



Mr Anthony Keon Director, Compliance Office of Liquor, Gaming and Racing Level 6 323 Castlereagh Street HAYMARKET NSW 2000	Senior Sergeant Donna Murphy Kings Cross Police 1-15 Elizabeth Bay Road ELIZABETH BAY NSW 2011	Mr Kim Stapleton JDK Legal Level 5 1 Castlereagh Street SYDNEY NSW 2000
Mr Tony Schwartz Back Schwartz Vaughan Level 1 156 Edgecliff Road WOOLLAHRA NSW 2025	The Person Apparently in Charge Bada Bing Nightspot 70A Darlinghurst Road POTTS POINT NSW 2011	

[anthony.keon@olgr.nsw.gov.au](mailto:anthony.keon@olgr.nsw.gov.au)  
[murp1don@police.nsw.gov.au](mailto:murp1don@police.nsw.gov.au)  
[k.stapleton@jdklegal.com.au](mailto:k.stapleton@jdklegal.com.au)

[tschwartz@bsv.com.au](mailto:tschwartz@bsv.com.au)  
[info@badabingnightspot.com.au](mailto:info@badabingnightspot.com.au)

31 January 2016

**Decision on Application for Long Term Closure Order –  
Bada Bing Nightspot, Potts Point (liquor licence number LIQO624013096)**

**INTRODUCTION**

1. On 22 December 2015, the Independent Liquor and Gaming Authority (**Authority**) received an application dated 22 December 2015 (**Application**) from Superintendent Robert Allison, Kings Cross Local Area Commander of the New South Wales Police Force (**Police**) in his capacity as a delegate of the New South Wales Commissioner of Police (**Applicant**).
2. The Application is made under section 84 of the *Liquor Act 2007* (**Act**) and seeks the issue of a Long Term Closure Order in relation to the licensed premises known as “Bada Bing Nightspot”, located at 70A Darlinghurst Road, Potts Point (**Premises**).
3. The Applicant advises that a criminal investigation by NSW Police is underway in relation to the licensee, former licensee, approved manager, staff and agents of the licensed business conducted on the Premises.
4. The Applicant alleges, on the basis of the material provided in support of the Application, that serious breaches of sections 74(1)(b), 74(2), 74(3)(b) and 74(4) of the Act have recently been detected by Police in relation to the Premises.
5. The Applicant further alleges that serious breaches of licence conditions imposed by the Act, Part 5A of the *Liquor Regulation 2008* (**Regulation**) and other conditions attaching to the individual licence of the Premises in relation to the operation of CCTV, the use of identification scanners, audience participation in adult entertainment and

access between the licensed and non-licensed areas of the building where the Premises is located have been detected by Police, contrary to section 11 of the Act.

6. The Applicant submits that closure of the Premises for a period of 6 months (or until such time as the conditions specified on page 21 of the Application Letter are met) is necessary to prevent or reduce a “significant threat or risk to the public interest” for the purposes of section 84 of the Act.
7. The Applicant’s specified conditions which, if satisfied, would warrant the reopening of the Premises within the proposed 6 months closure period are stated as follows:
  1. The investigation into Mr Abdul Rustom, Mr Kenneth Gibson and Mr Steven Lekoski under section 138 of the Act has been finalised and any complaint pursuant to section 139 of the Act has been determined by the Authority;

or, in the alternative, that the following occurs:

1. A new licensee is unconditionally approved by the Authority; and
2. The licence is restricted to standard trading hours; and
3. Adult entertainment/strippers is prohibited; and
4. There must be no internal communication between the licensed and unlicensed areas of the Premises.

## **NOTICE OF APPLICATION**

8. On the morning of 22 December 2015, the licensee was served by Police with a copy of a Notice of Application issued by the Authority informing the licensee that by reason of the gravity of the allegations contained in the Application and the pending expiry of a Short Term Closure Order issued by a Local Court Registrar on 20 December 2015 in relation to the Premises, the Authority was considering ordering the closure of the Premises for a period of 6 months from 7:00pm on Thursday 24 December 2015 or until such time as the conditions specified by the Applicant at page 21 of the Application Letter have been met (discussed below).
9. The licensee was invited to make written submissions in response to the Application by no later than 12:00 midday on Thursday 24 December 2015.

## **MATERIAL BEFORE THE AUTHORITY**

10. The material provided by Police to the Authority accompanying the Application comprises the following:
  - 21-page Application Letter dated 22 December 2015;
  - Annexures 1 to 30 referred to in the Application Letter (a bundle of supporting evidence or material comprising around 100 pages of material, discussed below); and
  - CCTV footage from the Premises referred to in the Application Letter recording patrons of the Premises physically interacting with strippers while performing on the Premises.

(collectively referred to as the **Application Material**).

11. In the Application Letter, Police submit that Section 84 of the Act requires that the Authority be satisfied of certain threshold matters to enliven a decision to make an order for long-term closure. Relevantly, the Authority must be satisfied that:
- the licensee or manager of the licensed premises is the subject of an investigation by the NSW Police Force or disciplinary action under Part 9 of the Act has been (or is proposed to be) taken by the Authority against the licensee or manager or a close associate of the licensee.
  - a serious breach of the Act has occurred, or is likely to occur, on the licensed premises and the closure of the premises is necessary to prevent or reduce a “significant threat or risk to the public interest”. Circumstances in which there may be a significant threat or risk to the public interest include circumstances in which there is:
    - a threat to public health or safety, or
    - a risk of substantial damage to property, or
    - a significant threat to the environment, or
    - a risk of serious offences (having a maximum penalty of not less than 2 years imprisonment) being committed on the premises.

### **Background Information about the Premises**

12. The Applicant states that the business on the Premises operates pursuant to an on-premises licence type, the designated primary purpose of which is recorded on the licence as “theatre public entertainment venue”. The liquor licence is number LIQO624013096 and licensed trading is authorised between 5:00am and 3:00am, Monday through Sunday.
13. The Applicant states that the Premises provides adult entertainment in the form of striptease, nude, semi-nude, erotic, tabletop and podium dancing. Strip shows can be viewed by patrons within a private room upon payment of a fee.
14. The Applicant observes that the Premises is situated on the south-eastern side of Darlinghurst Road near the intersection of Bayswater Road, with secondary frontage to Kellett Street. The site contains a three storey building that is occupied by the Premises on the first floor. The second floor of the building is currently used for storage and an office. The first floor is accessible by a staircase on the ground floor. At the top of the staircase is a landing which accommodates the cash booth. The bar is accessible via double entry doors on the left hand side of the landing. The bar area is occupied by one bar, a dance podium, four private dance rooms, a dance floor, smoking balcony and male and female bathrooms.
15. The Applicant provides the following evidence or material to substantiate this background information:
- **Annexure 1** to the Application Letter: *Key liquor licence details* for the Premises recorded as at 14 December 2015, sourced from the NSW Police Alcohol Related Crime Information Exchange (**ARCIE**) database.
  - **Annexure 2** to the Application Letter: Floor plan for the Premises (first floor and second floor).

16. The Applicant describes the Premises as a “small” venue, and although not subject to any current patron capacity restraints, the Applicant observes that a Place of Public Entertainment development consent (which the Authority notes is a type of planning instrument that is no longer in force) was issued in 2004 and specified a maximum capacity of 300 persons, including staff. The Applicant submits that this figure represents a reasonable indication of the current capacity of the Premises.
17. The Applicant notes that Mr Kenneth James Gibson was provisionally approved by the Authority as the licensee of the Premises on 15 July 2015 (**Licensee**). Prior to that, Mr Gibson was employed as an approved “high risk venue manager” under section 116A(2)(i) of the *Liquor Act 2007*.
18. The Applicant further notes that Mr Steven Lekoski, the approved high risk venue manager, was appointed on 20 January 2015 (**Approved High Risk Manager**). Police refer to a High Risk Venue Manager Approval Form for Steven Lekoski dated 20 January 2015 (**Annexure 3** to the Application Letter).
19. [The Authority notes that it does not have Annexure 3 on the bundle provided by the Applicant, but accepts the uncontested information provided by the Applicant as to Mr Steven Lekoski’s appointment in this capacity.]
20. The Applicant notes that prior to Mr Gibson, Mr Abdul Rustom was the licensee of the Premises. The Applicant contends that Mr Rustom left the employ of the Premises “suddenly” on 20 June 2015.
21. The Applicant states that the current recorded business owner of the business operating on the Premises is a corporation, Marathon Enterprises Pty Ltd (ABN 80 097 860 798), which was approved on 9 November 2004 (**Business Owner**). An ASIC Current Extract for Marathon Enterprises Pty Ltd dated 21 December 2015 indicates that Mr Kyriacos (Gary) Papadopoulos is the sole director and Mr Manthos Papadopoulos is the secretary of that corporation.
22. The Applicant observes that the Premises is located within the “Kings Cross Precinct”, as defined in Schedule 2 to the Act (**Precinct**). The Applicant submits that the liquor regulation for Kings Cross was amended in 2012 to target drug and alcohol-fuelled violence occurring within the Precinct.
23. The Applicant notes that the Kings Cross Precinct is also a “freeze precinct” within the meaning of the liquor legislation. This temporary freeze on liquor licences prohibits the licensing of additional licensed premises and increased licensed trading hours under the *Liquor Act 2007* and *Environmental Planning and Assessment Act 1979*. The Applicant notes that there are three freeze precincts currently designated within New South Wales – the Kings Cross Precinct, Oxford Street in Darlinghurst, and the Sydney CBD Entertainment Precinct.
24. The Applicant further submits that the Premises is designated as a “high risk premises” and subject to a suite of additional regulatory measures pursuant to Part 5A of the *Liquor Regulation 2008*.
25. [Although not specified in the Application, the Authority notes that the owner of the freehold upon which the Premises is located is another company, Sapphire Suite Pty Ltd (**Premises Owner**).]

## Operation of the Premises

26. The Applicant submits that the incidents described within this Application, occurring over a six-month period, paint an “alarming picture” of the “culture” of the business conducted on the Premises which, when considered in the context of a “high risk” premises within the Kings Cross Precinct (that is already under significant regulatory, media, political and public scrutiny), demonstrates a venue that is operating “well outside of community expectations and without any regard to its regulatory obligations”.
27. The Applicant advises that NSW Police are currently conducting an ongoing criminal investigation into the current Approved High Risk Manager (Mr Lekoski), Licensee (Mr Gibson), former licensee (Mr Rustom), venue staff and venue associates. Police allege that the ongoing operation of the Premises continues to be a “significant, and unnecessary, drain on public resources and is a clear and significant threat to the public interest”.

## Recent History of Persons Associated with Premises

28. The Applicant contends by way of background that in 2011, Mr Scott Lavers was employed as a door host at “Showgirls”. Showgirls is a licensed premises with an on-premises (theatre public entertainment venue) licence located on Darlinghurst Road, Kings Cross. In 2011 Mr Lavers and an ordinary manager were both arrested and charged for supplying the prohibited drug cocaine inside the licensed premises. The (then) Director-General (a role which the Authority notes is now exercised by the Secretary of the Department of Justice) subsequently imposed a condition on the liquor licence for Showgirls under section 54 of the Act, prohibiting Mr Scott Lavers from entering the Showgirls venue.
29. The Applicant contends that Mr Manthos Papadopoulos is a director of Elvedon Holdings Pty Ltd, the corporate business owner of Showgirls. Manthos Papadopoulos is the brother of Gary Papadopoulos (a director of the corporate business owner of Bada Bing). The Applicant contends that Scott Lavers has never been employed by the business operating on the (Bada Bing) Premises. However, the Applicant alleges that Mr Lavers has “transferred his drug supply business” from Showgirls to Bada Bing, based on the following information:
30. The Applicant refers to the NSW Police prosecution *Facts Sheet* for charge number H60519083 (**Annexure 4** to the Application Letter), which alleges that at about 1:50am on 18 May 2015, plainclothes Licensing Police observed a motor vehicle parked on the western footpath of Kellett Street, Potts Point near the rear exit of Bada Bing. Police saw Scott Lavers sitting in the driver’s seat of a vehicle registered in his name. An unknown male wearing a security uniform approached the driver’s side door and spoke to Mr Lavers before walking north on Kellett Street, where it was thought by Police that he entered “Velvet Underground”, another licensed strip club located on Kellett Street, Potts Point.
31. A short time later, Police saw Mr Stevie-Lee De Franciscis, an employee at Velvet Underground, approach the driver’s side window and speak to Mr Lavers. Mr De Franciscis looked left and right a number of times before climbing into the rear passenger seat directly behind Mr Lavers. Police approached the vehicle and introduced themselves. Police searched Mr Lavers and found \$840 in cash. Police searched the motor vehicle and underneath the driver’s seat found a medium-sized

resealable plastic bag containing 15 bags of cocaine weighing 14.9 grams and a medium-sized resealable plastic bag containing a tin of mints with eight bags of methylamphetamine weighing 2.52 grams inside. Police also found a pink zip bag containing an *Eclipse* mints tin with two bags of cocaine weighing 1.17 grams and one bag of methylamphetamine weighing 0.73 grams. Police located two “ice” pipes wrapped in a dishcloth and a blister pack containing 12 *Ativan* (lorazepam) tablets. Lorazepam is a prescribed restricted substance. These matters are currently before the Court.

32. As a result of this arrest, Police requested CCTV footage from Bada Bing, Velvet Underground and City of Sydney Council.
33. Police also requested information from the Kings Cross ID Scanner Provider in relation to Mr Lavers’ attendance at the Premises. The ID Scanner Provider confirmed that Mr Lavers scanned in to the Premises on **59** occasions between 1 May 2015 and 15 June 2015.
34. According to the NSW Police statement of Detective Senior Constable Andrew Agostino of Kings Cross Police Station dated 23 November 2015 (**Annexure 5** to the Application Letter), at about 10:00pm on 5 June 2015 Police were conducting surveillance inside Bada Bing Nightspot. Police observed Mr Lavers enter the Premises and walk to the back of the main bar entrance and enter through the rear fire door which is marked “No Entry”. Mr Lavers was seen to return to the main bar area at about 12:30am.
35. The Applicant submits that, despite strict bail conditions restricting Mr Lavers from entering Kings Cross, he has continued to scan in to the Premises several times a week.
36. The Applicant states that on 9 June 2015, the Kings Cross Local Area Command (**LAC**) Drug Unit established Strike Force Dickson to investigate the ongoing supply of prohibited drugs within the Premises. Police applied for, and were granted, a Telephone Intercept Warrant and lawfully intercepted Mr Lavers’ mobile telecommunications.
37. On the basis of the NSW Police prosecution *Facts Sheet* for charge number H58038452 (**Annexure 6** to the Application Letter), the Applicant submits that on 30 June 2015, Police intercepted text messages between Mr Lavers and a female who identified herself as “Annie”. During the conversation, Mr Lavers agreed to supply 0.8 grams of methylamphetamine (ice) for \$350 or 3.5 grams of methylamphetamine (ice) for \$1,200.
38. Police allege that on 1 July 2015, Mr Lavers received a text message from a customer asking if he was in Kings Cross and if it was possible to meet outside Velvet Underground. Mr Lavers confirmed that he was in Kings Cross and agreed to the meeting. A short time later, Mr Lavers received a text message from the same phone number claiming dissatisfaction with the quality of the drug that had been supplied. Mr Lavers said that he would organise another sample of the drug and have it delivered.
39. At 11:57pm on 1 July 2015, Police intercepted a telephone call between Mr Lavers and a known person. Mr Lavers was in his car at the time. After this conversation, it became apparent that Mr Lavers had not ended the call and the phone was still

recording while Mr Lavers continued speaking to his friend inside Mr Lavers' car. The nature of this conversation caused immediate concern to Police and as a result, Police moved quickly to arrest Mr Lavers.

40. Police arrested Mr Lavers at 3:45pm on 3 July 2015 in Kellett Street, Potts Point. Mr Lavers was searched and Police found an *Eclipse* mints tin containing two resealable bags containing methylamphetamine (ice) and one bag of white powder (cocaine). Later the same day, Police executed a search warrant at Mr Lavers' flat in Kirribilli where they found 20 resealable bags containing 39.31 grams of cocaine and one bag containing 6.40 grams of methylamphetamine (ice). These matters are currently before the Court.
41. Police submit that Mr Lavers was charged with "supply prohibited drug" and granted bail on the condition he reside in St Clair and not leave his home unless in the company of his wife or his father. Mr Lavers' father also agreed to pay \$50,000 surety. Information in relation to Mr Lavers' history of reoffending was passed on to St Marys Police.
42. The Applicant submits, on the basis of NSW Police prosecution *Facts Sheet* for charge number H58706732 (**Annexure 7** to the Application Letter), that on Friday 4 September 2015, St Marys Police stopped Scott Lavers in a vehicle after it made an illegal U-turn at traffic lights. Inside the vehicle, Police found 71.7 grams of methylamphetamine (ice) with an estimated street value of \$37,500 and 21.6 grams of cocaine with an estimated street value of \$10,000. Mr Lavers is currently remanded in custody awaiting trial.

#### The Current Police Investigation into the Premises

43. The Applicant submits that Police had no choice other than to arrest Scott Lavers, which prevented Police from fully investigating his role in the drug supply chain at the Premises. However, intelligence led Police to suspect that Mr Lavers would be replaced.
44. The Applicant advises that NSW Police are currently conducting an investigation into ongoing supply of the prohibited drug cocaine on the licensed premises and preparing to commence disciplinary proceedings with the Authority under Part 9 of the *Liquor Act* in relation to the current and former licensee of the premises.
45. The Applicant advises that on 9 June 2015, the Kings Cross LAC Drug Unit established Strike Force Dickson to investigate the ongoing supply of prohibited drugs within the Premises. On 27 August 2015, Controlled Operation CO15/246 was authorised by Assistant Commissioner Mick Fuller under the *Law Enforcement (Controlled Operations) Act 1997* authorising the conduct of controlled purchases of prohibited drugs inside the geographical area surrounding Bada Bing Nightspot.

#### **ALLEGED SERIOUS BREACHES OF THE ACT IN RELATION TO PROHIBITED DRUGS**

46. The Applicant submits that serious breaches of the Act have occurred, or are likely to occur, in relation to the following offence provisions of the Act regarding prohibited drugs and licensed premises:

- *Licensee permit premises to be used for the sale of prohibited drugs contrary to section 74(1)(b);*

- *Licensee permit possession or use of prohibited drug contrary to section 74(2);*
- *Employee or agent permit premises to be used for the sale of prohibited drugs contrary to section 74(3)(b); and*
- *Employee or agent permit possession or use of prohibited drug contrary to section 74(4).*

47. The Applicant alleges that between September 2015 and December 2015, Police identified serious breaches of sections 74(1)(b), 74(2), 74(3)(b) and 74(4) of the *Liquor Act 2007* (**Prohibited Drug Supply Events**) which occurred on the Premises of Bada Bing and provided the basis of a Short Term Closure Application that was granted by the Local Court on 20 December 2015.
48. The Applicant contends that these serious breaches involved the Approved High Risk Manager, Mr Steven Lekoski, and employees or agents of the Licensee, Mr Kenneth Gibson, who were permitting the Premises to be used for the sale of a prohibited drug (cocaine).
49. The Applicant contends that the Approved High Risk Manager and employees or agents of the Licensee permitted the possession of a prohibited drug (cocaine) on the Premises. The Applicant refers to the following matters in support of this contention:

#### **Prohibited Drug Supply Event #1**

50. At about 8.00pm on Thursday 3 September 2015, undercover Police officers (the **UC**) entered the Premises. A short time later, the UC engaged a female stripper in conversation. The female stripper, known as "Kiri" (identity unknown), informed the UC that she was able to supply 1 gram of cocaine for \$350. A short time later, "Jade" (Ms Colquitt), who is employed as a stripper/dancer/bartender at the Premises, approached the female UC and directed her into the female toilets where she supplied 0.61 grams of cocaine (weight including packaging). "Jade" provided her telephone number to the UC to facilitate the purchase of further amounts of cocaine. "Jade" asked the UC to refer to the drug by the codename "bottles".
51. The Applicant provides the following evidence or material in relation to this event:
- **Annexure 8** to the Application Letter: Photograph of drug in packaging.
  - **Annexure 8.1** to the Application Letter: Analyst's Certificate for Drug Exhibit number X00001873179 indicating that the substance provided to the UC contained 0.46 grams of cocaine, with a drug purity of 44.5%.

#### **Prohibited Drug Supply Event #2**

52. On 9 September 2015, the UC sent a text message to "Jade's" mobile phone placing an order for 1 gram of cocaine using the code "bottle". On 10 September 2015, the UC received a text from "Jade" agreeing to supply "one bottle". "Jade" indicated that she would be at Bada Bing at 10:00pm that evening.
53. At about 9:00pm on Thursday 10 September 2015, two undercover Police officers attended the Premises where "Jade" agreed to supply 1 gram of cocaine. The UC was directed to the female toilets where "Jade" supplied 0.61 grams of cocaine (weight including packaging) in exchange for \$350 cash. After the exchange, the UC and "Jade" returned to the bar area and engaged in a conversation. "Jade" told the UC that she had worked at Bada Bing for 8 years and has her own supply of cocaine. "Jade" also told Police that Bada Bing management staff also supply cocaine but it can be of



poor quality and limited supply. “Jade” said the cocaine supplied to the UC on 3 September 2015 came from Bada Bing management.

54. The Applicant provides the following evidence or material in relation to this event:

- **Annexure 9** to the Application Letter: Photograph of drug in packaging.
- **Annexure 9.1** to the Application Letter: Analyst’s Certificate for Drug Exhibit number X00001873180 indicating that the substance provided to the UC contained 0.47 grams of cocaine, with a drug purity of 51.5%.

### **Prohibited Drug Supply Event #3**

55. On Friday 18 September 2015, a UC sent a text message to “Jade” and placed an order for 1 gram of cocaine using the code word “bottle”. At about 10:10pm on 18 September 2015, a UC attended the Premises and met with “Jade”. “Jade” directed the UC to the female toilets where “Jade” supplied 0.88 grams of cocaine in exchange for \$350 in cash. The UC and “Jade” returned to the bar area and engaged in conversation. “Jade” told the UC that the Premises has an upstairs room where clients “can do anything except have sex with the strippers”. “Jade” told the UC that the upstairs room, which also has an EFTPOS machine, is available to select patrons at a cost of \$350 an hour. “Jade” also told the UC that Police are not aware of this room.

56. The Applicant provides the following evidence or material in relation to this event:

- **Annexure 10** to the Application Letter: Photograph of drug in packaging.
- **Annexure 10.1** to the Application Letter: Analyst’s Certificate for Drug Exhibit number X00002468280 indicating that the substance provided to the UC contained 0.72 grams of cocaine, with a drug purity of 47.5%.

### **Prohibited Drug Supply Event #4**

57. At 11:34pm on Friday 18 September 2015, a second deployment of undercover Police entered the Premises and engaged in a conversation with stripper/dancer “Mira” who agreed to supply 1 gram of cocaine. “Mira” directed the UC to a private dance room where she handed the UC a small bag containing 0.65 grams of cocaine in exchange for \$350 cash. “Mira” told the UC that Bada Bing has a room upstairs with an EFTPOS machine. This room is available to clients who may wish to “use [drugs] on the premises”. “Mira” told the UC that Kings Cross Police do not know about the room, that only select people may use it and that patrons “can do anything they want except have sex with the strippers”. “Mira” provided her mobile telephone number to the UC.

58. The Applicant provides the following evidence or material in relation to this event:

- **Annexure 11** to the Application Letter: Photograph of drug in packaging.
- **Annexure 11.1** to the Application Letter: Analyst’s Certificate for Drug Exhibit number X00002468281 indicating that the substance provided to the UC contained 0.48 grams of cocaine, with a drug purity of 36.0%.

### **Prohibited Drug Supply Event #5**

59. On 24 September 2015, the UC sent a text message to “Mira’s” mobile telephone but “Mira” did not reply.
60. At 9:18pm on Friday 25 September 2015, a UC attended the Premises and engaged in a conversation with “Mira” about a private dance. The UC negotiated the purchase of 1 gram of cocaine in exchange for \$350 cash. “Mira” directed the UC to a private dance room where she handed him a small bag containing 0.99 grams of cocaine. “Mira” confirmed receipt of the text message the day before, but told the UC she did not like to talk about drug supply via phone. “Mira” told the UC that facilities are available to purchase drugs at the Premises using a credit card.
61. The Applicant provides the following evidence or material in relation to this event:
- **Annexure 12** to the Application Letter: Photograph of drug in packaging.
  - **Annexure 12.1** to the Application Letter: Analyst’s Certificate for Drug Exhibit number XD000001021 indicating that the substance provided to the UC contained 0.73 grams of cocaine, with a drug purity of 50.5%.

### **Prohibited Drug Supply Event #6**

62. On Thursday 8 October 2015, a UC attended the Premises and engaged in conversation with waitress “Tash”. “Tash” agreed to supply 1 gram of cocaine in exchange for \$350 cash. “Tash” directed the UC into a private dance room where she gave the UC a small plastic bag containing 0.86 grams of cocaine and provided the UC with two mobile telephone numbers. “Tash” told the UC that the cocaine is organised by “Steve” in the front office.
63. The Applicant provides the following evidence or material in relation to this event:
- **Annexure 13** to the Application Letter: Photograph of drug in packaging.
  - [The Applicant notes that NSW Police are still awaiting an Analyst’s Certificate for Drug Exhibit number XD000001086.]

