

Our Ref: L 156
Your Ref:

Senior Sergeant Jeff Dean
Legal Advisor
NSW Police Force
Alcohol and Licensing Enforcement Command
Level 8
1 Charles Street
PARRAMATTA NSW 2150

Complaint under section 139 of the *Liquor Act 2007* (“Act”) regarding the Fernhill Tavern, Port Macquarie - Licence No 24004498

Dear Senior Sergeant Dean,

BACKGROUND

1. On 23 December 2008 the Authority received your letter dated 18 December 2008 enclosing a complaint (“**Complaint**”) from Sergeant John Lawrie, Mid North Coast Licensing Coordinator (“**Complainant**”) dated 28 November 2008 regarding the operation of the Fernhill Tavern (“**Hotel**”), the former licensee Mr Gregory Baggott (“**Licensee**”) and a Close Associate of the Licensee, Mr Gary Gant (“**Close Associate**”).
2. Since 7 November 2008 the Hotel has been under new management. The Hotel is now operated by the freehold owner of the premises, Jusmell Pty Ltd (“**Jusmell**”). Jusmell terminated the lease pursuant to which the previous owner of the Hotel business, Eagles Rock and Nest Pty Ltd (“**Eagles Rock**”), occupied those premises.
3. On 2 December 2008 Jusmell lodged an application to transfer the licence from the Licensee to Mr Peter Flanagan (a director of Jusmell), which was provisionally approved on 2 March 2009.
4. The Complaint concerns the period during which Eagles Rock operated the Hotel. The Complaint specifies three grounds that are available under section 139 (3) of the Act:
 - Section 139 (3) (i) – that the Licensee is not a fit and proper person to be the holder of a licence
 - Section 139 (3) (j) – that the Close Associate is not a fit and proper person to be a close associate of a licensee
 - Section 139 (3) (s) – that the licence has not been exercised in the public interest.
5. As updated by an email from the Complainant to the Authority dated 10 March 2009, the Complaint provides material detailing several incidents of proven or alleged misconduct. The outcome of each incident is noted in bold type below:
 - (i) NSW Police “Facts Sheet” reference 35350635 regarding Gregory Alan Baggott. This document concerns offences occurring during the period June to October 2008 of:

1. Licensee allowing supervision of a business by an unauthorised person for more than 6 weeks – section 92 (1) (a) of the Act
2. Licensee subletting the right to sell liquor on premises – section 92 (1) (b) of the Act

A prosecution was commenced and on 2 February 2009 the Licensee pleaded guilty and was **fined \$1000 plus \$73 court costs on each of these two offences.**

- (ii) NSW Police “Facts Sheet” reference 3510520191 regarding Gregory Alan Baggott. This document concerns the offence of Licensee permitting intoxication on licensed premises occurring on Friday 3 October 2008 - s73 (1) (a) of the Act.

A prosecution was commenced and on 2 February 2009 the Licensee pleaded guilty and was **fined \$1000 plus \$73 court costs.**

- (iii) NSW Police “Facts Sheet” reference 34695963 regarding Gregory Alan Baggott. This document concerns the offences occurring on 6 June 2008 of:

1. Unaccompanied minor in hotel - s116B (2) (b) of the *Liquor Act 1982*
2. Minor enter a restricted area of the hotel – s116B (1) (a) of the *Liquor Act 1982*
3. Hotelier fail to display minors sign in restricted area – s116C (1) (a) of the *Liquor Act 1982.*

A prosecution was commenced and concluded on 18 August 2008 [*note: correct date of conviction was confirmed by telephone advice provided to the Authority by Police on 7 April 2009*], with the Licensee **fined \$750 plus \$75 in court costs** for each offence.

- (iv) NSW Police “Facts Sheet” reference 35190381 regarding Gregory Alan Baggott. This document concerns the offence of Licensee permitting intoxication on licensed premises occurring on 16 February 2008 contrary to s125 (1) (b) of the *Liquor Act 1982.*

A prosecution was commenced and concluded on 14 April 2008, with the **Licensee fined \$750 plus \$70 in court costs.**

- (v) Penalty Notice dated 16 October 2007 issued by the Director of Liquor and Gaming arising from an on site audit of the Hotel on 5 October 2007. The following sanctions were imposed:

1. Failure to display information on chances of winning major prize on approved gaming machine – cl 21 Gaming Machines Regulation 2002. **Penalty Notice to the Licensee for \$550**
2. Failure to provide player information brochures on use of approved gaming machines – cl 23 of the Gaming Machines Regulation 2002. **Penalty Notice to the Licensee for \$550**
3. Failure to enter into arrangements with such persons or bodies as approved by Minister for the conduct of self-exclusion schemes – section 49 of Gaming Machines Act 2001. **Penalty Notice to the Licensee for \$1100**
4. Failure to display gambling warning and problem gambling notice on approved gaming machine – cl 25 of the Gaming Machines Regulation 2002. **Penalty notice to the Licensee for \$550**
5. Failure to display a notice in part of hotel where minors are permitted to remain only in company of responsible adult – section 116 C (1) (b) Liquor Act 1982. **Notice of non-compliance notice given to Licensee**
6. Failure to prominently display all pages of the liquor license on part of premises accessible to the public during trading hours – clause 21 of Liquor Regulations 1996. **Notice of non compliance given to Licensee**
7. Failure to display the gambling notice (G-line) on an approved gaming machine – cl 25 of the Gaming Machines Regulation 2002. **Notice of non-compliance given to Licensee.**

- (vi) COPS event record No E 53318836 regarding alleged cocaine use on the Hotel premises on 3 October 2008 by Close Associate Mr Gary Gant and Mr Phil McIlwaine (one of the managers appointed by the directors of Eagles Rock and Nest Pty Ltd to assist the Licensee). A compact disc was also submitted to the Authority containing CCTV footage (“**Video**”) to which this COPS Event record relates.

No prosecution was commenced. Advice from Sergeant Lawrie provided by email to the Authority dated 10 March 2009 indicates that no prosecution will be commenced due to an “inability to prove the drug at criminal court”.

- (vii) NSW Police COPS event record No E 34433645 regarding alleged assault by Mr Adam Ogston on the licensed premises on 12 July 2008.

No prosecution was commenced. The Complaint details that the victim was reportedly reluctant to pursue a complaint.

- (viii) NSW Police COPS event record No E 33558172 regarding an unaccompanied minor being on the licensed premises on 25 April 2008 when he assaulted another person.

Penalty Notice for \$550 issued by Police to Licensee for “failure to remove unaccompanied minor from the authorised part of the hotel”.

NOTIFICATION OF THE COMPLAINT

6. On 30 January 2009 the Authority sent letters by express post to the Licensee, the Close Associate and the directors of Eagles Rock, enclosing a copy of the Complaint. The letters invited written submissions by 16 February 2009.
7. On 4 February 2009 the Authority sent a letter by express post to the directors of Jusmell, inviting Jusmell to make any written submissions by 18 February 2009.

FURTHER CORRESPONDENCE BETWEEN THE AUTHORITY AND LICENSEE

8. In response to the Complaint, the Licensee’s solicitor Mr Bob Gillroy made a written submission dated 12 February 2009 (“**Licensee’s Submission**”). The key points are:
 - The Licensee was a founding shareholder of Eagles Rock that took over the licence of the premises on 15 December 2005.
 - When nominated, the Licensee fulfilled that duty “for a period of time”
 - The Licensee subsequently was diagnosed as having Motor Neurone Disorder and in the period that followed Mr Baggott’s medical conditions progressively deteriorated.
 - During the period that followed the financial circumstances of the Hotel and the relationship between the directors of Eagles Rock deteriorated.
 - The Licensee was abandoned by his fellow directors and left with the responsibility of maintaining the Hotel without support or assistance, notwithstanding his vulnerable medical condition.
 - The Licensee negotiated with his fellow directors and shareholders with a view to:
 - (i) resigning as Licensee
 - (ii) selling his share in Eagles Rock

(iii) cutting all ties from the operation.

- On two separate occasions the Licensee prepared the documents necessary for his resignation as Licensee, submitted to the directors of Eagles Rock, but the documents were never completed and submitted to the Office of Liquor Gaming and Racing (“OLGR”).
 - The Licensee’s availability at work deteriorated as a consequence of his medical condition, and different persons took over at varying times, the responsibility of the nominee. These managers were appointed by the Sydney-based directors of Eagles Rock (Mr Gary Gant, Mr Paul Jones and Mr Wayne Kipa). The managers appointed were: Mr John Scaysbrook, appointed from 5 May 2007 for approximately 6 months; Mr Phil McIlwaine, an existing staff member who worked at the premises for a time prior to the assumption of the business by Eagles Rock [his period of appointment is not specified in the Licensee’s Submission] and Mr Patalo Mariner [his period of appointment is not specified in the Licensee’s Submission].
 - The Licensee concedes that in hindsight, it was foolish and inappropriate for the Licensee to not directly submit his resignation to OLGR. The Licensee understands that it would have been far preferable for him to have removed himself from the position of Licensee and insisted upon the support of his fellow directors.
 - The Licensee’s attempts to remove himself from that role were frustrated by the actions of the other directors.
 - From June 2007 the Licensee received no remuneration from the operations of the Hotel or Eagles Rock, although negotiations were conducted for the sale of his shareholding. Annexure A to the Licensee’s Submission is a copy of an agreement that was entered into, endorsed by the Licensee, supplied to Mr Gant, but never honoured.
 - The Licensee ultimately resigned from his role on 29 October 2008, handing a copy of a letter notifying resignation [Annexure B to the Licensee’s Submission] to Sergeant Lawrie, Mid North Coast Licensing Coordinator. No attempt was made by Eagles Nest to appoint a replacement licensee.
 - The Licensee accepts that given his present circumstance “he is not a fit and proper person to hold down the role of Licensee. His physical wellbeing is such that he cannot attend to the various duties necessary for the proper implementation and management of a Hotel.”
 - The Licensee “is remorseful that he failed to earlier resign from the role of licensee” and “is despondent about the fact that his then business friends abandoned him to a task that was beyond his capabilities given his physical condition.”
 - The Licensee has been personally liable for various Court orders including fines, for which the Licensee has been left with the burden of paying by Eagles Rock.
 - The Licensee does not and cannot work. The Licensee’s family depend upon the wages of the Licensee’s wife and supplementary payments from the Department of Social Security.
 - The Licensee asks that compassion be shown to him.
9. In its letter dated 30 January 2009 the Authority offered the Licensee an opportunity to also make oral submissions, by telephone if convenient, but that option was not taken up.
10. On 9 March 2009, the Authority wrote to Mr Gillroy, providing copies of a submission received by the Authority from Mr Gant dated 25 February 2009, plus two submissions made by lawyers for Jussmell dated 26 January 2009. The Authority sought clarification of 5 points arising from the Licensee’s Submission:

