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11 December 2013

Dear Madam

Application by NSW Police under section 51(9)(b) of the Liquor Act 2007 to Revoke an Extended Trading Authorisation for the “Bada Bing Night Spot” - First Floor, 70A Darlinghurst Road, Kings Cross.

BACKGROUND

1. On 27 February 2013 the Authority received an application (“**Application**”) by Superintendent Susan Waites of Kings Cross Police Local Area Command in her capacity as a delegate of the New South Wales Commissioner of Police.
2. The Application concerns licensed premises located at First Floor, 70A Darlinghurst Road, Kings Cross (“**Premises**”) trading as the “Bada Bing Night Spot. The Authority is satisfied, on the basis of the information provided by the Applicant and the description of the licensed business provided by the operator of the licensed business, Marathon Enterprises Pty Ltd (“**Business Owner**”), that the venue operates in the mode of a nightclub with adult entertainment.
3. The venue provides professional disc jockeys who play recorded dance music of a kind that one may encounter at many other mainstream nightclubs. The venue occasionally operates as a venue where live musicians perform. The venue diverges from a mainstream nightclub, however, in that it provides adult entertainment in

the form of female strippers – referred to in the Business Owner’s submissions as “table dancers” or simply “dancers”. The strippers perform on podiums in the main entertainment areas of the Premises and in private rooms, where patrons may pay for a private performance. The venue also provides waitresses dressed in lingerie who are referred to in the Business Owner’s submissions as “lingerie girls”.

4. At the time of making this decision, the venue is authorised to sell or supply liquor for consumption on the Premises pursuant to an “on premises” licence that is provided for by section 25 of the Act.
5. The Application is made under section 51 (9)(b) of the *Liquor Act 2007* (Act). It seeks the revocation, or, in the alternative, variation of the extended trading authorisation pertaining to liquor licence number LIQO624013096 that attaches to the Premises.
6. Section 49(8) of the Act provides that an extended trading authorisation may be granted to certain types of licensed premises, including venues like the Bada Bing that operates pursuant to an on-premises licence granted under section 25 of the Act. Once in effect, an extended trading authorisation permits the licensed premises to trade for specified hours beyond those standard licensed trading hours that are prescribed by section 12 of the Act to which most licensed premises in New South Wales are subject. Standard hours extend from 5 am to midnight on Monday through Saturday and from 10 am to midnight on Sunday.
7. Section 51(9)(b) of the Act confers upon the Authority the power to vary or revoke an extended trading authorisation from time to time - upon application by the licensee, the New South Wales Commissioner of Police or the Director General of the New South Wales Department of Trade and Investment (“**Director General**”). The Authority may also vary or revoke an extended trading authorisation on the Authority’s own initiative.
8. Subsection 51(9) states:

(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 Director-General or the Commissioner of Police.

9. Section 51 does not specify the relevant considerations that govern the Authority's exercise of its power to vary or revoke an authorisation, although it is apparent that the Authority may receive broad guidance from the statutory objects prescribed by section 3(1) of the Act and must have regard to the statutory considerations prescribed by section 3(2) of the Act.

10. Section 3 states:

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.

11. When the Authority considers the exercise of its power under section 51(9)(b) the test is whether the proposed administrative action is in the public interest, informed by section 3 of the Act. When an application is made by a third party (such as the

Commissioner of Police) the Authority will decide whether, having considered the application and any submissions or other material before it, the Authority is satisfied that it is reasonable in the circumstances to vary or revoke the authorisation, as the case may be.

12. Licensing records indicate that the Premises has enjoyed extended trading hours since 9 November 2004 when the licence was first granted to Mr Kyriacos Papadopoulos, a director of the company that is the Business Owner. The Business Owner occupies and operates the licensed business on the Premises pursuant to a lease granted to it by the freehold owner of the property – a company called Sapphire Suite Pty Ltd (“**Premises Owner**”).
13. Numerous individuals have held the licence since Mr Papadopoulos was first granted it in 2004, although the Business Owner remains the operator of the licensed business to this date.
14. The type of licence that was granted to the business by the former New South Wales Licensing Court under the *Liquor Act 1982* was an “on – licence (theatre)” licence. When granting that licence, the Licensing Court did not confine licenced trading to fixed times of the day. Rather, the Premises was licensed to sell or supply liquor on those days when it was providing live or cinematographic “theatrical” entertainment. Conditions attaching to that licence prescribed that liquor may be supplied “1 hour before performance”, “during intervals”, or “thirty minutes after a performance”.
15. On 1 July 2008, pursuant to the legislative reforms to New South Wales liquor and gaming law enacted by the Parliament during 2007, the liquor licensing regime transitioned from the scheme provided by the *Liquor Act 1982* to the scheme provided by the current Act. The Authority was conferred with powers and functions formerly exercised by the Licensing Court, the Liquor Administration Board and the New South Wales Casino Control Authority.
16. With effect from 1 July 2008, the “on licence” granted under by the former Licensing Court under the *Liquor Act 1982* transitioned to an “on premises” licence that is provided for by section 25 of the (current) Act.
17. Sections 23 and 24 of the Act provide that the supply of liquor by an On Premises licensee must be ancillary to some other designated business purpose. That is, unlike premises that are licensed as hotels or general bars, the sale of liquor for consumption on premises cannot be the primary purpose of the business in

question. The designated purpose for the Premises is identified on the current licence is “Theatre public entertainment venue”.

18. By reason that the former Court did not confine licensed trading hours to fixed times of day, upon transition the licence was automatically endorsed with an extended trading authorisation. The Government Licensing System (“GLS”), which records the status of all New South Wales liquor licences since 1 July 2008, indicates that the Premises currently enjoys licensed trading hours of 5am to 5am, Monday through Sunday.
19. Furthermore, by reason that the licence and extended trading authorisation were in effect prior to 30 October 2008, the 6 hour mandatory daily closure period prescribed by section 11A of the Act does not apply to the Premises.
20. Consequently, liquor may potentially be sold or supplied for consumption on the Premises, 24 hours per day, seven days per week, if the licensee elects to do so – with minor restrictions that apply on Christmas Day and Good Friday.

MATERIAL BEFORE THE AUTHORITY

21. The Authority has before it an amended version of the Application. The amended version was produced by Police in response to an early request by the Authority’s General Counsel that Police clarify some of the data that they had presented in section 2.2 of the Police Submission that accompanies the Application – with a view to more clearly delineating between those Events recorded as having occurred during standard trading hours and those recorded during extended trading hours. The Applicant was also requested to explain how it had selected the Events from the COPS database.
22. By 25 March 2013 Police personally delivered, on the Authority’s behalf, copies of the amended Application and all supporting material to the then licensee, Mr Jonathan Henry (“**Licensee**”) and directors of the Business Owner and the Premises Owner. The material was delivered under the cover of a letter from the Authority dated 20 March 2013 inviting written submissions in reply.
23. In the consultation process that ensued all parties have requested, and were granted, extensions of time to make their respective submissions. The Authority the received several rounds of written submissions from the Business Owner (represented by Mr Tony Hatzis of Hatzis Cusack solicitors), the Premises Owner (represented by Mr Dion Manca of LAS Lawyers) and NSW Police (represented by Mr

Andrew Deards of the NSW Police Office of General Counsel and Sgt Donna Murphy of Kings Cross Police, the case manager responsible for this Application).