### **Prohibited Drug Supply Event #7**

64. At about 12:07am on Friday 9 October 2015, the UC entered the Premises and engaged in a conversation with dancer “Prudence”, who agreed to supply 1 gram of cocaine. “Prudence” took \$350 cash from the UC before having a conversation with “Tash”. “Prudence” and the UC walked to a private dance room where “Tash” supplied 0.83 grams of cocaine. “Prudence” performed a private dance for undercover Police, told them her name was “Prudence” and provided her mobile telephone number.
65. The Applicant provides the following evidence or material in relation to this event:
- **Annexure 14** to the Application Letter: Photograph of drug in packaging.
  - [The Applicant notes that NSW Police are still awaiting an Analyst’s Certificate for Drug Exhibit number XD000001085.]

### **Prohibited Drug Supply Event #8**

66. At 10:03pm on Friday 9 October 2015, undercover Police entered the Premises and engaged in conversation with "Prudence" to buy 1 gram of cocaine for \$400. "Prudence" had a conversation with "Tash". "Tash" then supplied 0.69 grams of cocaine to UC Police in a private dance room.
67. The Applicant provides the following evidence or material in relation to this event:
- **Annexure 15** to the Application Letter: Photograph of drug in packaging.
  - [The Applicant notes that NSW Police are still awaiting an Analyst's Certificate for Drug Exhibit number XD000001088.]

### **Prohibited Drug Supply Event #9**

68. At about 10:38pm on 3 December 2015, the UC entered the Premises. At 11:16pm the UC met with "Jade" in the main bar area. The UC engaged in a conversation with "Jade" and negotiated to buy 1 gram of cocaine. "Jade" met the UC inside the female toilets, where she supplied 0.75 grams of cocaine for \$300.
69. The Applicant provides the following evidence or material in relation to this event:
- **Annexure 16** to the Application Letter: Photograph of drug in packaging.
  - [The Applicant notes that NSW Police are still awaiting an Analyst's Certificate for Drug Exhibit number X000247361.]

### **Prohibited Drug Supply Event #10**

70. At 10:29pm on 3 December 2015, "Jade" met with the UC on the smoking balcony. The UC operative asked if "Jade" could supply an "8 ball" (3.5 grams) of cocaine. "Jade" told the UC that she would have to ask management and left the smoking balcony. "Jade" returned a short time later and told the UC she could not supply an 8 ball. The UC then asked if she could supply 5 bags (5 grams). "Jade" said she could do 5 bags but would have to get it from management and it may take an hour. The UC said that was too long to wait. "Jade" told the UC that she could do 2 bags (2 grams) now and the UC agreed to take 2 bags as a sample. "Jade" met the UC in the female toilets, where she supplied 1.42 grams of cocaine for \$700 cash.
71. The Applicant provides the following evidence or material in relation to this event:
- **Annexure 17** to the Application Letter: Photograph of drug in packaging.
  - [The Applicant notes that NSW Police are still awaiting an Analyst's Certificate for Drug Exhibit number X00002473642.]

### **Prohibited Drug Supply Event #11**

72. At about 10:18pm on 10 December 2015, the UC entered the Premises. The female UC approached the Approved High Risk Manager, Steve Lekoski, and asked if "Jade" was working. Mr Lekoski said no and the UC asked Mr Lekoski if he could help her

out. Mr Lekoski said to the UC, "Same as last week?", then told the UC he would send someone to see her. About 30 minutes later the male UC approached Mr Lekoski and asked if he could "help us out". Mr Lekoski told the UC he would send someone. A short time later, RSA Marshal Risati Vincent approached the UC and said, "I believe you need somebody to help you". Risati Vincent then met the male UC in the male toilets and supplied him with one bag of cocaine in exchange for \$350 cash. The male UC asked for another three bags of cocaine. At 11:25pm, Risati Vincent entered the bar from level 2, nodded to the male UC and walked into the toilets. Inside the toilet, Risati Vincent supplied three bags of cocaine in exchange for \$1,050. This transaction occurred in front of another patron who said, "I can't believe you are doing this". The total weight of the four bags of cocaine, including the packaging, is 4.90 grams.

73. The Applicant provides the following evidence or material in relation to this event:

- **Annexure 18** to the Application Letter: Photograph of drug in packaging.
- [The Applicant notes that NSW Police are still awaiting an Analyst's Certificate for Drug Exhibit number X00002466010.]

### **Prohibited Drug Supply Event #12**

74. At about 10:15pm on Saturday 19 December 2015, the UC entered the Premises. The UC engaged in a conversation with RSA Marshal Risati Vincent who supplied 1 gram of cocaine to the UC in exchange for \$350 cash.

75. At about 11:00pm on 19 December 2015, Kings Cross Police executed Search Warrant number 2626/2015 on the Premises. As a result of this search warrant, dancer Ms Colquitt and RSA Marshal Mr Vincent were arrested and charged with supplying prohibited drugs. Further arrests are expected to be made over the following days.

76. The Applicant submits that the information provided above demonstrates that it is extremely likely, should the Premises continue to trade under the current business model, that there will be further breaches of the Act in relation to drug possession, drug use and drug supply. Seven employees, including an approved high risk venue manager, have permitted the sale and supply of prohibited drugs on the licensed premises on 12 occasions. These are serious breaches of the *Liquor Act*.

77. The Applicant submits that on 10 December 2015, 4.90 grams of cocaine were supplied to an undercover Police officer by an RSA Marshal on instructions from an approved high risk venue manager, who, in the absence of the licensee, is in effect the licensee of a licensed premises.

78. The Applicant submits that Police are in possession of the Premises staff list on 10 December 2015 (**Annexure 19** to the Application Letter), which reveals that the Licensee, Mr Gibson was not on duty and that Mr Steven Lekoski was, for the purposes of sections 91(1A) and 91(2) of the Act, the licensee who has permitted the Premises to be used for the sale of a prohibited drug under sections 74(1) and 74(2) of the Act.

79. The Applicant submits that on 10 October 2015, NSW Police received *Crimestoppers* Report number IR59250726 (**Annexure 20** to the Application Letter) which indicates that Mr Lekoski and two other males were bringing prohibited drugs into the Premises.

The Applicant submits that this information indicates that Mr Lekoski has been involved in drug supply from within the Premises over an extended period of time.

80. The Applicant alleges that on three occasions, prohibited drugs were supplied to undercover Police away from the Premises by a staff member of the Premises. During these meetings, the staff member provided detailed information about the methodology used by the business operating on the Premises to supply prohibited drugs to patrons. Police note that these conversations were lawfully recorded, but cannot be transcribed until Strike Force Dickson has concluded. These recordings will be produced when complaint proceedings to the Authority commence.
81. The Applicant contends, on the basis of the statement from Detective Sergeant Kurt Hayward of Kings Cross Detectives dated 17 December 2015 (**Annexure 21** to the Application Letter), that throughout Strike Force Dickson and while gathering evidence to make an application for the Controlled Operation, surveillance Police were regularly approached by strippers and asked if they wanted to buy prohibited drugs.
82. The Applicant further submits that between August and December 2013, Kings Cross Police conducted Controlled Operation 13/197 under the reference "Strike Force Dalmatia", which was an investigation into the sale of prohibited drugs in licensed premises and adult entertainment venues in Kings Cross. The Applicant contends that undercover operatives were deployed at Bada Bing Nightspot on two occasions on 2 and 3 August 2013. On both occasions, undercover Police were able to purchase cocaine from a stripper for \$350. Police contend that the incidence of drug supply uncovered during Strike Force Dickson and Strike Force Dalmatia is a result of the nature of the business which is dependent on this illegal activity.
83. The Applicant refers to the information recorded by Police officers in the Police Computerised Operational Policing System report (**COPS Report**) number E53449726 dated 18 December 2013 (**Annexure 22** to the Application Letter) in support of the above allegations in relation to the events of 2 and 3 August 2013.
84. The Applicant further contends that on 24 November 2015, two patrons attended the Premises and engaged a stripper for a private dance. During the dance, the stripper offered the patron drugs to the value of \$350. The offer was declined by the patron as he thought it was too expensive. The patron remarked that he had recorded the offer to supply drugs. As a result, both patrons were removed from the Premises by a male who claimed to be a manager. The victim told Police that as he was getting into a taxi the manager said to him, "Say one word and I will see you in your grave". The patron was intimidated by this statement and attended Balmain Police Station to report the matter.
85. The Applicant refers to COPS Report number E559474313 dated 24 November 2015 (**Annexure 23** to the Application Letter) in support of the above allegations in relation to the events of 24 November 2015.
86. The Applicant concludes with a submission that the evidence and information provided with this Application clearly demonstrates that the risk of serious offences being committed on the Premises is likely to continue to occur for the following reasons:
  - the illegal activity is well organised;
  - the "upliner" has not been identified or arrested;

- internal dealers are easily replaced because they are typically backpackers, students and/or illegal immigrants;
- the strippers are loyal to the Premises and are “usually” drug dependent;
- the design of the building enables management to carry on illegal activities on level 2 without fear of scrutiny by Police or regulatory authorities. This hampers traditional methods of investigation into criminal activities within the Premises;
- traditional methods of policing provide little intelligence of the inner workings of these Premises;
- opportunities to recruit sources are extraordinarily rare and typically unsuccessful;
- patrons are often otherwise law abiding members of the community, who may be buying and/or using cocaine inside a strip club, and it is unlikely that any of these people would willingly make public the fact they attend the Premises, let alone reveal their drug use;
- the nature of the legitimate business (cash industry, adult entertainment) both complements and obscures the operation of the illegal drug business;
- all levels of management are complicit in this illegal activity; and
- conditions which have been imposed on the liquor licence to reduce the likelihood of illegal activity are circumvented by staff to facilitate the continuation of illegal activity.

**87.** The sale and supply of prohibited drugs to patrons exposes them to a significant threat to their health and safety. Police submit that unless action is taken to close the Premises, it is likely the demonstrated illegal activity will continue to occur.

#### **ALLEGED BREACHES OF LICENCE CONDITIONS IN RELATION TO CCTV**

**88.** The Applicant notes that the liquor licence is subject to the following conditions through the operation of Part 5A of the *Liquor Regulation 2008*:

- *The licensee of subject premises to which this clause applies must provide any recordings made by the system to a Police officer or inspector within 24 hours of any request by a Police officer or inspector to provide such recordings – clause 53H(2)(c) of the Regulation.*
- *The system’s cameras must cover the following areas – all entry and exit points on the Premises, the footpath immediately adjacent to the Premises, all publicly accessible areas (other than toilets) on the Premises – clause 53H(1)(d)(i), (ii) and (iii) of the Regulation.*

**89.** The Applicant contends that prohibited drug supply has taken place in areas of the Premises that are not covered by CCTV footage. When drugs were supplied in areas covered by CCTV footage (private dance rooms) the CCTV recordings of these areas were not provided when requested by Police.

**90.** The Applicant submits that the CCTV system of the Premises is compliant with clauses 53H(1)(d)(i), (ii) and (iii) of the Regulation in that all publicly accessible areas of the Premises including entry points and adjacent streets are covered by the CCTV system. However, while there is CCTV coverage of the rear fire stairs leading down to Kellett Street, there is no CCTV coverage of the rear fire stairs leading up to level 2 or within level 2 because these areas are not within the defined licensed area of the Premises.

**91.** The Applicant contends that following each undercover deployment, Detective Sergeant Mark Carter, the officer in charge of the Controlled Operation, requested

CCTV recordings from the Licensee and provided the licensed business with a hard drive to assist with this request.

92. The Applicant provides the following evidence or material in relation to these events as part of **Annexure 24** to the Application Letter:
- Forms of Demand for the production of material made under the *Gaming and Liquor Administration Act 2007* served on the Licensee on 29 September 2015, 30 September 2015 and 14 October 2015; and
  - Statements made by Detective Sergeant Mark Carter dated 26 September 2015, 1 October 2015 and 20 October 2015 in relation to requests for CCTV.
93. The Applicant contends that on each occasion, the Licensee provided Sergeant Carter with CCTV recordings from all internal cameras with the exception of the recordings from the cameras located inside the four private dance rooms, the rear stairs and the street frontage on Kellett Street.
94. The Applicant submits that Detective Carter “was not aware” of the licence condition that had been imposed by the operation of clause 53H of the *Liquor Regulation* and had accepted the footage from the Licensee in good faith, thinking that the private dance rooms were not covered by CCTV cameras.
95. On 3 November 2015, Detective Carter spoke with Licensing Police in relation to Strike Force Dickson. Licensing Police viewed the CCTV footage given to Detective Carter and pointed out that footage from the private dance rooms had not been produced. The Licensee told Detective Carter that footage from the private rooms is not usually given to Police when footage is requested.
96. The Applicant advises that the Licensee complied with subsequent demands for CCTV recordings by Detective Carter; however the Applicant contends that the files provided were corrupt and unable to be played by Police. The Applicant advises that a report by NSW Police State Technical Investigation Branch in relation to these CCTV files is pending.
97. The Applicant submits that, prior to the commencement of Part 5A of the *Liquor Regulation*, the private rooms were not covered by CCTV. The Applicant contends that this was not to preserve the dignity of the strippers, but in fact to hide the reality of what is taking place inside these private dance rooms – that is, drug supply and breach of licence conditions.
98. The Applicant contends that on five occasions, undercover Police were supplied with prohibited drugs by dancers inside the private dance rooms. Since the introduction of the *Kings Cross Plan of Management* in 2012 and the special licence conditions for licensed venues in Kings Cross, Police have insisted that CCTV cameras be installed inside the private dance rooms because they are areas accessible to the public. The Applicant submits that by the Licensee’s own admission, it is now known that these recordings were withheld by the Licensee from Police unless specifically requested.
99. The Applicant advises that following the arrest of Mr Scott Lavers in Kellett Street on 18 May 2015, Police served a Form of Demand upon the (then) licensee of the Premises, Mr Abdul Rustom, requiring the production of CCTV recordings of all entry and exit points on the Premises, the footpath immediately adjacent to the Premises

and all publicly accessible areas (other than the toilets) from 11:00pm to 1:30am on 16 May 2015, 11:30pm until 1:30am on 27 May 2015, 10:00pm to 11:30pm on 31 May 2015 and from 10:00pm until 11:59pm on 1 June 2015. The Applicant refers to a copy of the Form of Demand issued by Police (**Annexure 25** to the Application Letter).

100. The Applicant contends that CCTV footage from all cameras on the Premises was provided, with the exception of the private rooms and the rear stairs. All of this CCTV footage has now been provided on a USB storage device for the Authority to view.
101. The Applicant alleges that on 21 May 2015, following a complaint about the use of the Kings Cross ID Scanner on the Premises, Police served a Form of Demand on the (then) licensee, Mr Abdul Rustom, requesting a copy of CCTV recordings from all entry and exit points on the Premises, the footpath immediately adjacent to the Premises and all publicly accessible areas (other than the toilets) from 9:00pm on 17 May 2015 until 3:00am on 18 May 2015. An 8GB USB device was provided to the (then) licensee to assist with this request. Upon receipt of the footage, Police observed that CCTV recordings of the private dance rooms and the rear stairs had not been produced. The Applicant contends that on 4 June 2015, Police issued a further Form of Demand seeking these CCTV recordings. This second Form of Demand was complied with.
102. The Applicant provides copies of the Forms of Demand seeking CCTV recordings issued by NSW Police to the (then) licensee on 21 May 2015 and 4 June 2015 respectively (**Annexure 26** to the Application Letter) in support of these events.
103. The Applicant submits that the requirement to produce CCTV recordings to Police upon request is “unambiguous”. The Applicant describes the Licensee’s explanation to Detective Carter for not complying with this straightforward licence condition as “unsatisfactory”.
104. The Applicant submits that in the context of the facts outlined in this Application, this conduct amounts to a serious breach of the *Liquor Act*.

#### **ALLEGED BREACHES OF LICENCE CONDITION RESTRICTING ACCESS BETWEEN THE LICENSED AREA AND OTHER PARTS OF THE BUILDING**

105. The Applicant notes that the liquor licence for the Premises is subject to the following licence condition:

*There is to be no physical access from any part of the licensed premises to any other part of the building or adjoining buildings to the licensed premises unless approved for the purpose of an office and storage.*

106. The Applicant submits that Mr Dimitri Argeres, Acting Manager of Assessments and Analysis within the Office of Liquor, Gaming and Racing (**OLGR**) advised Police in an email dated 16 December 2015 (**Annexure 27** to the Application Letter) that there is no record of any application made by Bada Bing Nightspot to use level 2 of the building as an office or storage area.
107. The Applicant submits that even if approval was granted to use level 2 of the Premises for storage or an office, it is clear from the information provided by staff and observations made by Police that level 2 is actually being used for purposes other than the purpose potentially allowed by this licence condition.



108. The Applicant contends that undercover Police have been told by dancers that level 2 is available to “select patrons” to be used for “any activity” they may wish to engage in, with the exception of sex with the strippers. The dancers told Police that an EFTPOS machine was available to process transactions carried out with respect to “activities” taking place on level 2.
109. The Applicant contends that the EFTPOS machine on level 2 was subsequently seized during the execution by Police of Search Warrant number 2626/15 at the completion of Strike Force Dickson on Saturday 19 December 2015. The Applicant advises that the data from the EFTPOS machine is currently being downloaded and will be analysed in the course of this investigation.
110. The Applicant contends that Police have observed known drug supplier, Mr Scott Lavers, accessing level 2 of the Premises. Police have CCTV recordings showing Mr Lavers accessing level 2 unaccompanied by any member of staff of the licensed business.
111. The Applicant further contends that Police have CCTV recordings of a former licensee accompanying a “patched” member of the *Bandidos* Outlaw Motorcycle Gang (**OMCG**) and his group up to level 2.
112. The Applicant submits that unexplained access to level 2 of the building by patrons of the licensed business and criminal associates, in these circumstances, and in the context of the evidence provided of widespread drug supply within the Premises, constitutes a serious breach of the *Liquor Act*.
113. The Applicant contends that at about 11:30pm on 15 October 2015, Police attended the Premises with NSW Fire and Rescue personnel to conduct a fire safety audit. In the office area, Police observed six people including Dimitri Papadopoulos, the son of Gary Papadopoulos. The Applicant contends that it was “apparent” that these people were socialising in this area of the building as alcoholic drinks were present on the tables. The Applicant refers to Police Information Report number I59672049 dated 15 October 2015 sourced from the NSW Police Intelligence Information System (**Annexure 28** to the Application Letter) in support of these events.
114. The Applicant contends that on 19 May 2015, another licensee operating in the Kings Cross Precinct told Police he had refused entry to a male known as Jason Fahey on 17 May 2015 because the male produced an expired driver’s licence as identification to enter his licensed premises. An expired driver’s licence is not valid photo ID for the purpose of section 116AC(1)(a)(i) of the Act, and accordingly the invalid photo ID was not accepted by the patron ID Scanner. This (unnamed) Kings Cross licensee told Police that the male left his licensed premises and a short time later was seen to enter Bada Bing Nightspot. The Kings Cross licensee identified this male as a member of an OMCG. Police later confirmed that the male is a member of the Queensland chapter of the *Bandidos* OMCG.
115. The Applicant provides the following evidence or material in relation to these events:
- **Annexure 29** to the Application Letter: Photograph of Jason Fahey.
  - **Annexure 30** to the Application Letter: Affidavit of Mr Michael Gianak, the director of Group Security Solutions Pty Ltd trading as *Patronscan*, the approved system provider for the Kings Cross ID Scanner system dated 10 June 2015.

- 116.** The Applicant contends that Police requested CCTV footage from the Premises in relation to this incident and observed the following, noting that the timestamp on the CCTV footage is 13 minutes behind the actual time:

*CCTV shows Fahey enter the Premises at 21:20:04 wearing a long sleeved T-shirt and three quarter pants. He has short dark hair and professionally shaped eyebrows. He is in company of a female with long blonde hair who is wearing a waist length jacket, jeans and knee high boots. Fahey removes his ID from his wallet and holds it in his right hand while gesturing and speaking to Kenneth Gibson, the current licensee (Gibson was an approved manager at the time of this incident).*

*Fahey returns his ID to his wallet before handing it over to Gibson. Gibson takes the ID in his right hand then transfers it to his left hand. Gibson appears to place the ID into the ID scanner for a brief moment before manually entering the identification details into the ID scanner. The manual entry circumvents the issue of the photo ID being expired as a manual entry does not require input of the expiry date. Fahey shakes hands with Gibson and proceeds up the stairs where he opens the door to the main bar. Inside the cash booth the former licensee, Abdul Rustom, is seen to stand up. It is apparent Fahey has tried to enter the main bar without paying the cover charge. It is apparent that at this stage the former licensee does not know the identity of Fahey. The cover charge is paid and Fahey and his female companion enter the Premises.*

*A short time later Fahey is joined by a second male and two females where they are all seated in a booth in the rear left of the Premises.*

*At 21:28:27 the former licensee receives a phone call, leaves the cash booth and walks to the bottom of the stairs where he can be seen talking to Security and speaking on his mobile phone. A short time later he runs up the stairs, enters the Premises, walks to the booth where Fahey and his group are seated and greets Fahey like a long lost friend (21:30:40). At 21:34 the former licensee serves the group a tray of drinks. The former licensee is then seen sitting in the booth speaking to Fahey. As the licensee stands up to leave, Fahey also stands up and they have a further conversation. Fahey is then seen trying to attract the attention of his male friend, gesturing him to get up. At the same time Fahey touches his nose with his hand which Police suspect is a signal to his friend that cocaine is available and the reason why Fahey appears so enthusiastic for his friend to accompany him.*

*At 21:53:10 the former licensee takes the group through the fire exit doors at the rear of the Premises. CCTV footage does not show the group exiting onto Kellett Street so it is reasonable to believe the group is taken to level 2.*

*The group returns to the licensed premises from level 2 at 22:02:21. At 22:04:21 Fahey's female companion returns to the booth from the toilet and Fahey pushes her onto one of the other females in the group. The two females begin kissing and rubbing against each other while Fahey watches on. Police contend this behaviour is unusual and it is reasonable to assume this behaviour may be because he is affected by a prohibited drug.*

*At 22:36:42 the licensee takes Fahey and his group upstairs to level 2 a second time. The group returns to the licensed premises at 22:44.*

- 117.** The Applicant submits, on the basis of CCTV footage provided by the former licensee, that the following events occurred on the evening of 31 May 2015:

*On 31 May 2015 Scott Lavers entered Bada Bing at 22:28:05 (the CCTV footage is 15 minutes behind real time). Lavers is wearing a light coloured collared shirt, long pants and carrying a manbag across his right shoulder. Lavers is scanned in at 10:43pm. He*

walks to the top of the stairs and into the main bar area at 22:28:41 where he greets the former licensee, Abdul Rustom, with a high five.

Rustom takes Lavers into the cash booth and they both sit down. At 22:29:33 Rustom removes notes from the cash draw [sic], hands it to Lavers and they shake hands. At 22:31:00 Lavers removes something from his manbag with his right hand and shakes hands with Rustom a second time. At 22:39:51 Rustom and Lavers leave the cash booth and Lavers walks to the bar. A barmaid pours a spirit and a mixer into a glass and hands it to Lavers. Lavers does not appear to pay for the drink. Rustom waits for Lavers at the rear of the main bar near the fire door. Lavers approaches Rustom carrying the drink and they exit the main bar through the second door of the double doors leading to the fire exit. The second door is off camera. Footage of the rear stairs and private rooms were not provided to Police, as is customary with this Premises, however the rear street frontage of Kellett Street was provided and neither Rustom nor Lavers exit the Premises and therefore it is reasonable to believe they went to level 2.