- When did the Licensee’s capacities as a result of Motor Neurone Disease deteriorate to the point when it began affecting his functions as licensee?
- When did the Sydney-based directors become aware of this deterioration in his functions?
- When did the Sydney-based directors become aware of any compliance action taken with regard to the breaches of the Liquor Act(s) identified in the Complaint?
- When did the Sydney-based directors become aware that the Licensee wanted to surrender the Licence?
- When did the Sydney- based directors become aware that the Licensee wanted to leave the business?

11. On 19 March 2009, Mr Gillroy submitted a very detailed statutory declaration sworn on 19 March 2009 by the Licensee (“**Licensee Statutory Declaration**”). All of that declaration has been considered, but the key points are:

- Para 7:

“(1) I became a Director of Eagles Rock & Nest Pty Ltd in about December 2005;

(2) I was a founding Director of the Company;

(3) At the time of creating Eagles Rock & Nest before I was aware that three friends from Sydney, Gary Gant, Wayne Kipa and Paul Jones had been looking at the prospect of acquiring an interest in a Hotel. The focus of their attention was in the Sydney Metropolitan area. I became aware that the Fernhill Tavern was on the market. I had known Gant, in particular, and Jones and Kipa from my time in the Manly/Warringah District in my youth and through the football affiliation.

I communicated to them the advices that the Fernhill Tavern was for sale, provided details of the sale price, had various negotiations with them, decided to become a Director of the Company to make an application for the purchase of the Tavern that was ultimately successful.

It was the intention that I would then act as the Licensee for the Tavern. I was the only Director who resided in Port Macquarie at the time. The other three Directors resided in Sydney. The other three Directors have engaged in other business activities.

From the time of the acquisition of the Tavern I took the role of the Licensee.”

- Para 8:

“It is to be noted that in 2001 I had been diagnosed with an illness then thought to be Motor Neurone Disease. The diagnosis had been made by Dr Blackie. Dr Blackie is a Specialist Neurologist who is based in Newcastle. Dr Blackie initially, in 2001, tentatively made the diagnosis. I was then subsequently seen by Dr Con Yiannikis in 2003 and ultimately by my present Consulting Neurologist, Prof. Dominic Rowe in June 2005.”

- Para 10:

“I had communicated to them [the Sydney-based directors] the circumstances of my condition. Prior to me taking on the role as the Licensee of the Fernhill Tavern, I had worked, until I could no longer perform the trade, as a concreter in the Port Macquarie Area. I found that my medical condition was such that I could no longer perform the duties of a concreter and I had abandoned my employment prior to taking on the role as the Licensee of the Fernhill Tavern.”

- Para 11:

“In the period from June 2005 there has been significant deterioration in my medical condition. The condition has been surprising both to me, to my family, to my doctors and I believe also to the Directors of Eagles Rock & Nest.”

- Paras 12 and 13:

“Eagles Rock and Nest took over the License of the Fernhill Tavern in December 2005. I took over the licence of the Fernhill in December 2005.

I remained the Licensee of that Tavern and I was actively involved in the day to day operations of the Tavern effectively through until May 2007. On 5 May 2007 whilst I was at the Tavern, I was surprised to find the three other Directors, that is Gary Gant, Wayne Kipa and Paul Jones attend upon the Tavern. It was Saturday. I am certain of the date because it was my partner’s birthday. They came in the company of John Scaysbrook. ...”

- Para 15:

“At the meeting at the Tavern on 5 May 2007, conducted in the office I was advised, primarily by Gant who did most of the talking, although he was supported by both Kipa and Jones, that:

- (i) the Tavern was not trading in the way that they had expected*
- (ii) that they did not believe that I had the skills necessary to run the Tavern*
- (iii) that they had located John Scaysbrook, a resident of Port Macquarie, a man who had for 20 years been a representative of one of the brewing companies, Tooheys*
- (iv) that they believed Scaysbrook had the skills necessary in terms of the understanding of the administration of hotels and management skills to take over the responsibilities of running the Tavern.”*

- Para 16:

“Notwithstanding that my health had deteriorated substantially and I concede that I had taken some days off because of my medical condition although I was at work at least 80-85% of the time. I was still working long hours. I was spending, on average, between 10 and 12 hours per day at the Tavern, most days per week.”

- Paras 18 and 19:

“At that meeting it was decided by Kipa, Jones and Gant that Scaysbrook would take over the responsibility of the licence and that my role would be diminished. Up until 5 May 2007, I had received wages from Eagles Rock and Nest in my capacity as Licensee of the Tavern. I had, up to 5 May 2007 received \$900.00 before tax per week as my wages. I was also entitled to, had the company traded a profit, a dividend for my shareholding.

At the meeting on 5 May 2007 I was informed by the three other Directors that because I would be taking on a lesser role, my wages would immediately be halved. I would receive \$450 per week. I was not, however, required to work the hours that I had previously worked.”

- Para 20:

“From August 2007 my wages were suspended entirely and I have not received wage payments since that time”

- Para 29(2):

“On 5 May 2007 my role was terminated when he [Gant] replaced me with John Scaysbrook. I noted that at that time my medical condition had deteriorated. At that time I was struggling in terms of the performance of my duties. At the time I believe that I was probably thankful, after the initial shock of my termination, that the responsibility of looking after the Tavern had been removed from me.”

- Para 23:

“In the period that followed, initially Scaysbrook was the person who operated as the Manager of the Fernhill Tavern. He subsequently terminated his employment. On the termination of his employment he nominated a man, Shaun Morehead to replace him. Shaun Morehead did replace him. Subsequently he terminated. At that stage Phil McIlwain took over the role as being the person responsible for the operation of the Tavern and ultimately, Pat Mariner took over that role.”

- Para 24:

“I concede that at the time I was terminated, I should have taken active and prompt steps to facilitate the removal of my name from the position as Licensee. I was in direct contact with Gant from time to time. I was requested to remain on as the Licensee particularly as the other Managers both came and left.”

- Para 25:

“I wrote to Gant through my then solicitor, Tony Cox of Stacks, requesting that I be removed as Licensee. I filled in various forms that were then submitted to Sydney but the other Directors did not complete those forms and the resignation of my role as Licensee was not affected [sic]”.

- On Gant’s position that the Sydney-based directors were not aware of the operations of the Tavern and were not aware of the various compliance actions taken by Police against the Hotel (that is, the prosecutions, penalty notices and allegations that are cited by the Complainant in this Complaint) the Licensee states at Para 26:

“For the full period of those incidents [Gant] had effective control in conjunction with the other two Directors in that they were responsible for the appointment, the management, the reporting from and the direction to the then Manager, be it Scaysbrook, Moorehead, Mcilwaine or Mariner. I am aware that Gant, Kipa and Jones did not regularly come to Port Macquarie and did not regularly inspect the Tavern. They did, however, in the period following 5 May 2007 attend Port Macquarie, inspect the Tavern and liaise with the people that they nominated as Managers.”

- By reference to the prosecutions and compliance action cited in the Complaint, the Licensee states (at para 29(3)):

“I acknowledge that I was, at all relevant times, the Licensee. I acknowledge that I failed to appropriately remove myself from that position and in that regard I am very embarrassed and frustrated. I believe that steps were taken by me but those steps were not supported by the fellow Directors of Eagles Rock and Nest Pty Ltd in the formal replacement of me as Licensee notwithstanding that they had informally removed me from that role by way of terminating my position, removing my wages and replacing me with the person Scaysbrook, Morehead, Mcilwaine and Mariner.

I believe that the other Directors and particularly the Director Gant was fully apprised of all incidents relating to the Police charges and the Police prosecution.”

- On the issue of how the Licensee communicated his desire to depart as Licensee and shareholder in the business, the Licensee states at Para 29(4):

“My resignations were, at varying times, voiced. I confirm that in the body of the letter earlier submitted by my solicitor [the Licensee’s Submission] reference is made to the unsigned agreement. The unsigned agreement was prepared about September 2007. I am not certain as to the specific date. I believe that it was close to the 3 September and I believe that 3 September was the date the people had proposed to be the change over date in regard to the various responsibilities because the document indicates that I am responsible for solicitors fees up to 3 September for the Company, Eagles Rock & Nest Pty Ltd. I am adamant that the determination for the sale of my interest in the Company was to be effective at least by 15 October 2007.”

(The Licensee annexes an email from Ms Joanne Baggott to Mr James Kay dated 3 September 2007, which refers to the proposed sale of Baggott’s share in Eagles Rock to Gary Gant).

