

The Commander
Newcastle Police Area Command
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28 September 2018

Dear Sir,

Application for	Revoke an extended trading authorisation
Applicant	Superintendent John Gralton, Commander Newcastle City Local Area Command
Licence name	Sydney Junction Hotel
Premises	8 Beaumont Street Hamilton NSW 2303
Issue	Whether to revoke the extended trading authorisation on the licence for this hotel
Legislation	Section 51(9)(b) of the <i>Liquor Act 2007</i> (NSW)

**Independent Liquor & Gaming Authority
Final decision on application to revoke an extended trading authorisation – Sydney
Junction Hotel, Hamilton**

By letter dated 5 October 2017, the Commissioner of Police (by his delegate Superintendent John Gralton, Commander Newcastle City Local Area Command)(Applicant) applied (Application) for the revocation of the extended trading authorisation (ETA) previously granted by the predecessor of the Independent Liquor and Gaming Authority (Authority), the Licensing Court of New South Wales, in relation to the premises the subject of licence LIQH400118139 (Premises).

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

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

At its meeting on 12 September 2018, the Authority decided **not** to revoke the ETA but instead to **vary** the ETA pursuant to paragraph 51(9)(b) of the *Liquor Act 2007* (NSW) and any and all

other enabling powers such that the ETA authorises the licensee to sell or supply liquor for consumption on the parts of the Premises known as the public bar, saloon bar, beer garden and dining room during the following periods:

(a) between midnight (other than midnight on a Sunday) and 1:30 am on any day of the week (other than a Monday); and

(b) between 10 pm and midnight on a Sunday.

On this basis, the trading hours for the sale or supply of liquor for consumption on the parts of the Premises known as the public bar, saloon bar, beer garden and dining room is as follows:

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

While the Authority is not required by section 36C of the *Gaming and Liquor Administration Act 2007* (NSW) to provide a statement of reasons for this type of decision, enclosed is a statement of reasons, prepared in the context of a high volume liquor and gaming jurisdiction. These reasons are also provided for the purposes of rule 59.9 of the *Uniform Civil Procedure Rules 2005*. If you have any questions about this letter, please contact the Reviews and Secretariat Unit via ilga.secretariat@liquorandgaming.nsw.gov.au

Yours faithfully



Philip Crawford
Chairperson
For and on behalf of the Independent Liquor and Gaming Authority

SUMMARY OF REASONS FOR DECISION

INTRODUCTION

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

LEGISLATION

51 General provisions relating to licence-related authorisations

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

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

3 Objects of Act

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

THE APPLICATION LETTER

7. Briefly, in the Application Letter the Applicant notes that the Sydney Junction Hotel sells or supplies liquor pursuant to a “full” hotel liquor licence (as distinct from a general bar licence). The licence has the additional benefit of a minors area authorisation (MAA) and an ETA.
8. The Applicant advises that the then current licensee, Mr Campbell Rogers, held the licence since **7 June 2017**. Prior to this Mr Rogers’ wife, Mrs Clare Rogers, held the licence from **8 September 2014** until **6 June 2017**. (The Authority notes below that the licence changed hands to be held by Mr Ross Boland on **27 September 2017** but has yet again changed hands and at the date of this letter is held by Mr Campbell Rogers again since **19 February 2018**).
9. The Application Letter refers to the extensive licensed trading hours enabled by the ETA. A record of the licence maintained on the Liquor and Gaming New South Wales (LGNSW) OneGov licensing database (as at 16 January 2017) that accompanied the Application confirms that the type of licence attaching to the Premises is a hotel licence (the Authority notes that the primary purpose of a hotel, pursuant to section 15 of the Act, is the sale of liquor by retail). At the time of making this Application and as of the date of this decision, the hotel is licensed to sell or supply liquor, for consumption *on* the Premises, in the Public Bar, Saloon Bar, Beer Garden and Dining Room areas, from 5:00 am to 5:00am Monday through Saturday and from 10:00 am to midnight on Sunday.
10. This OneGov record also indicates that the hotel is authorised to sell liquor for consumption *off* the Premises from 5:00 am until midnight Monday through Thursday, 5:00 am until 10:00 pm Friday and Sunday and 10:00 am until midnight on Sunday. The Authority notes that by operation of sections 12 and 49 of the Act and clause 117 of the *Liquor Regulation 2018* (Regulation), the legislation now permits the hotel to sell takeaway liquor from 5:00 am until 11:00 pm Monday through Saturday and from 10:00 am until 10:00 pm on Sunday.
11. The Applicant contends in the Application Letter that development approval number 2014/1492 (DA) is in force with respect to the Premises and permits trading (for the purposes of planning legislation) until 3:00 am on Monday through Saturday and until 12:00 am on Sunday evening.
12. The Applicant advises that from 12 October 2015 until 12 October 2016 the hotel was given planning permission by Newcastle City Council (Council) to trade until 5:00 am after Friday and Saturday evening. This was a trial period of 12 months. The Hotel applied to have this trial extended but was unsuccessful, in part due to Police objection on social impact grounds. As a result, the hotel is currently required by the DA to cease trade at 3:00 am Monday to Saturday, notwithstanding the later hours authorised by the ETA.
13. The Applicant notes that (at the time of making the Application) the Premises was classified as a “Level 2” declared premises under the scheme administered by the Secretary for regulating violence on New South Wales licensed premises under schedule 4 to the Act (Schedule 4 Scheme).
14. The Authority notes that the Secretary assesses licensed premises, on a six monthly basis, for acts of violence recorded by NSW Police as having occurred *on* premises during each calendar year and financial year. Venues that record more than 19 acts of violence during a 12 months assessment period (or “Round”) are designated “Level 1” declared premises and subject to the operation of special licence conditions restricting certain

aspects of their operations. Venues recording between 12 and 19 acts of violence during each Round are designated as “Level 2” declared premises and subject to a regime of less stringent special licence conditions. The Schedule 4 Scheme is designed to increase the regulatory burden on violent venues to reduce the number of assaults occurring on the premises.

15. Notably for the purposes of this decision, the Schedule 4 Scheme is not concerned with the occurrence of acts of alcohol related anti-social conduct or disturbance that do not involve assaults. It is not concerned with acts of violence that may involve the staff or patrons of licensed premises that occur *off* the premises.
16. Referring to the Secretary’s published List of Declared Premises arising from the 12 months from January to December 2016, the Applicant contends that the Level 2 classification reflected an increase to 16 assaults *on* the Premises during that year.
17. In the Cover Letter, the Applicant contends that the Application Material demonstrates that the “ongoing and significantly high volumes of violence and intoxication” are attributable to the operation of the Premises and that the exercise of the ETA is causing “costs to the community” of Newcastle.
18. The central submission made in the Application Letter is that the ETA should be *revoked* by reason of the frequency and seriousness of assaults, intoxication and liquor licensing breaches that have been recorded as occurring on the Premises.
19. The Applicant further submits that the incidents documented in the Application Material demonstrate that this hotel does not “adequately manage or successfully operate” the ETA and that the Hotel licence has not been exercised consistently with the statutory objects in section 3 of the Act during extended trading hours.
20. Moreover, the Applicant further submits that although additional licence conditions have recently been imposed by the Secretary upon the licence, the Hotel was (at the time of making the Application) recording the fourth highest number of assaults *on or linked to* any licensed premises in the State. The Applicant concludes that revoking the ETA is in the best interests of the public.

THE APPLICATION MATERIAL

21. The Application Material as initially filed comprised around 587 pages of documents, including a Cover Letter of 1 page, an Application Letter of 39 pages, and the following supporting evidence or material, most of which comprise Computerised Operational Policing System reports (COPS Reports) prepared by individual NSW Police officers describing various incidents (COPS Events) that Police contend have either occurred on the Premises or are linked by the Applicant to the operation of the Premises or the conduct of its patrons:
 - **Annex 1:** OneGov licence record for licence number LIQH400118139 for the Premises as at 16 January 2017.
 - **Annex 1A:** LGNSW and NSW Police Local Licensing Agreement for the Premises effective 6 February 2017.
 - **Annex 1B:** NSW Department of Industry list of Level 1 and Level 2 ranked licensed premises, for the purpose of the Schedule 4 Scheme of the Act, which records acts of violence on all New South Wales licensed premises. This report concerned the regulatory assessment period running from 1 January 2016 to 31 December 2016, and attributes 16 assaults on the premises to the venue for this period.

- **Annex 1C:** Police submission to LGNSW under section 54(1) of the Act in respect of the Premises dated 6 April 2017, seeking the imposition of additional conditions by the Secretary of the Department of Industry upon the licence in relation to crime scene preservation, CCTV, round the clock incident register, supervision requirements, and extended trade supervision requirements. The Applicant advises this matter remained under consideration by LGNSW at the time of making the Application.
- **Annex 2:** Applicant Evidence Matrix summarising 104 COPS reported events (COPS Events) referred to as items (Items) 1-104 below.
- **Annex 3:** Copy of Escalated Licensing Operational Response Model (ELORM) report for Newcastle from June 2016 to August 2016 from the Alcohol Related Crime Information Exchange (ARCIE) system.
- **Annex 4:** Schedule 4 Scheme Progress Report for Newcastle for the December 2017 round and June 2018 round from ARCIE.
- **Annex 5:** Submission from Newcastle LAC to the Authority in relation to the Application dated 31 August 2017.
- **Annex 6:** Statement of Mr Garth Brennan, the partner of one of the owners, Ms Belinda Roals, from the restaurant Kavon Theatre dated 4 April 2017.
- **Annex 7:** Statement of Ms Belinda Jayne Roals, co-owner of the Kavon Theatre dated 4 April 2017.
- **Photograph 1:** Showing 4 opened beer bottles, 2 opened vodka cruisers and 2 glasses of water on a bar bench.
- **Photograph 2:** Showing young men and women on a dance floor; man in foreground carrying a bucket filled with multiple cans of beer or cider.
- **Photograph 3:** Showing a man standing at a bar with 3 cans of *Smirnoff Double Black* and 2 cans of *Jack Daniels* ready to drink beverages on a tray.

ADDITIONAL APPLICATION MATERIAL

22. On 16 October 2017 and 24 October 2017, at the Authority's request, the Applicant provided supplementary evidence and information (Additional Material) in order to clarify the status of certain Local Court prosecutions, Penalty Notices or other regulatory action that was described in the Application Letter but not documented in the Application Material.
23. In a letter dated 24 October 2017, the Applicant noted several typographical errors in the previous Evidence Matrix provided with the Application Material. The Applicant concedes that the incidents described in COPS Reports E66124485 (referred to below as Item 78) and E221416098 (Item 26) occurred on or in connection with the Premises during the afternoon and not during extended trading hours.
24. The Applicant also clarifies certain references to incorrect Penalty Infringement Notice numbers in the Application.
25. In this letter, the Applicant contends that during September 2014 Mrs Clare Rogers and Mr Campbell Rogers began operating the hotel to 5:00 am. After this, Police noticed an increase in assaults and other incidents at the venue. By the end of 2014, after the development application in respect of DA 2014/1492 had been submitted by Mr and Mrs Rogers seeking consent for 5:00 am trading on an ongoing basis, Police made a submission to Council raising concerns about the social impact of late trading. Council determined *not* to grant a modified development approval that would have permitted, for the purposes of planning legislation, the ongoing use of the Premises until 5:00 am.
26. The Additional Material provided by the Applicant on 16 October 2017 and 24 October 2017 comprises the following documents:

- a. DA No. 2014/1492 issued by Newcastle City Council (Council) addressed to Mr C and Mrs C Rogers dated 12 October 2014, permitting trading hours from 7:00 am to 3:00 am Monday to Saturday and from 7:00 am to 12:00 midnight Sunday, with a 12 months period during which a maximum of 12 events permitting trade until 5:00 am on Fridays and Saturdays may be conducted.
- b. Letter dated 16 November 2015 from Detective Inspector Steve Laska of the Newcastle LAC dated 16 November 2016 submitting that the trading hours of the Premises be restricted, for planning purposes, to Monday to Saturday 7:00 am-3:00 am and Sunday 7:00 am-12:00 pm (presumably intended to read "12:00 am") due to the "significant increase in the number of offences recorded in the vicinity of this venue" since 3 September 2016. Police state that between 3 September and 13 November 2016 they have recorded, *inter alia*, 16 assaults, 5 move on directions involving intoxicated persons in the near vicinity of the Premises, and 4 breaches of licensing legislation in relation to the Premises.
- c. Copy of a letter dated 27 January 2017 from Council to SJH Hamilton Pty Limited and KDC Pty Ltd (apparently the premises owner's architect) advising that DA No. 2014/1492.01 is *not* supported by Council, following consideration of responses from Police and Council's Environmental Officers. Council advise that the proposed development will have an unreasonable impact with regard to crime prevention and public safety; acoustic impact and social impact.
- d. Penalty Notice No. **4923341024** issued by Police to Mrs Clare Rogers on 24 September 2016 for an offence of *Licensee fail to comply with conditions of licence* (in contravention of section 11(2) of the Act) which occurred at 12:40 am, carrying a penalty of \$1,100, providing the following narrative (the subject of COPS Report E61045860):

"The licensee failed to record an assault E61045860 in the incident register. The assault occurred in the main bar area about 12:40am and continued on outside the venue. I viewed the incident register and it was not recorded."

- e. Penalty Notice No. **4923341170** issued by Police to Mrs Clare Rogers on 19 February 2017 at 1:00 am for an offence of *Licensee fail to comply with conditions of licence* (in contravention of section 11(2) of the Act), carrying a penalty of \$1,100, providing the following narrative (noting that the Application Letter states that this incident is the subject of COPS Report E63989934 but this Report is not in the Application Material or Additional Material):

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

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

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

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

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

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

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

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

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

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

INITIAL CONSULTATION

27. On 27 October 2017, the Authority Reviews and Secretariat Unit (Authority Secretariat) sent a Notice of Application to the then licensee, Mr Boland, providing a complete copy of the Application Material and the Additional Material, with similar notices sent on that date

to the corporate business owner SJH Hotels (NSW) Pty Ltd and the corporate premises owner S.J.H Hamilton Pty Ltd.

28. The licensee, business owner and premises owner of the Hotel (collectively referred to below as the Respondents) were invited to provide any written submissions or evidence in response to the Application on or before 24 November 2017 with the Applicant invited to provide any submission or evidence in reply on or before 8 December 2017, copying the Respondents.

RESPONDENTS SUBMISSIONS – OCTOBER AND NOVEMBER 2017

29. On 18 October 2017, before the Authority board had given any preliminary consideration to this matter, the Respondents sent a one-page preliminary submission to the Authority through Hatzis Cusack lawyers.
30. Hatzis Cusack referred to notification, on the Liquor and Gaming NSW (LGNSW) website, that the Application was an item on the agenda of the Authority's upcoming board meeting. The Respondents noted that on 8 September 2017 the Secretary had imposed a number of new conditions upon the licence of the Premises under section 54 of the Act, in response to a submission from NSW Police. These new conditions-imposed requirements with respect to crime scene preservation, CCTV coverage, maintenance of a round the clock incident register and requirements for the licensee or approved manager appointed by LGNSW to be on duty after midnight until the Premises ceases trading.
31. The Respondents submitted that the new Application from Police is premature, and there should be some reasonable time allowed to assess the impact of these new licence conditions before any further regulatory action is contemplated.
32. On 27 November 2017 Hatzis Cusack made a more substantial submission on behalf of the Respondents comprising some 172 pages of material. It included a 26 page legal submission letter from Mr Tony Hatzis, solicitor, with the following Annexures:
- **Annexure 1:** Photographs of the Hotel interior.
 - **Annexure 2:** Article from *Newcastle Herald* dated 7 April 2015 on the renovation of the Premises.
 - **Annexure 3:** Records of the Hotel notified as a "Finalist" in the 2017 Australian Hotels Association (AHA) Awards for Excellence.
 - **Annexure 4:** Bundle of 23 letters in support of the Hotel retaining its late trading hours from patrons of the Hotel. The submitters include Mrs K McCool of Lockyer Street, Merewether; Ms S Ceccato of Ingall Street, Mayfield; Mr N Boyd of Christopher Avenue, Valentine; Ms R Domanti, the DRN Fundraising Co-ordinator of Dog Rescue Newcastle; Ms P Drinkwater of Laman Street, Cooks Hill; Ms N Chapman of Lockyer Street, Merewether; Ms B Crittenden of Willards Lane, Oakhampton Heights; Ms A Grimshaw of Barney Street, Wallsend; Mrs K Swain of Pulver Street, Hamilton South; Mrs J Davis of Green Street, North Lambton; Mr A Fletcher, principal lawyer at Fletcher Pidcock Lawyers; Ms E Mead of Bruncker Road, Broadmeadow; Mrs E Sarks of Lockyer Street, Adamstown; Mr H Kirk of St Georges Road, New Lambton; Mr H Brodbeck of Elizabeth Place, Swansea; Ms L Dale, a Community Relations Co-ordinator with Cancer Council NSW - Hunter Region; Ms J Birse of Milray Street, Swansea; Ms H Williamson of Union Street, Cooks Hill; Ms G Young of Pacific Highway, Charlestown; Mr G Haren of Pride Avenue, Newcastle; Ms E Blakmore of Kemp Street, Hamilton South; Ms M Berry of Eighth Street, Adamstown; Ms B Weir of Lester Parade, North Lambton.
 - **Annexure 5:** Newcastle Council Decision on DA dated 12 October 2015 reference 2014/1492.

- **Annexure 6:** Emails between Mr Campbell Rogers and Hotels in the Newcastle Entertainment Precinct (NEP) between January and May 2017 in relation to the Hotel joining the NEP linked scanning system.
 - **Annexure 7:** Report dated 27 November 2017 from Mr Patrick Paroz, consultant engaged by the licensee's solicitors, regarding the Application, with Venue Safety and Compliance Audits prepared by Pat Paroz and Associates dated 6 May and 6 July 2017.
 - **Annexure 8:** Confidential Property Valuation Report for the Hotel prepared by Magaan O'Rourke Loader dated 26 November 2017.
 - **Annexure 9:** Sworn statement by Mrs Clare Rogers (who was the licensee of the Hotel between **8 September 2014** until **6 June 2017**) in relation to management of the Hotel dated 12 April 2017.
 - **Annexure 10:** Article from *Newcastle Herald* dated 20 July 2016 on CCTV in Hamilton in public areas.
- 33.** The submission was also accompanied by an annotated Excel Report providing commentary on the 104 COPS Events that were then relied upon by the Applicant, with the following additional material responding to the following matters specified in the Application Material:
- On Item numbers 36 and 40 of the Evidence Matrix, the Respondents provided records of email communication between Mr Campbell Rogers and Newcastle Council on Fire Safety Issues raised by the Council during January 2017.
 - On Item number 58, the Respondents provided a Hotel Incident Register entry from 2 March 2017 recording patrons who were asked to leave that evening and noting attendance of an ambulance.
 - On Item number 64, the Respondents provided an email from Mrs Clare Rogers from the hotel's then security contractor dated 13 April 2017, terminating the engagement of Responsible Service of Alcohol (RSA) Marshal in light of an assault on 31 March 2017.
- 34.** In summary, the Respondents then opposed the Application on the basis that:
- the Hotel is a large late trading venue with a 500-patron capacity situated within the Hamilton Entertainment Precinct and that it is appropriate for the hotel to provide late trading entertainment.
 - the Hotel has recently undergone a \$3 million renovation.
 - the Hotel's licence is already encumbered with a number of conditions, and the current business owners have implemented a number of additional requirements including 3:00 am closure, use of ID scanners after 9:00 pm when entertainment is provided, no service of shots, shooters, or high strength drinks at any time, use of a Plan of Management and use of more security staff than required by the licence, with 11 guards and 3 RSA Marshals on Saturday nights.
- 35.** Furthermore, the Respondents provide documentation in respect of the Hotel's nomination for AHA awards in recent years. They contend that the Hotel accommodates some 6000 people per week, with queues forming outside the Hotel on Friday and Saturday evenings. This, it is submitted, evidences a high community demand for the late trading licensed entertainment provided on the Premises.
- 36.** On the COPS Events that are linked by the Applicant to the Premises, the Respondents submit that Police do not take account of the high patron capacity of the venue. They further contend that the late trading hours enabled by the ETA provide recreational benefits to the community, benefits to related industries and further benefits by way of employment.