**118.** The Applicant contends, on the basis of CCTV footage provided by the former licensee, that the following events occurred on the evening of 1 June 2015:

*On 1 June 2015 Scott Lavers scanned in to the Premises at 10:35pm (22:19:22 CCTV time). At the time he was wearing a thigh length coat, long pants and carrying a manbag across his right shoulder. Lavers walked up the stairs and stood outside the cash booth for some time talking on his phone. Lavers left the Premises at 22:25:01 (CCTV time).*

*On 1 June 2015 Scott Lavers approaches the Premises from the east and stands on the footpath to the right of the principal entry door of the Premises. Lavers is wearing the same clothes worn previously. Lavers stands to the right of the front door then disappears off camera 2 at 22:53:25 and can be seen on camera 1 walking north onto Darlington Road. At 22:54:14 Lavers approaches the Premises from Darlington Road with Aleksander Josifovsky who is employed at the Premises in an unknown capacity.*

*Josifovsky is described as having short dark hair and is wearing a light coloured hoodie and long pants. Josifovsky shakes hands with the security guard in the fluorescent vest and gives him a hug. Josifovsky is not scanned in to the Premises which indicates to Police that he is working on the evening of 1 June 2015. Lavers is scanned in to the Premises at 11:10pm (22:52:53 CCTV time).*

*Josifovsky walks to the top of the stairs and shakes hands with a person inside the cash booth. Lavers approaches the cash booth and both males stand at the cash booth for a short time. Lavers and Josifovsky enter the door into the main bar at 22:55:44 and shake hands with two unknown males seated near the door. The first male is described as bald, wearing a long sleeve T-shirt with the sleeves rolled up to his elbows, long pants and trainers carrying a manbag across his right shoulder. The second male is described as overweight, possibly Islander, wearing a peak cap, sloppy joe, long pants and carrying a manbag over his left shoulder.*

*Lavers goes to the bar and orders a drink. While the bar maid makes a drink for Lavers, Lavers shakes hands with one of the males seated near the door. Lavers goes back to the bar and is handed his drink. No payment is made for the drink at this time.*

*The four males walk to the rear of the Premises and go up the stairs at 22:56:49. At 23:18:58 the two unknown males return to the main bar. The overweight male opens the door to the cash booth and steps inside, taking a seat behind the desk. A short time later the bald male enters the cash booth and stands talking to the overweight male seated behind the desk.*

*At 23:21:13 Lavers, Josifovsky and an unknown male who is wearing a hat return to the main bar through the fire exit door. Josifovsky speaks to the male with the bald head for a short time. The unknown male wearing the hat enters the cash booth.*

*The bald male leaves the cash booth at 23:21:07 and walks back into the bar. At 23:22:23 Lavers walks out to the smoking balcony with his drink to speak on the phone.*

*At 23:24:56 the bald male orders one mixed drink and one shot from the bar. He gives the mixed drink to the overweight male and drinks the shot himself. It is clear the waitress does not expect the bald male to pay for the drinks however he insists, pushing the money toward her a number of times. She gives him change which he then returns to her by putting it down the front of her T-shirt.*

*At 23:26:41 Scott Lavers goes into the toilet and the bald male leaves the bar area through the rear fire exit door. The bald male emerges onto Kellett Street at 23:26:57 and walks north on Kellett Street. At 23:27:05 Aleksander Josifovsky exits the main bar through the fire exit door, it appears that he is on a mobile phone. At 23:27:14 Aleksander Josifovsky emerges onto Kellett Street via the fire exit door and stands there propping it open until the bald male returns to the Premises and re-enters at 23:28:18 without scanning in. Aleksander Josifovsky and the bald male re-enter the main bar area at 23:28:35 where Josifovsky enters the cash booth while the bald male stands at the cash booth door holding it open.*

*Lavers re-enters the main bar from the toilet area at 23:32:04 and walks to the cash booth and opens the door.*

*At 23:36:00 the bald man and the overweight male re-enter the fire exit doors. Neither male exits onto Kellett Street so it is reasonable to assume that both males have gone to level 2. At 23:41:07 Aleksander Josifovsky and Scott Lavers exit the main bar through the rear fire exit. At 23:49:14 Lavers, who is now wearing a T-shirt with the manbag, returns to the main bar area and walks to the bar where he is served two mixed drinks which he does not appear to pay for at this time. Lavers re-enters the rear fire exit door, kicking it open as he is carrying the drinks in his hands at 23:50:20. The CCTV ends prior to the four males returning to the bar area.*

- 119.** The Applicant further contends that at about 10:00pm on 5 June 2015, Police were conducting surveillance inside the Premises. On the basis of the CCTV footage provided by the licensee, Police contend that at about 11:30pm, Police observed Scott Lavers walk into the Premises via the principal entry doors on Darlinghurst Road and walk directly to the rear fire door which he entered. Police noted that there is a sign on this door which reads "No Entry". Police saw Mr Lavers re-enter the bar area from the fire exit at 12:30am on 6 June 2015. At this time, Police can confirm there was no emergency, nor had a fire alarm warning been relayed to patrons inside the Premises.
- 120.** The Applicant notes that level 2 of the Premises is not subject to a liquor licence and does not form part of the licensed Premises of Bada Bing. Police are aware that level 2 has a change room for the strippers and an office area. The remaining rooms appear to be used for storage.
- 121.** The Applicant submits that a licence condition was imposed by the former New South Wales Licensing Court upon the licence for the Premises to ensure that level 2 was only accessed in connection with its use as an office or storeroom. Police believe this condition may have been imposed by the former Licensing Court to reduce the risk of the Premises being used by strippers to solicit patrons for sex. The Applicant submits that it is apparent from the conversations recorded between the dancers and undercover Police that sex on level 2 is not available, however it is clear the upper level co-exists in support of the licensed premises to provide an enhanced service or activity without fear of detection or scrutiny by Police or regulatory authorities.

122. The Applicant notes that all CCTV referred to in this Application has been produced on two USB devices and was hand delivered to the Authority on 21 December 2015.

### **ALLEGED BREACHES OF LICENCE CONDITIONS RESTRICTING AUDIENCE PARTICIPATION IN LIVE ENTERTAINMENT**

123. The Applicant submits that the liquor licence is subject to the following conditions:

- *Entertainers are not to leave the defined stage or catwalk area during their performance. When leaving the stage or catwalk area at the end of the performance they are to wear at least a "G" string.*
- *Audience participation involving physical contact or sexual activities is prohibited either on the stage or in any part of the licensed premises.*

124. The Applicant contends that on 20 May 2015, Police obtained CCTV footage from the business on the Premises in relation to an unrelated incident which occurred on 17 May 2015. Upon viewing the CCTV recordings, Police observed seven (7) performances by dancers inside the private dance rooms with various dancers performing for different patrons.

125. The Applicant contends that it is evident from these recordings that there is an "entrenched culture of non-compliance" with conditions imposed upon the liquor licence which regulate physical contact with patrons and sexual activities performed by dancers during these shows.

126. Police observed full nudity off the stage areas inside the private rooms; patrons touching the performers in a sexual way; entertainers touching, rubbing and grinding the groin area of male patrons; entertainers touching the breasts and groin area of a female patron and performers engaging in masturbation while patrons watch on.

127. The Applicant submits that the licence condition prohibiting audience participation is "unambiguous". It is a longstanding regulatory requirement that has been imposed on the Premises and other similar venues to reduce the "clear potential for this behaviour to escalate into unwelcome harassment or assault of the women working on the Premises".

128. The Applicant submits that non-compliance with this licence condition has previously resulted in numerous Penalty Infringement Notices being issued to various licensees in charge of the Premises over a long period of time.

129. The Applicant contends that during the course of this investigation, Police expect to see similar offences once the CCTV recordings that were seized during the execution of the Search Warrant have been analysed. Police expect to prosecute the former licensee and the current Licensee in relation to these offences against the *Liquor Act*.

130. The Applicant submits that a lack of diligence by management of the business, staff and agents of the licensee working on the Premises with regard to regulatory obligations poses a significant risk to the public interest.

### **APPLICATION FOR CLOSURE OF THE PREMISES**

131. The Applicant submits that closure of the Premises is necessary to prevent or reduce a significant threat to public health and safety. The Applicant submits that the

management culture on the Premises creates a “permissive environment” in which prohibited drugs are just another commodity to which patrons and staff have easy access.

132. The Applicant submits that the threat to public health and safety of patrons consuming illicit drugs and alcohol to the point of intoxication is a serious threat. The range of harms which may be manifested include patrons experiencing adverse effects to drugs which may lead to vomiting, hospitalisation, and in extreme cases, death.
133. The Applicant submits that closure of the Premises is necessary to prevent or reduce a risk of serious offences (having a maximum penalty of not less than 2 years imprisonment) being committed on the Premises.
134. The Applicant refers to the *Drug Misuse and Trafficking Act 1985*, which sets out the penalties for prohibited drug supply. The Applicant submits that supply of “even a small quantity of drugs” is punishable by maximum imprisonment of 2 years, while ongoing supply of prohibited drugs attracts a maximum penalty of 25 years imprisonment.
135. The Applicant submits that the information provided in this Application demonstrates an “extreme risk” of drug supply occurring on the Premises. The Applicant contends that the supply of prohibited drugs has become a “significant income stream” for the business.
136. The Applicant contends that if a stripper charges \$50 for a 15-minute private lap dance, the stripper keeps \$20 and the house keeps \$30. However, \$350 is charged for 1 gram of cocaine but, as can be seen by the Police analyses of the material seized, the actual amount of cocaine supplied to the customer is “often less than half of that”.

### **The Applicant’s case for why closure of the Premises is necessary**

137. The Applicant contends that at the beginning of Strike Force Dickson, undercover Police officers were able to purchase prohibited drugs inside the Premises from a “cold start” – meaning that Police merely asked the dancers if they could buy drugs on the Premises. Police were not introduced to the dancers by a trusted or known customer or associate, as is usually the case. Furthermore, throughout the course of this operation, surveillance Police were frequently asked by strippers if they wanted to buy cocaine.
138. The Applicant contends that when it became clear that the undercover Police operatives had money to spend, and in particular cash, staff volunteered information about the availability of “enhanced services” which could be provided to patrons off the licensed premises (upstairs on level 2) by staff at the Premises.
139. The Applicant submits that the evidence provided in this Application has demonstrated that “all levels of management are complicit in the illegal activities” taking place on the Premises. The Applicant submits that employees of the licensed business have made it clear that Kings Cross Police are unaware that rooms on level 2 may be used by patrons to partake in unspecified activities. The Applicant submits that this suggests that the activities being spoken about on level 2 would not pass scrutiny by Police.
140. The Applicant further submits that the design of the building enables employees of the business conducted on the Premises to carry on illegal activities on level 2 of the building without fear of scrutiny by Police or regulatory authorities, which “hampers

traditional methods of investigation into criminal activities within the Premises". Further, the evidence provided by Police demonstrates that employees regularly breach licence conditions such as CCTV and not scanning in associates whom Police will allege are consuming drugs on the Premises or bringing drugs into the Premises to hide the criminal activities taking place within the Premises.

141. The Applicant contends that undercover Police were given mobile phone numbers to prearrange drug supply and were told to use code when talking or texting (about drugs) on the phone. When undercover Police asked for larger amounts of a drug they were told only to communicate via an "app" and the negotiation proceeded straight to management. The Applicant contends that this conduct is indicative of the confidence that employees on the Premises have in their drug supply procedures. It also suggests an "entrenched and well established methodology which demonstrates an extreme and continuing risk of serious breaches of the Act occurring".

### **Applicant Further Submissions in support of the Application**

142. The Applicant contends that since a Short Term Closure Order was issued in respect of the Premises on 19 December 2015, NSW Police have commenced intensive regulatory engagement with venue operators in an attempt to address the inherent risks associated with the venue. Other regulatory actions have been commenced, including an investigation under section 138 of the *Liquor Act 2007*, and prosecution of current and former licensees.
143. The Applicant submits that the evidence and material provided demonstrates that "serious offences" are occurring inside the Premises and there are "fundamental failures" around adequacy of management and compliance culture.
144. The Applicant submits that there is a real and immediate threat to the public interest, and in particular threats to public health and safety. The likelihood of future contraventions remains "extreme" and the "only appropriate action" is to require the venue to close until a more comprehensive disciplinary investigation can be completed or until such time as there are "significant material changes to the business model and operation of the Premises" such as reverting to standard trading hours and removal of adult entertainment.

### **Outcome sought by the Applicant**

145. The Application Letter concludes with a submission that in order to address this immediate and continuing harm, Police request that the Authority exercise its power to order the Licensee to close the licensed premises under section 84 of the Act for a period of 6 months (being the maximum period prescribed by clause 28 of the *Liquor Regulation 2008*), or until such time (not exceeding 6 months) that the following occurs:

1. The investigation into Mr Abdul Rustom, Mr Kenneth Gibson and Mr Steven Lekoski under section 138 of the Act has been finalised and any complaint pursuant to section 139 of the Act has been determined by the Authority;

or, in the alternative, that the following occurs:

1. A new licensee is unconditionally approved by the Authority; and
2. The licence is restricted to standard trading hours; and

3. Adult entertainment/strippers is prohibited; and
4. There must be no internal communication between the licensed and unlicensed areas of the Premises.

### **Annexures 1 to 30 to the Application**

**146.** Accompanying the Application Letter were 30 Annexures provided by the Applicant in support of the Application. A brief summary of those annexures is as follows:

**147. Annexure 1 to the Application Letter – Key Liquor Licence Details** for the Premises (liquor licence number LIQO624013096) sourced from the NSW Police Alcohol Related Crime Information Exchange database as at 14 December 2015.

**148.** The licensees of the Premises are listed on this document as Mr Kenneth James Gibson (since 15 July 2015) and Mr John Gaitanis (since 17 February 2006). The business owner of the business operating on the Premises is a corporation, Marathon Enterprises Pty Ltd. The Authority notes that the owner of the freehold upon which the Premises is located is another company, Sapphire Suite Pty Ltd.

**149.** The licence record discloses that the Premises is subject to the following conditions:

- *Entertainers are not to leave the defined stage or catwalk area during their performance. When leaving the stage or catwalk area at the end of the performance they are to wear at least a “G” string.*
- *Audience participation involving physical contact or sexual activities is prohibited either on the stage or in any part of the licensed premises.*
- *An incident register is to be kept on the premises and any incident involving any staff member and the physical contact, physical restraint or ejection of a member of the public from the premises must be recorded in the register and must include the names of staff involved. This register is to be made available to Police upon request for inspection.*
- *Persons under the age of eighteen (18) years shall not, for any purpose, enter the premises. Signs shall be continuously displayed in and at the entrance to the licensed premises in such a manner and in such a place that it would be reasonable to expect a person entering the premises to be quickly alerted to its purport that persons under the age of eighteen (18) years are not permitted to enter the premises.*
- *At least two (2) licensed uniformed security guards must be present inside the premises whenever the premises is open for trading.*
- *All licensed security personnel are to wear identifying numbers. The name of security personnel and allocated number is to be entered into a book by the licensee/manager at the start of the shift of security personnel. This book is to be made available to Police upon request for inspection.*
- *“Unclassified” films are not to be exhibited on the premises.*
- *Any place within the licensed premises in which entertainment is provided shall not be partitioned so as to prevent observations of the activity in that place.*
- *The number of patrons in the premises shall not exceed the number authorised by the Place of Public Entertainment Approval issued to the premises under the Local Government Act.*
- *No advertising or other promotional reference to the nature of entertainment being conducted on the premises is to be placed on, or visible from, the outside of the premises.*



- *The time and date must automatically be recorded on all videotapes/DVDs/CDs, when it is recording. All are to be kept for a period of 30 days before they can be reused or destroyed. Any tape/DVD/CD is to be handed to Police upon request.*
- *There is to be no physical access from any part of the licensed premises to any other part of the building or adjoining buildings to the licensed premises unless approved for the purpose of an office and storage.*
- *No patron is to be ejected/escorted from the premises except via the front entrance onto Darlinghurst Road.*
- *The licensee shall install and maintain surveillance cameras and recorders to monitor and record the main entrance/exit onto Darlinghurst Road, the staircase inside the premises leading to/from the Darlinghurst Road entrance, the rear entrance/exit onto Kellett Street, stage area, catwalk, and bar area of the licensed premises whilst the premises are open for business and for half an hour after closure, irrespective of whether or not any entertainment is being conducted.*
- *All media advertising and other promotional materials shall advise that entertainment is of a sexually explicit nature which may offend.*
- *No security personnel are to perform any security activity unless wearing their identifying number.*
- *Spruikers for the premises must be the holder of a security licence to carry out that occupation. Spruikers may operate outside the premises only between the hours of 8:00pm of one day to 4:00am next succeeding day. No more than one (1) spruiker to be outside the premises on the footpath or roadway at any one time. Spruikers shall wear a uniform to clearly identify that they are working at "Centrefolds" (the subject premises). The name "Centrefolds" on the uniform of the spruikers shall be capable of being read from a distance of five (5) metres. Spruikers shall not operate any further than 3 metres from the front entrance to the premises. Spruikers shall not cross the road for the purpose of spruiking. Spruikers shall not physically touch members of the public or block their path of travel. Spruikers shall not shout or use offensive language.*
- *All conditions of the relevant Development Application issued by Council are to be complied with.*
- *No person is to be permitted to take glasses or open containers of liquor off the premises when leaving.*
- *Consumption on premises: Good Friday 12:00 noon – 10:00pm (liquor can only be served with or ancillary to a meal in a dining area). Christmas Day 12:00 noon – 10:00pm (liquor can only be served with or ancillary to a meal in a dining area). December 31<sup>st</sup> Normal opening time until normal closing time or 2:00am on New Year's Day, whichever is the later. Note: Trading is also allowed at other times on Good Friday and Christmas Day if authorised by an extended trading authorisation. Liquor can only be served with or ancillary to a meal in a dining area after 5:00am on Good Friday and Christmas Day.*
- *Immediately after the person in charge of the licensed premises becomes aware of an incident involving an act of violence causing an injury to a person on the premises, the person in charge must: a. take all practical steps to preserve and keep intact the area where the act of violence occurred, and retain all material and implements associated with the act of violence in accordance with Crime Scene Preservation Guidelines issued by NSW Police, and b. Make direct and personal contact with Local Area Commander or his/her delegate, and advise the Commander or delegate of the incident, and c. Comply with any directions given by the Commander or delegate to preserve or keep intact the area where the act of violence occurred.*
- *Licence conditions imposed by Part 5A of the Liquor Regulation 2008 (relating to the Kings Cross Precinct) apply to this licence.*

- *I. The licensee shall implement a lockout whereby no patron may be permitted to enter the premises after 2:00am until close of trade for that day. For the avoidance of doubt, patrons who are on the premises before 2:00am may leave the premises at any time or remain on the premises while the premises are authorised to trade, but are not permitted to re-enter the premises while the lockout is in effect. II. The licensee shall install a sign in a prominent, well-lit and legible position outside each street level entry point to the Premises, in letters not smaller than 50mm in height, that read: "NO ADMITTANCE AFTER 2AM By decision of the Independent Liquor and Gaming Authority it is a condition of the liquor licence that no patron may be admitted to the premises after 2:00am. Any patrons who leave the venue after 2:00am will not be readmitted".*

**150. Annexure 2 to the Application Letter** – Floor plan for the Premises (first floor and second floor).

**151. Annexure 3 to the Application Letter** – High Risk Venue Manager Approval Form for Mr Steven Lekoski dated 20 January 2015.

**152. Annexure 4 to the Application Letter** – NSW Police prosecution *Facts Sheet* for charge number H60519083 in relation to the events occurring on 18 May 2015 involving the alleged commission by the accused, Scott Robert Lavers, of the following offences:

- Supply prohibited drug > indictable quantity (not cannabis) contrary to section 25(1) of the *Drug Misuse and Trafficking Act 1985 (DMATA)*;
- Supply a prohibited drug contrary to section 25(1) of the DMATA (non-indictable offence);
- Deal with property suspected proceeds of crime contrary to section 193C(1) of the *Crimes Act 1900*;
- Possess prohibited drug contrary to section 10(1) of the DMATA (indictable offence); and
- Possess prohibited drug contrary to section 10(1) of the DMATA (non-indictable offence).

**153. Annexure 5 to the Application Letter** – NSW Police Statement of Detective Senior Constable Andrew Agostino of Kings Cross Police Station dated 23 November 2015 in relation to the alleged use by Scott Lavers of the rear fire door of the Premises which is marked "No Entry" on 5 June 2015.

**154. Annexure 6 to the Application Letter** – NSW Police prosecution *Facts Sheet* for charge number H58038452 in relation to the events occurring between 30 June 2015 and 3 July 2015 involving the alleged commission by the accused, Scott Robert Lavers, of the following offences:

- Supply a prohibited drug (x 4 counts) contrary to section 25(1) of the DMATA (non-indictable offence);
- Possess a prohibited drug (x 2 counts) contrary to section 10(1) of the DMATA (non-indictable offence); and

- Supply prohibited drug > indictable quantity (not cannabis) contrary to section 25(1) of the DMATA.

- 155. Annexure 7 to the Application Letter** – NSW Police prosecution *Facts Sheet* for charge number H58706732 in relation to the events occurring on Friday 4 September 2015, on which date the vehicle of the accused, Scott Robert Lavers, was searched by Police after it made an illegal U-turn at traffic lights and 71.7 grams of methylamphetamine (ice) with an estimated street value of \$37,500 and 21.6 grams of cocaine with an estimated street value of \$10,000 were found inside the vehicle.
- 156. Annexure 8 to the Application Letter** – Photograph of drug supplied by the stripper “Jade” to undercover Police at approximately 8:00pm on 3 September 2015, with a total weight of 0.61 grams including packaging.
- 157. Annexure 8.1 to the Application Letter** – Analyst’s Certificate for Drug Exhibit number X00001873179 indicating that the substance provided by the stripper “Jade” to undercover Police at approximately 8:00pm on 3 September 2015 contained 0.46 grams of cocaine, with a drug purity of 44.5%.
- 158. Annexure 9 to the Application Letter** – Photograph of drug supplied by the stripper “Jade” to undercover Police at approximately 9:00pm on 10 September 2015, with a total weight of 0.61 grams including packaging.
- 159. Annexure 9.1 to the Application Letter** – Analyst’s Certificate for Drug Exhibit number X00001873180 indicating that the substance provided by the stripper “Jade” to undercover Police at approximately 9:00pm on 10 September 2015 contained 0.47 grams of cocaine, with a drug purity of 51.5%.
- 160. Annexure 10 to the Application Letter** – Photograph of drug supplied by the stripper “Jade” to undercover Police at approximately 10:10pm on 18 September 2015, with a total weight of 0.88 grams including packaging.
- 161. Annexure 10.1 to the Application Letter** – Analyst’s Certificate for Drug Exhibit number X00002468280 indicating that the substance provided by the stripper “Jade” to undercover Police at approximately 10:10pm on 18 September 2015 contained 0.72 grams of cocaine, with a drug purity of 47.5%.
- 162. Annexure 11 to the Application Letter** – Photograph of drug supplied by the stripper “Mira” to undercover Police at approximately 11:34pm on 18 September 2015, with a total weight of 0.65 grams including packaging.
- 163. Annexure 11.1 to the Application Letter** – Analyst’s Certificate for Drug Exhibit number X00002468281 indicating that the substance provided by the stripper “Mira” to undercover Police at approximately 11:34pm on 18 September 2015 contained 0.48 grams of cocaine, with a drug purity of 36.0%.
- 164. Annexure 12 to the Application Letter** – Photograph of drug supplied by the stripper “Mira” to undercover Police at approximately 9:18pm on 25 September 2015, with a total weight of 0.99 grams including packaging.
- 165. Annexure 12.1 to the Application Letter** – Analyst’s Certificate for Drug Exhibit number XD000001021 indicating that the substance provided by the stripper “Mira” to

undercover Police at approximately 9:18pm on 25 September 2015 contained 0.73 grams of cocaine, with a drug purity of 50.5%.

- 166. Annexure 13 to the Application Letter** – Photograph of drug supplied by the stripper “Tash” to undercover Police on 8 October 2015, with a total weight of 0.86 grams including packaging (Drug Exhibit number XD000001086).
- 167. Annexure 14 to the Application Letter** – Photograph of drug supplied by the strippers “Tash” and “Prudence” to undercover Police at approximately 12:07am on 9 October 2015, with a total weight of 0.83 grams including packaging (Drug Exhibit number XD000001085).
- 168. Annexure 15 to the Application Letter** – Photograph of drug supplied by the strippers “Tash” and “Prudence” to undercover Police at approximately 10:03pm on 9 October 2015, with a total weight of 0.69 grams including packaging (Drug Exhibit number XD000001088).
- 169. Annexure 16 to the Application Letter** – Photograph of drug supplied by the stripper “Jade” to undercover Police at approximately 10:38pm on 3 December 2015, with a total weight of 0.75 grams including packaging (Drug Exhibit number X000247361).
- 170. Annexure 17 to the Application Letter** – Photograph of drug supplied by the stripper “Jade” to undercover Police at approximately 10:29pm on 3 December 2015, with a total weight of 1.42 grams including packaging (Drug Exhibit number X00002473642).
- 171. Annexure 18 to the Application Letter** – Photograph of drug supplied by RSA Marshal Risati Vincent to undercover Police at approximately 11:25pm on 10 December 2015, with a total weight of 4.90 grams including packaging (Drug Exhibit number X00002466010).
- 172. Annexure 19 to the Application Letter** – Staff list for the Premises for 10 December 2015, indicating that the Licensee, Mr Gibson was not on duty and Mr Steven Lekoski was, for the purposes of sections 91(1A) and 91(2) of the Act, effectively the licensee of the Premises at that time.
- 173. Annexure 20 to the Application Letter** – NSW Police *Crimestoppers* Report number IR59250726 dated 10 October 2015, which alleges that Mr Lekoski and two other males were bringing prohibited drugs into the Premises.
- 174. Annexure 21 to the Application Letter** – NSW Police Statement of Detective Sergeant Kurt Hayward of Kings Cross Detectives dated 17 December 2015 alleging that throughout Strike Force Dickson and while gathering evidence to make an application for the Controlled Operation, surveillance Police were regularly approached by strippers and asked if they wanted to buy prohibited drugs.
- 175. Annexure 22 to the Application Letter** – COPS Report number E53449726 dated 18 December 2013 in relation to the conduct of Controlled Operation 13/197 under the reference “Strike Force Dalmatia” between August and December 2013. This was an investigation into the sale of prohibited drugs in licensed premises and adult entertainment venues in Kings Cross. This COPS Report states that undercover Police operatives were deployed at Bada Bing Nightspot on two occasions on 2 and 3 August 2013 and on both occasions, were able to purchase cocaine from a stripper for \$350.

