



Superintendent Paul Fehon
Mid North Coast Local Area Command
Port Macquarie Police Station
2 Hay Street
PORT MACQUARIE NSW 2444

Mr Matthew Lindeman
Lindeman Lawyers
153A Gordon Street
PORT MACQUARIE NSW 2444

The Directors
Willis Rose Pty Ltd
Business Owner
The Pier on Clarence
72 Clarence Street
PORT MACQUARIE NSW 2444

The Directors
Gillside Pty Ltd
Premises Owner
The Pier on Clarence
8/128 William Street
PORT MACQUARIE NSW 2444

feho1pau@police.nsw.gov.au
lawr1joh@police.nsw.gov.au
matt@lindemanlawyers.com.au

portmacquariegigs@hotmail.com
stephen.willisrose@gmail.com

Via email and Express Post

31 October 2016

Dear Sir/Madam

**Notice of Final Decision with Reasons on
Complaint under Part 9 of the *Liquor Act 2007* in relation to
The Pier on Clarence, Port Macquarie and Mr Adam Barbuto, Licensee**

At its meeting of 26 October 2016 the Independent Liquor and Gaming Authority finalised a disciplinary complaint made on 4 May 2016 (**Complaint**) under Part 9 of the *Liquor Act 2007* (**Act**) by a delegate of the Commissioner of the NSW Police Force.

The Complaint concerned Mr Adam Barbuto in his role as the (now former) licensee of the licensed premises known as "The Pier on Clarence", trading at Shops 1-3, 72 Clarence Street, Port Macquarie NSW 2444.

The Authority has decided, pursuant to section 141(2)(f) of the Act, to disqualify Mr Barbuto from holding a licence, being the approved manager of licensed premises or being the close associate of a licensee, with respect to any licensed premises in New South Wales, for a period of ten (10) years from the date of this decision.

The Authority has further decided, pursuant to section 141(2)(d) of the Act, to suspend Mr Barbuto's RSA Certificate for a period of six (6) months.

The Authority has also decided to take the following action in relation to the licence itself, pursuant to section 141(2)(e) of the Act:

- Impose a condition on the licence requiring that an RSA Marshal will be rostered on every night at 8:00pm.

- Impose a condition on the licence requiring that there be no sale or supply of alcohol in the form of "shots" on the Premises.
- Vary the existing condition numbered "10510" on the licence so that the cameras for the CCTV system will also expressly be required to cover all service areas on the Premises.

Enclosed is a statement of reasons for the Authority's decision. Rights to seek review of this decision by the New South Wales Civil and Administrative Tribunal are detailed at the end of that document.

Yours Faithfully

A handwritten signature in black ink, appearing to be 'DAVID ARMATI', written over a horizontal line.

David Armati
Deputy Chairperson

STATEMENT OF REASONS

BACKGROUND

Complaint Material

1. On 4 May 2016, the Independent Liquor and Gaming Authority (**Authority**) received a disciplinary complaint (**Complaint**) from Superintendent Paul Fehon (**Complainant**) of the Mid North Coast Local Area Command (**LAC**) of the New South Wales Police Force (**Police**) in his capacity as a delegate of the New South Wales Commissioner of Police.
2. The Complaint is made under Part 9 of the *Liquor Act 2007* (**Act**) against Mr Adam Barbuto, the former licensee (**Licensee**) of the licensed premises currently trading as "The Pier on Clarence", located at Shop 1-3/72 Clarence Street, Port Macquarie NSW 2444 (**Premises**).
3. The Complaint comprises a cover letter from the Complainant dated 4 May 2016 (**Complaint Letter**). It forms part of a bundle of some 449 pages of supporting evidence or material and 18 video files of CCTV footage (**Complaint Material**).
4. Attached to the Complaint Letter are **110** Exhibits which comprise over **400** pages of Complaint Material, including reports sourced from the NSW Police Computerised Operational Policing System (**COPS Reports**) of events attended by Police that either occurred on the Premises or are linked by Police to the operation of the Premises or its patrons between May 2015 and March 2016; Statements of Police in relation to these COPS Reports; Police interviews with staff and employees of the business operating on the Premises; correspondence between the Licensee, management, Police and the (then) Office of Liquor, Gaming and Racing; and other miscellaneous documents gathered during the course of the investigation which preceded the making of this Complaint.
5. The **18** video files provided by the Complainant concern CCTV footage and/or other video footage of incidents that occurred either on the Premises or on other premises or locations about the operation of the Premises or the conduct of patrons of the Premises. These files range from 7 to 48 minutes in duration and were converted to AVI format by the Authority's litigation support contractor for common reference by the parties.
6. There were several issues with the CCTV evidence. Some of the video files did not have clearly visible data references identifying the camera number or time and date settings, causing it to be difficult for the Authority to discern the particular camera angle shown at any given time. This was complicated by the fact that some sections of the Complaint Letter did not clearly link the allegations made to the specific video file provided in support of that allegation.
7. Notwithstanding these difficulties, the Authority has reviewed all of the video evidence provided by the Complainant and has made findings on that evidence, to the extent that it corroborates the allegations in the Complaint Letter.
8. As detailed in the Complaint Letter, the licensed business on the Premises operates pursuant to an on-premises liquor licence number LIQO600673792. The venue formerly operated pursuant to an Australian Wine licence under the *Liquor Act 1982*.

9. The *OneGov* record of the liquor licence for the Premises provided by the Complainant, current as of 11 December 2015, indicates that the designated primary purpose of the licensed business is stated as “wine bar”. The business is authorised to sell or supply liquor for consumption on the Premises during the following hours:

Monday	5:00am – 12:00 midnight
Tuesday	5:00am – 12:00 midnight
Wednesday	5:00am – 12:00 midnight
Thursday	8:00am – 12:00 midnight
Friday	8:00am – 12:00 midnight
Saturday	8:00am – 12:00 midnight
Sunday	10:00am – 10:00pm.

10. The Complaint Letter describes the Premises as having three discrete licensed areas:
- The main *Pier on Clarence* area which has one bar service area and where live entertainment is performed regularly.
 - The *Grape and Petal* bar area which the Complainant contends is “more of a wine and food area”.
 - The external footpath, which extends the length of the venue on Clarence Street.

Complainant’s Account of Previous Regulatory Issues

11. The Complainant contends that in late 2004 numerous disturbance and compliance issues prompted Police to file a disturbance complaint under section 104 of the former *Liquor Act 1982*. That matter was finalised in 2006 and the licensed trading hours of the Premises were reduced from 2:00am to 12:00 midnight with a number of conditions imposed upon the licence to reduce noise and address legislative compliance issues. Police advise that the (then) licensee was disqualified from holding a licence and “the majority” of the conditions imposed by the former Licensing Court and Liquor Administration Board remain on the licence at this time.
12. In October 2006, Tameeka Pty Ltd (**Tameeka**) purchased the licensed business and began trading as “The Pier on Clarence”. The Complainant contends that in around 2012, some compliance issues were observed by Police at the Premises and also at other venues controlled by Tameeka. The sole company director at the time, Mr Paul Barr, had appointed Mr Stephen Jensen as an approved manager to be responsible for the licence on the Premises and Police contend that there was a “noticeable change” in the business model – moving away from a wine bar to a cocktail bar involving the sale of cocktails, liquor in teapots, jam jars and punch bowls, and an increase in the provision of live entertainment.
13. The Complainant contends that this change in the mode of business brought about an increase in legislative compliance issues, noise disturbance and the detection of intoxicated patrons on the Premises. Police contend that as a result of this, several Infringement Notices and Court Attendance Notices were issued against Tameeka.
14. The Complainant adds that in 2013, Police filed a submission to the (then) Office of Liquor, Gaming and Racing (**OLGR**, now known as Liquor and Gaming New South Wales, **LGNSW**) seeking a direction under section 102A of the Act to restrict the types of liquor products that may be served on the Premises. The Authority notes that the outcome of that process is not in evidence.

15. The Complainant adds that Police later made a submission to LGNSW seeking the exercise of the Secretary's power under section 54 of the Act in relation to what Police contend was the "inadequate" CCTV system on the Premises and the reluctance of business management to provide CCTV footage to Police when requested. The Complainant advises that licence condition number "10510" on the licence was imposed as a result of that process on 21 January 2014. A licence condition requiring security personnel was also introduced as part of action taken by the Secretary under section 54 of the Act during April 2014.
16. The Authority notes that these previous submissions, referred to in the introduction to the Complaint Letter, were not provided as part of the Complaint Material.
17. The Complainant submits that despite this previous regulatory action, activity on the Premises has continued to increase with the marketing of live entertainment and the sale of popular drinks such as cocktails and the service of liquor in steins/pints. This increased activity and a corresponding increase in patronage resulted in greater compliance issues but the venue has failed to implement commensurate responsible service of alcohol (**RSA**) practices and deploy adequate resources to manage the adverse impacts upon local amenity from the business.
18. The Complainant states that by the end of 2014, Tameeka had entered into liquidation and was subject to a Court order [which, while not specified, is assumed by the Authority to be an order under Part 10 of the Act] disqualified that company for a period of 3 years from holding a licence by reason of numerous licensing breaches detected at three of its licensed venues in Port Macquarie.

Current Control of Licence, Business and Premises

19. The Complainant states that the current business owner is Willis Rose Pty Ltd (**Business Owner**), whose director is Mr Stephen Jensen (the previous approved manager). The current premises owner is Gillside Pty Ltd (**Premises Owner**).
20. The Complainant states that Mr Stephen Jensen, a former approved manager of the licence, has now purchased the licensed business through his company, Willis Rose Pty Ltd. Mr Paul Barr, the former director of Tameeka, informs Police that he is a "cleaner" at the venue and has no financial interest in the business, while Police contend that they have observed him "regularly" attending meetings with Mr Jensen on the Premises and carrying business records and/or banking material.
21. The Complainant states that Mr Adam Barbuto, who was appointed licensee on 4 April 2014 during the latter period of Tameeka's control is the licensee (at the time of the Complaint). He is not declared to have any financial interest in the licensed business or the Premises itself.
22. The Complainant submits more generally that the Port Macquarie CBD has a history of alcohol related crime and associated issues. Since 2008, three late trading venues in Port Macquarie have featured on the declared premises list (for the purposes of Schedule 4 to the Act) as "Level 2" premises. Under the "Three Strikes Scheme" in Part 9A of the Act, one Port Macquarie venue has incurred two "strikes" and two further venues have incurred one "strike" each.
23. The Complainant contends that the venue is the "premier location" in Port Macquarie for live bands and entertainment. It usually has live acts performing from Tuesday through to

Saturday night each week. The Complainant contends that due to recent Police concerns with compliance issues, two security guards were engaged on Friday and Saturday evenings, but “in recent weeks” there has only been one security guard observed on the Premises on Friday evenings.

24. The Complainant contends that Mr Barr still appears to have influence over the venue, along with Mr Jensen, who was also part of the previous management under Tameeka. The Complainant notes that Mr Barbuto, who was appointed by Tameeka prior to its liquidation, remains the current licensee on the record. The Complainant submits that although there have been some “administrative positional changes”, the current management are still aware of local issues and expectations and are familiar with the licence conditions.
25. The Complainant submits that despite numerous meetings with venue management including Mr Jensen (the business owner) and Mr Barbuto (the Licensee) in relation to improving compliance practices at the venue during September and October 2015, offences against the *Liquor Act 2007* continue to occur and the detection of intoxicated patrons on the Premises is “more prevalent”.
26. The Complainant submits that it was “futile to attempt to mediate when the Licensee was in denial he was supplying shots and breaching his licence conditions regularly”. The Complainant submits that “trust is broken down” due to Police having to take formal action against the venue and due to the Licensee’s alleged non-compliance with a number of requests made by Police under section 21 of the *Gaming and Liquor Administration Act 2007*.

GROUNDS OF COMPLAINT

27. The Complaint Letter specifies five (5) grounds of complaint (**Grounds**), all of which are based upon statutory grounds available under section 139(3) of the Act. Briefly:
28. **Ground 1** is based on section 139(3)(g) of the Act, which provides:

that intoxicated persons have frequently been on the licensed premises or have frequently been seen to leave those premises.
29. The Complainant contends that Police have evidence of “at least 30 individuals” who were deemed to be well to seriously affected by intoxicating liquor between May 2015 and March 2016, including patrons vomiting or becoming ill; becoming involved in violent incidents; falling over or into objects; needing assistance to walk or leave the Premises and/or passing out or falling asleep at the table. The Complainant submits that despite Police taking enforcement action on intoxication matters, the Licensee, Mr Barbuto, has continued to allow persons to become intoxicated to an “unacceptable level”.
30. In support of Ground 1, the Complainant relies upon **23** separate incidents in relation to which COPS Reports were prepared by NSW Police, or Penalty Notices or Court Attendance Notices issued to the persons involved (**Table 1** and **Table 2** in the Complaint Letter).
31. **Ground 2** is based on section 139(3)(f) of the Act, which provides:

that the licensee has engaged in conduct or activities that are likely to encourage misuse or abuse of liquor (such as binge drinking or excessive consumption).

32. This Ground of Complaint is related to Ground 1. The Complainant submits that “on most occasions” where there are intoxication issues on the Premises there “appears to be the offering and supplying of shots or nips for rapid consumption”. The Complainant submits that it is “concerning” that the Licensee, Mr Barbuto and the owner, Mr Jensen “encourage” the consumption of shots and nips among staff and patrons and consume shots and nips themselves whilst on duty.
33. The Complainant submits that despite the Licensee signing the Hastings Liquor Accord agreement, he permits and partakes in the supply of shots and nips, which are rapidly consumed. This occurs after 10:00pm, during the higher risk part of the evening and in some instances the Licensee allows this to occur as late as 11:45pm, only 15 minutes prior to the cessation of trade.
34. In support of Ground 2, the Complainant relies upon **13** separate incidents whereby shots or nips have been consumed by staff and/or patrons or other activities where drinks are rapidly consumed and are likely to result in binge drinking and excessive consumption of alcohol (**Table 3** in the Complaint Letter).
35. **Ground 3** is based on section 139(3)(b) of the Act, which provides:
- that the licensee failed to comply with any of the conditions to which the licence is subject.*
36. This Ground is focused on the condition on the licence numbered “10510” which imposes a requirement upon the licensee to maintain a CCTV system on the Premises. The Complainant notes that the (then) Compliance Director of OLGR imposed this condition on the licence in late 2013 under section 54 of the Act in response to Police concerns about the Premises not being covered adequately by CCTV cameras.
37. The Complainant submits that this condition has been breached on numerous occasions by the previous management and that despite the change in management and ownership, the Licensee has “failed” to improve compliance with this condition. The Complainant contends that the Licensee continues to have “poor quality footage, areas not covering specified parts of the licensed area and he has an uncovered area of the licensed premises which he conveniently allows patrons to enter off camera”.
38. In support of Ground 3, the Complainant refers to **Table 4** in the Complaint Letter, which lists **13** incidents where Condition “10510” on the licence has been breached and Infringement Notices or Court Attendance Notices have been issued in respect of these breaches.
39. **Ground 4** is based on section 139(3)(i) of the Act, which provides:
- that the licensee is not a fit and proper person to be the holder of a licence.*
40. The Complainant submits that the Licensee, Mr Barbuto, was involved with the previous management when Tameeka was the corporate licensee and now holds the licence in his personal capacity for the business owner, Willis Rose Pty Ltd.
41. The Complainant submits that the Licensee is not a fit and proper person by reason that:
- (a) He has committed numerous offences against the *Liquor Act*;

- (b) He has failed to cooperate with authorities and in particular, comply with powers vested in the Police for investigating liquor and gaming matters;
 - (c) He consumes liquor regularly whilst working on the Premises to the point where he has become intoxicated;
 - (d) He has personally breached the conditions of the licence;
 - (e) He has personally breached smoking laws on the same licensed premises of which he is the licensee;
 - (f) He does not adhere to the Liquor Accord Terms or the *Plan of Management* for the licensed premises of which he is the licensee; and
 - (g) He misrepresents the truth in both official statements and incident book entries, and also fails to report incidents or omits information in the incident book to suit his own agenda.
42. The Complainant relies upon the above evidence or material provided in support of Grounds 1, 2 and 3, as well as records documenting the issue of numerous Infringement Notices and Court Attendance Notices to the Licensee.
43. **Table 5** in the Complaint Letter lists a total of **18** Infringement Notices that have been issued against the Licensee for breaches of licence conditions and permitting intoxication on the Premises. **Table 6** in the Complaint Letter lists a total of **8** charges against the Licensee. The Complainant submits that 11 of the matters the subject of the charges involve the commission of “prescribed” offences for the purposes of the Three Strikes Scheme in Part 9A of the Act.
44. **Ground 5** is based on section 139(3)(s) of the Act, which provides:
- that the licence has not been exercised in the public interest.*
45. The Complainant refers to section 3(2) of the Act, which sets out the objects of the Act that are applicable to a licensee with regard to community expectations and alcohol related harm minimisation when exercising a liquor licence. Briefly, the Complainant contends that:
- The Licensee and management have not been able to minimise harm associated with alcohol supply and consumption and are in fact directly involved in causing it;
 - The Licensee has not updated the *Plan of Management* for the Premises, despite his “regular” undertakings to update and improve the *Plan* and the commission of numerous offences against the Act between March 2015 and March 2016;
 - There are “high risks of alcohol related harm to the community” associated with the Licensee, management and staff consuming and supplying liquor while intoxicated and/or encouraging intoxicated patrons to consume liquor;
 - The transcripts of Police interviews with the owner, Mr Jensen, and four other employees of the business “highlight the contempt for responsible service of alcohol, a poor understanding of the *Plan of Management* for the venue and the poor leadership and management of the Premises”.

