



Our Ref:

Mr Darren Hickey
Licensee
(or the person apparently in charge of the premises)
Exchange Hotel
34 Oxford Street
DARLINGHURST 2010

By email

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16 January 2015

**Notice of Short Term Closure Order
Section 82 Liquor Act 2007
Exchange Hotel, Darlinghurst
Liquor Licence Number LIQH400102224**

Dear Sir

I refer to the Authority's Notice of Short Term Closure Order communicated to you on the evening of 15 January 2015 by solicitors for NSW Police, Henry Davis York.

The Notice concerned an application (**Application**) made by Superintendent Bernard Ryan of the Surry Hills Local Area Command of NSW Police under section 82 of the *Liquor Act 2007* (**Act**) seeking the issue of a Short Term Closure Order in relation to the Exchange Hotel located at 44 Oxford Street Darlinghurst (**Premises**).

The Applicant alleges, on the basis of the material provided in support of the Application, that a serious breach of the Act has occurred, or is likely to occur, including:

- (i) a breach or breaches of section 74(3) of the Act
- (ii) a breach or breaches of section 74(4) of the Act
- (iii) a breach or breaches of section 11 of the Act in respect of a condition currently on the licence requiring the preparation and implementation of a strict drug policy for the Premises.

and that closure of the Premises for a period of 29 hours from 5.00 am this Saturday 17 January 2015 to 10.00 am Sunday 18 January 2015 (**Relevant Period**) is necessary to prevent or reduce a significant threat or risk to the public interest for the purposes of section 82 of the Act.

The Notice was accompanied by the entire Application material relied upon by Surry Hills Police (**Application Material**).

The Authority has received submissions from the licensee's solicitor, Mr Don McDougall, submitted via email at around 4pm on 16 January 2015. The Authority notes an exchange of email correspondence between Mr McDougall and solicitors for the Police on the afternoon of 16 January 2015.

Mr McDougall submits that the Authority should not find, on the material before it, that the Applicant has proven that the Applicant holds the requisite delegation from the NSW Commissioner of Police and it follows that the Authority does not have jurisdiction to make the Order sought by the Applicant.

During the course of that correspondence Henry Davis York provided the Authority and Mr McDougall with an instrument of delegation issued by the NSW Police Commissioner, Andrew Scipione dated 4 March 2014 which delegates power under section 82(2) of the Act to all officers of, or above, the rank of inspector. They submit that the Applicant falls within that class of officer and also refer to section 49(5) of the *Interpretation Act 1987* which provides that a delegated function that purports to have been exercised by a delegate shall, until the contrary is proved, be taken to have been duly exercised by the delegate.

DECISION

The Authority is satisfied, on the basis of the Application (which specifies that the Applicant holds the rank of Superintendent) and the instrument of delegation, that the Applicant does in fact hold a current delegation to make the Application. The Application is valid.

The Authority is satisfied, on the balance of probabilities and on the basis of the Application Material that a serious breach of the Act, being a contravention of a licence condition requiring the implementation of a strict drug policy for the Premises, contrary to section 11(2) of the Act, has occurred and/or is likely to occur and that closure of the Premises for a period of 29 hours from 5.00 am this Saturday 17 January 2015 to 10.00 am Sunday 18 January 2015 is necessary to prevent or reduce a significant threat or risk to the public interest for the purposes of section 82 of the Act.

The Authority notes that (subject to its submission on the Authority's jurisdiction) the licensee does not oppose an Order closing the Premises for the Relevant Period. The licensee opposes an alternative Police proposal that the licensee consent to the imposition of new licence condition that would require the implementation of a strict drug policy approved by the Local Area Commander of Police. This position is taken on the basis that such condition is already in effect and the current plan was prepared in consultation with Police. The licensee further submits that section 82 of the Act does not contain a power to impose licence conditions.

By way of a brief submission letter made through his solicitor the licensee emphatically denies that he or his staff are aware of or permit the sale, supply or possession of prohibited substances on the Premises.

The licensee concedes that he has been made aware of evidence of the use of prohibited substances on the Premises by his staff, particularly cleaners when working in the toilet areas of the Premises. The licensee submits that a nightclub promoter named by Police in the Application has confirmed that he has recently been charged with drug offences and has been directed by the licensee not to attend the Premises.

Nevertheless, the Authority is satisfied, on the basis of the Application Material that:

- (i) During 2013 the licensee was issued with a Penalty Notice following the detection by Police of a contravention of the strict drug policy licence condition. This Penalty Notice is noted in the regulatory record provided by Police for the licensee.
- (ii) The licensee has been issued with Penalty Notices on five further occasions during 2014 with respect to the detected contravention of other licensing requirements (including, notably from a security perspective, CCTV requirements), which provide a further, albeit general cause for concern as to the adequacy of the licensing compliance practices maintained in respect of the Premises. These Penalty Notices are noted in the regulatory record provided by Police for the licensee.
- (iii) The Application Material also provides an extract of Police business records summarising 28 reports on the Computerised Operational Policing System reports database (**COPS Reports**) regarding the detection by Police of prohibited drugs on the Premises from January 2013 to December 2014. While the full text of those COPS Reports have not been provided, and evidence or material establishing the detection of drugs is not necessarily evidence of permission by staff or agents, this material provides a basis for the Authority's satisfaction that prohibited substances are being regularly taken onto the Premises, when considered alongside the licensee's acknowledgement that evidence of drug use is being detected by his staff.
- (iv) COPS Reports for two incidents on 11 January 2015 satisfy the Authority that Police have very recently detected persons either on the Premises or near the Premises (after being on the Premises) who were intoxicated by prohibited substances to a point where they required the assistance of an ambulance. The Authority notes that Police have considerable experience in dealing with persons intoxicated by alcohol and/or recreational drugs such as ecstasy and methamphetamines and accepts, for the purposes of this Application, the contemporaneous observations recorded in those COPS Reports that patrons were displaying behaviour consistent with use of prohibited drugs. One of these patrons admitted to taking drugs while on the Premises.
- (v) A COPS Report for an incident on 10 January 2015 records contemporaneous observations of numerous apparent drug affected patrons and records a description given to Police by the manager on duty with regard to drug control practices that were not compliant with the drug policy of the Premises.
- (vi) As contended in the Particulars of the Application and not disputed by the licensee, a nightclub promoter/contractor Mr Randal Morris (engaged by the licensed business to provide entertainment services to the hotel including the regular **Exile** events held on the Premises) and his associate Mr Mark Tuckwell were charged on 4 January 2015 with prohibited drug offences that were detected by Police while on the Premises. Mr Morris was charged with supply of gamma-Butyrolactone (**GBL**) and Methamphetamine while Mr Tuckwell was charged with possession of GBL.

NOTICE OF ORDER

The Authority orders the licensee, under section 82(2) of the Act that the Premises be closed for a period of 29 hours from 5.00 am this Saturday 17 January 2015 to 10.00 am Sunday 18 January 2015.

The Authority draws the licensee's attention to section 82(6) of the Act, which provides that failure to comply with an order made under section 82 is subject to a maximum penalty of 50 penalty units, 6 months imprisonment or both.

TIME OF ORDER

8.51 pm on 16 January 2015.

Yours faithfully

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

Micheil Brodie
Chief Executive
Independent Liquor and Gaming Authority