24. Those submissions entail documents, photographs or other media comprising around 2800 pages of material, being:
- (i) Application and attachments dated 30 January 2013 (as amended in March and served upon the respondents on 25 March 2013).
 - (ii) Submission and attachments from the Business Owner received by the Authority on 6 May 2013.
 - (iii) Submission and attachments from the Premises Owner received by the Authority on 9 May 2013.
 - (iv) Further submission from NSW Police received by the Authority on 3 June 2013.
 - (v) Submission from the Business Owner received by the Authority on 18 June 2013.
 - (vi) Submission from Premises Owner received by the Authority on 20 June 2013.
 - (vii) Submission from Business Owner received by the Authority on 17 July 2013.
25. The Authority also has access to audio visual media that accompanied some of the submissions, including CCTV footage relating to some of the Events provided by the Applicant.

SUMMARY OF THE APPLICATION

26. The Authority has read all of the material before it and has carefully considered the evidence or other material provided by the Applicant in relation to the 129 Events upon which the Applicant relies. Without purporting to re-state every matter alleged, the Applicant makes the following key contentions regarding the context in which the Premises operates:
- (i) The Premises occupies the first floor of a three storey building located at 70A Darlinghurst Road, Kings Cross. The Premises are accessible from a stair case from the ground floor main entrance to the venue on Darlinghurst Road. There is another entry point to the building located behind the Premises facing onto Kellett Street, Kings Cross.
 - (ii) Although not currently subject to any legislative capacity constraints, Police refer to a 2004 Place of Public Entertainment Development Consent (a planning instrument that no longer forms part of the regulatory landscape) that had approved a maximum of 300 people on the Premises, including staff. (The

Authority notes that this has been corrected by the Business Owner, as detailed below).

- (iii) The Licensee of the Premises at the time of the Application is Mr Jonathan Henry, who was appointed to that role by the Business Owner on 28 July 2011.
- (iv) The Premises are located in the heart of the Kings Cross entertainment precinct (Kings Cross Precinct), an area that Police describe as “synonymous with alcohol related crime, anti-social behaviour and community disturbance”. Police contend that this situation is “directly attributable for the high concentration of late trading licensed premises” located in this area.
- (v) Within the Kings Cross Precinct are 36 hotels, 225 on-premises licensed venues (including restaurants, nightclubs and strip clubs) 19 bottle shops and 13 producer/wholesaler licensees. Of those, 32 hotels, 154 on-premises licensed venues, 10 bottle shops and 6 producer/wholesalers are authorised by their licences to sell or supply liquor during extended trading hours.
- (vi) The Applicant contends (by reference to a City of Sydney *Pedestrian Safety Survey* and Police observations regarding the availability of late night public transport) that that people who come to Kings Cross intend to stay in the precinct after midnight and often until dawn. These visitors to the area face “considerable hardship” in obtaining public transport out of the Kings Cross Precinct during late hours and as a result there is a “large concentration of people in public areas” after midnight.

27. On the issue of the demands placed upon the Kings Cross Local Area Command of NSW Police by alcohol related crime and disturbance generally, the Applicant submits that:

- (i) Kings Cross Police Station is not equipped to detain intoxicated person and is not a “proclaimed place” for the purposes of the *Intoxicated Persons Act 1979* or the *Law Enforcement (Powers and Responsibilities) Act 2002* and there is no such proclaimed place within the Kings Cross Command. The detention of intoxicated persons at the Surry Hills Police Station is at the discretion of the Department of Corrections.
- (ii) Due to limited Police resources “large numbers of people are left to roam the streets” of Kings Cross. Police contend that often intoxicated people in public places include those who have been refused entry to licensed premises, lost

contact with their friends and cannot access public transport home. Police contend that the problem of large numbers of people in public areas is an issue that confronts Police, licensees and local residents “every weekend”.

(iii) Police have invested “thousands of hours” dealing with alcohol related crime in the crime “hot spot” areas within the Kings Cross Precinct. Between midnight and 6 am on Saturday and Sunday mornings Police interact with people on Darlinghurst Road, Roslyn Street, Springfield Avenue and Bayswater Road. These people come to Police attention through their consumption of liquor, for arguing amongst themselves, fighting, urinating, vomiting or requiring medical attention. According to Police, street offences, assault and malicious damage are the “primary offences” committed by these people.

(iv) The Applicant contends that City of Sydney does not allow cleaning teams into the Kings Cross Precinct late at night as it is considered unsafe to do so - but the City spends \$550,361.78 per annum cleaning garbage from the streets and cleaning urine from shopfronts and laneways in Kings Cross.

28. On the link between extended licensed trading hours and local alcohol related crime and disturbance, the Applicant refers to the *Liquor Amendment (Kings Cross Plan of Management) Bill 2012* (which the Authority notes has now been enacted to amend the *Liquor Act 2007*) that applies a number of new conditions and restrictions upon late trading premises within the defined Kings Cross Precinct. The legislation extends the freeze on the grant of certain liquor licences or authorisations within the designated Kings Cross Precinct until 24 December 2015.
29. The Applicant refers to the Minister’s Second Reading Speech in support of the *Kings Cross Plan of Management Bill 2012* which the Applicant submits recognises the nexus between extended trading hours violent and antisocial behaviour.
30. The Applicant submits that the information that it has provided to the Authority in relation to the Premises is a “clear example” of the connection between late trading and violent and antisocial behaviour.
31. Police state that on 19 July 2012 they met with venue management and the Business Owner’s solicitor, Mr Hatzis. Police advised the Business Owner during that meeting that they were then contemplating taking disciplinary action in relation to the Premises (which the Authority understands is a reference to a complaint under Part 9 of the Act) by reason of the “consistent pattern” of violent incidents in which Premises staff had been allegedly involved.

32. The Applicant alleges that there has been a “consistent pattern” of the licensed Business hindering Police investigations into incidents through failure to provide CCTV and documents when requested. The Applicant submits that this is not in the public interest for staff of any licensed premises to fail to cooperate with Police in their investigation of an assault upon a patron.
33. The Applicant states that since this meeting with management of the venue, Police have “noticed an improvement” in the operation of the Premises and have received a “more consistent” level of cooperation between the Business and Police.
34. On the 129 Events relied upon in this Application, Police make the following submissions:
- (i) Police refer to the “Evidence Matrix” that accompanies the Application which summarises the facts of 129 Police reported Events upon which the Applicant relies and in respect of which Police have provided evidence or other material with this Application.
 - (ii) The 129 Events have been drawn from a pool of all incidents that are recorded on the New South Wales Police Computerised Operational Policing System (“COPS”) database that have been linked by Police to the Premises.
 - (iii) The Applicant states that the Events have been selected from the COPS database for two reasons. First, they represent incidents that Police consider to be “adverse in nature” in that they involve violence, intoxication, disorderly behaviour or other breaches of the law. Second, the Events concern matters that have occurred during extended trading hours.
 - (iv) The Applicant notes that among the 129 Events selected are some matters that were reported during standard trading hours (ie after 5 am). Police contend that these incidents are nevertheless attributable to an “original” matter or incident that occurred during extended trading hours.
 - (v) The Applicant notes that of the 129 Events relied upon, 16 occurred during standard hours, 47 occurred between the start of extended trading and 3 am, while 57 occurred between 3 am and 5am.
 - (vi) The Applicant contends that the majority of the 129 Events selected by Police occurred between 3.00 am and 6.00 am. 55% of those Events that occurred

during extended trading hours occurred after 3 am, while 45% of them occurred prior to 3 am.

(vii) Police further contend that there is a “dramatic increase” in the number of Events *involving violence* that occur after 3 am.

