

Superintendent John Gralton  
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25 June 2018

Dear Superintendent Gralton,

<b>Application for</b>	Revoke an extended trading authorisation
<b>Applicant</b>	Superintendent John Gralton, Commander Newcastle City Local Area Command
<b>Licence name</b>	Sydney Junction Hotel
<b>Premises</b>	8 Beaumont Street Hamilton NSW 2303
<b>Issue</b>	Whether to revoke the extended trading authorisation on the licence for this hotel
<b>Legislation</b>	Sections 3, 49 and 51 of the <i>Liquor Act 2007</i>

**Independent Liquor & Gaming Authority Decision  
Application to revoke an extended trading authorisation – Sydney Junction Hotel,  
Hamilton**

At its meeting of 13 June 2018 the Independent Liquor and Gaming Authority (the Authority) finalised its consideration of an application made by Superintendent John Gralton, Commander Newcastle City Local Area Command on 6 October 2017 (Application) to revoke the extended trading authorisation (ETA) on licence LIQH400118139 for the Sydney Junction Hotel located at 8 Beaumont Street, Hamilton (Premises).

With the benefit of the ETA, the hotel has been licensed to sell liquor for consumption on the Premises from 5:00 am to 5:00 am Monday through Saturday and from 10:00 am to Midnight on Sunday. However, conditions of the development approval require the hotel to cease trading at 3:00 am Monday through Saturday and at midnight on Sunday.

The Authority has carefully considered the Application and all submissions made by the business and premises owners of the hotel and the Applicant in reply.

The Authority has decided **not** to revoke the ETA but instead take action, of its own initiative, pursuant to section 51(9)(b) of the *Liquor Act 2007* to **vary** the ETA so the sale or supply of liquor for consumption on the Premises must cease at 1:30 am in the morning after Monday through Saturday trade. No change has been made to Sunday licensed extended trading hours.

As a result, the licensed trading hours for the sale or supply of liquor for consumption on the Premises shall be as follows:

Monday: 5:00 AM to 1:30 AM  
Tuesday: 5:00 AM to 1:30 AM  
Wednesday: 5:00 AM to 1:30 AM  
Thursday: 5:00 AM to 1:30 AM  
Friday: 5:00 AM to 1:30 AM  
Saturday: 5:00 AM to 1:30 AM  
Sunday: 10:00 AM to 12:00 Midnight.

As advised in the Authority's notice of decision communicated on 14 June 2018, the varied licensed trading hours will commence on Sunday 1 July 2018.

The Authority is not required by the *Gaming and Liquor Administration Act 2007* to publish reasons for a decision of this kind. What follows is a summary only of the Authority's rationale for varying the ETA.

If you have any questions about this letter, please contact the Authority Reviews and Secretariat via email to [ilga.secretariat@liquorandgaming.nsw.gov.au](mailto:ilga.secretariat@liquorandgaming.nsw.gov.au)

Yours faithfully



David Armati  
Deputy Chairperson  
For and on behalf of the Independent Liquor and Gaming Authority

## SUMMARY OF REASONS

### INTRODUCTION

1. On 6 October 2017 the Independent Liquor and Gaming Authority (Authority) received an application (Application) made by a delegate of the Commissioner of NSW Police (Police) seeking that the Authority exercise its power under section 51(9)(b) of the *Liquor Act 2007* (Act) to revoke the extended trading authorisation (ETA) that currently attaches to hotel licence number LIQH400118139 for the premises trading as the Sydney Junction Hotel, located at 8 Beaumont Street, Hamilton NSW 2303 (Premises).
2. The Application correspondence as initially filed comprised a covering letter (Cover Letter) to the Authority signed by Detective Superintendent Murray Reynolds, Commander of the NSW Police Drug and Alcohol Command, dated 5 October 2017. It is accompanied by a letter making submissions in support of the Application (Application Letter) signed by Superintendent John Gralton (Applicant), Commander of the Newcastle City Local Area Command (LAC) of NSW Police dated 4 October 2017. The Application was accompanied by a substantial bundle of evidence and other material (Application Material) as discussed below.
3. Section 49 of the Act makes provision for the grant of an extended trading authorisation in respect of a licensed premises. If granted, such authorisation will enable the premises to trade during specified hours beyond the standard trading period that are prescribed by section 12 of the Act.
4. Under section 51(9)(b) of the Act, an extended trading authorisation may be varied or revoked by the Authority from time to time, either on the Authority's own initiative or upon application by a licensee, the Secretary of the Department of Industry or the New South Wales Commissioner of Police.
5. Pursuant to section 51(13) of the Act, the Authority must not impose a condition on a licence related authorisation, or revoke or vary an authorisation (other than on application by a licensee) unless the Authority has given the licensee to whom the authorisation relates a reasonable opportunity to make submissions in relation to the proposed decision and taken any such submissions into consideration before making the decision.
6. While the Authority has the power under section 51(9)(b) of the Act to vary or revoke a licence related authorisation, this section does not prescribe any express legislative test for the exercise of this power. In such circumstances, the Authority may have regard to whether the proposed administrative action is the "public interest" in respect of the Act. The Authority may receive guidance from the statutory objects stated in section 3(1) of the Act to extent that they are relevant and must take account of the statutory considerations prescribed by section 3(2) of the Act.

### LEGISLATION

#### 51 General provisions relating to licence-related authorisations

- (1) This section applies to the following authorisations granted by the Authority under this Act
  - (a) an extended trading authorisation,
  - (b) a drink on-premises authorisation,
  - (c) any other authorisation that may be granted by the Authority under Part 3 (other than a licence),
  - (d) a minors area authorisation,
  - (e) a minors functions authorisation.

- (2) An application for an authorisation to which this section applies must:  
...
- (3) In determining an application for an authorisation, the Authority has the same powers in relation to the application as the Authority has in relation to an application for a licence. The Authority may determine the application whether or not the Secretary has provided a report in relation to the application.
- (4) If, before an application for an authorisation is determined by the Authority, a change occurs in the information provided in, or in connection with, the application (including information provided under this subsection), the applicant must immediately notify the Authority of the particulars of the change.  
Maximum penalty: 20 penalty units.
- (5) Any person may, subject to and in accordance with the regulations, make a submission to the Authority in relation to an application for an authorisation.
- (6) If any such submission is made to the Authority, the Authority is to take the submission into consideration before deciding whether or not to grant the authorisation.
- (7) ....
- (8) ....
- (9) An authorisation:  
(a) is subject to such conditions:  
    (i) as are imposed by the Authority (whether at the time the authorisation is granted or at a later time), or  
    (ii) as are imposed by or under this Act or as are prescribed by the regulations, and  
(b) may be varied or revoked by the Authority on the Authority's own initiative or on application by the licensee, the Secretary or the Commissioner of Police.
- (10) ....
- (11) For the purposes of this Act, any condition to which an authorisation is subject is taken to be a condition of the licence to which the authorisation relates.
- (12) An authorisation has effect only while all the conditions to which it is subject are being complied with.
- (13) The Authority must not impose a condition on an authorisation, or revoke or vary an authorisation, other than a variation made on application by a licensee, unless the Authority has:  
(a) given the licensee to whom the authorisation relates a reasonable opportunity to make submissions in relation to the proposed decision, and  
(b) taken any such submissions into consideration before making the decision.
- (14) This section does not authorise the revocation or variation of a condition to which an authorisation is subject if the condition is imposed by this Act or is prescribed by the regulations.

### **3 Objects of Act**

- (1) The objects of this Act are as follows:  
(a) to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community,  
(b) to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality,  
(c) to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.
- (2) In order to secure the objects of this Act, each person who exercises functions under this Act (including a licensee) is required to have due regard to the following:  
(a) the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),  
(b) the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,  
(c) the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.

## THE APPLICATION LETTER

7. Briefly, in the Application Letter the Applicant notes that the Sydney Junction Hotel sells or supplies liquor pursuant to a “full” hotel liquor licence (as distinct from a general bar licence). The licence has the additional benefit of a minors area authorisation (MAA) and an extended trading authorisation (ETA).
8. The Applicant advises that the current licensee, Mr Campbell Rogers, has held the licence since **7 June 2017**. Prior to this Mr Rogers’ wife, Mrs Clare Rogers, held the licence from **8 September 2014** until **6 June 2017**. (The Authority notes below that the licence has recently changed hands again and is now held by Mr Ross Boland).
9. The Application Letter refers to the extensive licensed trading hours enabled by the ETA. A record of the licence maintained on the LGNSW OneGov licensing database dated 12 October 2017 confirms that the hotel is licensed to sell or supply liquor, for consumption *on* the Premises, in the Public Bar, Saloon Bar, Beer Garden and Dining Room areas, from 5:00am to 5:00am Monday through Saturday and from 10:00am to midnight on Sunday.
10. The OneGov record also indicates that the hotel is licensed to sell liquor for consumption *off* the Premises from 5:00am until midnight Monday through Thursday, 5:00am until 10:00pm Friday and Sunday and 10:00am until midnight on Sunday. The Authority notes that by operation of sections 12 and 49 of the Act and clause 70AB of the *Liquor Regulation 2008* (Regulation), the legislation now permits the hotel to sell takeaway liquor from 5:00 am until 11:00pm Monday through Saturday and from 10:00 am until 10:00pm on Sunday.
11. The Applicant contends that development approval number 2014/1492 (DA) is in force with respect to the Premises and permits trade (for the purposes of planning legislation) until 3:00am on Monday through Saturday and until 12:00am on Sunday evening.
12. The Applicant further contends that from 12 October 2015 until 12 October 2016 the Premises was given planning permission from Newcastle City Council (Council) to trade until 5:00am Friday and Saturday, for a trial period. The hotel applied to Council to have this trial extended but was unsuccessful, in part due to Police objection to the trial continuing on social impact grounds. As a result, the hotel is required by the DA to cease trade at 3:00am Monday to Saturday, notwithstanding the later hours indicated on the liquor licence.
13. The Applicant notes that the Premises is currently classified as a “Level 2 declared premises” under the scheme for Regulation of violence on licensed premises provided by Schedule 4 to the Act. Referring to the Secretary’s published list of declared premises for the 12 months regulatory period from January to December 2016, the Applicant contends this classification reflects an increase to 16 assaults occurring *on* the Premises that was recorded during that period.
14. In the Cover Letter the Applicant contends that the Application Material demonstrates that the “ongoing and significantly high volumes of violence and intoxication” are attributable to the operation of the Premises and that the exercise of the ETA is causing “costs to the community” of Newcastle.
15. The central submission in the Application Letter is that the ETA should be *revoked* by reason of the frequency and seriousness of assaults, intoxication and liquor licensing breaches occurring on the Premises.

16. The Applicant submits that the incidents documented in the Application Material demonstrate that the hotel does not “adequately manage or successfully operate” the ETA and that the hotel licence has not been exercised consistently with the statutory objects in section 3 of the Act during extended trading hours.
17. The Applicant further submits that although additional licence conditions have recently been imposed by the Secretary upon the licence, the hotel is currently recording the fourth highest number of assaults *on or linked to* any licensed premises in the State. The Applicant concludes that revoking the ETA is in the best interests of the public.

## THE APPLICATION MATERIAL

18. The Application Material contains the following documents, most of which comprise Computerised Operational Policing System reports (COPS Reports) prepared by individual NSW Police officers describing various incidents (Events) that have either occurred on the Premises or are linked by the Applicant to the operation of the Premises or the conduct of its patrons:
  - **Annex 1:** OneGov licence record for licence number LIQH400118139 for the Premises as at 16 January 2017.
  - **Annex 1A:** LGNSW and NSW Police Local Licensing Agreement for the Premises effective 6 February 2017.
  - **Annex 1B:** NSW Department of Industry list of Level 1 and Level 2 licences for the purpose of Schedule 4 of the Act for the period 1 January 2016 to 31 December 2016 (attributing 16 assaults to the Premises for this period).
  - **Annex 1C:** Police submission to LGNSW under section 54(1) of the Act in respect of the Premises dated 6 April 2017, seeking the imposition of additional conditions on the licence in relation to crime scene preservation, CCTV, round the clock incident register, supervision requirements, and extended trade supervision requirements. (The Applicant advises this matter remains under consideration by LGNSW at this time).
  - **Annex 2:** Applicant Evidence Matrix summarising 104 COPS Reported Events referred to as Items 1-104 below.
  - **Annex 3:** Copy of ELORM report for Newcastle from June 2016 to August 2016 from the Alcohol Related Crime Information Exchange (ARCIE) system
  - **Annex 4:** Schedule 4 Progress Report for Newcastle for the December 2017 round and June 2018 round from ARCIE
  - **Annex 5:** Submission from Newcastle LAC to the Authority in relation to the Application dated 31 August 2017
  - **Annex 6:** Statement of Mr Garth Brennan signed and dated 4 April 2017
  - **Annex 7:** Statement of Ms Belinda Jayne Roals signed and dated 4 April 2017
  - **Photograph 1:** Showing 4 opened beer bottles, 2 opened vodka cruisers and 2 glasses of water on a bar bench
  - **Photograph 2:** Showing young men and women on a dance floor; man in foreground carrying a bucket filled with multiple cans of beer or cider
  - **Photograph 3:** Showing a man standing at a bar with 3 cans of *Smirnoff Double Black* and 2 cans of *Jack Daniels* ready to drink beverages on a tray.

## ADDITIONAL APPLICATION MATERIAL

19. On 16 October 2017 and 24 October 2017, at the Authority’s request, the Applicant provided supplementary evidence and information (Additional Material) to the Authority Secretariat in order to clarify the status of certain Local Court prosecutions, Penalty Notices or other regulatory action that was described in the Application Letter but not documented in the Application Material.

20. In a letter dated 24 October 2017, the Applicant notes several typographical errors in the previous Evidence Matrix provided with the Application Material. The Applicant concedes that the incidents described in COPS Reports E66124485 (Item 78) and E221416098 (Item 26) occurred on or in connection with the Premises during the afternoon and not during extended trading hours.
21. The Applicant also clarifies certain references to incorrect Penalty Infringement Notice numbers in the Application.
22. In this letter the Applicant contends that during September 2014 Mrs Clare Rogers and Mr Campbell Rogers began operating the hotel to 5:00 am. After this, Police noticed an increase in assaults and other incidents at the venue. By the end of 2014, after the application in respect of DA 2014/1492 had been submitted by Mr and Mrs Rogers to seek 5:00 am trading on an ongoing basis, Police made a submission to Council raising concerns about the social impact of this trading. Council determined *not* to grant a modified development approval that would have permitted the ongoing use of the Premises, for planning purposes, until 5:00am.
23. The Additional Material provided by the Applicant on 16 October 2017 and 24 October 2017 comprises the following documents:
- a. DA No. 2014/1492 issued by Newcastle City Council addressed to Mr C and Mrs C Rogers dated 12 October 2014, permitting trading hours from 7:00am to 3:00am Monday to Saturday and from 7:00am to 12:00 midnight Sunday, with a 12 months period during which a maximum of 12 events permitting trade until 5:00am on Fridays and Saturdays may be conducted.
  - b. Letter dated 16 November 2015 from Detective Inspector Steve Laska of the Newcastle LAC dated 16 November 2016 submitting that the trading hours of the Premises be restricted, for planning purposes, to Monday to Saturday 7:00am-3:00am and Sunday 7:00am-12:00pm (presumably intended to read "12:00am") due to the "significant increase in the number of offences recorded in the vicinity of this venue" since 3 September 2016. Police state that between 3 September and 13 November 2016 they have recorded, *inter alia*, 16 assaults, 5 move on directions involving intoxicated persons in the near vicinity of the Premises, and 4 breaches of licensing legislation in relation to the Premises.
  - c. Copy of a letter dated 27 January 2017 from Council to SJH Hamilton Pty Limited and KDC Pty Ltd (apparently the Premises Owner's architect) advising that DA No. 2014/1492.01 is *not* supported by Council, following consideration of responses from NSW Police and Council's Environmental Officers. Council advise that the proposed development will have an unreasonable impact with regard to crime prevention and public safety; acoustic impact and social impact.
  - d. Penalty Notice No. **4923341024** issued by Police to Mrs Clare Rogers on 24 September 2016 for an offence of *Licensee fail to comply with conditions of licence* (in contravention of section 11(2) of the Act) which occurred at 12:40am, carrying a penalty of \$1,100, providing the following narrative (the subject of COPS Report E61045860):
 