46. In support of this Ground, the Complainant relies upon the evidence or material provided in relation to Grounds 1 to 3 of the Complaint. The Complainant also provides further evidence in the form of records of violence and related incidents at the venue, including Table 7 in the Complaint Letter which lists a total of 7 violent incidents allegedly occurring on or near the Premises between October 2014 and February 2016; footage of violent incidents on the Premises; noise from entertainment, music and patrons; and COPS Reports pertaining to disturbance issues.
47. The Complainant concludes with a submission that the Complaint Material demonstrates the “regular non-compliance and blasé attitude of the Licensee and management” and notes the extent of “delays and obstructions” experienced by Police in obtaining material from the management and staff of the venue during Police investigations. The Complainant contends that staff and management are “actively encouraging” patrons to rapidly consume liquor and displaying irresponsible attitudes towards harm minimisation.
48. The Complaint submits that the management’s non-compliance with the current conditions of the licence is highlighted by 11 prosecutions for offences against the Act, currently before the Court that Police deem to be at the “serious end of the spectrum” and which also constitute “prescribed offences” within the meaning of Part 9A of the Act.
49. The Complainant submits that despite repeated Police engagement with the Licensee, recommendations from Police are ignored or simply not met and that Police enforcement has escalated to the point where the business now has “over 40 offences” before the Port Macquarie Local Court. The Complainant submits that it is apparent that Police enforcement has “little or no effect in promoting positive change by the Licensee”.

DISCIPLINARY ACTION SOUGHT BY THE COMPLAINANT

50. The Complainant recommends that the Authority make the following orders, should the Grounds of Complaint be established:
 - (i) Order that the Licensee, Mr Adam David Barbuto, be disqualified from holding a liquor licence for such period as the Authority thinks fit; and
 - (ii) Take other disciplinary action pursuant to section 141(2) of the Act to address the ongoing mismanagement, intoxication and related concerns outlined in the Complaint.

CONSULTATION

Show Cause Notices

51. Pursuant to the consultation requirements in section 140 of the Act, the Authority sent letters via *Express Post* on 10 June 2016 to the Licensee (Mr Barbuto), the Business Owner (Willis Rose Pty Ltd) and the Premises Owner (Gillside Pty Ltd) inviting those parties to show cause by way of written submissions as to why disciplinary action should not be taken against them on the basis of the allegations raised in the Complaint.

Licensee Submission on the Merits of Complaint

52. On 10 July 2016, Mr Barbuto provided his response to the Show Cause Notice by means of a submission letter from his solicitor, Mr Matthew Lindeman of *Lindeman Lawyers*, who acts for the Licensee and Business Owner. The Licensee’s submission comprises a 7-page letter with an attached table containing more specific responses to the allegations in

the Complaint. Without purporting to restate the Licensee's submissions, the Licensee's position on the Particulars of the Complaint is briefly noted in the findings below.

Further Submission from the Complainant

53. On 23 July 2016, the Complainant provided a 33-page submission in response to the Licensee's primary submission on the merits of the Complaint. The Complainant also provided some additional CCTV footage on 25 July 2016.
54. On 26 July 2016, the Authority determined that a second round of material would not be considered, in the interests of determining this Complaint on an efficient basis. The evidence and material under consideration is confined to the initial Complaint Material and the Licensee's response of 10 July 2016.

LEGISLATION

55. Relevantly to this matter, section 139 of the Act makes the following provision for the making of disciplinary complaints in relation to licensed premises:

139 Grounds for making complaint

- (1) *A complaint in relation to a licensee, manager or close associate of a licensee may be made to the Authority by any of the following (referred to in this Part as “the complainant”):*
- (a) *the Secretary,*
 - (b) *the Commissioner of Police,*
 - (c) *a person authorised by the regulations to make a complaint under this Part.*
- (2) *A complaint must be in writing and specify the grounds on which it is made.*
- (3) *The grounds on which a complaint in relation to a licensee, manager or close associate may be made are as follows:*
- (a) *...*
 - (b) *that the licensee or manager has failed to comply with any of the conditions to which the licence is subject,*
 - ...*
 - (f) *that the licensee or manager has engaged in conduct or activities that are likely to encourage misuse or abuse of liquor (such as binge drinking or excessive consumption),*
 - (g) *that intoxicated persons have frequently been on the licensed premises or have frequently been seen to leave those premises,*
 - ...*
 - (i) *that the licensee is not a fit and proper person to be the holder of a licence (whether for the same reason as that set out in section 45(5A) or otherwise) or the manager is not a fit and proper person to be the manager of the licensed premises (whether for the same reason as that set out in section 68(4A) or otherwise),*
 - ...*
 - (s) *that the licence has not been exercised in the public interest,*
 - (t) *...*
- (4) *In subsection (3), “former Act” means the Liquor Act 1982 or the regulations made under that Act and includes, in the case of a licensee that is a registered club, the Registered Clubs Act*

1976 as in force immediately before the repeal of section 9 of that Act by Schedule 2 to the *Miscellaneous Acts (Casino, Liquor and Gaming) Amendment Act 2007*.

56. Relevantly to this matter, section 141 of the Act confers the following disciplinary powers upon the Authority should a complaint be established:

141 Disciplinary powers of Authority

...

- (2) *If the Authority is satisfied that any of the grounds (other than a criminal organisation associate ground) on which the complaint was made apply in relation to the licensee, manager or close associate, the Authority may decide not to take any action or may do any one or more of the following:*
- (a) *cancel the licence,*
 - (b) *suspend the licence for such period not exceeding 12 months (or, if circumstances of aggravation exist in relation to the complaint, not exceeding 24 months) as the Authority thinks fit,*
 - (c) *order the licensee or manager to pay, within such time as is specified in the order:*
 - (i) *a monetary penalty not exceeding 500 penalty units (in the case of a corporation) or 200 penalty units (in the case of an individual), or*
 - (ii) *if circumstances of aggravation exist in relation to the complaint—a monetary penalty not exceeding 1,000 penalty units (in the case of a corporation) or 400 penalty units (in the case of an individual),*
 - (d) *suspend or cancel any authorisation or other approval (other than the licence itself) held by the licensee under this Act,*
 - (e) *impose a condition to which the licence, or any authorisation or approval held by the licensee under this Act, is to be subject or revoke or vary a condition to which the licence or any such authorisation or approval is subject,*
 - (f) *disqualify the licensee from holding a licence, or from being the manager of licensed premises or the close associate of a licensee, for such period as the Authority thinks fit,*
 - (g) *withdraw the manager's approval to manage licensed premises,*
 - (h) *disqualify the manager from being the manager of licensed premises, or from holding a licence or being the close associate of a licensee, for such period as the Authority thinks fit,*
 - (i) *in the case of a limited licence held on behalf of a non-proprietary association—order that a limited licence is not, for a period of not more than 3 years from the date on which the decision takes effect, to be granted to any person on behalf of the non-proprietary association,*
 - (j) *disqualify the close associate from being a close associate of a licensee or the manager of licensed premises for such period as the Authority thinks fit,*
 - (k) *disqualify the close associate from holding a licence for such period as the Authority thinks fit,*
 - (l) *order the licensee, manager or close associate to pay the amount of any costs incurred by:*
 - (i) *the Secretary in carrying out any investigation or inquiry under section 138 in relation to the licensee, manager or close associate, or*
 - (ii) *the Authority in connection with the taking of disciplinary action against the licensee, manager or close associate under this section,*
 - (m) *reprimand the licensee, manager or close associate.*

- (3) *If the Authority orders a licensee or manager to pay a monetary penalty under this section and the penalty is not paid within the time specified in the order, the Authority may:*
 - (a) *cancel the licence, or*
 - (b) *suspend the licence until such time as the penalty is paid (or for such other period as the Authority thinks fit).*
- (4) *While a person is disqualified by the Authority from being a close associate of a licensee, the person is conclusively presumed for the purposes of this Act to be a person who is not a fit and proper person to be a close associate of a licensee.*
- ...

57. When considering the fitness and propriety of a liquor licensee, section 139(3)(i) refers a decision maker to section 45(5A) of the Act, which states:

45 Decision of Authority in relation to licence applications

- (5A) *Without limiting subsection (3)(a), in determining whether an applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates, the Authority is to consider whether the applicant:*
 - (a) *is of good repute, having regard to character, honesty and integrity, and*
 - (b) *is competent to carry on that business or activity.*

58. Finally, when determining a disciplinary complaint, the Authority will consider the statutory objects and considerations provided by section 3 of the Act:

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.*

FINDINGS ON GROUNDS OF COMPLAINT

59. A disciplinary complaint under Part 9 of the Act is an administrative matter, and findings are made to the civil standard of proof. However, in accordance with the principle enunciated by the High Court of Australia in *Briginshaw v Briginshaw* (1938) 60 CLR 336, the seriousness of the allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are

matters that are relevant to deciding whether an allegation has been proved, on the balance of probabilities.

60. The Licensee has made the general submission that the Authority should not proceed with determining the Complaint with regard to matters that are before the Courts and subject to prosecution for alleged offences against the Act.
61. However, section 142 of the Act provides that the Authority is not prevented from taking disciplinary action because a licensee, approved manager, close associate or other person concerned is subject to criminal or civil proceedings relating to the same matters. The Authority considers it in the public interest to proceed with this Complaint notwithstanding that many related prosecutions will be considered by the Courts later this year and may potentially be delayed for some further months.
62. The Authority does not purport to make findings on guilt, to the criminal standard of proof, of the Licensee or any other persons featured in these allegations. Rather, the Authority makes findings whether, on the balance of probabilities, the conduct alleged has occurred and, if so, whether it supports the Ground specified in the Complaint.

Findings on Ground 1

63. Ground 1, which is based upon section 139(3)(g) of the Act, alleges that intoxicated persons have frequently been on the licensed premises or have frequently been seen to leave those premises.
64. The Complainant relies upon **23** separate incidents having occurred on or near the Premises between 3 May 2015 and 19 March 2016. These are summarised in Table 1 in the Complaint Letter (**Table 1**).
65. Briefly, the Complainant alleges that these incidents involve patrons who were on the Premises and showed noticeable changes in speech, balance, coordination or behaviour, consistent with being well or seriously affected by intoxicating liquor. Some incidents involve patrons observed leaving the Premises after having consumed liquor at the venue.
66. Item #1 of Table 1 alleges that a male patron, immediately after leaving the Premises in a motor vehicle on 3 May 2015, was seen to mount a kerb in nearby Clarence Street and that the male later returned a blood alcohol reading of 0.127.
67. The Licensee submits that there is no evidence that the male had only just left the Premises and that 0.127 is considered a mid-range PCA offence. The Licensee also notes that COPS Report E58355371 records that Police had a suspicion that the male had been smoking cannabis.
68. The Authority is not satisfied that the COPS Report number E58355371 (Annexure 1.1) relied upon provides sufficient evidence to establish that the person involved was intoxicated when on or seen leaving the Premises. The incident involved the detection of a mid-range prescribed concentration of alcohol (**PCA**) offence and there is scope for dispute as to when the Patron left the Premises and his intoxication at that time.
69. As alleged in Item #2 of Table 1, the Authority is satisfied that a female patron who was well affected by intoxicating liquor was involved in a physical altercation with another female patron on the Premises on 30 May 2015.

70. While the Licensee submits that the female patron charged with assault was only “moderately affected” and that the CCTV footage does not indicate that she was “well affected”, the Authority makes this finding on the basis of the following evidence or material:
- COPS Report number E58137057, which relates to an incident on the Premises on 30 May 2015 and on the basis of which the Authority is satisfied a female patron was intoxicated and assaulted another female (Annexure 2.1);
 - CCTV footage provided by the Complainant depicting the violent incident that occurred on the Premises on 30 May 2015 (Annexure 2.2); and
 - Police summary of alleged breaches that occurred on the Premises on 30 May 2015 (Annexure 2.3).
71. Item #3 of Table 1 alleges that a female returned a blood alcohol reading of 0.148 after consuming liquor on the Premises and driving a motor vehicle home on 31 May 2015. The Licensee submits that this incident involved a mid-range PCA offence and that it was detected two and a half hours after the female patron had left the Premises.
72. The Authority accepts that the incident involved the detection of a mid-range PCA offence. While the information available gives rise to cause for concern, on the basis of the material before it the Authority is not satisfied that the COPS Report number E56869360 (Annexure 3.1) substantiates the allegation that the female was intoxicated while on or leaving the Premises.
73. Item #4 of Table 1 alleges that a male driver returned a blood alcohol reading of 0.160 after having had his last drink on the Premises on 21 June 2015. The arresting Police officer assessed him as being “well affected” by intoxicating liquor. The Licensee submits that the male was detected by Police at 2:30am, which is 3 hours after the bar on the Premises closes, and questions the reliability of the male’s statements to Police.
74. While the information as to the high range blood alcohol level gives rise to a prima facie cause for concern, on the material before the Authority in this instance and given the scope for uncertainty arising from the timing and of the detection of the driver, the Authority is not satisfied that the COPS Report number E58524366 (Annexure 4.1) provided by the Complainant substantiates the allegation that the person was intoxicated while on the Premises nor was he observed as intoxicated when leaving the Premises.
75. As alleged in Item #5 of Table 1, the Authority is satisfied that an intoxicated female, who had last consumed alcohol on the Premises, was found lying on the ground in her own vomit in Horton Street, Port Macquarie on 17 July 2015. While the Licensee submits that the female was only discovered by Police more than one hour after the bar on the Premises closed and that there was “no assessment” of the state of the female while she was on the Premises, the Authority is satisfied that the female was refused entry to the Port Macquarie Hotel, due to her level of intoxication, after she had consumed liquor on the Premises.
76. This incident supports the Ground of Complaint. The Authority makes this finding on the basis of the following evidence or material:
- COPS Report number E59015543, which relates to an incident on 17 July 2015 whereby an intoxicated female who had last consumed alcohol on the Premises was

refused entry to another nearby licensed venue and was found lying on the ground in her own vomit near the Premises (Annexure 5.1); and

- Statement of Police by Senior Constable Karlee West dated 29 October 2015 regarding the detection by Police of an intoxicated female on the ground in Horton Street, Port Macquarie after having last consumed alcohol on the Premises on 17 July 2015 (Annexure 5.2).

77. As alleged in Item #6 of Table 1, the Authority is satisfied that two intoxicated males were involved in affray and assault incidents on the Premises on 31 July 2015. The Licensee submits that the CCTV video evidence provided by the Complainant does not establish the allegation and that there are no “indicators” that the patrons were intoxicated. However the Authority is satisfied that this incident supports the Ground of Complaint. The Authority makes its finding on the basis of the following evidence or material:

- COPS Report number E58977858, which relates to an affray on the Premises on 31 July 2015 (Annexure 6.1);
- Statement of Police by Senior Constable Kaine Schwartz dated 28 October 2015 regarding the affray on the Premises on 31 July 2015 (Annexure 6.2);
- Statement of Police by Senior Constable Jonathan Richardson dated 29 October 2015, which contains observations of an intoxicated male involved in the affray on the Premises on 31 July 2015 (Annexure 6.3);
- CCTV footage provided by the Complainant depicting the affray on the Premises on 31 July 2015 (Annexure 6.4); and
- Police summary of alleged breaches that occurred on the Premises on 31 July 2015 (Annexure 6.5).

78. Item #7 of Table 1 alleges that a male patron who was drinking on the Premises on 1 August 2015 was later involved in a serious motor vehicle accident. The male was assessed to be “well to seriously affected” by alcohol.

79. The Licensee submits that COPS Report number E61006984 states that the accident occurred at 4:30am and that the male had a **zero** blood alcohol reading at the time. The Licensee refers to a webpage on the Transport for NSW website and submits that it is “physiologically impossible” for the male to have been seriously affected by alcohol on the Premises, and then record a zero blood alcohol reading at 4:30am.

80. The Authority is not satisfied that the COPS Report number E61006984 (Annexure 7.1) provided by the Complainant establishes that intoxicated persons were on or near the Premises by reason that the male returned a *negative* blood alcohol reading several hours after drinking on the Premises.

81. As alleged in Item #8 of Table 1, the Authority is satisfied that an intoxicated male was observed by Police in the verandah area of the Premises on 20 August 2015 and that Penalty Notice No. 4936070206 was issued to the Licensee for permitting intoxication on licensed premises.

82. This incident supports the Ground of Complaint. The Licensee did not provide a specific response to this allegation.

- 83.** The Authority makes this finding on the basis of the following evidence or material:
- COPS Report number E58445724, which contains observations of intoxicated persons on the Premises on 20 August 2015 (Annexure 8.1);
 - Statement of Police by Sergeant John Lawrie dated 22 August 2015, recording observations of the intoxicated persons on the Premises on 20 August 2015 (Annexure 8.2);
 - Statement of Police by Senior Constable Dean Magennis dated 22 August 2015, recording observations of the intoxicated persons on the Premises on 20 August 2015 (Annexure 8.3); and
 - Police summary of alleged breaches that occurred on the Premises on 20 August 2015 (Annexure 8.5).
- 84.** As alleged in Item #9 of Table 1, the Authority is satisfied that two intoxicated male patrons and one intoxicated female patron were observed by Police on the Premises on 21 August 2015 and that Penalty Notice No. 4936070215 was issued to the Licensee for permitting intoxication on licensed premises.
- 85.** This incident supports the Ground of Complaint. The Licensee did not provide a specific response to this allegation.
- 86.** The Authority makes this finding on the basis of the following evidence or material:
- COPS Report number E59494774, which contains observations of intoxicated persons on the Premises on 21 August 2015 (Annexure 9.1);
 - Statement of Police by Constable Daniel Smith dated 3 November 2015, recording observations of the intoxicated persons on the Premises on 21 August 2015 (Annexure 9.2);
 - Statement of Police by Sergeant John Lawrie dated 2 November 2015, recording observations of the intoxicated persons on the Premises on 21 August 2015 (Annexure 9.3);
 - Statement of Police by Senior Constable Dean Magennis dated 2 November 2015, recording observations of the intoxicated persons on the Premises on 21 August 2015 (Annexure 9.4);
 - CCTV footage provided by the Complainant depicting the intoxicated patrons on the Premises on 21 August 2015 (Annexure 9.5); and
 - Police summary of alleged breaches that occurred on the Premises on 21 August 2015 (Annexure 9.6).
- 87.** Item #10 of Table 1 alleges that a male seen staggering outside the Premises when leaving was refused entry into the *Port Macquarie Hotel* and was involved in a physical altercation with hotel security on 22 August 2015. Attending Police assessed the male as being “well affected” by intoxicating liquor.
- 88.** However, the Authority is not satisfied that the COPS Report number E61601186 (Annexure 10.1) and the CCTV footage (Annexure 10.2) provided by the Complainant

substantiate the allegation that intoxicated persons were on or near the Premises by reason that it only refers to the *Port Macquarie Hotel* and does not refer to the Premises at all.