37. On the Hotel's management of the risk of intoxication occurring on the Premises, the Respondents provide data as to the number of persons who were asked to leave and were refused entry to the hotel on several Friday and Saturday evenings between March and May 2017. They also refer to observations made by a consultant they have engaged, Mr Paroz, on the hotel's risk management practices (Annexure 7 to the 27 November 2017 Hatzis Cusack submission).
38. The Respondents further refer to testimonials provided in support of the Hotel (Annexure 4 to the 27 November 2017 Hatzis Cusack submission) and submit that when considered in light of the number of patrons accommodated by the Hotel, this venue generally provides a "fun, safe vibrant environment with good controls in place".
39. On the financial impact of revoking the ETA, the Respondents refer to a confidential report provided by a registered valuer, Mr Robert Loader (Annexure 8 to the 27 November 2017 Hatzis Cusack submission) and contend that granting the Application would result in a \$5 million-dollar loss to the capital value of the Hotel. The Respondents cite *O'Sullivan v Farrer* (1988) 13 NSWLR 562 and submit that there is a public interest in "avoiding the ruin of private individuals" and the Authority should have regard to the commercial implications of granting the Application. The Respondents also provide details of staff numbers engaged by the Hotel and contend that the employment of some 24 employees or contractors would be lost if the Hotel is forced to close at midnight.
40. The Respondents refer to population data from the 2016 Australian Bureau of Statistics (ABS) Census indicating a higher proportion of adults aged 20-29 in Newcastle Local Government Area (LGA) by comparison to NSW as a whole. They contend that there is "greater demand and expectation" among young adults in the Newcastle LGA to meet the entertainment needs of young people.
41. The Respondents refer to the Penalty Notices issued in relation to the Hotel during November 2016 and February 2017, arguing in submissions from their solicitor that Police intended to "create" a situation of patrons stockpiling drinks, contrary to the relevant licence condition.
42. In relation to an alleged non-compliance with a requirement to provide water to patrons detected on 19 November 2016, the Respondents contend that, contrary to statements made by the Hotel's staff to Police, the water stations were not actually malfunctioning. The licensee nevertheless paid the Penalty Notice.
43. In relation to a reported failure to record a matter in the Incident Register during September 2016, the Respondents acknowledge that this failure occurred and that the licensee attended Waratah Police Station and cooperated with Police. The licensee paid that Penalty Notice.
44. With regard to those Penalty Notices that were defended by the relevant licensee in Newcastle Court on 24 October 2017, the Respondents submit that Magistrate Andrew Eckold exercised his discretion not to record a conviction against Mrs Rogers on the basis of the measures taken and that the matters were the product of human error.
45. The Respondents further contend that Police conduct walk throughs of the Premises "five or six times per week" and that the detected breaches of licence conditions should be considered in light of this venue accommodating 6000 persons per week.
46. In response to the Applicant's reference to a Short-Term Closure Order Application for the Premises two days prior to the Easter weekend in April 2017, the Respondents note that

this matter was dealt with by agreement between the parties, with the Hotel taking voluntary measures over the Easter weekend. The Respondents submit that it is inappropriate for the Applicant to now rely upon this matter.

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

do. The Respondents submit that it is not meaningful to compare the regulatory record of this Hotel with others in Hamilton by reason of the “popularity” of this venue.

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

APPLICANT REPLY SUBMISSIONS – 4 DECEMBER 2017

61. On 4 December 2017, Police made submissions to the Authority in reply to the Respondents’ submissions of October and November 2017 via Ms Louise Hooke of the Newcastle City Licensing Unit of Police. This comprised a two-page submission letter from the Applicant, contending that the Respondents have failed to identify any solutions to the current problems that Police say are “plaguing” the Hotel and its operations. The Applicant disputes the inference offered by the Respondents that Police have not offered any solutions, contending that Police “actively sought to engage” the Hotel to assist in notifying and identifying issues when they arise. Police continue to “strongly support” the Application.
62. The Applicant contends that the Respondents submissions indicate that the Hotel operators are “ignorant to the significance of the issues and incidents” occurring at the Hotel. Police describe Mr Paroz’s report as “questionable” in terms of its independence. Police refute Mr Paroz’s findings that “... *management and staff of the Sydney Junction Hotel are very effectively implementing the plan of management and complying with the liquor licence conditions ...* ” on the basis of the detection by Police, over the past 12 months, of five (5) breaches of the licence and 3 breaches of licence conditions which are (at the time of this reply) being investigated by the Newcastle City Licensing unit and LGNSW inspectors. These matters concern breaches of crime scene preservation requirements, prohibitions against patrons stockpiling drinks and breach of a condition requiring use of security guards.
63. The Applicant submits that it is a matter of “great concern” that the Premises was now (as of December 2017) a *Level 1* declared premises pursuant to the Schedule 4 Scheme of the Act contending that it has had 30 assaults “attributed” to the Hotel during the twelve months of the most recent round of assessment.

64. The Applicant is particularly concerned with the number of ejections being recorded as occurring from the Hotel submitting that it is “disturbing” that such a large number of patrons are required to leave and exiting onto the streets in an intoxicated state. The Applicant contends that so many ejections of intoxicated people would not be occurring if the Hotel were as “vigilant as so claimed” with regard to the responsible service of alcohol.
65. The Applicant contends that assaults are continuing to occur *both in and around the Premises* and that between 15 July 2017 and 11 November 2017 there were seven (7) assaults at the Hotel, five (5) of which occurred during the extended trading period.
66. With regard to the licensee seeking approval to participate in a “linked scanning system” with other local venues, the Applicant contends that this system “cannot impact” the number of assaults occurring at the Hotel but is a “supplementary measure” to assist a venue to manage patron misbehaviour. The Applicant submits that this Hotel already has an ID scanning system in place, yet assault incidents still occur to the “highest level of any premises in Newcastle” with the Hotel recording the “second highest number of assaults in the state for a twelve-month period (30) -behind only *The Ivy* in Sydney”.
67. The Applicant submits that revoking the ETA will “improve the vibrancy and recreational amenity of the area”. Police say that patrons deserve the right to “attend a licensed premise without fearing violence or being witness to unsavoury behaviour”. Revocation of the ETA will provide a safer venue for the Hotel’s patrons and significantly reduce the amount of anti-social behaviour that is “spilling out” and “disturbing the community” in Hamilton and the surrounding area of Newcastle.
68. The Applicant provides the following further material:
- An Evidence Matrix containing summaries for an additional 20 Events recorded by Police between 15 July 2017 and 11 November 2017.
 - COPS Report E270879595 – licensing legislation, breach of licence (11:50pm 15 July 2017).
 - COPS Report E66129668 – assault (11:50pm 30 July 2017).
 - COPS Report E65558549 – licensing legislation, fail to quit (12:00am 5 August 2017).
 - COPS Report E65867179 – licensing legislation, fail to quit (2:30am 6 August 2017).
 - COPS Report E65697815 – licensing legislation, intoxicated person (12:45am 12 August 2017).
 - COPS Report E66903680 – assault (2:30am 13 August 2017).
 - COPS Report E65173822 – drink spiking (1:00am 9 September 2017).
 - COPS Report E67595877 – licensing legislation, breach of licence (10:00pm to 12:30am 9 September 2017).
 - COPS Report E67317582 – licensing legislation, fail to quit and assault (1:00am 10 September 2017).
 - COPS Report E248160596 – licensing legislation, fail to quit (1:00am 24 September 2017).
 - COPS Report E64759509 – licensing legislation, fail to quit (1:00am 24 September 2017).
 - COPS Report E67609385 – licensing legislation, fail to quit (9:00pm 29 September 2017).
 - COPS Report E65271044 – robbery (1:30am 30 September 2017).
 - COPS Report E67280155 – mid range prescribed concentration of alcohol (PCA) offence (3:15am 1 October 2017).

- COPS Report E68426388 –record of business Inspection (11:40pm 21 October 2017).
- COPS Report E65773332 – licensing legislation, fail to quit (10:45pm 24 October 2017).
- COPS Report E65971046 – affray (1:35am 28 October 2017).
- COPS Report E66408428 – street offence, offensive conduct (11:20pm 28 October 2017).
- COPS Report E66226721 – assault and licensing legislation, breach of licence (11:35pm 29 October 2017).
- COPS Report E66769508 – assault (1:20am 11 November 2017).

RESPONDENT FURTHER SUBMISSIONS – 7 DECEMBER 2017

69. On 7 December 2017 the Respondents' solicitors provided a five-page submission in response to the Applicant's submission of 4 December 2017. The Respondents contend that the additional COPS Reports indicate a reduction of "almost half" of the number of assaults that were recorded in respect of the Hotel – in that 8 assaults were recorded from 1 July 2017 until 4 December 2017 compared to 15 assaults for the same period during 2016.
70. The Respondent submit that these latest figures demonstrate the correctness of Mr Paroz's assessment in his report of 27 November 2017 that the high rates of assaults recorded on the Premises would reduce over time as the Hotel continues to enforce its barring policy, denying entry to people who have engaged in inappropriate behaviour.
71. The Respondent further submits that the "significant reduction" in assault numbers support Mr Paroz's observation in the November report that assault numbers fluctuate over time. The Respondent emphasises Mr Paroz's commentary on another hotel *Fanny's* of Newcastle (now as Argyle House, in the Newcastle CBD) and MJ Finnegan's (also in Newcastle CBD) whose rankings on the Declared Premises List from previous Rounds have subsequently improved, whilst continuing to serve patrons and provide entertainment until 3:00 am on Friday and Saturday nights. The Respondent submits that it would be "inappropriate and wrong" to permanently revoke the ETA because of "temporarily" higher crime rates that may well be referable to temporary circumstance including the launch of a newly refurbished Hotel and competitor hotels "withholding" access to their common barring list.
72. The Respondents submit that the Applicant fails to identify what the alleged deficiencies in the Hotel's system are. The Respondents characterise the 30 assaults attributed to the Hotel's now "tier one" (Level 1) status for the year to 30 June 2017 (2016 to 2017) as a "lagging indicator" and contend that the current evidence supplied by Police shows that, since 30 June 2017, almost half the number of assaults are being recorded on the Premises by comparison to the equivalent period during 2016-2017.
73. In response to the Applicant's submission that the Paroz audit is "questionable", the Respondents submit that Mr Paroz had conducted observations over three separate weekends over the course of nine months and is "well placed" to provide "credible, independent, observations about the adequacy or otherwise" of the Hotel's systems. He was the immediate past Commander of the NSW Police Alcohol Licensing and Enforcement Command, has an extensive CV in drug and alcohol regulation, and was recently commissioned by LGNSW to conduct an internal investigation.
74. The Respondents provide an additional report from Mr Paroz dated 6 December 2017 which concludes that the hotel is "highly vigilant" with respect to performance of RSA responsibilities with staff practicing "early intervention techniques" which help to explain

the relatively high numbers of “asked to leaves” from the Hotel. The Respondent contends that many people consume alcohol before coming to the Hotel, showing no signs of intoxication upon entering the Hotel but may develop those signs soon afterwards, even if they consume no or little alcohol at the Hotel. The Respondent further contends that COPS Report E270879595 provided with the Applicant’s updated Evidence Matrix illustrates this. The Respondents submit that removing intoxicated patrons does not demonstrate “lax or inappropriate” practices but rather staff that are “diligently performing the duties required of them at law”.

75. The Respondents discuss their attempts to join the local linked scanning system and contend that this demonstrates an “*embracing* of responsibility”, a desire to access “important tools” used by others to deny access by troublemakers to their Hotel and an “earnest” desire to provide a “safe facility”. The Respondents reiterate that Mr and Mrs Rogers have voluntarily implemented measures (referred to in the Respondents previous submission) which are “over and above minimum legal requirements” and argue that it is a “shame” that Police have not “compelled” other local hotels to “allow” the Sydney Junction Hotel to join their common barring system.
76. The Respondents contend that the Hotel’s own barring list is now “proving effective in significantly reducing assault numbers” with this reduction likely to extend further into the future the longer this system is in place.
77. The Respondents contend that “vibrancy” of the area can only be advanced by permitting the Hotel to continue to receive and entertain patrons, as it presently does during extended hours. People attend this Hotel in “very large numbers” and the Authority has been provided with testimonials from a large number of patrons who described the Hotel as providing a safe, welcoming and controlled environment. The Respondents contend that Mr Paroz, who advises in his various reports, that management and staff are effectively implementing the Plan of Management and that during his visits he saw no aggressive behaviour, corroborates these observations and testimonials.
78. The following additional material accompanies this submission:
 - Compliance Audit report dated 6 December 2017 conducted at the Hotel on 2-3 December 2017 prepared by Patrick Paroz of Pat Paroz & Associates Pty Ltd.
 - Further report prepared by Patrick Paroz of Pat Paroz & Associates Pty Ltd dated 6 December 2017 including photographs taken during the early hours of 3 December 2017 outside the *Hamilton Station Hotel, Sydney Junction Hotel, Kent Hotel* and the *Oasis* food court.
 - The updated Applicant Evidence Matrix annotated with the Respondents’ observations on each COPS Event relied upon by the Applicant.

FINDINGS ON COPS EVENTS FROM JULY 2016 TO NOVEMBER 2017

79. The Authority accepts the uncontested advice in the Application Letter that notwithstanding the *licensed* trading hours, the hotel’s *actual* trading hours are limited by the operation of development consent DA 2014/1492 to no later than 3:00 am after Monday through Saturday evenings and until 12:00 am on Sunday evenings
80. The Applicant’s case is primarily based on COPS Events that have been summarised by the Applicant in the Evidence Matrices provided with the Application Material. These are Excel spreadsheets providing one paragraph summaries of the alleged facts of each event. Each COPS Report has been furnished by the Applicant with the initial Application Material and the Additional Application Material.

81. COPS reports typically provide a contemporaneous narrative record of the observations made by a reporting Police officer, and/or witnesses to an incident who have reported a matter to Police. Reports vary in detail but typically record the time, date and place of the incident and the subject matter or offence category assigned to the matter by Police.
82. In each Evidence Matrix the Applicant also provides a brief note on the date and time of the Event, Police classification of any alleged offence, the gender and age of the person(s) involved, the nature of their involvement, their level of intoxication, the identified link to the Premises and the location or proximity of the Event to the Premises.
83. Noting that the First Evidence Matrix refers to the COPS Events as “Items 1-104” the Authority refers to the 20 further events recorded in the Second Evidence Matrix as Items 105 to 124.
84. Items 1-124 occurred between July 2016 and November 2017.
85. The Authority’s findings on an additional 21 COPS Events (which the Authority refers to as Items 125 – 145), provided by the Applicant on 27 August 2018 and which occurred between December 2017 and July 2018 are discussed further below.

Assault Events

86. **Item 1** – COPS Report E61332914 – 12:10 am on 3 July 2016: Male patron on the Premises was asked to leave due to being “well intoxicated” and became argumentative and spat on another person before being physically restrained. The patron contacted Police claiming he had been assaulted by Hotel security and was argumentative with Police when he was informed that no charges would be pursued against Hotel security.
87. **Item 3** – COPS Report E61653332 – 4:20 am on 23 July 2016 (recorded as an occurrence only): Female patron who had her last drink on the Premises and was recorded as being “moderately affected” by alcohol was taken to John Hunter Hospital. Patron claims to have been assaulted on the Premises at around 12:00 am through being hit to the back of her head. The Event is recorded by Police as an “occurrence” only as there was insufficient evidence to prove an assault.
88. **Item 6** – COPS Report E61149320 – 1:00 am on 21 August 2016: Male patron was punched in the mouth by another male in the courtyard area of the Premises, causing him to fall to the floor from his chair, suffering ongoing soreness to his jaw and headaches. Hotel was contacted for Police to view CCTV. Victim was recorded as having consumed his last drink on the Premises and being “slightly affected” by alcohol.
89. **Item 9** – COPS Report E61045860 – 1:00 am on 24 September 2016 (*also noted as a breach of licensing legislation*): Fight between two groups of male patrons occurred inside the Premises with all removed from the Premises by Hotel security guards. On the street, one woman fell backwards due to her intoxication, causing her to be knocked unconscious. One female and one male involved in this incident are recorded as having had their last drink at the Premises and as being “well affected” by alcohol.
90. **Item 15** – COPS Report E62319852 – 2:15 am on 9 October 2016: While on Beaumont Street a female aged 20-30 punched a male to his left eye region. The male and female were among approximately 200 persons who had recently left the Premises and were congregating on the street. The female is recorded to have had her last drink at the Hotel while witnesses described the male victim as highly intoxicated.

91. **Item 20** – COPS Report E62490613 – 12:15 am on 16 October 2016: Female was drinking on the Premises when another female patron began swearing at her, grabbed a handful of her hair and yanked it, causing her head to jerk to the side before punching her 3 times in the cheekbone. Hotel security ejected the second female from the Premises. Police attempted to contact the Hotel 3 times to access CCTV footage and on the fourth phone call were informed that CCTV was not working on this occasion. Both females recorded as having had their last drink at the Premises and as being “slightly affected” by alcohol.
92. **Item 21** – COPS Report E62237125 – 12:14 am on 22 October 2016: Four patrons (at least two males, unclear whether any females) were involved in physical fight in the VIP smoking area inside the Premises, which was broken up by security after one patron was pushed to the ground. All patrons were dispersed within the Hotel with no further details gained. One male is recorded as having had his last drink on the Premises and as being “moderately affected” by alcohol.
93. **Item 22** – COPS Report E62375427 – 1:11 am on 22 October 2016: An assault incident (unclear whether male or female) was recorded in the Hotel’s incident register. When Police reviewed the CCTV footage all they could see was 3 patrons falling onto Beaumont Street, with one of them being “thrown” out by security and one being dragged out, appearing unconscious, and placed in a recovery position by security. Victim is recorded to have had the last drink on the Premises and as “moderately affected” by alcohol.
94. **Item 23** – COPS Report E62554236 – 1:50 am on 22 October 2016: A male patron approached another male who was speaking on a telephone near the gaming area on the Premises and began talking to him. They then began punching and pushing each other and both men end up on the ground with the victim recorded as wiping blood from his nose. This incident was reported by Police on the basis of first viewing the incident register and observing that a record for the event was recorded then obtaining the CCTV footage which was viewed by officers. No record was made of the intoxication levels or last place of liquor consumption.
95. **Item 27** – COPS Report E63128431 – 1:49 am on 13 November 2016 *also noted as an offensive behaviour incident*. Male patron is observed on CCTV footage to headbutt another male patron inside the Premises before a number of punches are exchanged between them. One of them appeared to be moderately affected by alcohol, the other was recorded as being “not affected” by alcohol but as having had his last drink on the Premises.
96. **Item 28** – COPS Report E221415898 – 1:43 am on 12 November 2016: a patron struck another patron on the dance floor. One of the patrons was found by the RSA marshal and once outside was moved on with no issue.
97. **Item 29** – COPS Report E221415898 – 1:43 am on 12 November 2016: Fight broke out between two male patrons on the dancefloor at the Premises and one of these patrons refused to leave when asked and told security to “fuck off”. Once outside the Premises the other patron involved in the fight picked up a bollard and moved towards Hotel security and had to be restrained. Police became aware of the event after viewing the Hotel’s incident register during an inspection of the Premises.
98. **Item 35** – COPS Report E64085078 – 1:30 am on 10 December 2016: Woman tried to diffuse a heated discussion between a group of patrons on the Premises and one of the patrons (gender of the patron unclear from the report) threw a drink at her, after which a different patron (gender of the patron unclear from the report) pulled her hair, pulled her to the ground and punched her. Police attended a short time after this incident occurred. Two

females and one male involved in this incident are recorded as having had their last drinks on the Premises and all were “slightly affected” by alcohol.