35. In Section 2 of the main Police Submission in support of the Application, the Applicant provides a summary of the alleged facts for each of the 129 Events that are relied upon. This summary is not repeated in this decision, although the Authority’s findings on each of those matters, made in light of a consideration of the Applicant’s supporting evidence and the Business Owner’s competing analysis of those Events, are set out in this decision.

36. In Section 3 of the Police Submission, the Applicant provides an overview of the categories of misconduct that the Applicant seeks to emphasise:

Firearms offences

37. The Applicant contends that there have been 12 shootings in Kings Cross between 2001 and 2012 and the majority of these incidents are “gang related” and result in people being either injured or killed. (The Authority notes that the source of this information is not identified but the Authority accepts that Kings Cross Police are well placed to know the extent of reported shootings that have occurred in the Precinct).

38. The Applicant contends that Event 1 of the Events relied upon by the Applicant involved a security guard engaged by the licensed Business who was shot when he intervened in a brawl on the Premises involving two members of the “Comanchero” Organised Motorcycle Gang (“**OMCG**”).

39. The Applicant contends that Event 2 involved a male who was shot twice at close range outside the Premises after he had been removed from the Premises for fighting on the Premises along with the perpetrator of this shooting.

40. The Applicant contends that Event 103 involved another shooting incident that occurred inside the Premises following an alleged fight on the Premises between the shooter (a member of the Rebels OMCG) and the shooting victim.

41. The Applicant contends that notwithstanding these incidents, Event 15 discloses how a plain clothes Police officer was able to enter the Premises to conduct a covert inspection with a concealed firearm on his person that was undetected –

notwithstanding that a security guard used a “wand” metal detector as he passed through the entry point to the Premises.

Staff involvement in acts of violence

42. The Applicant contends that a number of Events establish a “trend” in which allegations of violence have been made against staff working on the Premises.

43. Police refer to Events number 3, 5, 14, 18, 30, 32, 39, 55, 98, 100, 104, 108, 110, 128, as matters where it is alleged that staff of the licensed Business have engaged in violence.

Non-cooperation by staff with an investigation of possible offences

44. The Applicant alleges that Police investigating allegations of violence committed on the Premises have been frustrated by a lack of cooperation from staff in relation to the provision of CCTV to Police; staff claiming not to have seen incidents that they would have seen or have knowledge of; staff providing false information to Police; staff removing assault victims to other areas of the Premises to provide first aid on the Premises rather than calling an ambulance and staff not notifying Police of an act of violence.

45. The Applicant also refers to Event 90 whereby a staff member is alleged to have engaged in the intimidation of a patron (an overseas tourist) by reason of the patron not tipping the strippers, before the staff member took an envelope containing \$500 in it from the patron, without the patron’s permission.

46. The Applicant contends that Event 44 discloses an incident whereby the duty Manager declined to make a statement to Police about an assault on the Premises involving two patrons; that Event 98 discloses an incident whereby security staff told Police they did not see a patron being knocked unconscious by an off duty security guard, when that position was contradicted by CCTV footage and Event 100 involved a staff member removing his security identification and walking back inside the Premises after punching a violent man on the street outside the Premises.

Staff consuming alcohol

47. The Applicant contends that a number of Events involve staff consuming alcohol while on duty at the Premises. The Applicant question whether staff affected by

alcohol are capable of making quick judgments when required to do so or whether they are able to assess the intoxication levels of others.

48. The Applicant contends that strippers who work on the Premises include certain “vulnerable employees” who are “likely to be drug or alcohol dependent” and work in this industry to “support their habit”.
49. The Applicant argues that since the Business Owner is profiting from providing adult entertainment to a predominantly male clientele, the Business Owner should be expected to “provide a safe workplace for these girls”.
50. In this context Police refer to Event 7, where a duty Manager admitted to Police of having had a “fair bit to drink” whilst on duty at 5 am in the morning; Event 15, where Police observed security guards and RSA (Responsible Service of Alcohol) Marshalls drinking shots at the bar; Event 88, where a waitress/bar tender was detected committing a mid-range prescribed concentration of alcohol (PCA) offence while driving home after drinking 6 or 7 alcoholic drinks during her shift; Event 89, where a stripper working on the Premises had reportedly commenced work affected by alcohol and then became more intoxicated before she was sent home; Event 93, where a stripper was assaulted by a regular patron of the Premises after she consumed 5 drinks on the Premises prior to the assault; Event 96, whereby a stripper was detected driving while suspended with a low range blood alcohol reading after she had consumed two alcoholic drinks during her shift at the Premises.

Staff of patrons drink driving after leaving the Premises

51. The Applicant contends that between 18 May 2010 and 2 July 2012 they have detected 20 incidents of drink driving that Police have linked to the Premises, the majority of which are mid-range PCA offences.
52. The Applicant submits that this conduct is a “dangerous activity and a threat to the amenity of any neighbourhood”. Police contends that while some of these drink drivers were actually in areas outside the immediate neighbourhood of Kings Cross when detected, it is reasonable to assume that they had driven through the neighbourhood after leaving the Premises.
53. In this context the Applicant again refers to Event number 88, whereby a bar staff member was detected committing a mid- range PCA offence after consuming 6 or 7

drinks during her shift and Event 89, when a stripper was detected driving while disqualified after having two drinks on the Premises.

54. The Applicant also refers to Event 75, whereby a drink driver and their passenger were both injured and two cars damaged as the driver collided with a parked car and Events 45/46, whereby the same drink driver was intercepted by Police twice in the space of one and a half hours driving through Darlington after departing the Premises.

55. The Applicant further identifies Events 73, 95, 102 and 115 as matters where the seriousness of the PCA offence was compounded by the additional risk factors of the driver respectively speeding, running a red light, having a near collision with concrete wall or having an actual collision with a parked car.

56. The Applicant contends that Events 25 and 73 involve high range PCA offences, while Events 22, 34, 45, 46, 51, 57, 59, 68, 75, 76, 80, 88, 95, 99, 102 involve mid-range PCA offences. Events 38, 53 and 115 are low range PCA offences. Event 96 involves a "special range" PCA offence, whereby the driver's licensing status, combined with the presence of a low blood alcohol concentration, gave rise to an offence.

Public disturbance and disorderly conduct incidents

57. The Applicant contends that 41 of the 129 Events relied upon involved patrons of the venue who were conducting themselves in a disorderly manner and causing public disturbance.

58. The Applicant contends that "the presence of disorderly patrons spitting, fighting, yelling, screaming obscenities and arguing with security outside the premises" detracts from the general amenity of the area and that "this type of disorderly behaviour frequently occurs between 3.00 am and 6.00 am".

59. The Applicant contends that management of the Premises appear to be "unaware" that after 5 am in the morning, Kings Cross devolves from an entertainment precinct into an area that has "the normal characteristics of a residential area".