89. As alleged in Item #11 of Table 1, the Authority is satisfied that an intoxicated female patron was observed by Police on the Premises on 28 August 2015.
90. The Licensee submits that the evidence provided by the Complainant does not support the allegation and “disagrees” that the female patron was intoxicated or unconscious.
91. Nevertheless, the Authority makes this finding on the basis of the following evidence or material:
 - COPS Report number E61697988, which contains observations of intoxicated persons on the Premises on 28 August 2015 (Annexure 11.1);
 - CCTV footage provided by the Complainant depicting the intoxicated patrons on the Premises on 28 August 2015 (Annexure 11.2); and
 - Police summary of alleged breaches that occurred on the Premises on 28 August 2015 (Annexure 11.3).
92. As alleged in Item #12 of Table 1, the Authority is satisfied that two intoxicated male patrons were observed by Police on the Premises on 12 September 2015.
93. This incident supports the Ground of Complaint. The Licensee did not provide a specific response to this allegation.
94. The Authority makes this finding on the basis of the following evidence or material:
 - Court Attendance Notice and NSW Police Facts Sheet for Charge No. H218682896 issued against the Licensee, Mr Barbuto in relation to three (3) counts of licensee permit intoxication on licensed premises and two (2) counts of licensee fail to comply with conditions of licence, detected on the Premises on 12 September 2015 (Annexure 12.1);
 - Statement of Police by Sergeant John Lawrie dated 17 September 2015 recording observations of the intoxicated persons on the Premises on 12 September 2015 (Annexure 12.2);
 - Statement of Police by Senior Constable Dean Magennis dated 17 September 2015 recording observations of the intoxicated persons on the Premises on 12 September 2015 (Annexure 12.3);
 - CCTV footage provided by the Complainant depicting the intoxicated patrons on the Premises on 12 September 2015 (Annexure 12.4); and
 - Police summary of alleged breaches that occurred on the Premises on 12 September 2015 (Annexure 12.5).
95. As alleged in Item #13 of Table 1, the Authority is satisfied that an intoxicated male was observed by Police on the Premises on 10 October 2015.

- 96.** The Licensee “disagrees” that the male was intoxicated while on the Premises and that the security guards on the Premises assessed the male as “not being intoxicated”.
- 97.** The Authority makes this finding on the basis of the following evidence or material:
- CCTV footage provided by the Complainant depicting the intoxicated patrons on the Premises on 10 October 2015 (Annexure 13.2); and
 - Police summary of alleged breaches that occurred on the Premises on 10 October 2015 (Annexure 13.3).
- 98.** As alleged in Item #14 of Table 1, the Authority is satisfied that an intoxicated male patron was observed by Police on the Premises on 13 October 2015.
- 99.** This incident supports the Ground of Complaint. The Licensee did not provide a specific response to this allegation.
- 100.** The Authority makes this finding on the basis of the following evidence or material:
- Court Attendance Notice and NSW Police Facts Sheet for Charge No. H59675503 issued against the Licensee in relation to one (1) count of licensee permit intoxication on licensed premises and one (1) count of licensee fail to comply with conditions of licence, detected on the Premises on 13 October 2015 (Annexure 14.1);
 - Statement of Police by Sergeant John Lawrie dated 17 October 2015 recording observations of the intoxicated persons on the Premises on 13 October 2015 (Annexure 14.2);
 - Statement of Police by Senior Constable Dean Magennis dated 17 October 2015 recording observations of the intoxicated persons on the Premises on 13 October 2015 (Annexure 14.3);
 - CCTV footage provided by the Complainant depicting the intoxicated patrons on the Premises on 13 October 2015 (Annexure 14.4); and
 - Police summary of alleged breaches that occurred on the Premises on 13 October 2015 (Annexure 14.5).
- 101.** As alleged in Item #15 of Table 1, the Authority is satisfied that one intoxicated male patron and one intoxicated female patron were observed by Police on the Premises on 16 October 2015.
- 102.** This incident supports the Ground of Complaint. The Licensee did not provide a specific response to this allegation.
- 103.** The Authority makes this finding on the basis of the following evidence or material:
- Court Attendance Notice and NSW Police Facts Sheet for Charge No. H60045703 issued against the Licensee in relation to one (1) count of licensee sell/supply liquor outside authorised hours; two (2) counts of licensee fail to comply with conditions of licence and one (1) count of licensee permit intoxication on licensed premises, detected on the Premises on 16 October 2015 (Annexure 15.1);

- Statement of Police by Sergeant John Lawrie dated 5 November 2015, recording observations of the intoxicated persons on the Premises on 16 October 2015 (Annexure 15.2);
 - CCTV footage provided by the Complainant depicting the intoxicated patrons on the Premises on 16 October 2015 (Annexure 15.3); and
 - Police summary of alleged breaches that occurred on the Premises on 16 October 2015 (Annexure 15.4).
- 104.** As alleged in Item #16 of Table 1, the Authority is satisfied that one intoxicated female patron was observed by Police on the Premises on 24 October 2015.
- 105.** This incident supports the Ground of Complaint. The Licensee did not provide a specific response to this allegation.
- 106.** The Authority makes this finding on the basis of the following evidence or material:
- Court Attendance Notice and NSW Police Facts Sheet for Charge No. H60202948 issued against the Licensee in relation to one (1) count of licensee fail to comply with conditions of licence and one (1) count of licensee permit intoxication on licensed premises, detected on the Premises on 24 October 2015 (Annexure 16.1);
 - Statement of a Witness by Ms Natalie Hopwood dated 30 October 2015 in the matter of Drink Spiking – The Pier on Clarence, in relation to an alleged drink spiking incident that occurred on the Premises on 24 October 2015 (Annexure 16.2);
 - Statement of Police by Sergeant John Lawrie dated 7 January 2016, recording observations of the intoxicated persons on the Premises on 24 October 2015 (Annexure 16.3);
 - CCTV footage provided by the Complainant depicting the intoxicated patrons on the Premises on 24 October 2015 (Annexure 16.4); and
 - Police summary of alleged breaches that occurred on the Premises on 24 October 2015 (Annexure 16.5).
- 107.** Item #17 of Table 1 alleges that a large number of patrons were observed by covert Police officers staggering and stumbling on the roadway after exiting the Premises and a number were refused entry to the Port Macquarie Hotel on 30 October 2015. Another male inside the Premises was given free shots and seen stumbling around the bar area.
- 108.** The Licensee notes that the COPS Report number E59874462 provided by the Complainant was prepared 12 days after the covert Police operation and questions its reliability. The Licensee also submits that the male allegedly receiving “free shots” was running a tab and was “uninhibited and unaffected” by alcohol
- 109.** The Authority is not satisfied that the COPS Report number E59874462 (Annexure 17.1) and the CCTV footage (Annexure 17.2) provided by the Complainant substantiate the allegation that intoxicated persons were on or near the Premises by reason of the imprecise nature of the allegations.

- 110.** As alleged in Item #18 of Table 1, the Authority is satisfied that one intoxicated male patron (being the first male referred to in the Table) was observed by Police on the Premises on 31 October 2015.
- 111.** The Licensee submits that the CCTV evidence does not show that the male was intoxicated or that he was unsteady on his feet “at any stage”.
- 112.** Nevertheless, the Authority makes this finding on the basis of the following evidence or material:
- COPS Report number E59641659, which contains observations of intoxicated persons on the Premises on 31 October 2015 (Annexure 18.1);
 - Statement of Police by Sergeant John Lawrie dated 5 November 2015, recording observations of the intoxicated persons on the Premises on 31 October 2015 (Annexure 18.2);
 - Statement of Police by Senior Constable Dean Magennis dated 5 November 2015, recording observations of the intoxicated persons on the Premises on 31 October 2015 (Annexure 18.3);
 - CCTV footage provided by the Complainant depicting the intoxicated patrons on the Premises on 31 October 2015 (Annexure 18.4); and
 - Police summary of alleged breaches that occurred on the Premises on 31 October 2015 (Annexure 18.5).
- 113.** As alleged in Item #19 of Table 1, the Authority is satisfied that two intoxicated female patrons, one of whom was an off duty staff member, were observed by Police on the Premises on 19 November 2015.
- 114.** This incident supports the Ground of Complaint. The Licensee did not provide a specific response to this allegation.
- 115.** The Authority makes this finding on the basis of the following evidence or material:
- Court Attendance Notice and NSW Police Facts Sheet for Charge No. H62250789 issued against the Licensee for three (3) counts of licensee fail to comply with conditions of licence and two (2) counts of licensee permit intoxication on licensed premises, detected on the Premises on 19 November 2015 (Annexure 19.1);
 - Statement of Police by Sergeant John Lawrie dated 25 November 2015, recording observations of the intoxicated persons on the Premises on 19 November 2015 (Annexure 19.2);
 - Statement of Police by Sergeant John Lawrie dated 8 January 2016, recording further observations of the intoxicated persons on the Premises on 19 November 2015 (Annexure 19.3);
 - Statement of Police by Senior Constable Dean Magennis dated 25 November 2015, recording observations of the intoxicated persons on the Premises on 19 November 2015 (Annexure 19.4);

- Statement of Police by Senior Constable Michael Foster dated 24 January 2016, recording observations of the intoxicated persons on the Premises on 19 November 2015 (Annexure 19.5);
 - Transcript of a record of interview between Police and Ms Jade Richards dated 7 January 2016, in relation to intoxicated patrons on the Premises on 19 November 2015 (Annexure 19.6);
 - CCTV footage provided by the Complainant depicting the intoxicated patrons on the Premises on 19 November 2015 (Annexure 19.7); and
 - Police summary of alleged breaches that occurred on the Premises on 19 November 2015 (Annexure 19.8).
- 116.** As alleged in Item #20 of Table 1, the Authority is satisfied that an intoxicated female, who had been drinking on the Premises, was observed near the Premises on 2 January 2016.
- 117.** The Licensee submits that there is no use of a “scale” in the COPS Report to indicate the female’s alleged level of intoxication and that there is no independent evidence with regard to this incident.
- 118.** The Authority makes this finding on the basis of COPS Report number E216111797, which records Police observations of an intoxicated female who had been drinking on the Premises on 2 January 2016 (Annexure 20.1).
- 119.** Item #21 of Table 1 alleges that a male inside the Premises on 20 February 2016 was “passed out” at the table for 15 minutes before being roused by other patrons, drinking pints of beer and spirits, and again falling asleep at the table. The male was woken up by Licensee and left the venue 15 minutes later, after consuming more liquor.
- 120.** The Licensee submits that the male shows “no noticeable signs of intoxication” during this incident and that the COPS Report does not make any comment on the male’s level of intoxication.
- 121.** The Authority is not satisfied that the COPS Report number E60834573 (Annexure 21.1) and the CCTV footage (Annexure 21.2) provided by the Complainant substantiate the allegation that intoxicated persons were on or near the Premises by reason that the evidence provided is inconclusive in that the patron, while drinking, may have been suffering from fatigue rather than intoxication *per se* and there is insufficient evidence or information regarding symptoms of intoxication in this case.
- 122.** Item #22 of Table 1 alleges that a male patron was asked to leave the Premises on 26 February 2016 and was shortly after involved in a fight nearby. The male was assessed by attending Police as “well affected” by intoxicating liquor.
- 123.** The Licensee submits that “common sense dictates that it is extremely difficult to ascertain an individual’s level of intoxication due to liquor a short time after they had been knocked unconscious”.
- 124.** The Authority is not satisfied that the COPS Report number E60580234 (Annexure 22.1) provided by the Complainant substantiates the allegation that intoxicated persons were on or observed leaving the Premises by reason that the evidence available is inconclusive.

125. Item #23 of Table 1 alleges that patrons leaving the Premises on 19 March 2016 were on the roadway, yelling loudly and climbing on the outdoor tables. Some were staggering and were deemed to be “well affected” by alcohol.
126. The Licensee submits that there is a “level of presumption” within the COPS Report provided by the Complainant in relation to this incident, and notes that the Complainant has not provided any CCTV video evidence to support the allegation.
127. The Authority is not satisfied that the COPS Report number E118221302 (Annexure 23.1) provided by the Complainant substantiates the allegation that intoxicated persons were on or seen leaving the Premises by reason that the evidence provided is inconclusive.
128. The Authority is satisfied that there were **14** incidents involving intoxicated persons detected on or seen leaving the Premises between May 2015 and February 2016 alone. Ground 1 of the Complaint is established in that intoxicated persons have frequently been on the Premises or observed leaving the Premises. Those found events are Item #2, Item #5, Item #6 (x 2 patrons), Item #8, Item # 9 (x 3 patrons), Item #11, Item #12 (x 2 patrons), Item #13, Item #14, Item #15 (x 2 patrons), Item #16, Item #18, Item #19 (x 2 patrons) and Item #20 of Table 1.
129. While “frequent” is not defined by the Act, the *Australian Concise Oxford Dictionary* (2nd Ed) defines frequent as follows:
- frequent:** **1.** Occurring often or in close succession. **2.** habitual, constant (*a frequent caller*) **3.** Found near together, numerous, abundant.
130. Having considered the number of patrons found to have been detected on or leaving the Premises while intoxicated and the time frame in which those events occurred, the Authority is satisfied that the requisite element of frequency exists and that Ground 1 is established.
131. The Authority notes with concern that some of these found incidents involved intoxicated patrons exhibiting the following indicia of serious intoxication and risk:
- Vomiting or becoming ill
(Items #5, #9, #12 and #16 of Table 1);
 - Becoming involved in violent incidents
(Items #2 and #6 of Table 1);
 - Falling over or into objects
(Items #15 and #16 of Table 1);
 - Needing assistance to walk or leave the Premises
(Items #5, #9, #15 and #16 of Table 1);
 - Passing out or falling asleep at the table
(Item #12 of Table 1).

Findings on Ground 2

132. Ground 2 of the Complaint, which is based on section 139(3)(f) of the Act, alleges that the licensee has engaged in conduct or activities that are likely to encourage misuse or abuse of liquor (such as binge drinking or excessive consumption).

133. The Complainant relies upon **13** separate incidents that are said to have occurred on or near the Premises between 31 July 2015 and 20 February 2016, which are set out in Table 3 in the Complaint Letter (**Table 3**).
134. Briefly, the Complainant alleges that these incidents involve patrons and/or staff of the licensed business variously consuming shots and/or nips at the bar or, in the case of staff members, behind the bar; *skolling* drinks and rapidly consuming multiple drinks within a short period of time.
135. The Complainant further alleges that staff of the licensed business “encourage” the consumption of shots and nips amongst both staff and patrons, and that patrons are often already consuming another drink when partaking in these shots and nips.
136. The Authority notes that the Complainant has not provided the COPS Report numbered E60694980 or CCTV footage or any other independent evidence in relation to a further (thirteenth) incident involving the Licensee and a patron consuming a nip or spirits together, which is alleged to have occurred on 10 September 2015 (Item #10 of Table 3). No adverse finding is made by the Authority on that allegation, by reason of the insufficiency of evidence provided in support of this Particular.
137. With regard to Item #6 of Table 1 (Item #13 of Table 3), the Authority is satisfied that on 31 July 2015 two female patrons received nips from the Licensee even though they already had a drink each, and that the Licensee and the two female patrons skolled the nip at the same time.
138. The Authority notes that the Licensee did not make a specific submission in response to this allegation. The Authority makes this finding on the basis of the same evidence or material relied upon to establish Particular 6 of Ground 1 above.
139. With regard to Item #7 of Table 1 (Item #12 of Table 3), the Authority is satisfied that on 1 August 2015 a male patron and a female patron consumed a “lick, sip, suck” tequila shot on the Premises.
140. The Licensee did not make a specific submission in response to this allegation. The Authority makes this finding on the basis of the following evidence or material:
 - CCTV footage provided by the Complainant depicting patrons consuming tequila shots on the Premises on 1 August 2015 (Annexure 7.2); and
 - Police summary of alleged breaches that occurred on the Premises on 1 August 2015 (Annexure 7.3).
141. The Authority is not satisfied that the incidents of patrons and staff skolling nips/shots on 21 August 2015, 12 September 2015 and 10 October 2015 as alleged in Items #9, #12 and #13 (respectively) of Table 1 (Items #11, #9 and #8 of Table 3) actually occurred, by reason that the evidence provided by the Complainant in support of those allegations is insufficient to make such a finding. This has not been assisted by some apparently incorrect camera data references provided in the Complaint Letter with regard to the CCTV evidence provided.
142. With regard to Item #14 of Table 1 (Item #7 of Table 3), the Authority is satisfied that on 13 October 2015, shots/nips were supplied to the same patron on four separate occasions, and that the Licensee consumed a shot/nip with another male patron on the Premises.