- 99. Item 47** – COPS Report E65350082 – 12:28 am on 27 January 2017: Male patron broke into the disabled toilet on the Premises and “groped” the female victim. Another patron intervened but was then removed from the Premises, while the male person of interest was seen by the female victim to get into a taxi and leave the Premises. The victim complained to security who informed Police officers who were already on the Premises. The male is recorded as being “moderately affected” with the female “moderately affected” by alcohol and both having had their last drinks on the Premises.
- 100. Item 48** – COPS Report E64272865 – 3:00 am on 28 January 2017: After leaving the Premises, a male patron jumped onto the bonnet of a car that had stopped at the intersection of Donald and Beaumont Streets. The driver got out and identified himself as a Police officer, showing the patron his badge. An altercation ensued and the patron punched the driver (the Police officer) in the head, causing the driver to lose consciousness. The patron then left the area and a passing Police vehicle was flagged down by the driver (upon regaining consciousness). This report indicates that the patron commenced drinking around 3:00 pm on Friday 27 January 2017 before going to the Sydney Junction Hotel. The male consumed “two brown pills” which he purchased from a male near the Premises when leaving to go to the King Street Hotel. After being refused entry, the male returned to the Sydney Junction Hotel and continued drinking. The patron is recorded as having had his last drink at the Premises and being “moderately affected” by alcohol. The other two patrons recorded in the report are described as being “well affected” by alcohol and also having consumed their last drink at the Premises.
- 101. Item 51** – COPS Report E63332945 – 1:30 am on 29 January 2017: After Hotel security removed a number of male patrons, a fight broke out between them on the footpath outside the Premises. One male king hit a security guard and another male was pushed to the ground. Police were called to the venue by security staff. The person of interest is recorded as being “moderately affected” by alcohol with his last drink on the Premises.
- 102. Item 53** – COPS Report E63524547 – 1:00 am on 5 February 2017: A female patron who had been on the Premises for a number of hours was walking to the dancefloor area when her hair was pulled, her head pulled down and forward and she was punched in the face 4 to 5 times before being dragged around by her hair. A crowd then gathered around and intervened. The victim was unsure who had assaulted her. The victim is recorded as having had her last drink on the Premises and being “well affected” by alcohol.
- 103. Item 57** – COPS Report E63372522 – 11:00 pm on Sunday 19 February 2017: A male patron fell into a female patron on the Hotel dancefloor and turned to apologise, but she punched him in the mouth, causing his bottom lip to split open. The male victim is recorded as having had his last drink on the Premises and being “moderately affected” by alcohol.
- 104. Item 58** – COPS Report E63360637 – 1:20 am on 2 March 2017: An unprovoked attack occurred on the street outside the Hotel perpetrated by a male patron who had just exited the Premises. The male victim was outside the Hotel facing in the opposite direction and the assault was observed by the victim’s girlfriend and Hotel security. The victim fell to the ground and lost consciousness for twenty seconds. Hotel security telephoned Police who attended. Both males are recorded as having had their last drinks on the Premises with the victim “slightly affected” and the assailant “moderately affected” by alcohol.
- 105. Item 62** – COPS Report E386332892 – 10:02 pm on Sunday 26 March 2017: Two female patrons were walking through the Hotel about to leave when two plastic beer cups were thrown deliberately with force, striking one of the female patrons in the side of the forehead

causing it to bleed significantly. The female victim attended hospital where the wound had to be glued shut. The victim is described as “not affected” by alcohol and having consumed her last drink at the Premises.

- 106. Item 70** – COPS Report E66127477 – 12:15 am on 2 April 2017: Male consuming alcohol on the Premises inappropriately grabbed a female patron and a fight ensued on the Premises between the male and the female’s boyfriend. The boyfriend suffered a deep vertical laceration on his lip. Police intervened and the first male became extremely aggressive and abusive towards Police, resisting arrest and throwing his body against the side of a Police car, bending the aerial. He was sprayed with capsicum spray, charged with assault Police and issued a Court Attendance Notice (703571707). There is no evidence of the outcome of this charge. The male patron is recorded as having had his last drink on the Premises and being “moderately affected” by alcohol.
- 107. Item 71** – COPS Report E64593731 – 2:20 am on 2 April 2017: One male headbutted another male in the gaming machine area of the Premises, causing the victim to collapse to the ground and lose consciousness. The assault was reported to Police and ambulance staff attended but upon regaining consciousness the victim had no recollection of the incident, suffering a suspected fractured nose, facial swelling and bruising. There is no record in the report of where these parties consumed their last drinks (if any) or their intoxication levels.
- 108. Item 74** – COPS Report E66098285 – 12:00 am on 16 April 2017: Female dancing on the dancefloor of the Premises was approached by a male patron who abruptly grabbed both of the female’s breasts. The female yelled at him before the male placed a \$10 and \$5 note in her hand and then walked away. Both the male and female patrons are recorded as having had their last drinks on the Premises, with the male “moderately affected” and the female “not affected” by alcohol.
- 109. Item 90** – COPS Report E64056525 – 1:10 am on 3 June 2017: A female patron dancing on the dancefloor of the Premises was approached by male who grabbed her crotch, smiled at her and kept walking. She became distressed, informed security and Police were called to the Premises by the venue manager, who identified the male from CCTV footage, who had by that time left the Premises. The female patron had her last drink on the Premises and is recorded as being “slightly affected” by alcohol.
- 110. Item 96** – COPS Report E63680220 – 1:58 am on 18 June 2017: Young female patron was transported to hospital by ambulance with a possible fractured nose after being punched on the dancefloor by another female patron on the Premises. Police arrested the offender and charged her with assault occasioning actual bodily harm. Both females were recorded as having had their last drinks on the Premises, with the accused “moderately affected” and the victim “well affected” by alcohol.
- 111. Item 99** – COPS Report E65496765 – 1:17 am on 25 June 2017: Two male patrons who appear to know one another were speaking on the dancefloor of the Premises before one took the other’s drink and began to walk away. He was then punched 5 times in the head by the male whose drink he had taken. Both are recorded as having had their last drinks on the Premises with one of the males “moderately affected” and the other “well affected” by alcohol.
- 112. Item 101** – COPS Report E67647467 – 12:15 am on 29 June 2017: Hotel security staff determined that a patron in the outdoor rear area of the Premises was intoxicated and asked him to leave after finishing his drink. When the patron was approached by security a second time he stood up and swiped his hand across the table towards security. The security guard then pulled the intoxicated patron into a headlock, threw him to the ground

and further strikes the victim's head causing swelling to the head and requiring conveyance to hospital. No records as to last place of consumption or intoxication levels are noted in this report.

- 113. Item 102** – COPS Report E65256658 – 1:30 am on 1 July 2017: Police attended the Hotel in relation to an alleged assault on the Premises but found that the male person of interest had left the venue. The male victim refused to provide details but was observed to have sustained bruising and swelling to his left eye which he was struggling to keep open. The manager stated that the victim was ordering a drink at the bar when the person of interest approached and punched him. The victim is recorded as having had his last drink on the Premises and “slightly affected” by alcohol.
- 114. Item 110** – COPS Report E66903680 – 2:20 am on 13 August 2017: Two male patrons began punching one another on the dance floor inside the Hotel. Staff broke up the fight and were informed they were fighting over a girl. Both males left the Premises prior to the arrival of Police. Although this report identifies one person as being moderately affected by alcohol and having consumed their last drink at the Premises, it is unclear who this person is in relation to this incident due to the redactions in the report.
- 115. Item 121** – COPS Report E65971046 – 12:05 am on 28 October 2017: A male and female were trying to gain entry to the Hotel after being refused entry earlier. Security restrain the male when unknown friends come over and get involved with security. A brawl involving the male, unknown friends and security breaks out ending up in the middle of Beaumont Road. The male receives a punch to the head and falls to the ground appearing to be knocked out. This report indicates that the victim advised Police that he was “pretty drunk” and got kicked out of the Premises earlier in the evening. The report describes the victim as having being “moderately affected” by alcohol and specifies that it is “not known” where the victim consumed his last drink.
- 116. Item 124** – COPS Report E66769508 – 1:20 am on 11 November 2017: A male patron was stopped from leaving the dance floor and was punched in the face by another male patron causing a small laceration under his left eye. The fight was stopped by security. There is no information concerning the level of intoxication or place of last consumption in this report.

Street Offences Events

- 117. Item 7** – COPS Report E62822969 – 4:30 am on 4 September 2016: Five males who are recorded as having had their last drinks on the Premises and being either “moderately” or “well affected” by alcohol left the Hotel, walked down Beaumont Street and instigated a brawl with a group of security guards who were eating on the street at the corner of Cleary and Beaumont Streets (it is unclear where these guards were employed). Witnesses stated that the patrons were “spoiling for a fight” and one of them then kicked a passing car causing damage to it. When Police arrived, 3 of this group were uncooperative and were arrested. One male was issued with a Criminal Infringement Notice No.4923339558 for offensive behaviour. Another male was issued a Future Court Attendance Notice for Offensive Behaviour and Affray. The outcome of these actions is not clear from the Application Material.
- 118. Item 8** – COPS Report E61997305 – 12:20 am on 18 September 2016: Male patron was playing a gaming machine on the Premises and smashed its screen, as confirmed by Hotel CCTV. After being escorted outside by staff to await Police, he ran down Beaumont Street but was apprehended and charged with malicious damage to property. The male is recorded as “moderately affected” by alcohol and having had his last drink on the Premises.

- 119. Item 11** – COPS Report E63018767 – 1:00 am on 2 October 2016: Approximately 30 people were fighting on the corner of Beaumont and Donald Streets. Police later viewed CCTV footage showing that the “larger group” of persons of interest had either been ejected from or had left the Premises only minutes before becoming involved in this brawl.
- 120. Item 16** – COPS Report E63383741 – 12:30 am on 15 October 2016 *also relied upon by the Applicant as a breach of licensing legislation*: Police observed the doorman at the Premises having trouble with a male patron, who appeared to be intoxicated. Security advised Police that the patron had been asked to leave the Premises several times. Police told the patron to leave and he became belligerent and abusive towards Police. The same patron was later observed staggering around the entrance to the Premises being abusive and swearing. The patron is recorded as being “well affected” by alcohol and that his place of last drink is “not known” (presumably because some time elapsed between him being ejected from the Premises and returning to the vicinity). Police issued him with Penalty Notice No.4938815678 for Failure to Quit Licensed Premises. The current status of this Penalty Notice is not clear from the Application Material.
- 121. Item 27** – COPS Report E63128431 – 1:49 am on 13 November 2016 *also relied upon by the Applicant as an assault incident*. Patron is recorded on CCTV footage to headbutt another patron inside the Premises before a number of punches were exchanged between the two males. The male who was headbutted was recorded as “not affected” by alcohol but having had his last drink on the Premises. The male who initiated the fight (by headbutting the other male) appeared “moderately affected” by alcohol and was issued with Criminal Infringement Notice No.4935858840 for Offensive Behaviour. The payment status of this Notice is not clear from the Application Material.
- 122. Item 43** – COPS Report E62655409 – 1:05 am on 22 January 2017: Male patron who had been drinking on the Premises was issued with a move on direction by Police after he was seen lying on the ground in the car park of the nearby Hamilton Rail Station. He is noted as being “well affected” by alcohol and having had his last drink at the Premises.
- 123. Item 50** – COPS Report E63615354 – 1:00 am on 29 January 2017: A male patron was observed by Police to throw a metal bollard at the tiled wall of the exterior of the Premises was issued with a move on direction by Police due to his behaviour and intoxication. Hotel staff were spoken to who stated that the patron would be issued with a Banning Notice. The patron was recorded as “moderately affected” by alcohol and having had his last drink on the Premises.
- 124. Item 55** – COPS Report E63716748 – 1:00 am on 12 February 2017: A group of male persons who had been drinking on the Premises and recorded as “moderately affected” by alcohol became aggressive towards each other on Beaumont Street, approximately 30 metres from the Premises. One of the males was approached by Police and became increasingly verbally abusive. Police repeatedly requested him to cease making threats and using offensive language but he continued. Police physically restrained the male and charged him with Affray and Offensive Language. The current status of this matter is unclear from the Application Material.
- 125. Item 73** – COPS Report E63803744 – 12:00 am on 16 April 2017: Female using *Snapchat* application on her iPhone pointed camera in the direction of a male on the Premises. The light from the camera shone in his face and the male grabbed her phone and threw it to the ground causing it to become inoperable. The female reported the matter to Police, who recorded it as a Malicious Damage to Property Event. The female is recorded as having had her last drink on the Premises and being “slightly affected” by alcohol.

- 126. Item 80** – COPS Report E63534330 – 1:04 am on 27 April 2017: A male patron was asked to leave the Premises by Hotel security staff due to his aggression and intoxication. He initially refused and then stood outside the Premises and had to be reminded repeatedly by the manager of the requirement for him to move at least 50 metres away from the Hotel. After moving approximately 20 metres away he told attending Police officers that he would “fight it in court”. Police issued a move on direction due to his intoxication and aggression. He is recorded as having had his last drink on the Premises and “well affected” by alcohol.
- 127. Item 86** – COPS Report E66960588 – 12:50 am on 14 May 2017: Male patron who had his last drink on the Premises and is recorded as being “well affected” by alcohol was issued with a move on direction by Police after enticing other commuters to fight and arguing with persons waiting on Platform 1 of Hamilton Railway Station. He was observed to be swaying side to side and smelling strongly of alcohol by rail and security staff, who contacted Police. Police issued Transport Infringement Notice 4037830180 for the offence of Behave in Offensive Manner in or on Public Passenger Vehicle/Train or Public Area. The current status of this Penalty Notice is unclear from the Application Material.
- 128. Item 97** – COPS Report E65389763 – 2:14 am on 18 June 2017: Police observed a male patron having been ejected from the Premises then argue with Hotel security, becoming belligerent and argumentative with Police and then failing to move 50 metres away from the Premises as directed. He is recorded as having had his last drink on the Premises and as being “well affected” by alcohol. He was issued with Infringement Notice No.4937174954 by Police for Excluded Person Remain in Vicinity of Licensed Premises. The status of this Infringement Notice is not known.

Other Miscellaneous Events

- 129. Item 10** – COPS Report E62142522 – 1:55 am on 24 September 2016: A male who had been drinking on the Premises and is described as “well affected” by alcohol broke into the home of the informant’s family (located approximately 750 metres from the Premises), fell asleep and the informant woke to find a stranger asleep in the bed next to him. Recorded by Police as a trespass offence.
- 130. Item 78** – COPS Report E66124485 – 12:00 pm on 22 April 2017: A patron who was “moderately affected” by alcohol and had been drinking at the Premises walked into a neighbouring restaurant, attempted to move a neon sign which fell off the counter and broke. Police later found the patron at the Exchange Hotel. The patron accompanied Police back to the restaurant, apologised and offered to pay for the damage.
- 131. Item 79** – COPS Report E63857527 – 10:10 pm on Sunday 23 April 2017: Police were approached by a female patron who was “moderately affected” by alcohol and had stated she had been drinking at the Premises. The female asked Police to give her a lift home. Police refused and the female became argumentative and began punching a wall. Police issued a move on direction to the female to which she complied.
- 132. Item 103** – COPS Report E64863207 – 3:12 am on 1 July 2017: Police were called to the scene of an accident where a vehicle had crashed into two parked vehicles and the driver had left the scene. The car was located in the middle of the road in a neighbouring suburb with the driver asleep at the wheel. He was subjected to a breath analysis test which gave a result of 0.191 and he was charged with High Range PCA. Recorded by Police to have consumed his last drink on the Premises and to be “well affected” by alcohol. The current status of those court proceedings is unclear from the Application Material.
- 133. Item 111** – COPS Report E65173822 – 1:00 am on 9 September 2017: A female patron informed Police that she saw a man next to her place his hand over her glass moving his

fingers as if putting something in her drink. The female patron smelt the drink and thought it smelt off so she went to the barman who upon smelling the drink also thought it smelt off. The man who allegedly put something in the female patron's drink asked her what happened and when she told him, he walked away.

Licensing Legislation Matters

- 134. Item 9** – COPS Report E61045860 – Between 12:40 am and 1:00 am on 24 September 2016 *also relied upon by the Applicant as an assault incident*: The licensee of the Premises at the time, Mrs Clare Rogers, was issued with a Penalty Notice by Police for failure to comply with licence condition requiring maintenance of incident register recording details of alcohol related assaults on the Premises. This incident was the subject of Penalty Notice 4923341024 which the licensee paid on 17 December 2016, according to SDRO Payment Details Record dated 28 December 2016 provided by the Applicant as an annexure to its letter dated 24 October 2017.
- 135. Item 13** – COPS Report E65127788 – 12:08 am on 8 October 2016: Male patron of the Hotel was arrested by Police after being asked by Hotel security to leave the Premises, pushing an RSA Marshal then “likely” smashing a window and refusing to leave. CCTV footage was not provided on request by Police and the matter was recorded as an alcohol related offence (unspecified) against licensing legislation by a customer. The male is recorded as having had his last drink on the Premises and as being “well affected” by alcohol.
- 136. Item 16** – COPS Report E63383741 – 12:30 am on 15 October 2016 *also relied upon by the Applicant as a street offence/ move on direction*: Male patron observed by Police to be “well affected” by alcohol; refusing to leave the Premises; then attempting to re-enter Premises after being removed. The last place of consumption of liquor is “not known”. Police issued him with Penalty Notice No.4938815678 for Failure to Quit Licensed Premises. The current status of this Penalty Notice is not clear from the Application Material.
- 137. Item 17** – COPS Report E272249894 – 1:45 am on 15 October 2016: Male patron stumbled out of the Premises and collapsed on his face. He appeared to be extremely alcohol and/or drug affected, was in and out of consciousness and placed in a recovery position while an ambulance was called. Police heard another patron say “yeah that guy was passed out in the toilet before”. The male is recorded as having had his last drink on the Premises and “seriously affected” by alcohol.
- 138. Item 32** – COPS Report E63235733 – 10:00 pm to 3:00 am on 19/20 November 2016: Covert officers entered the Premises using expired identification, once inside 6 alcoholic drinks were purchased and were placed in front of 2 officers who already had 1 drink, they sat with 7 drinks for a period of time. One of the officers attempted to use the water station but was informed that it was broken and they would need to go to another bar. Police observed the owner/manager of the Premises Mr Campbell Rogers checking identification of persons seeking entry to the Hotel without scanning their identification, which according to the report was to get “as many persons as possible” into the Premises before the lockout period commences. Police observed CCTV showing patrons purchasing at least 5 drinks at one time, with another patron observed to be highly intoxicated. Police issued the licensee at the time (Mrs Clare Rogers) with **three** Penalty Notices during this inspection for alleged breaches of licence conditions prohibiting sales of more than 4 drinks per customer, prohibiting the stockpiling of drinks and requiring the provision of a free water station, as recorded in this COPS Report.