- The Licensee concludes the declaration with the following un numbered paragraph:

“I accept that I have done wrong. I accept that I should have acted much more quickly in regard to my removal from the role of Licensee of Eagles Rock & Nest. I accept the responsibility of the Licensee was not duly performed by me. I do however submit that my circumstances were tainted by the effect of:

- (a) my medical condition;*
- (b) my effective abandonment by my fellow Directors who appeared to have sought alternative solutions in regard to the running of the Tavern without conferring with me. I felt as though I was isolated from the operations of the Tavern from effectively 5 May 2007. This, of course, does not excuse me from taking a more active role in regard to my removal as a Licensee.”*

12. The Licensee’s Statutory Declaration annexes the following supporting material that has been considered by the Authority:

- Letter from Dr Warwick Wickham to Ms Kelly Lewis, Counsellor, dated 13 March 2009
- Letter from Professor Dominic Rowe to Dr Wickham dated 8 July 2008
- Letter from Professor Rowe to Dr Wickham dated 14 June 2005
- Letter from Professor Rowe to Dr Wickham dated 27 September 2005
- GP Mental Health Care Plan for Licensee dated 13 March 2009
- Statement (character reference) by Mr Tony Green dated 30 January 2009
- Statement (character reference) by Ms Joanne Baggott dated 21 January 2009
- Statement (character reference) by Ms Margot Lee dated 25 January 2009
- Email from Joanne Baggott dated 3 September 2007 to Mr James Kay regarding proposal to sell the Licensee’s interest in Eagles Rock to the Close Associate.

FURTHER CORRESPONDENCE BETWEEN THE AUTHORITY AND JUSMELL PTY LTD

13. On 26 February 2009 O’Sullivan Saddington lawyers, filed two late submissions dated 26 February 2009 on behalf of their client Jusmell (“**Jusmell Submissions**”).

14. All of those submissions have been considered by the Authority, but the key points are:

- (i) On 7 November 2008 Jusmell terminated the lease and took possession of the premises by reason that its tenant, Eagles Rock, had “placed the Hotel’s licence in peril”
- (ii) Eagles Rock brought Court proceedings for relief against forfeiture of the lease, but Jusmell successfully defended those proceedings and has been in possession since 7 November 2008

- (iii) On 2 December 2008 Jusmell filed an application to transfer the licence to its nominee, Mr Peter Flanagan, who is a Director and shareholder of Jusmell
- (iv) Jusmell is now exercising the licence
- (v) The Complainant specifies in the Complaint that he has no concerns with Jusmell's operation of the licensed premises
- (vi) Jusmell makes no submission as to whether the Licensee or the Close Associate is a fit or proper licensee/close associate
- (vii) The licence has been exercised in public interest since Jusmell's assumption of the premises
- (viii) In the event that the Authority finds that the Hotel's licence has not been exercised in the public interest by Eagles Rock, Jusmell submits that the Authority should not cancel the licence, suspend the licence nor impose any condition on the licence.

FURTHER CORRESPONDENCE BETWEEN THE AUTHORITY AND THE CLOSE ASSOCIATE, MR GARY GANT

15. In response to the Complaint, Mr Gant sent a brief written submission by email ("**Gant First Submission**") dated 18 February 2009, which simply advised that Eagles Rock is in the process of being voluntarily wound up and no longer trades; that the company no longer has any connection with the Fernhill Tavern nor any other licensed premises; that the Licensee has not been the licensee of the Fernhill Tavern since November 2008 and that the Licensee is "currently very ill and not expected to survive until Christmas this year".
16. On the morning of 20 February 2009 the Authority sent an email to Mr Gant, providing him with copies of the Licensee's Submission and a copy of the letter from the Director of Liquor and Gaming to the Authority (discussed below) dated 11 February 2009. The Authority invited Mr Gant to make any submissions in response to that material by 25 February 2009 and noted that Mr Gant had not taken up the Authority's offer, made in its letter dated 30 January 2009, to make oral submissions to the Authority in addition to written submissions.
17. On 25 February 2009 Mr Gary Gant provided a longer submission by email ("**Gant Second Submission**"). All of that submission has been considered, but the key points are:
 - Eagles Rock purchased the Leasehold business on the 15th December 2005 at a cost of \$1,750,000. It had been in negotiation with the then current leasehold owners for in excess of six months prior to settlement.
 - The Licensee approached Eagles Rock in relation to investing into the Leasehold business as he was friends of the then current leasehold owners. After months of doing due diligence Eagles Rock decided that the Fernhill Tavern would be a good investment.
 - Other than the Licensee, all the other three owners of Eagles Rock live and work in Sydney and at no time planned to move to Port Macquarie. The Fernhill Tavern was an investment opportunity offered to them by the Licensee and the input of the Sydney – based Directors was limited to raising the deposits required to purchase the Leasehold.
 - The Licensee had been diagnosed with Motor Neurone Disorder for a few years prior to the purchase of the Leasehold but at the time of the purchase there were only limited symptoms and they did not affect his ability to hold the licence. In any event it was not until early 2006 that the Licensee obtained the liquor licence after Eagles Rock had purchased the Leasehold.

- From the very outset, the Licensee was to be the licensee and manager of the Fernhill Tavern and he was responsible to look after Eagles Rock's investment.
- Many factors over time affected the profitability of the Tavern and this placed many pressures on the Directors' relationships. Mr Gant states:

"There is no need to detail the factors that have affected pubs over the last few years as these are well publicised. Instead of the Fernhill Tavern being an investment opportunity which was to provide our families with an additional income stream it has been a financial drain. I have personally placed in excess of \$550,000 of my own funds into the Fernhill Tavern to enable the Tavern to remain open. To fund this amount I have had to sell investment properties. The \$550,000 only represents additional funds I have put into the business and does not include the initial deposit we all made to purchase the leasehold."

- Eagles Rock has now been evicted by the landlords and no longer trades at the Fernhill Tavern. Not only has Eagles Rock lost the business it has also lost the eight Poker Machine Entitlements ("PMEs") that it held while it was the lessor of the Fernhill Tavern. Eagles Rock spent 12 months fighting Jussell over rights to the PMEs at great cost and eventually Eagles Rock was "granted the ownership, to then two months later be evicted and the PME's reverted back to them [Jussell]".
- On the extent of knowledge and involvement of the Sydney-based directors with the affairs of the Hotel, Mr Gant states:

"Over the three years we operated the Fernhill Tavern, Gregory Baggott was always the Licensee. As Gregory's health deteriorated managers were employed to help Gregory with his workload. Until November last year I was not even aware of any of the complaints against Gregory and the Fernhill Tavern. At no time was I ever informed of the numerous court orders. The only incident I was ever made aware of was in relation too a glassing that happened last year on Australia Day which I was told was all sorted. Gregory kept many of the issues with the Fernhill Tavern away from us"....

"As three of the four owners lived in Sydney we really had no control of how the Fernhill Tavern was operated as we were not there for the day to day trading of the Tavern. In fact the Sydney owners only visited the Fernhill Tavern maybe two or three times a year. Gregory with the help of various managers operated the business and the only time I was involved was when further cash was required to be injected into the business."

- Mr Gant states that the last manager of the Fernhill Tavern, Mr Patolo Mariner, was appointed "by the Licensee" and Mr Gant confirmed his position "at the direction of the Licensee". Mr Gant adds:

"I have met Mr Mariner three times in person and spoken to him many time over his employment at the Fernhill Tavern. Mr Mariner was supposed to work in conjunction with Gregory in relation to the operation of the business as Gregory was the licensee and Mr Mariner was the manager. Unfortunately we now know that Mr Mariner is a person not to be trusted as he has stolen from us in excess of \$100,000 in both cash and inventory. The police will not get involved as they believe it is a civil matter."

- On the complaint against Fernhill Tavern regarding the Licensee subletting the supply of liquor, Mr Gant states:

"I believe this to not be the case and wish to provide further details in relation to this. Mr Mariner offered to operate the Bottle shop for us and we commenced some negotiations in relation to this proposal. Both Gregory and I were unaware that this was a breach of the liquor licence. Mr Mariner and I agreed to certain terms for the operation of the bottle shop which included- rent to be paid, part of the electricity cost was to be shared and Mr Mariner was to buy in as a partner in the Fernhill Tavern. At know [sic] time was any money paid for rent or electricity and Mr Mariner never purchased into the Fernhill Tavern. Mr Mariner purchased

approximately \$10,000 worth of alcohol from his own account to restock the bottle shop. These funds were later reimbursed from our account into his account. Mr Mariner established a business account named Chief's Bottle Shop which actually never traded. No BAS statements were ever lodged (as confirmed by our mutual book keeper and accountant) and all expenses and income was paid through our Fernhill account. Unfortunately a great deal of the funds were then transferred to his wallet. We have staff that can back this statement up. I provided some information to the police in relation to this, but they had made up their minds and as far as they were concerned we has a sub lease. I am no lawyer, but for a sublease to be in place, I would have thought a fundamental part of a lease is an agreement in place where a payment arrangement has been met. At know [sic] time was rent ever paid to the Fernhill Tavern and the stock was all paid for by the Fernhill Tavern, not Mr Mariner."

- The Sydney-based directors of Eagles Rock relied upon Gregory Bagott's ability to operate the Fernhill Tavern and unfortunately due mainly to his illness this was not done to a level that was acceptable. Mr Gant states that the Sydney- based directors:

"have in the main be left in the dark as to the day to day operations of the Fernhill Tavern. Other than required cash injections, I had little or know [sic] input into the operation of the Fernhill Tavern. In hindsight we should have had more input into the operations at the Fernhill Tavern, but the sheer distance between us and the Fernhill Tavern made it very difficult to have any productive input."