- 143.** The Licensee did not make a specific submission in response to this allegation. The Authority makes this finding on the basis of the same evidence or material relied upon to establish Particular 14 of Ground 1 above.
- 144.** With regard to Item #15 of Table 1 (Item #6 of Table 3), the Authority is satisfied, on the basis of the same evidence or material relied upon to establish Ground 1 above, that the following events occurred on the Premises on 16 October 2015:
- A male patron and a female patron skulled tequila shots;
 - A male patron skulled a large cocktail in the bar area, followed by several other male patrons in the group skolling their drinks;
 - The business owner and staff were given drinks behind the bar, following which two female patrons were given nips/shots to skoll;
 - The Licensee consumed a shot/nip with a patron in the *Grape and Petal Bar*, following which the business owner appeared and drank directly from the bottle;
 - A male patron skulled wine from a wine glass held by a female patron at the bar service area.
- 145.** The Authority notes that the Licensee did not make a specific submission in response to the allegation in Item #6 of Table 3.
- 146.** With regard to Item #16 of Table 1 (Item #5 of Table 3), the Authority is satisfied that on 24 October 2015, the business owner consumed shots with staff behind the bar service area, and that a female patron consumed a shot/nip at the bar before carrying another drink away. The Licensee did not make a specific submission in response to this allegation and the Authority makes this finding on the basis of the same evidence or material relied upon to establish Particular 16 of Ground 1 above.
- 147.** With regard to Item #17 of Table 1 (Item #4 of Table 3), the Authority is satisfied that the following events occurred on the Premises on 30 October 2015:
- Shots/nips were supplied by a female staff member to a male patron and a female patron in the *Grape and Petal Bar*, and the staff member and the Licensee both sculled their drinks; and
 - Shots/nips were again supplied to the male patron and the female patron at the bar (two each).
- 148.** The Authority makes these findings on the basis of the following evidence or material:
- COPS Report number E59874462, which records observations of patrons and staff consuming nips/shots on the Premises on 30 October 2015 (Annexure 17.1);
 - CCTV footage provided by the Complainant depicting patrons and staff consuming nips/shots on the Premises on 30 October 2015 (Annexure 17.2);
 - Police summary of alleged breaches that occurred on the Premises on 30 October 2015 (Annexure 17.3);
 - Statement of Police by Senior Constable Alexandra Preston dated 19 November 2015, recording observations of the Premises on 30 October 2015 (Annexure 17.4); and

- Statement of Police by Senior Constable Linda Hedley dated 30 November 2015, recording observations of the Premises on 30 October 2015 (Annexure 17.5).
- 149.** The Licensee did not make a specific submission in response to the allegation in Item #4 of Table 3.
- 150.** With regard to Item #18 of Table 1 (Item #3 of Table 3), the Authority is satisfied that on 31 October 2015, a female patron and a female staff member consumed “lick, sip, suck” tequila shots on the Premises. The Authority makes this finding on the basis of the same evidence or material relied upon to establish Particular 18 of Ground 1 above.
- 151.** The Licensee did not make a specific submission in response to the allegation in Item #3 of Table 3.
- 152.** With regard to Item #19 of Table 1 (Item #2 of Table 3), the Authority is satisfied that on 19 November 2015, an off duty staff member offered a covert licensing officer a shot and consumed one herself while at the bar, and that this same off duty staff member consumed shots with a patron on the Premises. The Authority makes this finding on the basis of the same evidence or material relied upon to establish Particular 19 of Ground 1 above.
- 153.** The Licensee did not make a specific submission in response to the allegation in Item #2 of Table 3.
- 154.** With regard to Item #21 of Table 1 (Item #1 of Table 3), the Authority is satisfied that on 20 February 2016, the Licensee consumed a shot with a patron who already had a partially consumed beer in the *Grape and Petal* Bar area of the Premises. The Authority makes this finding on the basis of the following evidence or material:
- CCTV footage provided by the Complainant depicting the Licensee consuming a shot with a patron in the *Grape and Petal* Bar area of the Premises on 20 February 2016 (Annexure 21.2); and
 - Police summary of alleged breaches that occurred on the Premises on 20 February 2016 (Annexure 21.3).
- 155.** The Licensee did not make a specific submission in response to the allegation in Item #1 of Table 3.
- 156.** The Authority is satisfied, on the basis of the above findings on Ground 2, that on **12** occasions between 31 July 2015 and 20 February 2016, patrons and/or staff of the licensed business were served shots or nips and/or drinks were rapidly consumed by patrons or staff members.
- 157.** The Authority is further satisfied, on the basis of its findings on Ground 2, that staff of the licensed business engaged in the following conduct or activities:
- Staff providing patrons with shots/nips, then consuming them with patrons (Items #6, #12, #13, #14, #15, #16 and #18 of Table 1);
 - Staff serving shots/nips to patrons while patrons already have another drink (Items #6, #9, #13, #16 and #18 of Table 1);
 - Staff and/or patrons skolling drinks

(Items #6, #9, #12, #13, #15 and #18 of Table 1).

158. The Authority is satisfied, on the basis of the above findings, that Ground 2 of the Complaint is established in that the licensee has engaged in conduct or activities that are likely to encourage misuse or abuse of liquor (such as binge drinking or excessive consumption).

Findings on Ground 3

159. Ground 3 of the Complaint, which is based on section 139(3)(b) of the Act, alleges that the licensee failed to comply with conditions to which the licence is subject.

160. This Ground as specified by the Complainant concerns alleged breaches of a condition on the licence numbered “10510”, requiring the provision and maintenance of a CCTV surveillance system on the Premises (**CCTV Condition**).

161. On the basis of the licence record before the Authority the CCTV Condition states:

1. *The licensee must maintain a closed-circuit television system on the premises in accordance with the following requirements:*
 - (a) *the system must operate continuously from opening time until one hour after the premises are required to close (or, in the case of premises that are not required to cease trading, continuously at all times),*
 - (b) *recordings must be in digital format and at a minimum of 6 frames per second,*
 - (c) *any recorded image must specify the time and date of the recorded image,*
 - (d) *the system's cameras must cover the following areas:*
 - (i) *all entry and exit points on the premises,*
 - (ii) *the footpath immediately adjacent to the premises,*
 - (iii) *all publicly accessible areas (other than toilets) on the premises.*
2. *The licensee must:*
 - (a) *keep all recordings made by the CCTV system for at least 30 days, and*
 - (b) *ensure that the system is accessible by at least one member of staff at all times it is in operation, and*
 - (c) *provide any recordings made by the system to a police officer within 24 hours of any request by a police officer or inspector to provide such recordings.*
 - (d) *Notify the Commander of the Mid North Coast Local Area Command or his delegate if there is any technical issue which prohibits the condition being complied with and in any case provide written evidence within 24 hours of that issue being rectified by a qualified technician.*

162. By way of background, the Complainant notes that the CCTV Condition was imposed by the Authority on the licence with effect from 21 January 2014 in response to a section 54 submission filed by Police with the Secretary in late 2013. That submission was made to resolve ongoing issues in relation to the Premises that were not, according to Police, being adequately covered by a CCTV system. Police note that those matters arose under previous venue management.

163. In support of Ground 3, the Complainant relies upon Table 4 in the Complaint Letter (**Table 4**), which sets out **23** separate incidents whereby a condition on the licence was said to have been breached and Penalty Notices or Court Attendance Notices were issued to the Licensee in respect of those breaches.

- 164.** The Licensee does not make specific submissions on the matters that are the subject of Table 4, but makes the general submission in response to Ground 3 that he has not been convicted of any breach of conditions and that the Premises is and was “covered” by CCTV within the meaning of Condition 10510 on the licence.
- 165.** The Licensee further contends that he has “listened to the concerns raised by Police” and that in September 2015 he added new cameras, as well as repositioning some of the existing cameras.
- 166.** Table 4 contains **13** alleged breaches of Condition “10510” on the licence (Items #2, #3, #4, #5, #6, #9, #11, #12, #17, #20, #21, #22 and #23). The Authority makes the following findings on the alleged breaches of the CCTV Condition:
- 167.** The Authority is satisfied, as alleged in Item #2 of Table 4, that the CCTV Condition was breached on 30 May 2015 and Penalty Notice No. 4936070096 was issued to the Licensee by Police in respect of this breach. [The Authority notes that the Complainant has not provided a copy of this Penalty Notice.] The Authority makes this finding on the basis of the Complaint Letter and the following evidence or material:
- COPS Report number E58137057 (Annexure 2.1);
 - CCTV footage of the Premises for 30 May 2015 (Annexure 2.2); and
 - Police summary of alleged breaches occurring on 30 May 2015 (Annexure 2.3).
- 168.** The Authority is satisfied, as alleged in Item #3 of Table 4, that the CCTV Condition was breached on 31 July 2015 and Penalty Notice No. 4936070022 was issued to the Licensee by Police in respect of this breach. [The Authority notes that the Complainant has not provided a copy of this Penalty Notice.] The Authority makes this finding on the basis of the Complaint Letter and the following evidence or material:
- COPS Report number E58977858 (Annexure 6.1);
 - CCTV footage of the Premises for 31 July 2015 (Annexure 6.4); and
 - Police summary of alleged breaches occurring on 31 July 2015 (Annexure 6.5).
- 169.** The Authority is further satisfied, as alleged by the Complainant in Part 3.1 of the Complaint Letter, that during the assault/affray matter that occurred on 31 July 2015 (the subject of Item #3 of Table 4), crucial areas of the Premises were not covered by the CCTV system, such as the north western wall where an offender was pushed and held off camera by a staff member.
- 170.** The Authority is satisfied, as alleged in Item #4 of Table 4, that the CCTV Condition was breached on 1 August 2015 and Penalty Notice No. 4936070105 was issued to the Licensee by Police in respect of this breach. [The Authority notes that the Complainant has not provided a copy of this Penalty Notice.] The Authority makes this finding on the basis of the Complaint Letter and the following evidence or material:
- COPS Report number E61006984 (Annexure 7.1);
 - CCTV footage of the Premises for 1 August 2015 (Annexure 7.2); and
 - Police summary of alleged breaches that occurred on the Premises on 1 August 2015 (Annexure 7.3).
- 171.** The Authority is satisfied, as alleged in Item #5 of Table 4, that the CCTV Condition was breached on 20 August 2015 and Penalty Notice No. 4936070031 was issued to the Licensee by Police in respect of this breach. [The Authority notes that the Complainant has

not provided a copy of this Penalty Notice.] The Authority makes this finding on the basis of the Complaint Letter and the following evidence or material:

- COPS Report number E58445724 (Annexure 8.1);
- CCTV footage of the Premises for 20 August 2015 (Annexure 8.4); and
- Police summary of alleged breaches that occurred on the Premises on 20 August 2015 (Annexure 8.5).

172. The Authority is satisfied, as alleged in Item #6 of Table 4, that the CCTV Condition was breached on 21 August 2015 and Penalty Notice No. 4936070040 was issued to the Licensee by Police in respect of this breach. [The Authority notes that the Complainant has not provided a copy of this Penalty Notice.] The Authority makes this finding on the basis of the Complaint Letter and the following evidence or material:

- COPS Report number E59494774 (Annexure 9.1);
- CCTV footage of the Premises for 21 August 2015 (Annexure 9.5); and
- Police summary of alleged breaches that occurred on the Premises on 21 August 2015 (Annexure 9.6).

173. The Authority is satisfied, as alleged in Item #9 of Table 4, that the CCTV Condition was breached on 28 August 2015 and Penalty Notice No. 4936070078 was issued to the Licensee by Police in respect of this breach. [The Authority notes that the Complainant has not provided a copy of this Penalty Notice.] The Authority makes this finding on the basis of the Complaint Letter and the following evidence or material:

- COPS Report number E61697988 (Annexure 11.1);
- CCTV footage of the Premises for 28 August 2015 (Annexure 11.2); and
- Police summary of alleged breaches that occurred on the Premises on 28 August 2015 (Annexure 11.3).

174. Item #11 of Table 4 alleges that the CCTV Condition was breached on 10 September 2015 and Penalty Notice No. 4936070242 was issued to the Licensee by Police in respect of this breach. The Authority notes that the Complainant has not provided COPS Report number E60694980, CCTV footage nor any other independent evidence in relation to this alleged breach of the CCTV Condition.

175. The Authority is not satisfied that this allegation is established on the evidence or material provided by the Complainant.

176. The Authority is satisfied, as alleged in Item #12 of Table 4, that the CCTV Condition was breached on 12 September 2015. The Authority makes this finding on the basis of the Complaint Letter and the following evidence or material:

- Court Attendance Notice and NSW Police Facts Sheet for Charge No. H218682896 issued against the Licensee (Annexure 12.1);
- CCTV footage of the Premises for 12 September 2015 (Annexure 12.4); and
- Police summary of alleged breaches that occurred on the Premises on 12 September 2015 (Annexure 12.5).

177. The Authority is satisfied, as alleged in Item #17 of Table 4, that the CCTV Condition was breached on 17 October 2015. The Authority makes this finding on the basis of the Complaint Letter and the following evidence or material:

- Court Attendance Notice and NSW Police Facts Sheet for Charge No. H60045703 issued against the Licensee (Annexure 15.1);
 - CCTV footage of the Premises for 16 October 2015 (Annexure 15.3); and
 - Police summary of alleged breaches that occurred on the Premises on 16 October 2015 (Annexure 15.4).
- 178.** Part 3.1 of the Complaint Letter also alleges that the CCTV system on the Premises is inadequate in that there are certain areas that are not covered by CCTV cameras which the Licensee allows patrons to use to enter the Premises off camera, as evidenced by an alleged supply of liquor outside of authorised licensed trading hours on 17 October 2015 (Annexure 15.1 in relation to Charge No. H60045703).
- 179.** The Licensee makes the general submission in response to this allegation that he has pleaded not guilty to the charge of supplying liquor outside authorised licensed trading hours and that he will be “defending the charge vigorously”.
- 180.** While the Authority is satisfied, as alleged in Item #17 of Table 4, that there was a breach of the CCTV Condition on 17 October 2015, the Authority notes that the allegations in the text of the Complaint Letter are different from the description of the incident set out in Table 4. The Authority does not make an adverse finding on the alleged incident of supplying liquor outside of authorised trading hours by reason that the evidence provided by the Complainant is insufficient to establish this allegation.
- 181.** The Authority is satisfied, as alleged in Item #20 of Table 4, that the CCTV Condition was breached on 30 October 2015 and Penalty Notice No. 4936070160 was issued to the Licensee by Police in respect of this breach. [The Authority notes that the Complainant has not provided a copy of this Penalty Notice.]
- 182.** The Licensee makes no specific submission on this matter and the Authority makes this finding on the basis of the Complaint Letter and the following evidence or material:
- COPS Report number E59874462 (Annexure 17.1);
 - CCTV footage of the Premises for 30 October 2015 (Annexure 17.2); and
 - Police summary of alleged breaches that occurred on the Premises on 30 October 2015 (Annexure 17.3).
- 183.** The Authority is satisfied, as alleged in Item #21 of Table 4, that the CCTV Condition was breached on 12 November 2015.
- 184.** The Licensee makes no specific submission on this matter and the Authority makes this finding on the basis of the Complaint Letter and the Field Court Attendance Notice and NSW Police Facts Sheet for Charge No. H59736638 issued against the Licensee (which forms part of Annexure R).
- 185.** The Authority is satisfied, as alleged in Item #22 of Table 4, that the CCTV Condition was breached on 19 November 2015.
- 186.** The Licensee makes no specific submission in response to this item and the Authority finds this allegation to be established on the basis of the Complaint Letter and the following evidence or material:
- Court Attendance Notice and NSW Police Facts Sheet for Charge No. H62250789 issued against the Licensee (Annexure 19.1);
 - CCTV footage of the Premises for 19 November 2015 (Annexure 19.7); and

- Police summary of alleged breaches that occurred on the Premises on 19 November 2015 (Annexure 19.8).

- 187.** The Authority is not satisfied that the CCTV Condition was breached on 20 February 2016, as alleged in Item #23 of Table 4. The Authority notes that the Police summary of the alleged breaches that occurred on the Premises on 20 February 2016 (Annexure 21.3) appears to provide incorrect camera data references with respect to the CCTV footage provided for the Premises for 20 February 2016 (Annexure 21.2). The Authority was unable to discern sufficient evidence to support this allegation from the Complaint Material.
- 188.** On the basis of the above findings on Ground 3, the Authority is satisfied that there have been **11** occasions between May 2015 and February 2016 where Condition “10510” on the licence regarding the CCTV system on the Premises has been breached. Those found events are Item # 2, Item #3, Item #4, Item #5, Item #6, Item #9, Item #12, Item #17, Item #20, Item #21 and Item #22 of Table 4.
- 189.** The Authority notes that while the Licensee generally disputes the allegation of inadequate CCTV coverage, he has not provided the Authority with evidence demonstrating how the CCTV system is fully compliant with Condition “10510” on the licence.
- 190.** The Authority is satisfied, on the basis of the above findings, that Ground 3 of the Complaint is established in that the Licensee failed to comply with a condition to which the licence is subject.

Findings on Ground 4

- 191.** Ground 4 of the Complaint, which is based on section 139(3)(i) of the Act, alleges that the Licensee is not a fit and proper person to be the holder of a licence.

Fitness and Propriety at General Law

- 192.** It is well established at common law for the purposes of licensing that to be “fit and proper” a person must have a requisite knowledge of the Act (or Acts) under which he or she is to be licensed and the obligations and duties imposed thereby: *Ex parte Meagher* (1919) 36 WN 175 and *Sakellis v Police* (1968) 88 WN (Pt 1) (NSW) 541. Being fit and proper normally comprises the three characteristics of “honesty, knowledge and ability”: *Hughes & Vale Pty Ltd v NSW* (No 2) (1955) 93 CLR 127.
- 193.** Where a person has been convicted of offences, the decision maker must consider the circumstances of those convictions and the general reputation of the person apart from the convictions and the likelihood of repetition – *Claraham v Register of Motor Vehicle Dealers in the ACT* (1994) 17 FLR 44.
- 194.** In *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321, the High Court of Australia has held that:

The expression ‘fit and proper person’ standing alone, carries no precise meaning. It takes its meaning from its context, from the activities in which the person is or will be engaged and the ends to be served by those activities. The concept of ‘fit and proper’ cannot be entirely divorced from the conduct of the person who is or will be engaging in those activities. However, depending on the nature of those activities, the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed that it will not occur, or whether the general community will have confidence that it will not occur. The list is not exhaustive but it does indicate that, in certain contexts, character (because it provides an indication of likely future conduct)

or reputation (because it provides an indication of public perception as to likely future conduct) may be sufficient to ground a finding that a person is not fit and proper to undertake the activities in question.

- 195.** Section 45(5A) of the Act, to which section 139(3)(i) refers, prescribes some non-exhaustive statutory considerations to which the Authority must have regard when determining the fitness and propriety of a licensee, including whether that person:
- (a) is of good repute, having regard to character, honesty and integrity; and
 - (b) is competent to carry on that business or activity.

