of an act of violence or intimidation: COPS Events numbers E52748819, E180032194, E138007598, E52765477, E52853741, E52512047, E98119301 and E50691787.
119. Mr Emmanouilidis argues that he was not on notice of the entirety of regulatory problems pertaining to the Hotel until he was provided with a copy of the Application material. While the Authority accepts that he may not have been on notice of all the Events now disclosed in the Application, any reasonably diligent party acquiring a hotel business would be expected to perform sufficient searches of Authority and OLGR records to inform itself, before acquiring the business, of the recent history of regulatory action, including the issue of Penalty Notices or prosecutions mounted by Police or OLGR, in relation to the licence.
120. The regulatory history of a premises is crucial to the continued operation of a licensed premises by reason of the “three strikes” scheme in Part 9A of the Act and the violent venues scheme in Schedule 4 to the Act. If Mr Emmanouilidis was not aware, he should have been aware of the great many prosecutions commenced and Penalty Notices issued by Police in relation to the licence over recent years, including action taken while his company was the Business Owner. He should have been aware that the Premises is a Level 2 declared premises for the rate of violence on the Premises.
121. If Mr Emmanouilidis was not aware of the extent of those problems, this does not engender confidence in Mr Emmanouilidis' submissions to the effect that, as he is now responsible for the business and the Premises, there is no reason to take action against the ETA.
122. Mr Emmanouilidis has not provided positive evidence or submissions identifying any substantial measures that he has implemented, as business owner since July 2013, to reduce the scope for the Hotel's late trading to generate alcohol related disturbance during late hours. He primarily relies upon his stated action to remove Mr Moshos from involvement with the hotel's operations. The Authority notes that Mr Moshos' removal from his position of Approved Manager has, in any event, been mandated by Order of the Local Court for 12 months.
123. During the Conference Mr Emmanouilidis pointed to his degree in business in support of a submission that he has the knowledge and ability to meet the challenges of running a late trading hotel with this record - yet those studies do not include any focus on licensing legislation or liquor licensing regulation more generally. The Authority accepts that Mr Emmanouilidis has completed the RSA and RCG short courses, as advised after the Conference.
124. Notwithstanding his studies, in written and oral submissions, Mr Emmanouilidis has made several arguments (for example, that the hotel has traded until 3:00am since 1937, that he has been provisionally approved as the licensee and that the hotel has a good trading record because it is not a Schedule 4 “declared premises”) that betray a basic lack of understanding of licensing legislation as it applies to the Premises and more generally.

125. In light of the Authority's findings that Mr Emmanouilidis was aware of at least some of the problems with patron behaviour pertaining to late trading and, in the alternative, that he *should have been aware* of the substantial adverse regulatory history of the licence before acquiring the business, the Authority does not have confidence that Mr Emmanouilidis' control of the hotel will bring with it such a change in circumstances as to displace a clearly established public interest case to take action with respect to the ETA.
126. While Mr Emmanouilidis has argued that he should not be "punished" for the conduct of the Former Licensee or Licensee, this Application does not concern the "punishment" of any party but the public interest in whether the ETA should be revoked at this time.
127. In this Application the Authority has been provided with a compelling *premises specific case* for taking action with regard to the *extended trading authorisation* attaching to this *licence*. The Authority must consider the Application made by Police on its merits and has done so in light of the competing submissions made by Mr Moshos and Mr Emmanouilidis.
128. The Authority emphasises, again, that its decision is not based on any particular found Event or type of found Event (for instance, Events involving violence, Events involving breaches of liquor legislation by patrons or Events involving intoxication and anti-social behaviour). Rather, it is the overall pattern of the found Events and the various types of found Events identified that, taken together, have caused the Authority to form a particular view as to what the public interest requires.
129. The Authority has noted Mr Emmanouilidis' submission that he has joined the Newcastle Liquor Accord (the Silk Hotel is designated as a mandatory participant in this Precinct Liquor Accord). The Authority has also had regard to the numerous conditions imposed upon the licence. However, the Authority is satisfied on the material before it that a *premises specific* regulatory response is now required – over and above those measures. The Authority does not accept that it is in the public interest to take no action in relation to this Premises.
130. The Authority is satisfied that it is now in the public interest to take regulatory action to reduce the capacity of *this particular licensed premises* to give rise to alcohol related violence, offensive conduct, disturbance or other forms of alcohol related anti-social conduct perpetrated by patrons and prospective patrons. That conduct has been demonstrated on a consistent basis over a substantial and recent period.
131. The Authority is not satisfied that such conduct is unlikely to continue unless action is taken to revoke the existing extended trading authorisation, thereby ceasing the capacity of the Premises or its patrons to adversely impact the public interest during late trading hours.
132. After careful deliberation, that is an outcome that balances the expectations of the community for late night entertainment with the public interest in reducing the capacity of *this* Premises to generate late night alcohol related disturbance.
133. The Authority has considered Mr Emmanouilidis' submission that revoking the ETA would "operate as a restraint of trade" and would have an adverse economic impact upon the business. The Authority accepts that some adverse impact is likely to flow to the business and the Premises from revoking the ETA.
134. However, Mr Emmanouilidis has not provided any evidence or analysis, independent or otherwise, as to the extent of adverse economic impact that revoking the ETA will have upon the business or the Premises or how such matters are relevant to the objects or considerations under section 3 of the Act. Nor did he provide any submissions or evidence (having now informed the Authority of his interest in the sole shareholder company in and

his directorship of the Premises Owner company) as to any adverse impact that may flow to the Premises Owner from revoking the ETA.

135. The Authority notes that the mode of operation of this hotel (that is, skewing the business toward late trading) is a commercial matter that the business owner can control. In any event, while the viability of this hotel is something that the Authority takes into account, it cannot dictate the public interest to the exclusion of other considerations.
136. While the trading hours of the licensed business on the Premises have typically been targeted toward night time patronage, the Authority notes that, prior to its indefinite closure in March 2014, it had commenced trading during the day. The Authority is satisfied that the licensed business has the capacity to continue to derive revenue from the sale of liquor and the provision of other hospitality and entertainment services during daytime and evening trading until 12:00 midnight six (6) nights per week and until 10:00pm on Sundays.
137. Mr Emmanouilidis' understandable desire to maximise the profits or value of the hotel is not, in the Authority's view, sufficient to displace the public interest in favour of revoking the ETA to minimise the substantial alcohol related harm that arises from the operation of the Premises.
138. The Authority accepts that there is strong consumer demand from locals and tourists alike for this type of late licensed venue in Newcastle, but those expectations are displaced by the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour). Further the Authority is aware that many other licensed premises in the Newcastle central business district are and remain capable of meeting this consumer demand whether or not the Premises continues to trade after midnight.
139. The Authority rejects Mr Emmanouilidis' submission that revoking the ETA will create a late trading "monopoly" for another nearby hotel, and notes the numerous late trading hotels currently operating in the Newcastle central business district, as detailed by the Applicant.

DECISION

140. In making this decision the Authority has had regard to all of the objects and statutory considerations prescribed by section 3 of the Act, and has given weight to section 3(2)(a) of the Act – the need to minimise harm associated with the misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour) – and section 3(2)(c) of the Act – the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of the community.
141. The Authority has decided to revoke the extended trading authorisation attaching to licence number LIQH400117485 with effect from **12:01am on Saturday 11 October 2014**.

Yours sincerely



Micheil Brodie
Chief Executive
for the **Independent Liquor and Gaming Authority**

09 October 2014