60. The Applicant emphasises the public disturbance dimensions of the following Events – all of which are reported as having occurred in public places, outside the venue and required Police intervention:

- (i) Event 1 – several members of an OMCG run from the Premises after a shooting incident which followed a brawl on Premises. Some of these males then return to the Premises, forcing open and damaging the locked front door of the venue and threaten staff to not hand over any CCTV to the Police.
- (ii) Event 2 – a male patron shoots another male patron on Darlinghurst Road after both males had been ejected from the Premises for fighting.
- (iii) Event 4 – four highly aggressive males became involved in a verbal argument with security staff outside the Premises when they were refused entry.
- (iv) Event 9- a male is punched in the face by another male at the entrance to the Premises.
- (v) Event 10 – a patron throws a glass bottle from the Premises onto Darlinghurst Road below.
- (vi) Event 13 – a male is refused entry and then argues with security staff and pushes a security guard.
- (vii) Event 14 – a patron is removed from the Premises and after a physical altercation with security that occurred near the doorway to the Premises. The patron falls to the ground and is found by Police with a large cut to his head and a broken arm.
- (viii) Event 16 – two males are seen engaged in intimidating conduct and engaging in a melee with other persons outside the Premises.
- (ix) Event 17 – a female passer by claims to Police that she was verbally abused and physically assaulted by a security guard after dropping her ice cream on the ground near the entrance to the Premises.
- (x) Event 20 – four males are engaged in a physical altercation in Kellett Street.
- (xi) Event 21 – three Comanchero OMCG members push and shove security guards outside the Premises as they attempt to force their way inside the venue.
- (xii)Event 23 – a male patron who is ejected from the Premises refuses to leave the vicinity and argues with Police outside the Premises.

- (xiii) Event 27 – a male patron is ejected from the Premises and refuses to leave the vicinity and argues with security staff on Darlinghurst Road, then argues with Police once they arrive.
- (xiv) Event 28 – a male patron ejected from the Premises, refuses to leave the vicinity and argues with security preventing others from entering.
- (xv) Event 29 – a male patron stands on the corner of Bayswater and Kellett Street inciting people to fight him.
- (xvi) Event 32 – a male is refused entry due to his intoxication. He alleges to Police that he was assaulted by a security guard without warning and at the time of engaging with Police he has a laceration to his forehead.
- (xvii) Event 35 – a female patron is ejected due to her intoxication and attempts to re-enter the Premises twice and is pushed away by security staff.
- (xviii) Event 36 – a male patron is detected by Police urinating in public after leaving the Premises.
- (xix) Event 39 – several female patrons are ejected from the Premises. They attempt to re-enter and one is arrested by Police. Her friends hinder Police.
- (xx) Event 40 – a female and male patron argue with each other as they leave the Premises. A male waiting in the queue to enter the Premises is pushed. A person is hit in the face and security staff force people out of the front entrance. People then attempt to re-enter the Premises while a female stands 10 metres away from the Premises yelling at security and arguing with Police before she is arrested.
- (xxi) Event 41 – 10 or 12 males are involved in a brawl in Darlinghurst Road, including some patrons of the Premises.
- (xxii) Event 42 - a male patron is detected by Police urinating in public after leaving the Premises.
- (xxiii) Event 44 – a male victim of an assault on the Premises spits and vomits a large amount of blood onto the footpath outside the Premises. The male smashes the glass window of a nightclub that is located next door to the Premises.

- (xxiv) Event 47 – a male patron is ejected from the Premises and is aggressive with security staff outside, pushing a guard, yelling and swinging a punch at a guard before security force him to the ground.
- (xxv) Event 55 – a female alleges that she was assaulted by venue security, screaming and yelling at security staff and Police outside the Premises.
- (xxvi) Event 61 – two males attempt to fight outside the Premises but are so intoxicated that their punches do not connect.
- (xxvii) Events 62 and 63 – an intoxicated patron is refused service by a taxi driver when he hails a taxi on the street and in retaliation he steals the driver's Taxi identification card and then kicks another taxi, denting the side door.
- (xxviii) Event 70 – two security guards from the Premises chase a male patron along Darlinghurst Road, struggling with him in the middle of the road as others join in. A female refuses to leave and yells and screams and attempts to bite a Police officer.
- (xxix) Event 78 – Police are approached by a male alcohol affected patron to report an altercation he had just been in at the Premises, but when told to wait while Police deal with another matter, the patron yells and screams to an extent that Police cannot deal with the first matter. The patron was apprehended and issued with an infringement notice.
- (xxx) Event 79 – Police are called to Craigend Street, Darlinghurst where a patron having left the Premises is reported to be threatening passers-by with a stick.
- (xxxi) Event 83 - Police are called to the Premises to deal with a male patron who is refusing to leave the Premises and is aggressive and argumentative with Police.
- (xxxii) Event 93 - a male patron is arguing with the venue's security staff on the street outside after being asked to leave.
- (xxxiii) Event 98 – a male patron is removed from the Premises and outside takes off his shirt and yells at security guards and behaves in an aggressive manner towards them, before punching a guard in the mouth and then being punched to the ground by the security guard where the patron bleeds heavily on the footpath.

(xxxiv)Event 100 – a male punches security staff outside the Premises and is tackled to the ground by security. After being rendered unconscious the patron arouses and then attacks the security staff again before Police restrain the male.

(xxxv) Event 101 – after loud yelling outside the Kings Cross Police station a male patron of the venue is detected by Police urinating on a sculpture in Fitzroy Gardens, Kings Cross.

(xxxvi)Event 103 – an armed male patron runs from the Premises through the neighbourhood after shooting another male on the Premises.

(xxxvii) Event 104 – three males and one female patron are ejected from the Premises after being assaulted by venue staff on the Premises. The males are covered in blood and intimidate nearby Ambulance officers as they insist to receive immediate medical attention. The Ambulance officers call Police for urgent assistance out of concern for their own safety. One male is placed in a Police van until he calms down.

(xxxviii) Event 105 – an intoxicated male is removed from the Premises and demands to be let back in. Venue security staff call Police for assistance.

(xxxix)Event 113 – three male patrons are involved in a physical altercation on the street, one of whom resists when apprehended by Police, who are also hindered by the male’s girlfriend who screams at Police grabbing their clothing, before hitting a nearby TV cameraman.

(xl) Event 120 – a brawl occurs between four aggressive and intoxicated male patrons on Bayswater Road.

(xli)Event 127 – a male who is refused entry to the Premises returns to the entry of the Premises and punches a security guard in the face, before being pursued by security staff down Kellett Street. The male requires the use by Police of capsicum spray to subdue him before he is arrested.

61. The Applicant submits that the preservation of local amenity requires a “significant Police response” to manage alcohol fuelled misbehaviour from those entering the Kings Cross Precinct late at night and in the early hours of the morning - all of which comes at a “significant cost in Police hours” that are devoted to “managing the risk or consequences of alcohol related disturbance”.

62. On the issue of organised crime, the Applicant contends that Kings Cross nightclubs and bars provide an “attractive market” for OMCG members to engage in drug supply, protection rackets and violent conduct. The Kings Cross Precinct has long been the location of turf wars in an attempt by OMCG groups to gain control of distribution points for the sale of recreational drugs. The Applicant contends that OMCG members are involved in “shootings, glassing, serious assault and intimidation” which also impacts the quiet and good order of the precinct.
63. The Applicant notes that in April 2012 the Director General was prompted to introduce a measure into the (then) Kings Cross Precinct Liquor Accord to restrict access by any persons displaying OMCG affiliation to licensed premises in the Kings Cross Precinct. That provision now forms part of the Kings Cross Plan of Management legislation that was enacted in 2012 and that replaces the Kings Cross Precinct Liquor Accord.
64. The Applicant draws the Authority’s attention to the following Events as involving an element of organised crime presence on the Premises. The Applicant submits that the presence of crime gang members at any licensed venue creates a higher risk that the venue will be exposed to violent crime:
- (i) Event 1 – a group of 20 males, including two members and one associate of the “Comanchero” OMCG attended the Premises and a brawl erupted on the Premises, as a consequence of a person within this group acting inappropriately towards a female worker at the venue. During the brawl an unknown offender fired a number of shots, injuring two security guards.
 - (ii) Event 2 – an argument between two males on the premises, one a member of the Assyrian Kings organised crime group (OCG) resulted in the two men being removed by security via separate exits. One of these men then approached the other on Darlinghurst Road and shot the victim twice in the leg and groin.
 - (iii) Event 21 – three members of the “Comanchero” OMCG forced their way into the Premises. Police intervened and attempted to stop them but they did not comply and continued to attempt to force their way up the stairs to the internal entry point of the Premises on level 1 of 70A Darlinghurst Road. The ensuing struggle between OMCG members, security staff and numerous Police resulted in the injury of a female Police officer.