- 176. Annexure 23 to the Application Letter** – COPS Report number E59474313 dated 24 November 2015 alleging that a stripper on the Premises had offered two patrons drugs to the value of \$350. The patrons declined the offer and were subsequently removed from the Premises by a male who claimed to be a manager. One of these patrons was intimidated by the manager when he allegedly stated, “Say one word and I will see you in your grave” and the patron reported the incident to Balmain Police.
- 177. Annexure 24 to the Application Letter** – Forms of Demand served by NSW Police on the Licensee on 26 September 2015, 1 October 2015 and 12 October 2015 in relation to requests for CCTV coverage for the evenings of 3 September 2015, 10 September 2015 and 18 September 2015 respectively. This Annexure also contains NSW Police Statements made by Detective Sergeant Mark Carter dated 26 September 2015, 1 October 2015 and 20 October 2015 in relation to those requests for CCTV coverage.
- 178. Annexure 25 to the Application Letter** - Form of Demand served by NSW Police upon the (then) licensee of the Premises, Mr Abdul Rustom, to produce CCTV recordings of all entry and exit points on the Premises, the footpath immediately adjacent to the Premises and all publicly accessible areas (other than the toilets) from 11:00pm to 1:30am on 16 May 2015, 11:30pm until 1:30am on 27 May 2015, 10:00pm to 11:30pm on 31 May 2015 and from 10:00pm until 11:59pm on 1 June 2015.
- 179. Annexure 26 to the Application Letter** – Form of Demand dated 21 May 2015 and served by NSW Police upon the (then) licensee of the Premises, Mr Abdul Rustom, to produce CCTV recordings of entry and exit points on the Premises, the footpath immediately adjacent to the Premises and all publicly accessible areas (other than the toilets) from 9:00pm on 17 May 2015 until 3:00am on 18 May 2015 and a further Form of Demand dated 4 June 2015 and served by NSW Police upon the (then) licensee of the Premises, Mr Abdul Rustom, to produce CCTV recordings of all the areas noted above, as well as the rear stairs and the private dancing rooms.
- 180. Annexure 27 to the Application Letter** – email from Mr Dimitri Argeres, Acting Manager of Assessments and Analysis, OLGR to Police dated 16 December 2015 stating that there is no record of any application by Bada Bing Nightspot to use level 2 of the building as an office or storage area.
- 181. Annexure 28 to the Application Letter** – NSW Police *Information Report* number I59672049 dated 15 October 2015 sourced from the NSW Police Intelligence Information System, reporting that at about 11:30pm on 15 October 2015, Police attended the Premises with NSW Fire and Rescue personnel to conduct a fire safety audit and observed six people, including Dimitri Papadopoulos, the son of Gary Papadopoulos, socialising in this area while alcoholic drinks were present on the tables.
- 182. Annexure 29 to the Application Letter** – Photograph of Mr Jason Fahey, a member of the *Bandidos* OMCG, who was allegedly permitted to enter the Premises despite the fact that his driver’s licence had expired and he had no valid form of photo ID, in apparent contravention of the patron ID scanning requirement for high risk venues provided by section 116AC of the Act.
- 183. Annexure 30 to the Application Letter** – Affidavit of Mr Michael Gianak, the director of Group Security Solutions Pty Ltd trading as *Patronscan*, the approved system provider for the Kings Cross ID Scanner system dated 10 June 2015. Briefly,

Mr Gianak states that in his capacity as director, he is authorised to access all records held by Group Security Solutions trading as *Patronscan* in relation to the Kings Cross Precinct ID scanner system.

**184.** Mr Gianak states that on 4 June 2015, in accordance with a request from Senior Sergeant Donna Murphy of Kings Cross Police, Mr Gianak accessed records contained in the Patronscan computer server. Annexed to this affidavit are copies of the database record detailing entry time and date with a unique identifier of b5cebe9e-de80-4a14-91d3-e706e7d4d9fb and 5413e513-706f-428b-bbd8-08e79644cbaa pertaining to a patron named Jason Fahey who scanned into Bada Bing at 9:33pm on 17 May 2015.

**185.** Mr Gianak states that these records indicate that:

- At the time the patron record b5cebe9e-de80-4a14-91d3-e706e7d4d9fb was created, scanner operator “Kenny” was logged in;
- The scan was manually entered as Jason Fahey was not detailed in the automatic scan log;
- There was no driver’s licence biometric image captured by the scanner;
- Jason Fahey was scanned using a New South Wales driver’s licence, as confirmed by patron record number 5413e513-706f-428b-bbd8-08e79644cbaa;
- Both the driver’s licence biometric image and live image are captured. However the patron record indicates that this form of identification was “denied” as it had expired.

## **SUBMISSIONS IN RESPONSE TO THE NOTICE OF APPLICATION**

### **Business Owner’s Request for Extension of Time to Make Submissions – 23 December 2015**

**186.** The Authority invited submissions in response to the Notice of Application from the Licensee, Business Owner and Premises Owner by 12:00 midday on 24 December 2015.

**187.** At 1:17pm on 23 December 2015 Mr Kim Stapleton of the law practice *JDK Legal*, who acts for the Business Owner, emailed the Authority requesting an extension of time to make submissions in response to the Notice of Application until 19 January 2016. This request was made on the basis of the imminent closure of Mr Stapleton’s law practice for the Christmas and New Year break; that they had not received a reasonable opportunity to respond to the Application Material served upon them by NSW Police on 21 December 2015; and on the basis that the Business Owner undertakes to voluntarily close the business and not reopen without providing 7 days’ notice to the Authority, with trade not to recommence until 26 January 2016.

### **Letter Granting Extension of Time to Make Submissions – 23 December 2015**

**188.** A letter from the Authority’s Chief Executive sent on the afternoon of 23 December 2015 granted the requested extension, subject to observance of the following conditions (to which the Business Owner had agreed earlier that day):

- (i) The Business Owner shall file its submissions in response to the Application with the Authority by 5:00pm on Tuesday 19 January 2016.

- (ii) The Licensee shall file a signed Voluntary Suspension of Licence Form with the Manager of Licensing before 4:00pm on 23 December 2015, copying the Applicant and specifying a period of suspension of the licence from 5:00pm on 23 December 2015 until 26 January 2016 (being 7 days after the date that the submissions from the Business Owner will be filed).
- (iii) The Business Owner shall cease all trading on the Premises until 26 January 2016.

**189.** This letter from the Authority noted that the Business Owner had already filed a Voluntary Suspension of Licence Form at 3:16pm on 23 December 2015 and that this suspension had been accepted and approved by the Authority.

**190.** The Authority's letter noted that it had accepted the Business Owner's request for an extension of time by reason that the protective purpose of the Application will be served in the interim by the cessation of all trading on the Premises until 26 January 2016.

### **Initial Submissions from Premises Owner – 23 December 2015**

**191.** This concise submission letter was emailed to the Authority by Mr Tony Schwartz of the law firm *Back Schwartz Vaughan*, who represents the Premises Owner, Sapphire Suite Pty Ltd. It states:

*We refer to the above matter and your letter dated 22 December 2015 to Mr Kenneth Gibson, Licensee of the Bada Bing Night Spot (the "Licensed Premises").*

*We act for Sapphire Suite Pty Limited ("Sapphire"), the owner of the property located at 70A Darlinghurst Road, Potts Point NSW and the building in which the Licensed Premises are located (the "Building").*

*We are instructed by Sapphire to make the following brief submissions to the Independent Liquor and Gaming Authority (the "Authority") in relation to the application dated 22 December 2015 (the "Application") by Superintendent Robert Alison [sic], Kings Cross LAC, that the Authority make an order under Section 84 of the Liquor Act 2007 (the "Act") for the closure of the Licensed Premises for a period of up to 6 months.*

*Sapphire and its principal, Mr Hussein (Charlie) Saleh, are extremely concerned about the allegations contained in the Application of dealing in illicit drugs in the Licensed Premises and otherwise in the Building, and allegations of breaches of Licence conditions. They instruct us to communicate to the Authority that they consider the allegations as very serious and that they are totally opposed to anyone engaging in illegal activity, including drug dealing, in the Building. In addition, it also is most concerned about the alleged breaches of Licence conditions. In light of these allegations, Sapphire is considering its position as regards the Business Owner, Marathon Enterprises Pty Limited ("Marathon"), which is also the lessee of the Licensed Premises, including as to Sapphire's rights under clause 19 of the lease. We attach a copy of clause 19 for your assistance.*

*The Authority will have noted that there is no suggestion in the Application and supporting material of any improper conduct of any kind by Sapphire and/or Mr Saleh. In those circumstances, Sapphire submits that no action should be taken by the Authority which adversely affects the Licence to the detriment of Sapphire.*

*We note that in the Application at page 21, the Applicant proposes that 4 steps be taken in the alternative to closure under Section 84 of the Act.*

*Our Client does not oppose step 1.*

*Our Client opposes any variation of the Licence conditions, save as set out below, including the proposed steps 2 and 3. The allegations are not in any way referable to the times at which the venue trades or, indeed, the sale of liquor per se. There is no suggestion of trading beyond its permitted hours or as to intoxication on the Licensed Premises. Further, to prohibit entertainment of the kind the venue offers goes to the very essence of the venue's business. Noting that the physical layout of the building is designed for this kind of business, such a condition would adversely affect Sapphire's interests, including its ability to attract another tenant to operate another kind of business without extensive and expensive modifications to the fixtures and fittings. Similarly, reduced trading hours would adversely affect Sapphire's ability to attract a new tenant and the rent that can be reasonably charged.*

*With respect to step 4, we note the terms of the existing Licence condition:*

*"There is to be no physical access from any part of the licensed premises to any other part of the building or adjoining buildings to the licensed premises unless approved for the purpose of an office and storage."*

*Sapphire does not take any position as to whether a breach of this condition has occurred, but it appears that this condition does not address the apparent concern of the Applicant, namely, that members of the public are accessing level 2 of the building for improper purposes.*

*We are instructed that the internal staircase forms part of the fire escape for level 2 of the building. We also are instructed that the internal staircase is also used by entertainers to access level 2 as their changing room is located on that level. Therefore, a blanket prohibition on "communication" between levels 1 and 2 of the Building by the internal staircase, as proposed by the Applicant, is not appropriate.*

*Our Client would not oppose a further condition, though operative only when Marathon is the business owner, in terms as follows:*

*"Patrons are not to access the internal stairway connecting levels 1 and 2 during trading hours except for the purposes of exiting the building in an emergency."*

*Sapphire requests the further opportunity to be heard if the Authority is considering taking any step with respect to variation of Licence conditions, or as to suspension or cancellation of the Licence, and that the Authority inform it, through us, of any other action it proposes to take and/or takes, whether by the complaint proceedings contemplated by the Police or otherwise.*

- 192.** Attached to this submission is an extract of clause 19 of the lease pursuant to which the Business Owner, Marathon Enterprises Pty Ltd occupies the building in which the Premises is situated.

### **Submissions from the Business Owner – 19 January 2016**

- 193.** At 4:19pm on 19 January 2016, the Business Owner provided a submission in response to the Notice of Application. The Business Owner did not respond with any evidence but rather by way of an 11-page submission letter from the Business Owner's solicitors.
- 194.** The Business Owner notes that this Application followed the issue of a Short Term Closure Order against the Premises on 20 December 2015. [The Authority notes that this closure order was issued by a Registrar of the Downing Centre Local Court.]



- 195.** The Business Owner contends that it was not given any prior notice of the Short Term Closure Application made by Police and had no opportunity to be heard on that application.
- 196.** The Business Owner notes that the Authority has granted its request for an extension of time to make submissions in response to the Application until 19 January 2016, provided that the Licensee agree to a voluntary suspension of the exercise of the licence until 26 January 2016. The Licensee agreed and at 3:16pm on 23 December 2015 the Business Owner filed an application for a temporary suspension of the licence until 26 January 2016 – which was duly granted by the Authority.
- 197.** The Business Owner submits that the practical effect of the above is that the Premises has now been closed for over one month. Should the Authority form the view that the Premises should remain closed for some longer period, the Business Owner requests that this already elapsed period be taken into account when determining the duration of any order.
- 198.** The Business Owner submits that while the closure of the Premises has been a “considerable financial burden”, it has nonetheless provided an opportunity for it to evaluate the concerns of NSW Police and “decide upon a course of action that will address adequately and sufficiently those Police concerns”.
- 199.** The Business Owner submits that Police have essentially relied on the same ground for seeking the long term closure as they did in respect of the short term closure of the Premises – being the “ongoing supply of the prohibited drug cocaine to undercover police by agents/employees of the licensee” in the 6-month period from June to December 2015.
- 200.** The Business Owner submits that the Application Letter alleges that “all levels of management are complicit in the illegal activities taking place on the premises” (page 19) and that one of the entertainers on the Premises (“Mercedes”) stated that “Security are all a part of it” and that the cocaine supplied to patrons is “their boss’ coke, but they get looked after” ... “by the guys that run the place” (paragraph 11 of **Annexure 21** to the Application Letter, which is a statement of Detective Sergeant Hayward dated 17 December 2015).
- 201.** The Business Owner submits that the Authority should place little weight on this statement, having regard to the context in which it was made. The Business Owner argues that, at its highest, this statement would appear to be an allegation of involvement by security staff and *some* of the management of the business (“the guys that run the place”) – not all of the management, and not all levels of the business management.
- 202.** The Business Owner submits that this tends to be borne out by the fact that the material relied on by the Applicant in the Application only identifies the involvement of the following persons who could be “fairly” described as being involved in management:
- The current Approved High Risk Manager (Mr Steven Lekoski); and
  - The RSA Marshal (Mr Vincent).

**203.** The Business Owner notes that the Applicant seeks that the Premises be ordered to remain closed pending investigations being finalised under section 138 of the Act in relation to:

- The current Licensee (Mr Kenneth Gibson);
- The current Approved High Risk Manager (Mr Steven Lekoski); and
- A former licensee (Mr Abdul Rustom).

**204.** Alternatively, the Applicant seeks that the following actions be taken:

1. A new licensee is unconditionally approved by the Authority;
2. The licence is restricted to standard trading hours;
3. Adult entertainment/strippers is prohibited; and
4. There must be no internal communication between the licensed and unlicensed areas of the premises.

#### Business Owner's Submissions on the Relevant Provisions of the Act

**205.** The Business Owner notes that there have been no previous decisions made by the Authority under section 84 of the Act. The Business Owner then sets out in full section 82 of the Act (in relation to short term closure orders) and section 84 of the Act (in relation to long term closure orders).

**206.** The Business Owner notes that both sections, in their current form, have been in the Act since its inception – however there is no mention of either section in the reading speeches in relation to the differences between the two sections.

**207.** The Business Owner refers to clause 28 of the *Liquor Regulation 2008*, which provides that for the purposes of section 84(5) of the Act, the Authority cannot require the closure of premises for a period of more than 6 months.

**208.** The Business Owner accepts that Police have established the requirement of “section 82(2)(a)” [the Authority notes that this is an apparent reference to section 84(2)(a)] in that Police have indicated that the Licensee, Mr Gibson, is the subject of an ongoing Police investigation.

**209.** The Business Owner further accepts that Police have established the requirement of “section 82(2)(b)” [the Authority notes that this is an apparent reference to section 84(2)(b)] in that the Licensee has been given notice of the Application and has now been given a reasonable opportunity to make submissions in relation to it.

**210.** The Business Owner then refers to its letter to the Authority dated 23 December 2015 which states that at that time, the Business Owner did not accept that there had been a reasonable opportunity afforded to it to make submissions.

**211.** The Business Owner submits that the “area of contention” in this matter is in relation to whether Police have established the requirement of section 84(2)(c).

**212.** The Business Owner observes that at first glance, section 82(2)(b) and section 84(2)(c) “appear to be identical” and, as such, would be interpreted in the same way. However, the Business Owner argues that to do so would be a “mistake” as the former provision contemplates a much shorter time period of closure (up to 72 hours) than the latter provision (up to 6 months).

- 213.** The Business Owner submits that “the bar is set much higher” for an applicant to obtain a long term closure order and that, if the risk factors present at a venue are such that they can be addressed by a short term closure order, then that is the “appropriate” way to address them.
- 214.** The Business Owner submits that if the risk factors cannot be addressed by way of a short term closure order because they are likely to last beyond a short term period, then section 84 enables the Authority to make an order that extends over a longer period, noting that such an order can also be brought to an end expressly within that period by the imposition of relevant conditions, which includes conditions on the licence. This is made explicit by section 84(6).
- 215.** The Business Owner then submits that:
- ...if relevant conditions can be proposed, the imposition of which will adequately address the risk factors, or other actions can be taken by a licensee or business owner to address those risk factors, then either course is the more direct, appropriate and beneficial response: not just to close the Premises, without more.*

#### Business Owner’s Response to Allegations in the Application

- 216.** The Business Owner advises that Mr Kyriacos (Gary) Papadopoulos is a director of the corporate Business Owner. He is a shareholder, along with his brother, Manthos Papadopoulos. Gary is “shocked” by the material contained in the Application and “denies any personal wrongdoing”.
- 217.** The Business Owner contends that Gary Papadopoulos is a “family man” and has a “zero tolerance towards drugs and drug dealing”. However, he “accepts that there is recent evidence of such gravity that, unremedied, would warrant closure of the Premises”.
- 218.** Furthermore, Gary Papadopoulos accepts that “possibly a significant part of the problem” lies in the fact that he was not present at the Premises in the past 6 months, as much as he should have been.
- 219.** The Business Owner submits that it is also now clear that Mr Papadopoulos’ trust in, and reliance upon, his licensee and high-risk approved manager was “badly misplaced and abused”.
- 220.** The Business Owner accepts that, to the civil standard of proof at least, Police have established that a “serious breach of the Act has occurred on the licensed premises, being the sale and supply of prohibited drugs by entertainers to undercover Police”. As such, the first part of section 82(2)(c) is established.
- 221.** The Business Owner submits that the issue is now whether the second part of section 82(2)(c) is established – namely, whether the Authority is satisfied that “the closure of the premises is necessary to prevent or reduce a significant threat or risk to the public interest.”
- 222.** The Business Owner contends that, by reason of the action that it has now taken and proposes to take, as set out below, the Authority would not be satisfied that continued closure, under “section 82” [the Authority notes that this is an apparent reference to section 84] of the Act, is either necessary or warranted.

### *Business Owner's Account of Steps Taken to Address Police Concerns*

**223.** The Business Owner contends that it has taken the following steps to address the Police concerns about drugs which are raised by the Application Material:

- It has engaged the law firm *JDK Legal* to enquire of Police if there is any specific complaint against the current Licensee of being knowingly involved in the instances of drug supply identified in the Application, with a view to deciding whether the employment of the current Licensee should be terminated. The Business Owner “appreciates that responsibility for sale and supply of drugs on the Premises rests with the Licensee, even absent of any allegation of his direct involvement in such activity”.
- After discussions with Police on 18 January 2016, it has become apparent to the Business Owner that Police have significant concerns about the current Licensee (Mr Kenneth Gibson) remaining in that position. Accordingly, the Business Owner has terminated Mr Gibson’s services as licensee.
- It has also terminated the employment of the current Approved High Risk Manager (Mr Steven Lekoski), who has been identified by Police as being involved in the supply of drugs.
- It has terminated the employment of the RSA Marshal (Mr Vincent), who has been clearly identified by Police as being involved in the supply of drugs.
- It has terminated the employment of former licensee (Mr Abdul Rustom) on 20 June 2015, and Mr Rustom has had no role to play in the business since that date.
- It has also terminated the services of the eight (8) entertainers referred to in the Application Material as offering to supply drugs at the venue, being the following:
  - “Mercedes”;
  - “Megan”;
  - “Kiri”;
  - “Jade”;
  - “Mira”;
  - “Tash”;
  - “Prudence”; and
  - “Milly”.
- It has terminated the services of the security company to the Business Owner, which is alleged to have been involved in the supply of drugs at the Premises (paragraph 11 of **Annexure 21** to the Application Letter, which is a statement of Detective Sergeant Hayward dated 17 December 2015).
- It has retained Mr Chris Pickard, a former police officer, as a consultant, with a view to taking his counsel and advice as to:
  - Ways in which to prevent the Premises being the site of any further instances of drug supply. In this regard, it has already been decided that the *Plan of Management* be updated to incorporate a section on the

business's drug policy. All staff will, prior to commencing work at the Premises, be required to read the Premises' "zero tolerance drug policy" and sign a document acknowledging that they have read the policy and will comply with it. Furthermore, any employee caught dealing in drugs on the Premises (which will include self-use) will be summarily dismissed;

- Updating the *Plan of Management* and staff training procedures;
  - Selection of a new licensee and a new approved high risk manager; and
  - Retaining a new security company.
- Further, the Business Owner proposes a condition on the licence in the following terms:

*For as long as Marathon Enterprises Pty Ltd is the business owner:*

*No patron is permitted access to the internal stairway connecting levels 1 and 2 except for the purpose of exiting the premises in an emergency. No patron is permitted access to level 2 of the building unless on legitimate business and in the company of the licensee, manager on duty or a director of Marathon Enterprises Pty Ltd. Nothing in this condition prevents entertainers from accessing level 2, provided that such access is solely to enable those entertainers to use the change room located on level 2.*

- The Business Owner further proposes to install CCTV cameras outside the door separating level 1 of the Premises from the fire stairs, and also outside the door separating level 2 from the fire stairs. This, it is submitted, will enable the Business Owner to maintain digital records of compliance with the above proposed condition. Police or other authorised officers would be able to inspect these records to ensure compliance with the condition.
- The Business Owner submits that it would agree to document the above matters in a revised *Plan of Management*, subject to further consultation with local Police and the assistance of the consultant.

**224.** The Business Owner submits that aside from the main focus of the Application, the balance of the Police concerns may be summarised as follows:

*Police have also identified ongoing breaches of Kings Cross Precinct conditions which require a licensee to provide CCTV footage to Police upon request and scanning of patron ID breaches of the Liquor Act which relate to taking liquor off the licensed premises, breaches of a licence condition which prohibits physical access from any part of the licensed premises to any other part of the building, and breaches of a licence condition which prohibits audience participation involving physical contact or sexual activities on any part of the licensed premises.*

**225.** The Business Owner argues that none of the above alleged breaches are serious enough in nature to found a long term closure order. However, the Business Owner accepts that these matters are "indicative of a failure of management to comply with the Act and the conditions of the licence, which in future must be addressed immediately".

**226.** The Business Owner submits that, to the extent that the alleged breaches involve criticisms of the former licensee (Mr Rustom), and the (now former) approved high risk

manager (Mr Lekoski), both of whom have been directly implicated in the drug dealing taking place at the venue, both those persons would have had a vested interest in covering up their wrongdoing by limiting the provision of CCTV footage to Police.

- 227.** Noting that the services of Mr Rustom and Mr Lekoski have now been terminated, and that a new licensee and a new high risk manager are proposed to be appointed, the Business Owner submits that it expects that it “will be able to work with [the new licensee and new high risk manager] and the retained consultants to address compliance with the relevant conditions and to ensure that there is no repetition of the alleged breaches”.
- 228.** The Business Owner submits that, in the current circumstances, it is not appropriate for a long term closure order to be made and that the Authority can have comfort that to allow the Premises to trade under a new licensee “will not expose the public to unnecessary risk”.

#### Business Owner’s Submissions on the Alternative Orders Proposed by Police

1. *A new licensee is unconditionally approved by the Authority*

- 229.** In relation to proposed alternative order 1, the Business Owner submits that it is “minded” to engage a new licensee, whose engagement would commence upon the provisional transfer of the licence to him. The Business Owner has retained a consultant to assist in sourcing suitable candidates.

2. *The licence is restricted to standard trading hours*

3. *Adult entertainment/strippers is prohibited*

- 230.** The Business Owner opposes the Applicant’s proposed alternative orders 2 and 3 and adopts the submissions made by the Premises Owner’s solicitor in its letter to the Authority of 23 December 2015, reproduced below:

*Our Client opposes any variation of the Licence conditions, save as set out below, including the proposed steps 2 and 3. The allegations are not in any way referable to the times at which the venue trades or, indeed, the sale of liquor per se. There is no suggestion of trading beyond its permitted hours or as to intoxication on the Licensed Premises. Further, to prohibit entertainment of the kind the venue offers goes to the very essence of the venue’s business. Noting that the physical layout of the building is designed for this kind of business, such a condition would adversely affect Sapphire’s interests, including its ability to attract another tenant to operate another kind of business without extensive and expensive modifications to the fixtures and fittings. Similarly, reduced trading hours would adversely affect Sapphire’s ability to attract a new tenant and the rent that can be reasonably charged.*

4. *There must be no internal communication between the licensed and unlicensed areas of the premises.*

- 231.** The Business Owner submits that the concerns raised by the Applicant’s proposed alternative order 4 are addressed by the Business Owner’s proposed new licence condition in relation to access to the internal stairway between level 1 and level 2 of the building in which the Premises is located and the Business Owner’s intention to install further CCTV cameras on the Premises.