139. The licensee at the time (Mrs Clare Rogers) elected to have these Penalty Notices heard in Court (two of which - **4923341143** and **4923341134** - she was sentenced to a 6 months good behaviour bond, and the other of which - **4923341161** - was paid on 16 October 2017).
140. **Item 69** – COPS Report E64371861 – 12:30 am on 2 April 2017: Police observed an intoxicated female lying in the recovery position on the footpath on Hudson Street next to the driveway to the rear of the Premises. Her friend told Police that she had been consuming alcohol on the Premises and was only young and not used to drinking. Recorded as an (unspecified) alcohol related breach of licensing legislation by the licensee. There is no record of last place of consumption and no note of level of intoxication.
141. **Item 89** – COPS Report E64659372 – 2:05 am on 28 May 2017: Male patron on the dancefloor of the Premises pulled the hair of a female and was told to leave by Hotel security staff but refused. Another male became “argumentative and quarrelsome” and both males were physically removed from the Premises by Hotel security. It is reported that the first male would be issued with a Penalty Notice for failure to leave licensed premises when required. The last place of consumption is recorded as the Premises and the male is recorded as being “moderately affected” by alcohol. The current status of this Penalty Notice is unclear from the Application Material.
142. **Item 91** – COPS Report E63735409 – 2:00 am on 3 June 2017: Male patron was asked to leave the Premises by Hotel security staff due to his high level of intoxication and became abusive and argumentative towards staff, then argumentative and abusive towards Police and was arrested. The patron is recorded as having had his last drink on the Premises and as being “seriously affected” by alcohol. The patron was issued with Infringement Notice 4937174826 carrying a penalty of \$550 for the offence of Excluded Person Remaining in Vicinity of Licensed Premises. The current status of the Penalty Notice is unclear from the Application Material.
143. **Item 92** – COPS Report E65123931 – 2:00 am on 3 June 2017: Male patron refused to quit the Premises when asked by security and then by Police and questioned Police as to why he had to leave, despite being told that he was too intoxicated. Patron eventually moved on but was issued with Penalty Infringement Notice No. 4920242728 by Police for the offence of Excluded Person Remain in Vicinity of Licensed Premises, carrying a penalty of \$550. The current status of this Penalty Notice is unclear from the Application Material.
144. **Item 107** – COPS Report E65558549 – 12:00 am on 5 August 2017: A male patron was ejected from the Hotel. He refused to leave the vicinity of the Hotel and spat on one of the security guards. The patron ran off before Police arrived and the security guard made no effort to speak with Police. The manager stated that “being assaulted as a bouncer was part of the job” and they did not want any further action in relation to the matter.
145. **Item 108** – COPS Report E65867179 – 2:30 am on 6 August 2017: Female patron was sighted in the toilets of the Premises complaining she was sick to staff. Ambulance officers attended with the patron refusing a trip to hospital. The patron also refused efforts by staff to organise transport home via a taxi service. The patron refused to leave when asked by Police and was escorted out of the Premises. The patron attempted to re-enter a number of times and was placed into an awaiting taxi and informed of the infringement for fail to leave premises when required.
146. **Item 109** – COPS Report E65697815 – 12:45 am on 12 August 2017: Police attended the Hotel in relation to an intoxicated female refusing to leave the vicinity of the Hotel. The

female was in Hudson Street, Hamilton and was “unsteady” getting to her feet and “smelt of intoxicating liquor”. The female was “argumentative and belligerent” to Police when asked for identification. CCTV footage indicated security directing the female to leave the area. Police directed the female to move away from the location. When Police attempted to hand the female her driver’s licence, which she had dropped, the female punched a Police officer in the upper right arm. Police arrested the female and took her to Newcastle Police Station. The COPS Report recorded the female’s level of intoxication as “well affected” and that her last drink was at the Premises.

- 147. Item 113** – COPS Report E67317582 – 1:00 am on 10 September 2017 (*which the evidence matrix also lists as an assault*): Security had identified a female patron as intoxicated and had asked her to leave. The female refused to leave at first but later agreed. A male patron was then asked to leave due to his aggressive nature. Both patrons started to walk towards the exit until the male patron refused to go. Security used force to escort the male out when the female patron punched security in the nose causing it to bleed.
- 148. Item 114** – COPS Report E248160596 – 1:00 am on 24 September 2017: A male seen by Police to be intoxicated was loitering around Hudson Street. The male yelled out “I’m not even drunk, I drank water”. His speech was slurred, eyes bloodshot and actions clumsy. Police asked the male to move from the location. Security informed Police that the male was removed from the Hotel due to signs of intoxication. Police provided the male with a direction to leave advising him that he was committing an offence and to move at least 50m from the entrance. The male refused. As a result Police issued penalty #4923337908 for remain in vicinity. This report described the person of interest as being “well affected” by alcohol with the last drink consumed at the Premises.
- 149. Item 115** – COPS Report E64759509 – 1:25 am on 24 September 2017: An intoxicated male had attempted to gain entry to the Premises 4 times with security telling him could not enter. Police provided the male with a direction to leave and then issued penalty #4923337917. Although this report describes the person of interest as being “well affected” by alcohol and having consumed his last drink at the Premises, it does not specifically mention that the male had previously been inside the Premises.

Business Inspections

- 150.** The Applicant has provided some information that does not record any specific contraventions of licensing legislation but have apparently been provided to illustrate the level of patronage during Police inspections and the degree of risk posed by patron demand and the supply of liquor at this venue during late trading hours.
- 151. Item 95** – COPS Report E66755577 – 12:30 am on 10 June 2017: During a business inspection Police asked a male patron to leave due to his intoxication. Police noticed persons were purchasing 4 drinks at one time and did observe a few persons stockpiling with more than 2 unconsumed drinks in front of them. After leaving Police were called back to the Hotel due to 2 other males refusing to leave and they eventually complied. Police observed that the food available was “sausages”.

Further Related Events

- 152.** A number of COPS Events appear to have occurred at a time of day prior to the commencement of extended trading hours. Having considered the facts of these matters and the submissions of the Respondents, the Authority is satisfied that the following incidents did in fact occur and provide relevant information about anti-social behaviour, adverse impact on amenity and/or the culture of patrons who are attracted to this venue by

reason of its status as a large, late trading Hotel offering live nightclub style entertainment. The Authority considers this information to be relevant, but not of itself determinative, in that it underscores the additional risks posed by the availability and exercise of extended trading hours, as the venue accommodates persons who have either been drinking on the Premises for a prolonged period or are drawn to this Hotel in significant numbers after drinking other venues or locations before attending the Premises.

- 153.** The Authority is satisfied, on the balance of probabilities, that the following Events involving alcohol related crime, disturbance, patron intoxication, or anti-social conduct requiring the intervention of Police did actually occur. These Events, which record incidents which occurred from 3 July 2016 to 11 November 2017 indicate a reasonable nexus to the exercise of the ETA, which is in effect between the hours of 12:00 am and 5:00 am on Monday through Saturday and between 10:00 pm and midnight on Sunday evenings.
- 154.** Having considered the submissions from the Respondents on each of these matters, the Authority is satisfied that the following Events occurred on or near the Premises and/or involved persons who were either on the Premises or were attracted to the Premises by reason of the exercise of the ETA and the availability of late trading.
- 155. Item 2** – COPS Report E61590336 – 6:40 pm on 20 July 2016: A female patron was refused service and asked to leave the Premises. The female refused to leave and had to be physically removed from the Premises. Outside the Premises the female refused to move 50 metres away from the location. When Police attended, the female had moved over to Hamilton Railway Station. When Police spoke to the female, she became argumentative and stated they had stolen her property. An infringement notice was not issued by Police as the female is homeless with no known income. The person of interest is described as being “moderately affected” by alcohol and having consumed her last drink at the Premises.
- 156. Item 4** – COPS Report E61771812 – 11:25 pm on 5 August 2016: A male was issued with a move on direction after being observed by Police outside of the Hotel, unsteady on his feet and falling onto nearby railway tracks. The male became aggressive and argumentative and Police detained him for his own safety. The male is recorded as “well affected” by alcohol and having had his last drink on the Premises.
- 157. Item 12** – COPS Report E62447240 – 11:40 pm on 7 October 2016: A male who is recorded as “well affected” by alcohol and having his last drink at the Premises was located inside the security fence/gate of the rail compound yard. The male informed Police that he had been in the smokers’ area of the Hotel, when the smoke had made him paranoid, so he climbed the fence/wall of the Hotel and entered the compound area. Police issued the male with a move on direction.
- 158. Item 14** – COPS Report E62270822 – 11:15 pm on 8 October 2016: A resident complained to Police about noise and behaviour of patrons coming from the Hotel. Police noticed that the Hotel had the front door open. Police issued the Premises with a noise abatement direction for 28 days.
- 159. Item 26** – COPS Report E221416098 – 1:45 pmt to 1:55 pm on 12 November 2016: A male patron poured his drink over another group of patrons’ belongings in the beer garden of the Premises. The male was escorted from the Premises and told he could not return. The Male re-entered the Premises and staff asked the male to leave. The male walked outside into the beer garden, poured water over a patron from the previous incidents and then hit the patron. Police systems did not show the Hotel having called Police. This Event did not occur during late hours but is relevant only to the extent that it evidences a lack of

diligence in notifying Police of a significant act of violence on the Premises, which is of particular concern with respect to a higher risk, late trading venue.

- 160. Item 30** – COPS Report E64703882 – 9:14 pm on 13 November 2016: Two patrons (one of which is a female; the gender of the other patron is unclear from the COPS Report) have words with each other, which escalated to pushing into chairs, an object being thrown and the female patron being shoved onto the floor. The female patron verbally abuses the RSA Marshal and is then asked to leave and when out the front continues to abuse Hotel staff and security. The other patron was located on the dance floor and asked to leave. The female patron was contacted by Police on 16 November 2016 and told Police that, when informing the security guard about what happened, he was swearing and tipping something sticky over her and this is when she became more abusive towards staff. This report identifies the female patron as “well affected” and having consumed her last drink at the Premises.
- 161. Item 31** – COPS Report E63698616 – 10:30 pm on 18 November 2016: Police were conducting a static observation of the line-up of persons waiting to get inside the Hotel. Police observed a female who was “seriously affected” by alcohol permitted to enter the Hotel after passing security staff and an RSA Marshal. Police approached security and informed them of their observations. Security located the female patron and removed her from the Premises. The female had been drinking at home prior to entering the Premises.
- 162. Item 33** – COPS Report E62662722 – 1:15 am on 19 November 2016: A male patron was wrestled to the ground by Hotel security outside the Premises. Police assisted and observed the patron to be highly intoxicated and aggressive. No offences were recorded, there is no separate note as to where the patron’s last drink was consumed or his level of intoxication.
- 163. Item 34** – COPS Report E61562610 – 3:20 am on 27 November 2016: Police observed a male lying on the footpath outside the Premises who was well affected by alcohol. It is not known however whether he consumed alcohol inside the Premises. There is no record of where he consumed his last drink or his level of intoxication.
- 164. Item 37** – COPS Report E62920122 – 11:55 pm on 23 December 2016: A number of male patrons were drinking inside the Hotel when another group of male patrons pushed and punched them. The report describes the victims (which included a male and a female patron – it appears as though they did not mean to assault the female patron) and persons of interest as “slightly affected” and “moderately affected” by alcohol and having consumed their last drink on the Premises.
- 165. Item 39** – COPS Report E65992186 – 10:35 pm on 31 December 2016: Police attended the Premises where they were informed that a young person was present within the Hotel. The young person was removed from the Hotel and identified as being 17 years of age. The person of interest was identified as “slightly affected” by alcohol and she refused to respond to where she consumed her last drink, it is “not known”.
- 166. Item 41** – COPS Report E63457950 – 11:45 pm on 13 January 2017: An unknown person (not clear whether male or female) inside the Premises threw a hard-plastic beer cup, which hit a male patron in the head, causing a minor laceration to his forehead. The male victim is described as “moderately affected” and having consumed his last drink at the Premises.
- 167. Item 42** – COPS Report E63460350 – 9:05 pm on 14 January 2017: Two male patrons (who are described as friends) had been previously drinking at the Hotel and were recorded as “well affected” and “moderately affected” by alcohol in this report. One of the

patrons had been asked to leave. A physical altercation occurred between the two male patrons in the street before both parties went separate ways on Bennett Street after which one lost consciousness and required hospitalisation.

- 168. Item 44** - COPS Report E63183622 – 9:00 pm on 26 January 2017: A male patron of the Hotel was playing a gaming machine. He slapped the buttons and punched the screen. He is then seen brushing something off the screen of the machine, which causes it to crack. The person of interest is described as “moderately affected” by alcohol and having consumed his last drink at the Premises.
- 169. Item 45** – COPS Report E63106224 – 9:00 pm on 26 January 2017: Police attended the venue on 27 January 2017 in relation to an unrelated matter. The manager showed Police CCTV footage that depicted a male patron having an argument with another male and one of the patrons getting punched in the head causing him to fall to the ground, lying motionless. The RSA Marshal walks the victim out of the Premises. Neither Police nor the manager were notified of the assault. The intoxication status of these male patrons and the place they consumed their last drink is not specified in this report.
- 170. Item 64** – COPS Report E63316630 – 10:10 pm on 31 January 2017: A male patron was asked to leave the Premises by Hotel security. When outside, the RSA Marshal made comments towards the male patron before hitting the patron across the head, causing the patron to fall to the ground. Whilst 3 security guards were holding the male patron, another security guard punched the male patron in the head, causing him to fall to the ground and become unconscious for 2 minutes. The patron attended hospital. Police later found out that the victim had a ruptured left tympanic membrane and a left nasal bone fracture of indeterminate age. The victim is described as “moderately affected” by alcohol and having consumed his last drink at the Premises.
- 171. Item 52** – COPS Report E319159993 – 11:30 pm on 4 February 2017: Whilst dancing on the dance floor of the Hotel, a female patron who was “well affected” by alcohol was touched all over her body by one or more male patrons. The female patron reported the incident to security. Security asked the female patron to leave the Premises. Police attended and spoke with the female patron. The report indicates that the female patron consumed her last drink at the Premises.
- 172. Item 54** – COPS Report E64417908 – 11:40 pm on 10 February 2017: A female patron was punched in the head on two occasions and had a drink thrown at her by another female patron (the report indicates that the patrons know each other). The intoxication status of these female patrons and the place they consumed their last drink is not specified in this report.
- 173. Item 60** – COPS Report E66213784 – 10:00 pm on 11 March 2017: Female patron on the dance floor had her hair pulled violently from behind, which caused her and the person of interest to fall to the ground where a further altercation pursued. Hotel security broke up the scuffle and removed both parties from the Hotel. The victim is described as being “moderately affected” by alcohol and having consumed her last drink at home/private residence.
- 174. Item 63** – COPS Report E64159454 – 11:00 pm on 25 March 2017: The male victim was in the Hotel smoking area and started to walk towards the dance floor to avoid confrontation with the female person of interest. The male victim was shoved and then punched in the back of the head. The male victim then threw his plastic cup of ice at the two females before leaving. The victim is identified as “not affected” by alcohol having consumed his last drink at the Premises. The person of interest is recorded as “not affected” by alcohol and having consumed her last drink at home/private residence.

- 175. Item 65** – COPS Report E63690244 – 11:10 pm on 31 March 2017: Police observed an “extremely intoxicated” female patron not able to walk without tripping over her own feet (walking from what appears to be from inside the Hotel to outside). Police walked out onto the footpath, stopped the patron and made enquiries about her welfare. The female was not able to string a full sentence together and needed to steady herself by holding a street sign pole to prevent herself from falling over. A taxi was organised to take her home. This report is silent as to the last place the female consumed alcohol.
- 176. Item 66** – COPS Report E66594988 – 11:00 pm on 1 April 2017: A Police drug dog made a positive indication near a person waiting to enter the Premises. The male admitted he had smoked cannabis throughout the day and was taken to the Police Command bus. Police searched the accused and sighted an extendable baton down the front of his shorts. The person was charged with the possession of a prohibited weapon/article. Although this report identifies the male as being “moderately affected’ by alcohol and having consumed his last drink at the Premises, the report makes it clear that the male was “standing in the entrance line with the intention to enter the night club”. This report does not indicate that the male was re-entering the Premises so it is unclear whether the statements made describing the male’s level of intoxication and last place of consumption are accurate.
- 177. Item 67** – COPS Report E63615537 – 11:10 pm on 1 April 2017: Plain clothes Police were inside the Premises and observed a female patron showing signs of intoxication. The female was being assisted to walk by two females, her head was wobbly and her eyelids were drooping. Due to the drug dog operation no further observations could be made due to Police being required to assist outside. The report is silent as to the last place the female consumed alcohol.
- 178. Item 68** – COPS Report E 279772494 – 11:25 pm on 1 April 2017: Plain clothes Police were inside the Premises. Police identified an intoxicated male who had fallen to the ground and lay motionless. Police had concerns for his wellbeing and asked if he was okay to which he replied “no”. Staff escorted the patron from the Hotel. The report is silent as to the last place the male consumed alcohol.
- 179. Item 72** – COPS Report E124858002 – 10:20 pm on 8 April 2017: Whilst waiting in line to enter the Premises, an altercation occurred between two females, becoming physical. One female sustained a minor cut to her nose and a mobile phone was thrown against a wall, smashing it. Both the victim and the person of interest are described as “not affected” by alcohol and having consumed her last drink at home/private residence.
- 180. Item 76** – COPS Report E64166232 – 11:45 pm on 21 April 2017: 2 male patrons were involved in a physical fight inside the Premises. Both were removed from the Premises by Hotel security. The intoxication status of these patrons and the place they consumed their last drink is not specified in this report.
- 181. Item 81** – COPS Report E64758058 – 10:45 pm on 6 May 2017: A patron (gender not clear from the report) had been removed from the Hotel by staff and refused to leave. The patron was given a move on direction from Police with no further incidents. The patron is recorded as being “slightly affected” by alcohol and having consumed the last drink at the Premises
- 182. Item 84** – COPS Report E64537057 – 11:30 pm on 12 May 2017: Police were made aware of a “moderately affected” male who had been refused re-entry to the Premises. Police advised the male that he needed to be 50 metres from the Premises and showed the male where that distance was. The male went to sit on the bonnet of a nearby vehicle and was spoken to about this by Police. The male yelled offensive language at the Police

and was issued with an infringement notice. The report notes the male as having consumed his last drink at the Premises.

- 183. Item 85** – COPS Report E553874791 – 11:10 pm on 12 May 2017: A male in the Hotel carpark was asked to leave but refused. Police identified him as “moderately affected by alcohol” when advising him to move on (although later in the report he is identified as having a “well affected” level of intoxication). The male began swearing and yelling before being escorted on to Hudson Street and advised that he needs to be 50 metres from the Premises. The male refused and was escorted the 50-metres distance by Police. After attending to other duties, police identified the male to be again standing nearby the Premises. The male was issued with infringement notices for the matter. The report indicates that the male consumed his last drink at the Premises.
- 184. Item 88** – COPS Report E63687509 – 11:40 pm on 27 May 2017: During a business inspection Police recorded observations including that: security officers were incapable of kicking anyone out of the line if they pushed in; vomit on the floor outside the female toilet being cleaned up by Hotel staff; at least 2 males holding 3 alcoholic drinks but as soon as Police were seen looking at those persons, security approached the men and enforced the 2 drinks per person rule; the manager asked a male patron to leave the Premises but allowed the patron to ignore him and walk into the male toilets before requesting security remove the male and that there were large lines of persons outside the venue awaiting entry.
- 185. Item 104** – COPS Report E326447993 – 9:45 pm on 13 July 2017: A male patron was refused service due to intoxication and asked to leave the Premises. The male patron became verbally abusive and punched a staff member before being escorted to the door. At the exit door the male patron threw another punch at a staff member. The male patron was taken to the ground and restrained until Police arrived. Upon arrival of Police, the male patron attempted to head-butt a Police officer and kicked out striking a Police officer in the right leg. With the assistance of staff members, the male patron was carried and placed in the rear caged compartment of the Police vehicle. The male patron was conveyed to Newcastle Police Station where the accused also kicked the custody manager in the leg. The patron was charged with the matter. The person of interest is described as “well affected” by alcohol and having consumed his last drink at the Premises.
- 186. Item 105** – COPS Report E270879595 – 11:50 pm on 15 July 2017: Covert Police officers entered the Premises. At around 12:20 am on 16 July 2017 these officers identified an intoxicated female patron. At around 12:40 am one of the officers had stockpiled 8 unconsumed beers and when asked by a staff member whose drinks they were, the officer stated that the drinks were “Mine and my mate’s. He’s on the dance floor” with the staff member responding with “Ok”. For a period of approximately 2 hours, the officers were able to maintain a minimum of six to eight unconsumed beers between two people. At 1:00 am uniformed Police had intercepted the intoxicated female. Police spoke to the intoxicated female patron on 25 August 2017 who indicated that she had consumed a 750ml bottle of red wine by herself at a friend’s place and six cocktails at the Depot in Hamilton prior to entering the Premises. This female patron stated that she should not have been allowed to enter the Sydney Junction Hotel as she was “too Drunk”.
- 187. Item 106** – COPS Report E66129668 – 11:50 pm on 29 July 2017: A male patron walked up to another male patron who was drinking at the hotel and exchanged words which resulted in a drink of alcohol followed by a plastic cup being thrown at the male patron’s face, causing minor lacerations to the corner of his left eye. The victim is described as “moderately affected” by alcohol and having consumed his last drink at the Premises.

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

COPS Events Not Established/Insufficient Nexus to ETA: July 2016 to December 2017

- 194.** Having considered the evidence or material provided by the Applicant, and the Respondents’ evidence or submission in reply, subject to receiving and considering the further submissions that have been invited, the Authority is not satisfied that the following Events should be reasonably attributed to the exercise of the ETA. These findings have been made either because there is insufficient evidence or information provided in the COPS Report to establish the occurrence, or because the facts alleged do not, in the

Authority's view, establish a sufficient nexus between the occurrence in the question and the Hotel's exercise of the ETA.