*"The licensee failed to record an assault E61045860 in the incident register. The assault occurred in the main bar area about 12:40am and continued on outside the venue. I viewed the incident register and it was not recorded."*
  - e. Penalty Notice No. **4923341170** issued by Police to Mrs Clare Rogers on 19 February 2017 at 1:00am for an offence of *Licensee fail to comply with conditions*

of licence (in contravention of section 11(2) of the Act), carrying a penalty of \$1,100, providing the following narrative (noting that the Application Letter states that this incident is the subject of COPS Report E63989934 but this Report is not in the Application Material or Additional Material):

*"About 1am 19/2/17 Covert Officers had 8 opened alcoholic drinks in front of them for a period of time. This is in breach of licence condition, 'No stockpiling of drinks'."*

- f. Penalty Notice No. **4923341134** issued by NSW Police to Mrs Clare Rogers on 19 November 2016 at 10:45pm for an offence of *Licensee fail to comply with conditions of licence* (in contravention of section 11(2) of the Act), carrying a penalty of \$1,100, providing the following narrative (the subject of COPS Report E63235733):

*"At 10:45pm a covert officer purchased a tray of 6 drinks comprising of 1 corona, 2 x Jack Daniels and Coke, 3 x Smirnoff black cans, which is in breach of their licence condition restricting service of alcohol on Friday and Saturday nights, no more than 4 alcoholic drinks may be sold or supplied on the licensed premises to the same person."*

- g. Penalty Notice No. **4923341143** issued by Police to Mrs Clare Rogers on 19 November 2016 at 11:00pm for an offence of *Licensee fail to comply with conditions of licence* (in contravention of section 11(2) of the Act), carrying a penalty of \$1,100, providing the following narrative (the subject of COPS Report E63235733):

*"At 10:45pm covert officers purchased 6 alcoholic drinks from the Hotel. They already had 1 alcoholic drink in front of them. They sat with 7 alcoholic drinks in front of them for a period of time. This is in breach of their licence condition 'no stockpiling of drinks'."*

- h. Penalty Notice No. **4923341161** issued by Police to Mrs Clare Rogers on 19 November 2016 at 11:30pm for an offence of *Licensee fail to comply with conditions of licence* (in contravention of section 11(2) of the Act), carrying a penalty of \$1,100, providing the following narrative (the subject of COPS Report E63235733):

*"A covert police officer attempted to use the water station inside the Hotel but was informed by staff it was broken and she would have to go inside. This is in breach of licence condition 'free water stations shall be placed on every bar within the licensed premises'."*

- i. Notice of Court Order issued by Newcastle Local Court dated 16 October 2017 in the matter of *R v Clare Rogers*. The Notice records that on 13 October 2017 Mrs Rogers pleaded and was found guilty in relation to the following charges, resulting in the following orders:

- i. **2017/00175874-001 / Licensee fail to comply with conditions of licence** (relating to Penalty Infringement Notice 4923341143) – 6 months good behaviour bond pursuant to section 10(1)(b) of the *Crimes (Sentencing Procedure) Act 1999* to commence on 13 October 2017.
- ii. **2017/00175872-001 / Licensee fail to comply with conditions of licence** (relating to Penalty Infringement Notice 4923341170) – 6 months good behaviour bond pursuant to section 10(1)(b) of the *Crimes (Sentencing Procedure) Act 1999* to commence on 13 October 2017.
- iii. **2017/00175873-001 / Licensee fail to comply with conditions of licence** (relating to Penalty Infringement Notice 4923341134) – 6 months good behaviour



bond pursuant to section 10(1)(b) of the *Crimes (Sentencing Procedure) Act 1999* to commence on 13 October 2017.

- j. State Debt Recovery Office (SDRO) information that a payment amount of \$1,100 was “allocated” to Penalty Notice **4923341024** on 17 December 2016 and that the status of this matter is recorded as “Closed/Paid”.
- k. SDRO Payment Summary for payment of Penalty Notice **4923341024** as at 28 December 2016 noting the status as “Closed/Paid”.
- l. SDRO information relating to Penalty Notice **4923341161** for a fine of \$1,100 stating that “Westpac Credit Card (Web)” occurred and the status of the Penalty Notice is “EO Closed” on 16 October 2017.

## INITIAL CONSULTATION

- 24. On 27 October 2017, the Authority Secretariat sent a Notice of Application to the new licensee Mr Boland providing a complete copy of the Application Material and the Additional Police Material, with similar notices sent on that date to the corporate business owner SJH Hotels (NSW) Pty Ltd and the corporate premises owner S.J.H Hamilton Pty Ltd.
- 25. Those parties (collectively, the Respondents) were invited to provide any written submissions or evidence in response to the Application on or before 24 November 2017 with the Applicant invited to provide any submission or evidence in reply on or before 8 December 2017, copying the Respondents.

## LICENSEE RESPONSE

- 26. On 18 October 2017, before the Authority had an opportunity to give any consideration to this matter, the hotel owners SJH Hotels (NSW) Pty Ltd, sent a one-page, preliminary submission to the Authority through Hatzis Cusack lawyers.
- 27. The submission advised that on 8 September 2017 the Secretary of the NSW Department of Industry had imposed a number of new conditions upon the licence of the Premises under section 54 of the Act in response to a submission from Police. The new conditions imposed requirements as to crime scene preservation, CCTV coverage, maintenance of a round the clock incident register and requirements for the licensee or approved manager appointed by LGNSW to be on duty after midnight until the Premises ceases trading.
- 28. The business owners submit that this Application by Police is premature, and that there should be some reasonable time to assess the impact of these new conditions before any further regulatory action is contemplated.
- 29. On 27 November 2017 Hatzis Cusack made a more substantial submission comprising 172 pages of material, copying the Applicant, on behalf of the current licensee, Mr Ross Boland, the corporate business owner SJH Hotels (NSW) Pty Ltd and the corporate premises owner SJH Hamilton Pty Ltd (the **Licensee Response**).
- 30. The Licensee Response comprises a 26 page submission letter from Mr Tony Hatzis, solicitor (Licensee Submission), with the following Annexures:
  - **Licensee Annexure 1:** Photographs of the hotel interior.
  - **Licensee Annexure 2:** Article from *Newcastle Herald* dated 7 April 2015 on the renovation of the Premises.

- **Licensee Annexure 3:** Records of the hotel notified as a “Finalist” in the 2017 AHA Awards for Excellence.
  - **Licensee Annexure 4:** Bundle of 23 letters in support of the hotel retaining its late trading hours.
  - **Licensee Annexure 5:** Newcastle Council Decision on Development Application (DA) dated 12 October 2015 reference 2014/1492.
  - **Licensee Annexure 6:** Emails from hotel in relation to the affairs of the Hamilton Liquor Accord from February to May 2017.
  - **Licensee Annexure 7:** Report dated 27 November 2017 from Mr Patrick Paroz, consultant engaged by the licensee’s solicitors, regarding the Application, with Venue Safety and Compliance Audits prepared by Pat Paroz and Associates dated 6 May and 6 July 2017.
  - **Licensee Annexure 8:** Confidential Property Valuation Report prepared by Magaan O’Rourke Loader dated 26 November 2017.
  - **Licensee Annexure 9:** Sworn statement by Mrs Clare Rogers in relation to management of the hotel dated 12 April 2017.
  - **Licensee Annexure 10:** Article from *Newcastle Herald* dated 20 July 2016 on CCTV in Hamilton in public areas.
31. The Licensee Response also included an Excel Report providing the Respondents’ commentary on the 104 COPS Reports relied upon by the Applicant and supplementary material on the hotel’s position on the following specific Events, being:
- COPS Report Events number 36 and 40 in the Application Material - records of email communication between Mr Campbell Rogers and Newcastle Council on Fire Safety Issues raised by the Council during January 2017
  - COPS Report Event number 58 – a Hotel Incident Register entry from 2 March 2017 recording patrons asked to leave and the attendance of an ambulance
  - COPS Report Event number 64 – email from Mrs Clare Rogers from the hotel to its security contractor dated 13 April 2017, terminating the engagement of Responsible Service of Alcohol (RSA) Marshal Mr Adam Naylor arising from an assault on 31 March 2017.
32. In summary, the Respondents oppose the Application on the basis that:
- the hotel is a large late trading venue with a 500-patron capacity situated within the Hamilton Entertainment Precinct and that it is appropriate for the hotel to provide late trading entertainment.
  - the hotel has recently undergone a \$3 million renovation.
  - the hotel’s licence is already encumbered with a number of conditions, and the current business owners have implemented a number of additional requirements including 3:00 am closure, use of ID scanners after 9pm when entertainment is provided, no service of shots, shooters, or high strength drinks at any time, use of a Plan of Management and use of more security staff than required by the licence, with 11 guards and 3 RSA Marshals on Saturday nights.
33. The Respondents refer to and provide documentation in respect of the hotel’s nomination for AHA awards in recent years. They contend that the hotel accommodates some 6000 people per week, with queues forming outside the hotel on Friday and Saturday evenings. This, it is submitted, evidences high community demand for late trading licensed entertainment.
34. On the COPS Reported Events that are linked by the Applicant to the Premises, the Respondents submit that Police do not take account of the high patron capacity of the

venue. They further contend that the late trading hours enabled by the ETA provide recreational benefits to the community, benefits to related industries and further benefits by way of employment.

35. On the Hotel's management of the risk of intoxication occurring on the Premises, the Respondents provide data as to the number of persons who were asked to leave and were refused entry to the hotel on several Friday and Saturday evenings between March and May 2017. They also refer to observations made by a consultant they have engaged, Mr Paroz, on the hotel's risk management practices (Licensee Annexure 7).
36. The Respondents further refer to testimonials provided in support of the Hotel (Licensee Annexure 4) and submit that when considered in light of the number of patrons accommodated by the hotel, this venue generally provides a "fun, safe vibrant environment with good controls in place".
37. On the financial impact of revoking the Extended Trading Authorisation, the Respondents refer to a confidential report provided by a registered valuer, Mr Robert Loader (Licensee Annexure 8) and contend that granting the Application would result in a substantial loss to the capital value of the hotel. (The Authority has not specified the figure for the purposes of this published decision). The Respondents cite *O'Sullivan v Farrer* (1988) 13 NSWLR 562 and submit that there is a public interest in "avoiding the ruin of private individuals" and the Authority should have regard to the commercial implications of granting the Application. The Respondents also provide details of staff numbers engaged by the hotel and contend that the employment of some 24 employees or contractors would be lost if the hotel is forced to close at midnight.
38. The Respondents refer to population data from the 2016 ABS Census indicating a higher proportion of adults aged 20-29 in Newcastle Local Government Area (LGA) by comparison to NSW as a whole. They contend that there is "greater demand and expectation" among young adults in the Newcastle LGA to meet the entertainment needs of young people.
39. The Respondents refer to the Penalty Notices issued in relation to the hotel during November 2016 and February 2017, arguing in submissions from their solicitor that Police intended to "create" a situation of patrons stockpiling drinks, contrary to the relevant licence condition.
40. In relation to an alleged non-compliance with a requirement to provide water to patrons detected on 19 November 2016, the Respondents contend that, contrary to statements made by the hotel's staff to Police, the water stations were not actually malfunctioning. The licensee nevertheless paid the Penalty Notice.
41. In relation to a reported failure to record a matter in the Incident Register during September 2016, the Respondents acknowledge that this failure occurred and that the licensee attended Waratah Police station and cooperated with Police. The licensee paid that Penalty Notice.
42. With regard to those Penalty Notices that were defended by the relevant licensee in Newcastle Court on 24 October 2017, the Respondents submit that Magistrate Eckold exercised his discretion not to record a conviction against Mrs Rogers on the basis of the measures taken and that the matters were the product of human error.
43. The Respondents further contend that Police conduct walk throughs of the Premises "five or six times per week" and that the detected breaches of licence conditions should be considered in light of this venue accommodating 6000 persons per week.

44. In response to the Applicant's reference to a Short-Term Closure Order Application for the Premises two days prior to the Easter weekend in April 2017, the Respondents note that this matter was dealt with by agreement between the parties, with the hotel taking voluntary measures over the Easter weekend. The Respondents submit that it is inappropriate for the Applicant to now rely upon this matter.
45. The Respondents further note the imposition of new conditions upon the licence by the Secretary of the Department of Industry during April 2017. They submit that the new conditions only became effective on 15 September 2017 and the Police evidence giving rise to this decision was "similar" to the material now relied upon in this Application. These regulatory controls provide a further reason not to grant this Application.
46. The Respondents make a number of more specific observations on the COPS Events upon which the Applicant relies. These observations are set out in the Licensee's Annotated Police Evidence Matrix, which includes the Respondent's commentary on each of the Events alleged by the Applicant.
47. The Respondents make the general submission that the COPS Events should be considered in the context of a hotel that is said to entertain 6000 patrons per week. The Events range in seriousness and in the degree of connection to the hotel.
48. The Respondents question the relevance to the hotel of any COPS Events involving "domestic" disputes or where drugs were involved, or where a hotel patron was an innocent victim when assaulted on the street.
49. The Respondents further submit that the COPS Events include 17 incidents where hotel staff were recorded to have removed hotel patrons, who have resisted, and this conduct is to the credit of the hotel.
50. With respect to alleged incidents of intoxicated patrons on the Premises in COPS Events 31, 65 and 67, the Respondents contend that:
  - Event 31 involved a patron who is recorded to have "straightened up" before entry and was removed from the hotel shortly after her entry.
  - Event 65 involved a female who was drug affected and became intoxicated very quickly and exited quickly after leaving the toilets while intoxicated
  - Event 67 involved an incident where Police did not bring their observations of the patron to the attention of staff. On that evening the hotel refused entry to 32 individuals and asked 49 to leave the Premises.
51. The Respondents submit that certain malicious damage Events relied upon by the Applicant involve patrons who had not "overconsumed" alcohol when they engaged in this conduct.
52. The Respondents dispute the Applicant submission that "46" assaults were recorded at the hotel between 1 July 2016 and 20 July 2017, submitting that these include some matters that are "linked" to the hotel in that they occurred on the street (Events 15, 59 and 70).
53. The Respondents contend that the December 2017 figures provided to the licensee indicate that a total of 30 assaults were counted as having occurred **on** the Premises in the latest "Round" of the Schedule 4 Scheme, which concerns the period from 1 July 2016 to 30 June 2017.

54. The Respondents submit that the Applicant has not demonstrated how the systems in place at the hotel are failing, or what the hotel could reasonably have done that it did not do. The Respondents submit that it is not meaningful to compare the regulatory record of this hotel with others in Hamilton by reason of the “popularity” of this venue.
55. The Respondents submit that a number of COPS Reported Events concern assaults on the dance floor/ nightclub area (Events 6, 9, 21, 22, 23, 26, 27, 28, 35, 37, 74, 76, 90, 96 and 99) where staff had engaged the persons involved, called Police, and assisted Police with enquires including CCTV and ID scanning data.
56. After addressing a number of the broader policy submissions made by the Applicant, including the fact that the hotel has development consent to trade until 3:00 am, the Respondents criticise the Applicant’s reliance upon statements from a “competing” licensed restaurant regarding alleged disturbance from the hotel’s patrons. The Respondents refer to a report from their consultant, Mr Paroz, to the effect that he did not observe any disturbance to this late trading restaurant on the evenings when he performed his audit.
57. The Respondents contend that adverse impacts such as public urination and anti-social conduct are “generally experienced” in Hamilton and in part are the product of the station now being a terminus for the Newcastle Railway line.
58. The Respondents refer to the statutory objects and considerations provided by section 3 of the Act and submit that catering for public expectations weighs very strongly in favour of refusing the Application. The Respondents submit that revoking the ETA would be contrary to the balanced development of the industry, with “punitive” consequences for the hotel premises owners. The conditions imposed by the Secretary that commenced in September 2017 should be given time to run their course.