- 232.** However, the Business Owner repeats the view of the Premises Owner with respect to those matters in submissions from the Premises Owner's solicitor to the Authority dated 23 December 2015 which state:

*With respect to step 4, we note the terms of the existing Licence condition:*

*"There is to be no physical access from any part of the licensed premises to any other part of the building or adjoining buildings to the licensed premises unless approved for the purpose of an office and storage."*

*Sapphire does not take any position as to whether a breach of this condition has occurred, but it appears that this condition does not address the apparent concern of the Applicant, namely, that members of the public are accessing level 2 of the building for improper purposes.*

*We are instructed that the internal staircase forms part of the fire escape for level 2 of the building. We also are instructed that the internal staircase is also used by entertainers to access level 2 as their changing room is located on that level. Therefore, a blanket prohibition on "communication" between levels 1 and 2 of the Building by the internal staircase, as proposed by the Applicant, is not appropriate.*

- 233.** The Business Owner proposes that the Police concerns raised in the Application can be sufficiently addressed by the appointment of a new licensee and the other measures that the Business Owner has taken or proposes to take, as outlined above.
- 234.** The Business Owner submits that those measures are the "most direct and immediate way to address the concerns raised by Police in the Application, without visiting undue and unreasonable hardship" upon the Business Owner.
- 235.** In conclusion, adapting the wording of the Authority at page 2 of the Authority's published decision entitled *Decision to Impose Licence Conditions under Section 53 – Silk Hotel, Newcastle* dated 23 August 2013 (which the Authority notes involved measures consented to by a licensee in response to a short term closure application), the Business Owner submits that its proposed approach represents "a more durable regulatory response than the [long term] closure of the Hotel".

### **Submissions from Premises Owner on Business Owner Response – 21 January 2016**

- 236.** At 2:11pm on 21 January 2016, Mr Lloyd Harris of *Back Schwartz Vaughan* provided further submissions on behalf of the Premises Owner in response to the Business Owner's submissions of 19 January 2016. The full text of that submission letter states as follows:

*We refer to the above matter, our submissions to the Independent Liquor and Gaming Authority (the "Authority") dated 23 December 2015 on behalf of the owner of the Premises, Sapphire Suite Pty Limited ("Sapphire"), and the submissions to the Authority from JDK Legal dated 19 January 2016 on behalf of the Business Owner, Marathon Enterprises Pty Ltd ("Marathon").*

*By our 23 December submissions, Sapphire expressed no view on the closure of the Premises and that remains its position. However, Sapphire is opposed to the imposition of any Licence conditions that may affect the operation of the Premises in the long term, specifically when Marathon may cease to have any involvement with the Premises.*

*To that end, we repeat that Sapphire opposes the imposition of any conditions on the Licence, other than as stated in our 23 December submissions, save as stated below.*

*With respect to access between the first and second floors of the building, it remains Sapphire's position that the form of condition it proposed in our 23 December submissions is adequate to address the concerns of Police, namely, patrons' ability to access level 2 via the internal staircase. However, Sapphire does not oppose the expansion of the restriction of patron access to the internal stairway and to level 2 more widely as proposed by Marathon, if the operation of the condition is confined to when Marathon is business owner. (We note that on a strict reading of Marathon's proposed condition, the second sentence is not qualified by the words at the commencement of the first sentence, namely, "For as long as Marathon Enterprises Pty Ltd is the business owner"). If the Authority was minded to adopt the condition proposed by Marathon, to avoid doubt any such condition should read as follows:*

*"For as long as Marathon Enterprises Pty Ltd is the business owner:*

- (a) no patron is permitted access to the internal stairway connecting levels 1 and 2 except for the purpose of exiting the premises in a n emergency; and*
- (b) no patron is permitted access to level 2 of the building unless on legitimate business and in the company of the licensee, manager on duty or a director of Marathon Enterprises Pty Ltd.*

*Nothing in this condition prevents entertainers from accessing level 2, provided that such access is solely to enable those entertainers to use the change room located on level 2."*

*With respect to proposals of Marathon to install CCTV cameras, Sapphire opposes the imposition of any obligation attached to the Licence for such CCTV cameras, imposed either directly as a licence condition or indirectly through such being part of a Plan of Management mandated by a new or amended licence condition.*

*In the alternative to such action, it is open to the Authority to require under Section 84(6) of the Liquor Act 2007 (the "Act"), as a requirement of reopening after a closure order made under Section 84(1), that such CCTV cameras be installed, without making such as a licence condition. (The reference to "specified conditions" in section 84(6) of the Act is wider than to "conditions" in, say, section 11 of the Act.) Sapphire would not oppose such a course.*

*However, if the Authority is minded to impose a requirement for CCTV cameras, as proposed by Marathon, either as a licence condition or through a Plan of Management, Sapphire submits that, similarly, any such obligation should apply only when Marathon is the Business Owner.*

*We note that as to CCTV cameras, no specific wording of a proposed licence condition or the relevant terms of a Plan of Management is proposed by Marathon. We trust that in all events Sapphire will be given the opportunity to comment on any such proposed licence condition or new Plan of Management.*

## **Applicant's Submissions in Reply – 22 January 2016**

- 237.** On 19 January 2016, the Authority advised the Applicant that it may have a short opportunity to provide any evidence or submissions in reply to the Business Owner or Premises Owner's submissions by 12:00 midday on 22 January 2016.
- 238.** At 1:38pm on 22 January 2016, Kings Cross Local Area Commander, Acting Superintendent Paul Dunstan provided a further submission on behalf of the Applicant in response to the Business Owner's and Premises Owner's submissions of



19 January 2016 and 21 January 2016 respectively. The full text of the Applicant's submission in reply states as follows:

1. *By way of application dated 21 December 2014, the Independent Liquor & Gaming Authority ("the Authority") received an application by Acting Superintendent Robert Allison of Kings Cross Police Local Area Command in his capacity as a delegate of the New South Wales Commissioner of Police seeking Long Term Closure of the premises while an investigation is carried out, or in the alternative, conditions imposed on the licence to ensure there is no repeat of serious offences occurring on the premises pursuant to s74 of the Act.*
2. *Under cover of a letter dated 22 December 2015, the Chief Executive of the Authority, Micheil Brodie invited submissions by the business owner by 5pm on 19 January 2016. Due to the period of time elapsed since the initial application the Authority's General Counsel has invited NSW Police to reply to the business owner's submissions by 1pm 22 January 2016.*
3. *The NSW Police Force maintains its position that the premises should be closed pursuant to s84 while an investigation is carried out in relation to incidents of drug supply to undercover police by management and staff employed at the premises and while investigations are being finalised under section 138 of the Act in relation to a number of people interested in the business of the licensed premises*
4. *It is submitted that the information, including CCTV footage relied on by NSW Police and evidence that the prohibited drug alleged to be supplied is in fact the prohibited drug cocaine, mandates closure of the premises. It clearly illustrates an entrenched culture of drug supply within the premises across all levels of management.*
5. *It is insufficient for the business operator to plead, post event, that they have terminated staff, replaced security and are searching for a new licensee, high risk approved manager and RSA Marshalls. This is reminiscent of assurances made to Police and the Authority in 2013 when the premises were subject to an application by New South Wales Police to revoke the premises extended trading authorisation.*
6. *Police have no faith that yet another cleanout of staff will ensure that serious offences will not re occur on the licensed premises. The former licensee, Abdul Rustom, was the licensee bought in by liquor consultants to ensure the premises was managed in a professional manner and in accordance with the objects of the Act as a result of previous s51 proceedings. Information submitted by Police clearly shows that the former licensee was not, despite assurances, a fit and proper person to manage high risk licensed premises within the Kings Cross Precinct. In fact he was the complete opposite.*
7. *The lawyers for the business operator state, "Material relied on by the police in the Application only identifies the involvement of the following persons who could be fairly described as being involved in management... the current high risk approved manager.... RSA Marshall". That submission could only be made on instructions from the business operator and it is a clear indication of the mindset of the business operator. That is, a failure to recognise their culpability in a significant criminal incident. Police contend that the strippers contracted to operate within the premises could not engage in drug supply in such an open and unaccountable manner if it were not sanctioned by management.*
8. *Further, there is significant circumstantial evidence to suggest that Abdul Rustom was involved in, or turned a blind eye to drug related within the premises prior to resigning from his position as licensee in June 2015. His relationship with Scott Lavers, along with his interaction with Bandidos OMCG member Jason Fahey, which was caught on CCTV in March 2015, suggests*

*that the manner in which prohibited drugs was bought into the premises and supplied to patrons on the premises was known to Abdul Rustom.*

9. *Bada Bing is an establishment which one would expect to find in the Kings Cross precinct. Police suspect that for patrons attracted to these premises, there may be an expectation that the link between sex and drugs is a 'given'. This expectation is not only satisfied by staff but encouraged in circumstances where the evidence reveals there is a regularity of unacceptable incidents associated with the supply of prohibited drugs. The Police submission clearly shows as the staff became more comfortable with the undercover officers the amount of prohibited drug available to these officers increased. Police were assured drugs could be provided off premises (at bucks parties and the like) as well as on premises.*
10. *If there is an expectation by patrons who attend businesses such as Bada Bing for adult entertainment, there must also be an expectation by the patrons to enter premises which are safe and an expectation by the patron to remain safe on the premises rather than being harassed or encouraged to buy prohibited drugs.*
11. *In determining whether to close the premises for 6 months pursuant to s84, the Authority should have regard to the matters identified in the Police application which, Police contend, paint an alarming picture of an entrenched drug culture at the premises. In making a determination, the Authority must also consider the following points:*
  - (a) *The number of staff (10) found to be involved in the sale and supply of prohibited drugs inside the premises;*
  - (b) *The period of time (4 months) over which drugs were supplied;*
  - (c) *The amount of prohibited drugs (16 grams) sold to undercover police;*
  - (d) *The consequent breaches of the Liquor Act regularly taking place to ensure that these serious criminal offences could not be uncovered by means other than a costly, resource intensive, long term operation by New South Wales Police.*
12. *The New South Wales Police Force maintains its submission that the premises should be closed pursuant to s84 while an investigation under s 138 is finalised. Closure of the premises is the only comfort the Authority will have that these premises are not being used to sell and supply drugs contrary to the Act.*
13. *If the Authority is not minded to close the premises based on these particularly serious criminal incidents it is respectfully submitted that the following conditions be imposed on the liquor licence:*
  - i. *The premises must not trade until a new licensee has been unconditionally approved by the Authority*
  - ii. *Adult entertainment/strippers is prohibited*
  - iii. *There must be no Internal Communication between licensed and unlicensed areas of the premises.*
  - iv. *The licence is restricted to standard trading hours.*
14. *It is respectfully submitted that closure of the premises pursuant to s 84 or the alternative position referred to in the preceding paragraph are consistent with the objects of the Act, in particular, s.3(1) thereby resulting in a balanced approach to the sale, supply and consumption of liquor on the premises which would facilitate the public interest. The public interest here of course includes a the health and safety of the public at large and reduction in the use of police resources required to consistently ensure these premises trade in accordance with the Act.*

## **Business Owner's Response to Applicant's Reply – 22 January 2016**

**239.** At 4:27pm on 22 January 2016, the Business Owner's solicitors provided further submissions in response to the Applicant's reply, the full text of which is as follows:

*We refer to the police submission lodged today.*

*There is, unfortunately, nothing new in it. It is, with respect, but a mere regurgitation of the original Application with no apparent thought given to our client's submissions.*

*It fails to address the fact that our client has now taken steps and plans to take further steps that are designed to prevent any further drug dealing at the premises, if it is permitted to re-open: and that will only happen after the provisional transfer of the licence to a new licensee.*

*Again, despite our criticism, there is a reference to "an entrenched culture of drug supply within the premises across all levels of management": see par 4.*

*However, the police do not point to any evidence in the Application, or in their further submission, of it extending beyond a former licensee, (Mr Rustom), who left the premises on 20 June 2015, the former high risk manager (Mr Lekoski), who has been terminated by our client, and the former RSA Marshal (Mr Vincent), whose services have also been terminated by our client.*

*There is no evidence that it goes any higher than that. The only criticism of the most recent licensee (Mr Gibson) is essentially that he is responsible for (in the sense that it happened on "his watch"), but not personally involved in, the drug dealing.*

*Certainly there is no evidence that it extends to our client, or its director, Kyriacos (Gary) Papadopoulos.*

*The statement in paragraph 7 that "It is a clear indication of the mindset of the business operator. That is, a failure to recognize their culpability in a significant criminal incident" should be regarded as no more than a "cheap shot" by the Police, suggesting as it does a degree of complicity in the drug dealing by Mr Papadopoulos: but without a scintilla of supporting evidence. Accordingly, we ask the Police to withdraw the statement.*

*As we have said, as our client has now terminated the licensee (Mr Gibson) and the high risk manager (Mr Lekoski), it is not in a position to immediately reopen until such time as it has appointed a new licensee.*

*It is in the process of vetting potential licensees now with the assistant [sic] of a consultant.*

*Our client has not had the opportunity to engage with Senior Sergeant Donna Murphy in relation to the steps it has now taken, and further proposes to take to address the police concerns, due in large part to Senior Sergeant Murphy being on extended holidays since the Application was lodged. We understand that she is not due back for at least another week.*

*Disappointingly, there is nothing in the response of the police today that suggests that they have engaged, or intend to engage, with our client in terms of its actions and further proposed initiatives.*

*We refer to the further submission lodged by the landlord today [the Authority notes that this is a reference to the Premises Owner's submissions of 21 January 2016]. We are content with the revised wording of the condition we proposed that appears at the top of page 2 of its submission – the intent was that the condition would only operate while our client was the business owner (as it has been since 2004).*

*We also agree with the fourth last paragraph of page 2 of that letter, and suggest it be adopted instead of a condition being imposed on the licence.*

### **Premises Owner's Response to Applicant's Reply – 22 January 2016**

- 240.** At 4:57pm on 22 January 2016, the Premises Owner's solicitors provided a further brief submission in response to the Applicant's reply submissions, the full text of which is as follows:

*We refer to the above matter and the submissions of the Police dated 22 January 2015 (sic).*

*We refer to paragraph 9 of the Police submissions. Our client, Sapphire Pty Ltd ("Sapphire"), rejects any assertion by the Police at paragraph 9 to the effect that there is some necessary link between the character of the Premises as an adult entertainment venue, and illicit drugs. We note that even at its highest the Police say they suspect that patrons may have some expectation that there is such a link.*

*We would observe that the Licence attached to the Premises is an On-Premises Licence Theatre Public Entertainment Venue with Extended Trading Authorisation. By reason of Sections 22 to 24 of the Liquor Act 2007 (the "Act"), in order to trade under its Licence, the primary purpose of the business conducted at the Premises must be that of a theatre or public entertainment venue. Given the nature and character of the Kings Cross precinct, the location of the Premises in the middle of that precinct on Darlinghurst Road, and the nature and character of the Premises themselves, the only type of theatre or other public entertainment that could reasonably be expected to be offered at the Premises is that of adult entertainment.*

*We submit that if a condition was imposed on the Licence that precluded the offering of adult entertainment at the Premises, then any operators (whether it is the current Business Owners or not), would not be able to comply with the primary purpose obligations under the Act. That would have the practical effect of preventing the Premises from trading at all.*

*Such action by the Authority would act to the very considerable commercial detriment of Sapphire and in its view is a disproportionate response to the matters of concern raised by the Police.*

### **Supplementary Submission from Business Owner – 25 January 2016**

- 241.** At 10:59am on 25 January 2016, the Business Owner's solicitors provided a further (unsolicited) submission in relation to the Application, apparently in response to the Applicant's reference to the decision made by the Authority in 2013 to reduce the extended trading hours of the Premises pursuant to section 51 of the Act.
- 242.** The Business Owner's solicitors were advised that this late submission would form part of the material before the Authority in relation to the Application, but that submissions have now closed unless the Authority directs otherwise.
- 243.** The full text of this brief submission states as follows:

*Further to our letter of 22 January 2016, we are instructed to make the following comments in relation to the reference by Police to the s.51 proceedings that were before the Authority in 2013, referred to in paragraphs 5 and 6 of the Police submission lodged on 22 January 2016, which culminated in the reasons for decision published on 11 December 2013:*

- That application related to “alcohol related crime and disturbance generally”, in relation to 129 events over a 3½ year period from May 2009 to November 2012;
- The Authority was persuaded that Mr Papadopoulos was taking appropriate action to address those issues by its change of licensee and manager at that time, consequent upon advice from consultants, which is one of the reasons it did not revoke the extended trading authorisation, but rather limited the hours;
- Since the decision in December 2013, the venue has addressed the issues of alcohol related violence and disturbance, as evidenced by the fact that it has not been breached for permitting intoxication or for alcohol related violence on the premises since the decision;
- The issues the subject of the current s.84 application are totally different – they essentially relate to drug dealing on the premises over a 7 month period from June to December 2015;
- Their detection arose from a covert police operation, but the result of that operation was not disclosed to the business owner until after the short-term closure order was made on 20 December 2015;
- The business owner has already taken a number of steps to address these issues of concern raised by Police – these steps are set out in full in our submission of 19 January 2016;
- We submit that the Authority can have confidence that the business owner is now taking appropriate steps to address the current concern, as it did the former concern in 2013.

### **Police Response to Condition on Level 2 Access – 27 January 2016**

**244.** At 8:45am on 27 January 2016, Senior Sergeant Donna Murphy on behalf of the Applicant provided the following brief submission to the Authority objecting to the terms of the condition proposed by the Premises Owner in its submission to the Authority of 21 January 2016 with regard to access to the internal stairway connecting levels 1 and 2 of the building in which the Premises is situated. The full text of this email from Police states as follows:

*In relation to the submission by Mr Harris Police object to any condition in respect to level 2 access which relies on Police having to prove the person was a patron of the premises. Unlike the word 'employee' there is no definition of the word 'patron' in the Act.*

*If the Authority is minded to impose a condition in the terms submitted by Mr Harris, Police respectfully request the condition be written in a manner which only allows an 'employee' access to level 2.*

*If a condition is imposed in these terms, Police also request that a system is in place to record the name, DOB, address and tax file number of every employee prior to the commencement of their duties. This record must be made available to Police or Special Inspectors to inspect upon request.*

### **Premises Owner’s Reply to Police on Level 2 Access – 27 January 2016**

**245.** At 11:48am on 27 January 2016, the Premises Owner’s solicitors provided a final email submission in response to the Police objection, the full text of which states as follows:

*We submit that patron would be “defined” by its ordinary meaning. The restriction proposed by the Police would effective [sic] preclude, for instance, the owner of the premises, any managing real estate agent and tradesman from accessing the premises (or such access would cause a breach of the condition).*

## **LEGISLATION**

**246.** The power pursuant to which the Authority may issue an order for the long term closure of a licensed premises is provided by section 84 of the Act, which states as follows:

### **84 Order by Authority for long-term closure of licensed premises**

- (1) *The Authority may, on the application of the Secretary or the Commissioner of Police, order a licensee to close the licensed premises from a time specified in the order until a later specified time.*
- (2) *The Authority may not make an order under this section unless:*
  - (a) *the licensee or manager of the licensed premises is the subject of an investigation by the Secretary under section 138 or an investigation by the NSW Police Force, or the licensed premises are the subject of a complaint under Division 3, or disciplinary action under Part 9 has been (or is proposed to be) taken by the Authority against the licensee or manager or a close associate of the licensee, and*
  - (b) *the licensee has been given notice of the application for closure of the licensed premises and has been given a reasonable opportunity to make submissions to the Authority in relation to the application, and*
  - (c) *the Authority is satisfied that a serious breach of this Act has occurred, or is likely to occur, on the licensed premises and that the closure of the premises is necessary to prevent or reduce a significant threat or risk to the public interest.*
- (3) *Without limiting the generality of subsection (2), circumstances in which there may be a significant threat or risk to the public interest include circumstances in which there is:*
  - (a) *a threat to public health or safety, or*
  - (b) *a risk of substantial damage to property, or*
  - (c) *a significant threat to the environment, or*
  - (d) *a risk of serious offences (having a maximum penalty of not less than 2 years imprisonment) being committed on the premises.*
- (4) *An order ceases to have effect at the time specified or when a complaint concerning the licensee or manager of the premises is determined under this Act, whichever is the earlier.*
- (5) *An order may not require the closure of premises for a period longer than the period prescribed by the regulations.*
- (6) *An order may require the closure of premises until specified conditions are met but must not require closure for a period longer than that permitted under subsection (5).*
- (7) *A licensee must comply with an order made under this section.*

*Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.*
- (8) *The regulations may make provision for or with respect to an application for an order under this section, including the procedure to be followed at or in connection with the hearing and determination of any such application.*

**247.** Relevantly to this Application, section 74 of the Act states as follows:

**74 Sale of stolen goods and possession, use or sale of drugs on licensed premises**

(1) *A licensee must not permit the licensed premises to be used for the sale of:*

- (a) *any goods that the licensee suspects of being stolen, or*
- (b) *any substance that the licensee suspects of being a prohibited plant or a prohibited drug.*

*Maximum penalty: 50 penalty units.*

(2) *A licensee must not permit the possession or use on the licensed premises of any substance that the licensee suspects of being a prohibited plant or a prohibited drug.*

*Maximum penalty: 50 penalty units.*

(3) *An employee or agent of a licensee or a person (other than the licensee) in charge of licensed premises must not permit the licensed premises to be used for the sale of:*

- (a) *any goods that the employee, agent or person suspects of being stolen, or*
- (b) *any substance that the employee, agent or person suspects of being a prohibited plant or a prohibited drug.*

*Maximum penalty: 50 penalty units.*

(4) *An employee or agent of a licensee or a person (other than the licensee) in charge of licensed premises must not permit the possession or use on the licensed premises of any substance that the employee, agent or person suspects of being a prohibited plant or a prohibited drug.*

*Maximum penalty: 50 penalty units.*

(5) *It is a defence to a prosecution for an offence under this section if it is proved that the goods concerned were not stolen or that the substance concerned was not a prohibited plant or a prohibited drug.*

**248.** Relevantly to this Application, section 11 of the Act, which contains general provisions in relation to licence conditions, states as follows:

**11 Licence conditions – general provisions**

(1) *A licence is subject to:*

- (a) *such conditions as may be imposed, or are taken to have been imposed, by the Authority or the Secretary (whether at the time the licence is granted or at any later time) under this Act, and*
- (b) *such conditions as are imposed by this Act or prescribed by the regulations, and*
- (c) *such other conditions as are authorised to be imposed on the licence under this Act.*

(1A) *Schedule 4 (Special licence conditions for declared premises) has effect. The regulations may amend that Schedule (including, without limitation, by adding or removing any relevant licence under that Schedule).*

(2) *A licensee must comply with any conditions to which the licence is subject.*

*Maximum penalty: 100 penalty units or imprisonment for 12 months, or both.*

(3) *For the purposes of this Act, a condition to which a licence is subject includes any provision of this Act that imposes a requirement or restriction (other than as an offence) on or in relation to the licence, licensee or licensed premises concerned.*

*Note: The times during which licensed premises are authorised to trade is an example of such a requirement.*

**249.** Division 1 of Part 5A of the *Liquor Regulation 2008* sets out a number of special licence conditions for certain licensed premises within the Kings Cross Precinct. Relevantly to this Application, clause 53H of the Regulation, which contains provisions for the maintenance of CCTV systems on subject premises, states as follows:

**53H CCTV systems to be maintained on subject premises**

- (1) *The licensee of subject premises to which this clause applies must maintain a closed-circuit television system on the premises in accordance with the following requirements:*
  - (a) *the system must record continuously from opening time until one hour after the premises are required to close (or, in the case of premises that are not required to cease trading, continuously at all times),*
  - (b) *recordings must be in digital format and at a minimum of 6 frames per second,*
  - (c) *any recorded image must specify the time and date of the recorded image,*
  - (d) *the system's cameras must cover the following areas:*
    - (i) *all entry and exit points on the premises,*
    - (ii) *the footpath immediately adjacent to the premises,*
    - (iii) *all publicly accessible areas (other than toilets) on the premises.*
- (2) *The licensee of subject premises to which this clause applies must:*
  - (a) *keep all recordings made by the CCTV system for at least 30 days, and*
  - (b) *ensure that the system is accessible by at least one member of staff at all times it is in operation, and*
  - (c) *provide any recordings made by the system to a police officer or inspector within 24 hours of any request by a police officer or inspector to provide such recordings.*
- (3) *This clause applies to subject premises if the licence for the premises is:*
  - (a) *a hotel licence (including a general bar licence), or*
  - (b) *a club licence, or*
  - (c) *an on-premises licence relating to a public entertainment venue (other than a cinema) or karaoke bar, or*
  - (d) *an on-premises licence relating to a restaurant that is authorised to trade after midnight on any day of the week and in respect of which an authorisation under section 24(3) of the Act is in force.*
- (4) *However, this clause does not, except to the extent provided by subclause (5), apply to subject premises that comprise a small bar.*
- (5) *Without affecting the operation of subclause (3), the Secretary may, by notice in writing served on the licensee of subject premises, declare the premises to be premises to which this clause applies, but only if the Secretary is satisfied that:*
  - (a) *there has been a history (whether before or after the commencement of this Part) of alcohol-related violence on the premises, or*
  - (b) *an incident has occurred on the premises after the commencement of this clause involving an act of violence that has caused a serious injury to a person.*
- (6) *The licensee of any such declared subject premises must comply with the requirements of subclauses (1) and (2) as soon as practicable (or in any case no later than 4 weeks) after being notified of the declaration.*



(7) *This clause takes effect on and from 17 December 2012.*

**250.** Division 3 of Part 6 of the Act contains miscellaneous offences and regulatory controls in relation to licensed premises within the Kings Cross Precinct. Relevantly to this Application, sections 116AB and 116AC of the Act and clause 53Q of the Regulation, in relation to patron ID scanning, state as follows:

**116AB Kings Cross precinct ID scanner system**

- (1) *The "Kings Cross precinct ID scanner system" is an integrated database system that is approved by the Secretary and that consists of the following:*
  - (a) *the identification details of those persons who are the subject of a temporary or long-term banning order (together with the period for which any such order is in force),*
  - (b) *any information that has been scanned and recorded by patron ID scanners operating in high risk venues,*
  - (c) *any associated equipment (including the patron ID scanners linked to the system).*
- (2) *The Secretary may, with the concurrence of the Commissioner of Police, approve a person or body to operate the Kings Cross precinct ID scanner system. A person or body may not be approved if the person or body is a close associate of a licensee or has any interest, whether financial or otherwise, in the business carried on under a licence.*
- (3) *The approval of a person or body to operate the system is subject to such conditions as the Secretary considers appropriate (including conditions relating to the disposal and retention of information held in the system) and may be revoked at any time by the Secretary. The conditions of approval may be varied at any time by the Secretary.*
- (4) *Without limiting subsection (3), the conditions of any such approval are taken to include the following:*
  - (a) *any information held in the system must not be transferred to any place outside of Australia except New Zealand,*
  - (b) *information must not be held in the system for more than 30 days after it is collected except:*
    - (i) *in the case of information relating to a person who is the subject of a long-term banning order (in which case the information may be held in the system for the period that the order is in force), or*
    - (ii) *in such other cases as may be authorised by the Secretary at the request of the Commissioner of Police,*
  - (c) *if the approved system provider is not an organisation within the meaning of the Privacy Act 1988 of the Commonwealth-the provider must ensure that the provider is treated as an organisation for the purposes of that Act,*
  - (d) *the approved system provider must comply with the requirements of the Privacy Act 1988 of the Commonwealth with respect to the protection of any personal information held by the provider,*
  - (e) *the approved system provider must comply with a request by the Commissioner of Police to dispose of any information held by the provider,*
  - (f) *if the Kings Cross precinct ID scanner system fails for any reason, the approved system provider must:*

- (i) immediately notify the local police, and
- (ii) comply with a contingency protocol, as approved by the Secretary, for ID scanner system failure.