- Mr Gant concludes that the involvement of Eagles Rock with the Fernhill Tavern has:

"left all the owners of Eagles Rock in financial strife where we are all likely to lose our homes to repay outstanding debts that have been incurred. We still have an outstanding loan to the National Australia Bank for \$800,000 which relates to the purchase of the leasehold."

CONSULTATION WITH THE DIRECTOR OF LIQUOR AND GAMING

18. A copy of the Complaint was sent to the Director of Liquor and Gaming ("**Director**") by express post on 30 January 2009 for comment. The Director made a brief submission in reply dated 10 February 2009 that was sent to the Authority by an email dated 11 February 2009. The Director noted that one OLGR audit had been conducted at the Hotel over the preceding two years. On 5 October 2007 this audit identified seven breaches of the Liquor and Gaming Machines Acts and resulted in the Licensee being issued Penalty Notices to a total of \$2750. The Director notes that the results of this audit are detailed in the Complaint.

CORRESPONDENCE BETWEEN THE AUTHORITY AND "INTERESTED PERSONS"

19. In the course of considering the Complaint, the Authority considered whether it should take action, pursuant to sections 141 (5) and (6) of the Act, against the Sydney-based directors and shareholders of Eagles Rock during the relevant period – Messrs Gary Gant, Wayne Kipa and Paul Jones ("**Interested Persons**") by reason that those directors may have failed to demonstrate the degree of diligence reasonably expected of a reasonably diligent director of a business conducted under a liquor licence.
20. A search of the Australian Securities and Investments Commission records performed on 2 March 2009 revealed that only Mr Paul Jones remains a director of Eagles Rock. Mr Gant retired as a director on 17 November 2008 and Mr Kipa retired on 22 December 2008. All three Interested Persons, in addition to the Licensee, were directors of Eagles Rock during the period in which the incidents cited by the Complainant occurred.

21. On 2 March 2009 the Authority sent letters by express post to the Interested Persons, providing them with copies of the Complaint (save for Mr Gant, who had already received the Complaint in his capacity as Close Associate), the Licensee's Submission, the Gant Second Submission and the Jusmell Submissions.
22. These letters noted the Authority's power to sanction "interested persons" pursuant to sections 141 (5) and (6) of the Act and invited them, in their capacity as interested persons, to make written submissions in response to the Authority's concerns regarding their diligence as directors of the Hotel business, by 16 March 2009. On 10 March 2009, a copy of the Authority's letter to Mr Kipa was sent to an alternative address, in the event that he had not received the letter sent to his recorded address.
23. On 11 March 2009 the Authority sent to the Interested Persons a further letter enclosing five (5) affidavits that were obtained by the Authority on 9 March 2009 from the NSW Supreme Court file in the matter of *Eagles Rock and Nest Pty Ltd v Jusmell Pty Ltd* No 5632 of 2008 ("**Supreme Court Proceedings**"). These were the "relief against forfeiture" proceedings commenced in the Equity Division of the Court by Eagles Rock, to which Jusmell's lawyers refer in the Jusmell Submissions.
24. The Supreme Court Proceedings were dismissed by the Court on 17 December 2008 for want of prosecution by Eagles Rock, but the affidavits filed by Jusmell while those proceedings were on foot contained sworn evidence regarding aspects of Eagles Rock's conduct that, according to Jusmell, had placed the liquor licence in peril and formed the basis for Jusmell's termination of the lease.
25. As this material was relevant to the Authority's concerns regarding the role of the Interested Persons, the five affidavits were put to them for comment, with an extension of time to provide any written submissions in response by 18 March 2009.
26. On 18 March Mr Kipa telephoned the Authority seeking a further extension of time to provide submissions. By email of that date, the Authority granted Mr Kipa an extension until midday on 25 March 2009 to make submissions.
27. On 20 March 2009, an email was sent by the Authority to Messrs Kipa and Gant forwarding the Licensee's Statutory Declaration of 19 March 2009. That email invited them to make any written comments in reply by no later than midday on 25 March 2009. As the email address of Mr Paul Jones was not known to the Authority, a letter enclosing the Statutory Declaration was delivered by courier to Mr Jones's recorded home address on 20 March 2009, offering a similar opportunity to respond.
28. On 25 March 2009 Mr Gary Gant made a lengthy submission by email ("**Gant Third Submission**"), setting out Mr Gant's response to the Licensee's Statutory Declaration. All of that submission has been considered by the Authority. By reference to the paragraph numbers of the Licensee's Statutory Declaration, Mr Gant makes the following key points:
 - On paras 8-12:

"No comment"
 - On para 13:

"I had personally spoken to Greg many times before this date in relation to the fact we believed he needed help both because of his health and lack of experience in operating a pub. Paul had also spoken to Greg about how we felt he was not operating the pub to its best potential. This

was based on the fact that only a few months earlier we had been evicted from the Tavern by the Landlords for not paying rent. This was the first we heard of this and we were told about us being evicted from a friend who lived in Port Macquarie not Greg. When we looked into what was happening we were then informed that we were actually behind in rent by six months. In addition, many other bills had not been paid. Until the eviction we were told the Fernhill was going great and that we were expecting a dividend later that year. This was fare [sic] from the truth as in fact we were behind approximately \$100,000. After this we felt Greg needed someone there with greater experience to help him. John Scaysbrook has many years experience in the pub industry and while he was there for the six months helped put many great processes in place. Greg was still at the Fernhill as the Licensee. In the beginning we had hoped that John would eventually go on to be the Licensee but this did not eventuate. Because of the eviction we had incurred in excess of \$40,000 in legal costs.”

- On paras 14-16:

“No comment”

- On para 17:

“Totally untrue. We confirmed John was to take over as the manager and assist with the day to day operations. Greg was to remain as the Licensee and oversee the pub. Due to the poor financial state of the Fernhill (some if not most rested with Greg’s poor management) we could not pay Greg for his services, but Greg was provided with a company car and mobile. In time when the pub was in a better position we were going to then look to paying Greg for his work.”

- On para 18:

“No comment”

- On para 19:

“As per 17”

- On para 20:

“ As per 17 please also note over the past three years I have placed in excess of \$500,000 of my own personal money into the Tavern to pay bills, legals expenses, rent and wages. I had to sell investment properties and obtain loans to make these payments. I at no time was ever paid any wages, dividends or any money from the Fernhill, the complete opposite, as I am in excess of \$500,000 worse off.”

- On paras 21-22:

“No comment”

- On para 23:

“Over this entire time Greg was actively involved with the Tavern as the licensee and assisted with the operation. I do believe it was to a much less degree than it had been previously. In fact both Phil McMillwain and Pat Mariner were recommended as managers by Greg whilst he was working in the Fernhill.”

- On para 24:

“Greg was never terminated as the managers put in place were there to assist him. Greg’s role was reduced but this was done to assist him due to his health and also lack of experience in pub operations.”

- On para 25:

“We spoke about putting in a new licensee but it was never done as Greg was needed and he agreed to assist. I do not remember ever getting any letter from Stacks the Lawyers in relation to Greg being removed as licensee. We needed Greg as he was the only director in Port Macquarie and although we hoping [sic] to eventually put in a new Licensee this did not eventuate as we had difficulty getting the right person. Please note we did however have a new Licensee arranged to take over from Greg (Adam Batchelor) but this did not eventuate as we were again evicted from the Fernhill.”

- On para 26:

“No comment”

- On para 27:

“100% untrue as the only incident I was ever told about in relation to the licence was in regards to a glassing that happened there on the Anzac day in 2007. If we were told about any other incidents we would have taken actions to replace Greg as Licensee much earlier.”

- On para 28:

“No comment”

- On para 29(1):

“No comment”

- On para 29(2):

“As per above comments, Greg was never terminated. If he was, why was it not until September 2008 he resigned as a director? Why was Greg also working in the Fernhill along with the operation of the tavern?”

- On para 29 (3):

“As stated above, we were only ever told of the one breach of License by Greg. I was made aware of some of the breaches by the Licensing Police after numerous calls and the full extent was only known when our solicitors at the time obtained the full list. My understanding was we had no issues with the police and ran a good bar.”

- On para 29 (4):

“We had planned in late 2007 to purchase Greg’s share in the business as we felt Greg’s assistance at the time was limited. This however never went any further as we still needed Greg’s assistance with the Licence and with mounting legal costs, we ‘needed all hands on deck’. “

- On para 29 (5):

“No comment”

29. Mr Gant followed up the Gant Third Submission with a brief Statutory Declaration dated 26 March 2009 (“**Gant Statutory Declaration**”). The entire declaration is as follows:

1. *“I confirm the contents of the email I sent to the Casino Liquor and Gaming Control Authority on Wednesday 25/03/2009 11.21AM [the Gant Third Submission] to be true and correct to the best of my knowledge.*
2. *Mr Gregory Baggott never informed me of any breaches in relation to the License for the Fernhill Tavern while we operated the Tavern, with the exception of one glassing incident that happened I believe on Anzac day in 2007. Until we were evicted from the Fernhill Tavern I was not even remotely aware of the seriousness and the number of breaches we had incurred. The full extent of this was only made evident when speaking to the Port Macquarie Licensing Police and then through my solicitors after our conviction.*
3. *I was fully aware of Gregory Baggott’s health condition prior to purchasing the Fernhill Tavern leasehold.*
4. *I discussed with Gregory Baggott many times over the years placing a new licensee in the Fernhill Tavern, but a suitable replacement was only found late last year. Both Gregory Baggott and I had agreed it was in the best interest of the business for him to stay on in that capacity. If I was made aware how many complaints were held on the licence, a new licensee would have been found immediately.*
5. *As I was based in Sydney, it was difficult to assist with the operations of the Fernhill Tavern and I had to rely on Gregory Baggott and the staff at the Tavern to operate it. I assisted where I could, but ultimately this was primarily in the form of financial assistance. I have assisted the Fernhill Tavern with cash injections of in excess of \$500, 000 which I can easily provide receipts to confirm.*
6. *On several occasion [sic] Gregory Baggott and myself discussed buying out his share in the Fernhill Tavern, and we even got as far as drawing up an agreement. Due to Financial constraints and a lack of quality staff I was unable to purchase Gregory Baggott’s shares and this matter was closed sometime in late 2007 I believe.”*

30. On 25 March 2009 Mr Gant sent by email to the Authority an electronic copy of a brief (one paragraph) Statutory Declaration sworn by Mr Paul Jones on 25 February 2009. The entire declaration is as follows:

“I Paul Josep [sic] Jones, solemnly declare that the Statutory Declaration that Greg Baggott has made, before Robert Wilcox Gillroy, is full of lies and untruths. I had only communicated with Greg through Gary Gant & Wayne kipa [sic] as the, lies and ‘untruths’ [sic], that surfaced 18 months ago, filled me with disgust. These lies were detrimental to the Fernhill Tavern, that is why a more professional manager had to be brought in. Ultimately Greg was still Licensee and partner.”