#### **APPLICANT SUBMISSIONS IN REPLY**

59. On 4 December 2017, Police sent a reply to the Licensee’s Response via email from Louise Hooke of the Newcastle City Licensing Unit of NSW Police to the Authority Secretariat. This communication comprised a two-page submission letter from the Applicant (Applicant Reply). The Applicant contends that in their solicitor’s submissions the Respondents have failed to identify any solutions to the current problems that Police say are “plaguing” the hotel and its operations. The Applicant disputes the inference offered by Mr Hatzis that Police have not offered any solutions, contending that Police “actively sought to engage” the hotel to assist in notifying and identifying issues when they arise. Police “strongly support” the Application.
60. The Applicant contends that the submissions made by the Respondents indicate that the hotel operators are “ignorant to the significance of the issues and incidents” occurring at the hotel. Police describe Mr Paroz’s report as being “questionable” as to its independence. Police refute Mr Paroz’s findings that “... *management and staff of the Sydney Junction Hotel are very effectively implementing the plan of management and complying with the liquor licence conditions ...*” on the basis of their detection, over the last 12 months, of five breaches of licence and 3 breaches of licence conditions which are currently being investigated by the Newcastle City Licensing unit and LGNSW inspectors. The Applicant contends that these detected breaches concern matters of “crime scene preservation, stockpiling, and the condition relating to the requirements of the security guards”.
61. The Applicant submits that it is a matter of “great concern” that the hotel is now a “Level 1 declared premises” pursuant to Schedule 4 of the *Liquor Act 2007* and has had 30

assaults “attributed” to the hotel in the twelve months during the current round of the regulatory scheme in Schedule 4 to the Act.

62. The Applicant is particularly concerned with the number of ejections being recorded as occurring from the hotel, submitting that it is “disturbing” that such a large number of patrons are required to leave and exiting onto the streets in an intoxicated state. The Applicant contends that so many ejections of intoxicated people from the hotel would not be occurring if the hotel were actually as “vigilant as so claimed” with regard to the responsible service of alcohol.
63. The Applicant contends that assaults are continuing in and around the hotel and that between 15 July 2017 and 11 November 2017 there were seven (7) assaults at the hotel, five (5) of which occurred during the extended trading period.
64. With regard to the licensee seeking approval to participate in a “linked scanning system” for patrons the Applicant contends that this system “cannot impact” the number of assaults occurring at the hotel but is a “supplementary measure” to assist a venue to manage patron misbehaviour. The Applicant submits that the hotel already has a scanning system in place, yet incidents still occur to the “highest level of any premises in Newcastle” and with the hotel recording the “second highest number of assaults in the state for a twelve-month period (30) -behind only *The Ivy* in Sydney”.
65. The Applicant contends that revoking the ETA will “improve the vibrancy and recreational amenity of the area” with patrons deserving of the right “to expect to be able to attend a licensed premise without fearing violence or being witness to unsavoury behaviour”. Revocation of the ETA will provide a safer venue for the hotel’s patrons and significantly reduce the amount of anti-social behaviour spilling out and disturbing the community in Hamilton and the surrounding area of Newcastle.
66. The Applicant provides the following material with this submission in reply:
  - An Evidence Matrix containing summaries for an additional 20 items between 15 July 2017 and 11 November 2017.
  - COPS Report E270879595 – licensing legislation, breach of licence (11:50pm 15 July 2017).
  - COPS Report E66129668 – assault (11:50pm 30 July 2017).
  - COPS Report E65558549 – licensing legislation, fail to quit (12:00am 5 August 2017).
  - COPS Report E65867179 – licensing legislation, fail to quit (2:30am 6 August 2017).
  - COPS Report E65697815 – licensing legislation, intoxicated person (12:45am 12 August 2017).
  - COPS Report E66903680 – assault (2:30am 13 August 2017).
  - COPS Report E65173822 – drink spiking (1:00am 9 September 2017).
  - COPS Report E67595877 – licensing legislation, breach of licence (10:00pm to 12:30am 9 September 2017).
  - COPS Report E67317582 – licensing legislation, fail to quit and assault (1:00am 10 September 2017).
  - COPS Report E248160596 – licensing legislation, fail to quit (1:00am 24 September 2017).
  - COPS Report E64759509 – licensing legislation, fail to quit (1:00am 24 September 2017).
  - COPS Report E67609385 – licensing legislation, fail to quit (9:00pm 29 September 2017).

- COPS Report E65271044 – Robbery (1:30am 30 September 2017).
- COPS Report E67280155 – PCA mid range (3:15am 1 October 2017).
- COPS Report E68426388 – Business Inspection (11:40pm 21 October 2017).
- COPS Report E65773332 – Licensing legislation, fail to quit (10:45pm 24 October 2017).
- COPS Report E65971046 – Affray (1:35am 28 October 2017).
- COPS Report E66408428 – Street offence, offensive conduct (11:20pm 28 October 2017).
- COPS Report E66226721 – Assault and licensing legislation, breach of licence (11:35pm 29 October 2017).
- COPS Report E66769508 – Assault (1:20am 11 November 2017).

## RESPONSE TO APPLICANT REPLY SUBMISSIONS

67. The Respondents solicitors made a five-page submission on 7 December 2017 in response to the Applicant Reply on behalf of the current licensee, Mr Ross Boland, the corporate business owner SJH Hotels (NSW) Pty Ltd and the corporate premises owner SJH Hamilton Pty Ltd (the **Respondents Second Response**).
68. The Respondents contend that the COPS Reports provided by the Applicant indicate a reduction of “almost half” the number of assaults recorded in respect of the hotel, indicating a total of 8 assault incidents during the period between 1 July 2017 until 4 December 2017 compared to 15 assaults for the same period during 2016.
69. The Respondent submits that these latest figures demonstrate the correctness of Mr Paroz’s assessment in his report dated 27 November 2017 that the high rates of assaults recorded in the Premises would reduce over time as the hotel continues to enforce its barring policy, denying entry to people who have engaged in inappropriate behaviour.
70. The Respondent contends that the “significant reduction” in assault numbers illustrates Mr Paroz’s observation in the November report that assault numbers fluctuate over time. The Respondent emphasises Mr Paroz’s discussion with regard to the Newcastle hotel known as *Fanny’s* of Newcastle (now as Argyle House) and MJ Finnegan’s (also in Newcastle) rankings on the declared premises list in previous rounds which have subsequently improved their standing, whilst continuing to serve patrons and provide entertainment until 3:00am on Friday and Saturday nights. The Respondent submits that it would be “inappropriate and wrong” to permanently revoke the ETA because of “temporarily” higher crime rates that may well be referable to temporary circumstance including the launch of a newly refurbished hotel and competitor hotels “withholding” access to their common barring list.
71. The Respondents submit that the Applicant fails to identify what the alleged deficiencies in the hotel’s system are. The Respondents characterises the 30 assaults attributed to the Premises status as a level 1 declared premises are a “lagging indicator” with the current evidence supplied by Police showing that since 30 June 2017 almost half the number of assaults were being recorded in comparison to the equivalent period in 2016-2017.
72. In response to Police submissions that Mr Paroz audit is “questionable” the Respondents submit that Mr Paroz conducted observations on three separate weekends at the hotel over the course of the last nine months and is “well placed” to provide “credible, independent, observations about the adequacy or otherwise” of the hotel’s systems. He was the immediate past Commander of the NSW Police Alcohol Licensing and Enforcement Command, has an extensive CV in drug and alcohol regulation, and was recently commissioned by LGNSW to conduct an internal investigation.

73. The Respondents refer to the latest report by Mr Paroz (a further report dated 6 December 2017) which concludes that the hotel is “highly vigilant” with respect to performance of RSA responsibilities with staff practicing “early intervention techniques” which help to explain the relatively high numbers of “asked to leaves” from the hotel. The Respondent contends that many people consume alcohol before coming to the hotel, showing no signs of intoxication upon entering the hotel but may develop those signs soon afterwards, even if they consume no or little alcohol at the hotel. The Respondent further contends that COPS Report E270879595 provided with the Applicant’s updated Evidence Matrix illustrates this. The Respondents submit that removing intoxicated patrons from the Premises does not demonstrate “lax or inappropriate” practices but rather staff that are “diligently performing the duties required of them at law”.
74. The Respondents discuss their attempts to join the linked scanning system and contend that this shows an “embracing of responsibility”, a desire to access “important tools” used by others to deny access by troublemakers to their hotel and an “earnest” desire to provide a “safe facility”. The Respondents reiterate that Mr and Mrs Rogers have voluntarily implemented measures (referred to in the Respondents initial submission but not repeated here) which are “over and above minimum legal requirements” and express that it is a “shame” that Police have not compelled the other hotels to allow the Sydney Junction Hotel to join the common barring system.
75. However, the Respondents contend that the hotel’s own barring list is “now proving effective in significantly reducing assault numbers” with this reduction likely to extend further into the future the longer the system is in place.
76. The Respondents contend that “vibrancy” of the area can only be advanced by permitting the hotel to continue to receive and entertain patrons, as it presently does during extended hours. People attend the hotel in “very large numbers” and the Authority has been provided with testimonials from a large number of patrons who described the hotel as providing a safe, welcoming and controlled environment. The Respondents contend that Mr Paroz, who advises in his various reports, that management and staff are effectively implementing the Plan of Management and that during his visits he saw no aggressive behaviour, corroborates these observations and testimonials.
77. The Respondents provide the following additional material with this submission:
- Compliance Audit report dated 6 December 2017 conducted at the hotel on 2-3 December 2017 prepared by Patrick Paroz of Pat Paroz & Associates Pty Ltd.
  - Further report prepared by Patrick Paroz of Pat Paroz & Associates Pty Ltd dated 6 December 2017 including photographs taken during the early hours of 3 December 2017 outside the *Hamilton Station Hotel, Sydney Junction Hotel, Kent Hotel* and the *Oasis* food court.
  - The updated Applicant Evidence Matrix annotated with the Respondents’ comments on each COPS Reported Event.

## FINDINGS

### The Current Status of the Licence

78. The Application Letter advises that the current licensee is Mr Campbell Rogers who has held the licence since **7 June 2017** and before that Mrs Clare Rogers held the licence since **8 September 2014**. The licence record as at 16 January 2017 that is Annexure 1 to the Application Material indicates that the business owner and premises owner is S.J.H. Hamilton Pty Ltd, which has owned the Premises and the licensed business since 8 September 2014.



79. However, a more recent OneGov record obtained by the Authority on **12 October 2017** indicates that the licence was transferred to Mr Ross Boland on 27 September 2017. Mr Boland is the licensee at the time of this decision. This record discloses that the corporate licensed business owner since **27 September 2017** has been SJH Hotels (NSW) Pty Ltd while the premises owner remains S.J.H Hamilton Pty Ltd.

80. The OneGov licence record notes a number of venue specific licence conditions on the licence. A number of these conditions commenced effect on 1 July 2008 and were apparently in force at the time of transition from the former Liquor Act 1982 to the current Act. Some conditions were more recently imposed upon the licence. The conditions require the following:

- Effective from 1 July 2008, compliance with the LA10 noise emission restriction
- Effective from 1 July 2008, use of 2 licensed security guards to patrol outside the Premises to Donald Street from 11pm until after closing on Friday and Saturday nights - effective from 1 July 2008
- Effective from 1 July 2008, use of licensed guard to patrol outside the Premises from 11pm until after closing on Wednesday and Thursday night
- Effective from 28 March 2012, use of an employee or contractor whose sole function is to monitor responsible service of alcohol practices (RSA Marshal) at the bar and throughout the licensed Premises from 11:00 pm until closing time on Fridays and Saturdays
- Effective from 28 March 2012, a prohibition after 10:00pm on Fridays and Saturdays on the service of shots, drinks containing more than 50% spirits or liqueur, ready to drink (RTD) beverages with an alcohol by volume content or more than 5%, and any drink containing more than one 30ml nip of spirits or liqueur may be served; nor may a customer purchase more than 4 alcoholic drinks or one bottle of wine
- Effective from 28 March 2012, observance of "Orderly Precinct Strategy" requirements including refusal of entry to any person who has or is reasonably suspected by staff to have consumed alcohol in a public place, exhibited anti-social or aggressive behaviour in the vicinity of the Premises, or been argumentative, disorderly or abusive to staff during the last 6 hours; use of signage relating to a lockout and to reduce noise and impact upon the local neighbourhood; provision of free water stations at every bar in the Premises and no takeaway liquor sales after 10:00pm
- Effective 28 March 2012, a prohibition on patrons stockpiling drinks
- Effective 28 March 2012, use of a 1:00am lockout until closing
- Effective 28 March 2012, cessation of alcohol sales, dimmed lighting, live music and any music louder than background level 30 minutes prior to closure, with announcements at 15-minute intervals advising patrons of the need to respect neighbours when departing, the availability of free water and transportation options
- Effective 28 March 2012, a requirement to perform a rubbish collection between one hour after closure and 7am
- Effective from 28 March 2012, a requirement for security officers to make reasonable efforts after midnight to encourage patrons not to linger within the perimeter of the Premises and ensure all patrons have left the environs 30 minutes after closure
- Effective from 28 March 2012, a requirement to provide written advice to staff and security of all conditions to which the licence is subject within 14 days of their imposition, as well as the need to apply responsible service of alcohol practices, details of available transport, and the location of the 50-metres vicinity which applies to any excluded persons

- Effective from 13 July 2017, a minors area authorisation applying to the Main Bar, Function Area, Bistro, Beer Garden, Foyer and Sanitary Facilities excluding the gaming area
- Effective from 15 September 2017, maintenance of a CCTV system on the Premises and compliance with conditions for keeping and making recordings available to Police on request
- Effective from 15 September 2017, maintenance of an incident register recording the occurrence of certain adverse incidents on the Premises
- Effective from 15 September 2017, a requirement for an after midnight “supervisor” with at least 2 years’ experience as a supervisor or manager during extended trading hours
- Effective from 15 September 2017, a requirement for staff to comply with Crime Scene Preservation Guidelines where an act of violence causing injury to a person occurs on the Premises.

## EVENTS FOUND BY THE AUTHORITY

81. The COPS Reported events that are relied upon by the Applicant have been summarised by the Applicant’s two Evidence Matrices before the Authority. These take the form of Excel spreadsheets that provide a brief one paragraph summary of each Event, with reference to the relevant COPS Report. Each COPS Report provides a narrative record of the Event of varying detail, noting the time the Event occurred, the Police subject category assigned to each Event and a brief note of the reason why the Applicant has linked the occurrence of the Event to the exercise of the ETA.
82. The Authority proposes to make the following findings by reference to the Event Numbers specified in the Evidence Matrices. Noting that the first Matrix summarised 104 Events while the second summarised a further 20 Events, the incidents noted on the second Evidence Matrix will be referred to below as Events 105 to 124.
83. Notwithstanding the licensed trading hours, the Authority notes that the hotel’s *actual* trading hours are limited to no later than 3:00am after Monday through Saturday evenings and until 12:00am on Sundays by operation of DA 2014/1492, noting that the trial period granted by Council permitting 5:00am trading ceased on 12 October 2016.
84. These proposed findings are set out by subject matter and in chronological order, having considered the commentary, evidence and material provided by the Respondents in response to each Event.

## Assault Events

85. **Item 1** – COPS Report E61332914 – 12:10am on 3 July 2016: Male patron on the Premises was asked to leave due to being “well intoxicated” and became argumentative and spat on another person before being physically restrained. The patron contacted Police claiming he had been assaulted by hotel security and was argumentative with Police when he was informed that no charges would be pursued against hotel security.
86. **Item 3** – COPS Report E61653332 – 4:20am on 23 July 2016 (recorded as an occurrence only): Female patron who had her last drink on the Premises and was recorded as being “moderately affected” by alcohol was taken to John Hunter Hospital. Patron claims to have been assaulted on the Premises at around 12:00am through being hit to the back of her head. The Event is recorded by Police as an “occurrence” only as there was insufficient evidence to prove an assault.