#### **116AC High risk venues – licence conditions relating to ID scanning**

(1) **Patron photo IDs to be scanned**

*The licence for a high risk venue is subject to the following conditions:*

- (a) a person must not be permitted to enter the venue as a patron unless:
  - (i) the person produces to a staff member a form of identification containing a photograph of the person and the person's identification details ("**photo ID**"), and
  - (ii) the photo ID is scanned by a staff member using a patron ID scanner,
- (b) a person must be refused admission to the venue as a patron if the person:
  - (i) chooses not to produce his or her photo ID to a staff member, or
  - (ii) is subject to a temporary or long-term banning order,
- (c) the use of a patron ID scanner as required by this section (including the procedures for scanning and the time of use) must comply with such requirements as are approved by the Secretary and notified to the licensee,
- (d) only patron ID scanners of a type approved by the Secretary may be used in the venue for the purposes of this section,
- (e) a patron ID scanner may only be used to record information of the kind prescribed by the regulations,
- (f) if any patron ID scanner used in the venue fails for any reason, the licensee must:
  - (i) immediately notify the local police, and
  - (ii) comply with a contingency protocol, as approved by the Secretary, for patron ID scanner failure.

- (2) *Subsection (1)(a)(ii) does not require a person to be refused permission to enter a high risk venue if, at that time, each patron ID scanner in the venue is not working because of scanner or system failure.*

(3) **Producing false ID to enter high risk venue**

*A person who produces any document purporting to contain the person's identification details in order to gain entry to a high risk venue is guilty of an offence if the document is false in a material particular in relation to the person.*

*Maximum penalty: 50 penalty units.*

(4) **Privacy protection**

*It is a condition of the licence for a high risk venue that the licensee must:*

- (a) *if the licensee is not an organisation within the meaning of the Privacy Act 1988 of the Commonwealth-ensure that the licensee is treated as an organisation for the purposes of that Act, and*
  - (b) *comply with the requirements of that Act with respect to the protection of any personal information recorded by a patron ID scanner operating in the venue.*
- (5) *It is also a condition of the licence for a high risk venue that the licensee:*
- (a) *prepares and implements a privacy management plan relating to the use of patron ID scanners in the venue, and*
  - (b) *prepares and implements a privacy policy containing information for patrons about the use of patron ID scanners in the venue and the procedures for*

- ensuring that the privacy of patrons is protected and for making complaints about breaches of privacy, and*
- (c) *ensures that the privacy policy for the venue is made available for inspection by any person who requests to see it, and*
  - (d) *ensures that an outline of the privacy policy is displayed at or near any public entrance to the venue in a manner that enables patrons to be alerted to its contents immediately before being required to produce a photo ID, and*
  - (e) *without limiting any requirement under the Privacy Act 1988 of the Commonwealth, ensures that any written complaint by a patron about a breach of privacy is, within 14 days of the complaint being made to the licensee or a staff member, notified to the Secretary.*
- (6) *The privacy management plan and privacy policy required to be prepared by a licensee under this section must, without limiting any requirement under the Privacy Act 1988 of the Commonwealth, adopt or comply with a plan and policy approved by the Kings Cross Accord (being the local liquor accord of that name in force under Division 1 of Part 8) in conjunction with the relevant industry association for the licensee.*
- (7) **Exemption from patron ID scanning requirements**  
*The Minister may, on application by the licensee of a high risk venue and on payment of a reasonable fee determined by the Minister, exempt the licensee, by order in writing served on the licensee, from the condition referred to in subsection (1)(a) (the "patron ID scanning requirement").*
- (8) *An order under subsection (7) may provide that the exemption from the patron ID scanning requirement:*
- (a) *applies to the whole or any specified part of the high risk venue concerned for such period as is specified in the order, and*
  - (b) *is subject to such conditions as may be specified in the order.*
- (9) *The Minister may exempt the licensee of a high risk venue from the patron ID scanning requirement only:*
- (a) *if the Minister is satisfied that the exemption is unlikely to result in an increase in the level of alcohol-related violence or anti-social behaviour or other alcohol-related harm in the Kings Cross precinct, and*
  - (b) *after considering a recommendation by the Secretary in relation to the exemption.*
- (10) *An application for an exemption under subsection (7) must be in the form and manner approved by the Minister.*

**53Q Information recorded by patron ID scanners**

*For the purposes of section 116AC(1)(e) of the Act, the following information is prescribed:*

- (a) *the identification details (within the meaning of section 116AA of the Act) of a person,*
- (b) *the photograph appearing on a person's photo ID (as referred to in section 116AC of the Act),*
- (c) *a photograph of the person taken by the patron ID scanner at the time the person's photo ID is scanned.*

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

**3 Objects of Act**

- (1) *The objects of this Act are as follows:*

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

## **FINDINGS AND REASON FOR DECISION**

- 252.** The Authority must take care when fact finding in the context of an application for a long term closure order. An application for a long term closure order is an administrative matter, and findings are made to the civil standard of proof.
- 253.** However, in accordance with the principle enunciated by the High Court of Australia in *Briginshaw v Briginshaw* (1938) 60 CLR 336, the seriousness of the allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are matters that are relevant to deciding whether an allegation has been proved on the balance of probabilities.
- 254.** Turning to the requirements of section 84 of the Act, the Authority is satisfied, for the purposes of section 84(1) of the Act and on the basis of the Application Material filed with the Authority on 22 December 2015, that an application has been made under section 84 of the Act by a delegate of the New South Wales Commissioner of Police (Superintendent Robert Allison) to the Authority seeking the closure of the Premises for a period of six (6) months or until the conditions proposed by the Applicant and as specified in the Application Letter have been satisfied.
- 255.** With regard to section 84(2)(a) of the Act, the Authority is satisfied, on the basis of the advice provided by the Applicant in the Application Material and in particular the Application Letter to the Authority from the Applicant dated 22 December 2015, that an investigation by New South Wales Police is currently underway in relation to the (then) Licensee of the Premises (Mr Kenneth Gibson), the Approved High Risk Manager of the Premises (Mr Steven Lekoski) and a former licensee of the Premises (Mr Abdul Rustom).
- 256.** With regard to section 84(2)(b) of the Act, the Authority is satisfied that the Licensee has been given notice of the Application and has had a reasonable opportunity to make submissions to the Authority in relation to the Application. This finding is made on the basis of the Notice of Application issued by the Authority on 22 December 2015 and the submissions acknowledging receipt of the Application from the Business Owner's solicitors.

- 257.** Although not required by section 84 of the Act, the Authority is satisfied, on the basis of the course of email communication between the Authority, the Applicant and Mr Kim Stapleton of *JDK Legal* (who acts for the Business Owner, Marathon Enterprises Pty Ltd), that the Business Owner has been given notice of the Application and a reasonable opportunity to make submissions in response to the Application.
- 258.** The Authority is further satisfied, on the basis of the course of email communication between the Authority, the Applicant and Messrs Lloyd Harris and Tony Schwartz of *Back Schwartz Vaughan* (who act for the Premises Owner, Sapphire Suite Pty Ltd), that the Premises Owner has been given notice of the Application and a reasonable opportunity to make submissions in response to the Application.
- 259.** The Authority notes that it granted a request from the Business Owner’s solicitor for an extension of time to make submissions until 19 January 2016, on the proviso that the exercise of the licence be voluntarily suspended and the Premises not recommence trading until 26 January 2016.
- 260.** Notwithstanding initial submissions from the Business Owner to the effect that it has been denied a reasonable opportunity to respond to the Application, the Authority is satisfied, in light of the extension of time granted to the Business Owner to complete submissions by 19 January 2016 (which was requested by the Business Owner on the proviso that the business would not reopen until 26 January 2016) the Authority is satisfied that the Licensee has had a reasonable opportunity to provide any submissions or evidence in response to the Application for the purposes of section 84(2)(b) of the Act.

## **FINDINGS**

### **Serious Breaches of the Act**

- 261.** With regard to the requirement of section 84(2)(c) that the Authority be satisfied that a serious breach of the Act has occurred, or is likely to occur, the Authority makes the following findings, on the balance of probabilities and exercising due care with regard to the seriousness of the allegations and the consequences of making a closure order:

#### Prohibited Drug Supply Event #1

- 262.** The Authority is satisfied that the following events occurred on the Premises on Thursday 3 September 2015, as alleged by the Applicant:
- At about 8.00pm on Thursday 3 September 2015, undercover Police officers (the **UC**) entered the Premises.
  - A short time later, the UC engaged a female stripper in conversation. The female stripper, known as “Kiri” (identity unknown), informed the UC that she was able to supply 1 gram of cocaine for \$350.
  - A short time later, “Jade”, who is employed as a stripper/dancer/bartender at the Premises, approached the female UC and directed her into the female toilets where she supplied 0.61 grams of cocaine (weight including packaging).

- “Jade” provided her telephone number to the UC to facilitate the purchase of further amounts of cocaine. “Jade” asked the UC to refer to the drug by the codename “bottles”.

**263.** The Authority makes these findings on the basis of the evidence and material before it, being the information provided in the Application Letter, the photograph of the drug supplied by “Jade” in its packaging (which is **Annexure 8** to the Application Letter), and the Analyst’s Certificate for Drug Exhibit number X00001873179 indicating that the substance provided to the UC on this occasion contained 0.46 grams of cocaine, with a drug purity of 44.5% (which is **Annexure 8.1** to the Application Letter).

#### Prohibited Drug Supply Event #2

**264.** The Authority is satisfied that the following events occurred on the Premises on Wednesday 9 and Thursday 10 September 2015, as alleged by the Applicant:

- On 9 September 2015, the UC sent a text message to “Jade’s” mobile phone placing an order for 1 gram of cocaine using the code “bottle”.
- On 10 September 2015, the UC received a text from “Jade” agreeing to supply “one bottle”. “Jade” indicated that she would be at Bada Bing at 10:00pm that evening.
- At about 9:00pm on Thursday 10 September 2015, two undercover Police officers attended the Premises where “Jade” agreed to supply 1 gram of cocaine.
- The UC was directed to the female toilets where “Jade” supplied 0.61 grams of cocaine (weight including packaging) in exchange for \$350 cash.
- After the exchange, the UC and “Jade” returned to the bar area and engaged in a conversation. “Jade” told the UC that she had worked at Bada Bing for 8 years and has her own supply of cocaine.
- “Jade” also told Police that Bada Bing management staff also supply cocaine but it can be of poor quality and limited supply. “Jade” said the cocaine supplied to the UC on 3 September 2015 came from Bada Bing management.

**265.** The Authority makes these findings on the basis of the evidence and material before it, being the information provided in the Application Letter, the photograph of the drug supplied by “Jade” in its packaging (which is **Annexure 9** to the Application Letter) and the Analyst’s Certificate for Drug Exhibit number X00001873180 indicating that the substance provided to the UC on this occasion contained 0.47 grams of cocaine, with a drug purity of 51.5% (which is **Annexure 9.1** to the Application Letter).

#### Prohibited Drug Supply Event #3

**266.** The Authority is satisfied that the following events occurred on the Premises on Friday 18 September 2015, as alleged by the Applicant:

- On Friday 18 September 2015, a UC sent a text message to “Jade” and placed an order for 1 gram of cocaine using the code word “bottle”.

- At about 10:10pm on 18 September 2015, a UC attended the Premises and met with “Jade”. “Jade” directed the UC to the female toilets where “Jade” supplied 0.88 grams of cocaine in exchange for \$350 in cash.
- The UC and “Jade” returned to the bar area and engaged in conversation. “Jade” told the UC that the Premises has an upstairs room where clients “can do anything except have sex with the strippers”.
- “Jade” told the UC that the upstairs room, which also has an EFTPOS machine, is available to select patrons at a cost of \$350 an hour. “Jade” also told the UC that Police are not aware of this room.

**267.** The Authority makes these findings on the basis of the evidence and material before it, being the information provided in the Application Letter, the photograph of the drug supplied by “Jade” in its packaging (which is **Annexure 10** to the Application Letter) and the Analyst’s Certificate for Drug Exhibit number X00002468280 indicating that the substance provided to the UC on this occasion contained 0.72 grams of cocaine, with a drug purity of 47.5% (which is **Annexure 10.1** to the Application Letter).

#### Prohibited Drug Supply Event #4

**268.** The Authority is satisfied that the following events occurred on the Premises on Friday 18 September 2015, as alleged by the Applicant:

- At 11:34pm on Friday 18 September 2015, a second deployment of undercover Police entered the Premises and engaged in a conversation with stripper/dancer “Mira” who agreed to supply 1 gram of cocaine.
- “Mira” directed the UC to a private dance room where she handed the UC a small bag containing 0.65 grams of cocaine in exchange for \$350 cash. “Mira” told the UC that Bada Bing has a room upstairs with an EFTPOS machine. This room is available to clients who may wish to “use [drugs] on the premises”.
- “Mira” told the UC that Kings Cross Police do not know about the room, that only select people may use it and patrons “can do anything they want except have sex with the strippers”. “Mira” provided her mobile telephone number to the UC.

**269.** The Authority makes these findings on the basis of the evidence and material before it, being the information provided in the Application Letter, the photograph of the drug supplied by “Mira” in its packaging (which is **Annexure 11** to the Application Letter) and the Analyst’s Certificate for Drug Exhibit number X00002468281 indicating that the substance provided to the UC on this occasion contained 0.48 grams of cocaine, with a drug purity of 36.0% (which is **Annexure 11.1** to the Application Letter).

#### Prohibited Drug Supply Event #5

**270.** The Authority is satisfied that the following events occurred on the Premises on Thursday 24 and Friday 25 September 2015, as alleged by the Applicant:

- On 24 September 2015, the UC sent a text message to “Mira’s” mobile telephone but “Mira” did not reply.

- At 9:18pm on Friday 25 September 2015, a UC attended the Premises and engaged in a conversation with “Mira” about a private dance. The UC negotiated the purchase of 1 gram of cocaine in exchange for \$350 cash.
- “Mira” directed the UC to a private dance room where she handed him a small bag containing 0.99 grams of cocaine.
- “Mira” confirmed receipt of the text message the day before, but told the UC she did not like to talk about drug supply via phone. “Mira” told the UC that facilities are available to purchase drugs at the Premises using a credit card.

**271.** The Authority makes these findings on the basis of the evidence and material before it, being the information provided in the Application Letter, the photograph of the drug supplied by “Mira” in its packaging (which is **Annexure 12** to the Application Letter) and the Analyst’s Certificate for Drug Exhibit number XD000001021 indicating that the substance provided to the UC on this occasion contained 0.73 grams of cocaine, with a drug purity of 50.5% (which is **Annexure 12.1** to the Application Letter).

#### Prohibited Drug Supply Event #6

**272.** The Authority is satisfied that the following events occurred on the Premises on Thursday 8 October 2015, as alleged by the Applicant:

- On Thursday 8 October 2015, a UC attended the Premises and engaged in conversation with waitress “Tash”. “Tash” agreed to supply 1 gram of cocaine in exchange for \$350 cash.
- “Tash” directed the UC into a private dance room where she gave the UC a small plastic bag containing 0.86 grams of cocaine and provided the UC with two mobile telephone numbers.
- “Tash” told the UC that the cocaine is organised by “Steve” in the front office.

**273.** The Authority makes these findings on the basis of the evidence and material before it, being the information provided in the Application Letter and the photograph of the drug in its packaging that was supplied to the UC on this occasion by “Tash” (which is **Annexure 13** to the Application Letter).

#### Prohibited Drug Supply Event #7

**274.** The Authority is satisfied that the following events occurred on the Premises on Friday 9 October 2015, as alleged by the Applicant:

- At about 12:07am on Friday 9 October 2015, the UC entered the Premises and engaged in a conversation with dancer “Prudence”, who agreed to supply 1 gram of cocaine.
- “Prudence” took \$350 cash from the UC before having a conversation with “Tash”. “Prudence” and the UC walked to a private dance room where “Tash” supplied 0.83 grams of cocaine.
- “Prudence” performed a private dance for undercover Police, told them her name was “Prudence” and provided her mobile telephone number.



**275.** The Authority makes these findings on the basis of the evidence and material before it, being the information provided in the Application Letter and the photograph of the drug in its packaging that was supplied to the UC by “Prudence” and “Tash” on this occasion (which is **Annexure 14** to the Application Letter).

#### Prohibited Drug Supply Event #8

**276.** The Authority is satisfied that the following events occurred on the Premises on Friday 9 October 2015, as alleged by the Applicant:

- At 10:03pm on Friday 9 October 2015, undercover Police entered the Premises and engaged in conversation with “Prudence” to buy 1 gram of cocaine for \$400. “Prudence” had a conversation with “Tash”.
- “Tash” then supplied 0.69 grams of cocaine to UC Police in a private dance room.

**277.** The Authority makes these findings on the basis of the evidence and material before it, being the information provided in the Application Letter and the photograph of the drug in its packaging that was supplied to the UC by “Prudence” and “Tash” on this occasion (which is **Annexure 15** to the Application Letter).

#### Prohibited Drug Supply Event #9

**278.** The Authority is satisfied that the following events occurred on the Premises on Thursday 3 December 2015, as alleged by the Applicant:

- At about 10:38pm on 3 December 2015, the UC entered the Premises.
- At 11:16pm the UC met with “Jade” in the main bar area. The UC engaged in a conversation with “Jade” and negotiated to buy 1 gram of cocaine.
- “Jade” met the UC inside the female toilets, where she supplied 0.75 grams of cocaine for \$300.

**279.** The Authority makes these findings on the basis of the evidence and material before it, being the information provided in the Application Letter and the photograph of the drug in its packaging that was supplied to the UC by “Jade” on this occasion (which is **Annexure 16** to the Application Letter).

#### Prohibited Drug Supply Event #10

**280.** The Authority is satisfied that the following events occurred on the Premises on Thursday 3 December 2015, as alleged by the Applicant:

- At 10:29pm on 3 December 2015, “Jade” met with the UC on the smoking balcony.
- The UC operative asked if “Jade” could supply an “8 ball” (3.5 grams) of cocaine. “Jade” told the UC that she would have to ask management and left the smoking balcony. “Jade” returned a short time later and told the UC she could not supply an 8 ball.

- The UC then asked if she could supply 5 bags (5 grams). “Jade” said she could do 5 bags but would have to get it from management and it may take an hour. The UC said that was too long to wait.
- “Jade” told the UC that she could do 2 bags (2 grams) now and the UC agreed to take 2 bags as a sample.
- “Jade” met the UC in the female toilets, where she supplied 1.42 grams of cocaine for \$700 cash.

**281.** The Authority makes these findings on the basis of the evidence and material before it, being the information provided in the Application Letter and the photograph of the drug in its packaging that was supplied to the UC by “Jade” on this occasion (which is **Annexure 17** to the Application Letter).

#### Prohibited Drug Supply Event #11

**282.** The Authority is satisfied that the following events occurred on the Premises on Thursday 10 December 2015, as alleged by the Applicant:

- At about 10:18pm on 10 December 2015, the UC entered the Premises.
- The female UC approached the Approved High Risk Manager, Steve Lekoski, and asked if “Jade” was working. Mr Lekoski said no and the UC asked Mr Lekoski if he could help her out. Mr Lekoski said to the UC, “Same as last week?”, then told the UC he would send someone to see her.
- About 30 minutes later the male UC approached Mr Lekoski and asked if he could “help us out”. Mr Lekoski told the UC he would send someone.
- A short time later, RSA Marshal Mr Vincent approached the UC and said, “I believe you need somebody to help you”. Mr Vincent then met the male UC in the male toilets and supplied him with one bag of cocaine in exchange for \$350 cash.
- The male UC asked for another three bags of cocaine. At 11:25pm, Mr Vincent entered the bar from level 2, nodded to the male UC and walked into the toilets.
- Inside the toilet, Mr Vincent supplied three bags of cocaine in exchange for \$1,050. This transaction occurred in front of another patron who said, “I can’t believe you are doing this”.
- The total weight of the four bags of cocaine, including packaging, is 4.90 grams.

**283.** The Authority makes these findings on the basis of the evidence and material before it, being the information provided in the Application Letter and the photograph of the drug in its packaging that was supplied to the UC by RSA Marshal Vincent on this occasion (which is **Annexure 18** to the Application Letter).

## Prohibited Drug Supply Event #12

**284.** The Authority is satisfied that the following events occurred on the Premises on Saturday 19 December 2015, as alleged by the Applicant:

- At about 10:15pm on Saturday 19 December 2015, the UC entered the Premises.
- The UC engaged in a conversation with RSA Marshal Mr Vincent who supplied 1 gram of cocaine to the UC in exchange for \$350 cash.

**285.** The Authority makes these findings on the basis of the evidence and material before it, being the information provided by the Applicant in the Application Letter.

## Further Drug Supply Events

**286.** The Authority is further satisfied, on the basis of the information provided in the Application Letter, that at about 11:00pm on 19 December 2015, Kings Cross Police executed Search Warrant number 2626/2015 on the Premises. As a result of this search warrant, dancer "Jade" (Ms Colquitt) and RSA Marshal (Mr Vincent) were arrested and charged with supplying prohibited drugs.

**287.** The Authority is satisfied, as alleged by the Applicant, that on 10 December 2015 the Licensee, Mr Gibson was not on duty and that Mr Steven Lekoski was, for the purposes of section 91(1A) and 91(2) of the Act, the licensee who has permitted the Premises to be used for the sale of a prohibited drug under sections 74(1) and 74(2) of the Act. The Authority makes this finding on the basis of the information provided in the Application Letter and the Premises staff list for the evening of 10 December 2015 (**Annexure 19** to the Application Letter).

**288.** The Authority is satisfied, as alleged by the Applicant, that Mr Lekoski has been involved in drug supply from within the Premises over an extended period of time. The Authority makes this finding on the basis of the information provided in the Application Letter and *Crimestoppers* Report number IR59250726 (**Annexure 20** to the Application Letter) which indicates that Mr Lekoski and two other males were bringing prohibited drugs into the Premises.