- 195. Item 5** – COPS Report E61791511 – 2:00 am on 13 August 2016: Physical altercation occurred on the Premises between two patrons, both of whom were recorded as having their last drink on the Premises and as being “moderately affected” by alcohol. Informant decided not to pursue the matter. The Authority finds that there was insufficient evidence or information about this event by reason that the victim, while only moderately affected by liquor, refused to give a statement to Police.
- 196. Item 18** – COPS Report E63288829 – 2:30 am on 16 October 2016: A 50-year-old male was walking behind female along Beaumont Street, after consuming alcohol on the Premises. He began swearing at her, she turned to tell him to stop and he slapped her in the face, punched her and she fell to the ground before he left the scene. Female is recorded as having last drank on the Premises and is recorded as being “well affected” by alcohol. Although the Authority finds that there is no evidence that the victim, who was well affected by liquor, was either on the Premises or seeking to enter the Premises, it is not in dispute that she was drinking at the Hotel first. The Authority considers this incident as too remote to attribute to the Hotel.
- 197. Item 19** – COPS Report E63304773 – 12:45 am on 16 October 2016: A restaurant located opposite the Premises on Beaumont Street was broken into by a male patron of the Premises (as recorded on CCTV footage), who took a bottle of bourbon from the bar then left through the front doors. This male is recorded as having had his last drink on the Premises and as being “well affected” by alcohol. Recorded as a break and enter offence. The Authority finds that the cause of the break and enter is not known. The Authority will not guess that it was because of intoxication at the Premises and as a result the link is broken. There could be many reasons for such criminality.
- 198. Item 24** – COPS Report E61954370 – 7:40 pm on 28 October 2016: A male had been drinking at the Premises at around 6:30pm. A friend of the male was refused service and asked to leave the Premises. The male left the Premises after becoming abusive. After attending the Hamilton Station Hotel and consuming more drinks, the male re-entered the Premise at 7:40 pm, approached the bar and verbally abused the staff and asked them to fight him. The male was asked to leave and was excluded from the Premises. The male stayed outside the door yelling abuse, threats and wanting to fight the staff. Police attended and located the male 100 metres down the same street, an infringement notice (4937173001) was issued for an excluded person remaining in the vicinity of licensed premises. The report indicates that the person of interest is “well affected” by alcohol and consumed his last drink at the Kent Hotel. The Authority finds that by the patron leaving the Premises and attending the Hamilton Station Hotel before returning to the Premises, the nexus was broken.
- 199. Item 25** – COPS Report E65067884 – 11:55 pm on 29 October 2016: During a business inspection a male patron was observed as being “well affected” by what Police suspected to be a prohibited drug. When spoken to, the patron stated “Yeah I’m totally flying”. Police found that the patron had a “racing” pulse. Police removed him from the Hotel and searched him at which time the male states “I’m not stupid I’ve taken whatever before I came here”. The Authority finds no evidence of liquor consumption or permission of use of the prohibited drug on the Premises.
- 200. Item 36** – COPS Report E63242319 – 11:30 pm on 10 December 2016: Licensing Police attended the Premises for an inspection. One of the fire exits off the main dance floor was blocked by a pulled down blind and a two-seater lounge. Another fire exit off the main dance floor near the toilets was chained shut. The Authority finds this inspection to have

identified concerns regarding planning/fire safety compliance, not liquor related issues attributable to the ETA.

- 201. Item 38** – COPS Report E63319450 – 9:00 pm on 26 December 2016: A male patron of the Hotel attempted to leave the Premises with a can of alcohol. The patron refused to hand his drink to the manager and attempted to skull the drink. Security attempted to remove the drink from the patron resulting in some of the drink spilling on the patron, causing the patron to become aggressive, spitting the drink that he had in his mouth at the manager and security officer. Police removed the patron from the Premises. The person of interest is described as “moderately affected” by alcohol and having consumed his last drink at the Premises. The Authority finds that the proper response from staff does not warrant an adverse finding, noting that the Event occurred at 9:00 pm.
- 202. Item 40** – COPS Report E65164387 – 11:15 pm on 31 December 2016: During a business inspection Police observed fire exits chained closed and furniture obstructing other fire exits. The Authority notes that the inspection uncovered planning/fire safety issues, not liquor related issues attributable to the ETA.
- 203. Item 46** – COPS Report E63592050 – 10:00 pm on 26 January 2017: During a business inspection a female approached venue security and a line up to the venue was blocking the pedestrian traffic. The Authority finds that there is insufficient evidence or information that the queue has caused any significant problem.
- 204. Item 49** – COPS Report E63218511 – 12:01 am 29 January 2017: Male person who had previously that night been drinking at the Premises and was observed to be “well affected” by alcohol attended nearby *Oasis* food court and held a knife close to the victim and demanded that he hand over his wallet. The victim tried to resist and the male said “I’m going to put holes in you”. Recorded as an armed robbery incident. The victim is recorded as having had his last drink at the Premises and as being “well affected” by alcohol. The Authority finds that the cause is not known. The Authority will not guess that it was because of intoxication at the Premises and as a result the link is broken. There could be many reasons for such criminality.
- 205. Item 56** – COPS Report E63215505 – 11:01 pm on 11 February 2017: A brawl occurred outside the Premises. The victim is identified as “not affected” by alcohol and having consumed his last drink at the Premises. The Authority considers that the event occurred too early to establish a nexus to the exercise of the ETA.
- 206. Item 59** – COPS Report E64824867 – 2:25 am on 5 March 2017: Male victim was lying on the footpath 30 metres from the intersection of Beaumont Street and Hudson Street, surrounded by group of intoxicated persons. Witnesses stated that victim had been assaulted on the street by another male. The victim is recorded as having had his last drink on the Premises and as being “moderately affected” by alcohol. The Authority finds that there is an insufficient nexus to drinking on the Premises even though the intoxicated person was found near the Hotel, outside on the street.
- 207. Item 61** – COPS Report E63998448 – 12:50 am on 12 March 2017: Manager advised Police that 497 persons were on the Premises. Police observed Hotel security permit entry to about 30 persons who had been waiting in line outside, meaning that the Premises would be in breach of a condition specifying a maximum of 500 patrons on the Premises. The Authority finds this to be a business inspection only with no clear evidence of breach of licence conditions or alcohol related misconduct, notwithstanding there were many people queuing.

- 208. Item 75** – COPS Report E63938412 – 11:00 am on 21 April 2017: The licensee at the time, Mrs Clare Rogers, and Mr Campbell Rogers attended Waratah Police Station with their AHA representative John Green for an arranged meeting. Police discussed CCTV coverage and the licensee was reminded that she had signed a Local Licensing Agreement regarding the timely provision of CCTV for police investigations. Police discussed licence conditions that they were seeking under section 54 of the Act. Police discussed issues regarding queuing into the venue, numbers of patrons and inconsistency of the guards scanning and observing patrons for intoxication. The Authority notes that this was a daytime overview of regulatory concerns that may broadly relate to late trading but the COPS Report does not disclose an instance of non-compliance in its own right that is attributable to the ETA per se.
- 209. Item 77** – COPS Report E64093640 – 1:55 am on 23 April 2017: Police were called to the Premises in relation to a patron who was refusing to leave. Police found the female patron calmly waiting for them at the front of the Premises where she explained she slipped on a spilt drink and was then asked to leave the Premises. The patron appeared to be moderately intoxicated but spoke coherently and respectfully to Police. Recorded as an (unspecified) alcohol related offence by a customer/not minor, who had her last drink on the Premises and was “moderately affected” by alcohol, with no further action taken. The Authority considers that the female patron appeared to have satisfied Police that she slipped on a drink rather than fell over due to intoxication. The Authority considers that security acted appropriately when seeing someone fall over.
- 210. Item 82** – COPS Report E125307902 – 10:50 pm on Sunday 6 May 2017: During a business inspection, Police observed that most of the patrons were in the “nightclub” area of the Premises; that DJ entertainment was being provided; that 450 patrons were present on the Premises and that about 200 persons were lined up outside the Premises waiting to enter. The Authority finds that although the inspection occurred during late hours and large numbers of persons were present late on Sunday night and Monday morning, no breach or alcohol related conduct was reported per se.
- 211. Item 83** – COPS Report E125360802 – 4:10 pm on 9 May 2017: During a business inspection, Mr Campbell Rogers approached Police and asked if Police would allow him to work without an RSA card as it was due to expire the following day. Rogers was informed that no such consent would be given and that he should not serve or supply liquor without a current RSA. The Authority finds that this records a discussion between Mr Rogers as business owner and Police at 4:10 pm regarding his RSA status. There is no clear nexus to the ETA apparent from this Police engagement.
- 212. Item 87** – COPS Report E64680134 – 3:10 am on 14 May 2017: Male motorist was stopped by Police while driving on University Drive in the suburb of Callaghan and administered a random breath test which returned a middle range PCA reading (0.135 grams per 210 litres of breath). The driver was observed by Police to smell of liquor and to have glassy, bloodshot eyes. He told Police that he had consumed 5 beers on the Premises. He is recorded as having had his last drink on the Premises and as being “moderately affected” by alcohol. Issued with a licence suspension notice. While a serious incident, the Authority does not find this mid-range PCA offence supports an inference of a patron drinking substantial amounts of liquor during extended trading hours or that the patron was likely intoxicated before leaving the Premises.
- 213. Item 93** – COPS Report E64256514 – 9:20 am on 4 June 2017: Male patron who had been drinking on the Premises from 5:00 pm on 3 June 2017 until 1:00 am on 4 June 2017 lost control of his vehicle while driving and crashed into a tree on Yarramalong Road, Wyong Creek. He told Police that he had consumed about 10 x 330ml *Tooheys Extra Dry* beers whilst on the Premises and returned a blood alcohol reading of 0.102 on a breath

analysis test. He is recorded as having had his last drink on the Premises and as being “slightly affected” by alcohol. He was issued a Court Attendance Notice by Police for the offences of Drive with Middle Range PCA and Negligent Driving. The current status of those court proceedings is unclear from the Application Material. While a serious incident, noting the time that elapsed since leaving the Premises, the Authority does not find this mid-range PCA offence supports an inference of a patron drinking substantial amounts of liquor during extended trading hours or that the patron was likely intoxicated before leaving the Premises.

- 214. Item 94** – COPS Report E64375836 – 2:30 am on 4 June 2017: Police officers attending the Premises for a business inspection asked the manager how many patrons had been ejected from the Premises that night due to intoxication and was told “170” including “40” who had been refused entry due to intoxication. Manager is reported to have told Police “it has been worse”. The Authority considers that the manager’s comments are a sign that the Hotel has acted appropriately. Nevertheless, the Authority does consider the number as very high but also considers there to be insufficient evidence.
- 215. Item 98** – COPS Report E65511141 – 12:50 am on 24 June 2017: Two males who had been consuming alcohol on the Premises were observed by Police having a physical fight in the middle of Beaumont Street near the corner of Hudson Street, with a crowd gathered around them. They pushed each other several times, were both verbally abusive and one punched the other. They are both recorded as being “well affected” by alcohol with one of the males recorded as consuming his last drink at the Premises and the other recorded as “not known”. Police issued a move on direction to one and arrested the other (it is not clear from the COPS Report which man was arrested); and advised that action would be taken against both men for the offence of affray. The current status of this proposed Court Action is unclear from the Application Material. The Authority finds that the relationship (both males knew each other from Toronto) takes the conduct away from a simple couple of intoxicated people fighting after leaving.
- 216. Item 100** – COPS Report E64927057 – 4:00 am on 25 June 2017: A major traffic incident involving a driver crashing into a parked car and then colliding with a telephone pole on Memorial Drive, Bar Beach with extensive damage caused to both vehicles. The driver was recorded as “well affected” by alcohol, recorded a Blood Alcohol Concentration (BAC) reading of 0.129 and consumed her last drink at the Premises. The current status of those court proceedings is unclear from the Application Material. The Authority finds that the time gap from leaving the Premises and the crash breaks the nexus.
- 217. Item 117** – COPS Report E65271044 – 1:30 am on 30 September 2017: A male had consumed 2 beers at the Kent Hotel and 5 bourbons before coming into town. The male approached a number of males seeking to purchase pot. After walking down Devon Street, Hamilton, the male was struck in the side of the head, causing him to fall to the ground, being further punched and kicked. The male noticed after the assault that his wallet and keys were missing. The report indicates that the victim was “well affected” by alcohol having consumed his last drink at the Premises. The Authority finds the victim’s vulnerability to robbery was less a factor of his attendance at the Hotel and more the product of him drinking for some time at home. The robbery was primarily a product of an attempt to buy recreational drugs near a late-night food court. On balance, the Authority does not attribute the occurrence of this event to the exercise of the hotel’s ETA.
- 218. Item 118** – COPS Report E67280155 – 3:15 am on 1 October 2017: A male driving a vehicle was stopped by Police to conduct a random breath test. The test returned a positive result and was taken to Charlestown Police Station where he undertook a breath analysis that returned a result of 0.087 grams of alcohol in 100 millilitres of blood/210 litres of breath. Due to the mid-range reading, the male’s licence was immediately suspended

and was issued with Field Court Attendance Notice number 1206914. The report indicates that the male was “moderately affected” by alcohol and had consumed his last drink at the Premises. The Authority does not attribute low to medium range PCA offences to the licensed premises because it does not clearly demonstrate a high level of liquor consumption on the Premises. The Authority considered it prudent to give the hotelier the benefit of the doubt and only consider high-level PCA offences, which will likely involve a patron who has consumed a substantial amount of liquor on the Premises and where the offence may be more squarely attributable to the excise of the PCA.

RESPONDENT SUBMISSIONS – 15 MAY 2018

- 219.** On 24 April 2018 the Authority sent by email a letter to the Applicant and Hatzis Cusack, solicitors for the Respondents, notifying them of the findings that the Authority was disposed to make on the COPS Events described above (Findings Letter). The Authority invited the parties to make any final submissions in response to those findings and requested the Hotel’s business owners to provide further data relating to the Hotel’s claims of the economic prejudice that would flow to the business were the ETA to be revoked.
- 220.** Specifically, the Authority invited any further evidence, supported by a statutory declaration from an accountant, by reference to trading records for February 2018, substantiating the Hotel’s claims as to the economic prejudice that would flow should the ETA be varied, rather than revoked, so that licensed trading ceases at 12.30 am, 1:00 am, 1:30 am and 2:00 am, with an indication of the proportion of revenue derived in the three categories of liquor, gaming and other (non-liquor or gaming) goods and services by reference to February 2018 trading data. The Authority also invited the premises owners to provide any further submissions or evidence concerning the alleged diminution in value of the property in the event that the ETA was varied.
- 221.** On 15 May 2018 the Respondents provided a seven-page submission letter through their solicitors, Hatzis Cusack, accompanied by 33 pages of supporting material, including:
- Statutory Declaration dated 15 May 2018 from the Hotel’s accountant, Ms Catriona Rogers, providing dollar figures for the Hotel’s revenue during February 2018, broken down into half hourly increments between midnight and 3:00 am. The data was provided on a confidential basis and is not specified in this published decision letter.
 - Statutory Declaration dated 15 May 2018 from Mr Campbell Rogers, licensee of the hotel at the time of this declaration and company director of the corporate premises owner, broadly contending, *inter alia*, that any wind back in hours will have a greater effect than simply lost revenue, including by reason that it will make the venue less attractive to those seeking late night entertainment by comparison to other licensed premises in Hamilton, noting the 1:00 am lockout in operation in the Hamilton entertainment precinct. Mr Rogers also contends that should the hours be varied, patrons leaving the Premises earlier in the evening will mean more patrons on the streets, creating pressure for other venues.
 - An 11-page Compliance Audit Report dated 14 May 2018 prepared by Patrick Paroz of Pat Paroz & Associates Pty Ltd on the basis of an audit conducted between 10:00 pm on 12 May and 1:30 am on 13 May 2018. The report discusses the recent assaults attributed to the venue under Rounds 18 and 19 of the Schedule 4 Scheme, the Hotel’s patron banning/identification/scanning policy, harm minimisation licence conditions currently in effect on the licence, recent further harm reduction measures introduced at the Hotel, the average age of patrons evident from ID scanning records since 2015 (23 for males and 22 for females), existing “protective factors” evident from the way the business is operated and very observations on nearby hotels.
 - A one-page document from Police dated 6 April 2018 addressed to the licensee and LGNSW regarding assessment for the purposes of the Schedule 4 Scheme to the Act, noting 25 assaults on premises attributed to the Hotel by Police.

- Email between Mr Campbell Rogers and Stephen Hunt from Hunt Hospitality dated 10 May 2018 briefly noting deal points of a proposed sale of the business to the Hunt Hospitality Group.
- A two-page document prepared by Hatzis Cusack commenting on some of the Authority's findings.

- 222.** In their legal submission, the Respondents contend that there has been a significant reduction in the assaults recorded as occurring on the Premises, and that the greater numbers of assaults recorded during the later part of 2016, compared to the 12 months during calendar year 2017 (particularly the last quarter of 2017) were a consequence of the Hotel offering a “newer” venue with late-night DJs playing dance music, which drew patrons to the Premises.
- 223.** The Respondents claim that the “failure” of other late trading licensed premises in the suburb of Hamilton to participate in a multi-party barring scheme has played a role in the occurrence of the COPS Events at their Hotel. They submit that Mr Paroz has repeatedly expressed his view in his numerous reports that he has provided that it will “take time” for the Hotel to weed out trouble makers and reduce adverse incident numbers, using initiatives such as ID scanners and the like, but that such initiatives are taking effect.
- 224.** Moreover, the Respondents submit that the latest numbers of assaults recorded on the Premises pursuant to the Schedule 4 Scheme (regarding the period from 1 July 2016 to 30 June 2017) show that assault numbers have improved. They submit that the latest published List of Declared Premises is based upon data that is subject to a time lag and the most up to date information (from the upcoming calendar year 2017) indicates that assaults on Premises have reduced by one third, if the 6 months from 1 July 2017 to 30 December 2017 is compared to the previous 6 months period.
- 225.** The Respondents provide short submissions questioning the Authority's attribution of the adverse events described in Items 2, 3, 10, 12, 30, 42, 44, 45, 57, 62 and 104 to the exercise of the ETA.
- 226.** Finally, the Respondents advise that the Hotel is the subject of “discussions” with a third party with a view to selling the business. Attached is a one-page email dated 10 May 2018 from the Hunt Hospitality Group to Mr Campbell Rogers. This potential purchaser is described by the Respondents as a proven operator of Hotels in the Hunter District, including the Kent Hotel in Hamilton. The Respondents contend that, like the Sydney Junction Hotel, the Kent Hotel is a large licensed venue offering a range of licensed entertainment, including late night DJs and live entertainment. This potential sale, it is said, provides another reason for the Authority not to take any action against the ETA at this time.

APPLICANT SUBMISSIONS – 21 MAY 2018

- 227.** On 21 May 2018 the Applicant filed a two-page submission in reply, referring to the statutory objects and considerations in section 3 of the Act and submitting that while granting this Application may well result in financial loss, the information before the Authority indicates that the Hotel still presents as a viable investment should the ETA be revoked. The Applicant contends that the Hotel's current business owners own other successful hotels that trade within the standard trading period and they are familiar with operating a licensed venue of that type should the ETA be revoked.
- 228.** The Applicant contends that there are 6 hotels and 1 licensed restaurant that trade late in the entertainment precinct (that is Beaumont Street) and that, recent revocations aside, the Sydney Junction Hotel has not been providing services of a kind that are “unique” to the licensed entertainment offered by other venues during late hours in this area.