(iv) Event 103 – a fight broke out on Premises between a member of the Rebels OMCG and another male. Security staff intervened and took hold of the male patron. The Rebels OMCG member then shot the victim at close range.

65. On the regulatory performance of the Licensee, the Applicant contends that Mr Henry was issued with ten (10) Penalty Notices, one (1) Compliance Notice and two (2) verbal warnings from Police since he acquired the licence on 28 July 2011.

66. The alleged breaches of liquor and gaming legislation detected by Police primarily concern failures by the Licensee to comply with conditions of the licence – most commonly a condition requiring that strippers do not engage in physical contact with patrons or a failure to provide CCTV footage upon requested by Police.

67. The Applicant notes that four individuals have held the liquor licence during the period covered by the Events. The Applicant contends that Mr Henry is “inexperienced” and that in practice he defers to a manager of the Premises, Mr Turcotte, on matters concerning the operation of the venue. With regard to the licensee’s knowledge and ability to manage a high risk venue, the Applicant contends that:

(i) despite being penalised for failing to produce CCTV when requested by Police, Mr Henry has failed to learn how to operate the venue CCTV system himself.

(ii) rather than introducing measures to reduce or prevent intoxication levels on the Premises, the licensee, Mr Henry, relies upon venue security and Police to remove troublesome people from inside and outside the Premises.

(iii) notwithstanding that there is an abundance of information available that represents “industry best practice” when managing “high risk” licensed premises, the licensee has not adopted such measures in his management of the Premises.

(iv) there is a demonstrated need for the improved internal surveillance and diligence by security staff and RSA Marshalls on the Premises. Police refer to Event 104, which discloses a violent unprovoked attack on the Premises committed by four venue staff, including two RSA Marshalls, upon four patrons on 25 April 2012. Police contend that this Event demonstrates a failure by management to supervise or respond to the actions of its staff.

(v) the Plan of Management document produced by the Business on 29 August 2012 is the substantially same document as the document provided by the licensed Business to City of Sydney Council in 2010 with regard to Development Application D/2004/1110/C. The Applicant submits that notwithstanding that two incidents involving the use of firearms on Premises had occurred, the 2012 Plan makes no provision for the management of that particular risk. The Applicant further submits that despite numerous breaches of a licence condition prohibiting physical contact between entertainers (strippers) and patrons, the 2012 Plan does not deal with this issue either.

68. The Applicant submits that the 129 Events identified in the Application all demonstrate a sufficient geographical and temporal nexus to the exercise of the extended trading authorisation at the Premises. For each Event the Applicant has provided Police records evidencing where alcohol was last consumed by the person or persons who have come to the attention of Police.

69. The Applicant submits that the Authority should take into account the impact that the Premises is having upon the relevant “neighbourhood”, which the Applicant identifies as the Kings Cross Precinct (an area that the Authority notes is now defined in the Act).

70. The Applicant notes that section 48(9)(a) of the Act prevents the grant of an extended trading authorisation to any licensed premises unless the decision maker is satisfied that practices are in place for the responsible supply of liquor and that all reasonable steps are taken to prevent intoxication on premises. The Applicant further notes that section 49(8)(b) prevents the grant of such authorisation unless a decision maker is satisfied that the extended trading will not result in the “frequent undue disturbance” of the neighbourhood of the relevant premises.

71. The Applicant contends that that between May 2009 and November 2012 matters have occurred whereby patron intoxication, or the irresponsible service of alcohol, have contributed to the occurrence of more than 100 Events that are attributed by Police to the Premises. The Applicant submits that these incidents demonstrate that the licensed Premises does not satisfy the requirements of section 48(9)(a).

72. The Applicant further contends that between May 2009 and November 2012 incidents of patron intoxication, or the irresponsible service of alcohol, have contributed to more than 100 Events which include acts of *violence or offensive conduct in the vicinity of the Premises*. The Applicant contends that these incidents establish that the Premises does not satisfy the requirements of section 49(8)(b).

73. The Applicant emphasises that in this matter Police have provided the Authority with adverse material that is attributable to the operation of the Premises *during extended trading hours*. The Applicant submits that the inability of the Premises to manage the extended trading authorisation has had significant repercussions for patrons and the community, in that patrons and employees of the licensed business have been exposed to gunshot wounds, violent assault and robbery while others have been “rendered incapacitated” through the irresponsible service of alcohol.
74. The Applicant further submits that there have been “frequent incidents of disorderly conduct” committed by patrons either on the Premises or taking the form of drink driving perpetrated by patrons after leaving the Premises. Police have been assaulted by patrons of the venue and security staff have assaulted patrons without provocation.
75. The Applicant contends that the Licensee has “failed to implement any changes or policies” to address this “trend”. The Applicant believes that the only solution is the revocation of extended trading hours.
76. On the basis of the material provided in this Application, the Applicant contends that revoking the extended trading authorisation will “dramatically decrease” the rate of assault linked to the Premises, along with the incidence of intoxication, disorderly conduct and exposure of the Premises to breaches of liquor licensing requirements.
77. The Applicant emphasises the statutory object in section 3(1)(a) of the Act, 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”.
78. The Applicant makes the alternative submission that, should the Authority not be minded to *revoke* the extended trading authorisation, the Authority should effect a “substantial reduction in extended trading hours”.
79. The Applicant concludes that taking into account the size and licence type of the Premises, the Premises has been linked to a high number of adverse incidents, including shootings, violent assault, a glassing, intoxication, offensive behaviour and breaches of licence conditions. The Applicant submits that the revocation of the extended trading authorisation is “necessary” to ensure the safety of patrons and to preserve the amenity and good order of the neighbourhood.
80. The Applicant annexes the following material to the Application:

- (i) Annexure 1. 1 - Copy of the Liquor Licence record for the Premises as of 19 September 2012 .
- (ii) Annexure 1.2 - Architectural Diagram of the Premises.
- (iii) Annexure 1.3 - Internal Police Data from the Escalated Licensing Operational Response Model (“**ELORM**”) classifying the risk level of the Premises for various offences.
- (iv) Annexure 1.4 - City of Sydney Interim Report: Snap Shot of the Late Night City.
- (v) Annexure 1.6 Minister’s Second Reading Speech for *Liquor Amendment (Kings Cross Plan of Management) Bill 2012* .
- (vi) Annexure 1.7 - Police Map of the Kings Cross Precinct as defined by the Plan of Management legislation.
- (vii) Annexure 2 - Confidential Statement provided by an employee of the Premises (the Authority notes that it has not considered this document).
- (viii) Annexure 3 – list of all COPS Reports and other documents provided in relation to each Event, followed by hundreds of pages of material comprising the evidence or other material upon which Police rely to substantiate each Event, including - COPS Reports, Computerised Incident Dispatch System (CIDS) reports, Witness Statements, Alcohol Linking Data (showing last place alcohol was consumed by person named in COPS Report) CCTV footage, Police Legal Process documentation (for prosecutions) and other miscellaneous documents.
- (ix) Attachment 4 – Affidavit by Mr Tim Jessup, State Debt Recovery Office (“**SDRO**”) dated 5 September 2012, documenting the payment status of Penalty Notices issued in respect of the Premises.
- (x) Attachment 4.2 – Plan of Management for Premises 2010.
- (xi) Attachment 4.3 – Plan of Management for Premises 2012.