**289.** The Authority is satisfied, as alleged by the Applicant, that throughout Strike Force Dickson and while gathering evidence to make an application for the Controlled Operation, surveillance Police were regularly approached by strippers and asked if they wanted to buy prohibited drugs. The Authority makes this finding on the basis of the information provided in the Application Letter and the statement from Detective Sergeant Kurt Hayward of Kings Cross Detectives dated 17 December 2015 (**Annexure 21** to the Application Letter).

**290.** The Authority notes that between August and December 2013, Kings Cross Police conducted Controlled Operation 13/197 under the reference "Strike Force Dalmatia", which was an investigation into the sale of prohibited drugs in licensed premises and adult entertainment venues in Kings Cross.

**291.** The Authority is satisfied that the following events occurred on the Premises on Friday 2 and Saturday 3 August 2013, as alleged by the Applicant:

- Undercover Police operatives were deployed at Bada Bing Nightspot on two occasions on 2 and 3 August 2013.
- Between 10:49pm and 11:32pm on Friday 2 August 2013, Vlasta (a Czech national who was working as a stripper on the Premises at the time) was monitored by Police as she supplied an undercover Police officer with 0.51 grams of cocaine. The undercover officer paid \$350 for what Vlasta purported was 1 gram of the prohibited drug.
- Between 10:49pm and 11:32pm on Saturday 3 August 2013, Vlasta was monitored by Police as she supplied an undercover Police officer with 0.56 grams of cocaine. The undercover officer paid \$350 for what Vlasta purported was 1 gram of the prohibited drug.

**292.** The Authority makes this finding on the basis of the Application Letter and the information recorded by Police officers in Police COPS Report number E53449726 dated 18 December 2013 (**Annexure 22** to the Application Letter) in relation to the events of 2 and 3 August 2013.

**293.** The Authority is satisfied that the following events occurred on the Premises on Tuesday 24 November 2015, as alleged by the Applicant:

- On 24 November 2015, two patrons attended the Premises and engaged a stripper for a private dance.
- During the dance, the stripper offered the patron drugs to the value of \$350. The offer was declined by the patron as he thought it was too expensive.
- The patron remarked that he had recorded the offer to supply drugs. As a result, both patrons were removed from the Premises by a male who claimed to be a manager.
- The victim told Police that as he was getting into a taxi the manager said to him, "Say one word and I will see you in your grave".
- The patron was intimidated by this statement and attended Balmain Police Station to report the matter.

**294.** The Authority makes this finding on the basis of the Application Letter and the information recorded by Police officers in Police COPS Report number E559474313 dated 24 November 2015 (**Annexure 23** to the Application Letter) in relation to the events of 24 November 2015.

**295.** The Authority is satisfied, on the basis of its findings on Prohibited Drug Supply Event number 11, that a serious breach of the Act, being a breach of section 74(1)(b) of the Act, has occurred on the Premises.

**296.** The Authority is satisfied, on the basis of its findings on Prohibited Drug Supply Event number 11, that a serious breach of the Act, being a breach of section 74(2) of the Act, has occurred on the Premises.

- 297.** The Authority is satisfied, on the basis of its findings on Prohibited Drug Supply Events numbered 1 through 12 that a serious breach of the Act, being a breach of section 74(3) of the Act, has occurred on the Premises.
- 298.** The Authority is satisfied, on the basis of its findings on Prohibited Drug Supply Events numbered 1 through 12 that a serious breach of the Act, being a breach of section 74(4) of the Act, has occurred on the Premises.

**Has there been “permission” by a relevant person of the possession, supply or use of prohibited drugs on the Premises?**

- 299.** The Applicant submits that seven employees of the licensee, including an approved high risk venue manager, have permitted the sale and supply of prohibited drugs on the licensed premises on 12 occasions between September and December 2015. These are serious breaches of the *Liquor Act*.
- 300.** Further, the Applicant submits that on 10 December 2015, 4.90 grams of cocaine were supplied to an undercover Police officer by an RSA Marshal on instructions from an approved high risk venue manager (Mr Lekoski), who, in the absence of the licensee, is in effect the licensee of a licensed premises.
- 301.** The Applicant contends that at the beginning of Strike Force Dickson, undercover Police officers were able to purchase prohibited drugs inside the Premises from a “cold start” – meaning that Police merely asked the dancers if they could buy drugs on the Premises. Police were not introduced to the dancers by a trusted or known customer or associate, as is usually the case. Furthermore, throughout the course of this operation, surveillance Police were frequently asked by strippers if they wanted to buy cocaine.
- 302.** The Applicant contends that when it became clear that the undercover Police operatives had money to spend, and in particular cash, staff volunteered information about the availability of “enhanced services” which could be provided to patrons off the licensed premises (upstairs on level 2) by staff at the Premises.
- 303.** The Applicant submits that the evidence provided in this Application has demonstrated that “all levels of management are complicit in the illegal activities” taking place on the Premises. The Applicant submits that employees of the licensed business have made it clear that Kings Cross Police are unaware that rooms on level 2 may be used by patrons to partake in unspecified activities. The Applicant submits that this suggests that the activities being spoken about on level 2 would not pass scrutiny by Police.
- 304.** The Applicant further submits that the design of the building enables employees of the business conducted on the Premises to carry on illegal activities on level 2 of the building without fear of scrutiny by Police or regulatory authorities, which “hampers traditional methods of investigation into criminal activities within the Premises”.
- 305.** Furthermore, the Applicant submits that the evidence provided by Police demonstrates that employees regularly breach licence conditions such as CCTV and not scanning in associates whom Police will allege are consuming drugs on the Premises or bringing drugs into the Premises to hide the criminal activities taking place within the Premises.
- 306.** The Applicant contends that undercover Police were given mobile phone numbers to prearrange drug supply and were told to use code when talking or texting (about

drugs) on the phone. When undercover Police asked for larger amounts of a drug they were told only to communicate via an “app” and the negotiation proceeded straight to management.

307. The Applicant submits that this conduct is indicative of the confidence that employees on the Premises have in their drug supply procedures. It suggests an “entrenched and well established methodology which demonstrates an extreme and continuing risk of serious breaches of the Act occurring”.
308. The Applicant submits that the management culture on the Premises creates a “permissive environment” in which prohibited drugs are just another commodity to which patrons and staff have easy access and that the information provided in this Application demonstrates an “extreme risk” of drug supply occurring on the Premises. The Applicant contends that the supply of prohibited drugs has become a “significant income stream” for the business.
309. The Authority is satisfied that serious breaches of the Act have been established by the Applicant on the basis of the evidence or material provided with respect to the conduct of the employed strippers, employed RSA Marshal and the Approved High Risk Manager on the Premises as noted above.
310. The Authority is further satisfied, on the basis of the information provided in the Application Letter and the Authority's findings with respect to the conduct of Mr Gibson that, on the balance of probabilities, he permitted the possession and/or use of a substance suspected of being a prohibited drug, cocaine, on the Premises contrary to section 74(2) of the Act. Alternatively, he permitted the sale of a substance suspected of being a prohibited drug, cocaine, contrary to section 74(1)(b) of the Act.
311. While the Act does not define what “permission” by a licensee entails for the purposes of section 74 of the Act, the following guidance may be obtained from the common law:

*A person cannot permit a thing to be done unless it is done with his or her knowledge (Somerset v Wade [1894] 1 QB 574; [1891-4] All ER Rep 1228) but knowledge includes the state of mind of an individual who shuts their eyes to the obvious and allows their servant to do something in the circumstances where a contravention is likely, not caring whether a contravention takes place or not (Goldsmith v Deakin (1933) 150 LT 157; [1933] All ER Rep 102; Prosser v Richings [1936] 2 All ER 1627; Churchill v Norris (1938) 158 LT 255).*

*If the person delegates authority to a servant or agent, then they are liable if the person in charge knows, connives at or wilfully shuts their eyes to the illegal act, or but for gross negligence ought to have known of the illegal act: Bosley v Davies (1875) QBD 84; Redgate v Haynes (1876) 1 QBD 89; Emary v Nolloth [1903] 2 KB 264; [1900-3] All ER Rep 606. In Allen v Whitehead [1930] 1 KB 211; [1929] All ER Rep 13, it was held that inasmuch as the knowledge of the manager must be imputed to the employer.*

*In Adelaide City Corp v Australasian Performing Right Assoc Ltd (1928) 40 CLR 481; 34 ALR 127; 2 ALJR 35, Knox CJ said at 487:*

*Indifference or omission is “permission” within the plain meaning of that word where the party charged (1) knows or has reason to anticipate or suspect that the particular act is to be or is likely to be done, (2) has the power to prevent, (3) makes the fault in some duty of control or interference arising out of the circumstances of the case, and (4) thereby failed to prevent it. Knowledge of*

*something likely to be done in the future may suffice, at least if that knowledge rises to the level of “shutting one’s eyes to the obvious”.*

*In Chappel v A Ross & Sons Pty Ltd [1969] VR 376, Winneke CJ and Smith J said at 382:*

*[Permitting] is not only a right or capacity on the part of the permittor to prevent the contravention, but also a state of mind amounting to consent to, or acquiescence in, the contravention. And consent or acquiescence must include an element of knowledge or foresight. Actual knowledge of the contravention is being or will be committed would plainly be sufficient. Likewise, we think a belief that a contravention is highly likely or probable would suffice. The weight of judicial authority, in our opinion, supports this view. For these reasons, “permission”, in our opinion, cannot be equated with a careless or negligent failure to prevent a contravention.*

**312.** The Authority is also aware of the New South Wales Court of Criminal Appeal judgment in *R v Jasper* [2003] NSWCCA 139 A Crim 329 which the Authority notes was an appeal arising from the prosecution of a corrupt Police officer under the *Drug Misuse and Trafficking Act 1985*. At issue was the meaning of “permitting” or “suffering” the supply of prohibited drugs.

**313.** At paragraphs 22 and 23 of that judgment His Honour Mason P made the following observations:

*The very fact that each word [permit and suffer] is used in the present definition points against a complete identity of the meaning. As presently advised, I see nothing in the context to displace the reasoning in Sanewski where Kelly SPJ (at 378) and Shepherdson J (at 379-380) suggested that where the words are juxtaposed “suffer” carries a more passive connotation, meaning passively or implicitly allowing an act to take place as distinct from actively or expressly allowing it (i.e. “permitting” it).*

...

*A person does not suffer or permit conduct over which he or she has no control or of which he or she is ignorant. For a person to “permit” or “suffer” another to sell and distribute etc. prohibited drugs requires more than awareness of the act in question.*

**314.** The Authority is not purporting to find whether any person is guilty of an offence to the criminal standard of proof. It is deciding whether, on the civil standard of proof and taking appropriate care when reaching that state of satisfaction (given the substantial adverse consequences for the Business Owner, its staff and the Premises Owner) that a serious breach of the Act either has occurred, or is likely to occur, and whether closure of the Premises is necessary to prevent or reduce a significant threat to the public interest.

**315.** The Authority notes the ordinary meaning in which “permit” was explained by the High Court of Australia in *Adelaide City Corp v Australian Performing Rights Association* (cited above). It is satisfied that conduct engaged in by the Licensee (Mr Kenneth Gibson) and the Approved High Risk Manager (Mr Steven Lekoski) falls within this notion of what “permission” entails.

**316.** A question of statutory interpretation arises as to whether the words “employee” and “agent” as they appear in subsections 74(3)(b) and 74(4) of the Act simply mean an employee or an agent or whether they should be taken to mean “employee in charge of the licensed premises” or “agent in charge of the licensed premises”.

- 317.** While the issue is not without doubt, it is the Authority's view that an employee or agent does not also have to be in charge of the licensed premises for the offence to be committed.
- 318.** The purpose of this provision is to capture the conduct of persons who are not in charge of licensed premises and permit the relevant conduct to occur. The use of "agent" addresses the prospect of an independent contractor, such as a security guard, engaging in the proscribed conduct while not actually in charge of the licensed premises.
- 319.** The Authority is further satisfied that Mr Lekoski, an agent of the licensee, "permitted" the possession, use and supply of prohibited drugs on the Premises contrary to sections 74(3) and 74(4) of the Act while he was responsible for the Premises in respect of the adverse incidents detected by Police that are the subject of this Application.
- 320.** In reaching satisfaction that serious breaches of section 74 of the Act have occurred, the Authority has also had regard to the scale of the venue, which although described by the Applicant as a "small" venue, has an apparent patron capacity of 300 persons (according to the Applicant). In submissions in reply, the Applicant referred to the Authority's December 2013 decision with regard to the Premises under section 51(9) of the Act, when the Authority was satisfied, on the basis of information from the then business owner, that the Premises had a patron capacity of 220. The Authority accepts, on the basis of the information provided by the Applicant that the patron capacity is from 220 to 300, but does not accept the Applicant's characterisation of the Premises as a "small" venue. In relative terms it is a licensed premises of small to medium scale.
- 321.** Having regard to this, and the layout of the Premises evident from the Application Material, including the video footage provided by the Applicant, the Authority is satisfied that the risk of future offences involving the possession, supply or use of prohibited drugs on the Premises is ongoing and substantial and needs to be addressed.
- 322.** The evidence as to the flagrancy of the use, possession or supply of cocaine on the Premises by a number of employees, including senior persons in control of the licensed business, which was observable by undercover Police without any apparent difficulty; the ease with which undercover Police were able to negotiate and procure the supply of prohibited drugs to them on the Premises by employees of the licensed business; and the movement of patrons and employees of the licensed business from the licensed area to the level 2 area of the building where they were able to openly use cocaine (albeit outside of the licensed premises) all establish permission of the prohibited drug conduct and the seriousness of the breaches of the Act.
- 323.** The Authority has considered the contention advanced by the Applicant that "all levels of management are complicit in the illegal activities" taking place on the Premises. The Authority is satisfied that Mr Gibson (when licensee), Mr Rustom (when licensee) and Mr Lekoski (when Approved High Risk Manager) likely permitted the relevant misconduct while they were respectively in charge of the Premises. The allegation that "all levels of management" is imprecisely stated but there is considerable evidence that persons in key positions of responsibility for control of the business conducted on the Premises permitted the relevant conduct. It is unnecessary for the Authority to find



whether the broader contention regarding “all levels of management” is established for the purposes of determining this Application.

### **Alleged Breaches of Licence Conditions in relation to CCTV**

- 324.** The Authority is satisfied, as alleged by the Applicant, that prohibited drug supply has taken place in areas of the Premises that are not covered by CCTV footage. When drugs were supplied in areas covered by CCTV footage (private dance rooms) the CCTV recordings of these areas were not provided when requested by Police.
- 325.** The Authority is satisfied that on each occasion, the (then) licensee provided Detective Carter with CCTV recordings from all internal cameras with the exception of the recordings from the cameras located inside the four private dance rooms, the rear stairs and the street frontage on Kellett Street.
- 326.** The Authority is satisfied that on 3 November 2015, Detective Carter spoke with Licensing Police in relation to Strike Force Dickson. Licensing Police viewed the CCTV footage given to Detective Carter and pointed out that footage from the private dance rooms had not been produced. The Licensee told Detective Carter that footage from the private rooms is not usually given to Police when footage is requested.
- 327.** The Authority is satisfied that the Licensee complied with subsequent demands for CCTV recordings by Detective Carter; however the files provided were corrupt and unable to be played by Police.
- 328.** The Authority accepts the Applicant’s contention that, prior to the commencement of Part 5A of the *Liquor Regulation*, the private rooms were not covered by CCTV and is satisfied, as alleged by the Applicant, that this conduct was either designed to, or had the effect of concealing from detection the conduct within these private rooms – including drug supply and breach of licence conditions.
- 329.** The Authority is satisfied that on five occasions, undercover Police were supplied with prohibited drugs by dancers inside these private dance rooms.
- 330.** The Authority is satisfied, on the basis of the Applicant’s submission, that since the introduction of the *Kings Cross Plan of Management* in 2012 and the special licence conditions for licensed venues in Kings Cross, Police have insisted that CCTV cameras be installed inside the private dance rooms because they are areas accessible to the public.
- 331.** The Authority is satisfied, as alleged by the Applicant, that by the Licensee’s own admission recordings were withheld by the Licensee from Police unless specifically requested.
- 332.** The Authority makes the above findings on the basis of the information provided in the Application Letter and the supporting evidence contained in **Annexure 24** to the Application Letter, which comprises the Forms of Demand for the production of material made under the *Gaming and Liquor Administration Act 2007* served on the Licensee on 29 September 2015, 30 September 2015 and 14 October 2015 and the statements made by Detective Sergeant Mark Carter dated 26 September 2015, 1 October 2015 and 20 October 2015 in relation to requests for CCTV.

- 333.** The Authority is further satisfied that, as alleged by the Applicant, following the arrest of Mr Scott Lavers in Kellett Street on 18 May 2015, Police served a Form of Demand upon the (then) licensee of the Premises, Mr Abdul Rustom, requiring the production of CCTV recordings of all entry and exit points on the Premises, the footpath immediately adjacent to the Premises and all publicly accessible areas (other than the toilets) from 11:00pm to 1:30am on 16 May 2015, 11:30pm until 1:30am on 27 May 2015, 10:00pm to 11:30pm on 31 May 2015 and from 10:00pm until 11:59pm on 1 June 2015. The Authority is satisfied that CCTV footage from all cameras on the Premises was provided, with the exception of the private rooms and the rear stairs.
- 334.** The Authority makes the above findings on the basis of the information provided in the Application Letter, the copy of the Form of Demand issued by Police on this occasion (**Annexure 25** to the Application Letter) and the CCTV footage that was copied to a USB storage device and provided to the Authority by Police.
- 335.** The Authority is satisfied, as alleged by the Applicant, that on 21 May 2015, following a complaint about the use of the Kings Cross ID Scanner on the Premises, Police served a Form of Demand on the (then) licensee, Mr Abdul Rustom, requesting a copy of CCTV recordings from all entry and exit points on the Premises, the footpath immediately adjacent to the Premises and all publicly accessible areas (other than the toilets) from 9:00pm on 17 May 2015 to 3:00am on 18 May 2015. An 8GB USB device was provided to Mr Rustom to assist with this request. Upon receipt of the footage, Police observed that CCTV recordings of the private dance rooms and the rear stairs had not been produced.
- 336.** The Authority is satisfied, as alleged by the Applicant, that on 4 June 2015, Police issued a further Form of Demand seeking these CCTV recordings. This second Form of Demand was complied with.
- 337.** The Authority makes the above findings on the basis of the information provided in the Application Letter, the copies of the Forms of Demand seeking CCTV recordings issued by NSW Police to the (then) licensee Mr Rustom on 21 May 2015 and 4 June 2015 respectively (**Annexure 26** to the Application Letter) and the CCTV footage that was copied to a USB storage device and provided to the Authority by Police.
- 338.** On the basis of all of the above findings, the Authority is satisfied, on the balance of probabilities, that serious and repeated breaches of clause 53H of the Regulation in relation to CCTV requirements have occurred or are likely to have occurred, contrary to section 11(2) of the Act.
- 339.** The Authority is satisfied, as alleged by the Applicant and in the context of the facts outlined in relation to this Application, that the Licensee Mr Gibson's and the former licensee Mr Rustom's repeated acts or omissions contrary to the requirements of this licence condition amounts to a serious breach of section 11 of the *Liquor Act*.

#### **Alleged Breaches of Licence Condition Restricting Access between the Licensed Area and Other Parts of the Building**

- 340.** The Authority is satisfied, on the basis of the Authority's *OneGov* licence record for the Premises, that the liquor licence for the Premises is subject to the following licence condition:

*There is to be no physical access from any part of the licensed premises to any other part of the building or adjoining buildings to the licensed premises unless approved for the purpose of an office and storage.*

- 341.** The Authority is satisfied, on the basis of the email from Mr Dimitri Argeres, Acting Manager of Assessments and Analysis within the Office of Liquor, Gaming and Racing to Police dated 16 December 2015 (**Annexure 27** to the Application Letter), that there is no record of any application made by Bada Bing Nightspot to use level 2 of the building as an office or storage area.
- 342.** The Authority is satisfied, on the basis of the information provided in the Application Letter, that undercover Police have been told by dancers that level 2 is available to “select patrons” to be used for “any activity” they may wish to engage in, with the exception of sex with the strippers. The dancers told Police that an EFTPOS machine was available to process transactions carried out with respect to “activities” taking place on level 2. This EFTPOS machine was subsequently seized during the execution by Police of Search Warrant number 2626/15 at the completion of Strike Force Dickson on Saturday 19 December 2015.
- 343.** The Authority is satisfied, as alleged by the Applicant, and on the basis of the information provided in the Application Letter and CCTV recordings provided by the Applicant to the Authority, that Police have observed known drug supplier, Mr Scott Lavers, accessing level 2 of the Premises unaccompanied by any member of staff of the licensed business. The Authority is further satisfied that Police also observed a former licensee accompanying a “patched” member of the *Bandidos* OMCG and his group up to level 2.
- 344.** The Authority is satisfied, as alleged by the Applicant, that at about 11:30pm on 15 October 2015, Police attended the Premises with NSW Fire and Rescue personnel to conduct a fire safety audit. In the office area, Police observed six people including Dimitri Papadopoulos, the son of Gary Papadopoulos. It was apparent that these people were socialising in this area of the building as alcoholic drinks were present on the tables. The Authority makes this finding on the basis of the information provided in the Application Letter and Police Information Report number I59672049 dated 15 October 2015 sourced from the NSW Police Intelligence Information System (**Annexure 28** to the Application Letter).
- 345.** The Authority is further satisfied, that on 19 May 2015, another licensee operating in the Kings Cross Precinct told Police he had refused entry to a male known as Jason Fahey on 17 May 2015 because the male produced an expired driver’s licence as identification to enter his licensed premises. An expired driver’s licence is not valid photo ID for the purpose of section 116AC(1)(a)(i) of the Act, and accordingly the invalid photo ID was not accepted by the patron ID Scanner. This (unnamed) Kings Cross licensee told Police that the male left his licensed premises and a short time later was seen to enter Bada Bing Nightspot. The Kings Cross licensee identified this male as a member of an OMCG. Police later confirmed that the male is a member of the Queensland chapter of the *Bandidos* OMCG.
- 346.** The Authority is satisfied that the following events took place on the evening of 17 May 2015, as alleged by the Applicant:

*CCTV shows Fahey enter the Premises at 21:20:04 wearing a long sleeved T-shirt and three quarter pants. He has short dark hair and professionally shaped eyebrows. He is in company of a female with long blonde hair who is wearing a waist length*

*jacket, jeans and knee high boots. Fahey removes his ID from his wallet and holds it in his right hand while gesturing and speaking to Kenneth Gibson, the current licensee (Gibson was an approved manager at the time of this incident).*

*Fahey returns his ID to his wallet before handing it over to Gibson. Gibson takes the ID in his right hand then transfers it to his left hand. Gibson appears to place the ID into the ID scanner for a brief moment before manually entering the identification details into the ID scanner. The manual entry circumvents the issue of the photo ID being expired as a manual entry does not require input of the expiry date. Fahey shakes hands with Gibson and proceeds up the stairs where he opens the door to the main bar. Inside the cash booth the former licensee, Abdul Rustom, is seen to stand up. It is apparent Fahey has tried to enter the main bar without paying the cover charge. It is apparent that at this stage the former licensee does not know the identity of Fahey. The cover charge is paid and Fahey and his female companion enter the Premises.*

*A short time later Fahey is joined by a second male and two females where they are all seated in a booth in the rear left of the Premises.*

*At 21:28:27 the former licensee receives a phone call, leaves the cash booth and walks to the bottom of the stairs where he can be seen talking to Security and speaking on his mobile phone. A short time later he runs up the stairs, enters the Premises, walks to the booth where Fahey and his group are seated and greets Fahey like a long lost friend (21:30:40). At 21:34 the former licensee serves the group a tray of drinks. The former licensee is then seen sitting in the booth speaking to Fahey. As the licensee stands up to leave, Fahey also stands up and they have a further conversation. Fahey is then seen trying to attract the attention of his male friend, gesturing him to get up. At the same time Fahey touches his nose with his hand which Police suspect is a signal to his friend that cocaine is available and the reason why Fahey appears so enthusiastic for his friend to accompany him.*

*At 21:53:10 the former licensee takes the group through the fire exit doors at the rear of the Premises. CCTV footage does not show the group exiting onto Kellett Street so it is reasonable to believe the group is taken to level 2.*

*The group returns to the licensed premises from level 2 at 22:02:21. At 22:04:21 Fahey's female companion returns to the booth from the toilet and Fahey pushes her onto one of the other females in the group. The two females begin kissing and rubbing against each other while Fahey watches on. Police contend this behaviour is unusual and it is reasonable to assume this behaviour may be because he is affected by a prohibited drug.*

*At 22:36:42 the licensee takes Fahey and his group upstairs to level 2 a second time. The group returns to the licensed premises at 22:44.*

- 347.** The Authority makes the above findings on the basis of the information provided in the Application Letter, the photograph of Mr Jason Fahey (**Annexure 29** to the Application Letter), the affidavit of Mr Michael Gianak, the director of Group Security Solutions Pty Ltd trading as *Patronscan*, the approved system provider for the Kings Cross ID Scanner system dated 10 June 2015 (**Annexure 30** to the Application Letter) and the CCTV footage pertaining to the events of 17 May 2015 as provided to the Authority by the Applicant.
- 348.** On the basis of the above findings in relation to the events of 17 May 2015, the Authority is satisfied, on the balance of probabilities, that a serious breach of section 116AC concerning licence conditions in relation to patron ID scanning requirements for high risk venues located within the Kings Cross Precinct has occurred or is likely to have occurred, contrary to section 11(2) of the Act.