Particular 4(a)

- 196.** Particular 4(a) of the Complaint alleges that the Licensee is not a fit and proper person to be the holder of a licence by reason that he has committed numerous offences against the *Liquor Act 2007*.
- 197.** In support of Particular 4(a), the Complainant refers to Table 5 in the Complaint Letter (**Table 5**), which lists **18** Penalty Notices issued to the Licensee by Police for alleged breaches of licence conditions detected between May 2015 and October 2015. The Complainant also refers to Table 6 in the Complaint Letter (**Table 6**), which lists **8** charges issued against the Licensee for incidents of permitting intoxication on the Premises and various other licensing offences detected between September 2015 and February 2016.
- 198.** The Licensee has not provided evidence or submissions in its response to the Complaint dated 10 July 2016 contesting the allegations in the following matters, but has indicated that the Licensee intends to defend all of the Penalty Notices and that they remain unpaid.
- 199.** In his response to the Complaint dated 10 July 2016 the Licensee has provided little by way of positive evidence or submissions going to his personal reputation or competence to carry on the relevant business or activity for the purposes of section 45(5A) of the Act.
- 200.** While the Authority accepts that the Penalty Notices have not been paid, nor are the alleged contraventions admitted by the Licensee (who will be defending the Notices in Court), the Authority has considered the available documentary and CCTV evidence or material for each incident and makes the following findings on the balance of probabilities.
- 201.** The Authority notes that Items #2, #3, #4, #5, #7, #11 and #18 of Table 5 correspond to Items #2, #3, #4, #5, #6, #9 and #20 of Table 4, in relation to alleged breaches of the CCTV Condition. The Authority is satisfied, on the basis of its observations and findings on Ground 3, that the CCTV Condition was breached on all of these seven occasions.
- 202.** The Authority notes that Items #6 and #9 of Table 5 correspond to Items #8 and #9 of Table 1, with respect to the allegation that intoxicated persons were on the Premises or were seen to leave the Premises on 20 and 21 August 2015 respectively. The Authority is satisfied, on the basis of its observations and findings on Ground 1, that the Licensee permitted intoxication on the Premises on both of those occasions.
- 203.** The Authority further notes that Item #13 of Table 5 corresponds to Item #11 of Table 4, with respect to an alleged breach of the CCTV Condition. The Authority repeats its observations on this matter as set out in Ground 3 above and makes no adverse finding in relation to this allegation.

- 204.** Each of the remaining matters alleged in Table 5 concerns an alleged breach of one of the following conditions on the licence:

Condition 350

The licensee shall ensure that no person consumes liquor on the footpath area of the premises, on any day, after 11:00pm.

Condition 360

The licensee shall ensure that any person consuming alcohol on the footpath area of the premises is to be seated.

Condition 370

The licensee shall ensure that no patron leaves the premises with open alcohol containers or glasses.

Condition 380

No entertainment is to be conducted after 11:00pm on any day.

Condition 390

An announcement is to be made at the cessation of entertainment to the effect that patrons should leave the premises and the vicinity of the premises quickly and quietly to avoid disturbance to the neighbourhood.

- 205.** As alleged in Item #1 of Table 5, the Authority is satisfied that a breach of Condition 360 in relation to patrons consuming liquor on the footpath while not seated did occur on 30 May 2015 and that Penalty Notice No. 4936070087 was issued against the Licensee by Police in respect of this breach. [The Authority notes that the Complainant has not provided a copy of this Penalty Notice.] The Authority makes this finding on the basis of the following evidence or material:

- COPS Report number E58137057 (Annexure 2.1);
- CCTV footage of the Premises for 30 May 2015 (Annexure 2.2); and
- Police summary of alleged breaches that occurred on the Premises on 30 May 2015 (Annexure 2.3).

- 206.** As alleged in Item #8 of Table 5, the Authority is satisfied that a breach of Condition 380 in relation to entertainment being conducted on the Premises after 11:00pm did occur on 21 August 2015 and that Penalty Notice No. 4936070224 was issued against the Licensee by Police in respect of this breach. [The Authority notes that the Complainant has not provided a copy of this Penalty Notice.] The Authority makes this finding on the basis of the following evidence or material:

- COPS Report number E59494774 (Annexure 9.1);
- Statement of Police by Constable Daniel Smith dated 3 November 2015 (Annexure 9.2);
- Statement of Police by Sergeant John Lawrie dated 2 November 2015 (Annexure 9.3);
- Statement of Police by Senior Constable Dean Magennis dated 2 November 2015 (Annexure 9.4); and
- Police summary of alleged breaches that occurred on the Premises on 21 August 2015 (Annexure 9.6).

- 207.** The Authority has reviewed the CCTV footage of the Premises for 21 August 2015 provided by the Complainant (Annexure 9.5) but that evidence is inconclusive as to a breach of Condition 380 on 21 August 2015. This has not been assisted by some

apparently incorrect camera data references provided by the Complainant with respect to the CCTV evidence. Nevertheless, the allegation is established on the basis of the documentary evidence and material before the Authority.

208. As alleged in Item #10 of Table 5, the Authority is satisfied that a breach of Condition 350 in relation to patrons consuming liquor on the footpath after 11:00pm did occur on 28 August 2015. The Authority makes this finding on the basis of the following evidence or material:

- COPS Report number E61697988 (Annexure 11.1); and
- Police summary of alleged breaches that occurred on the Premises on 28 August 2015 (Annexure 11.3).

209. The Authority has reviewed the CCTV footage of the Premises for 28 August 2015 provided by the Complainant (Annexure 11.2) but that evidence is inconclusive as to a breach of Condition 350 on 28 August 2015. This has not been assisted by some apparently incorrect camera data references provided by the Complainant with respect to the CCTV evidence. Nevertheless, the allegation is established on the basis of the documentary evidence and material before the Authority.

210. Item #12 of Table 5 refers to an alleged breach of Condition 350 on 10 September 2015. The Authority notes that the Complainant has not provided COPS Report number E60694980 or CCTV footage or any other evidence in relation to this alleged breach of the condition requiring that liquor not be consumed on the footpath after 11:00pm. The Authority is not satisfied that this allegation is established on the evidence and material before it.

211. As alleged in Item #14 of Table 5, the Authority is satisfied that a breach of Condition 360 in relation to patrons consuming liquor on the footpath while not seated did occur on 28 August 2015. The Authority makes this finding on the basis of the following evidence or material:

- COPS Report number E59821058 (Annexure 13.1);
- CCTV footage of the Premises for 10 October 2015 (Annexure 13.2); and
- Police summary of alleged breaches that occurred on the Premises on 10 October 2015 (Annexure 13.3).

212. As alleged in Item #15 of Table 5, the Authority is satisfied that a breach of Condition 370 in relation to carrying liquor off the Premises did occur on 10 October 2015. The Authority makes this finding on the basis of the following evidence or material:

- COPS Report number E59821058 (Annexure 13.1); and
- Police summary of alleged breaches that occurred on the Premises on 10 October 2015 (Annexure 13.3).

213. The Authority has reviewed the CCTV footage of the Premises for 10 October 2015 provided by the Complainant (Annexure 13.2) but that evidence is inconclusive to establish the alleged breach of Condition 370 on 10 October 2015. This has not been assisted by some apparently incorrect camera data references provided by the Complainant with respect to the CCTV evidence. Nevertheless, the allegation is established on the basis of the documentary evidence and material before the Authority.

- 214.** As alleged in Item #16 of Table 5, the Authority is satisfied that a breach of Condition 370 in relation to carrying liquor off the Premises did occur on 13 October 2015. The Authority makes this finding on the basis of the following evidence or material:
- Court Attendance Notice and NSW Police Facts Sheet for Charge No. H59675503 issued against the Licensee (Annexure 14.1);
 - Statement of Police by Sergeant John Lawrie dated 17 October 2015 (Annexure 14.2);
 - Statement of Police by Senior Constable Dean Magennis dated 17 October 2015 (Annexure 14.3); and
 - Police summary of alleged breaches that occurred on the Premises on 13 October 2015 (Annexure 14.5).
- 215.** The Authority has reviewed the CCTV footage of the Premises for 13 October 2015 provided by the Complainant (Annexure 14.4) but that evidence is inconclusive to establish the alleged breach of Condition 370 on 13 October 2015. This has not been assisted by some apparently incorrect camera data references provided by the Complainant with respect to the CCTV evidence. Nevertheless, the allegation is established on the basis of the documentary evidence and material before the Authority.
- 216.** As alleged in Item #17 of Table 5, the Authority is satisfied that a breach of Condition 390 requiring an announcement at the cessation of entertainment did occur on 30 October 2015. The Authority makes this finding on the basis of the following evidence or material:
- COPS Report number E59874462 (Annexure 17.1);
 - Police summary of alleged breaches that occurred on the Premises on 30 October 2015 (Annexure 17.3);
 - Statement of Police by Senior Constable Alexandra Preston dated 19 November 2015 (Annexure 17.4); and
 - Statement of Police by Senior Constable Linda Hedley dated 30 November 2015 (Annexure 17.5).
- 217.** The Authority has reviewed the CCTV footage of the Premises for 30 October 2015 provided by the Complainant (Annexure 17.2) but that evidence is inconclusive to establish the alleged breach of Condition 390 on 30 October 2015. This has not been assisted by some apparently incorrect camera data references provided by the Complainant with respect to the CCTV evidence. Nevertheless, the allegation is established on the basis of the documentary evidence and material before the Authority.
- 218.** The Authority is satisfied, on the basis of the above findings on the allegations in Table 5, that NSW Police have issued the Licensee with **17** Penalty Notices for offences against the *Liquor Act 2007* between 30 May 2015 and 30 October 2015.
- 219.** Table 6 in the Complaint Letter lists 8 charges for alleged offences against the Act that have been issued against the Licensee in relation to incidents of permitting intoxication on the Premises and various other licensing offences detected between September 2015 and February 2016. The Complainant states that these matters are listed for mention before the Port Macquarie Local Court on 4 May 2016 and the Licensee has indicated that he will defend the charges.
- 220.** As alleged in Item #1 of Table 6, the Authority is satisfied that three counts of the Licensee permitting intoxication on licensed premises and two counts of the Licensee failing to comply with conditions of the licence (regarding the CCTV system and the consumption of liquor on the footpath while not seated) occurred and were detected by Police on the

Premises on 12 September 2015, and that the Licensee was issued Charge No. H218682896 in respect of these matters. The Authority makes this finding on the basis of the same evidence or material relied upon to establish the allegation in Item #12 of Table 1.

- 221.** As alleged in Item #2 of Table 6, the Authority is satisfied that one count of the Licensee permitting intoxication on licensed premises and one count of the Licensee failing to comply with conditions of the licence (regarding the consumption of liquor on the footpath while not seated) occurred and were detected by Police on the Premises on 13 October 2015. The Licensee was issued Charge No. H59675503 in respect of these matters. The Authority makes this finding on the basis of the same evidence or material relied upon to establish the allegation in Item #14 of Table 1.
- 222.** As alleged in Item #3 of Table 6, the Authority is satisfied that one count of the Licensee selling/supplying liquor outside authorised hours; two counts of the Licensee failing to comply with conditions of the licence (regarding the CCTV system and the consumption of liquor on the footpath while not seated) and one count of the Licensee permitting intoxication on licensed premises occurred and were detected by Police on the Premises on 16 October 2015, and that the Licensee was issued Charge No. H60045703 in respect of these matters. The Authority makes this finding on the basis of the same evidence or material relied upon to establish the allegation in Item #15 of Table 1.
- 223.** As alleged in Item #4 of Table 6, the Authority is satisfied that one count of the Licensee permitting intoxication on licensed premises and one count of the Licensee failing to comply with conditions of the licence (regarding the consumption of liquor on the footpath while not seated) occurred and were detected by Police on the Premises on 24 October 2015, and that the Licensee was issued Charge No. H60202948 in respect of these matters. The Authority makes this finding on the basis of the same evidence or material relied upon to establish the allegation in Item #16 of Table 1.
- 224.** As alleged in Item #5 of Table 6, the Authority is satisfied that the Licensee has failed to comply with direction issued under the *Gaming and Liquor Administration Act 2007* and failed to comply with conditions of the licence regarding the CCTV system. These events occurred and were as detected by Police on 7 and 12 November 2015 respectively and the Licensee was issued with Charge No H59736638. The Authority makes these findings on the basis of the same evidence or material relied upon to establish the allegation in Item #21 of Table 4 and the information provided in the Field Court Attendance Notice and NSW Police Facts Sheet for Charge No. H59736638 (which forms part of Annexure R).
- 225.** As alleged in Item #6 of Table 6, the Authority is satisfied that two counts of the Licensee permitting intoxication on the Premises and three counts of failing to comply with conditions on the licence (regarding an announcement at the cessation of entertainment, the consumption of liquor on the footpath while not seated and the CCTV system) occurred and were detected by Police on 19 November 2015. The Licensee was issued with Charge No H62250789 for these events. The Authority makes these findings on the basis of the same evidence or material relied upon to establish the allegation in Item #19 of Table 1.
- 226.** As alleged in Item #7 of Table 6, the Authority is satisfied that one count of the Licensee refusing or failing to comply with a direction issued pursuant to the *Gaming and Liquor Administration Act 2007* occurred and was detected by Police on 1 December 2015. The Licensee was issued Charge No. H60239259 The Authority makes this finding on the basis of the Court Attendance Notice and NSW Police Facts Sheet for Charge No. H60239259 (which forms part of Annexure R).

- 227.** As alleged in Item #8 of Table 6, the Authority is satisfied that one count of the Licensee failing to comply with a condition on the licence (regarding the CCTV system) occurred and were detected by Police on the Premises on 20 February 2016. The Authority makes this finding on the basis of the same evidence or material relied upon to establish the allegation in Item #21 of Table 1.
- 228.** The Authority is satisfied, as alleged by the Complainant, that **11** of these offences are “prescribed offences” within the meaning of the Three Strikes Disciplinary Action scheme in Part 9A of the Act (section 144B), although the Authority observes that this is not a Complaint under Part 9A of the Act.
- 229.** The Authority is satisfied, on the basis of the above findings, that the Licensee has committed numerous offences against the *Liquor Act 2007*. Particular 4(a) of the Complaint is established.

Particular 4(b)

- 230.** Particular 4(b) of the Complaint alleges that the Licensee is not a fit and proper person to be the holder of a licence by reason that he fails to cooperate with law enforcement authorities, in particular, the Licensee failed to comply with powers vested in NSW Police for investigating liquor and gaming matters on two occasions in November and December 2015.
- 231.** The Authority is satisfied, as alleged by the Complainant, that the Licensee did not comply with a request made by Police pursuant to the *Gaming and Liquor Administration Act 2007* to provide certain CCTV footage to Police on 7 November 2015. The Authority makes this finding on the basis of the Complaint Letter and Field Court Attendance Notice and NSW Police Facts Sheet for Charge No. H59736638 issued against the Licensee (which forms part of Annexure R).
- 232.** The Authority is satisfied, as alleged by the Complainant, that the Licensee failed to comply with a request made by Police pursuant to the *Gaming and Liquor Administration Act 2007* to provide sales records to Police on 1 December 2015. The Authority makes this finding on the basis of the Complaint Letter and the Court Attendance Notice and NSW Police Facts Sheet for Charge No. H60239259 (which forms part of Annexure R).
- 233.** The Authority is satisfied, on the evidence or material before it, that these matters concerned legitimate requests made by Police with which the Licensee failed to comply. The Authority notes that the facts of these matters are not contested by the Licensee.
- 234.** The Authority is satisfied, on the basis of the above findings, that the Licensee has failed to comply with two requests made under the *Gaming and Liquor Administration Act 2007*. Particular 4(b) of the Complaint is established.

Particular 4(c)

- 235.** Particular 4(c) of the Complaint alleges that the Licensee is not a fit and proper person to be the holder of a licence by reason that he consumes liquor regularly whilst working on the Premises to the point where he has become intoxicated.
- 236.** The Authority notes that the Complainant has not provided Particulars of this allegation, but appears to rely upon the matters set out in Table 1 and Table 3 regarding incidents of intoxicated patrons detected on or near the Premises and/or the Licensee engaging in

conduct or activities that are likely to encourage misuse or abuse of liquor, some of which are not relevant to the allegation made in this Particular.

- 237.** The Complainant does specifically refer to the incident in Item #15 of Table 1 and alleges that the Licensee was seen to stumble into a wall after drinking throughout his shift on 16 October 2015. The Complainant also alleges that the Licensee was seen earlier during this same shift consuming shots of liquor, toasting patrons and dancing around the *Grape and Petal* Bar.
- 238.** The Authority is satisfied, on the basis of the same evidence or material relied upon to establish Ground 1, that the Licensee did in fact consume liquor whilst he was working on the Premises on 16 October 2015, causing him to stumble into a wall. The Authority is satisfied that the Licensee was intoxicated on that occasion.
- 239.** The Authority repeats its observations and findings on Particulars 6, 14, 17 and 21 of Ground 1 and Particulars 13, 7, 4 and 1 of Ground 2 above, and is satisfied, on the basis of the same evidence or material relied upon to establish those Particulars, that the Licensee also consumed liquor whilst working on the following further occasions:
- 31 July 2015 (Item #6 of Table 1);
 - 13 October 2015 (Item #14 of Table 1);
 - 30 October 2015 (Item #17 of Table 1);
 - 20 February 2016 (Item #21 of Table 1).
- 240.** The Authority is satisfied, on the basis of the above findings, that the Licensee consumed liquor whilst on duty at the Premises on at least five (5) occasions between July 2015 and February 2016 and that he was intoxicated on one of these occasions (16 October 2015). The Authority is satisfied that the Licensee consumed liquor regularly whilst working on the Premises.
- 241.** At paragraph 4.9(c) of his submission dated 10 July 2016 the Licensee concedes that he does consume liquor whilst working and acknowledges that such behaviour on the part of himself and his staff “falls short of the expectations of the community as a whole”. However, the Licensee denies that he has at any time been *intoxicated* whilst working.
- 242.** The Authority accepts the Licensee’s submissions that he does in fact consume liquor whilst working on the Premises, and is satisfied that the Licensee was intoxicated when he consumed liquor during his shift on 16 October 2015. However the Authority is not satisfied, on the balance of probabilities, that the Licensee has *regularly* consumed liquor whilst working on the Premises *to the point of intoxication*.
- 243.** Particular 4(c) is established in part.