BUSINESS OWNER’S SUBMISSIONS OF 6 MAY 2013

81. On 6 May 2013 Mr Tony Hatzis of Hatzis Cusack solicitors, acting for the licensee and Business Owner, provided extensive submissions in response to the Authority’s invitation to respond to the Application. This material comprises:

- (i) Cover letter from Tony Hatzis dated 6 May 2013.
- (ii) One page overview of the business owner’s position.
- (iii) 32 page Submission from Tony Hatzis and Mark Leeming SC with attachments “A” to “X” (“**Hatzis/Leeming Submission**”).
- (iv) Business Owner’s summary of each of the 129 Events identified in the Police Evidence Matrix.

- (v) Observations of the operation of the licensed business by consultants engaged by the Business Owner, Messrs Pickard and Smith, trading as Top Shelf Consultants.
- (vi) Petitions signed by numerous patrons and other persons who oppose the Application.

82. Without seeking to repeat all of the contentions made by the Business Owner in this material (and, in particular, without repeating the Business Owner's competing analysis of the facts of each Event) the central contentions or arguments, set out in Hatzis/Leeming Submission, are as follows.

83. The Business Owner makes the following contentions regarding the context in which the licensed Business operates:

- (i) The Premises has been site of a strip club since "at least 1989", previously operating as businesses known as venues known as "Playbirds" and "Centrefolds International".
- (ii) The Business Owner gained development consent from the City of Sydney to refurbish the Premises and operate as a strip club in 2004, with trading permitted (for the purposes of development consent) until 6am, initially for a trial period. The Business Owner then challenged the decision of Council in the Land and Environment Court and in *Hosking Munro Pty Ltd v Sydney City Council* [2005] NSWLEC 542 that Court found that a trial period was unnecessary by reason that the Premises had hitherto traded as a strip club for 24 hours per day without complaint.
- (iii) The Business Owner spent \$500,000 on a fit out to convert the Premises into a modern nightclub from what was previously a "stage with theatre style seating".
- (iv) The Premises now offers the elements of a nightclub and an adult entertainment venue. There are three other licensed adult entertainment venues in Kings Cross, but the Premises is the only venue that combines the services of a nightclub and a strip club.
- (v) The Premises attracts a "large number of female patrons".
- (vi) The Business Owner provides employment for 37 people including 4 managers, 3 bar staff, 2 RSA Marshals, 6 security, 8 waitresses, 2 cleaners, 1 glass collector, 1 maintenance person and 10 DJs.
- (vii) The Business Owner also provided contract work for the "dancers" at the venue. These opportunities are "popular with travellers from interstate and overseas" who usually have performed at other venues. On any given week "between 25 and 40 dancers" may be working at the venue.

- (viii) The Premises also provides a venue for disc jockeys to provide live entertainment. The Business Owner further refers to Annexure "C" of the Hatzis Leeming submission, a letter from the MusicOz Foundation Ltd, which organises the Australian Independent Music Awards. This letter describes the Premises as offering a place for "musicians to socialise in a safe environment after work".
- (ix) The Business currently operates to a limit of 220 persons on the Premises at any one time, in order to comply with Building Code of Australia requirements. The Applicant's reference to a limit of 300 persons might be a mistaken reference to the development consent D/2004/831/B for the Sapphire Suite nightclub, which operates on the ground floor of the same building.
- (x) The Business Owner submits that the venue is "relatively small in scale".
- (xi) The Premises is permitted to trade 24 hours per day, 6 days per week for the purposes of both the development consent DA2004/1110 and under the liquor licence.
- (xii) As an adult entertainment venue the Premises derives its custom "in the later hours of the night" and many patrons "come to enjoy the entertainment after having been elsewhere".
- (xiii) There is "little patronage" prior to midnight. Patronage "tends to peak around 2.00-3.00 am" with numbers remaining high until around 4.00 am when numbers begin to taper off until the Premises closes at around 6.00 am.
- (xiv) The licensed business entertains, "on average 2000 patrons per week". The Business Owner estimates that the business entertains "around 100,000 patrons per annum".
- (xv) If the Application is granted, a long standing business will "become unviable and be likely to close". The Business Owner submits that the grant of the Application will "destroy a venue which has been a significant part of Sydney's late night scene for many years".
- (xvi) Sydney City Council research that is provided at Annexure 1.4 to the Application shows that pedestrian volumes in Kings Cross peak after midnight period. On Saturday evenings pedestrian volumes of 5850 were recorded on Darlinghurst Road, North of Bayswater Road between 12.00 and 1.00 am. Pedestrian volumes of 5050 were recorded between 1.00 am and 3.00 am.
- (xvii) The OLGR Report entitled "*Kings Cross Precinct Accord Alcohol Related Harm Profile Report to the Director General 10 August 2012*" found that between 11.00pm and midnight there were 40 licensed premises operating with 10,371 persons capacity; between midnight and 1 am there were 39

venues with 10, 271 capacity; between 1 am and 2 am there were 38 venues with 9,886 capacity and between 2 am and 3 am there were 35 venues with 8,828 capacity; between 3 am and 4 am there were 33 venues with 8,433 capacity and between 4 am and 5 am there were 26 venues operating with 1,990 patron capacity. That report identifies 29 venues in Kings Cross with trade until 5 am, which usually indicates 24 hour licensed trading.

- (xviii) Sydney City Council's "*Late Night Trading Research Project*" (7 May 2009) indicated that Sydney's night time economy generated \$15.1 Billion in 2009 and represented 28.4% of all jobs in the City. Of that figure, \$485 million was estimated to be generated by "beverage led businesses" (hotels, liquor retail, etc) while \$868 million was generated by "entertainment led businesses". The estimated annual tax revenue from the Sydney night time economy was identified as \$457 million.
- (xix) The Business Owner concedes that Kings Cross "has its challenges". The August 2012 OLGR Report indicated that from April 2011 to March 2012, there were **178** alcohol related assaults occurring *on licensed premises* 70% of which occurred between midnight and 5 am and that between July 2011 and June 2012 there were **260** alcohol related assaults in *outdoor public places* in the Kings Cross Precinct. The Report also indicated that many venues provide an "array of liquor promotions" and that a high number of persons are excluded from licensed premises for intoxication and the "pre-fuelling" may be an issue on the streets of Kings Cross. (The Authority notes that "pre-fuelling" refers to the practice of young adults drinking take away liquor before seeking entry to licensed premises).
- (xx) Keeping OMCG members out of licensed premises in Kings Cross is an "ongoing issue" and the "nature of the area" attracts members of those organisations to the Kings Cross Precinct.
- (xxi) Notwithstanding these challenges, an historical view of the Bureau of Crime Statistics and Research (BOCSAR) *NSW Crime Statistics* data that was previously published on the BOCSAR website indicated that the number of assaults recorded in the State Suburb of Kings Cross has decreased over the last 10 years – with **287** recorded during April 2002 to March 2003, peaking at **337** during April 2007 to March 2008 and declining to **213** during April 2011 to March 2012.
- (xxii) The Hatzis/Leeming Submission notes that the reduction in BOCSAR recorded assaults has followed previous regulatory measures imposed by the previous State Government including the special licence conditions imposed upon declared premises (under Schedule 4 to the Act) and licence conditions implemented in 2010 requiring that no gang colours be worn or displayed in licensed premises.