31. At 10.35 am on 25 March 2009 the Authority received a submission by email from Mr Wayne Kipa (“**First Kipa Submission**”), which is extracted in full below (*note*: typographical errors are as submitted):

“In response to your letter Ref / L159. May I say that Eagles Rock & Nest Pty Ltd & Jusmell Pty Ltd have a very long history. When we purchased the Fernhill Tavern for 1.75000.00 Lease hold The thirteen poker machine entitlements. Were included. That can be verified by the gaming board. They were also our own security if we ever had hard times . We could sell blocks of three to cover our debts if need be. The First time we proposed to sell a block of three, Jusmell said that they would prevent us selling any. The Gaming board approved the sale

2007. The money gained was used to pay outstanding debts . In 2008, Due to Smoking Ban , Low Unemployment. Increased Poker Machine Tax. We were finding business very hard. So we decided to sell another block of three poker machine entitlements. We were informed by Jusmell Pty Ltd that we could not sell any. We also recieved a letter stating that if we brokered a deal with Jusmell Pty Ltd. That they would not seek compensation for the first three PMT we sold. The matter went before the gaming board, which approved the sale. Jusmell took the matter to court, which Eagles Rock & Nest Pty Ltd won. Jusmell Appealed we also won that desion, then took the matter to the Supreme Court which Eagles Rock & Nest Pty Ltd also won. Due to the long & exhausting court process Eagles Rock & Nest Pty Ltd could not sustain the financial input to keep fighting. Most of the money from the sale of PMT was used to fund our legal battle. This breech of lease came not long after Jusmell had lost their court case. I firmly believe that this whole battle is purly about the PMTs. & Jusmell is doing all it can to take them from us for as little as possible. If we were left in control of PMTs we could have paid any business debt we had. As the value of PMTs is Far greater than any debt we had .If we had acess to to our PMTs Greg Baggot could have Retired as Licensee alot earlier and recieved some payment. But he had to stay on as our eyes & ears at The Fernhill. As For Pat Mariner who was recommended by Greg Baggott whilst Pat Mariner was employed as a bar tender , Then was employed as Operations Manager . We have since found Pat to be a compulsive liar who was responsible for removing funds from the fernhill. One was the money to pay the TAB that was put in by Gary Gant, he said was paid , Another was installing his own Eft Pos that took all the Fernhills Takings & Deposited them into His own account. Also Removing all Stock from the Bottle shop that was re stocked by Gary Gant only 4 x weeks prior. Also closing the Fernhill Doors & Telling customers that the Fernhill Had no Beer so could not open . (We owed no money to Tooheys,) Which also helped Jusmell in our breech of Lease . We were informed by a friend who visited the Pub that TAB was off. We have since found out that Pat had been investigated for Fraud . I look forawrd to your response.”

32. At 10.42am on 25 March 2009 the Authority received a further submission by email from Mr Kipa (“**Second Kipa Submission**”). This submission refers to the paragraph numbers of the Licensee’s Statutory Declaration and the key points are follows (*note: typographical errors are as submitted*):

- On para 7:

“Greg informed Paul Jones about the sale of the fernhill tavern & Paul Jones informed us.”

- On paras 8-12:

“No Comment”

- On para 13:

“We attended the Fernhill to introduce Greg Baggott to Our new manager John Scaysbrook because we had been locked out of the building due to outstanding rent. We also had to fund 40K in legal cost to regain entry. We were not informed of our position with landlords it was only after a friend of Paul Jones who lives in Port Macquarie Call him on the mobile to inform us. Also at no time was Grag [sic] Baggott not to be Licensee [sic] .Because he was a director & our eyes & ears at the fernhill. Although Greg received no wages he had full use of company car & mobile till late july - august.”

- On paras 14 – 16:

“No Comment”

- On para 17:

"No Greg Baggott was to remain Licencee"

- On para 18:

"Agree"

- On para 19:

"No comment"

- On para 20:

"Company Car & Mobile provided"

- On paras 21 – 22:

"No Comment"

- On para 23:

"Phil McIlwain was put in as manager on Gags advice. & Greg was still involved in the day to day running of the fern hill. It was Greg who instigated the employment of Pat Mariner"

- On para 24:

"No comment"

- On para 25:

"We never recieved any letter stating that Greg Baggott was to be removed from Licencee"

- On para 26:

"No comment"

- On para 27:

"Not true Greg was our eyes & ears about any incidents at the fernhill . We were only ever told of one incident"

- On para 28:

"No Comment"

- On para 29 (1):

"No Comment"

- On para 29 (2):

"Greg role as licencee was not terminated on May 5th 2007"

- On para 29 (3):

“We were never told the full extent of incidents concerning the Fernhill till the gaming board brought this to our attention. Only incident we new of was a glassing incident.”

- On para 29 (4):

“Due to our financial stress brought on by the on going & extended court battles with Jusmill Pty Ltd we were not in a position to finalise the purchase of his shares.”

FINDINGS

- 33. The Authority finds that between July and October 2008 the Licensee committed the offence of allowing the supervision of a business conducted under a licence by a person not authorised by the Authority for a period of more than 6 weeks, contrary to section 92 (1) (a) of the Act.**
- 34. The Authority finds that between July and October 2008 the Licensee committed the offence of subletting the right to sell liquor on premises, contrary to section 92 (1) (b) of the Act.**
- 35. The Authority finds that the Sydney-based directors were aware, at the relevant times, of the arrangements between Eagles Rock and the Hotel manager Mr Patolo Mariner that gave rise to the commission of those offences against section 92 of the Act.**
36. In making these findings, the Authority relies on advice from the Complainant provided by email dated 10 March 2009 that the Licensee pleaded guilty and was convicted by the Port Macquarie Local Court on 2 February 2009 and fined \$1000 plus \$73 in court costs for each offence.
37. The Authority also relies upon the NSW Police Facts Sheet reference 35350635 that sets out the facts alleged by Police in those matters. The Authority is satisfied, as contended in that Facts Sheet, that the Hotel was effectively under the supervision of an unauthorised person, Mr Patolo Mariner, and not the Licensee, from or around 7 July 2008 to 3 October 2008.
38. The Authority is satisfied that, from or around 7 July 2008 to 3 October 2008, the right to sell liquor from the Hotel bottle shop had been sub-let by the Licensee to Mr Patolo Mariner. The Authority accepts Facts Sheet reference 35350635, including the notes on interview between Police and Mr Mariner that took place on 13 November 2008, where Mr Mariner informed Police that:
 - he injected \$40, 000 into the Chief’s Bottleshop to purchase stock and other running expenses at the Hotel
 - between July and October 2008 he was in charge of the Hotel making decisions and supervising staff
 - he saw the Licensee on only two occasions during that period at the Hotel and that was not to conduct any work activity or to take instructions from the Licensee
 - he performed this role with the blessing of the Licensee and Mr Gant and dealt exclusively with Mr Gant and often discussed his becoming a partner in the business.
39. The Authority further relies upon the affidavit of Mr Mariner sworn on 9 December 2009 (“**Mariner Affidavit**”) filed during the Supreme Court Proceedings. The Authority finds that during June 2008, in a telephone call that was arranged by the Licensee and conducted between Mr Mariner and Mr Gant, Mr Gant offered Mr Mariner the opportunity to run the bottle shop business for himself, in consideration for taking on management of the Hotel.
40. The Authority gives weight to the sworn evidence filed in the Supreme Court Proceedings in paragraphs 4 and 5 of the Mariner Affidavit:

4. *After about 3 days, I indicated to Baggott my intention to leave the Hotel, because of the way the Hotel was run. Baggott then offered me the job of Operations Manager at the Hotel. Baggott said to me words to the following effect:*

“I have 3 partners in Sydney and I will get Gary Gant to give you a ring to discuss you being the Operations Manager at the Hotel”.

5. *Sometime later, I received a telephone call from Gary Gant (“Gant”). I said to Gant words to the following effect:*

“To keep the pub running, you need to open the bottle shop”

Gant said to me words to the following effect:

“If you run the pub, you can have the bottle shop for yourself”

I said to Gant words to the following effect:

“But you Lease the pub, you cant put a Lease on a Lease”

Gant said to me words to the following effect:

“Don’t worry about that, I will sort it out”

41. The Authority accepts the evidence in paragraphs 14 and 15 of the Mariner Affidavit, that Mr Gant was aware that this arrangement was contrary to the Act:

“14. I was working about 70 hours per week at the Hotel. I was running the bottle shop for Russell [Mr Russel Souter, a business partner of Mariner at the bottle shop] and myself, and also running the Hotel.