Particular 4(d)

- 244.** Particular 4(d) alleges that the Licensee is not a fit and proper person to be the holder of a licence by reason that he *personally* breaches the conditions on his licence.
- 245.** The Authority notes that the Complainant has not provided Particulars of this claim, but appears to rely upon the incident in Item #4 of Table 6 (which is the same matter as that alleged in Item #16 of Table 1). The Complainant here alleges that the Licensee himself is seen consuming a beer on the footpath just outside the licensed Premises whilst standing and smoking a cigarette on 24 October 2015.

- 246.** In his submission of 10 July 2016, the Licensee submits that he has “not been convicted of any offences under the Act” and “never been convicted of anything”. Nevertheless the Authority is satisfied, on the basis of the same evidence or material relied upon to establish Ground 3, that on 24 October 2015 the Licensee himself did consume beer on the footpath just outside the Premises whilst standing and smoking a cigarette, in contravention of Condition 360 on the licence.
- 247.** The Authority is satisfied, on the basis of the above findings, that the Licensee has personally engaged in conduct that was contrary to a condition on the licence on 24 October 2015. Particular 4(d) is established.

Particular 4(e)

- 248.** Particular 4(e) of the Complaint alleges that the Licensee is not a fit and proper person to be the holder of a licence by reason that he breaches smoking laws on his own licensed premises.
- 249.** The Authority notes that the Complainant has not provided Particulars of this allegation. The Complainant contends that the Licensee has been observed on CCTV smoking inside the venue in both the main *Pier on Clarence* and *Grape and Petal* Bars, and has also been seen smoking within 4 metres of the public entrances to the venue on “various dates and times”.
- 250.** The Complainant further alleges that a statement has been provided to NSW Health regarding non-compliance by the licensed business and the Licensee with anti-smoking laws, as noted in a Statement of Police by Sergeant John Lawrie dated 10 November 2015 (Annexure S).
- 251.** While an issue arises as to whether smoking regulations fall within the scope and purpose of the *Liquor Act 2007*, the Authority understands that the Complainant is submitting that the Licensee’s personal contravention of the *Smoke-free Environment Act 2000* is a relevant matter that goes to his broader reputation and character.
- 252.** The Authority accepts that offences committed by a licensee other than those provided by the liquor legislation (whether against the *Crimes Act* or other legislation) are matters that may potentially be taken into account when assessing a person’s honesty or when having regard to their reputation, including their character, for the purposes of section 45(5A) of the Act.
- 253.** However, there is no evidence of Penalty Notices or other formal regulatory action having been taken against the Licensee for his alleged personal contravention of the *Smoke-free Environment Act 2000*. On the material before it, the Authority does not give weight to these allegations when considering this Ground of Complaint.
- 254.** Particular 4(e) is not established.

Particular 4(f)

- 255.** Particular 4(f) of the Complaint alleges that the Licensee is not a fit and proper person to be the holder of a licence by reason that he does not adhere to the terms of the Hastings Liquor Accord or the *Alcohol Plan of Management* for the Premises.

- 256.** A copy of the Hastings Liquor Accord, signed by the Licensee on 10 October 2014 (Annexure C), and the *Alcohol Plan of Management* for the Premises dated 10 March 2015 (Annexure D) have been provided by the Complainant.
- 257.** The Authority notes that the Licensee has made several undertakings in this document with regard to the responsible service of alcohol as part of his participation in the Hastings Liquor Accord. They include:
- Promoting a strict door policy;
 - No sale or supply of shooters/shots at any time, or any drink designed for rapid or consecutive “line up” consumption (does not include premium spirits served appropriately and consumed responsibly);
 - No “doubles” spirits at any time (does not include measures used in making cocktails);
 - No “ready to drink” beverage containing more than 5% alcohol to be sold, at any time, for consumption on the licensed premises.
- 258.** The Authority notes that the *Alcohol Plan of Management* for the Premises also contains measures aimed at, *inter alia*, minimising noise and adverse amenity impacts; ensuring the responsible service of alcohol; preventing intoxication; preventing underage drinking and preventing disruptive or anti-social behaviour.
- 259.** At point 4.5 of his submissions dated 10 July 2016, the Licensee submits that he was the Vice President of the Hastings Liquor Accord in 2014 and is now the current President. He contends that this highlights his “long-term commitment” to active membership of the Accord.
- 260.** The Authority notes that the Accord provides for no sale or supply of shooters or shots at any time. The Licensee submits at point 4.9 of his submissions that he did not re-sign this document when it was handed out at the Annual General Meeting of the Liquor Accord in 2015.
- 261.** The Licensee argues that any beverage described by the Complainant as a “shot” in this Complaint does not contravene the terms of the Accord, by reason that such shots amount to premium beverages served at a premium price that are consumed responsibly and fall within an exception provided by the Accord.
- 262.** Nevertheless, on the basis of the high incidence of patrons rapidly consuming drinks served in (what were described by staff as) a “7 oz” glass, as evident from the CCTV footage provided by the Complainant, the Authority is satisfied that this conduct does not fall within the exception provided by the Accord. The Authority is satisfied that the Licensee has not complied with the Accord in this regard.
- 263.** While the Accord is a voluntary scheme, the allegation is accepted and given *some* weight as it adversely reflects upon the ability of the Licensee to adhere to the undertakings he has given to the Accord. The Licensee has argued that he did not sign the 2015 version of the Accord when it was handed to him at the Annual General Meeting, yet relies in his submissions on his past and present participation in the Accord.

- 264.** The Complainant has not provided enumerated Particulars of the allegation in Particular 4(f), but the allegation refers generally to the incidents in Table 3 with regard to the Licensee's involvement in the consumption and supply of shots to patrons and staff.
- 265.** The Authority repeats its observations and analysis of the incidents in Table 3, as set out in its findings on Ground 2 above.
- 266.** In support of Particular 4(f), the Complainant specifically refers to the incident in Item #15 of Table 1, alleging that the Licensee was present and involved when liquor was supplied outside authorised trading hours on 16 October 2015. The Authority repeats its observations and analysis of this incident, as set out in its findings on Ground 3 and Part 3.1 of the Complaint Letter.
- 267.** The Complainant also refers to the incident in Item #19 of Table 1 in support of this Particular, alleging that the Licensee was present on 19 November 2015 when an intoxicated female staff member was seen behaving inappropriately and licking the bare breast of another female patron.
- 268.** The Authority is satisfied that the female staff member involved in this incident was intoxicated. However the Authority is not satisfied that the conduct exhibited by the female staff member is sufficiently indecent to be contrary to section 73 of the Act or the Premises' *Alcohol Plan of Management*. While this incident is factually established on the evidence or material before the Authority, the conduct of the female staff member on 19 November 2015 constitutes a fleeting incident of exuberance and this matter is given little weight.
- 269.** The Authority is satisfied, on the basis of the above findings, that Particular 4(f) is established to the extent that it concerns the Licensee's non-compliance with the terms of the Hastings Liquor Accord, of which he is the President. The Authority does not make any adverse finding in relation to the Licensee's alleged non-compliance with the *Alcohol Plan of Management*.

Particular 4(g)

- 270.** Particular 4(g) alleges that the Licensee is not a fit and proper person to be the holder of a licence by reason that he "misrepresents the truth" in both official statements and Incident Book entries, and fails to report incidents or omits information in the Incident Book to suit his own agenda.
- 271.** The Complainant refers to an incident that occurred on 17 October 2014 when a security officer working on the Premises, Mr Daniel Kelly, assaulted a patron on the Premises, Mr Andrew Van Den Bos.
- 272.** The Complainant alleges that the Licensee's record of the assault as noted in the Incident Book does not accord with the CCTV evidence or independent witness accounts.
- 273.** The Complainant contends that the Licensee claims that the patron had his head touching the security guard's head, provoking the guard to respond in the way he did. The Complainant further contends that the Licensee failed to mention the punches thrown by the guard in the Incident Book entry.
- 274.** The Complainant relies upon the following evidence or material in support of this allegation:

- COPS Report number E56747742 (Annexure U);
- Statement of a Witness by the Licensee dated 10 March 2015 (Annexure E);
- Statement of Police by Senior Constable Damian McAnarney dated 20 February 2015 (Annexure F);
- Excerpts of the Premises' Incident Log for 17 October 2014 (Annexure G); and
- CCTV footage of violent incidents on the Premises (Annexure H).

- 275.** The Authority has reviewed all of the above evidence or material and is satisfied that the Licensee's record of this incident in the Premises' Incident Book is inaccurate and misrepresents the truth.
- 276.** The Complainant also refers to an incident that occurred on 24 October 2015 in relation to a female patron who needed to be driven home by a staff member due to her seriously intoxicated state. The Complainant alleges that no medical attention was arranged for the intoxicated female (who provided a statement to Police alleging that her drink had been spiked) and that the Licensee initially stood on the footpath smoking as the patron vomited in the garden while being assisted by other patrons. The Complainant submits that this incident warrants recording, however there is no record in relation to this incident in the Premises' Incident Book.
- 277.** The Complainant relies upon the Court Attendance Notice and NSW Police Facts Sheet for Charge No. H60202948 issued against the Licensee on 24 October 2015 (Annexure 16.1) and the CCTV footage provided by the Complainant for the Premises on 24 October 2015 (Annexure 16.4) in support of this allegation.
- 278.** On the evidence or material before it, the Authority is satisfied that this is a serious incident involving an alleged drink spiking and that the Licensee should have recorded it in the Incident Book for the Premises. The Authority notes that the Licensee does not contest the allegation that this incident was not recorded in the Incident Book and has not provided any evidence to the contrary.
- 279.** The Complainant also refers to an incident that occurred on 26 February 2016 in relation to a male patron who was assaulted by an unknown male just outside the Premises. The Complainant alleges that attending Police, the Licensee and security staff have provided differing accounts of the circumstances leading up to this incident.
- 280.** The Complainant relies upon COPS Report number E60580234 (Annexure 22.1) and Excerpts of the Premises' Incident Log in relation to this incident on 26 February 2016 (Annexure V) in support of this allegation.
- 281.** On the evidence or material before it, the Authority is satisfied that the security guard and the Licensee provide slightly different accounts of the incident by reason of their arrival on the scene at different times. The Authority is not satisfied that this matter constitutes a misrepresentation of the truth on the part of the Licensee. The Licensee's account is not completely accurate, but it is not an unreasonable or misleading account of events.
- 282.** Particular 4(g) is established.
- 283.** The Authority is satisfied, on the basis of the above findings, that Particulars 4(a) through 4(g) are established, either in whole or in part. The Authority further notes that Grounds 1, 2 and 3 of the Complaint have been established.
- 284.** The Authority is satisfied that Ground 4 of the Complaint is established and that the Licensee is not a fit and proper person to be the holder of a licence.

Findings on Ground 5

- 285.** Ground 5 of the Complaint, which is based on section 139(3)(s) of the Act, alleges that the licence has not been exercised in the public interest.
- 286.** The Authority notes that the Licensee has not made any specific submissions in response to the allegations in this Ground.

Section 3(2)(a) of the Act

- 287.** On the statutory consideration in section 3(2)(a) – minimising harm associated with misuse and abuse of liquor – the Complainant submits that the Authority may have regard to the evidence provided in support of Grounds 1 and 2 of the Complaint as that evidence establishes that the Licensee and management of the licensed business have not been able to minimise harm associated with alcohol supply and consumption and are in fact directly involved in causing it.
- 288.** The Complainant further submits that the Licensee has not updated the *Plan of Management* for the Premises, despite his “regular” undertakings to update and improve the *Plan* and despite the commission of numerous offences against the Act between March 2015 and March 2016. Furthermore, the Complainant reiterates the submission that the Licensee signed the Hastings Liquor Accord Terms on 10 October 2014, which includes an undertaking not to supply shooters/shots or any drink designed for rapid consumption; yet the Licensee has engaged in conduct contrary to that undertaking.
- 289.** The Authority repeats its observations and findings on Grounds 1, 2 and 4(f) of the Complaint and is satisfied, as alleged in this Ground, that the Licensee and management staff have not been able to minimise the harm associated with alcohol supply and consumption and are in fact directly involved in causing it, contrary to the object set out in section 3(2)(a) of the Act.

Section 3(2)(b) of the Act

- 290.** On the statutory consideration in section 3(2)(b) – encouraging responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor – the Complainant submits that the Authority may have regard to the evidence provided in support of Grounds 1 and 2 of the Complaint. The Complainant contends that there are “high risks of alcohol related harm to the community” associated with the Licensee, management and staff consuming and supplying liquor while intoxicated and/or encouraging intoxicated patrons to consume liquor.
- 291.** The Authority repeats its observations and findings on Grounds 1, 2 and 4(f) of the Complaint and is satisfied, as alleged in this Ground, that the conduct of the Licensee, management and staff of the licensed business in consuming and supplying liquor while intoxicated and/or encouraging intoxicated patrons to consume liquor presents a high risk of alcohol related harm to the community.
- 292.** In support of this Ground, the Complainant also refers to transcripts of Police interviews with the business owner, Mr Stephen Jensen, and four other employees of the business. The Complainant claims that these interviewees’ conduct in those interviews “highlights the contempt for responsible service of alcohol, a poor understanding of the *Plan of Management* for the venue and the poor leadership and management of the Premises”.

- 293.** The Complainant refers to the fact that each of these persons interviewed read prepared preambles making it clear that they were participating in the interviews “under duress”. The Complainant submits that the interviewees showed “irresponsible attitudes” with regard to cooperation with the authorities. Further, the Complainant submits that there was a clear attempted justification of consuming “shots” whilst on duty by using the “two drink” policy as an “excuse”.
- 294.** The Authority has reviewed the transcripts of Police interviews with the business owner, Stephen Jensen (Annexure I); staff member Corey Kelly (Annexure J); staff member Anastasia Murray (Annexure K); staff member Haylee Williams (Annexure L); and staff member Rebecca Hall (Annexure M) and is satisfied that these five persons read prepared statements from their solicitor indicating that they did not wish to be interviewed. Nevertheless, they then went on to answer Police questions.
- 295.** The Authority is not satisfied that their conduct establishes that they committed any offence against the *Gaming and Liquor Administration Act 2007* or that they showed “irresponsible attitudes” with regard to cooperation with Police. The Authority does not give any weight to these matters when assessing whether the licence has been exercised contrary to the public interest.

Section 3(2)(c) of the Act

- 296.** On the statutory consideration in section 3(2)(c) – the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life – the Complainant submits that the Authority may have regard to the evidence provided in support of Grounds 1, 2 and 3 of the Complaint.
- 297.** The Authority repeats its observations and findings on Grounds 1, 2 and 3 of the Complaint and is satisfied that the conduct established in those Grounds in respect of the operation of the Premises detracts from the amenity of community life.
- 298.** The Complainant also refers to the following further evidence or material in support of this Ground:
- Police video footage of noise from entertainment, music and patrons (Annexure O);
 - Statement dated 16 September 2015 from Ms Catherine Henderson, manager of the Mid-Pacific Motel (Annexure Q);
 - Covert audit and observations of the Premises on 27 March 2015 recorded by Licensing Police in COPS Report number E58001929 (Annexure N);
 - COPS Report numbers E61195287 and E59708177 relating to disturbance issues arising from the operation of the Premises (Annexure P and Annexure 23.1).
- 299.** The Authority has reviewed all of the above evidence or material and is satisfied that while the Police video footage of noise from entertainment, music and patrons (Annexure O) provides some evidence of noise emanating from the Premises, the level of noise from these disturbances is not quantified or measured by Police. Similarly, the observations of the Premises on 27 March 2015 recorded by covert Licensing Police in COPS Report number E58001929 (Annexure N) are not sufficiently specific to enable the Authority to give weight to this material for the purposes of Ground 5.
- 300.** The Authority is satisfied, on the basis of the statement dated 16 September 2015 from Ms Catherine Henderson, manager of the Mid-Pacific Motel (Annexure Q) and COPS Report numbers E61195287 and E59708177 relating to disturbance issues arising from the operation of the Premises (Annexure P and Annexure 23.1), that the operation of the

Premises has adversely affected the amenity of community life on numerous occasions between October 2014 and February 2016.

- 301.** In support of Ground 5, the Complainant also relies upon Table 7 in the Complaint Letter (**Table 7**), which sets out **7** separate violent incidents that occurred on or near the Premises between October 2014 and February 2016. The Authority makes the following findings:
- 302.** As alleged in Item #1 of Table 7, the Authority is satisfied that a male patron was involved in a fight on Clarence Street near the Premises, shortly after he had been asked to leave the Premises at approximately 11:30pm on 26 February 2016 [the Authority notes that the Complaint Letter states “26 June 2016” in an apparent typographical error]. The Authority makes this finding on the basis of the CCTV footage of violent incidents on the Premises (Annexure H) and COPS Report number E60580234 (Annexure 22.1).
- 303.** As alleged in Item #2 of Table 7, the Authority is satisfied that at about 11:00pm on 20 February 2016 a number of male patrons, who had been ejected from the Premises following a physical altercation, were arguing with security staff on the footpath immediately outside the Premises and that it took more than 15 minutes to control the incident upon Police attendance at the scene. The Authority makes this finding on the basis of the CCTV footage of violent incidents on the Premises (Annexure H) and COPS Report number E60834573 (Annexure 21.1).
- 304.** As alleged in Item #3 of Table 7, the Authority is satisfied that at about 11:20pm on 10 October 2015 a number of male patrons left the Premises and became involved in a fight at the corner of Clarence and Short Streets, about 50 metres from the Premises. The fight continued back to the footpath of the Premises, with one male throwing chairs at the other males involved. The original offender was not at the venue at all. The Authority makes this finding on the basis of the CCTV footage of violent incidents on the Premises (Annexure H) and COPS Report number E61112887 (Annexure 13.1),
- 305.** Item #4 of Table 7 alleges that at about 11:44pm on 22 August 2015 a male was seen staggering outside the Premises when leaving and was refused entry into the Port Macquarie Hotel, upon which the male failed to leave the vicinity and was involved in an altercation with hotel security. The Authority is not satisfied that the COPS Report number E61601186 (Annexure 10.1) provided by the Complainant substantiates this allegation as it only refers to the Port Macquarie Hotel and does not refer to the Premises at all. No adverse finding is made on this allegation for the purposes of this Ground.
- 306.** As alleged in Item #5 of Table 7, the Authority is satisfied that at about 11:50pm on 31 July 2015 two intoxicated males were involved in an affray and assault on the Premises, resulting in their arrests. The Authority makes this finding on the basis of the CCTV footage of violent incidents on the Premises (Annexure H) and COPS Report number E58977858 (Annexure 6.1).
- 307.** As alleged in Item #6 of Table 7, the Authority is satisfied that at about 11:48pm on 30 May 2015 a female patron who was well affected by alcohol was charged with assaulting another female patron on the Premises by punching her several times to the head. The Authority makes this finding on the basis of the CCTV footage of violent incidents on the Premises (Annexure H) and COPS Report number E58137057 (Annexure 2.1).
- 308.** As alleged in Item #7 of Table 7, the Authority is satisfied that at about 10:35pm on 17 October 2014 a male patron arguing with a security guard was tackled to the ground and struck three times by the security guard. The Licensee made misleading statements to

Police and recorded the incident in the Premises' Incident Book in a manner that did not accord with the CCTV footage. The Authority makes this finding on the basis of the same evidence or material relied upon in support of Particular 4(g) in relation to the violent incident that occurred on the Premises on 17 October 2014.