87. **Item 6** – COPS Report E61149320 – 1:00am on 21 August 2016: Male patron was punched in the mouth by another male in the courtyard area of the Premises, causing him to fall to the floor from his chair, suffering ongoing soreness to his jaw and headaches. Hotel was contacted for Police to view CCTV. Victim was recorded as having consumed his last drink on the Premises and being “slightly affected” by alcohol.
88. **Item 9** – COPS Report E61045860 – 1:00am on 24 September 2016 (*also noted as a breach of licensing legislation*): Fight between two groups of male patrons occurred inside the Premises with all removed from the Premises by hotel security guards. On the street, one woman fell backwards due to her intoxication, causing her to be knocked unconscious. One female and one male involved in this incident are recorded as having had their last drink at the Premises and as being “well affected” by alcohol.
89. **Item 15** – COPS Report E62319852 – 2:15am on 9 October 2016: While on Beaumont Street a female aged 20-30 punched a male to his left eye region. The male and female were among approximately 200 persons who had recently left the Premises and were congregating on the street. The female is recorded to have had her last drink at the hotel while witnesses described the male victim as highly intoxicated.
90. **Item 20** – COPS Report E62490613 – 12:15am on 16 October 2016: Female was drinking on the Premises when another female patron began swearing at her, grabbed a handful of her hair and yanked it, causing her head to jerk to the side before punching her 3 times in the cheekbone. Hotel security ejected the second female from the Premises. Police attempted to contact the hotel 3 times to access CCTV footage and on the fourth phone call were informed that CCTV was not working on this occasion. Both females recorded as having had their last drink at the Premises and as being “slightly affected” by alcohol.
91. **Item 21** – COPS Report E62237125 – 12:14am on 22 October 2016: Four patrons (at least two males, unclear whether any females) were involved in physical fight in the VIP smoking area inside the Premises, which was broken up by security after one patron was pushed to the ground. All patrons were dispersed within the hotel with no further details gained. One male is recorded as having had their last drink on the Premises and as being “moderately affected” by alcohol.
92. **Item 22** – COPS Report E62375427 – 1:11am on 22 October 2016: An assault incident (unclear whether male or female) was recorded in the hotel’s incident register. When Police reviewed the CCTV footage all they could see was 3 patrons falling onto Beaumont Street, with one of them being “thrown” out by security and one being dragged out, appearing unconscious, and placed in a recovery position by security. Victim is recorded to have had the last drink on the Premises and as “moderately affected” by alcohol.
93. **Item 23** – COPS Report E62554236 – 1:50am on 22 October 2016: A male patron approached another male who was speaking on a telephone near the gaming area on the Premises and began talking to him. They then began punching and pushing each other and both men end up on the ground with the victim recorded as wiping blood from his nose. This incident was reported by Police on the basis of first viewing the incident register and observing that a record for the event was recorded then obtaining the CCTV footage which was viewed by officers. No record was made of the intoxication levels or last place of liquor consumption.
94. **Item 27** – COPS Report E63128431 – 1:49am on 13 November 2016 *also noted as an offensive behaviour incident*: Male patron is observed on CCTV footage to headbutt another male patron inside the Premises before a number of punches are exchanged between them. One of them appeared to be moderately affected by alcohol, the other was

recorded as being “not affected” by alcohol but as having had his last drink on the Premises.

95. **Item 28** – COPS Report E221415898 – 1:43am on 12 November 2016: a patron struck another patron on the dance floor. One of the patrons was found by the RSA marshal and once outside was moved on with no issue.
96. **Item 29** – COPS Report E221415898 – 1:43am on 12 November 2016: Fight broke out between two male patrons on the dancefloor at the Premises and one of these patrons refused to leave when asked and told security to “fuck off”. Once outside the Premises the other patron involved in the fight picked up a bollard and moved towards hotel security and had to be restrained. Police became aware of the event after viewing the hotel’s incident register during an inspection of the Premises.
97. **Item 35** – COPS Report E64085078 – 1:30am on 10 December 2016: Woman tried to diffuse a heated discussion between a group of patrons on the Premises and one of the patrons (gender of the patron unclear from the report) threw a drink at her, after which a different patron (gender of the patron unclear from the report) pulled her hair, pulled her to the ground and punched her. Police attended a short time after this incident occurred. Two females and one male involved in this incident are recorded as having had their last drinks on the Premises and all were “slightly affected” by alcohol.
98. **Item 47** – COPS Report E65350082 – 12:28am on 27 January 2017: Male patron broke into the disabled toilet on the Premises and “groped” the female victim. Another patron intervened but was then removed from the Premises, while the male person of interest was seen by the female victim to get into a taxi and leave the Premises. The victim complained to security who informed Police officers who were already on the Premises. The male is recorded as being “moderately affected” with the female “moderately affected” by alcohol and both having had their last drinks on the Premises.
99. **Item 48** – COPS Report E64272865 – 3:00am on 28 January 2017: After leaving the Premises, a male patron jumped onto the bonnet of a car that had stopped at the intersection of Donald and Beaumont Streets. The driver got out and identified himself as a Police officer, showing the patron his badge. An altercation ensued and the patron punched the driver (the Police officer) in the head, causing the driver to lose consciousness. The patron then left the area and a passing Police vehicle was flagged down by the driver (upon regaining consciousness). This report indicates that the patron commenced drinking around 3pm on Friday 27 January 2017 before going to the Sydney Junction Hotel. The male consumed “two brown pills” which he purchased from a male near the Premises when leaving to go to the King Street Hotel. After being refused entry, the male returned to the Sydney Junction Hotel and continued drinking. (The patron is recorded as having had his last drink at the Premises and being “moderately affected” by alcohol. The other two patrons recorded in the report are described as being “well affected” by alcohol and also having consumed their last drink at the Premises.
100. **Item 51** – COPS Report E63332945 – 1:30am on 29 January 2017: After hotel security removed a number of male patrons, a fight broke out between them on the footpath outside the Premises. One male king hit a security guard and another male was pushed to the ground. Police were called to the venue by security staff. The person of interest is recorded as being “moderately affected” by alcohol with his last drink on the Premises.
101. **Item 53** – COPS Report E63524547 – 1:00am on 5 February 2017: A female patron who had been on the Premises for a number of hours was walking to the dancefloor area when her hair was pulled, her head pulled down and forward and she was punched in the face 4 to 5 times before being dragged around by her hair. A crowd then gathered around and

intervened. The victim was unsure who had assaulted her. The victim is recorded as having had her last drink on the Premises and being “well affected” by alcohol.

- 102. Item 57** – COPS Report E63372522 – 11:00pm on Sunday 19 February 2017: A male patron fell into a female patron on the hotel dancefloor and turned to apologise, but she punched him in the mouth, causing his bottom lip to split open. The male victim is recorded as having had his last drink on the Premises and being “moderately affected” by alcohol.
- 103. Item 58** – COPS Report E63360637 – 1:20am on 2 March 2017: An unprovoked attack occurred on the street outside the hotel perpetrated by a male patron who had just exited the Premises. The male victim was outside the hotel facing in the opposite direction and the assault was observed by the victim’s girlfriend and hotel security. The victim fell to the ground and lost consciousness for twenty seconds. Hotel security telephoned Police who attended. Both males are recorded as having had their last drinks on the Premises with the victim “slightly affected” and the assailant “moderately affected” by alcohol.
- 104. Item 62** – COPS Report E386332892 – 10:02pm on Sunday 26 March 2017: Two female patrons were walking through the hotel about to leave when two plastic beer cups were thrown deliberately with force, striking one of the female patrons in the side of the forehead causing it to bleed significantly. The female victim attended hospital where the wound had to be glued shut. The victim is described as “not affected” by alcohol and having consumed her last drink at the Premises.
- 105. Item 70** – COPS Report E66127477 – 12:15am on 2 April 2017: Male consuming alcohol on the Premises inappropriately grabbed a female patron and a fight ensued on the Premises between the male and the female’s boyfriend. The boyfriend suffered a deep vertical laceration on his lip. Police intervened and the first male became extremely aggressive and abusive towards Police, resisting arrest and throwing his body against the side of a Police car, bending the aerial. He was sprayed with capsicum spray, charged with assault Police and issued a Court Attendance Notice (703571707). There is no evidence of the outcome of this charge. The male patron is recorded as having had his last drink on the Premises and being “moderately affected” by alcohol.
- 106. Item 71** – COPS Report E64593731 – 2:20am on 2 April 2017: One male headbutted another male in the gaming machine area of the Premises, causing the victim to collapse to the ground and lose consciousness. The assault was reported to Police and ambulance staff attended but upon regaining consciousness the victim had no recollection of the incident, suffering a suspected fractured nose, facial swelling and bruising. There is no record in the report of where these parties consumed their last drinks (if any) or their intoxication levels.
- 107. Item 74** – COPS Report E66098285 – 12:00am on 16 April 2017: Female dancing on the dancefloor of the Premises was approached by a male patron who abruptly grabbed both of the female’s breasts. The female yelled at him before the male placed a \$10 and \$5 note in her hand and then walked away. Both the male and female patrons are recorded as having had their last drinks on the Premises, with the male “moderately affected” and the female “not affected” by alcohol.
- 108. Item 90** – COPS Report E64056525 – 1:10am on 3 June 2017: A female patron dancing on the dancefloor of the Premises was approached by male who grabbed her crotch, smiled at her and kept walking. She became distressed, informed security and Police were called to the Premises by the venue manager, who identified the male from CCTV footage, who had by that time left the Premises. The female patron had her last drink on the Premises and is recorded as being “slightly affected” by alcohol.

- 109. Item 96** – COPS Report E63680220 – 1:58am on 18 June 2017: Young female patron was transported to hospital by ambulance with a possible fractured nose after being punched on the dancefloor by another female patron on the Premises. Police arrested the offender and charged her with Assault Occasioning Actual Bodily Harm. Both females were recorded as having had their last drinks on the Premises, with the accused “moderately affected” and the victim “well affected” by alcohol.
- 110. Item 99** – COPS Report E65496765 – 1:17am on 25 June 2017: Two male patrons who appear to know one another were speaking on the dancefloor of the Premises before one took the other’s drink and began to walk away. He was then punched 5 times in the head by the male whose drink he had taken. Both are recorded as having had their last drinks on the Premises with one of the males “moderately affected” and the other “well affected” by alcohol.
- 111. Item 101** – COPS Report E67647467 – 12:15am on 29 June 2017: Hotel security staff determined that a patron in the outdoor rear area of the Premises was intoxicated and asked him to leave after finishing his drink. When the patron was approached by security a second time he stood up and swiped his hand across the table towards security. The security guard then pulled the intoxicated patron into a headlock, threw him to the ground and further strikes the victim’s head causing swelling to the head and requiring conveyance to hospital. No records as to last place of consumption or intoxication levels are noted in this report.
- 112. Item 102** – COPS Report E65256658 – 1:30am on 1 July 2017: Police attended the hotel in relation to an alleged assault on the Premises but found that the male person of interest had left the venue. The male victim refused to provide details but was observed to have sustained bruising and swelling to his left eye which he was struggling to keep open. The manager stated that the victim was ordering a drink at the bar when the person of interest approached and punched him. The victim is recorded as having had his last drink on the Premises and “slightly affected” by alcohol.
- 113. Item 110** – COPS Report E66903680 – 2:20am on 13 August 2017: Two male patrons began punching one another on the dance floor inside the hotel. Staff broke up the fight and were informed they were fighting over a girl. Both males left the Premises prior to the arrival of Police. Although this report identifies one person as being moderately affected by alcohol and having consumed their last drink at the Premises, it is unclear who this person is in relation to this incident due to the redactions in the report.
- 114. Item 121** – COPS Report E65971046 – 12:05am on 28 October 2017: A male and female were trying to gain entry to the hotel after being refused entry earlier. Security restrain the male when unknown friends come over and get involved with security. A brawl involving the male, unknown friends and security breaks out ending up in the middle of Beaumont Road. The male receives a punch to the head and falls to the ground appearing to be knocked out. This report indicates that the victim advised Police that he was “pretty drunk” and got kicked out of the Premises earlier in the evening. The report describes the victim as having being “moderately affected” by alcohol and specifies that it is “not known” where the victim consumed his last drink.
- 115. Item 124** – COPS Report E66769508 – 1:20am on 11 November 2017: A male patron was stopped from leaving the dance floor and was punched in the face by another male patron causing a small laceration under his left eye. The fight was stopped by security. There is no information concerning the level of intoxication or place of last consumption in this report.

## Street Offences Events

- 116. Item 7** – COPS Report E62822969 – 4:30am on 4 September 2016: Five males who are recorded as having had their last drinks on the Premises and being either “moderately” or “well affected” by alcohol left the hotel, walked down Beaumont Street and instigated a brawl with a group of security guards who were eating on the street at the corner of Cleary and Beaumont Streets (it is unclear where these guards were employed). Witnesses stated that the patrons were “spoiling for a fight” and one of them then kicked a passing car causing damage to it. When Police arrived, 3 of this group were uncooperative and were arrested. One male was issued with a Criminal Infringement Notice No.4923339558 for offensive behaviour. Another male was issued a Future Court Attendance Notice for Offensive Behaviour and Affray. The outcome of these actions is not clear from the Application Material.
- 117. Item 8** – COPS Report E61997305 – 12:20am on 18 September 2016: Male patron was playing a gaming machine on the Premises and smashed its screen, as confirmed by hotel CCTV. After being escorted outside by staff to await Police, he ran down Beaumont Street but was apprehended and charged with malicious damage to property. The male is recorded as “moderately affected” by alcohol and having had his last drink on the Premises.
- 118. Item 11** – COPS Report E63018767 – 1:00am on 2 October 2016: Approximately 30 people were fighting on the corner of Beaumont and Donald Streets. Police later viewed CCTV footage showing that the “larger group” of persons of interest had either been ejected from or had left the Premises only minutes before becoming involved in this brawl.
- 119. Item 16** – COPS Report E63383741 – 12:30am on 15 October 2016 *also relied upon by the Applicant as a breach of licensing legislation*: Police observed the doorman at the Premises having trouble with a male patron, who appeared to be intoxicated. Security advised Police that the patron had been asked to leave the Premises several times. Police told the patron to leave and he became belligerent and abusive towards Police. The same patron was later observed staggering around the entrance to the Premises being abusive and swearing. The patron is recorded as being “well affected” by alcohol and that his place of last drink is “not known” (presumably because some time elapsed between him being ejected from the Premises and returning to the vicinity). Police issued him with Penalty Notice No.4938815678 for Failure to Quit Licensed Premises. The current status of this Penalty Notice is not clear from the Application Material.
- 120. Item 27** – COPS Report E63128431 – 1:49am on 13 November 2016 *also relied upon by the Applicant as an assault incident*: Patron is recorded on CCTV footage to headbutt another patron inside the Premises before a number of punches were exchanged between the two males. The male who was headbutted was recorded as “not affected” by alcohol but having had his last drink on the Premises. The male who initiated the fight (by headbutting the other male) appeared “moderately affected” by alcohol and was issued with Criminal Infringement Notice No.4935858840 for Offensive Behaviour. The payment status of this Notice is not clear from the Application Material.
- 121. Item 43** – COPS Report E62655409 – 1:05am on 22 January 2017: Male patron who had been drinking on the Premises was issued with a Move On Direction by Police after he was seen lying on the ground in the car park of the nearby Hamilton Rail Station. He is noted as being “well affected” by alcohol and having had his last drink at the Premises.
- 122. Item 50** – COPS Report E63615354 – 1:00am on 29 January 2017: A male patron was observed by Police to throw a metal bollard at the tiled wall of the exterior of the Premises was issued with a Move On Direction by Police due to his behaviour and intoxication. Hotel

staff were spoken to who stated that the patron would be issued with a Banning Notice. The patron was recorded as “moderately affected” by alcohol and having had his last drink on the Premises.

- 123. Item 55** – COPS Report E63716748 – 1:00am on 12 February 2017: A group of male persons who had been drinking on the Premises and recorded as “moderately affected” by alcohol became aggressive towards each other on Beaumont Street, approximately 30 metres from the Premises. One of the males was approached by Police and became increasingly verbally abusive. Police repeatedly requested him to cease making threats and using offensive language but he continued. Police physically restrained the male and charged him with Affray and Offensive Language. The current status of this matter is unclear from the Application Material.
- 124. Item 73** – COPS Report E63803744 – 12:00am on 16 April 2017: Female using *Snapchat* application on her iPhone pointed camera in the direction of a male on the Premises. The light from the camera shone in his face and the male grabbed her phone and threw it to the ground causing it to become inoperable. The female reported the matter to Police, who recorded it as a Malicious Damage to Property Event. The female is recorded as having had her last drink on the Premises and being “slightly affected” by alcohol.
- 125. Item 80** – COPS Report E63534330 – 1:04am on 27 April 2017: A male patron was asked to leave the Premises by hotel security staff due to his aggression and intoxication. He initially refused and then stood outside the Premises and had to be reminded repeatedly by the manager of the requirement for him to move at least 50 metres away from the hotel. After moving approximately 20 metres away he told attending Police officers that he would “fight it in court”. Police issued a Move On Direction due to his intoxication and aggression. He is recorded as having had his last drink on the Premises and “well affected” by alcohol.
- 126. Item 86** – COPS Report E66960588 – 12:50am on 14 May 2017: Male patron who had had his last drink on the Premises and is recorded as being “well affected” by alcohol was issued with a Move on Direction by Police after enticing other commuters to fight and arguing with persons waiting on Platform 1 of Hamilton Railway Station. He was observed to be swaying side to side and smelling strongly of alcohol by rail and security staff, who contacted Police. Police issued Transport Infringement Notice 4037830180 for the offence of Behave in Offensive Manner in or on Public Passenger Vehicle/Train or Public Area. The current status of this Penalty Notice is unclear from the Application Material.
- 127. Item 97** – COPS Report E65389763 – 2:14am on 18 June 2017: Police observed a male patron having been ejected from the Premises then argue with hotel security, becoming belligerent and argumentative with Police and then failing to move 50 metres away from the Premises as directed. He is recorded as having had his last drink on the Premises and as being “well affected” by alcohol. He was issued with Infringement Notice No.4937174954 by Police for Excluded Person Remain in Vicinity of Licensed Premises. The status of this Infringement Notice is not known.