15. *Gant visited the Hotel on about 2 occasions whilst I was there. One of those occasions was after the Port Macquarie Cup Race Meeting when Gant and Kipa attended the Hotel in the evening. Gant removed my Certificate of Registration of Business Name which I had affixed to the wall of the bottle shop and said to me words to the following effect:*

“I’m taking down the Certificate because if John Laurie [sic] saw it, he’d close us down”.

42. The Authority further relies upon Annexure “A” to the Mariner Affidavit, which is a copy of an email from Gant to the Fernhill Tavern dated 25 June 2008 that reads:

“Hi Pat

I wish to confirm your appointment as Operations Manager for the Fernhill Tavern. As the Operations Manager you have our authority to run the Fernhill Tavern as you see fit.

You have the full support of the owners and we look forward to a long and profitable relationship.

Thanks

*Gary Gant
Finance Director
Jewel Finance”*

43. The Authority further relies upon Annexure B to the Mariner Affidavit, which is a copy of an email from Gant to the Fernhill Tavern dated 1 July 2008 that reads:

“Hi Pat

As discussed yesterday, I wish to confirm our consent for you to operate the bottle shop at the Fernhill Tavern under the name Chief’s bottle Shop.

We will need to calculate a fair and reasonable rate to allow for the following considerations:

- *Rent of the bottle Shop*
- *Electricity of the cool room (the most expensive percentage of the overall electricity bill)*
- *Staff expenses*

Any amount paid to the Fernhill Tavern must take into account the above considerations.

I look forward to your thoughts shortly.

*Gary Gant
Finance Director
Jewel Finance”*

44. The Authority notes that while the Supreme Court Proceedings were on foot no evidence was filed by Eagles Rock in rebuttal to the Mariner Affidavit. Mr Gant’s position on this issue, as communicated to the Authority during the course of considering this Complaint, is unconvincing. His case, as stated in the unsworn Second Gant Submission, is that there is a lack of documentation recording any “arrangement for the payment of rent” and he contends that:

“At know [sic] time was rent ever paid to the Fernhill Tavern and the stock was all paid for by the Fernhill Tavern, not Mr Mariner.”

45. The Authority finds that an agreement to sub-let the right to supply liquor was in fact made by Mr Gant (on behalf of Eagles Rock) and Mr Mariner during June 2008 and that the parties proceeded on that basis from July to October 2008. The essence of the agreement was that Mr Mariner would have the right to occupy and run the bottle shop, that is, buy and sell liquor to the public, as his own business. The valuable consideration to be provided by Mr Mariner for this commercial opportunity included Mr Mariner’s agreement to managing the Hotel as a whole, his payment of a “reasonable” amount of rent and his payment of that share of the Hotel’s electricity bills that are attributable to the running of the bottle shop cool room.

46. By Mr Gant’s own admission, Mr Mariner set up his own business account for the bottle shop and purchased, from his own funds, “\$10,000” worth of stock for the Hotel. Even if that particular payment, as stated by Mr Gant, was reimbursed by the Hotel, this conduct is not consistent with the role of an employed manager and is consistent with a person running his own business, with a stake in maintaining the viability of the Hotel. In any event, the Authority prefers the information provided by Mr Mariner to Police as recorded in Police Facts Sheet 35350635, that Mr Mariner injected \$40,000 into the Hotel to pay for stock and other expenses and that any transactions from the bottle shop went through his own account. This fact sheet notes:

“Documents were supplied to police that indicated that the bottleshop was being operated as a stand alone entity and any transactions made in the bottleshop were going to a bank account with the Bank of Queensland (Port Macquarie branch) under the name of Mr P Mariner and Mr R Souter Trading as Chiefs Bottleshop”

47. The Authority does not accept the statement by Mr Gant in the Second Gant Submission that the Licensee and Mr Gant were not aware that their arrangement with Mr Mariner was in breach of the liquor licence. This is contradicted by the sworn evidence of Mr Mariner in paragraph 15 of the Mariner Affidavit and undermined further by the fact that on 2 February 2009 the Licensee pleaded guilty and was convicted of the offence of subletting the right to supply liquor. The Authority also finds it unlikely that Mr Gant, himself a licensee with regard to another business (discussed below), would be unaware that this arrangement was not permitted by the Hotel's licence.
48. The Authority has considered the allegation in the Second Gant Submission that Mr Mariner took cash and inventory from the Hotel worth \$100,000, a complaint which, according to Mr Gant, has not been pursued by Police because Police regard it as a civil matter. The Authority also notes the allegation made by Mr Kipa in the First Kipa Submission that Mr Mariner is a "compulsive liar". No evidence has been provided by Mr Gant or Mr Kipa to support those allegations.
49. On the material before it, the Authority is satisfied that those allegations are a product of a civil dispute between the directors of Eagles Rock and Mr Mariner regarding their respective entitlement to stock and revenue of the Hotel during the latter stages of the business. Those allegations alone are not sufficient to undermine the sworn evidence provided in the Mariner Affidavit, supported by emails from Mr Gant annexed to that Affidavit. Nor do the allegations undermine the credibility of information provided by Mr Mariner to Police, and recorded in Police Facts Sheet 35350635, that helped secure a conviction of the Licensee.
- 50. The Authority finds that on 3 October 2008 the Licensee committed the offence of permitting intoxication on licensed premises, contrary to section 73 (1) (a) of the Act.**
51. In making this finding, the Authority relies upon NSW Police "Facts Sheet" reference 3510520191 regarding Gregory Alan Baggott, and advice from the Complainant dated 10 March 2009 that on 2 February 2009 the Licensee pleaded guilty to this offence and was fined \$1000 plus \$73 in court costs.
- 52. The Authority finds that the Licensee committed the following offences on 6 June 2008:**
- Unaccompanied minor in hotel - s116 (b) (2) (b) of the *Liquor Act 1982*
 - Minor enter a restricted area of the hotel - s116 (b) (1) (a) of the *Liquor Act 1982*
 - Hotelier fail to display minors sign in restricted area – s116 (c) (1) (a) of the *Liquor Act 1982*.
53. In making these findings, the Authority relies upon the NSW Police Facts Sheet reference 34695963 and the advice in the Complaint that the Licensee was convicted on 18 August 2008, with the Port Macquarie Local Court fining the Licensee \$750 plus \$75 in court costs for each offence.
- 54. The Authority finds that the Licensee committed the offence of permitting intoxication on licensed premises on 16 February 2008, contrary to section 125 (1) (b) of the *Liquor Act 1982*.**
55. In making this finding the Authority relies upon the NSW Police Facts Sheet reference 35190381 and the advice in the Complaint that the Licensee was convicted of this offence on 14 April 2008 in Port Macquarie Local Court and fined \$1000 plus \$70 in Court costs.
- 56. The Authority is not satisfied that the Close Associate Gary Gant used cocaine on the Hotel premises on 3 October 2008.**

57. The Complainant's case that Mr Gant is not a "fit and proper" person to be a close associate of a licensee is founded upon this allegation.
58. The Authority has carefully considered this serious allegation, including the information recorded on the NSW Police "COPS" database event No E 53318836 and the CCTV footage ("Video") to which this COPS record refers. The Video was obtained by Police in the course of viewing footage stored on the Hotel's CCTV system while they investigated the intoxication on premises offence that occurred on 3 October 2008.
59. The Video was apparently recorded from a camera located on the ceiling of a room which has been identified by Police (and the Authority accepts) as the back office of the Hotel. It features two men who have been identified by Police as (and the Authority accepts to be) Mr Gary Gant and Mr Phil McIlwaine. The faces of the men feature clearly enough to enable their identification.
60. However, due to the perspective and distance of the camera and the limited quality of the Video, the Authority is unable to ascertain with any degree of confidence even the *appearance* of the substance that is apparently being snorted by the two men off the surface of a photograph frame.
61. The COPS record, which discusses Mr Gant being questioned by Police about the Video, notes that Mr Gant does not say what the substance was. Nor is there any other evidence that corroborates the opinion of Police that "it is apparent that the substance is cocaine". In an email to the Authority dated 10 March 2009, Police advised that they have not proceeded with any prosecution due to the "inability for us to prove drug at criminal court".
62. While the Authority makes this finding applying the civil standard of proof, it is mindful of the caution given by Dixon J of the High Court in *Briginshaw v Briginshaw* (1938) 60 CLR 336:
- "When in a civil proceeding, a question arises whether a crime has been committed, the standard of persuasion is, according to the better opinion, the same as upon other civil issues... But, consistently with this opinion, weight is given to the presumption of innocence and exactness of proof required."
63. In conclusion, while the Video gives rise to a reasonable suspicion that Mr Gant and Mr McIlwaine were using an illicit drug at the Hotel on 3 October 2008, on the available evidence (and giving due weight to the presumption of innocence) the Authority is not satisfied that it is more likely than not that the substance being snorted on camera by the two men was the prohibited drug cocaine.
64. **The Authority makes no findings on the other alleged offences cited in the Complaint that have not been prosecuted or for which Penalty Notices have been issued.**
65. The Authority notes that there are other incidents cited by the Complainant for which a criminal prosecution has not ensued. A Penalty Notice dated 16 October 2007 was issued to the Licensee by the Director of Liquor and Gaming as a result of an on-site audit performed by inspectors from the Office of Liquor, Gaming and Racing. Another Penalty Notice for an incident occurring on 25 April 2008 was issued by Police for the Licensee's failure to remove an unaccompanied minor from an authorised area of the Hotel.
66. Section 45 of the *Fines Act 1996* provides that if a Penalty Notice Enforcement Order is made in relation to an offence alleged to have been committed by a person, the person is not as a result taken to have been convicted of the offence. The making of the order does not in any way affect or prejudice any civil claim, action or proceeding arising out of the same occurrence.