- 349.** The Authority is satisfied that the following events took place on the Premises on the evening of 31 May 2015, as alleged by the Applicant:

*On 31 May 2015 Scott Lavers entered Bada Bing at 22:28:05 (the CCTV footage is 15 minutes behind real time). Lavers is wearing a light coloured collared shirt, long pants and carrying a manbag across his right shoulder. Lavers is scanned in at 10:43pm. He walks to the top of the stairs and into the main bar area at 22:28:41 where he greets the former licensee, Abdul Rustom, with a high five.*

*Rustom takes Lavers into the cash booth and they both sit down. At 22:29:33 Rustom removes notes from the cash draw [sic], hands it to Lavers and they shake hands. At 22:31:00 Lavers removes something from his manbag with his right hand and shakes hands with Rustom a second time. At 22:39:51 Rustom and Lavers leave the cash booth and Lavers walks to the bar. A barmaid pours a spirit and a mixer into a glass and hands it to Lavers. Lavers does not appear to pay for the drink. Rustom waits for Lavers at the rear of the main bar near the fire door. Lavers approaches Rustom carrying the drink and they exit the main bar through the second door of the double doors leading to the fire exit. The second door is off camera. Footage of the rear stairs and private rooms were not provided to Police, as is customary with this Premises, however the rear street frontage of Kellett Street was provided and neither Rustom nor Lavers exit the Premises and therefore it is reasonable to believe they went to level 2.*

- 350.** The Authority makes these findings on the basis of the information provided in the Application Letter and the CCTV footage pertaining to the events of 31 May 2015 as provided to the Authority by the Applicant.

- 351.** The Authority is satisfied that the following events occurred on the Premises on the evening of 1 June 2015, as alleged by the Applicant:

*On 1 June 2015 Scott Lavers scanned in to the Premises at 10:35pm (22:19:22 CCTV time). At the time he was wearing a thigh length coat, long pants and carrying a manbag across his right shoulder. Lavers walked up the stairs and stood outside the cash booth for some time talking on his phone. Lavers left the Premises at 22:25:01 (CCTV time).*

*On 1 June 2015 Scott Lavers approaches the Premises from the east and stands on the footpath to the right of the principal entry door of the Premises. Lavers is wearing the same clothes worn previously. Lavers stands to the right of the front door then disappears off camera 2 at 22:53:25 and can be seen on camera 1 walking north onto Darlington Road. At 22:54:14 Lavers approaches the Premises from Darlington Road with Aleksander Josifovsky who is employed at the Premises in an unknown capacity.*

*Josifovsky is described as having short dark hair and is wearing a light coloured hoodie and long pants. Josifovsky shakes hands with the security guard in the fluorescent vest and gives him a hug. Josifovsky is not scanned in to the Premises which indicates to Police that he is working on the evening of 1 June 2015. Lavers is scanned in to the Premises at 11:10pm (22:52:53 CCTV time).*

*Josifovsky walks to the top of the stairs and shakes hands with a person inside the cash booth. Lavers approaches the cash booth and both males stand at the cash booth for a short time. Lavers and Josifovsky enter the door into the main bar at 22:55:44 and shake hands with two unknown males seated near the door. The first male is described as bald, wearing a long sleeve T-shirt with the sleeves rolled up to his elbows, long pants and trainers carrying a manbag across his right shoulder. The second male is described as overweight, possibly Islander, wearing a peak cap, sloppy joe, long pants and carrying a manbag over his left shoulder.*

*Lavers goes to the bar and orders a drink. While the bar maid makes a drink for Lavers, Lavers shakes hands with one of the males seated near the door. Lavers goes back to the bar and is handed his drink. No payment is made for the drink at this time.*

*The four males walk to the rear of the Premises and go up the stairs at 22:56:49. At 23:18:58 the two unknown males return to the main bar. The overweight male opens the door to the cash booth and steps inside, taking a seat behind the desk. A short time later the bald male enters the cash booth and stands talking to the overweight male seated behind the desk.*

*At 23:21:13 Lavers, Josifovsky and an unknown male who is wearing a hat return to the main bar through the fire exit door. Josifovsky speaks to the male with the bald head for a short time. The unknown male wearing the hat enters the cash booth.*

*The bald male leaves the cash booth at 23:21:07 and walks back into the bar. At 23:22:23 Lavers walks out to the smoking balcony with his drink to speak on the phone.*

*At 23:24:56 the bald male orders one mixed drink and one shot from the bar. He gives the mixed drink to the overweight male and drinks the shot himself. It is clear the waitress does not expect the bald male to pay for the drinks however he insists, pushing the money toward her a number of times. She gives him change which he then returns to her by putting it down the front of her T-shirt.*

*At 23:26:41 Scott Lavers goes into the toilet and the bald male leaves the bar area through the rear fire exit door. The bald male emerges onto Kellett Street at 23:26:57 and walks north on Kellett Street. At 23:27:05 Aleksander Josifovsky exits the main bar through the fire exit door, it appears that he is on a mobile phone. At 23:27:14 Aleksander Josifovsky emerges onto Kellett Street via the fire exit door and stands there propping it open until the bald male returns to the Premises and re-enters at 23:28:18 without scanning in. Aleksander Josifovsky and the bald male re-enter the main bar area at 23:28:35 where Josifovsky enters the cash booth while the bald male stands at the cash booth door holding it open.*

*Lavers re-enters the main bar from the toilet area at 23:32:04 and walks to the cash booth and opens the door.*

*At 23:36:00 the bald man and the overweight male re-enter the fire exit doors. Neither male exits onto Kellett Street so it is reasonable to assume that both males have gone to level 2. At 23:41:07 Aleksander Josifovsky and Scott Lavers exit the main bar through the rear fire exit. At 23:49:14 Lavers, who is now wearing a T-shirt with the manbag, returns to the main bar area and walks to the bar where he is served two mixed drinks which he does not appear to pay for at this time. Lavers re-enters the rear fire exit door, kicking it open as he is carrying the drinks in his hands at 23:50:20. The CCTV ends prior to the four males returning to the bar area.*

**352.** The Authority makes these findings on the basis of the information provided in the Application Letter and the CCTV footage provided to Police by the former licensee of the Premises Mr Rustom.

**353.** The Authority is satisfied that the following events occurred on the Premises on the evening of 5 June 2015, as alleged by the Applicant:

- At about 10:00pm on 5 June 2015, Police were conducting surveillance inside the Premises.
- At about 11:30pm, Police observed Scott Lavers walk into the Premises via the principal entry doors on Darlinghurst Road and walk directly to the rear fire door which he entered.

- Police noted that there is a sign on this door which reads “No Entry”.
  - Police saw Mr Lavers re-enter the bar area from the fire exit at 12:30am on 6 June 2015. At this time, there was no emergency, nor had a fire alarm warning been relayed to patrons inside the Premises.
- 354.** The Authority makes these findings on the basis of the information provided in the Application Letter and the CCTV footage provided by the (then) licensee, Mr Rustom.
- 355.** The Authority is satisfied, as alleged by the Applicant, that level 2 is actually being used for purposes other than the purpose potentially allowed by this licence condition.
- 356.** The Authority notes that a licence condition was imposed by the former New South Wales Licensing Court upon the licence requiring that level 2 of the building only be accessed, if approved, in connection with its use as an office or storeroom.
- 357.** The Authority is satisfied, as alleged by the Applicant, that this condition was imposed by the former Licensing Court in order to reduce the risk of the Premises being used by strippers to solicit patrons for sex.
- 358.** On the basis of all of the above findings, the Authority is satisfied, on the balance of probabilities, that serious and repeated breaches of a licence condition prohibiting physical access from any part of the licensed premises to any other part of the building unless approved for the purpose of an office and storage, have occurred or are likely to have occurred, contrary to section 11(2) of the Act.
- 359.** The Authority is satisfied, as alleged by the Applicant, that unexplained access to level 2 of the building by patrons of the licensed business and criminal associates, in these circumstances, and in the context of the evidence provided of widespread drug supply within the Premises, constitutes a serious breach of the *Liquor Act*, being a serious breach of a licence condition contrary to section 11(2) of the Act.
- 360.** While breach of a condition of this kind may not, in other circumstances, constitute a “serious” breach of the Act, given the evidence and material before the Authority as to use of the Level 2 room for the purposes of supply and use of prohibited drugs and given that this condition has been detected as having been contravened on numerous occasions, the Authority is satisfied that this breach constitutes a serious breach of the Act by the licensee at the relevant time.

### **Alleged Breaches of Licence Conditions Restricting Audience Participation in Live Entertainment**

- 361.** The Authority is satisfied, on the basis of the Authority’s *OneGov* licence record for the Premises, that the liquor licence for the Premises is subject to the following further licence conditions:
- *Entertainers are not to leave the defined stage or catwalk area during their performance. When leaving the stage or catwalk area at the end of the performance they are to wear at least a “G” string.*
  - *Audience participation involving physical contact or sexual activities is prohibited either on the stage or in any part of the licensed premises.*

- 362.** The Authority is satisfied, on the basis of the information provided in the Application Letter and the CCTV footage that was provided to the Authority by the Applicant, that during the course of seven (7) performances by dancers inside the private dance rooms with various dancers performing for different patrons on 17 May 2015, there was full nudity off the stage areas inside the private rooms; patrons touching the performers in a sexual way; entertainers touching, rubbing and grinding the groin area of male patrons; entertainers touching the breasts and groin area of a female patron and performers engaging in masturbation while patrons watched on.
- 363.** On the basis of the above findings, the Authority is satisfied, on the balance of probabilities, that serious and repeated breaches of licence conditions prohibiting audience participation in the adult entertainment provided on the Premises have occurred or are likely to have occurred, contrary to section 11(2) of the Act.
- 364.** While isolated or trivial contraventions of a condition requiring no contact with the performers may not be considered to amount to a serious breach of the Act in other circumstances, the repeated occurrence and the nature of the physical contact that has been established by the Applicant on the basis of the Application Material, including audio visual footage, supports a conclusion that this is a serious breach of the Act. The purpose of this condition is to ensure that patrons, affected by alcohol, do not engage in conduct that escalates into an assault upon the performers or that results in altercations between patrons and security staff.
- 365.** The repeated detection of this conduct and the nature of the contact between the performers satisfies the Authority that this practice is permitted by either the licensee or other persons in charge of the Premises. Permitting physical conduct may well be designed to, and will at least have the effect of, attracting patrons to this business at the expense of its commercial competitors.

### **Approach to Reaching Satisfaction as to Serious Breach of the Act**

- 366.** The Authority notes the comments made by O’Keefe J in *Elcham & Anor v Commissioner of Police & Ors* [2001] NSWSC 614, which was an appeal arising from a Short Term Closure Order issued in respect of the former *Embassy* nightclub in Double Bay. His Honour observed at paragraph 63:

*Whilst a single act, event or circumstance may not of itself be sufficient to establish some other act, event or circumstance which must accompany the first act, event or circumstance if breach of a relevant law is to be established, the addition of further acts, events or circumstances may provide circumstantial evidence or material that may give rise to proof of knowledge or other relevant state of mind. In **Martin v Osborne** (1936) 55 CLR 367 it was said by Dixon J, with whom Latham CJ agreed, that:*

*“If an issue is to be proved by circumstantial evidence, facts subsidiary to or connected with the main fact must be established from which the conclusion follows as a rational inference ... The circumstances which may be taken into account in this process of reasoning include all facts and matters which form constituent parts or ingredients of the transaction itself or explain or make intelligible the course of conduct pursued ... the class of acts and occurrences that may be considered includes circumstances whose relation to the fact in issue consists in the probability or increased probability, judged rationally upon common experience, that they would not be found unless the fact to be proved also existed.” (supra at 375);*

and:



*“The repetition of acts or occurrences is often the very thing which makes it probable that they are accompanied by some further fact. The frequency with which a set of circumstances recurs or the regularity with which a course of conduct is pursued may exclude, as unreasonable, any other explanation or hypothesis than the truth of the fact to be proved.” (supra at 276)*

- 367.** While the Authority notes that there is no evidence that the Licensee, Mr Gibson personally possessed, used, sold or supplied substances reasonably suspected of being prohibited drugs on the Premises, the Authority’s findings as to the possession, use and/or supply of prohibited drugs on the Premises by patrons, senior managers and other employees of the business carried on pursuant to the licence satisfies the Authority that Mr Gibson likely permitted the prohibited drug conduct on the Premises by employees contrary to section 74(1) and (2) while he held the licence or was at least so reckless as to whether or not the licensed premises was operating in compliance with section 74 of the Act with respect to prohibited drugs as to constitute “permission” of that misconduct in the relevant sense.
- 368.** The Authority is satisfied that Mr Gibson was not present on the Premises on 10 December 2015 and that Mr Lekoski, as the Approved High Risk Manager and in the absence of the Licensee on that occasion, was, pursuant to section 91(1A) and 91(2) of the Act, deemed to have the responsibilities of the licensee. The Authority is satisfied, on the balance of probabilities, that he permitted the Premises to be used for the sale of a prohibited drug contrary to sections 74(3) and 74(4) of the Act.
- 369.** The Authority is satisfied, on the basis of its above findings, that the possession, use and/or supply of prohibited drugs on the Premises was blatant. The Authority is satisfied on the evidence or material provided by the Applicant regarding the Controlled Operation conducted by Police on 19-20 December 2015 that Mr Gibson (and, in Mr Gibson’s absence, Mr Lekoski) were grossly negligent as to control of the use of prohibited drugs on the Premises. The Authority does not have the benefit of any evidence regarding what measures, if any, were actually in place and the extent to which they were implemented to detect or manage the risk of prohibited drugs on the Premises during the nights in question.
- 370.** In addition to the possession, use and/or supply of prohibited drugs on the Premises, the Authority is satisfied that the established breaches of licence conditions in relation to CCTV, access between the licensed area and other parts of the building and audience participation in live entertainment demonstrate that “serious offences” are occurring inside the Premises and there are “fundamental failures” around adequacy of management and compliance culture.
- 371.** The Authority is satisfied that the use of level 2 of the building for the purpose of selling or supplying liquor and engaging in adult entertainment in an unregulated environment gives rise to serious doubts as to whether Mr Gibson, or other persons in charge of the business at the time of the OLGR raids on 19-20 December 2015, can be relied upon to address the various ongoing regulatory risks that require careful management within a high risk licensed venue in Kings Cross.

#### **Is Closure of the Premises Necessary at this time?**

- 372.** In *Commissioner of Police v Ryan* [2007] NSWCA 196, which was an appeal against a short term closure order issued under the former *Liquor Act 1982* against the Royal Hotel in Moree, the Court of Appeal provided the following observations on the

approach to be taken by a decision maker when discerning whether a closure order is “necessary”:

*The terms upon which an order may be made under either ss 104A or 104C [of the former Liquor Act 1982] provide a clear indication that closure of the premises must be “necessary” to prevent or reduce a significant threat or risk to the public interest, as defined. In **Elcham v Commissioner of Police** (2001) 53 NSWLR 7, O’Keefe J held that “necessary” was to be understood as engaging a power to make orders which are reasonably required in order to accomplish the specific protective purposes identified: at [47]-[60], adopting a meaning “by reference to concepts of reasonableness, commonsense and appropriateness to the accomplishment of the relevant statutory purpose” (at [56]), as explained in **Pelechowski v Registrar**, Court of Appeal (NSW) (1999) 198 CLR 435 at 452 (Gaudron, Gummow and Callinan JJ), as well as other authorities to similar effect. This approach was not challenged in the present appeal and should be accepted.*

*The relevant purpose is sufficiently described as protective of the public interest or as preventative of harm to the public interest. Effectuating the purpose requires a prediction as to the existence and extent of a relevant threat or risk to the public interest. That evaluation may be based on a satisfaction that a serious breach of the Liquor Act has occurred in the past, or that such a breach is likely to occur in the future, on the premises. The threats may involve, but are not limited to, threats to public health, safety or the environment. Relevant risks may include (but are not limited to) the risk of substantial damage to property, or of serious offences being committed on the premises.*

**373.** The Authority is satisfied, on the basis of the submissions provided by the Business Owner through its solicitors, that the Business Owner has voluntarily agreed to suspend the exercise of the licence for the Premises on 23 December 2015 and has taken the following action in response to the Application:

- It has engaged the law firm *JDK Legal* to enquire of Police if there is any specific complaint against the current Licensee of being knowingly involved in the instances of drug supply identified in the Application, with a view to deciding whether the employment of the current Licensee should be terminated. The Business Owner “appreciates that responsibility for sale and supply of drugs on the Premises rests with the Licensee, even absent of any allegation of his direct involvement in such activity”.
- After discussions with Police on 18 January 2016, it has become apparent to the Business Owner that Police have significant concerns about the current Licensee (Mr Kenneth Gibson) remaining in that position. Accordingly, the Business Owner has terminated Mr Gibson’s services as licensee.
- It has also terminated the employment of the current Approved High Risk Manager (Mr Steven Lekoski), who has been identified by Police as being involved in the supply of drugs.
- It has terminated the employment of the RSA Marshal (Mr Risati Vincent), who has been clearly identified by Police as being involved in the supply of drugs.
- It has terminated the employment of former licensee (Mr Abdul Rustom) on 20 June 2015, and Mr Rustom has had no role to play in the business since that date.

- It has also terminated the services of the eight (8) entertainers referred to in the Application Material as offering to supply drugs at the venue, being the following:
  - “Mercedes”;
  - “Megan”;
  - “Kiri”;
  - “Jade”;
  - “Mira”;
  - “Tash”;
  - Prudence; and
  - “Milly”.
  
- It has terminated the services of the security company to the Business Owner, which is alleged to have been involved in the supply of drugs at the Premises (paragraph 11 of Annexure 21 to the Application Letter, which is a statement of Detective Sergeant Hayward dated 17 December 2015).
  
- It has retained Mr Chris Pickard, a former police officer, as a consultant, with a view to taking his counsel and advice as to:
  - Ways in which to prevent the Premises being the site of any further instances of drug supply. In this regard, it has already been decided that the *Plan of Management* be updated to incorporate a section on the business’s drug policy. All staff will, prior to commencing work at the Premises, be required to read the Premises’ “zero tolerance drug policy” and sign a document acknowledging that they have read the policy and will comply with it. Furthermore, any employee caught dealing in drugs on the Premises (which will include self-use) will be summarily dismissed;
  - Updating the *Plan of Management* and staff training procedures;
  - Selection of a new licensee and a new high risk approved manager; and
  - Retaining a new security company.
  
- The Business Owner proposes a condition on the licence in the following terms:
 

*For as long as Marathon Enterprises Pty Ltd is the business owner:*

*No patron is permitted access to the internal stairway connecting levels 1 and 2 except for the purpose of exiting the premises in an emergency. No patron is permitted access to level 2 of the building unless on legitimate business and in the company of the licensee, manager on duty or a director of Marathon Enterprises Pty Ltd. Nothing in this condition prevents entertainers from accessing level 2, provided that such access is solely to enable those entertainers to use the change room located on level 2.*
  
- The Business Owner further proposes to install CCTV cameras outside the door separating level 1 of the Premises from the fire stairs, and also outside the door separating level 2 from the fire stairs. This, it is submitted, will enable the Business Owner to maintain digital records of compliance with the above proposed condition. Police or other authorised officers would be able to inspect these records to ensure compliance with the condition.

- The Business Owner submits that it would agree to document the above matters in a revised *Plan of Management*, subject to further consultation with local Police and the assistance of the consultant.

- 374.** The Authority understands that the Premises remains closed at the time of this decision.
- 375.** Nevertheless, given the extent of drug possession, use and supply on the Premises found by the Authority and the Authority's satisfaction that two licensees and an approved high risk manager have likely permitted this conduct, in addition to the found repeated breaches of other licence conditions, the Authority is satisfied that permitting the Premises to trade at this point and before fundamental reforms in its management, supervision and operations are operative, would be contrary to the public interest and poses a clear risk of further serious breaches of the Act. As a result, closure of the Premises for a period of 6 months or until the fundamental reforms are operative, whichever is the earlier, is necessary to prevent or reduce a significant threat or risk to the public interest, being the supply of a prohibited drug (cocaine) on the Premises.
- 376.** The Authority notes the reference made by the Applicant in its submissions in reply to the previous regulatory action taken by the Authority in respect of the Premises. The Business Owner and the Premises Owner will be aware of the Authority's published 2013 findings on a substantial body of evidence provided by New South Wales Police collated over several years, on the adverse history of the Premises.
- 377.** In December 2013 the Authority found that a range of adverse events had occurred on or near the Premises including gun violence, the presence of organised crime figures, assaults committed by patrons and staff, patrons requiring ambulance treatment and hospitalisation at St Vincent's Hospital, the intensive consumption of Police resources to monitor and respond to disturbance, noise and disturbance from patrons and prospective patrons arguing and fighting with security guards at the entry point and public intoxication by patrons after leaving the venue.
- 378.** The Authority's findings led to the Authority reducing Bada Bing's licensed trading hours in the Authority's published decision dated 11 December 2013.
- 379.** While the Application now before the Authority is to be determined on its merits, the Authority cannot ignore the longstanding problematic history of the Premises which notably included previous conduct in breach of licence conditions restricting physical contact between strippers and patrons and requirements as to CCTV on the Premises.
- 380.** In making this decision, the Authority has had regard to the adverse financial impact that this decision will have upon the Business Owner, its staff and indirectly the Premises Owner.
- 381.** While that financial impact has not been quantified in any submissions before the Authority, the Authority is satisfied that the public interest in preventing or reducing a substantial threat to the public interest prevails over the private interests of the parties who own, operate or are employed by the licensed business on the Premises.
- 382.** It is apparent that a searching assessment of the fitness and propriety of the proposed new licensee or approved manager will be required, given the recent history of the Premises and the events that have given rise to this Application. This will also

necessitate an assessment of all persons who are closely associated with the licence or interested in the Premises.

383. The Authority is satisfied that the Premises should be closed from 8:00pm on 31 January 2016 for a period of six (6) months or until persons acceptable to the Authority are confirmed as the licensee and/or approved manager and high risk approved manager of the Premises.

## **ORDER**

384. The Authority orders, pursuant to section 84(1) of the Act, that the licensed premises known as Bada Bing Nightspot located at 70A Darlinghurst Road, Potts Point NSW 2011 (licence number LIQO624013096) be closed for a period of six (6) months from 8:00pm on 31 January 2016 **OR** until persons acceptable to the Authority are confirmed as the licensee and/or approved manager and high risk approved manager of the Premises, whichever is the earlier.

## **NOTICE OF INTENTION TO IMPOSE NEW LICENCE CONDITIONS**

385. Notwithstanding that the Authority is satisfied as to the necessity of closing the Premises for six months (or until such time as an acceptable licensee or approved manager is confirmed by the Authority) the Authority gives notice of its intention to impose the following further conditions under section 53 of the Act. These conditions are designed to address the longer term management of the business conducted on the Premises:

### ***Plan of Management***

*The licensee shall prepare, by 30 April 2016, a new Drug Policy addressing the risk of drug supply, possession and use on the Premises directed to any persons who may access the Premises. Such Policy shall be devised in consultation with NSW Police. The licensee shall provide the Authority with the approval or other comments provided by NSW Police when the Policy is furnished to the Authority.*

### ***No staff with liquor or prohibited drug convictions***

*No staff shall be employed or engaged by the business operating pursuant to the licence on the Premises who have had a prior conviction (that is not a spent conviction) for any state or federal offence, in Australia or overseas, pertaining to the possession, use, sale or supply of a "prohibited drug" (within the meaning of the Drug Misuse and Trafficking Act 1985) or any offence under the Liquor Act 2007.*

### ***Access to Level 1 and 2 of building in which Premises is situated***

- (a) no patron is permitted access to the internal stairway connecting levels 1 and 2 except for the purpose of exiting the premises in an emergency; and*
- (b) no patron is permitted access to level 2 of the building unless on legitimate business and in the company of the licensee, manager on duty or a director of Marathon Enterprises Pty Ltd.*
- (c) CCTV cameras will provide constant surveillance of the doors at the entry to the stairwells at levels 1 and 2 of the building.*

*Nothing in this condition prevents entertainers from accessing level 2, provided that such access is solely to enable those entertainers to use the change room located on level 2.*

*“patron” means anyone other than the business owner, premises owner, management, staff or agents of the business operating on the premises.*

**386.** The Business Owner and Premises Owner are invited to make written submissions on the proposed conditions, within 30 days of the date of this letter, addressed to the Chairperson of the Authority via the Authority’s General Counsel at [bryce.wilson@ilga.nsw.gov.au](mailto:bryce.wilson@ilga.nsw.gov.au).

Yours faithfully

A handwritten signature in blue ink, appearing to read 'M Brodie', is centered on a light blue rectangular background.

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