#### **Other Miscellaneous Events**

- 128. Item 10** – COPS Report E62142522 – 1:55am on 24 September 2016: A male who had been drinking on the Premises and is described as “well affected” by alcohol broke into the home of the informant’s family (located approximately 750 metres from the Premises), fell asleep and the informant woke to find a stranger asleep in the bed next to him. Recorded by Police as a trespass offence.
- 129. Item 78** – COPS Report E66124485 – 12:00pm on 22 April 2017: A patron who was “moderately affected” by alcohol and had been drinking at the Premises walked into a



neighbouring restaurant, attempted to move a neon sign which fell off the counter and broke. Police later found the patron at the Exchange Hotel. The patron accompanied Police back to the restaurant, apologised and offered to pay for the damage.

- 130. Item 79** – COPS Report E63857527 – 10:10pm on Sunday 23 April 2017: Police were approached by a female patron who was “moderately affected” by alcohol and had stated she had been drinking at the Premises. The female asked Police to give her a lift home. Police refused and the female became argumentative and began punching a wall. Police issued a Move On direction to the female to which she complied.
- 131. Item 103** – COPS Report E64863207 – 3:12am on 1 July 2017: Police were called to the scene of an accident where a vehicle had crashed into two parked vehicles and the driver had left the scene. The car was located in the middle of the road in a neighbouring suburb with the driver asleep at the wheel. He was subjected to a breath analysis test which gave a result of 0.191 and he was charged with High Range PCA. Recorded by Police to have consumed his last drink on the Premises and to be “well affected” by alcohol. The current status of those court proceedings is unclear from the Application Material.
- 132. Item 111** – COPS Report E65173822 – 1:00am on 9 September 2017: A female patron informed Police that she saw a man next to her place his hand over her glass moving his fingers as if putting something in her drink. The female patron smelt the drink and thought it smelt off so she went to the barman who upon smelling the drink also thought it smelt off. The man who allegedly put something in the female patron’s drink asked her what happened and when she told him, he walked away.

### Licensing Legislation Matters

- 133. Item 9** – COPS Report E61045860 – Between 12:40am and 1:00am on 24 September 2016 *also relied upon by the Applicant as an assault incident*: Licensee of the Premises Mrs Clare Rogers was issued with a Penalty Notice by Police for failure to comply with licence condition requiring maintenance of incident register recording details of alcohol related assaults on the Premises. This event is the subject of Penalty Notice 4923341024 which the Licensee paid on 17 December 2016, according to SDRO Payment Details Record dated 28 December 2016 provided by the Applicant as an annexure to its letter dated 24 October 2017.
- 134. Item 13** – COPS Report E65127788 – 12:08am on 8 October 2016: Male patron of the hotel was arrested by Police after being asked by hotel security to leave the Premises, pushing an RSA Marshal then “likely” smashing a window and refusing to leave. CCTV footage was not provided on request by Police and the matter was recorded as an alcohol related offence (unspecified) against licensing legislation by a customer. The male is recorded as having had his last drink on the Premises and as being “well affected” by alcohol.
- 135. Item 16** – COPS Report E63383741 – 12:30am on 15 October 2016 *also relied upon by the Applicant as a street offence/ move on direction*: Male patron observed by Police to be “well affected” by alcohol; refusing to leave the Premises; then attempting to re-enter Premises after being removed. Last place of consumption is “not known”. Police issued him with Penalty Notice No.4938815678 for Failure to Quit Licensed Premises. The current status of this Penalty Notice is not clear from the Application Material.
- 136. Item 17** – COPS Report E272249894 – 1:45am on 15 October 2016: Male patron stumbled out of the Premises and collapsed on his face. He appeared to be extremely alcohol and/or drug affected, was in and out of consciousness and placed in a recovery position while an ambulance was called. Police heard another patron say “yeah that guy

was passed out in the toilet before". The male is recorded as having had his last drink on the Premises and "seriously affected" by alcohol.

- 137. Item 32** – COPS Report E63235733 – 10:00pm to 3:00am on 19/20 November 2016: Covert officers entered the Premises using expired identification, once inside 6 alcoholic drinks were purchased and were placed in front of 2 officers who already had 1 drink, they sat with 7 drinks for a period of time. One of the officers attempted to use the water station but was informed that it was broken and they would need to go to another bar. Police observed the owner/manager of the Premises Mr Campbell Rogers checking identification of persons seeking entry to the hotel without scanning their identification, which according to the report was to get "as many persons as possible" into the Premises before the lockout period commences. Police observed CCTV showing patrons purchasing at least 5 drinks at one time, with another patron observed to be highly intoxicated. Police issued the Licensee with **three** Penalty Notices during this inspection for alleged breaches of licence conditions prohibiting sales of more than 4 drinks per customer, prohibiting the stockpiling of drinks and requiring the provision of a free water station, as recorded in this COPS report.
- 138.** The licensee elected to have these Penalty Notices heard in Court. (two of which - **4923341143** and **4923341134** - she was sentenced to a 6 months good behaviour bond, and the other of which - **4923341161** - was paid on 16 October 2017).
- 139. Item 69** – COPS Report E64371861 – 12:30am on 2 April 2017: Police observed an intoxicated female lying in the recovery position on the footpath on Hudson Street next to the driveway to the rear of the Premises. Her friend told Police that she had been consuming alcohol on the Premises and was only young and not used to drinking. Recorded as an (unspecified) alcohol related breach of licensing legislation by the licensee. There is no record of last place of consumption and no note of level of intoxication.
- 140. Item 89** – COPS Report E64659372 – 2:05am on 28 May 2017: Male patron on the dancefloor of the Premises pulled the hair of a female and was told to leave by hotel security staff but refused. Another male became "argumentative and quarrelsome" and both males were physically removed from the Premises by hotel security. It is reported that the first male would be issued with a Penalty Notice for failure to leave licensed premises when required. The last place of consumption is recorded as the Premises and the male is recorded as being "moderately affected" by alcohol. The current status of this Penalty Notice is unclear from the Application Material.
- 141. Item 91** – COPS Report E63735409 – 2:00am on 3 June 2017: Male patron was asked to leave the Premises by hotel security staff due to his high level of intoxication and became abusive and argumentative towards staff, then argumentative and abusive towards Police and was arrested. The patron is recorded as having had his last drink on the Premises and as being "seriously affected" by alcohol. The patron was issued with Infringement Notice 4937174826 carrying a penalty of \$550 for the offence of Excluded Person Remaining in Vicinity of Licensed Premises. The current status of the Penalty Notice is unclear from the Application Material.
- 142. Item 92** – COPS Report E65123931 – 2:00am on 3 June 2017: Male patron refused to quit the Premises when asked by security and then by Police and questioned Police as to why he had to leave, despite being told that he was too intoxicated. Patron eventually moved on but was issued with Penalty Infringement Notice No. 4920242728 by Police for the offence of Excluded Person Remain in Vicinity of Licensed Premises, carrying a penalty of \$550. The current status of this Penalty Notice is unclear from the Application Material.

- 143. Item 107** – COPS Report E65558549 – 12:00am on 5 August 2017: A male patron was ejected from the hotel. He refused to leave the vicinity of the hotel and spat on one of the security guards. The patron ran off before Police arrived and the security guard made no effort to speak with Police. The manager stated that “being assaulted as a bouncer was part of the job” and they did not want any further action in relation to the matter.
- 144. Item 108** – COPS Report E65867179 – 2:30am on 6 August 2017: Female patron was sighted in the toilets of the Premises complaining she was sick to staff. Ambulance officers attended with the patron refusing a trip to hospital. The patron also refused efforts by staff to organise transport home via a taxi service. The patron refused to leave when asked by Police and was escorted out of the Premises. The patron attempted to re-enter a number of times and was placed into an awaiting taxi and informed of the infringement for fail to leave premises when required.
- 145. Item 109** – COPS Report E65697815 – 12:45am on 12 August 2017: Police attended the hotel in relation to an intoxicated female refusing to leave the vicinity of the hotel. The female was in Hudson Street, Hamilton and was “unsteady” getting to her feet and “smelt of intoxicating liquor”. The female was “argumentative and belligerent” to Police when asked for identification. CCTV footage indicated security directing the female to leave the area. Police directed the female to move away from the location. When Police attempted to hand the female her driver’s licence, which she had dropped, the female punched a Police officer in the upper right arm. Police arrested the female and took her to Newcastle Police Station. The COPS Report recorded the female’s level of intoxication as “well affected” and that her last drink was at the Premises.
- 146. Item 113** – COPS Report E67317582 – 1:00am on 10 September 2017 (*which the evidence matrix also lists as an assault*): Security had identified a female patron as intoxicated and had asked her to leave. The female refused to leave at first but later agreed. A male patron was then asked to leave due to his aggressive nature. Both patrons started to walk towards the exit until the male patron refused to go. Security used force to escort the male out when the female patron punched security in the nose causing it to bleed.
- 147. Item 114** – COPS Report E248160596 – 1:00am on 24 September 2017: A male seen by Police to be intoxicated was loitering around Hudson Street. The male yelled out “I’m not even drunk, I drank water”. His speech was slurred, eyes bloodshot and actions clumsy. Police asked the male to move from the location. Security informed Police that the male was removed from the hotel due to signs of intoxication. Police provided the male with a direction to leave advising him that he was committing an offence and to move at least 50m from the entrance. The male refused. As a result Police issued penalty #4923337908 for remain in vicinity. This report described the person of interest as being “well affected” by alcohol with the last drink consumed at the Premises.
- 148. Item 115** – COPS Report E64759509 – 1:25am on 24 September 2017: An intoxicated male had attempted to gain entry to the Premises 4 times with security telling him could not enter. Police provided the male with a direction to leave and then issued penalty #4923337917. Although this report describes the person of interest as being “well affected” by alcohol and having consumed his last drink at the Premises, it does not specifically mention that the male had previously been inside the Premises.

## **Business Inspections**

- 149.** The Applicant has provided several COPS Reports that do not record any specific alleged contraventions of licensing legislation but have apparently been provided to illustrate the

level of patronage on the Premises during Police inspections and the degree of risk posed by patron demand and the supply of liquor at this venue during late trading hours.

- 150. Item 95** – COPS Report E66755577 – 12:30am on 10 June 2017 – During a business inspection Police asked a male patron to leave due to his intoxication. Police noticed persons were purchasing 4 drinks at one time and did observe a few persons stockpiling with more than 2 unconsumed drinks in front of them. After leaving Police were called back to the hotel due to 2 other males refusing to leave and they eventually complied. Police observed that the food available was “sausages”.

## **FURTHER RELATED EVENTS**

- 151.** A number of Events appear to have occurred prior to the extended trading period. Subject to receiving and considering the further submissions that have been invited, the Authority is provisionally satisfied that the following incidents did occur and provide relevant information about anti-social behaviour, adverse impact on amenity and/or the culture of patrons who are attracted to this venue by reason of its status as a large, late trading hotel with live entertainment. This information underscores the additional risks posed by the exercise of this licence during extended hours, as the venue accommodates persons who have either been drinking for a prolonged period on the premises or drinking at other venues before attending the Premises.
- 152.** Subject to receiving and considering the further submissions that have been invited, the Authority is provisionally satisfied, on the balance of probabilities, that the following Events involving alcohol related crime, disturbance, patron intoxication, or anti-social conduct requiring the intervention of Police did actually occur. These Events, which record incidents occurring during the period from 3 July 2016 to 11 November 2017 indicate a reasonable nexus to the exercise of the ETA, which is in effect between the hours of 12:00am and 5:00 am on Monday through Saturday and between 10:00pm and midnight on Sunday evenings.
- 153.** Subject to receiving and considering the further submissions that have been invited, the Authority is provisionally satisfied that the following Events occurred on or near the Premises and/or involved persons who were either on the Premises or were attracted to the Premises by reason of the exercise of the ETA and the availability of late trading.
- 154. Item 2** – COPS Report E61590336 – 6:40pm on 20 July 2016: A female patron was refused service and asked to leave the Premises. The female refused to leave and had to be physically removed from the Premises. Outside the Premises the female refused to move 50 metres away from the location. When Police attended, the female had moved over to Hamilton Railway Station. When Police spoke to the female, she became argumentative and stated they had stolen her property. An infringement notice was not issued by Police as the female is homeless with no known income. The person of interest is described as being “moderately affected” by alcohol and having consumed her last drink at the Premises.
- 155. Item 4** – COPS Report E61771812 – 11:25pm on 5 August 2016: A male was issued with a Move On Direction after being observed by Police outside of the hotel, unsteady on his feet and falling onto nearby railway tracks. The male became aggressive and argumentative and Police detained him for his own safety. The male is recorded as “well affected” by alcohol and having had his last drink on the Premises.
- 156. Item 12** – COPS Report E62447240 – 11:40pm on 7 October 2016: A male who is recorded as “well affected” by alcohol and having his last drink at the Premises was located inside the security fence/gate of the rail compound yard. The male informed Police

that he had been in the smokers' area of the hotel, when the smoke had made him paranoid, so he climbed the fence/wall of the hotel and entered the compound area. Police issued the male with a Move On direction.

- 157. Item 14** – COPS Report E62270822 – 11:15pm on 8 October 2016: A resident complained to Police about noise and behaviour of patrons coming from the hotel. Police noticed that the hotel had the front door open. Police issued the Premises with a noise abatement direction for 28 days.
- 158. Item 26** – COPS Report E221416098 – 1:45pm to 1:55pm on 12 November 2016: A male patron poured his drink over another group of patrons' belongings in the beer garden of the Premises. The male was escorted from the Premises and told he could not return. The Male re-entered the Premises and staff asked the male to leave. The male walked outside into the beer garden, poured water over a patron from the previous incidents and then hit the patron. Police systems did not show the hotel having called Police.
- 159. Item 30** – COPS Report E64703882 – 9:14pm on 13 November 2016: Two patrons (one of which is a female; the gender of the other patron is unclear from the COPS Report) have words with each other, which escalated to pushing into chairs, an object being thrown and the female patron being shoved onto the floor. The female patron verbally abuses the RSA Marshal and is then asked to leave and when out the front continues to abuse hotel staff and security. The other patron was located on the dance floor and asked to leave. The female patron was contacted by Police on 16 November 2016 and told Police that, when informing the security guard about what happened, he was swearing and tipping something sticky over her and this is when she became more abusive towards staff. This report identifies the female patron as "well affected" and having consumed her last drink at the Premises.
- 160. Item 31** – COPS Report E63698616 – 10:30pm on 18 November 2016: Police were conducting a static observation of the line-up of persons waiting to get inside the hotel. Police observed a female who was "seriously affected" by alcohol permitted to enter the hotel after passing security staff and an RSA Marshal. Police approached security and informed them of their observations. Security located the female patron and removed her from the Premises. The female had been drinking at home prior to entering the Premises.
- 161. Item 33** – COPS Report E62662722 – 1:15am on 19 November 2016: A male patron was wrestled to the ground by hotel security outside the Premises. Police assisted and observed the patron to be highly intoxicated and aggressive. No offences were recorded, there is no separate note as to where the patron's last drink was consumed or his level of intoxication.
- 162. Item 34** – COPS Report E61562610 – 3:20am on 27 November 2016: Police observed a male lying on the footpath outside the Premises who was well affected by alcohol. It is not known however whether he consumed alcohol inside the Premises. There is no record of where he consumed his last drink or his level of intoxication.
- 163. Item 37** – COPS Report E62920122 – 11:55pm on 23 December 2016: A number of male patrons were drinking inside the hotel when another group of male patrons pushed and punched them. The report describes the victims (which included a male and a female patron – it appears as though they did not mean to assault the female patron) and persons of interest as "slightly affected" and "moderately affected" by alcohol and having consumed their last drink on the Premises.
- 164. Item 39** – COPS Report E65992186 – 10:35pm on 31 December 2016: Police attended the premises where they were informed that a young person was present within the hotel.