- 229.** The Applicant contests Mr Paroz' contention made in the compliance audit conducted on 12 -13 May 2018, that the operation of the hotel has improved over the last 13 months and that the venue is well run and well controlled. The Applicant submits that those observations were made on the basis of only four visits, between the hours of 10:00 pm and 1:30 am. The Applicant notes that in addition to those hours the Applicant relies upon adverse events that have occurred between midnight and 3:00 am.
- 230.** The Applicant submits that the prevention of financial hardship to a licensed business operator is not an objective of the Act, while harm minimisation is. The Applicant submits that during the 6 months that have elapsed since the Hotel was notified of this Application, the business owners have failed to address matters relevant to the statutory considerations in section 3(2) of the Act. The Applicant notes that both of the owners, Mr and Mrs Rogers, have personally held this licence for some time.
- 231.** On the proposed change of business owner foreshadowed by the Respondents, the Applicant submits that the fact that a proposed buyer operates other licensed venues is no guarantee that the issues identified in this Application with respect to late trading by *this* Hotel will not continue, should the business change hands.
- 232.** The Applicant submits that the Authority should determine the Application on the evidence now before it, not on presumptions that new business owners will improve the performance of the venue.
- 233.** The Applicant concludes that revoking the ETA will provide a safer venue for the Hotel's patrons, reducing the amount of anti-social behaviour generated by patrons who are "spilling out and disturbing the community".

RESPONDENT SUBMISSION/APPLICANT REPLY - 5 JUNE 2018

- 234.** On 5 June 2018, the Respondents provided a further three-page submission. Briefly, the Respondents take issue with the Applicant's contention that the hotel is likely to remain a Level 1 declared premises when Round 20 of the Schedule 4 Scheme, which will concern the period from July 2017 to June 2018, is finalised. The Respondents reiterate that assaults on the Premises have been declining in recent times.
- 235.** The Respondents submit that the financial loss from reducing late trading means that reducing licensed hours is a disproportionate regulatory response in circumstances when assaults are in decline. In response to the Applicant's observation that Mr and Mrs Rogers own two other hotels that trade during standard licensed trading hours, the Respondents submit that these venues are located in suburban locations and have very different business models. The Respondents refute the Applicant's contention that the venue offers little that is unique to late night entertainment in Hamilton. They refer to the evidence of public comments supportive of the continuation of 3:00 am licensed trading that were provided with their November 2017 submission.
- 236.** The Respondents submit that the determination of this matter should not be reduced to a contest between the hotel's financial interests and public safety and that the statutory objects of sections 3(1)(a), (b) and (c) and the statutory consideration in section 3(2)(c) favour *maintaining* late licenced hours. With respect to the foreshadowed sale of the Hotel business, the Respondents advise that an exchange of contracts for the sale of the business are "likely to occur this week".
- 237.** Later on 5 June 2018 the Applicant provided a short email in reply conceding that while the Applicant cannot predict the venue's standing when the next Round of the Schedule 4

Scheme is finalised on 1 December 2018, the Hotel is currently ranked number 1 in the State for violence on premises.

- 238.** The Applicant agrees with the Hotel's submission that Police have presented this matter as a contest between private financial interest and public safety. The Applicant submits that while harm minimisation and prevention is a priority for Police there are also substantial financial imposts imposed upon the general public by way of the provision of emergency services, the criminal justice system, medical costs and social services costs arising from the abuse of liquor. The Applicant submits that while it is difficult to quantify the cost of alcohol related assaults upon this local community, the cost to the Australian community of alcohol related crime, violence and healthcare was estimated at \$36 Billion (Laslett, et al 2010).

THE PURPORTED DECISION – 13 JUNE 2018

- 239.** At its Board meeting of 13 June 2018, the Authority considered the Application and submissions then before it and determined to **not** revoke the ETA, but instead vary the ETA, of its own initiative, pursuant to section 51(9)(b) of the Act so that the Hotel could not trade beyond 1:30 am after Monday through Saturday evening (Purported Decision). No action was taken with respect to Sunday evening trade by reason that the Premises is only licensed until midnight. That Purported Decision was notified to the parties in a letter from the Authority dated 14 June 2018 and was determined to commence effect on 1 July 2018.
- 240.** On 28 June 2018 judicial review proceedings were commenced by Mr Campbell Rogers and Mr Ross Boland in the Supreme Court of New South Wales seeking to set aside the Purported Decision. An application for interlocutory relief was refused by Hulme J on 29 June 2018. The substantive judicial review proceedings were heard by Schmidt J on 12 July 2018 and in a judgment delivered on 1 August 2018 her Honour set aside the Purported Decision by reason that the Authority had not complied with the statutory consultation requirement specified by section 51(13) of the Act. The matter was remitted to the Authority for reconsideration according to law.

NOTICE OF PROPOSED DECISION - 20 AUGUST 2018

- 241.** The Authority gave further consideration to the matter at its Board meeting on 15 August 2018. On 20 August 2018 the Authority sent a letter via email to the Respondents via Hatzis Cusack, notifying them that the Authority proposes **not** to revoke the ETA but make a decision (Proposed Decision) to vary the ETA pursuant to section 51(9)(b) of the Act and any and all other enabling powers such that the ETA authorises the licensee to sell or supply liquor for consumption on the parts of the Premises known as the public bar, saloon bar, beer garden and dining room during the following periods
- (a) between midnight (other than midnight on a Sunday) and 1:30 am on any day of the week (other than a Monday); and
 - (b) between 10 pm and midnight on a Sunday.

- 242.** The Authority invited the Respondents to make any submissions that they wished to make in relation to the Proposed Decision within 21 days from the date of that letter.

RESPONDENTS SUBMISSION ON PROPOSED DECISION - 22 AUGUST 2018

- 243.** On 22 August 2018, Hatzis Cusack lodged a submission on behalf of the Respondents comprising a five-page legal submission letter accompanied by the following material:

- (a) Affidavit of Mr Campbell Rogers sworn on 28 June 2018 tendered in evidence at the Supreme Court proceedings of *Rogers v The Independent Liquor and Gaming Authority* case number 2018/199783. This Affidavit included a copy of a letter of loan offer received by Mr Campbell from the Commonwealth Bank dated 26 February 2018.
- (b) Affidavit of Mr Campbell Rogers sworn on 22 June 2018 tendered in evidence at the NSW Civil and Administrative Tribunal proceedings of *Rogers v The Independent Liquor and Gaming Authority* case number 2018/188453.
- (c) Email from Commonwealth Bank to Mr Campbell Rogers dated 28 June 2018.
- (d) Email from Mr Rogers to Tony Hatzis dated 2 August 2018 containing minutes of a meeting at a Waratah Police Station dated 12 June 2018.
- (e) Press Release announcing the opening of the Newcastle Interchange located at Wickham sourced on 21 August 2018.
- (f) Application made to the Commissioner of Police under the *Government Information (Public Access) Act 2009* (NSW) in relation to the Sydney Junction Hotel on 17 July 2018.

- 244.** In this submission, the Respondents contend that there will be a permanent and substantial loss of capital value to the Hotel if the licensed trading hours are varied as proposed by the Authority, claiming that this “may well prove ruinous” to Mr Rogers and his family. The Respondents refer to Affidavits sworn by Mr Rogers, in particular the Affidavit dated 22 June 2018 in which Mr Rogers contends that the revenue impacts of varying the ETA to 1:30 am will be similar to the revenue impacts of revoking the ETA and will diminish the value of the freehold of the Hotel property. Mr Rogers also refers to certain loan covenants with the Commonwealth Bank and claims that the reduction in freehold value is likely to put him and his companies in a position of default with respect to those covenants.
- 245.** The Respondents also refer to an email from Commonwealth Bank to Mr Rogers dated 28 June 2018 whereby the bank refers to a “significant impact to income and valuation” arising from the Proposed Decision.
- 246.** In their legal submissions the Respondents claim that the former intended buyer of the Hotel terminated negotiations to purchase the property. They submit that a loss in capital value in the order of 5 million dollars will fall squarely upon the shoulders of Mr Rogers and his family should the Proposed Decision be implemented.
- 247.** The Respondents further contend that the circumstances have now “markedly changed” and that assaults and anti-social behaviour have “significantly reduced since the 2016-2017 period”. The Respondents refer to the Compliance Audit Report dated 14 May 2018 prepared by Mr Paroz (provided with the Respondent’s submission dated 15 May 2018), which referred to lower numbers of assaults record against the Premises. The Respondents contend that the number of “refused entry” incidents (as recorded by the Hotel) are down by around a half and the number of “asked to leave” events are down by about one third compared to mid-2017.
- 248.** The Respondents further contend that at a meeting with Police at Waratah Police Station on 12 June 2018, Police commented that “things seem to be getting better” with “few mentions of the Hotel” at their weekly Monday meetings. The Respondents also refer to the opening of the Newcastle Transport Interchange at Wickham on 15 October 2017 and contend that this will result in fewer intoxicated revellers on the street surrounding the Hotel and less likelihood of interaction between the Hotel’s patrons and such persons.
- 249.** Notably, the Respondents requested the Authority to exercise its powers under section 21 of the *Gaming and Liquor Administration Act 2007* (NSW) to require Police to produce all COPS records in any way linked to the Hotel in respect of the period from 11 November

2017 until 30 June 2018. The Respondents contend that such data will support the Respondents' position that the Hotel's measures have proven effective such that there is no longer any need to take the proposed administrative action.

REQUEST FOR UPDATED COPS REPORTS

- 250.** In response to the Respondents' request for the Authority to obtain updated information, on 24 August 2018 the Authority sent an email to the Applicant, copying Hatzis Cusack Lawyers, requesting Police to provide, by 3 September 2018, only those COPS Reports recording adverse events on or off the Premises that Police contend are reasonably attributable to the exercise of ETA for the period from 12 November 2017 to 31 July 2018.
- 251.** The Authority invited the Respondents to make any final submissions, confined to a reply to those additional COPS Events, by 10 September 2018. The Authority also requested that the Hotel provide information (on a confidential basis), verified by a letter from the Hotel's accountant, specifying:
- Total revenue received at all times by the Hotel during the months of June and July 2018, with subtotals for the categories of liquor, gambling and other services (non-liquor food and beverage).
 - Total revenue received (with a breakdown of the categories) during June and July 2018 **after midnight**.
 - Total revenue received (with a breakdown of the categories) during June and July 2018 **after 1:30 am**.
- 252.** The rationale for inviting this final round of information was to assess the extent to which the exercise of the ETA was continuing to attract or generate any late-night alcohol related violence or forms of anti-social conduct both on or off the Premises. The June and July revenue data would provide updated information about late trading revenue impacts that may flow from reducing post-midnight licensed trading, given that the Purported Decision had remained in effect throughout the month of July 2018, reducing the Hotel's hours to 1:30 am.

UPDATED COPS REPORTS - 27 AUGUST 2018

- 253.** On 27 August 2018 the Applicant sent an email to the Authority and Hatzis Cusack solicitors attaching another Evidence Matrix (Third Evidence Matrix) summarising **21** additional COPS Events which the Applicant contends are reasonably attributable to the exercise of the ETA from the period from 12 November 2017 to 31 July 2018.
- 254.** In a subsequent set of three emails on 27 August 2018, Police provided the Authority and Hatzis Cusack with a copy of the full text of the COPS Reports for each of the 21 Events specified in the Third Evidence Matrix.
- 255.** The Authority refers to these additional Events as **Items 125-145**.

RESPONDENTS FURTHER SUBMISSION - 10 SEPTEMBER 2018

- 256.** On 10 September 2018 the Respondents provided a 17-page legal submission responding to the matters referred to in the Third Evidence Matrix on behalf of the Respondents (being the current licensee, Mr Campbell Rogers, the business owner, SJH Hotels (NSW) Pty Ltd and the premises owner S.J.H. Hamilton Pty Ltd).
- 257.** This submission was accompanied by the following further material:

- (a) An annotated version of the Third Evidence Matrix with the Respondents' comments on each Event.
- (b) Form A - A request from the licensee for Police (undated) to review certain acts of violence on the Premises attributed to the Hotel between 1 July 2017 and 30 June 2018 for the purposes of the Schedule 4 Scheme.
- (c) Letter from Hotel's Accountants, *The Rogers Group Chartered Accountants*, to the Authority dated 10 September 2018 attaching trading figures as requested by the Authority in their email dated 24 August 2018.
- (d) Four letters received from local community members (Ms M Gell of Donald Street Hamilton dated 8 September 2018; Mr N Gurr of Avid Entertainment (a small business that provides the DJs and manages the Hotel's entertainment rosters) dated 22 June 2018; Mr J Burton (social co-ordinator for Edwards Hall College) dated 22 June 2018; Ms P Macleay (resident of Newcastle dated 22 June 2018) supporting the hotel remaining open and trading until 3:00 am.
- (e) OneGov licence record for *Kavon Theme Restaurant* (an on-premises licensed restaurant located close to the Hotel in Beaumont Street Hamilton) together with extracts from its webpage showing its manner of operation.
- (f) Summary of results of the Schedule 4 Scheme dating from Round 2 until the current Round 19.

- 258.** The Respondents submit that the information provided in the Third Evidence Matrix for 12 November 2017 and 30 June 2018 shows a "very substantial fall" in the numbers of incidents relating to the Hotel. The Respondents submit that over the same time period in the preceding calendar year (12 November 2016 to 30 June 2017) Police had included 76 incidents, 59 of which the Authority found to be attributable to the exercise of the ETA.
- 259.** The Respondents submit that 11 of the 21 COPS Events in the Third Evidence Matrix cannot rationally support an adverse inference against the Hotel and/or are not properly referable to the exercise of the ETA and it would be difficult for the Authority to attribute "any more than 8 to 10 of the events" in the Third Evidence Matrix to the exercise of the ETA.
- 260.** The Respondents submit that the incidents that should be attributed to the ETA are around *one-sixth* or *one-seventh* the numbers found during the prior corresponding period and this information shows a "dramatic, marked and substantial improvement in the behaviour of patrons" at the Hotel. The Respondent contends that during this period the venue has exercised its ETA until 3:00 am in the same manner as it did in the prior corresponding period with the Hotel operating to the same business model.
- 261.** The Respondents refer to the Hotel's implementation of harm minimisation measures and contend that the reduced numbers in this latest material from the Applicant demonstrate that the Hotel's "business model" does not cause "unacceptably high" rates of criminal incidents and anti-social behaviour and that over time as the venue identifies and bans problematic patrons using its ID scanning measures the occurrence of incidents are reduced.
- 262.** The Respondents discuss the Hotel's status under the Schedule 4 Scheme and submit that there has been a clear downward trend in acts of violence on the Premises since mid-2017 gathering pace from November 2017 to June 2018.
- 263.** The Respondents contend that the Hotel will drop to a "Tier 2" (Level 2) venue in the upcoming Round 20 of the Schedule 4 Scheme and needs only "maintain current rates of improvement" to fall off the declared premises list altogether. They contend that this will most likely occur in Round 21.

- 264.** The Respondents reiterate their complaint that a refusal by competing venues to let this Hotel join the NEP “information sharing network”. They claim that this was “calculated” to achieve a result whereby troublemakers excluded from the NEP venues would patronise the Sydney Junction Hotel. The Respondents contend that the Hotel’s use of its own ID scanning and barring system has assisted to weed out trouble makers over time.
- 265.** In response to the Authority’s request for financial data pertaining to June and July 2018, the Respondents submit that the figures provided disclose a revenue reduction of “some 30% in the month of July, when compared to the revenue of the Hotel in June and in the preceding periods previously provided to the Authority”. This, it is submitted, demonstrates the business owners’ concern that the Hotel would lose more than just the proportion of revenue previously earned in the period between 1:30 am and 3:00 am and that with 1:30 am closing, people would either not choose the Hotel at all or leave prior to 1:00 am for an alternate venue by 1:00 am to avoid a lockout at other hotels.
- 266.** The Respondents submit that the only option to reduce the hit to revenue would be to reduce staffing levels, which will reduce employment opportunities, lessen recreational options for patrons and reduce opportunities for musicians, DJs, sound and lighting technicians and others involved in the provision of music and entertainment. The Respondents contend that the business owners cannot reduce their fixed costs and this reduces the capacity of the business to make a commercial return on capital. This, it is said, would cause a disproportionate loss to the Hotel’s proprietors and “inhibits and retards the development of the industry”.
- 267.** The Respondents refer to the latest evidence of support for late trading provided with this submission dated 10 September 2018 at Annexure 4 (containing the four further letters) and submit that weight should be given to the fact that no local residents have expressed support for shutting the Hotel at 1:30 am. The only evidence of disturbance complaint is from a licensed competitor business and winding back the Hotel’s hours “will benefit the Kavon business, which is located only some 20 metres from the Sydney Junction hotel”.
- 268.** The Respondents conclude that in light of the decline in incidents and the measures implemented by the Hotel operators, there is a public interest in “preserving the benefit” of being able to socialise with other members of one’s local community, at hours reasonably expected of hotels in a specified “entertainment precinct”, at a hotel offering “high, modern standards”.
- 269.** Finally, the Respondents advise that the Rogers family company has exchanged contracts to sell the freehold and business of the Hotel to companies associated with the Iris Group of Hotels. The Respondents submit that this is yet another reason to find that rates of assault and anti-social behaviour are likely to be sustained at low levels and are unlikely to spike markedly in the future.
- 270.** The Respondents conclude that a balancing of the statutory objects, informed by the evidence before the Authority and current risk profile of the Hotel requires that the Authority not wind back the licensed trading hours of the Hotel. The Authority should refuse the Application and “take no other action”.

EMAILS FROM IRIS CAPITAL GROUP – 10 and 11 SEPTEMBER 2018

- 271.** At 2:13 pm on Monday 10 September 2018 the Authority received a four-paragraph email from Mr Rod Hawkins, General Counsel of the Iris Group in the following terms:

On 7 September 2018 Sydney Junction Hotel Property Pty Ltd and Sydney Junction Hotel Operations Pty Ltd (two companies in the Iris Capital group of companies) exchanged

contracts to purchase the freehold and business of the Sydney Junction Hotel (**SJH**) from companies associated with the Rogers family.

I note that one of the agenda items for ILGA's board meeting on 12 September is the consideration of an Application to revoke extended trading authorisation under section 51(9)(b) of the Liquor Act 2007 by NSW Police (**Application**).

As the incoming owner and operator for the SJH we will be conducting an immediate review of its operations, including the issues raised by the Application and the response/measures taken by the current owner. There is a possibility that we would wish to make submissions, over and above those that may be submitted by the current owner, and/or make some operational changes to address the issues raised by the Application.

I respectfully request that ILGA provides Iris Capital with a reasonable opportunity to make submissions in relation to the proposed regulatory action.

272. At 4:07 pm on that date the Authority Secretariat advised Mr Hawkins by email as follows:

I note that this matter was first before the Authority in June. I am not of the view that it would be appropriate to remove it from consideration at Wednesday's meeting at this late stage.

If you wish to make a submission, please do so by 5 pm tomorrow. Your email below will be provided to the Authority as part of the material being considered.

273. At 12:36 pm on Tuesday 11 September 2018 Mr Hawkins sent an email to the Authority Secretariat as follows:

I have asked the vendor to provide me with a copy of the latest submission lodged with the Authority yesterday. I have been provided with that submission.

It is apparent from that document that there is a body of evidence being relied upon by the Police which goes back at least 2 years.

I am informed that there is a considerable volume of evidence that has been filed with the Authority by the applicant and the respondent.

Without being provided with that material, Iris cannot make any meaningful submission.

Sydney Junction Hotel Property Pty Ltd and Sydney Junction Hotel Operations Pty Ltd will obviously be adversely affected by any winding back of the Hotel's trading hours, as I understand is now proposed.

If the Authority is at all minded to order a scaling back of hours, despite the submissions of the existing owners, I would respectfully request that our companies be given a reasonable opportunity to make additional submissions, after being furnished with the evidentiary material before the Authority.

FINDINGS ON UPDATED COPS REPORTS FOR DECEMBER 2017 TO JULY 2017

274. The Authority proceeded to consider the Application at its Board meeting of Tuesday 12 September 2018, as scheduled. The Authority is satisfied that of the 21 latest COPS Events, all but Items 125, 129 and 131 are established on the balance of probabilities with their occurrence reasonably attributable to the exercise of the ETA. Briefly:

275. Item 125 – COPS Report E401808092 – 12:30 am on Sunday 16 December 2017 (alleged breach of licence condition prohibiting drink stockpiling): A male patron inside the Hotel purchased four alcoholic drinks before returning to a high table and chair near the dance floor. CCTV shows that a male staff member approached the patron, picks up something off the table and puts it in the plastic tub he is carrying, points to two other drinks near the

patron and then puts these two drinks in the plastic tub and walks away. The male was consuming one drink with three unconsumed drinks on the table directly in front of him. Police issued the then licensee (Mr Boland) with an infringement notice on 16 December 2017 for failing to comply with a licence condition. The Authority accepts the Respondents' advice that a prosecution of the licensee was withdrawn by Police due to insufficient evidence as to whether the patron had acquired all of the drinks in question. The Authority **does not** find that this Event is established.