84. The Business Owner makes the following contentions about the responsible service of alcohol (“RSA”) practices of the licensed Business that operates on the Premises:

- (i) The venue does not offer drink discounts or engage in other liquor promotions of any kind that are disclosed in the August 2012 OLG Report.
- (ii) All staff are “appropriately RSA trained”.
- (iii) In a Police record of interview dated 28 October 2012 that is Annexure 3 to the Application two bar staff members of the venue told Police that the Business engages in regular training for RSA practices, including “role plays and scenarios”. Staff are told to look out for signs of intoxication and inform bar staff, the licensee, managers, waitresses RSA Marshalls and security staff.
- (iv) When the Premises is trading at least 2 RSA Marshalls are dedicated to looking for signs of intoxication.
- (v) Food and water is provided at the venue.
- (vi) Water is served with spirit drinks.
- (vii) Spirit bottles are fitted with stoppers that pour a measured 30 mls nip.

85. The Business Owner refers to Events 13, 14, 23, 32, 35, 49, 94, 98 and 105 as examples of the Business acting appropriately, by “removing people who have been detected as showing a sign or signs of possible intoxication”. These incidents, it is said, evidence the Business Owner’s “RSA policy of early intervention” – that is, refusing service to those who may be “on the way” towards intoxication and asking those people to leave.

86. The Business Owner notes that over the three and a half years period covered by 128 of the Events, there is only one instance of the Premises having been breached for the offence (against section 73 of the Act) of permitting intoxication on the Premises - Event 19 which occurred on 12 April 2010.

87. The Business Owner refers to the “detailed and independent” observations made by the hospitality industry compliance consultant engaged by the Business Owner (trading as “Top Shelf” consulting), who have conducted covert inspections at the request of the Business.

88. The Business Owner notes the “large proportion” of its patrons who have written letters to the Authority opposing the Police Application and the venue’s response to the one glassing incident that is identified in the Events – whereby venue management voluntarily undertook to not use glass, save for Corona beer bottles and champagne bottles. That undertaking has remained in place until legislation

commenced with effect in December 2012 mandating a no glass after midnight requirement at Kings Cross late trading venues.

89. The Business Owner notes the recent regulatory reforms introduced by the *Liquor Amendment (Kings Cross Plan of Management) Act 2012* which commenced in December 2012 imposed the following new restrictions upon all late trading venues in Kings Cross:

- (i) No liquor sales between 4 and 5 am.
- (ii) No glass to be used when serving drinks after midnight on any day.
- (iii) No shots or high strength alcoholic drinks after midnight on weekends.
- (iv) No more than 4 alcoholic drinks served to any one patron on weekends.
- (v) RSA Marshalls to be used by venues on weekend.
- (vi) CCTV systems must be in use covering all publically accessible areas and outside the footpath.
- (vii) An Incident Register shall be in use at all times of the day.
- (viii) Venues must comply with NSW Police Crime Scene Preservation Guidelines.
- (ix) Persons may not enter the venues wearing OMCG colours or insignia.
- (x) Police campaigns regarding RSA shall be promoted.
- (xi) Venues shall maintain hourly alcohol sales data if required by the Director General.

90. The Business Owner notes that in his Second Reading Speech for the *Liquor Amendment (Kings Cross Plan of Management) Bill 2012* the Minister foreshadowed the introduction of further measures, such as electronic identification scanners, a new small bar licence category and the ability of the Director General to revoke RSA competency cards where there is a serious breach of RSA obligations.

91. The Plan of Management measures had only been in place for less than two months when Police lodged their Application with the Authority. The Business Owner argues that “it would be premature” to revoke the extended trading authorisation without giving these new reforms a reasonable opportunity to achieve their intended objects.

92. The Business Owner submits that it is an active member of the Kings Cross Liquor Accord and the Business Owner notes a number of initiatives of that body.

93. On the issue of “community expectations”, the Business Owner argues that Sydney is the country’s premier tourist destination, and that Kings Cross is the premier late night entertainment district. Residents and visitors “expect” to find an array of such

late night entertainment options in Kings Cross, including adult entertainment and those expectations “should be given weight” in the Authority’s decision making, per section 3(1)(a) of the Act.

94. Attachment “G” to the Hatzis/Leeming Submission comprises 35 letters addressed to the Authority by patrons of the venue opposing any reduction in current trading hours. A common theme of these letters of support is that people feel safe at the venue that they have not experienced instances of violence and aggression, that management is professional and courteous, that liquor is supplied responsibly and that the premises are conducted to a high standard of professionalism”. The Business Owner quotes extracts from several of these testimonials.
95. Attachment “H” to the Hatzis/Leeming Submission comprises an electronic petition organised by the Business Owner and posted on the website of the Business whereby 318 persons have opposed winding back hours of the venue “to any extent”. A further 508 persons have signed a paper based petition kept on the Premises opposing the Application.
96. On the issue of its regulatory record, the Business Owner makes the following points in the Hatzis/Leeming Submission:
 - (i) In the latest round (Round 9) of the scheme administered by the Director General for the purposes of Schedule 4 to the *Liquor Act 2007*, the Premises had only 5 incidents of alcohol related assault on the Premises attributed to it for calendar year 2012.
 - (ii) Despite operating in the Kings Cross Precinct, trading until 6 am and attracting an estimated 2000 patrons per week, the Premises is associated with less than half the number of assault on premises events recorded by those “Tier 2” venues that are declared premises in Round 9.
 - (iii) The Premises has never been listed among the “Tier 1” or “Tier 2” declared premises since that scheme commenced in 2008.
 - (iv) Annexure 1.4 to the Application contains NSW Police internal “ELORM” risk rating data, which records all incidents of crime related to a given venue, whether those incidents are established or not. That Police model rates the venue as of “medium” risk, which the Business Owner submits is in contrast to the Police submissions of an ingrained culture of serious violence.

- (v) The Business Owner notes the Police contention that OMCG members regularly attend the venue but notes that the Police ELORM rating under the “criminal intelligence” category places the venue at either “medium” or “low” levels of risk over the preceding five (quarterly) reporting periods for the purposes of that model.
- (vi) The Business Owner submits 128 of the 129 Events occurred over a three and a half year period. Many of these Events involved patrons who had attended the Premises and the incidents occurred far away – such as Event 126, when a patron was indecently assaulted by a taxi driver.
- (vii) Police have only given absolute numbers of incidents without any comparative data which might “enable the Authority to assess whether the number of incidents is more or less than might be expected for such a venue”.
- (viii) There have been no disturbance complaints made in relation to the Premises, and when granting development consent the Land and Environment Court noted in 2005 that the site had historically operated as a strip club for 24 hours per day since 1989 without complaint. Notwithstanding the growth in residential development in Kings Cross since that decision, the venue has not been subject to any disturbance complaint. On 2 July 2010 the Authority determined a (review of) a disturbance complaint determination regarding a number of venues in Kings Cross and the Premises was not named in that complaint.

97. The Business Owner contends that until the last quarter of 2011 Police were providing the Kings Cross Liquor Accord with details of the “top 4” Kings Cross venues for the occurrence of assaults occurring *on licensed premises*. Attachment “J” to the Hatzis/Leeming Submission is a copy of minutes of the Accord from 29 September 2011 and 8 December 2011. The Premises is not mentioned on that list. In September 2011 the Kings Cross Local Area Command prepared a “Power Point” presentation with the “top 10” Kings Cross venues for assaults on premises. That document is Annexure “K” to Hatzis/Leeming Submission and it shows that the Premises was not in the top ten venues for assaults during the period from 1 April to 15 September 2011. In a presentation by Kings Cross LAC to the Accord, referred to in Annexure “L”, Police advised that assaults on licensed premises were trending downwards, which the Business Owner submits is consistent with the BOCSAR data.