The young person was removed from the hotel and identified as being 17 years of age. The person of interest was identified as “slightly affected” by alcohol and she refused to respond to where she consumed her last drink, it is “not known”.

- 165. Item 41** – COPS Report E63457950 – 11:45pm on 13 January 2017: An unknown person (not clear whether male or female) inside the Premises threw a hard-plastic beer cup, which hit a male patron in the head, causing a minor laceration to his forehead. The male victim is described as “moderately affected” and having consumed his last drink at the Premises.
- 166. Item 42** – COPS Report E63460350 – 9:05pm on 14 January 2017: Two male patrons (who are described as friends) had been previously drinking at the hotel and were recorded as “well affected” and “moderately affected” by alcohol in this report. One of the patrons had been asked to leave. A physical altercation occurred between the two male patrons in the street before both parties went separate ways on Bennett Street after which one lost consciousness and required hospitalisation.
- 167. Item 44** - COPS Report E63183622 – 9:00pm on 26 January 2017: A male patron of the hotel was playing a gaming machine. He slapped the buttons and punched the screen. He is then seen brushing something off the screen of the machine, which causes it to crack. The person of interest is described as “moderately affected” by alcohol and having consumed his last drink at the Premises.
- 168. Item 45** – COPS Report E63106224 – 9:00pm on 26 January 2017: Police attended the venue on 27 January 2017 in relation to an unrelated matter. The manager showed Police CCTV footage that depicted a male patron having an argument with another male and one of the patrons getting punched in the head causing him to fall to the ground, lying motionless. The RSA Marshal walks the victim out of the Premises. Neither Police nor the manager were notified of the assault. The intoxication status of these male patrons and the place they consumed their last drink is not specified in this report.
- 169. Item 52** – COPS Report E319159993 – 11:30pm on 4 February 2017: Whilst dancing on the dance floor of the hotel, a female patron who was “well affected” by alcohol was touched all over her body by one or more male patrons. The female patron reported the incident to security. Security asked the female patron to leave the Premises. Police attended and spoke with the female patron. The report indicates that the female patron consumed her last drink at the Premises.
- 170. Item 54** – COPS Report E64417908 – 11:40pm on 10 February 2017: A female patron was punched in the head on two occasions and had a drink thrown at her by another female patron (the report indicates that the patrons know each other). The intoxication status of these female patrons and the place they consumed their last drink is not specified in this report.
- 171. Item 60** – COPS Report E66213784 – 10:00pm on 11 March 2017: Female patron on the dance floor had her hair pulled violently from behind, which caused her and the person of interest to fall to the ground where a further altercation pursued. Hotel security broke up the scuffle and removed both parties from the hotel. The victim is described as being “moderately affected” by alcohol and having consumed her last drink at home/private residence.
- 172. Item 63** – COPS Report E64159454 – 11:00pm on 25 March 2017: The male victim was in the hotel smoking area and started to walk towards the dance floor to avoid confrontation with the female person of interest. The male victim was shoved and then punched in the back of the head. The male victim then threw his plastic cup of ice at the two females

before leaving. The victim is identified as “not affected” by alcohol having consumed his last drink at the Premises. The person of interest is recorded as “not affected” by alcohol and having consumed her last drink at home/private residence.

- 173. Item 64** – COPS Report E63316630 – 10:10pm on 31 January 2017: A male patron was asked to leave the Premises by hotel security. When outside, the RSA Marshal made comments towards the male patron before hitting the patron across the head, causing the patron to fall to the ground. Whilst 3 security guards were holding the male patron, another security guard punched the male patron in the head, causing him to fall to the ground and become unconscious for 2 minutes. The patron attended hospital. Police later found out that the victim had a ruptured left tympanic membrane and a left nasal bone fracture of indeterminate age. The victim is described as “moderately affected” by alcohol and having consumed his last drink at the Premises.
- 174. Item 65** – COPS Report E63690244 – 11:10pm on 31 March 2017: Police observed an “extremely intoxicated” female patron not able to walk without tripping over her own feet (walking from what appears to be from inside the hotel to outside). Police walked out onto the footpath, stopped the patron and made enquiries about her welfare. The female was not able to string a full sentence together and needed to steady herself by holding a street sign pole to prevent herself from falling over. A taxi was organised to take her home. This report is silent as to the last place the female consumed alcohol.
- 175. Item 66** – COPS Report E66594988 – 11:00pm on 1 April 2017: A Police drug dog made a positive indication near a person waiting to enter the Premises. The male admitted he had smoked cannabis throughout the day and was taken to the Police Command bus. Police searched the accused and sighted an extendable baton down the front of his shorts. The person was charged with the possession of a prohibited weapon/article. Although this report identifies the male as being “moderately affected” by alcohol and having consumed his last drink at the Premises, the report makes it clear that the male was “standing in the entrance line with the intention to enter the night club”. This report does not indicate that the male was re-entering the Premises so it is unclear whether the statements made describing the male’s level of intoxication and last place of consumption are accurate.
- 176. Item 67** – COPS Report E63615537 – 11:10pm on 1 April 2017: Plain clothes Police were inside the Premises and observed a female patron showing signs of intoxication. The female was being assisted to walk by two females, her head was wobbly and her eyelids were drooping. Due to the drug dog operation no further observations could be made due to Police being required to assist outside. The report is silent as to the last place the female consumed alcohol.
- 177. Item 68** – COPS Report E 279772494 – 11:25pm on 1 April 2017: Plain clothes Police were inside the Premises. Police identified an intoxicated male who had fallen to the ground and lay motionless. Police had concerns for his wellbeing and asked if he was okay to which he replied “no”. Staff escorted the patron from the hotel. The report is silent as to the last place the male consumed alcohol.
- 178. Item 72** – COPS Report E124858002 – 10:20pm on 8 April 2017: Whilst waiting in line to enter the Premises, an altercation occurred between two females, becoming physical. One female sustained a minor cut to her nose and a mobile phone was thrown against a wall, smashing it. Both the victim and the person of interest are described as “not affected” by alcohol and having consumed her last drink at home/private residence.
- 179. Item 76** – COPS Report E64166232 – 11:45pm on 21 April 2017: 2 male patrons were involved in a physical fight inside the Premises. Both were removed from the Premises by

hotel security. The intoxication status of these patrons and the place they consumed their last drink is not specified in this report.

- 180. Item 81** – COPS Report E64758058 – 10:45pm on 6 May 2017: A patron (gender not clear from the report) had been removed from the hotel by staff and refused to leave. The patron was given a move on direction from Police with no further incidents. The patron is recorded as being “slightly affected” by alcohol and having consumed the last drink at the Premises
- 181. Item 84** – COPS Report E64537057 – 11:30pm on 12 May 2017: Police were made aware of a “moderately affected” male who had been refused re-entry to the Premises. Police advised the male that he needed to be 50 metres from the Premises and showed the male where that distance was. The male went to sit on the bonnet of a nearby vehicle and was spoken to about this by Police. The male yelled offensive language at the Police and was issued with an infringement notice. The report notes the male as having consumed his last drink at the Premises.
- 182. Item 85** – COPS Report E553874791 – 11:10pm on 12 May 2017: A male in the hotel carpark was asked to leave but refused. Police identified him as “moderately affected by alcohol” when advising him to move on (although later in the report he is identified as having a “well affected” level of intoxication). The male began swearing and yelling before being escorted on to Hudson Street and advised that he needs to be 50 metres from the Premises. The male refused and was escorted the 50-metres distance by Police. After attending to other duties, police identified the male to be again standing nearby the Premises. The male was issued with infringement notices for the matter. The report indicates that the male consumed his last drink at the Premises.
- 183. Item 88** – COPS Report E63687509 – 11:40pm on 27 May 2017: During a business inspection Police recorded observations including that: security officers were incapable of kicking anyone out of the line if they pushed in; vomit on the floor outside the female toilet being cleaned up by hotel staff; at least 2 males holding 3 alcoholic drinks but as soon as Police were seen looking at those persons, security approached the men and enforced the 2 drinks per person rule; the manager asked a male patron to leave the Premises but allowed the patron to ignore him and walk into the male toilets before requesting security remove the male and that there were large lines of persons outside the venue awaiting entry.
- 184. Item 104** – COPS Report E326447993 – 9:45pm on 13 July 2017: A male patron was refused service due to intoxication and asked to leave the Premises. The male patron became verbally abusive and punched a staff member before being escorted to the door. At the exit door the male patron threw another punch at a staff member. The male patron was taken to the ground and restrained until Police arrived. Upon arrival of Police, the male patron attempted to headbutt a Police officer and kicked out striking a Police officer in the right leg. With the assistance of staff members, the male patron was carried and placed in the rear caged compartment of the Police vehicle. The male patron was conveyed to Newcastle Police Station where the accused also kicked the custody manager in the leg. The patron was charged with the matter. The person of interest is described as “well affected” by alcohol and having consumed his last drink at the Premises.
- 185. Item 105** – COPS Report E270879595 – 11:50pm on 15 July 2017: Covert Police officers entered the Premises. At around 12:20am on 16 July 2017 these officers identified an intoxicated female patron. At around 12:40am one of the officers had stockpiled 8 unconsumed beers and when asked by a staff member whose drinks they were, the officer stated that the drinks were “Mine and my mate’s. He’s on the dance floor” with the staff member responding with “Ok”. For a period of approximately 2 hours, the officers were able to maintain a minimum of six to eight unconsumed beers between two people. At



1:00am uniformed Police had intercepted the intoxicated female. Police spoke to the intoxicated female patron on 25 August 2017 who indicated that she had consumed a 750ml bottle of red wine by herself at a friend's place and six cocktails at the Depot in Hamilton prior to entering the Premises. This female patron stated that she should not have been allowed to enter the Sydney Junction Hotel as she was "too Drunk".

- 186. Item 106** – COPS Report E66129668 – 11:50pm on 29 July 2017: A male patron walked up to another male patron who was drinking at the hotel and exchanged words which resulted in a drink of alcohol followed by a plastic cup being thrown at the male patron's face, causing minor lacerations to the corner of his left eye. The victim is described as "moderately affected" by alcohol and having consumed his last drink at the Premises.
- 187. Item 112** – COPS Report E67595877 – 11:00pm on 9 September 2017: Covert Police attended the Premises and purchased 6 beers, twenty minutes later purchasing two vodkas and all of these drinks were stockpiled.
- 188. Item 116** – COPS Report E67609385 – 9:00pm 29 September 2017: An intoxicated male outside the Premises refused to leave the area. Police issued a fail to leave infringement notice for fail to leave a licensed premises and Police gave a move on direction from the area. The person of interest is described as being "moderately affected" by alcohol and having consumed his last drink at the Premises.
- 189. Item 119** – COPS Report E68426388 – 11:40pm 21 October 2017: During a business inspection Police observed one male patron to be moderately intoxicated, glazed eyes, red faced, loud spoken, using offensive language and attempting to leave twice through the exit door after being told not to exit through that door by security.
- 190. Item 120** – COPS Report E65773332 – 10:45pm on 24 October 2017: Licensee had asked a male patron to leave the premises due to his behaviour and intoxication. The male patron became argumentative and aggressive refusing to leave the Premises. The patron swung a punch at the licensee with security stepping in and restraining the male before the punch could connect. Security removed the male from the Premises. Police observed the male sitting at a bus stop across the road from the Premises consuming a bottle of beer. The male was "moderately affected" by alcohol. A police check revealed that the male had breached a number of bail conditions, was placed under arrest and charged for the matter. Although this report indicates that the person of interest consumed his last drink at the Premises, the report also specifies that the male patron was observed consuming a bottle of beer at the bus stop across the road from the Premises. The Authority considers that the last place of consumption would in fact be in the street.
- 191. Item 122** – COPS Report E66408428 – 11:20pm on 28 October 2017: When patrolling Hudson Street, Police observed a male who appeared to be urinating near an electrical box. When asked for identification the accused became defensive and aggressive. Police informed the male that he would be receiving an infringement notice for offensive behaviour in a public place. The person of interest is described as "moderately affected" having consumed his last drink at the Premises.
- 192. Item 123** – COPS Report E66226721 – 11:35pm on 28 October 2017 (*also listed as assault*): On 29 October 2017 Police attended the Premises and inspected the incident register locating an assault that occurred on the Premises on 28 October 2017 around 11:35pm. The incident register was ticked for aggression and inappropriate conduct with CCTV footage. A male patron struck two other males before a flurry of punches were thrown. CCTV footage shows the licensee cleaning up injuries sustained by the two males. The matter was not reported to Police, breaching a licence condition relating to crime

scene preservation. Both the victim and the person of interest are described as “moderately affected” by alcohol having consumed their last drink at the Premises.

#### **EVENTS NOT ESTABLISHED/ INSUFFICIENT NEXUS TO THE ETA**

- 193.** Having considered the evidence or material provided by the Applicant, and the Respondents’ evidence or submission in reply, subject to receiving and considering the further submissions that have been invited, the Authority is provisionally not satisfied that the following Events should be reasonably attributed to the exercise of the ETA – either because there is insufficient evidence or information provided in the COPS Report to establish the occurrence, or because the facts alleged do not, in the Authority’s view, establish a sufficient nexus between the occurrence and the hotel’s exercise of the ETA.
- 194. Item 5** – COPS Report E61791511 – 2:00am on 13 August 2016: Physical altercation occurred on the Premises between two patrons, both of whom were recorded as having their last drink on the Premises and as being “moderately affected” by alcohol. Informant decided not to pursue the matter. The Authority finds that there was insufficient evidence or information about this event by reason that the victim, while only moderately affected by liquor, refused to give a statement to Police.
- 195. Item 18** – COPS Report E63288829 – 2:30am on 16 October 2016: A 50-year-old male was walking behind female along Beaumont Street, after consuming alcohol on the Premises. He began swearing at her, she turned to tell him to stop and he slapped her in the face, punched her and she fell to the ground before he left the scene. Female is recorded as having last drunk on the Premises and is recorded as being “well affected” by alcohol. Although the Authority finds that there is no evidence that the victim, who was well affected by liquor, was either on the premises or seeking to enter the Premises, it is not in dispute that she was drinking at the hotel first. The Authority considers this incident as too remote to attribute to the hotel.
- 196. Item 19** – COPS Report E63304773 – 12:45am on 16 October 2016: A restaurant located opposite the Premises on Beaumont Street was broken into by a male patron of the Premises (as recorded on CCTV footage), who took a bottle of bourbon from the bar then left through the front doors. This male is recorded as having had his last drink on the Premises and as being “well affected” by alcohol. Recorded as a break and enter offence. The Authority finds that the cause of the break and enter is not known. The Authority will not guess that it was because of intoxication at the Premises and as a result the link is broken. There could be many reasons for such criminality.
- 197. Item 24** – COPS Report E61954370 – 7:40pm on 28 October 2016: A male had been drinking at the Premises at around 6:30pm. A friend of the male was refused service and asked to leave the Premises. The male left the Premises after becoming abusive. After attending the Hamilton Station Hotel and consuming more drinks, the male re-entered the Premise at 7:40pm, approached the bar and verbally abused the staff and asked them to fight him. The male was asked to leave and was excluded from the Premises. The male stayed outside the door yelling abuse, threats and wanting to fight the staff. Police attended and located the male 100 metres down the same street, an infringement notice (4937173001) was issued for an excluded person remaining in the vicinity of licensed premises. The report indicates that the person of interest is “well affected” by alcohol and consumed his last drink at the Kent Hotel. The Authority finds that by the patron leaving the Premises and attending the Hamilton Station Hotel before returning to the Premises, the nexus was broken.
- 198. Item 25** – COPS Report E65067884 – 11:55pm on 29 October 2016: During a business inspection a male patron was observed as being “well affected” by what Police suspected

to be a prohibited drug. When spoken to, the patron stated “Yeah I’m totally flying”. Police found that the patron had a “racing” pulse. Police removed him from the hotel and searched him at which time the male states “I’m not stupid I’ve taken whatever before I came here”. The Authority finds no evidence of liquor consumption or permission of use of the prohibited drug on the Premises.