- 276. Item 126** – COPS Report E66020727 – 12:30 am on Sunday 24 December 2017 (alleged intoxicated patron outside venue requiring move on direction by Police): A male patron who had been ejected from the Hotel was issued with a move on direction by Police. The report records the patron as being “well affected” by alcohol and having consumed his last drink on the Premises.
- 277. Item 127** – COPS Report E66902319 – 1:40 am on Saturday 20 January 2018 (alleged assault outside the Hotel): A male patron was asked by staff on numerous occasions to leave before he was physically removed from the Premises. The male patron can be seen on CCTV resisting staff and it takes a number of security guards to move the patron outside. Once outside, the patron remained in the vicinity and was argumentative, refusing to move on. After trying to re-enter and being offered a bottle of water, which he hits out of the manager's hands, the patron approached a guard and said words like "I will rape your kids." The guard then slapped the patron across the face with an open right hand causing him to fall over and hit his head on temporary fencing, before landing on the ground. The patron sustained a laceration to his forehead from his fall. The report records the patron as “well affected” by alcohol and having consumed his last drink on the Premises.
- 278. Item 128** – COPS Report E1018866290 – 1:55 am on Saturday 3 February 2018 (alleged patron misconduct conduct outside the Premises): Police were contacted by a neighbour next to the carpark of the NAB building on the corner of Donald and Beaumont Streets, Hamilton due to what appeared to the complainant as a verbal argument between a couple. On arrival, Police were alerted to a female who climbed onto the roof of a shop next to the NAB building. The female was too intoxicated to climb back down and the NSW Fire Brigade was called to remove her. It was reported to Police by a person involved in the incident that the female suffers from Attention Deficit Hyperactivity Disorder, is on medication and shouldn't consume sugar but consumed a large amount of sweet alcoholic drinks. The report records the female as “well affected” by alcohol and consumed her last drink on the Premises. Notwithstanding the Respondents' submissions regarding the mental condition of the patron, the Authority is satisfied that this incident did occur and involved a significant late-night disturbance event caused by a patron who was well affected by alcohol consumed on the Premises.
- 279. Item 129** – COPS Report E68615178 – between 1:00 am and 2:00 am on Sunday 11 February 2018 (alleged drink spiking on the Premises): About 11:30 pm on 10 February 2018, the female patron arrived at the Hotel, ordering a vodka with Redbull drink between 1:00 am and 2:00 am. After walking to the dance floor and placing her drink on a table, the female patron noticed a male sitting at another table about 1 metre from her drink but thought nothing of it. The patron alleges that an unknown substance was put into her drink and that she consumed the drink unknowingly. After leaving the Premises the patron is recorded as having started vomiting repeatedly and became unresponsive before passing out. A drug test supplied by the father of a friend indicated a possible detection of opium. The manager reviewed the CCTV footage and advised that it does not record anything of the incident. This COPS Report indicates that the footage reviewed was very grainy, of mediocre quality and does not depict the incident or identify any potential person of interest. The report notes that the tests conducted on 14 February 2018 were analysed by FASS (which the Authority assumes is the NSW Health Forensic and Analytical Science

Service) and revealed a negative result. The Authority considers that there is too much uncertainty surrounding this reported drink spiking and **does not** find the Event to be established.

- 280. Item 130** – COPS Report E66695736 – 12:37 am on Sunday 11 February 2018 (alleged assault on the Premises): Hotel security guards intervened in a fight amongst patrons on the dance floor. Five male patrons were involved, with numerous punches exchanged. The identity of two male patrons is unknown, while three males are identified in the report (one being the victim and two being persons of interest) who are noted as “moderately affected” by alcohol and having consumed their last drinks on the Premises.
- 281. Item 131** – COPS Report E 290826794 – 2:05 am on Saturday 17 February 2018 (alleged mid-range PCA offence): A male motorist was stopped for the purpose of a random breath test on the Pacific Highway, Charlestown. Police believed that he was moderately affected by alcohol and a breath test returned a reading of 0.090 grams of alcohol per 210 litres of breath. The male advised Police that he had consumed about “5 x Jim and Cola’s” on the Premises with his first drink at around 9:00 pm and his last around 12:00 am. The male was issued with certificate L3646/20180217/0010 and Field Court Attendance Notice no: 1240859 for driving with a middle range prescribed concentration of alcohol. His licence was suspended immediately, and the current status of this matter is not clear from the report. The report identifies that the male was recoded as “moderately affected” by alcohol and consumed his last drink on the Premises. The Respondents submits that the Authority does not usually take medium range PCA offences into account and should not take this matter into account. While all PCA matters represent serious alcohol related anti-social conduct with potentially grave consequences for the community, the medium range reading, the available information on how many drinks were consumed and the time of detection do not establish the patron being intoxicated or consuming liquor to excess on the Premises. While the Event is established, it **is not** attributed to the exercise of the ETA.
- 282. Item 132** – COPS Report E68675478 – 1:20 am on Sunday 18 February 2018 (alleged assault causing actual bodily harm on the Premises): Police responded to a brawl in Beaumont Street where Police located a male on the footpath with an injury to his finger requiring medical attention. The male stated that he was in an altercation after leaving the Premises. The report records the male as “moderately affected” by alcohol and having consumed his last drink on the Premises. The Authority does not accept the Respondents’ submission that this matter should not be found attributable to the exercise of the ETA. The patron was moderately affected by liquor after last drinking on the Premises and got into a brawl creating significant disturbance on a public street. The location of the violence five blocks away does not break the nexus to the exercise of late trading by the Hotel.
- 283. Item 133** – COPS Report E66956347 – 4:00 am on Thursday 22 February 2018 (alleged high range PCA): Police stopped a female motorist for a random breath test after observing her driving. The female advised Police that she had been drinking all night. Police could smell intoxicating liquor on her breath and noted that her speech was slurred, and her eyes glazed. A breath analysis returned a reading of 0.159 grams of alcohol in 210 litres of breath and the female was arrested. The female admitted having 10 vodka and cranberry drinks on the Premises with the first drink consumed at 6:00 pm and her last alcoholic drink at 3:30 am. The licence was confiscated, and the female provided with a Field Court Attendance Notice no: 1169454 for the offence of drive with high range PCA. The report records the motorist as “well affected” by liquor and having consumed her last drink at a public place. The Authority does not accept the Respondents’ submission that Item 133 should not be found attributable to the exercise of the ETA. The patron had a high range reading, was noticeably intoxicated to the Police who intercepted her and on her own account had been drinking on the Premises all night.

- 284. Item 134** – COPS Report E67101318 – 12:40 am on Sunday 18 February 2018 (disturbance complaint from another licensed business): On 22 February 2018 the proprietor of the *Kavon Theatre*, situated directly opposite the Hotel on Hudson Street, spoke to Police about ongoing issues with the Hotel. The proprietor reported that at 12.40 am on 18 February 2018, a male patron had been ejected from the Premises and was pushing a female acquaintance outside the door on Hudson Street. The Hotel's security guards restrained the male and vigorously had him in a headlock with another guard assisting and dragging the male patron to the carpark. Security staff then released the male and said: "see you later". The proprietor went back inside his venue but about five minutes later, heard a commotion outside his front door. When he walked back outside he observed security guards on the nearby street corner making sure the male did not return to the Premises. The patron has removed his shirt and started coming back towards the Premises. Another group of males were coming across the road and the ejected patron and this group began a brawl in which the Hotel's security intervened. The proprietor told Police that incidents like this still occur and that it appears to him that the Hotel does not do anything to curb the violence. The *Kavon* now has a camera positioned at the rear of that venue to record any events from the Hotel that affect their business.
- 285. Item 135** – COPS Report E68864880 – 12:36 am on Saturday 10 March 2018 (alleged move on direction): A male patron was engaged in a confrontation on Beaumont Street, Hamilton with another male who was claimed to owe the first male money. Police established that the patron had been drinking on the Premises during the night and recorded him having blood shot eyes and slurred speech. The patron was issued by Police with a move on direction by reason of his behaviour. The report identifies the male as "slightly affected" by alcohol and having consumed his last drink on the Premises. The Authority does not accept the Respondents' submission that Item 135 should not be found attributable to the exercise of the ETA. The patron had been drinking on the Premises and engaged in anti-social conduct, in a public place, during late hours, after drinking on the Premises, creating a sufficient disturbance to require the intervention of Police. The patron was recorded as demonstrating symptoms consistent with being alcohol affected.
- 286. Item 136** – COPS Report E67730666 – 2:30 am on Friday 6 April 2018 (alleged street offence): Police spoke to a male after witnesses called to complain that he was abusing people and being racist. Police found the male behaving in a loud and aggressive manner on the platform of Hamilton train station and issued him with a move on direction. The report identifies that the male was "moderately affected" by alcohol and having consumed his last drink on the Premises.
- 287. Item 137** – COPS Report E70163889 – 2:00 am on Sunday 22 April 2018 (alleged malicious damage): A female patron left the Hotel voluntarily around 2:00 am. About 9 minutes later, CCTV showed the female attempting to re-enter the Premises while the lockout was in effect. The female is seen to be using force in an attempt to open the door without success. The female then left along Hudson Street before attempting to force her way back inside 5 minutes later. CCTV records a glass panel of the door fracturing as the female leans heavily against it before leaving the scene. Bystanders alerted staff who confronted the female and photographed her drivers' licence. The female is recorded as having paid for the window. On 10 May 2018 Police were informed that the female had paid for the damage and no further action was desired. The report identifies the female as "well affected" by alcohol and having consumed her last drink on the Premises.
- 288. Item 138** – COPS Report E70507567 – 12:43 am on Thursday 26 April 2018 (alleged move on direction): A male patron left the Hotel at closing and began arguing with a female. Hotel security guards have intervened, and the male began arguing with guards. Police issued a move on direction. The report identifies the male as "moderately affected"

by alcohol and having consumed his last drink on the Premises. The Authority does not accept the Respondents' submission that Item 138 should not be found attributable to the exercise of the ETA. The patrons were observed to be "moderately affected" by alcohol and created a sufficient public disturbance to warrant Police intervention, after drinking on the Premises during late hours.

- 289. Item 139** – COPS Report E69639382 – 1:45 am on Saturday 12 May 2018 (alleged assault and offensive behaviour): Police have responded to a call about a group of males fighting at the intersection of Beaumont Street and Maitland Road, Islington. Upon arrival, Police noticed one male with his shirt off attempting to punch another male, whilst the other male has punched the first in the face. Both men declined to make a complaint, received Penalty Notices for offensive behaviour and were issued with move on directions. The report identifies the males as "moderately affected" by alcohol and having consumed their last drinks on the Premises. The Authority does not accept the Respondents' submission that Item 139 should not be found attributable to the exercise of the ETA. Notwithstanding the Event occurred some distance away and that there was a lack of co-operation with Police, this was a significant episode of late-night violence in a public street involving a group of males "moderately affected" by alcohol after drinking on the Premises.
- 290. Item 140** – COPS Report E70495886 – 1:40 am on Sunday 13 May 2018 (alleged breach of licensing legislation): Police attended the Premises due to a female patron failing to quit the Premises. Security informed Police that the patron refused to leave the area after being excluded from the Premises. Police explained that she was not allowed to re-enter after the lockout. The patron became aggressive yelling abuse at Hotel security, and refusing to provide Police with her identification, providing different accounts of her name and put her hand in the face of officers, causing her to be arrested. The patron was issued with an infringement notice for excluded person remaining in the vicinity of licenced premises. The report identifies the patron as "well affected" by alcohol and having consumed her last drink on the Premises. The Authority does not accept the Respondents' submission that Item 140 should not be found attributable to the exercise of the ETA. The patron was well affected by liquor and creating significant disturbance requiring the intervention of Police.
- 291. Item 141** – COPS Report E66294410 – 1:25 am on Sunday 27 May 2018 (alleged offensive language offence): Police observed a male swearing in the carpark of the nearby Hamilton train station after just having been ejected from the Premises. The male was standing across the road from the Premises swearing and taunting the Hotel's security guards. A Transport Infringement Notice was issued for offensive language in or on public passenger vehicle/train or a public area and a move on direction was issued. The report identifies the patron as "moderately affected" by alcohol and having consumed his last drink on the Premises.
- 292. Item 142** – COPS Report E70499289 – 1:15 am on Sunday 27 May 2018 (alleged assault, recorded by Police as "rejected"): A female patron arrived at the Hotel with her fiancé who is employed as a security guard at the Hotel on 26 May 2018. At 1:15 am on 27 May 2018 the female patron was asked to leave due to a minor altercation with another security guard. The patron was escorted from the Premises and once outside refused to leave, yelling at staff. The patron approached Police at the Hamilton train station and alleged that security staff from the Hotel had assaulted her. The patron appeared to be moderately affected by alcohol and was distressed. As she was making this complaint the patron called out abuse towards the security staff. At the time, the patron's male partner who was also moderately affected by alcohol engaged with Police but became belligerent and abusive towards Police. Police issued him with a move on direction. The female patron wished to report the matter but declined to make a statement. The female left the location. Police spoke to staff at the Hotel and CCTV indicates that guards have used reasonable

force to remove her while the patron was resisting security staff. The report records the female as “moderately affected” by alcohol and having consumed her last drink on the Premises. The Authority does not accept the Respondents’ submission that Item 142 should not be found attributable to the exercise of the ETA. The Authority accepts that the claimed assault was not established, and that staff were using reasonable force. Nevertheless, this patron and her partner were affected by alcohol after drinking on the Premises during late hours and created significant disturbance on the Premises and on the street outside, resisting staff and abusing Police. While staff are not at fault, it is another example of late-night alcohol affected patrons behaving in a disorderly manner and creating significant disturbance.

- 293. Item 143** – COPS Report E69927985 – 12:10 am on Sunday 3 June 2018 (alleged assault occasioning actual bodily harm): Around 12:10 am after being on the Premises since around 9:30 pm, a male patron was dancing when pushed by another male and has fallen backwards to the ground. Other males stood around the victim and punched and kicked him until he was unconscious. The males are recorded as continuing to assault the victim whilst unconscious. Staff intervened. One male was escorted from the Premises but turned and violently shoved the staff member in the chest and arm before leaving. The victim was taken to an office for first aid and then conveyed by ambulance to Hospital where he was treated for suspected orbital fractures, a cracked left nostril, broken teeth and other minor facial injuries. The report records the victim and persons of interest as “moderately affected” by alcohol and having consumed their last drinks on the Premises.
- 294. Item 144** – COPS Report E67975250 – 2:20 am on Saturday 9 June 2018 (alleged move on direction): Police were patrolling Beaumont Street when they came across persons milling around and yelling at each other. Police spoke to a male who the report records to have smelt of liquor, unsteady on his feet and moderately affected by alcohol. Police issued the male with a move on direction. The report records the male as having consumed his last drink on the Premises.
- 295. Item 145** – COPS Report E68584733 – 1:24 am on Saturday 14 July 2018 (alleged assault causing grievous bodily harm): Three male victims had been at the Hotel before walking away towards Islington. Outside a café on Beaumont Street, one of the victims have engaged an unknown male about urinating in a doorway. Three persons of interest approached the victims saying: “We’ll fight you”. Another three males joined in the confrontation. The first victim was punched to the jaw from behind, with his jaw being dislocated and fractured in two places, a nerve severed with significant bleeding from his mouth. The second victim was punched to the mouth and sustained a minor laceration to his lip. The third victim was punched to the left cheek and sustained a sore left cheek. The persons of interest fled the scene, but their identities have become known to Police after an investigation, with one interviewed. One person of interest told Police he had been drinking on the Premises prior to walking towards the incident but denied any knowledge of the incident. The report records the three male victims as “moderately affected” by alcohol and having consumed their last drinks on the Premises.

REASONS

The Current Status of the Licence

- 296.** There has been some movement in respect to parties associated with the licence since this Application was made to the Authority and notified to the Respondents.
- 297.** The initial Application Letter advised that the licensee was Mr Campbell Rogers who had held the licence since **7 June 2017** and before that Mrs Clare Rogers (Mr Rogers’ wife) held the licence from **8 September 2014**. The OneGov licence record as at 16 January

2017 that is Annexure 1 to the Application Material indicates that both the business owner and premises owner was a company, S.J.H. Hamilton Pty Ltd, which has owned the Premises and the licensed business since **8 September 2014**.

298. However, a more recent OneGov record obtained by the Authority on **12 October 2017** indicated that the licence had been transferred from Mr Campbell Rogers to Mr Ross Boland on **27 September 2017**. This record disclosed that the corporate licensed business owner since **27 September 2017** was transferred to another company, SJH Hotels (NSW) Pty Ltd while the premises owner remained S.J.H Hamilton Pty Ltd.

299. A OneGov licence record obtained by the Authority current as to **11 September 2018** indicates that the licensee had been transferred back from Mr Ross Boland to Mr Campbell Rogers on **19 February 2018**. The business owner remained SJH Hotels (NSW) Pty Ltd while the premises owner remained S.J.H. Hamilton Pty Ltd.

300. The licensing record as at 11 September 2018 notes the imposition of a number of venue specific licence conditions upon this licence. A number of these measures commenced effect on 1 July 2008 and were apparently imposed by previous regulators and in force at the time of transition of the licence from the former *Liquor Act 1982* (NSW) to the current Act on that date. Some of the venue specific conditions were more recently imposed by the Secretary in response to regulatory concerns about the operation of the venue. As of the date of this decision, these conditions require the following:

- Effective from 1 July 2008, compliance with the LA10 noise emission restriction.
- Effective from 1 July 2008, use of 2 licensed security guards to patrol outside the Premises to Donald Street from 11:00 pm until after closing on Friday and Saturday nights - effective from 1 July 2008.
- Effective from 1 July 2008, use of licensed guard to patrol outside the Premises from 11:00 pm until after closing on Wednesday and Thursday night.
- Effective from 28 March 2012, use of an employee or contractor whose sole function is to monitor responsible service of alcohol practices (RSA Marshal) at the bar and throughout the licensed Premises from 11:00 pm until closing time on Fridays and Saturdays.
- Effective from 28 March 2012, a prohibition after 10:00 pm on Fridays and Saturdays on the service of shots, drinks containing more than 50% spirits or liqueur, ready to drink (RTD) beverages with an alcohol by volume content or more than 5%, and any drink containing more than one 30ml nip of spirits or liqueur may be served; nor may a customer purchase more than 4 alcoholic drinks or one bottle of wine.
- Effective from 28 March 2012, observance of "Orderly Precinct Strategy" requirements including refusal of entry to any person who has or is reasonably suspected by staff to have consumed alcohol in a public place, exhibited anti-social or aggressive behaviour in the vicinity of the Premises, or been argumentative, disorderly or abusive to staff during the last 6 hours; use of signage relating to a lockout and to reduce noise and impact upon the local neighbourhood; provision of free water stations at every bar in the Premises and no takeaway liquor sales after 10:00 pm.
- Effective 28 March 2012, a prohibition on patrons stockpiling drinks.
- Effective 28 March 2012, use of a 1:00 am lockout until closing.
- Effective 28 March 2012, cessation of alcohol sales, dimmed lighting, live music and any music louder than background level 30 minutes prior to closure, with announcements at 15-minute intervals advising patrons of the need to respect neighbours when departing, the availability of free water and transportation options.
- Effective 28 March 2012, a requirement to perform a rubbish collection between one hour after closure and 7:00 am.