- 309.** The Authority is satisfied, on the basis of the above findings, that the mode of operation of the Premises by the Licensee and management staff is such that the licensed Premises operates in a manner that is adverse to the statutory considerations with which a licensee and the Authority must have regard when exercising functions under the Act. The licence has not been exercised in the public interest.

FINAL SUBMISSIONS ON DISCIPLINARY ACTION

- 310.** On 31 August 2016 the Authority sent a detailed letter notifying its findings on the Grounds of Complaint (**Findings Letter**) to the parties, inviting them to provide any final submissions or evidence confined to the question of what, if any, disciplinary action should be taken in light of those findings.

Complainant Submission dated 7 September 2016

- 311.** On 7 September 2016 the Complainant made a submission to the Authority in response to the Findings Letter. Briefly, the Complainant submits that the breaches detected on the Premises and committed by the Licensee are of a “serious and ongoing nature” and that a “clear deterrent” against these types of offences is required to reduce the incidence of alcohol related crime within the Port Macquarie Central Business District.
- 312.** With regard to Ground 1, the Complainant submits that the following measures should be implemented to reflect the “expected standards” relating to the responsible service of alcohol and management of patrons’ consumption of alcohol in order to minimise any future occurrences of intoxicated persons being on or being seen to leave the Premises:
- The licence should be “re-issued” as an on-premises (Wine Bar) licence with takeaway provision for wine only and the prohibition of the sale or supply of any spirits, cocktails or other alcohol that is not wine or beer.
 - The elimination of “large receptacles” such as jugs, pints provided or used on the Premises.
- 313.** With regard to Ground 2, the Complainant submits that the evidence “substantiates a longstanding culture by the Licensee and staff to encourage behaviour which is considered well outside the intended good conduct and responsible service of alcohol” and that the following measures should be implemented:
- Eliminating the sale of spirits, cocktails and shots.
 - The removal of the Licensee.
 - A restriction in relation to the supply/sale of beer or wine in standard glasses with no large receptacles such as jugs, pints, etc. provided or used on the Premises.
- 314.** With regard to Ground 3, the Complaint Material has identified “an extremely high number of breaches” of conditions on the licence regulating the controlled sale, supply and consumption of liquor. The Complainant submits that the “most disturbing aspect” in relation to this Ground is the extension of the behaviour from not only the bar and interior of the Premises, but in the conduct permitted on the shared licensed footpath area, which in turn impacts on the “expectations, needs and aspirations of the community”.

- 315.** The Complainant submits that the Business Owner has breached Conditions 2, 3, 4, 6, 8, 12 and 15 of the outdoor dining permit issued by Port Macquarie-Hastings Council on 22 June 2015 (a copy of which is provided) and that the venue has previously “manipulated the CCTV” to restrict or prevent the recording of the sale or supply of alcohol upon the Premises.
- 316.** The Complainant submits that the following measures should be implemented to remedy the matters identified in Ground 3 to enable the venue to “fall more closely” within the “intended purpose” of a wine bar and to “eliminate the current issues” in relation to ensuring the quiet and good order of the neighbourhood:
- Removal of the condition on the licence which currently permits the consumption of any liquor on the shared footpath outside the Premises.
 - Removal of the Licensee.
 - Full CCTV coverage of all bar and service areas to clearly identify the service or provision of any form of alcohol or other beverages from within the Premises.
 - No entertainment or amplified music to be conducted on the Premises after 10:00pm on any day.
- 317.** With regard to Ground 4, the Complainant submits that the Licensee has shown a “total disregard” for his requirements under the Act, which is exacerbated by his “refusal” to comply with any directions, recommendations or compliance warnings over a “lengthy period of time”. The Authority should take the following action:
- That the Licensee be disqualified from holding a liquor licence and/or statutory position under the Act in licensed premises for a period of 10 years.
 - That the Licensee has his responsible service of alcohol qualification revoked for a minimum of 6 months.
- 318.** With regard to Ground 5, the Complainant submits that the Complaint Material clearly establishes the “ongoing and continual disregard” exhibited by the Licensee and management staff to conduct the Premises in accordance with any legislative requirements or licence conditions and that there has been a “continual lowering of standards” which has not been rectified at any stage by either the Business Owner or the Licensee. The Complainant acknowledges the Authority’s power to cancel the licence, but submits that “the most appropriate disciplinary action” would be as follows:
- The reduction in operating hours for the sale, supply, service and consumption of liquor to cease at 10:00pm on any given day.
 - The amendment to the current licence not to permit the consumption or provision of any liquor on the shared footpath area outside the Premises.
 - The licence for the Premises is issued as an “on-premises (Wine Bar)” licence with takeaway provision for wine only and should revert to the intended use of the licence “in accordance with the wine bar character”. The licence was initially issued with this intention. Police seek the prohibition in relation to the sale/supply of any spirits, cocktails or other alcohol that is not wine or beer.
 - A restriction in relation to the supply/sale of beer or wine in standard glasses with no large receptacles such as jugs, pints, etc. provided or used on the Premises.
- 319.** Attached to the Complainant submission of 7 September 2016 is a copy of the Approval to Occupy Footpath pursuant to section 125 of the *Roads Act 1993* and section 68 of the *Local Government Act 1993* issued to the Business Owner by Port Macquarie-Hastings Council on 22 June 2015 and the associated plans of the licensed areas of the Premises.

Premises Owner Submission dated 15 September 2016

320. On 15 September 2016 Mr David Shannon of the law firm *Searson Shannon & Co*, who acts for the Premises Owner, provided a submission to the Authority in response to the Findings Letter. Briefly, the Premises Owner submits that it opposes the licence conditions proposed by the Complainant in its submission of 7 September 2016. The Premises Owner submits that disciplinary action taken by the Authority should be confined to:

- The termination of Mr Barbuto's employment.
- An RSA Marshal will be rostered on every night at 8:00pm.
- CCTV footage will cover all service areas.
- The sale/supply of shots will cease.

321. The Premises Owner notes that the Complainant included a copy of the "lease agreement" between the Premises Owner and Port Macquarie-Hastings Council for use of the footpath outside the Premises. The Premises Owner submits that the furnishing of the lease agreement "lacks specifics" and for this reason is not addressed by the Premises Owner.

322. The Premises Owner submits, by way of background, that the Premises holds an on-premises (Wine Bar subcategory) licence that sells "restaurant quality food" and "quality wines" to the public and stocks a "full range of liquor" for consumption on the Premises. The licensed business on the Premises provides entertainment that is "very different" from that found at any other licensed venue in Port Macquarie and provides "valuable employment" to 14 people who are "in the local area".

323. The Premises Owner contends that the venue is also used by schools, churches and other community groups without charge for community based activities such as school band competitions, HSC Trials assessments, Christian mothers' group gatherings and children's cancer fundraising. The Premises Owner submits that the Premises is "permitted" to provide all of the above services and facilities under both its licence as well as the relevant planning laws.

324. The Premises Owner submits that there are several characteristics of the venue that "set it apart" from other licensed venues in Port Macquarie, including:

- The venue closes by 12:00 midnight on Tuesday through Saturday and by 10:00pm on Sunday;
- All entertainment on the Premises must cease by 11:00pm;
- Liquor consumption in the outdoor area must cease by 11:00pm and liquor service is often finished by 11:30pm;
- The type of entertainment provided includes "local" bands, solo artists, open "mic" nights, comedians, live drawing, charity events, "drag" shows and DJs;
- While dimly lit in some areas, the Premises does not provide a light show, lasers or any other visual/tactile medium commonly used in nightclubs;
- The volume of the music is "not so all encompassing" that it prohibits conversation;
- There is no designated dancefloor;
- Bar staff are highly trained and frequently produce "complicated products" requiring time and skill to prepare;
- The kitchen takes last orders at 10:00pm every night that the Premises is open and when the kitchen is closed, lighter meals are always available upon request;
- There are no gambling facilities or pool tables on the Premises as it is a "family venue" that aims to attract an older and "more mature clientele".

- 325.** The Premises Owner submits that Mr Stephen Jensen, the director of the corporate Premises Owner, was the approved manager of the venue when it was owned by Tameeka Pty Ltd and ceased his employment with Tameeka Pty Ltd on 30 June 2013. Before moving to Port Macquarie, Mr Jensen held several “positions of authority” at various other venues including bar manager at The Rails in Byron Bay, bar manager at the Orange Grove Hotel, assistant manager at the Victoria Hotel, bar manager at the Olympic Hotel, and bar manager at the Exchange Hotel. The Premises Owner submits that Mr Jensen left all of the above venues “on good terms” and at no stage was his management the focus of any issues with compliance.
- 326.** The Premises Owner submits that in May 2015 Mr Jensen became the business owner of the venue through his company Willis Rose Pty Ltd. At the time, Mr Jensen was studying full-time, completing a double degree in Law/Social Science at Southern Cross University and was in no position to take over the role of licensee or manager of the venue. The Premises Owner submits that at the time the venue changed hands, Mr Barbuto’s conduct had not been the focus of any issues with compliance. In particular, there were no issues with intoxication, CCTV cameras or disturbances to the quiet and good order of the neighbourhood.
- 327.** The Premises Owner submits that Mr Jensen’s role within the business has been confined to overseeing its finances through his company Willis Rose Pty Ltd, and occasionally bartending. Operational control has been exercised by Mr Barbuto and bar managers such as Austin Hughes and Corey Kelly.
- 328.** The Premises Owner submits that Mr Jensen has taken several steps following the filing of this Complaint to improve management practices at the venue and alleviate any concerns that the Authority may have, including:
- The employment of Mr Barbuto has been terminated;
 - The employment of Mr Barr has been terminated;
 - Whilst Mr Jensen’s company is the licensee of the Premises as outlined in section 61 of the Act, Mr Jensen has deferred his studies;
 - Mr Jensen has met with various stakeholders in the community including the local council and the managers of the Mid-Pacific Motel;
 - Smoking on the Premises has ceased;
 - The sale of straight liquor at the Premises has ceased;
 - An RSA Marshal is rostered on at the Premises every night;
 - Mr Jensen is overseeing compliance in a “hands on” manner every Friday and Saturday night.
- 329.** The Premises Owner notes that Mr Jensen intends to continue in this role until he has employed a suitable candidate to undertake the role of licensee.
- 330.** The Premises Owner makes the following specific submissions in response to each of the five Grounds of Complaint.
- 331.** On Ground 1, the Premises Owner contends that of the **14** events found by the Authority that establish the allegation in Ground 1, **5** do not outline what type of alcohol was being consumed by the patron identified as intoxicated; **3** items outline that the patron in question was drinking beer; **3** items outline that the patron was consuming wine; **2** patrons are said to be drinking cocktails; and **2** patrons are identified as consuming shots. The Premises Owner submits that the issue is not the type of beverage being consumed, but the management of the Premises at the time.

- 332.** The Premises Owner submits that Mr Barbuto’s employment has been terminated; an RSA Marshal will be rostered on at the Premises every night after 8:00pm; the CCTV cameras will be adjusted so that all service areas are covered; and that the sale/supply of shots on the Premises has been discontinued.
- 333.** On Ground 2, the Premises Owner notes Mr Barbuto’s submission, which states that the consumption of alcohol by on-duty staff members has ceased. The Premises Owner further submits that Mr Barbuto’s employment has been terminated; all senior management roles have changed hands since the filing of the Complaint; and the sale/supply of shots on the Premises has been discontinued.
- 334.** On Ground 3, the Premises Owner refers to the Authority’s findings and notes that they concern breaches of the CCTV Condition on the licence for the Premises. The Premises Owner submits that Mr Barbuto’s employment has since been terminated, but that Mr Barbuto had no reason to believe that the CCTV footage he provided to Sergeant Lawrie “within the last 6 weeks” was non-compliant.
- 335.** On Ground 4, the Premises Owner notes that Mr Barbuto was found not fit and proper by the Authority and submits that Mr Barbuto’s employment has been terminated.
- 336.** On Ground 5, the Premises Owner contends that none of the evidence provided by the Complainant “highlights an issue with the consumption of liquor on the footpath”. The Premises Owner submits that the sale of alcoholic beverages should not be restricted to beer and wine only and notes that the sale/supply of shots on the Premises has been discontinued. The Premises Owner also refers to Mr Barbuto’s submission in relation to pints being a “universally accepted” standard measure for the service of alcoholic beverages.
- 337.** The Premises Owner makes the following further submissions in relation to Ground 5:
- The Authority found that Grounds 1, 2 and 4(f) were relevant in establishing this Ground. As such, Mr Barbuto’s employment has been terminated.
 - The premises owner, Mr Jensen, has established a relationship with the new managers of the Mid-Pacific Motel and will ensure any issues are addressed.
 - There have been no complaints from any full-time residents who live in an apartment block directly across the road.
 - Mr Barbuto has submitted several letters of support from other residents in the immediate vicinity of the venue.
 - The findings made by the Authority “clearly outline a deficiency in management”. The Premises Owner submits that ensuring these issues are addressed and compliance with the conditions on the licence and the Act will “ensure that the licence will operate in the public interest”.
- 338.** The Premises Owner submits that the conditions proposed by the Complainant in its submission of 7 September 2016 do not accord with the objects of the Act and that:
- There is no expectation or need of the community for the “majority” of the conditions;
 - The conditions proposed by the Complainant do not meet the aspirations of the community, nor do they facilitate the balanced development of the liquor industry as the conditions are “not evidence based”.
 - The proposed conditions are “unwarranted and an unnecessary expense and burden” on the Premises Owner.
 - The conditions detract from the responsible development of related industries in that the business would be unable to sustain the provision of live entertainment as a

- result. Port Macquarie would suffer a significant loss within the arts community if the Premises were forced to discontinue the performances it provides each night.
- Given the changes that have occurred in the management staff, the fact that Mr Barbuto's employment has been terminated and the "other evidence based submissions" made by the Premises Owner, the operation of the venue will not detract from community life.

Licensee Submission dated 19 September 2016

339. On 19 September 2016 the Licensee, through his solicitor, provided a final submission on disciplinary action to the Authority. Briefly, the Licensee makes the following general submissions on his character:

- The Licensee is 44 years of age and lives with his partner of 5 years. He provides both emotional and financial support to his four children.
- The Licensee and his family have been well respected members of the local community for a number of years. His grandmother Cecily Yeo was a councillor for over 20 years on Port Macquarie-Hastings Council and was the recipient of an OAM in 2002 for services to the community, aged care and ex-services/veterans' affairs.
- Since 1990, the Licensee has been employed in the liquor industry in various capacities including as booking agent, DJ and senior barman at Roxy's and TC's nightclub; barman at Sails Resort; booking agent, assistant marketing manager and barman at The Macquarie Hotel; venue manager at The Beachhouse and Licensee of The Pier on Clarence. Notably, the Licensee's involvement in hospitality has only been in and around the Port Macquarie-Hastings area.
- Coinciding with his employment at various venues is the Licensee's role as a booking agent in Port Macquarie for 25 years. During this period, the Licensee has been "instrumental" in ensuring that Port Macquarie is a destination for artists and fans of live music. He has booked over 5,000 acts to play in Port Macquarie over this time.
- Through the respect the Licensee has garnered in the music industry, both locally and nationally, the Licensee has acted as a judge for numerous school and council run band competition; promoted youth and community festivals free of charge; provided facilities for students to sit their trial HSC assessments; interacted with school communities to provide opportunities for young musicians and facilitated charity events.
- The Licensee has also worked at Wesley United in a youth mentoring program and supported local charities such as Headspace and Sea Rescue.
- The Licensee has no criminal history; nor does he have any history of breaches of licensing legislation. His operation of licensed venues has never been an issue with Liquor and Gaming NSW or the Authority.
- As noted above, the Licensee's employment history in hospitality is focused solely within the Port Macquarie-Hastings region. His prospects of finding gainful employment, particularly in a management position, within the industry are "minimal". Port Macquarie is a small community with few licensed establishments.