67. However, by reason of the Authority's findings on those offences for which convictions have been secured, it is not necessary for the purposes of this determination to make findings on whether the Licensee in fact committed those offences for which Penalty Notices were issued or for which allegations were made but no prosecution ensued.
68. **The Authority finds that at the time of this decision, the Licensee does not have the physical capacity to adequately perform the responsibilities of a licensee.**
69. In making this finding the Authority relies upon the concession in the Licensee's Submission that the Licensee "accepts that given his present circumstance he is not a fit and proper person to hold down the role of Licensee. His physical wellbeing is such that he cannot attend to the various duties necessary for the proper implementation and management of a Hotel". The Authority finds that there is sufficient medical evidence annexed to the Licensee's Statutory Declaration that he suffers a serious degenerative illness, Motor Neurone Disorder, and that his symptoms are now well advanced.
70. **The Authority finds that when the Licensee was appointed licensee of the Hotel his level of impairment arising from his medical condition was significant enough to prevent him from performing his former trade as a concreter but not so advanced as to prevent him from working as a full time hotelier.**
71. **The Authority finds that the other directors of Eagles Rock were on notice of the Licensee's degenerative medical condition prior to their assumption of the lease for the Hotel on 15 December 2005.**
72. In making this finding, the Authority relies upon Government Licensing System records that show that Mr Gregory Baggott was appointed licensee of the Hotel on 1 September 2006. The Licensee's Statutory Declaration states, and the Authority accepts, that that the Licensee performed his duties full time, with a degree absence due to his condition, until 5 May 2007.
73. The Licensee's Statutory Declaration (including the annexed Letter from Professor Rowe to Dr Wickham dated 14 June 2005 and Letter from Professor Rowe to Dr Wickham dated 27 September 2005) evidences diagnosis of the condition and describes the symptoms that were present during 2005. The Authority also relies upon the Second Gant Submission, which states:
- "Gregory Baggott had been diagnosed with Motor Neuron (sic) Disorder for a few years prior to purchase the Leasehold but at the time of the purchase there was only limited symptoms and they did not affect his ability to hold the licence. In any event it was not until early 2006 that Gregory Baggott obtained his Liquor Licence after we had purchased the Leasehold."*
74. **The Authority finds that by 5 May 2007 the Licensee's symptoms had deteriorated to the point that his illness, in combination with a lack of managerial and prior industry experience, prevented him from performing as an effective licensee of the Hotel and that the Sydney-based directors of Eagles Rock were aware of this.**
75. **The Authority finds that from August 2007 the Licensee ceased playing any significant role in the day to day supervision of the Hotel and that the Sydney-based directors were aware of this.**
76. The Authority accepts the evidence in the Licensee's Statutory Declaration that, by a decision of the directors of Eagles Rock, the Licensee ceased working full time on the premises following a meeting of the directors that took place at the Hotel on 5 May 2007. The Authority accepts the evidence of the Licensee in that declaration that:

"I was informed that Scaysbrook would take over the responsibility for the Tavern and would ultimately take over the licence of the Tavern. I was informed that the wages at half pay would continue for a period of 2 months, thereafter my wages would terminate. This was to accommodate the expenses associated with Scaysbrook wages to, in turn operate as Licensee."

77. The Authority notes statements from Mr Gant and Mr Kipa to the effect that Mr Scaysbrook and subsequent managers were appointed by the directors of Eagles Rock to "assist" the Licensee, but does not accept that this was the case. Rather, each "Operations Manager" was effectively supplanting the role of the Licensee in supervising the premises.
78. While Mr Gant and Mr Kipa deny that the Licensee was "terminated" from his role on 5 May 2007, the Authority notes that neither of them has contested that the Licensee's wages were in fact halved in May 2007 and then ceased altogether in August 2007.
79. The Authority considers it highly unlikely that in light of his deteriorating medical condition (and having received wages for working full time from 1 September 2006 to May 2007) the Licensee would have continued working on the premises, supervising its day to day affairs in any meaningful manner, without payment of wages from August 2007 until October 2008.
80. The Authority finds that by 5 May 2007 the other directors of Eagles Rock replaced the Licensee with their appointed Manager, Mr John Scaysbrook, as the Licensee was not able to manage the Hotel to their expectations. The Authority finds that it was evident to the other directors that the Licensee was not capable of adequately running the Hotel, whether due to his physical condition, his lack of managerial skills or prior experience, or a combination of those factors.
81. The Authority accepts the Licensee's submission that "at various times people were appointed to the position of Operations Manager" with the "intention that they would replace him as licensee of the Company". This submission finds some support in paragraph 4 of the Gant Statutory Declaration that states:

"I discussed with Gregory Baggott many times over the years placing a new licensee in the Fernhill Tavern, but a suitable replacement was only found late last year. Both Gregory Baggott and I had agreed that it was in the best interest of the business for him to stay on in that capacity. If I was made aware of how many complaints were held on the licence, a new licence would have been found immediately."

82. The Authority further notes the Gant Second Submission that:

"Over the three years we operated the Fernhill Tavern, Gregory Baggott was always the Licensee. As Gregory's health deteriorated managers were employed to help Gregory with his workload."

83. The Authority finds that the Licensee's supervision of the Hotel was reduced to that of a "part time" presence only during the period from May to August 2007 when, according to the Licensee's Statutory Declaration, his wages were halved and his responsibilities diminished.
84. To the extent that the Licensee's evidence as to his supervision of the Hotel between May and August 2007 is in conflict with the evidence of Mr Gant and Mr Kipa, the Authority prefers the evidence of the Licensee, who is in a better position to describe the extent of his own involvement with the Hotel.

85. The Authority finds that the Licensee exercised no effective supervision of the Hotel from August 2007, when payment of wages to the Licensee from Eagles Rock ceased. The Authority finds, as conceded by the Licensee in the Licensee's Statutory Declaration, that the Licensee should have taken, but did not take, steps to remove himself formally as licensee on the record after August 2007.
86. The Authority finds, as stated in the Licensee's Statutory Declaration, that the other directors of Eagles Rock encouraged the Licensee not to remove himself formally as licensee on the record. To the extent that the Licensee's evidence as to his presence at the Hotel after August 2007 is in conflict with that of Mr Gant and Mr Kipa (who claim that the Hotel managers worked with the Licensee and under the Licensee's supervision) the Authority prefers the evidence of the Licensee, who is in a better position to describe the extent of his involvement with the Hotel.
87. The Authority finds that all directors of Eagles Rock decided to leave the Licensee on the record for reasons of commercial convenience. The Authority accepts that it was difficult for them to find a permanent replacement among the several Operations Managers who stayed for relatively short periods of time. Replacing the Licensee would have involved the recruitment of a competent person to take on all the responsibilities and potential liabilities of supervising the Hotel, with the attendant payment of wages and related expenses.
88. The Authority is satisfied that the Licensee repeatedly voiced a desire to his co-directors to formally resign as licensee, but acquiesced in the face of a conflicting desire of his co-directors that he stay on. The Licensee did not formally communicate his resignation as licensee until his facsimile letter addressed to the Authority dated 29 October 2008 (Annexure B to the Licensee Submission).
89. The Authority finds that after August 2007 the Licensee continued to have an interest in the affairs of the business, as he remained a director and shareholder, but his role in supervising the day to day operation of the Hotel had been supplanted by the Hotel's Operations Managers, who acted without effective supervision by the Licensee.
90. By the time the last Operations Manager Mr Mariner was appointed in July 2008, the Licensee's supervision of the Hotel was negligible and he was licensee in name only. This absence of effective supervision, coupled with an improper reliance by the directors of Eagles Rock upon Mr Mariner to run the Hotel, gave rise to the successful prosecution of the Licensee for offences against section 92 of the Act.

DETERMINATION

91. When determining this Complainant, the Authority has considered relevant provisions of the Act, including but not limited to the statutory objectives and relevant considerations that are set out under section 3 of the Act:

3 Objects of Act

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

- (a) to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community,
- (b) to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality,
- (c) to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.

(2) In order to secure the objects of this Act, each person who exercises functions under this Act (including a licensee) is required to have due regard to the following:

- (a) the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),
- (b) the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,
- (c) the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.

Ground 1: That the Licensee is not fit and proper person to be the holder of a licence

92. On the meaning of “fit and proper person” the Authority has had regard to the decision of the High Court in *Hughes & Vale Pty Ltd v NSW* (No 2 1955) 93 CLR 127, per Dixon CJ, who states (at p156):

“The expression “fit and proper person” is of course familiar enough as traditional words when used with references to officers and perhaps vocation. But the very purpose is to give the widest scope for judgment and indeed for rejection. “Fit” (or ‘idoneus’) with respect to an office is said to involve three things, honesty, knowledge and ability.”

93. By reason of the Licensee’s concession that he is physically unfit and the Authority’s findings on the numerous offences committed by the Licensee against the Act and the *Liquor Act 1982*, **the Authority has decided that the Licensee is not a fit and proper person to be the holder of a licence.**

94. Having considered the Licensee’s submissions on his medical condition and the financial hardship that may accrue to the Licensee and his family from a fine, and in the interests of protecting the industry and the community, **the Authority disqualifies the Licensee**, pursuant to section 141 (2) (f) of the Act, from holding a licence for a period of three (3) years, commencing on the day of this decision.