- Effective from 28 March 2012, a requirement for security officers to make reasonable efforts after midnight to encourage patrons not to linger within the perimeter of the Premises and ensure all patrons have left the environs 30 minutes after closure.
- Effective from 28 March 2012, a requirement to provide written advice to staff and security of all conditions to which the licence is subject within 14 days of their imposition, as well as the need to apply responsible service of alcohol practices, details of available transport, and the location of the 50-metres vicinity which applies to any excluded persons.
- Effective from 13 July 2017, a minors area authorisation applying to the Main Bar, Function Area, Bistro, Beer Garden, Foyer and Sanitary Facilities excluding the gaming area.
- Effective from 15 September 2017, maintenance of a CCTV system on the Premises and compliance with conditions for keeping and making recordings available to Police on request.
- Effective from 15 September 2017, maintenance of an incident register recording the occurrence of certain adverse incidents on the Premises.
- Effective from 15 September 2017, a requirement for an after midnight “supervisor” with at least 2 years’ experience as a supervisor or manager during extended trading hours.
- Effective from 15 September 2017, a requirement for staff to comply with Crime Scene Preservation Guidelines where an act of violence causing injury to a person occurs on the Premises.

No further extension of the timetable is appropriate

- 301.** The Application has been subject to exhaustive consultation since it was filed in October 2017, with the Respondents making four rounds of submissions prior to the Authority issuing the Purported Decision on 14 June 2018 and another two rounds of submissions following the Authority giving notice of its Proposed Decision to reduce licensed trading from 3:00 am to 1:30 am on 20 August 2018. The Applicant has made several rounds of submissions in reply and has had the opportunity to update its case for revocation of the ETA.
- 302.** Public notice that this Application was being considered at Authority Board level has been communicated through the LGNSW website, in advance of monthly Authority meetings held on 18 October 2017, 14 February 2018, 13 June 2018 and 12 September 2018. The Purported Decision and related litigation in the New South Wales Supreme Court and the New South Wales Civil and Administrative Tribunal initiated by the Respondents attracted considerable media attention during July and August 2018.
- 303.** In those circumstances and given the material before the Authority establishing an ongoing pattern of late-night alcohol anti-social conduct committed by Hotel patrons and persons seeking access to the venue, it is not in the public interest to delay determination of the Application to accommodate another round of consultation with the purchaser, Iris Group, which would in turn necessitate a right of reply from the Applicant before any decision is made. While the Authority accepts that contracts for sale of the Hotel have been exchanged, settlement will not take place for some weeks.
- 304.** Notwithstanding Iris Group’s late request to consider all of the material before the Authority, the *current* business owners are far better placed to respond to the merits of the COPS Events that have been levelled against the Hotel. Iris Group, as with other informed observers, have had the opportunity to be on notice of this Application through the Authority’s published meeting agendas and media coverage. Any substantial proposal to address late night disturbance under a new operator could have been concisely

communicated to the Authority between the time of Iris exchanging contracts on 7 September 2018 and close of business on Tuesday 11 September 2018.

- 305.** Iris Group have not identified a sufficient basis for the Authority delaying regulatory action against the ETA and in any event, once the purchaser actually assumes responsibility for the Premises, it would be open to any new licensee to make an application in respect of the ETA at some future time.

Analysis

- 306.** The Authority now has before it COPS Events and information from the Respondents spanning a period of two years, from July 2016 to July 2018. That is a substantial period of time to assess whether continuation of the ETA is in the public interest, or whether regulatory action should be taken.
- 307.** Of the **145** COPS Events now before the Authority, the Authority is satisfied that **121** did occur, on the balance of probabilities and are reasonably attributed to the exercise of the ETA (noting that Item 27 concerned both an assault event and a street offence; Item 9 involved both a licensing legislation offence and an assault; while Item 16 concerned both a street offence and a licensing legislation offence). Of those found Events, **35** occurred between July and December 2016 **47** occurred between January and June 2017, **22** occurred between July and December 2017 and **17** occurred between January and June 2018.
- 308.** The information pertaining to the first six months of 2018 indicates a substantial reduction in the occurrence of adverse COPS Events attributable to the ETA. This has been taken into consideration by the Authority when deciding what, if any, action is appropriate at this time. The entirety of the COPS Events and submissions before the Authority provide insights into the Hotel's late-night operations and the clearly demonstrated potential for its late-night patrons to engage in acts of violence and other forms of anti-social conduct on Premises and in the neighbourhood. The latest round of found COPS Events establish that patrons are *still* engaging in a range of unacceptable conduct, even if assaults recorded on the Premises are diminishing. While the Hotel may be focussing on managing what occurs on the Premises, its alcohol affected patrons are still engaging in an unacceptable level of anti-social conduct after patronising this venue during late hours.
- 309.** On the basis of all the material before it, the Authority is satisfied that the preferable decision is to not revoke the ETA but vary the ETA so that licensed trading is reduced from 3:00 am to 1:30 am after Monday through Saturday evenings, with no change to midnight licensed trading on Sunday evening.
- 310.** The Authority has considered the Respondents' submissions dated 15 May 2018 in response to the Authority's previous findings on Items 2, 3, 10, 12, 30, 42, 44, 45, 57, 62 and 104 but is satisfied, on the basis of the evidence or material noted in the Findings Letter, that these adverse events did occur on the balance of probabilities and are reasonably attributable to the Hotel's exercise of the ETA. The Authority's findings on Items 125 to 145, including Items 125, 128, 129, 131, 132, 133, 135, 138, 139, 140 and 142 that were subject to challenge by the Respondents, are set out above.
- 311.** The Applicant would have the Authority remove all late trading capacity, which would require the venue to close at midnight Monday through Saturday and 10:00 pm on Sunday. The Respondents seek that the Authority take no action.

- 312.** The Authority accepts that the Hotel has put in place a Plan of Management and notes that it must comply with a range of existing licence conditions including an obligation to engage security staff to manage security and RSA issues.
- 313.** In response to this Application, the business owners have engaged consultants and implemented voluntary initiatives such as identity scanning and barring. The Authority is satisfied that the various measures implemented by the hotel, under the glare of regulatory scrutiny, appear to have had enjoyed some measure of success, particularly with respect to the reduction of assaults occurring on Premises.
- 314.** At the time of this decision, the Hotel is designated by the Secretary as a Level 1 declared premises and the highest ranked hotel for the occurrence of violence on premises in the State. It has held declared premises status for some two years now: Level 2 during Round 17 (for January 2016 to December 2016, after the current business owners acquired the hotel); Level 1 during Round 18 (July 2016 to June 2017) and Level 1 during Round 19 (January 2017 to December 2017).
- 315.** Moreover, the Respondents concede that the Hotel is likely to be ranked a Level 2 declared premises in the upcoming Round 20 of the Scheme (July 2017 to June 2018), to be finalised later this year.. While a change of status from Level 1 to Level 2 is a significant improvement, Level 2 classification nevertheless reflects a substantial and recent level of violence on the Premises.
- 316.** There has been a considerable focus among the submissions as to how well the Hotel is performing pursuant to the Schedule 4 Scheme, but this Application is not confined to an assessment of violence *on* the Premises.
- 317.** While the number of assaults is a matter of some importance, this Application is concerned with a broader range of anti-social conduct. The COPS Events found by the Authority, including the most recent matters recorded from January to June 2018, evidence of a spectrum of anti-social conduct involving late night patrons of the Hotel – from assaults occurring *on and off* the Premises, to offensive conduct, to prescribed concentration of alcohol incidents, to acts of public disturbance and disorderly conduct occurring near the Premises and in surrounding streets of the neighbourhood of the Premises. Many of these patrons are demonstrating obvious signs of intoxication when engaged by Police. These Events have generated a substantial impost on Police resources.

Section 3 of the Liquor Act

- 318.** When considering whether taking any action against the ETA is in the public interest, the Authority has considered the statutory objects in section 3(1), including the regulation and control of the sale, supply and consumption of liquor in a manner that is consistent with the expectations, needs and aspirations of the community per section 3(1)(a).
- 319.** The Authority accepts that the 23 letters provided by the Respondents in Annexure 4 to their submission dated 27 November 2017 and the 4 additional letters provided in Annexure 4 to their submission dated 10 September 2018 demonstrate that 23 local hotel patrons and 4 local businesses support the continuation of 3:00 am trading. That provides a modest but significant level of local resident support for 3:00 am licensed trading.
- 320.** As submitted by the Respondent, there is no evidence of local residents supporting the Application, but that is not surprising in circumstances when this Application is not of a kind that requires a community impact statement and consultation with the community.

- 321.** The Authority accepts that a substantial number of *patrons* have also been voting with their feet and supporting late trading by attending the Premises, particularly the 3:00 am trading nightclub that is conducted on the Premises. Nevertheless, neither the Applicant nor the Hotel have provided any substantial insights or research into the attitudes of the broader *community of the suburb of Hamilton* or residents in nearby areas that are likely to patronise or be impacted by the Hotel's operations.
- 322.** The Authority accepts the Applicant's contention, in its submission dated 21 May 2018, that late night licensed entertainment is available at 6 other hotels and one on-premises licensed venue in Beaumont Street Hamilton (the Kavon). The Respondents themselves noted in their submission dated 15 May 2018 that the Kent Hotel located approximately 280 metres from the Premises provides late-night DJs and live entertainment.
- 323.** There are a range of late trading options that provide alternative means of meeting community expectations, needs and aspirations within Hamilton should the late trading hours of this venue be reduced. Furthermore, the Authority notes a considerable number of late trading licensed premises, from hotels to smaller licensed premises, in the Newcastle CBD, around 3 kilometres away.
- 324.** In the interests of serving community expectations, *varying* the ETA rather than *revoking* it will enable this venue to continue to serve community expectations for licensed entertainment over an extensive period across the course of the week with the Hotel trading outside the standard trading period from midnight until 1:30 am Monday through Saturday and from 10:00pm until Midnight on Sunday.
- 325.** Section 3(1)(b) of the Act provides the statutory object of facilitating the balanced development, in the public interest, of the liquor industry. While the Respondents' provision of late licensed entertainment in a recently renovated hotel setting serves the development of the local industry, the statutory object is the *balanced* development of that industry, in the *public interest*.
- 326.** Given the findings made by the Authority on the pattern of adverse events attributable to the exercise of the ETA, the Authority is satisfied that it would better serve the *balanced* development of the industry for some reduction in late trading hours to occur. Such action will reduce the scope for late night anti-social conduct that has been caused by the Hotel's clientele and other persons attracted to the venue by reason of its 3:00 am licensed trading hours.
- 327.** Section 3(1)(c) provides the statutory object of contributing to the responsible development of related industries such as live entertainment, tourism and hospitality industries. The Authority accepts that the venue's provision of live entertainment, primarily through the provision of DJs providing dance music in a nightclub mode of entertainment in part of the Premises, contributes to the development of related live entertainment industries. The revenue data provided by the Respondents in their submissions dated 15 May 2018 provide evidence of significant liquor, gambling and other revenue derived between midnight and 3:00 am.
- 328.** Noting the Respondents' contentions in their submission dated 27 November 2017 as to the number of persons employed by the Hotel in various capacities during late hours, the Authority accepts that this aspect of the Hotel's late trading plays in the development of "related" hospitality, live entertainment and gambling industries in the Hamilton entertainment precinct. The Authority notes the letter from Mr Gurr of Avid Entertainment provided with the Respondents' submission of 10 September 2018 in this regard.

- 329.** Nevertheless, this aspect of the Hotel's operations must be placed in perspective. The Premises is licensed as a *hotel*. The primary purpose of any hotel in New South Wales is the sale of liquor by retail. It is not a nightclub (an on premises licensed venue whose designated *primary purpose* is dancing and dance music) nor an on premises venue with the dedicated primary purpose of hosting live entertainment. The Hotel can and does provide live entertainment and DJs, among other services, but those services should not be the primary focus of operations. Reducing the capacity of this venue to provide licensed dance music entertainment by 90 minutes per day, will not prejudice the Hotel's primary purpose.
- 330.** Moreover, the statutory object in section 3(1)(c) concerns the *responsible* development of related industries. It appears to the Authority that, notwithstanding the recent efforts of the Hotel to exclude intoxicated persons or weed out trouble makers that are identified in the Paroz Report dated 14 May 2018, the Hotel has been operating in such a way as to encourage significant numbers of patrons to attend the venue during late hours but has given rise to what the Authority regards as unacceptable levels of anti-social conduct caused by the Hotel's clientele.
- 331.** It is apparent from the COPS Events found by the Authority that the majority of patrons involved in late night anti-social conduct are younger adults, aged in their late teens and 20s. A good deal of these individuals were recorded as noticeably affected by liquor when engaged by Police officers. This evidence demonstrates the higher risk culture of patrons who are likely to be drawn to late night licensed trading, including but not limited to nightclub style entertainment, after migrating from other venues.
- 332.** In light of the Authority's findings on the adverse events attributable to the ETA, with many events relating to the nightclub aspect of the business and other events occurring in the other bar areas and the gaming room, the Authority is satisfied that reducing the scope for anti-social conduct by reducing the late trading footprint will better serve the *responsible* development of related industries. The Authority notes that by varying the ETA as proposed, the venue would still be able to serve the development of related industries until 1:30 am Monday to Saturday and midnight on Sunday.
- 333.** On the material before it, the statutory considerations in section 3(2) of the Act to which the Authority must turn its mind call for intermediate regulatory action to be taken without further delay. Section 3(2)(a) concerns the need to minimise harm associated with the misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour).
- 334.** Notwithstanding that the Schedule 4 Scheme imposes substantial special licence conditions which restrict the supply of certain drinks and impose other harm minimisation measures, those conditions do not appear to the Authority to have proven sufficient to avoid the venue's repeated listing as a declared premises, nor do those special conditions appear to have avoided the numerous adverse events attributable to exercise of the ETA that have been found by the Authority.
- 335.** While the Respondents have made much of a recent reduction in assaults on premises, and this is a factor of some importance when assessing this Application, section 3(2)(a) is a broader provision, requiring the Authority to consider the need to minimise harm associated with the abuse of liquor including *violence and other anti-social behaviour*.
- 336.** The Authority does not consider it in the public interest to give the Hotel yet more time to micro manage trouble makers and take other initiatives designed to reduce the levels of patron misconduct - as an alternative to taking immediate regulatory action to vary the ETA.

- 337.** The Authority is not persuaded by the Hotel's attempt to apportion blame towards other hotels in the Newcastle Entertainment Precinct for not sharing their patron identification data. It is a matter for each licensed premises in New South Wales to manage its own operations, particularly during higher risk late trading hours, in a manner that minimises adverse impact on public amenity and reduces the scope for its patrons to engage in alcohol related anti-social conduct.
- 338.** The Respondents have provided information as to the considerable but declining numbers of patrons who have been denied entry, or excluded from the Premises, pursuant to its risk management practices. The Authority accepts that the Hotel has been taking this action. While the Hotel's licensee, staff and contractors are not "at fault" for removing intoxicated, aggressive or quarrelsome patrons, section 51(9)(b) of the Act – unlike the disciplinary provisions of the Act – is not concerned with the attributing fault, but with the proper regulation, in the public interest, of liquor related authorisations attaching to individual licensed premises.
- 339.** Late trading brings inherent risks by reason of patrons who have been drinking alcohol on the Premises for a prolonged period of time, or by attracting persons in various degrees of intoxication who migrate from other licensed venues or private locations. Those risk management challenges are increased in larger scale venues, with larger patron capacities.
- 340.** If a licensed business is continuing to attract and generate problematic clientele during late hours, a business owner has a range of options available to remedy the problem *in a timely manner* – from reorienting the business away from a focus on late night trading, to not exercising the full gamut of late licensed hours, to reducing the areas of a venue in which late trading is conducted, to restricting patron capacity during late hours, to reducing the scope of higher risk activities such as live entertainment. While these are matters of commercial judgement, they may give rise to regulatory consequences.
- 341.** Giving weight to the statutory consideration in section 3(2)(a) of the Act, the Authority is satisfied that reducing late licensed trading will provide a decisive and timely means of reducing the scope for the anti-social conduct, identified in the Authority's findings, to occur in the first place. Such action is necessary on the material before the Authority and should commence effect without further delay. Taking action, rather than taking no action, will *ensure* that the scope for late night patron misconduct at this venue is reduced.
- 342.** While the Application Letter makes passing reference to section 3(2)(b) of the Act, which concerns the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor, there is insufficient evidence before the Authority to find that the Hotel business is engaging or promoting irresponsible practices, although there are numerous COPS Events found by the Authority indicating that hotel *patrons* were seriously affected by liquor and have proven unable to consume liquor in a responsible manner during late hours.
- 343.** On the statutory consideration in section 3(2)(c) – the need to ensure that the sale, supply and consumption of liquor contributes to and does not detract from community life - the pattern of on and off premises assaults, anti-social conduct and other forms of disturbance requiring the intervention of Police or emergency services provide a compelling reason to now reduce the scope for patrons or other persons attracted to the Premises during late hours to detract from the amenity of community life.
- 344.** The Authority accepts the Respondents' argument in its submission dated 27 November 2017 that late licensed hours provide some *positive* amenity to the Hotel's patrons, who

may take advantage of the increased scope for social interaction and enjoyment of the licensed services on offer at this Hotel. However, the negative amenity impacts upon the locality arising from this Hotel's late trading over the past two years has been substantial, with liquor consumption playing a role in many of the adverse incidents attributable to the exercise of the ETA.

- 345.** The Authority is satisfied that reducing the late licensed hours will most effectively reduce the scope for the sale, supply and consumption of liquor in relation to the Premises to detract from community life in the neighbourhood, while still enabling positive amenity benefits for patrons of this venue to be enjoyed until 1:30 am six days per week and with extended trading until midnight on Sunday. It will ensure that the scope for disturbance is reduced in a manner that is certain. It is a preferable course than taking a "wait and see" approach as proposed by the Respondents.

Conclusion

- 346.** Having considered the Application and all of the material now before it, the Authority is satisfied that it is in the public interest to vary the ETA on Monday through Saturday trading so that the sale or supply of liquor for consumption on the Premises must cease at 1:30 am. Noting that extended licensed trading is currently limited to midnight on Sundays, the Authority does not consider it necessary to take any regulatory action in respect of Sunday trading.
- 347.** The Authority accepts that taking this action will have a substantial adverse impact upon the current late night revenue derived by the Hotel business owner by reducing the revenue streams that the Hotel currently enjoys between 1:30 am and 3:00 am, as evident in the statutory declaration from the premises owner's accountant dated 15 May 2018. The Authority is satisfied, on the basis of that data, and the revenue data for June and July 2018 that the adverse impact of *varying* the ETA would be substantially reduced by comparison to revoking the ETA, which would require closure at Midnight on Monday through Saturday evenings, and at 10:00 pm on Sundays.
- 348.** The Authority notes that it is a condition of the licence that cessation of liquor service must occur 30 minutes before closing and this will require the cessation of liquor at 1:00 am. The Authority accepts the proposition, advanced by the Respondents in the statutory declaration by Mr Rogers dated 15 May 2018, that further losses may arise through patrons not choosing this venue over others, noting the 1:00 am lockout in place across certain late trading venues in the Hamilton entertainment precinct.
- 349.** While the Authority finds it credible for the premises owner to assert that some significant diminution in property value may also flow to the premises owner should licensed hours be reduced, the Respondents have only provided an expert valuation on the basis of the Applicant's proposed *revocation* of the ETA, not the Authority's proposed *variation* of licensed hours to 1:30. An email from the property owners' bank refers to a "significant impact to income and valuation" without specifying the likely impact. The Authority accepts that some capital loss may well occur from varying the ETA but it is difficult to ascertain the extent of such loss on the information provided by the Respondents. This reduces the weight that may be given to this submission.
- 350.** Nevertheless, the prospect of adverse regulatory action foreshadowed in the Proposed Decision has not, it would seem, prevented both the business and premises owners from exchanging contracts for sale of the Hotel to a third-party.
- 351.** Lost revenue, lost employment hours and some loss of property or leasehold value may be a consequence whenever *any* regulatory action is taken to reduce late licensed trading

hours. The Authority has taken all of these matters into account when deciding to vary, rather than revoke, the ETA.

352. In arriving at this decision, the Authority has considered all of the statutory objects in section 3(1) of the Act and all of the statutory considerations in section 3(2). The Authority has also given weight to the statutory considerations in sections 3(2)(a) and 3(2)(c) of the Act.

A handwritten signature in blue ink, appearing to read 'Philip Crawford', enclosed in a thin black rectangular border.

Philip Crawford
Chairperson