- 199. Item 36** – COPS Report E63242319 – 11:30pm on 10 December 2016: Licensing Police attended the Premises for an inspection. One of the fire exits off the main dance floor was blocked by a pulled down blind and a two-seater lounge. Another fire exit off the main dance floor near the toilets was chained shut. The Authority finds this inspection to have identified concerns regarding planning/fire safety compliance, not liquor related issues attributable to the ETA.
- 200. Item 38** – COPS Report E63319450 – 9:00pm on 26 December 2016: A male patron of the hotel attempted to leave the Premises with a can of alcohol. The patron refused to hand his drink to the manager and attempted to skull the drink. Security attempted to remove the drink from the patron resulting in some of the drink spilling on the patron, causing the patron to become aggressive, spitting the drink that he had in his mouth at the manager and security officer. Police removed the patron from the Premises. The person of interest is described as “moderately affected” by alcohol and having consumed his last drink at the Premises. The Authority finds that the proper response from staff does not warrant an adverse finding, noting that the Event occurred at 9:00pm.
- 201. Item 40** – COPS Report E65164387 – 11:15pm on 31 December 2016: During a business inspection Police observed fire exits chained closed and furniture obstructing other fire exits. The Authority notes that the inspection uncovered planning/fire safety issues, not liquor related issues attributable to the ETA.
- 202. Item 46** – COPS Report E63592050 – 10:00pm on 26 January 2017: During a business inspection a female approached venue security and a line up to the venue was blocking the pedestrian traffic. The Authority finds that there is insufficient evidence or information that the queue has caused any significant problem.
- 203. Item 49** – COPS Report E63218511 – 12:01am 29 January 2017: Male person who had previously that night been drinking at the Premises and was observed to be “well affected” by alcohol attended nearby *Oasis* food court and held a knife close to the victim and demanded that he hand over his wallet. The victim tried to resist and the male said “I’m going to put holes in you”. Recorded as an armed robbery incident. The victim is recorded as having had his last drink at the Premises and as being “well affected” by alcohol. The Authority finds that the cause is not known. The Authority will not guess that it was because of intoxication at the Premises and as a result the link is broken. There could be many reasons for such criminality.
- 204. Item 56** – COPS Report E63215505 – 11:01pm on 11 February 2017: A brawl occurred outside the Premises. The victim is identified as “not affected” by alcohol and having consumed his last drink at the Premises. The Authority considers that the event occurred too early to establish a nexus to the exercise of the ETA.
- 205. Item 59** – COPS Report E64824867 – 2:25am on 5 March 2017: Male victim was lying on the footpath 30 metres from the intersection of Beaumont Street and Hudson Street, surrounded by group of intoxicated persons. Witnesses stated that victim had been assaulted on the street by another male. The victim is recorded as having had his last drink on the Premises and as being “moderately affected” by alcohol. The Authority finds that there is an insufficient nexus to drinking on the Premises even though the intoxicated person was found near the hotel, outside on the street.

- 206. Item 61** – COPS Report E63998448 – 12:50am on 12 March 2017: Manager advised Police that 497 persons were on the Premises. Police observed hotel security permit entry to about 30 persons who had been waiting in line outside, meaning that the Premises would be in breach of a condition specifying a maximum of 500 patrons on the Premises. The Authority finds this to be a business inspection only with no clear evidence of breach of licence conditions or alcohol related misconduct, notwithstanding there were many people queuing.
- 207. Item 75** – COPS Report E63938412 – 11:00am on 21 April 2017: The licensee and Campbell Rogers attended Waratah Police Station with their AHA representative John Green for an arranged meeting. Police discussed CCTV coverage and the licensee was reminded that she had signed a Local Licensing Agreement regarding the timely provision of CCTV for police investigations. Police discussed licence conditions that they were seeking under section 54 of the Act. Police discussed issues regarding queuing into the venue, numbers of patrons and inconsistency of the guards scanning and observing patrons for intoxication. The Authority notes that this was a daytime overview of regulatory concerns that may broadly relate to late trading but the COPS Report does not disclose an instance of non-compliance in its own right that is attributable to the ETA per se.
- 208. Item 77** – COPS Report E64093640 – 1:55am on 23 April 2017: Police were called to the Premises in relation to a patron who was refusing to leave. Police found the female patron calmly waiting for them at the front of the Premises where she explained she slipped on a spilt drink and was then asked to leave the Premises. The patron appeared to be moderately intoxicated but spoke coherently and respectfully to Police. Recorded as an (unspecified) alcohol related offence by a customer/not minor, who had her last drink on the Premises and was “moderately affected” by alcohol, with no further action taken. The Authority considers that the female patron appeared to have satisfied Police that she slipped on a drink rather than fell over due to intoxication. The Authority considers that security acted appropriately when seeing someone fall over.
- 209. Item 82** – COPS Report E125307902 – 10:50pm on Sunday 6 May 2017: During a business inspection, Police observed that most of the patrons were in the “nightclub” area of the Premises; that DJ entertainment was being provided; that 450 patrons were present on the Premises and that about 200 persons were lined up outside the Premises waiting to enter. The Authority finds that although the inspection occurred during late hours and large numbers of persons were present late on Sunday night and Monday morning, no breach or alcohol related conduct was reported per se.
- 210. Item 83** – COPS Report E125360802 – 4:10pm on 9 May 2017: During a business inspection, Campbell Rogers approached Police and asked if Police would allow him to work without an RSA card as it was due to expire the following day. Rogers was informed that no such consent would be given and that he should not serve or supply liquor without a current RSA. The Authority finds that this records a discussion between the licensee/business owner and Police at 4:10pm about his RSA status and as a result, there is no clear nexus to the ETA.
- 211. Item 87** – COPS Report E64680134 – 3:10am on 14 May 2017: Male motorist was stopped by Police while driving on University Drive in the suburb of Callaghan and administered a random breath test which returned a middle range prescribed concentration of alcohol (PCA) reading (0.135 grams per 210 litres of breath). The driver was observed by Police to smell of liquor and to have glassy, bloodshot eyes. He told Police that he had consumed 5 beers on the Premises. He is recorded as having had his last drink on the Premises and as being “moderately affected” by alcohol. Issued with a licence suspension notice. While a serious incident, the Authority does not find this mid- range PCA offence

supports an inference of a patron drinking substantial amounts of liquor during extended trading hours or that the patron was likely intoxicated before leaving the Premises.

- 212. Item 93** – COPS Report E64256514 – 9:20am on 4 June 2017: Male patron who had been drinking on the Premises from 5:00pm on 3 June 2017 until 1:00am on 4 June 2017 lost control of his vehicle while driving and crashed into a tree on Yarramalong Road, Wyong Creek. He told Police that he had consumed about 10 x 330ml *Tooheys Extra Dry* beers whilst on the Premises and returned a blood alcohol reading of 0.102 on a breath analysis test. He is recorded as having had his last drink on the Premises and as being “slightly affected” by alcohol. He was issued a Court Attendance Notice by Police for the offences of Drive with Middle Range PCA and Negligent Driving. The current status of those court proceedings is unclear from the Application Material. While a serious incident, noting the time that elapsed since leaving the Premises, the Authority does not find this mid-range PCA offence supports an inference of a patron drinking substantial amounts of liquor during extended trading hours or that the patron was likely intoxicated before leaving the Premises.
- 213. Item 94** – COPS Report E64375836 – 2:30am on 4 June 2017: Police officers attending the Premises for a business inspection asked the manager how many patrons had been ejected from the Premises that night due to intoxication and was told “170” including “40” who had been refused entry due to intoxication. Manager is reported to have told Police “it has been worse”. The Authority considers that the manager’s comments are a sign that the hotel has acted appropriately. Nevertheless, the Authority does consider the number as very high but also considers there to be insufficient evidence.
- 214. Item 98** – COPS Report E65511141 – 12:50am on 24 June 2017: Two males who had been consuming alcohol on the Premises were observed by Police having a physical fight in the middle of Beaumont Street near the corner of Hudson Street, with a crowd gathered around them. They pushed each other several times, were both verbally abusive and one punched the other. They are both recorded as being “well affected” by alcohol with one of the males recorded as consuming his last drink at the Premises and the other recorded as “not known”. Police issued a Move on Direction to one and arrested the other (it is not clear from the COPS Report which man was arrested); and advised that action would be taken against both men for the Offence of Affray. The current status of this proposed Court Action is unclear from the Application Material. The Authority finds that the relationship (both males knew each other from Toronto) takes the conduct away from a simple couple of intoxicated people fighting after leaving.
- 215. Item 100** – COPS Report E64927057 – 4:00am on 25 June 2017: A major traffic incident involving a driver crashing into a parked car and then colliding with a telephone pole on Memorial Drive, Bar Beach with extensive damage caused to both vehicles. The driver was recorded as “well affected” by alcohol, recorded a BAC reading of 0.129 and consumed her last drink at the Premises. The current status of those court proceedings is unclear from the Application Material. The Authority finds that the time gap from leaving the Premises and the crash breaks the nexus.
- 216. Item 117** – COPS Report E65271044 – 1:30am on 30 September 2017: A male had consumed 2 beers at the Kent Hotel and 5 bourbons before coming into town. The male approached a number of males seeking to purchase pot. After walking down Devon Street, Hamilton, the male was struck in the side of the head, causing him to fall to the ground, being further punched and kicked. The male noticed after the assault that his wallet and keys were missing. The report indicates that the victim was “well affected” by alcohol having consumed his last drink at the Premises. The Authority finds the victim’s vulnerability to robbery was less a factor of his attendance at the hotel and more the product of him drinking for some time at home. The robbery was primarily a product of an

attempt to buy recreational drugs near a late-night food court. On balance, the Authority does not attribute the occurrence of this event to the exercise of the hotel's ETA.

- 217. Item 118** – COPS Report E67280155 – 3:15am on 1 October 2017: A male driving a vehicle was stopped by Police to conduct a random breath test. The test returned a positive result and was taken to Charlestown Police Station where he undertook a breath analysis that returned a result of 0.087 grams of alcohol in 100 millilitres of blood/210 litres of breath. Due to the mid-range reading, the male's licence was immediately suspended and was issued with Field Court Attendance Notice number 1206914. The report indicates that the male was "moderately affected" by alcohol and had consumed his last drink at the Premises. The Authority does not attribute low to medium range PCA offences to the licensed premises because it does not clearly demonstrate a high level of liquor consumption on the Premises. The Authority considered it prudent to give the hotelier the benefit of the doubt and only consider high-level PCA offences, which will likely involve a patron who has consumed a substantial amount of liquor on the Premises and where the offence may be more squarely attributable to the excise of the PCA.

## FINAL SUBMISSIONS

- 218.** On 24 April 2018 the Authority sent by email a letter to the Applicant and the solicitors for the hotel's business and premises owners, notifying them of the findings that the Authority was disposed to make on the COPS Reported events described above (Findings Letter). The Authority invited the parties to make any final submissions in response to those findings and requested the hotel's business owners to provide further data relating to the hotel's claims of the economic prejudice that would flow to the business were the ETA to be revoked.
- 219.** Specifically, the Authority invited any further evidence, supported by a statutory declaration from an accountant, by reference to trading records for February 2018, substantiating the hotel's claims as to the economic prejudice that would flow should the ETA be varied, rather than revoked, so that licensed trading ceases at 12.30 am, 1:00 am, 1:30 am and 2:00am, with an indication of the proportion of revenue derived in the three categories of liquor, gaming and other (non-liquor or gaming) goods and services by reference to February 2018 trading data. The Authority also invited the premises owners to provide any further submissions or evidence concerning the alleged diminution in value of the property in the event that the ETA was varied.
- 220.** On 15 May 2018 the Respondents provided a seven pages submission through their solicitors, accompanied by 33 pages of supporting material, including:
- Statutory Declaration dated 15 May 2018 from the hotel's accountant, Ms Catriona Rogers, providing dollar figures for the hotel's revenue during February 2018, broken down into half hourly increments between midnight and 3:00 am. The data was provided on a confidential basis and is not specified in this published decision letter.
  - Statutory Declaration dated 15 May 2018 from Mr Campbell Rogers, licensee of the hotel and company director of the corporate premises owner, broadly contending, *inter alia*, that any wind back in hours will have a greater effect than simply lost revenue, including by reason that it will make the venue less attractive to those seeking late night entertainment by comparison to other licensed premises in Hamilton, noting the 1:00 am lockout in operation in the Hamilton entertainment precinct. Mr Rogers also contends that should the hours be varied, patrons leaving the Premises earlier in the evening will mean more patrons on the streets, creating pressure for other venues.
  - An 11-page Compliance Audit Report dated 14 May 2018 prepared by Patrick Paroz of Pat Paroz & Associates Pty Ltd on the basis an audit conducted between 10:00 pm on 12 May and 1:30 am on 13 May 2018. The Report discusses the recent assaults attributed to the venue under Rounds 18 and 19 of the Schedule 4 scheme, the hotel's patron banning/identification/scanning policy, harm minimisation licence conditions currently in

effect on the licence, recent further harm reduction measures introduced at the hotel, the average age of patrons evident from ID scanning records since 2015 (23 for males and 22 for females), existing “protective factors” evident from the way the business is operated and very observations on nearby hotels.

- A one-page document from NSW Police dated 6 April 2018 addressed to the licensee and LGNSW regarding assessment for the purposes of Schedule 4 to the Act, noting 25 assaults on premises attributed to the hotel by Police.
- Email between Mr Campbell Rogers and Stephen Hunt from Hunt Hospitality dated 10 May 2018 briefly noting deal points of a proposed sale of the business to the Hunt Hospitality Group.
- A two-page document prepared by Hatzis Cusack commenting on some of the Authority’s findings.

- 221.** In their legal submissions the Respondents contend that there has been a significant reduction in the assaults recorded as occurring on the Premises, and that the larger numbers of assaults that were recorded in the later part of 2016 (compared to the 12 months during calendar year 2017 – particularly the last quarter of 2017) were the result of this hotel offering a “newer” venue with late-night DJs playing dance music, which drew patrons to the Premises.
- 222.** The Respondents contend that the “failure” of other late trading venues in Hamilton to participate in a Multi-Party Barring Scheme has played a role in the occurrence of the adverse events. They submit, by reference to the Compliance Audit from their consultant Mr Paroz, that it will take time for the hotel to weed out trouble makers and reduce adverse incident numbers, using initiatives such as ID scanners and the like, but that such initiatives are taking effect.
- 223.** Moreover, the Respondents submit that the latest numbers of assaults recorded on the Premises pursuant to the “declared premises” scheme in Schedule 4 to the Act show that assault numbers have improved during the latest Round of assessment (which concerns events during the 12 months from 1 July 2016 to 30 June 2017). The latest published list of declared premises is based upon data that is subject to a time lag and the most up to date information (from the upcoming round for calendar year 2017) indicates that the rate of assaults on the Premises have reduced by one third during the most recent 6 months regulatory period (1 July 2017 to 30 December 2017), compared to the previous 6 months period.
- 224.** The Respondents provide short submissions questioning the Authority’s attribution of the adverse events described in Items 2, 3, 10, 12, 30, 42, 44, 45, 57, 62 and 104 to the exercise of the ETA by the hotel.
- 225.** Finally, the Respondents advise that the hotel is currently the subject of “discussions” with a third party with a view to selling the business. Attached is a one-page email dated 10 May 2018 from the Hunt Hospitality Group to Mr Campbell Rogers. The potential purchaser is described by the Respondents as a proven operator of hotels in the Hunter District, including the Kent Hotel in Hamilton. The Respondents contend that, like the Sydney Junction Hotel, the Kent Hotel is a large licensed venue offering a range of licensed entertainment, including late night DJs and live entertainment. This potential sale, it is said, provides another reason for the Authority to not take any action against the ETA at this time.
- 226.** On 21 May 2018 the Applicant made a two pages submission in reply, referring to the statutory objects and considerations in section 3 and submitting that while granting the Application may well result in financial loss, the information before the Authority indicates that the Hotel still presents as a viable investment should the ETA be revoked. The Applicant contends that the hotel’s current business owners own other successful hotels

that trade during the standard trading period and are familiar with operating a licensed venue of that type should the ETA be revoked.