Ground 2: That the Close Associate is not a fit and proper person to be a close associate of a licensee

95. This ground of Complaint was founded upon the allegation by Police that the Close Associate used cocaine on the premises of the Hotel on 3 October 2008.

96. On the available evidence, the Authority is not satisfied that the Close Associate used cocaine on the premises as alleged. Accordingly, **the Authority does not find** that the Close Associate is not a fit and proper person to be a close associate of a licensee on the basis of this allegation.

Ground 3: That the Licence has not been exercised in the public interest.

97. In *Re Zappia’s Application* [1966] 7 FLR 405 the Supreme Court of the Australian Capital Territory heard an appeal against the refusal of an application for a licence under an ACT Liquor Ordinance. In that case Smithers J said that in general the public interest has positive and negative aspects which:

“reflect the intention of the legislature that the reasonable requirements of the community shall be satisfied, where that can be achieved consistently with good order and propriety in relation to the distribution and consumption of liquor, the proper policing of such order and propriety and in the collection of revenue from the sale of liquor. In the exercise of its discretion in the granting or refusing of licences, a tribunal is required to consider these and all other aspects of public interest ascertainable from the Ordinance as may be relevant to the application before it.”

98. The Authority has weighed up the positive and negative aspects of the public interest that are embodied in section 3 of the Act. The Authority notes that aspects of the public interest may also be discerned from individual sections of the Act, including offence provisions.

99. In *Thomas v Licensing Court of New South Wales, Armatas v Licensing Court of New South Wales and Stavrou v Licensing Court of NSW* (Unreported, 19 May 1992) the Supreme Court of New South Wales held that it was open to the former NSW Licensing Court to find that a licence had not been exercised in the public interest in circumstances where the Licensing Court found numerous breaches of section 125 of the *Liquor Act 1982* (the analogous provision to section 73 of the Act). In the Supreme Court's judgment Loveday J stated:

“The licensee was bound to conduct his licensed premises in accordance with the conditions of the licence and in accordance with the provisions of the Liquor Act 1982. In particular he was required not to commit breaches of s125 of the Act. If he did so then it follows that he was not exercising the licence in accordance with the provisions of the Act and therefore he was not exercising it in accordance with the public interest, the public interest in this case being specifically stated by a section of the Liquor Act.”

100. The Authority has considered the Licensee's exercise of the licence *as a whole*, over the period in which the Licensee was responsible for the Hotel. The Authority has found that the Licensee committed numerous offences against the Act and the *Liquor Act 1982*. Some of those offences, particularly the two offences against section 92 of the Act, involved a continuous course of misconduct committed over a significant period of time. Those offences cannot be dismissed as isolated incidents caused by temporary lapses in good management or events that were beyond the control of the Licensee.

101. Nevertheless, there has been a significant change of circumstances since 7 November 2008, when Jusmell terminated the lease to Eagles Rock and took possession of the Hotel.

102. There is no evidence before the Authority that Jusmell has been operating the licence in a manner that is not in the public interest. On the contrary, the Complaint states:

“*The hotel premises is currently being operated by the freehold owners who police do not have any concerns about.*”

103. In an email from the Complainant to the Authority dated 2 March 2009, the Complainant advised the Authority (with the benefit of the Jusmell Submissions) that:

“*Since taking over the hotel, the landlord Peter FLANAGAN has shown the appropriate control and responsibility of the premises.*”

104. In light of the current operation of the Hotel by Jusmell and the sanctions imposed by the Authority against the Licensee and Interested Persons in this determination, it is not necessary to make a finding as to whether the licence has been exercised contrary to the public interest.

105. The Authority notes that no meaningful sanction could be imposed even were such a finding to be made. To cancel, suspend or place conditions upon the Hotel's licence would not penalise those responsible for the conduct of the business before the end of 2008. It would, however, unreasonably prejudice the current licensee and owner of the business.

ACTION AGAINST INTERESTED PERSONS

106. Sections 141(5) and (6) of the Act provide:

(5) Action against other interested persons

In deciding whether to take disciplinary action under this section against a licensee in relation to a complaint, the Authority may take disciplinary action against a person who is interested in the business, or in the conduct or profits of the business, carried on under the licence (regardless of whether the Authority takes any disciplinary action under this section against the licensee concerned).

(6) If the Authority decides to take disciplinary action against any such interested person, the Authority may do any or more of the following:

- (a) disqualify the person, for a period commencing on a specified day, from being a person interested in the business, or in the conduct or profits of the business, carried on under a licence,
- (b) reprimand the person.

107. All three of the Sydney-based directors and shareholders of Eagles Rock during the period to which the Complaint relates, Mr Gary Gant, Mr Paul Jones and Mr Wayne Kipa, are “interested persons” within the meaning of section 141 (5) of the Act.

108. The Authority has found that Mr Gant, Mr Jones and Mr Kipa were on notice of the Licensee’s deteriorating ability to perform his functions from as early as May 2007, when they authorised, as directors, the appointment of the first of four “Operations Managers” to supervise the business and perform the responsibilities of *de facto* licensees.

109. The Authority has found that from May to August 2007 the Licensee was only supervising the Hotel on a part time basis and from August 2007 the Licensee was no longer effectively supervising the day to day affairs of the Hotel to any significant degree. The Interested Persons were aware of this.

110. The Authority has found that, during the period of Mr Mariner’s appointment as Operations Manager from July to October 2008, the Licensee had no effective role in supervising the affairs of the Hotel. The Sydney based directors gave control of the premises and in particular the bottle shop to Mr Mariner when arrangements were made during June 2008 that placed the Licensee in breach of section 92 of the Act.

111. The Authority considers that any reasonably diligent director of a business carried on under a liquor licence would have taken steps to ensure that a licensee who was known to have a serious degenerative medical condition was monitored and (when the time came) replaced by a fit and proper person who was able to perform the functions and responsibilities required of a licensee under Liquor and Gaming legislation.

112. On the facts found, the prudent time to replace the Licensee was in or around May 2007 and certainly no later than August 2007, when his day to day supervision of the Hotel effectively ceased. If the directors were unable to find a fit and proper licensee, then the proper course of action was to suspend trading until one could be appointed. In this case, the Sydney-based directors of Eagles Rock found it more convenient to encourage the Licensee to stay on the record rather than appoint a new licensee and apply for the formal transfer of the license to that person or temporarily close the business.

113. The Authority accepts the statements made in the Gant Second and Third Submissions, the Gant Statutory Declaration and the Kipa First Submission to the effect that the Sydney directors were not

aware of the full extent of prosecutions, Penalty Notices and compliance action taken by Police and the Director against the Licensee until November 2008, when their solicitors commenced the Supreme Court Proceedings. The Licensee has provided no evidence to the Authority that he actually put those directors on notice of all of those matters at the relevant times.

114. However, the Authority finds that the lack of due diligence on the part of the Interested Persons, discussed above, brought about the poor standards of supervision and accountability which permitted numerous breaches of Liquor and Gaming legislation.
115. Furthermore, the Authority has found that in June 2008 Mr Gant negotiated the arrangement whereby Mr Mariner would effectively run the bottle shop for himself and be responsible for running of the Hotel. Both Mr Gant and the Licensee had fiduciary obligations, as then directors of Eagles Rock, to inform their co-directors of this significant commercial arrangement. Annexure A to the Mariner Affidavit confirms that Mr Mariner “will have the full support of the owners”. The Authority finds it more likely than not that Mr Kipa and Mr Jones were aware of this arrangement and that they sanctioned it.
116. The Government Licensing System records that on 13 February 2008 Mr Gant himself became the holder of an on premises liquor licence LIQO624009068 for the vessel *MV Yackatoon*. Mr Gant is also the director of Gantman Holdings Pty Ltd (the relevant business and premises owner). Mr Gant has greater experience in the industry than the other Sydney-based co-directors of Eagles Rock and was aware, or should have been aware, of the requirements under New South Wales liquor legislation that a business carried on under a licence be subject to the adequate supervision of a fit and proper licensee.
117. The Authority has taken into account the submission in the Second Gant Submission that:

“This whole experience with the Fernhill Tavern has left all the owners in financial strife where we are all likely to lose our homes to repay outstanding debts that have been incurred. We still have an outstanding loan to the National Australia Bank for \$800,000 which relates to the purchase of the leasehold.”

118. Nevertheless, in the interests of protecting the industry and the community, the Authority has decided to take the following action:
- Pursuant to section 141 (6) of the Act, **the Authority disqualifies** Mr Paul Joseph Jones and Mr Wayne Taipua Kipa, for a period of two (2) years commencing on the date of this decision, from being a person interested in the business, or in the conduct or profits of the business, carried on under a licence.
 - Pursuant to section 141 (6) of the Act, **the Authority disqualifies** Mr Gary Gant, for a period of three (3) years commencing two months after the date of this decision, from being a person interested in the business, or in the conduct or profits of the business, carried on under a licence. The Authority has deferred the commencement of Mr Gant’s term of disqualification for a period of two months, to enable him to make arrangements to divest himself of his interest discussed at paragraph 116 of this decision.

REVIEW RIGHTS

119. Section 144 of the Act provides that an application for review of this decision may be made to the Administrative Decisions Tribunal of New South Wales (“ADT”). Such application may be made by the person against whom any disciplinary action is taken by the Authority in relation to the Complaint, or the Complainant.

120. An application for review must be made in the manner and form prescribed by the ADT, within 28 days of the day on which the applicant was notified of this decision. For more information contact the Registry of the ADT at Level 15, 111 Elizabeth Street, Sydney NSW 2000.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Chris Sidoti', with a small horizontal line at the end.

Chris Sidoti
Chairperson
7 April 2009