- 340.** With regard to disciplinary action, the Licensee submits that the objects of the Act, in particular sections 3(1)(a), 3(1)(b) and 3(2), will be met if the Authority issues him with a reprimand. The Licensee submits that he has already suffered from “significant extra-curial punishment” including the termination of his employment; significant reputational damage and his “negligible” prospects of regaining a position of authority in the liquor industry.
- 341.** Furthermore, the Licensee is currently facing 39 charges in the Port Macquarie Local Court founded on many of the same matters as those alleged in the Complaint, the outcomes of which may result in significant financial penalties or even imprisonment. The Licensee notes that he did not address any of these matters in his submissions to the Authority “for fear of prejudicing their result” and submits that he faces the “very real possibility of being punished twice for the same offence”.
- 342.** The Licensee submits that, taking into account his lack of antecedents, criminal or otherwise, he should not be denied the opportunity to continue in the hospitality industry, being the only industry he knows and relies upon to support his children. The Licensee submits that removal of his RSA Certificate is “not warranted”. Further, the Licensee notes that he has already lost his position as licensee and submits that a period of disqualification from the industry for 10 years is “excessive” and that a 12 month period of disqualification would be an appropriate period of suspension from holding a position as licensee.
- 343.** Attached to the Licensee’s submission are numerous personal character references, listed below:
- Character reference from Mr Andrew Blackmore, Music and Christian Studies Teacher at St Columba Anglican School dated 13 September 2016;
 - Character reference from Ms Ellen Smallacombe from the Hog’s Breath Café dated 13 September 2016;
 - Character reference (undated) from Ms Lisa Wannell, Licensed Sales Agent from Wauchope Real Estate;
 - Character reference from Ms Charmain Woods from Hunt for Home Artist Management dated 12 September 2016;
 - Character reference from Ms Rebecca Bull, Sales Consultant from L J Hooker Kingscliff dated 13 September 2016;
 - Character reference (undated) from Mr Matthew Woodward of MPW Audio;
 - Character reference from Ms Leah Halmagyi dated 14 September 2016;
 - Character reference from Mr Luke Monks of the band *Gay Paris* dated 12 September 2016;
 - Character reference from Mr Geoff Jones, schoolteacher and professional musician dated 13 September 2016;
 - Character reference from Ms Gabrielle Smith, customer advocate from Essential Energy, dated 12 September 2016;
 - Character reference from Ms Cara Vasilescu, dated 13 September 2016;
 - Character reference from Mr Travis Fredericks, Senior Registered Nurse at Port Macquarie Base Hospital dated 14 September 2016;
 - Character reference from Ms Lisa Willows, Public and Community Relations of Lifeline Mid Coast NSW dated 14 September 2016;
 - Character reference from Mr Mark Spence, Director of Drums & Percussion, St Agnes’ Parish Secondary Schools dated 13 September 2016;
 - Character reference from Ms Bonita Maiolo, former employee at The Pier on Clarence dated 14 September 2016;
 - Character reference from Ms Danielle Crisp, owner/operator of Splinterz dated 14 September 2016;

- Character reference from Ms Mereki White dated 14 September 2016;
- Character reference from Ms Rachel Hangan dated 12 September 2016;
- Character reference (undated) from Mr Alex Wilson of the band *sleepmakeswaves*;
- Character reference (undated) from Mr Troy Durose of Roy Rose Music;
- Character reference from Mr Nathan Correy, musician and co-manager dated 13 September 2016;
- Character reference (undated) from Ms Stacey McMillan, law graduate and former employee at The Pier on Clarence;
- Character reference from Mr Michael Eyb, Proprietor/Tutor at Intense Rhythm Drum Studios dated 12 September 2016;
- Character reference from Mr John Pring dated 13 September 2016;
- Character reference (undated) from Mr Anthony Firth, Music/Art Teacher at Camden Haven High School;
- Character reference from Ms Skye Byrd, Director at The Little Bird Agency dated 12 September 2016;
- Character reference (undated) from Ms Anita Bellamy;
- Character reference (undated) from Mr Nick Schwanck;
- Character reference from Mr Mark Bessett, Academic Manager, Licensed Territories at SAE Global dated 11 September 2016;
- Character reference from Mr Lachlan Lamond, former assistant manager at the Port Macquarie Hotel and The Beachhouse dated 13 September 2016;
- Character reference from Mr Nicholas Potts dated 12 September 2016;
- Character reference from Ms Taisha Steep dated 13 September 2016;
- Character reference from Mr Cristian Duclos dated 12 September 2016;
- Character reference from Mr Paul Koch dated 12 September 2016;
- Character reference from Mr Mick Sheppard dated 12 September 2016;
- Character reference from Mr Chris Rose dated 13 September 2016;
- Character reference from Mr David Rose, Chartered Accountant dated 13 September 2016;
- Character reference from Ms Amanda Buntschu dated 13 September 2016;
- Character reference from Mr Ihan Luppi dated 13 September 2016;
- Character reference from Mr Adam Simpson, Drummer and Tour Manager of the band *Gay Paris* dated 13 September 2016;
- Character reference from Ms Melinda Casey dated 13 September 2016;
- Character reference from Ms Regina Thompson of Smart Assistant dated 13 September 2016.

Complainant Further Submission dated 22 September 2016

- 344.** On 22 September 2016 Superintendent Fehon made a further submission to the Authority in response to the Premises Owner’s submission of 15 September 2016. The Complainant submits that the evidence provided in relation to the Complaint relates not only to the Licensee but also to the premises owner, Mr Jensen, whom the Complainant contends is a “close associate” of the Licensee within the meaning of section 5 of the *Gaming and Liquor Administration Act 2007*.
- 345.** The Complainant submits that the conduct outlined in the Complaint Material “clearly identifies” that the licence was not exercised in the public interest and there is strong evidence of the owners, particularly Mr Jensen, having knowledge of the “unacceptable practices” exhibited within the Premises. The Complainant maintains its initial position with regard to disciplinary action on the Complaint.
- 346.** In response to the Premises Owner’s submission of 15 September 2016, the Complainant draws the Authority’s attention to the following matters:

- The Premises Owner acknowledges that Mr Stephen Jensen is the director of Willis Rose Pty Ltd.
- Paragraph 7 of the Premises Owner’s submission acknowledges that the venue is used by schools, churches and other community groups. The use of the Premises by such patrons “escalates the concern” of Police as to the suitability of the Premises. The Complainant submits that strong disciplinary action should be taken by the Authority, taking into consideration the patrons who are likely to attend the venue.
- The above use of the venue is in contrast to the Premises Owner’s submission that the venue caters to a “more mature clientele”.
- The Premises Owner’s submission refers to the good character and experience of Mr Jensen. However Mr Jensen was convicted on 5 February 2014 of an offence of selling or supplying liquor contrary to the licence under section 9 of the Act. Mr Jensen was at that time the approved manager of the venue.
- There is evidence in Ground 2 of the Complaint Material that Mr Jensen engaged in “unacceptable practices whilst on the Premises”.
- Paragraph 42 of the Premises Owner’s submission claims that “none of the evidence highlights an issue with the consumption of liquor on the footpath”. The Complainant refers the Authority to the Complaint Material which specifically identifies 9 breaches of conditions directly relating to the consumption of liquor on the footpath. There is also further evidence relating to the defined licensed footpath area, including patrons throwing furniture and being involved in violent altercations.
- Paragraph 43 of the Premises Owner’s submission acknowledges the Authority’s finding with respect to the “deficiency in management”. The Complainant submits that this failure is not confined to the individual conduct of the Licensee and also includes the conduct of Mr Jensen.

347. The Complainant submits that the conditions outlined in the Complainant’s previous submission of 7 September 2016 are “basic conditions for any entertainment venue” and do not fully address the issues identified in the Authority’s findings. The Complainant submits in its submission of 22 September 2016 that the proposed conditions are considered to be “appropriate in order to address the requirement for improved practices, including increased harm minimisation strategies, in order to meet the acceptable standards of the community”.

Further Premises Owner Submission dated 5 October 2016

348. On 5 October 2016 Mr David Shannon of the law firm *Searson Shannon & Co* provided a further submission to the Authority on behalf of the Premises Owner in response to the Complainant’s submission of 22 September 2016. The Premises Owner makes the following submissions:

349. Paragraph 5 of page 2 of the Complainant’s submission of 22 September 2016 alleges that Mr Jensen was convicted of an offence in relation to the sale or supply of liquor contrary to the licence on 5 February 2014. The Premises Owner states that Mr Jensen was not convicted of the offence and the charges were dismissed without proceeding to a conviction.

350. Page 1 of the Complainant’s submission of 22 September 2016 submits that the owner of the premises, Mr Stephen Jensen, would be defined as a “close associate” within the meaning of section 5 of the *Gaming and Liquor Administration Act 2007*. The Premises Owner submits that the Complaint was made *solely in relation to the Licensee, Mr Barbuto*. At no stage did the Complainant provide evidence as to the role of the Premises

Owner or Mr Jensen as a “close associate”, nor did the Authority make any adverse findings against Mr Jensen.

351. The Premises Owner submits that in light of the above, it is apparent that disciplinary action should be taken only against Mr Barbuto, as he was the “only focus” of the Complaint. The Premises Owner refers the Authority to its original submission of 15 September 2016 which details the steps taken by the Premises Owner in relation to compliance at the venue. Further, the Premises Owner notes that Mr Barbuto is no longer employed at the Premises and that the implementation of conditions as is available to the Authority under section 141(2)(e) would involve taking action against persons who were not the focus of the Complaint.

352. No final submissions on disciplinary action were made by any other parties.

DECISION ON DISCIPLINARY ACTION

353. The Authority’s disciplinary jurisdiction provided by Part 6A of the Act is protective, rather than punitive in nature. As held by the New South Wales Supreme Court in *Seagulls Rugby League Football Club Ltd v Superintendent of Licences* (1992) 29 NSWLR 357 (at paragraph 373):

The over-riding purpose of the jurisdiction is the protection of the public, and of members of clubs by the maintenance of standards as laid down in the Act.

354. Nevertheless, as observed by Basten JA of the New South Wales Court of Appeal in *Director General, Department of Ageing, Disability and Home Care v Lambert* (2009) 74 NSWLR 523 (**Lambert**), while disciplinary proceedings are protective, that is not to deny that orders made by disciplinary bodies may nonetheless have a *punitive effect*. His Honour observed that a Court (and hence a regulatory decision maker such as the Authority) should be mindful that a protective order is reasonably necessary to provide the required level of public protection.

355. At paragraph 83 of the judgment in *Lambert*, Basten JA states that the “punitive effects” may be relevant to the need for protection in that:

...in a particular case, there may be a factual finding that the harrowing experience of disciplinary proceedings, together with the real threat of loss of livelihood may have opened the eyes of the individual concerned to the seriousness of his or her conduct, so as to diminish significantly the likelihood of repetition. Often such a finding will be accompanied by a high level of insight into his own character or misconduct, which did not previously exist.

356. At paragraph 85 of the judgment, Basten JA observes that:

...the specific message of the disciplinary cases explaining that the jurisdiction is entirely protective is to make clear that the scope of the protective order must be defined by the reasonable needs of protection, as assessed in the circumstances of the case.

357. The Authority further notes that when determining the nature of the appropriate disciplinary action, the conduct of the respondent to a complaint *up until its final determination* is relevant and should be taken into account: *Sydney Aussie Rules Social Club Ltd v Superintendent of Licences* (SC (NSW) Grove J, No. 16845 of 1990, unreported BC9101830).

- 358.** The Authority is satisfied, on the basis of the positive character references provided by Mr Barbuto, that he has demonstrated a considerable degree of engagement with the local community and extensive ability with regard to attracting and arranging live entertainment. The Authority notes that the responsible development of related industries, such as the live music industry, is an object of section 3(1)(c) of the Act.
- 359.** However, the findings made by the Authority satisfy it that Mr Barbuto has not demonstrated the required degree of knowledge and ability – being two of the three elements of the common law indicia of fitness and propriety – to maintain responsibility for a liquor licensed premises. The Authority does not make any adverse findings as to Mr Barbuto’s honesty.
- 360.** Mr Barbuto’s conduct demonstrated a persistent lack of judgement and an inability to manage the alcohol related impact of the operations of the venue. His regulatory performance, including several personal instances whereby Mr Barbuto engaged in drinking on duty and permitting lax controls over the service of liquor on the Premises, satisfies the Authority that Mr Barbuto has not demonstrated, for the purposes of section 45(5A) of the Act, the competence to assume legal responsibility for a licensed business. Nor has he demonstrated the level of knowledge and ability with regard to regulatory matters that would enable the Authority to have confidence in him should he assume a position of control or influence over a licensed business.
- 361.** The Authority notes with concern the limited but significant adverse licensing history (including numerous Penalty Notices in relation to the permission of intoxication on the Premises and breaches of various licence conditions) that arose while Mr Barbuto held the licence for the Premises. The Authority also considered the numerous incidents involving patrons of the Premises leaving the premises intoxicated or otherwise causing disturbance to residential amenity - which the Authority is satisfied arose by reason of the commercial decisions made by Mr Barbuto to operate a licensed business with a strong emphasis on live entertainment without commensurate management of the responsible service of alcohol.
- 362.** Looking forward, the findings made in this Complaint undermine the confidence the Authority would have should Mr Barbuto seek to hold another licence or be appointed as the approved manager in the case of a corporate licensee. While a close associate occupies a less direct position of regulatory responsibility in a licensed business, the Authority infers, on the basis of its findings, that should Mr Barbuto act in a position of influence or control over a licensed business, he would likely prioritise the commercial and entertainment focus of the business at the expense of regulatory compliance and risk management.
- 363.** The Authority’s findings on this Complaint satisfy it that an appropriate form of disciplinary action is a lengthy period of disqualification from occupying a regulated position in the industry. The Authority has decided to disqualify Mr Barbuto from holding a licence, being an approved manager of a licensed premises or serving as a close associate of a licensee for a period of 10 years under section 141(2)(f) of the Act.
- 364.** In addition to disqualifying him from holding a regulated role, Mr Barbuto’s personal failure to take seriously his consumption of alcohol while on duty warrants an additional period of suspension from him being directly involved in the sale or supply of liquor as part of a licensed business.
- 365.** Acknowledging the potential impact that this may have upon Mr Barbuto’s employment prospects in the short term, the Authority nevertheless considers it appropriate for Mr

Barbuto's RSA Certificate to be suspended for a period of six (6) months, pursuant to the Authority's power in section 141(2)(d) of the Act. This significant suspension will reinforce the protective measures taken in response to this Complaint and serve a salutary lesson for Mr Barbuto as to the importance of exercising diligence with regard to the responsible sale or supply of alcohol, whether as a licensee or an employee.

- 366.** The Authority has found that the licence has not been exercised in the public interest. The Authority notes that the Licensee's employment has been terminated by the business owner and the Complainant does not seek cancellation of the licence. The Complainant seeks that the designated activity associated with the licence be confined to that of a "wine bar".
- 367.** Having considered submissions from the Premises Owner and the Complainant, the Authority has decided to take the action against the licence under section 141(2)(e) of the Act, with a view to better ensuring that the Premises does not continue to give rise to regulatory non-compliance or patron misconduct at the levels established in this Complaint.
- 368.** Notwithstanding that the Licensee will change in light of Mr Barbuto's dismissal, the business owner and premises owner will remain the same. In those circumstances the Authority considers it in the public interest to reduce the scope for alcohol related harm, anti-social conduct and disturbance, having regard to the recent behaviour of its patrons:
- Impose a condition on the licence requiring that an RSA Marshal will be rostered on every night at 8:00pm.
 - Impose a condition on the licence requiring that the sale/supply of shots on the Premises will cease.
 - Vary the existing condition numbered "10510" on the licence so that the cameras on the Premises' CCTV system cover all service areas on the Premises.
- 369.** The Authority accepts Mr Barbuto's submissions on the prospect of a monetary penalty. The Authority notes that Mr Barbuto has already been financially prejudiced through termination of his employment and that he is subject to a range of pending prosecutions for offences against the Act. In light of Mr Barbuto's lengthy disqualification from holding a statutory role under the Act and the temporary suspension of his RSA Certificate, the Authority considers that a monetary penalty would not serve a significant additional protective purpose and the Authority makes no order to that effect.

ORDERS

- 370.** The Authority takes the following disciplinary action, effective from the date of this letter:
- (i) Pursuant to section 141(2)(f) of the Act, Mr Adam Barbuto is disqualified from holding a licence, from being the approved manager of licensed premises or close associate of a licensee in New South Wales, for a period of ten (10) years.
 - (ii) Pursuant to section 141(2)(d) of the Act, Mr Adam Barbuto's RSA Certificate is suspended for a period of six (6) months.
 - (iii) Pursuant to section 141(2)(e) of the Act, the following conditions are to be imposed on the licence for the Premises:
 1. An RSA Marshal will be rostered on every night from 8:00pm until closing.

2. The following drinks must not be sold or supplied on the Premises:
 - Any drink (commonly referred to as a “shot”) that contains no more than 30mL of spirits or liqueur and that is designed to be consumed rapidly.
- (iv) Pursuant to section 141(2)(e) of the Act, the existing licence condition “10510” is to be varied as follows:
 1. *The licensee must maintain a closed-circuit television system on the premises in accordance with the following requirements:*
 - (a) *the system must operate continuously from opening time until one hour after the premises are required to close (or, in the case of premises that are not required to cease trading, continuously at all times),*
 - (b) *recordings must be in digital format and at a minimum of 6 frames per second,*
 - (c) *any recorded image must specify the time and date of the recorded image,*
 - (d) *the system’s cameras must cover the following areas:*
 - (i) *all entry and exit points on the premises,*
 - (ii) *the footpath immediately adjacent to the premises,*
 - (iii) *all publicly accessible areas (other than toilets) on the premises,*
 - (iv) ***all service areas on the premises.***
 2. *The licensee must:*
 - (a) *keep all recordings made by the CCTV system for at least 30 days, and*
 - (b) *ensure that the system is accessible by at least one member of staff at all times it is in operation, and*
 - (c) *provide any recordings made by the system to a police officer within 24 hours of any request by a police officer or inspector to provide such recordings.*
 - (d) *Notify the Commander of the Mid North Coast Local Area Command or his delegate if there is any technical issue which prohibits the condition being complied with and in any case provide written evidence within 24 hours of that issue being rectified by a qualified technician.*

REVIEW RIGHTS

- 371.** Pursuant to section 144 of the Act, an application for review of this decision may be made to the New South Wales Civil and Administrative Tribunal (**NCAT**) by the Complainant or any person against whom disciplinary action is taken by the Authority under Part 9 of Act. An application for review should be made within 28 days of the date of notification of this decision.
- 372.** Please visit the NCAT website at www.ncat.nsw.gov.au or contact the NCAT Registry at Level 9, John Maddison Tower, 86-90 Goulburn Street, Sydney for further information.

Yours faithfully



David Armati
Deputy Chairperson