- 227.** The Applicant contends that there are 6 hotels and 1 licensed restaurant that trade late in the entertainment precinct (that is Beaumont Street) and that aside from its recent renovation, the Sydney Junction Hotel has not been providing services of a kind that are unique to the services offered by other licensed venues during late hours in this area.
- 228.** The Applicant contests Mr Paroz' contention that the operation of the hotel has improved over the last 13 months and that the venue is well run and well controlled. The Applicant submits that those observations were made on the basis of only four visits to the Premises, with observations made between 10:00 pm and 1:30 am. The Applicant notes that in addition to that trading period, the Applicant relies upon adverse events that have occurred between the hours of midnight and 3:00 am.
- 229.** The Applicant submits that the prevention of financial hardship to a licensed business operator is not an objective of the Act, while harm minimisation is. The Applicant submits that during the 6 months that have now elapsed since the hotel was notified of this Application, the hotel business owners have failed to address matters relevant to the statutory considerations in section 3(2) of the Act. The Applicant notes that both of the owners, Mr and Mrs Rogers, have personally held the licence for some time.
- 230.** On the proposed change of business owner, the Applicant submits that the fact that the proposed buyer operates other licensed premises is no guarantee that the issues identified by the Applicant during late hours in respect of *this* hotel will not continue should the business change hands.
- 231.** The Applicant submits that the Authority should determine the Application on the basis of the evidence before it, not on the basis of a presumption that new business owners will improve the performance of the venue.
- 232.** The Applicant concludes that revoking the ETA will provide a safer venue for the hotel's patrons, reducing the amount of anti-social behaviour generated by patrons who are "spilling out and disturbing the community".
- 233.** On 5 June 2018 the Respondents provided a three-page further submission. Briefly, the Respondents take issue with the Applicant's contention that the hotel is likely to remain a level 1 declared premises in Round 20 of the regulatory scheme, which will concern the period from July 2017 to June 2018. The Respondents submit that Police could have, but have not, substantiated this claim and reiterate their submission that assaults on the Premises have been declining in recent times.
- 234.** The Respondents reiterate that the financial loss from reducing late trading hours would mean that reducing the hours is a disproportionate regulatory response in circumstances when assaults are in decline. In response to the Applicant's statement that Mr and Mrs Rogers own two other hotels that trade during standard hours, the Respondents submit that these venues are located in suburban locations and have very different business models. The Respondents refute the Applicant's submission that the venue offers little that is unique to late night entertainment in Hamilton and refers to certain public comments, included with the Respondents original submission, that were favourable to the business and supportive of 3:00 am late trading.
- 235.** The Respondents submit that the determination of this matter should not be reduced to a contest between the hotel's financial interests and public safety, submitting that the statutory objects of sections 3(1)(a), (b) and (c) and the statutory consideration in section



3(2)(c) favour *maintaining* late licenced hours. With respect to the foreshadowed sale of business, the Respondents advise that contracts for the sale of business are likely to be exchanged this week.

- 236.** Later on 5 June 2018, the Applicant provided a short email in reply, conceding that while the Applicant cannot predict the venue's standing when the next Round is finalised on 1 December 2018, the hotel is currently ranked number 1 for incidents of violence in the State.
- 237.** The Applicant agrees with the Hotel's submission that Police present this matter as a contest between private financial interest and public safety. The Applicant submits that harm minimisation and prevention is a priority for Police but there are also substantial financial imposts upon the *public* by way of emergency services, the criminal justice system, medical costs and social services costs arising from the abuse of liquor. The Applicant submits that while it is difficult to quantify the cost of alcohol related assaults to this local community, the cost to the Australian community of alcohol related crime, violence and healthcare was estimated at \$36 Billion in the research of Laslett, et al (2010).
- 238.** This final email was sent to the Hotel's solicitors for their information and submissions closed.

## **DECISION**

- 239.** The Authority determined this matter at its Board meeting of Wednesday 13 June 2018 and provided a short letter notifying its decision on Thursday 14 June 2018 giving advance notice of the varied hours that would commence with effect from 1 July 2018.
- 240.** As of 13 June 2018 there was no confirmation provided by the Respondents that any sale of business had actually been settled, nor was there any substantial information as to the terms of that sale, or the nature of any proposed new business to operate on the Premises.
- 241.** While the Authority accepts that there is an experienced hotel operator interested in taking on the lease to the Premises, there is little information before the Authority as to the mode and style of any new hotel enterprise that may operate should that occur. Specifically, there is no indication as to whether live entertainment and dance music will continue until 3:00 am, given the current popularity of that aspect of the hotel's operations that has been acknowledged by the Respondents in its submissions. The Authority cannot, at this time, find that the operation of the business or the conduct of its patrons is likely to change in a manner that moves the Authority to take no action on the Application.
- 242.** The Authority has considered the Respondents' submissions dated 15 May 2018 in response to the Authority's findings on Items 2, 3, 10, 12, 30, 42, 44, 45, 57, 62 and 104 but remains satisfied, on the basis of the evidence or material noted in the Findings Letter, that these adverse events did occur and are reasonably attributable to the hotel's exercise of the ETA.
- 243.** The Authority accepts the Respondents' submissions that this decision should not be reduced to a contest between private financial hardship and public safety.
- 244.** The public interest in respect of the Act, as informed by the statutory objects in section 3(1), includes the regulation and control of the sale, supply and consumption of liquor in a manner that is consistent with the expectations, needs and aspirations of the community per section 3(1)(a).

- 245.** The Authority notes that in their submission dated 27 November 2017 the Respondents have provided evidence by way of 23 letters from hotel patrons and some local businesses supporting the continuation of 3:00 am trading.
- 246.** The numbers of patrons who are attending or seeking to attend the hotel late at night that are apparent from the Respondents' submissions, including the high numbers of persons who are turned away, provide a further indication that this venue, including its late-night dance music services, have been quite popular. In this sense the venue is meeting community expectations, for this type of entertainment, in addition to the other liquor and gaming services on offer at the hotel.
- 247.** While the Authority accepts that a substantial number of *patrons* have been voting with their feet and supporting late trading, neither the Applicant nor the hotel have provided any substantial insights into the attitudes of the broader *community of the suburb of Hamilton* or residents in nearby areas that are likely to patronise or be impacted by the hotel's operations.
- 248.** The Authority accepts the Applicant's contention, in its submission dated 21 May 2018 that late night licensed entertainment is available at 6 hotels and one on-premises licensed venue in Beaumont Street Hamilton. The Respondents themselves note in their submission dated 15 May 2018 that the potential buyer operates one of those hotels, which provides live entertainment including dance music and DJs.
- 249.** The Authority is satisfied that there are late trading alternatives to meet community expectations, needs and aspirations should the late trading hours of this hotel be reduced with a range of other late trading licensed premises in the Newcastle CBD, 3 kilometres away. By varying the ETA as determined, the hotel will still be licensed to operate and serve community expectations over an extensive period across the course of the week, until 1:30 am Monday through Saturday and until midnight on Sunday.
- 250.** Section 3(1)(b) of the Act provides the statutory object of facilitating the balanced development, in the public interest, of the liquor industry. While the Respondents' provision of late licensed entertainment in a recently renovated hotel serves the development of the local industry, the statutory object is the *balanced* development of the industry, in the *public interest*.
- 251.** Given the findings made by the Authority on the pattern of adverse events attributable to the exercise of the ETA, the Authority finds that it would better serve the *balanced* development of the industry for some reduction in late trading hours to occur if, as indicated by the Authority's findings on the adverse events attributable to the ETA, this will reduce the scope for late night anti-social conduct that has been caused by the hotel's clientele and other persons attracted to the venue by reason of its 3:00 am licensed trading hours.
- 252.** Section 3(1)(c) provides the statutory object of contributing to the responsible development of related industries such as live entertainment, tourism and hospitality industries. The Authority accepts that the venue's provision of live entertainment, primarily through the provision of DJs providing dance music in a nightclub mode of entertainment in part of the Premises, contributes to the development of related live entertainment industries. The revenue data provided by the Respondents in their submissions dated 15 May 2018 provide evidence of significant liquor, gambling and other revenue derived between midnight and 3:00 am.

- 253.** Noting the Respondents' contentions in their submission dated 27 November 2017 as to the number of persons employed by the hotel in various capacities during late hours, the Authority accepts that late trading provides one aspect of the role that this venue plays in the development of "related" hospitality and gambling industries in the Hamilton entertainment precinct.
- 254.** Nevertheless, the statutory object concerns the *responsible* development of related industries. It is apparent that, notwithstanding the recent efforts of the hotel to exclude intoxicated persons or weed out trouble makers that are identified in the Paroz Reports dated 14 May 2018, the business owners have elected to pursue a mode of operation with a focus on late night nightclub style entertainment until 3:00 am. This has encouraged significant numbers of patrons to attend the venue during late hours but has given rise to unacceptable levels of anti-social conduct caused by the hotel's clientele, notwithstanding the harm reduction measures implemented by the licensee.
- 255.** In light of the Authority's findings on the adverse events attributable to the ETA, with many events relating to the nightclub aspect of the business and other events occurring in the other bar areas and the gaming room, the Authority is satisfied that reducing the scope for anti-social conduct by reducing the late trading footprint will better serve the *responsible* development of related industries. The Authority notes that by varying the ETA as determined, the venue will still be able to serve the development of related industries until 1:30 am Monday to Saturday and midnight on Sunday.
- 256.** On the material before it, the statutory considerations in section 3(2) of the Act to which the Authority must turn its mind call for some intermediate regulatory action. Section 3(2)(a) concerns the need to minimise harm associated with the misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour).
- 257.** The Authority accepts the Respondents' submission dated 15 May 2018 that some significant reduction in assaults recorded on the Premises is evident, from its previous peak in 2016/2017. The Authority is not yet in a position to make a finding on whether the hotel will remain a declared premises in the next Round 20 of the scheme, which will concern the period from July 2017 to June 2018, as the results have not yet been published by the Secretary.
- 258.** There is no dispute however, that the hotel is at this time a "Level 1" declared premises arising from the latest published results of Round 19 of the Schedule 4 scheme, which concerned assaults on licensed premises during calendar year 2017. Publicly available information confirms that this hotel was a Level 1 declared premises during Round 18 (which concerned July 2016 to June 2017) and a Level 2 declared premises during Round 17, which concerned the 2016 calendar year.
- 259.** The Authority notes that under the Schedule 4 scheme, licensed venues that have recorded 19 or more assaults occurring on the premises during the relevant 12 months period are classified as Level 1, with venues recording between 12 and 18 assaults on premises classified as Level 2.
- 260.** The Authority is satisfied, that during the period of ownership of the current business owners, the hotel has recorded substantial and consistently high levels of violence on the Premises. The business owners have had over two years to rectify the Hotel's performance and have been on notice of this Application since 27 October 2017.
- 261.** Notwithstanding that the Schedule 4 scheme imposes substantial special licence conditions which restrict the supply of certain drinks and impose other harm minimisation measures, those conditions have not proven sufficient to avoid the venue's repeated listing

as a declared premises, nor have those special conditions avoided the numerous adverse events attributable to exercise of the ETA that have been found by the Authority.

- 262.** While the Respondents have made much of a recent reduction in assaults, and this is a relevant issue when assessing this Application, section 3(2)(a) is a broader provision, requiring the Authority to consider the need to minimise harm associated with the abuse of liquor including *violence and other anti-social behaviour*.
- 263.** The Authority does not consider it in the public interest to give the hotel business owners more time to micro manage trouble makers and take other initiatives designed to reduce the levels of patron misconduct as an alternative to taking action against the ETA.
- 264.** Giving weight to the statutory consideration in section 3(2)(a) of the Act, the Authority is satisfied that reducing late licensed trading will best reduce the scope for assaults and a range of anti-social conduct identified in the Authority's findings to occur in the first place and that such action is necessary on the material before the Authority
- 265.** While the Applicant has briefly referred to section 3(2)(b) of the Act, which concerns the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor, there is insufficient evidence before the Authority to find that the hotel business is engaging in irresponsible practices, although there are numerous events found attributable to the ETA indicating that hotel *patrons* were seriously affected by liquor and have been unable to consume liquor in a responsible manner during late hours.
- 266.** 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 community life - the hotel's record of on-Premises assaults, off-Premises assaults, anti-social conduct and other forms of disturbance requiring the intervention of Police or emergency services provide a compelling reason to reduce the scope for patrons or other persons attracted to the Premises by reason of its late hours to detract from the amenity of community life.
- 267.** The Authority accepts the Respondents' submission dated 27 November 2017 to the effect that the late trading hours provide some positive amenity to the hotel's patrons, who may take advantage of the increased scope for social interaction and enjoyment of the licensed services on offer at this hotel.
- 268.** However, the negative amenity impacts upon the locality arising from 3:00 am licensed trading during 2016 and 2017 have been substantial, with liquor consumption playing a role in many of the adverse incidents attributable to the ETA. The Authority is satisfied that reducing the late trading hours will most effectively reduce the scope for the sale, supply and consumption of liquor in relation to the Premises to detract from community life, while still enabling the licence to facilitate some positive amenity benefits until 1:30 am six days per week and with extended trading until midnight on Sunday.
- 269.** In conclusion, having considered the Application and all of the submissions and material now before it, the Authority is satisfied that it is in the public interest to vary the ETA on Monday through Saturday trading so that the sale or supply of liquor for consumption on the Premises must cease at 1:30 am. Noting that extended licensed trading is currently limited to midnight on Sundays, the Authority does not consider it necessary to take any regulatory action in respect of Sunday trading.
- 270.** The Authority accepts that taking this action will have a substantial adverse impact upon the current revenue derived by the hotel business owner by reducing the revenue streams

that the hotel currently enjoys between 1.30 am and 3:00 am as evident in the statutory declaration from the premises owner's accountant dated 15 May 2018.

- 271.** The Authority is satisfied, on the basis of that data (which it has not specified in this published decision at the request of the Respondents) that the adverse impact upon current revenue streams will be substantially reduced by comparison to revoking the ETA, which would require closure of the venue at Midnight Monday through Saturday, and 10:00 pm on Sunday, as proposed by the Applicant.
- 272.** The Authority notes that it is a condition of the licence that cessation of liquor service must occur 30 minutes before closing and this will require the cessation of liquor at 1:00am. The Authority accepts the proposition advanced by the Respondents in the statutory declaration by Mr Rogers dated 15 May 2018 that further losses may arise through patrons not choosing this venue over others, noting the 1:00 am lockout in place across certain late trading venues in the Hamilton entertainment precinct.
- 273.** The Authority further accepts that some loss of property value may also flow to the premises owner should licensed hours be reduced, although it is difficult to give weight to this concern when the premises owner has not taken up the Authority's invitation to quantify that loss should the Authority vary, rather than revoke, the ETA. Nevertheless, the prospect of adverse regulatory action has not, it would seem, prevented the premises owner from entering into advanced discussions to lease the hotel to an experienced third-party operator.
- 274.** Lost revenue, lost employment hours and some loss of property or leasehold value may be consequence whenever any regulatory action is taken to reduce late licensed hours. The Authority has taken these matters into account when considering what action is appropriate in the current circumstances.
- 275.** It is apparent from the Respondents' submissions that they have *elected* to run a higher risk mode of operation, with a focus upon late live entertainment until 3:00 am. Given the licence type (a hotel with the primary purpose of the sale of liquor) and the medium scale of the venue, these practices give rise to increased scope for physical interaction between patrons who may have consumed liquor over a prolonged period of time, either on the Premises or at other locations before attending the Premises. The Authority is satisfied that this mode of operation, in combination with recent renovations and the availability of other services, has generated significant late-night patronage and substantial alcohol related anti- social conduct. The harm reduction measures implemented on the Premises have not proven sufficient to offset that risk. The Authority is satisfied that reducing late trading hours will most effectively reduce the scope for adverse impact upon local amenity.
- 276.** In making this decision the Authority has considered all of the statutory objects in section 3(1) of the Act and all of the statutory considerations in section 3(2). In taking action to vary the ETA, the Authority has given weight to the statutory consideration in sections 3(2)(a) and 3(2)(c) of the Act.



David Armati  
Deputy Chairperson  
For and on behalf of the Independent Liquor and Gaming Authority