98. On the issue of public transport, the Business Owner notes that the City of Sydney's Survey, provided as Attachment "A" to the Hatzis/Leeming submission, recorded that 16% of respondents drive home from the Kings Cross Precinct using a private car. The Business Owner submits that the "dearth" of public transport options has been recognised in the Minister's Second Reading Speech for the *Liquor Amendment (Kings Cross Plan of Management) Bill 2012*.
99. The Business Owner submits that the lack of late night public transport from Kings Cross causes "a higher number of people to drive home than would otherwise be the case". The Business Owner submits that measures to improve public transport are likely to reduce the number of patrons driving home from the Precinct.
100. On the issue of minors on the Premises, the Business Owner notes that only one occasion identified by the Applicant, Event 81, involved a minor gaining entry to the Premises. The Business Owner submits that even one such incident is of concern and that all times the security are stationed at the Ground Floor and required to check the identification of anyone who appears to be under 25 years of age. The Business Owner notes that the provision of fake identification documents is a problem in the Precinct generally and that this was recorded in the Minutes to the Accord's meeting of 8 December 2011 when Sergeant Brett Mills is recorded to have advised that there are some very good fake identify documents on the market and that venues are encouraged to check regularly for a hologram on a driver's licence.
101. The Business Owner again refers to the observations of the consultants that it has commissioned - two former Police officers, Messrs Pickard and Smith trading as "Top Shelf". The consultants have made observations of the operation of the venue over a 7 hour period on four weekend nights in April 2013, or a total of 28 hours.
102. In their Report that is Attachment "N" to the Hatzis/Leeming Submission, the consultants observed that the venue had more than adequate CCTV systems, that liquor service practices are appropriate, that management is responsive to suggestions for improvement, that there is "no sign of any OMCG or OCG involvement" and that the venue undertakes a number of voluntary measures, over and above its licence conditions, to provide a safe venue - such as hand held metal detectors, additional rapid response security personal shared with other venues, in house refresher courses and "above industry standard CCTV footage".
103. The Business Owner advises that it has taken up the consultant's recommendations that spirits not be served in shakers; that the venue should install a walk through metal detector and that "training be given to security staff to better

ensure the recording of all incidents”. In light of the consultant’s recommendations to the effect that Mr Henry (the Licensee) is “probably too young and not assertive enough to be the licensee”, the consultants have interviewed and recommended another candidate, Mr Luke Russell, whose curriculum vitae is Attachment “O” to the Hatzis/Leeming Submission.

104. The Business Owner advises that the licence will now be transferred to Mr Russell. The Business Owner has also acted on the consultant’s recommendations that Mr Turcotte be relieved of any role at the venue by reason that he has “lost the confidence” of local Police, notwithstanding that the consultants recognise his “value” to the Business. The Business Owner advises that Mr Turcotte will be relieved of all duties as of 24 May 2013. (The Authority notes that its licensing records show that an application to transfer the licence from Mr Henry to Mr Russell was made on 2 May 2013. After provisional approval on 7 May 2013 the transfer was confirmed on 27 November 2013).
105. On the meeting with Kings Cross Police on 18 July 2012, the Hatzis/Leeming Submission attaches a file note made by Mr Hatzis who attended that meeting, which was requested by the Business Owner to “clear the air” regarding the “various recent misunderstandings” between Police and the venue. Discussion at that meeting focussed upon a recent failure by Mr Turcotte to provide CCTV footage – which the Business Owner submits was due to Mr Turcotte’s personal circumstances. The venue agreed that from then on it would arrange for three people to be able to operate the CCTV system, not just Mr Turcotte and that 24/7 telephone numbers would be provided to Police for those staff.
106. The Business Owner states that at this meeting here was also discussion of an incident on 25 April 2012 when RSA Marshalls working on the Premises had allegedly attacked 4 patrons without provocation. The Business Owner contends that venue management were “unaware” of the occurrence of this incident but that they sacked the RSA Marshalls once they were provided with the CCTV footage in July. During this meeting venue management advised Police of enhancements to the frame rate to be captured by the venue’s CCTV, which is double the industry standard. Police are said to have acknowledged these measures as steps in the right direction. Management also agreed to conduct Crime Scene Preservation training for all staff, in light of Police concerns that a staff member had cleaned up the scene on 25 April 2012 (the staff member stating to Police: “I don’t like mess”). The Business Owner notes the acknowledgement made by Police in the Application that since the meeting of 18 July 2012 Police have noted a more consistent and appropriate level of cooperation by staff with Police.

107. On the 129 Events, the Business Owner submits that 128 of these incidents occurred over a three and a half year period, while one of the Events (a 2007 shooting) occurred nearly 6 years ago.
108. The Business Owner argues that the linking by Police of the Events to the Premises should be “treated with caution” in that Police have included Events which the Business Owner submits “does not involve any abrogation of responsibility by the venue”. The Business Owner refers by way of example to Event 9 (a patron leaving the venue is assaulted on the street); Event 21 (security staff attempt to block the entry of OMCG members who force their way past; Event 24 (a female is refused entry then produces a bag of cocaine and complains by telephone to Police of a theft by reason that a guard has seized the cocaine from her); and Event 72 (a mentally unstable person is excluded from the Premises and makes allegations of assault that are rejected by the Police).
109. The Business Owner further submits that there are incidents identified in the Applicant’s Evidence Matrix as involving “intoxication” or “assault” when the underlying COPS Report or other data “does not fairly support such a classification”. The Business Owner draws the Authority’s attention to the following Events that, it is submitted, have been “misclassified” by Police:
- (i) Event 29 - a male is on the street inciting people to fight him. The COPS Report notes that he appeared under the influence of a stimulant drug, possibly ecstasy. The man had five previous matters involving drug possession. The Business Owner submits that this matter has been mislabelled by Police as “intoxication”.
 - (ii) Event 47 – a male patron is asked to leave for continually touching female staff, who complain to venue security. The Business Owner submits that this incident has been mislabelled by Police as “intoxication”.
 - (iii) Event 64 – a French tourist leaves the Premises at 5am and twelve hours later reports her hand bag lost to Police. This incident is characterised as a lost property event in the COPS Report, but Police classify it as an intoxication incident, by reason that the patron could not recall where she left her bag due to her stated level of intoxication. The Business Owner submits that there were no observations made of the tourist

while she was inside the Premises to establish that she was actually intoxicated on the Premises.

- (iv) Event 67- Police observe a female Australian naval officer on the street near the Premises who is described as “moderately affected”. They give her a lift home to HMAS Kuttabul as they have assessed her to be vulnerable due to a number of males near her. The Business Owner submits that this incident has been characterised as an intoxication Event “though there were no observations made of her showing overt signs of intoxication whilst at the venue”.
- (v) Event 74 – a French tourist attends Kings Cross Police and wrongly accuses a security guard of stealing his wallet. The tourist claimed to have consumed a large amount of alcohol but is described by Police as “moderately affected” by alcohol. The COPS Report is labelled “lost property-found property” but the matter has been identified in the Application as an event involving intoxication.

110. The Business Owner refers to the Events 49 and 94 as examples whereby the venue has “appropriately” removed “people who commence to show signs of possible intoxication” when those patrons have not accepted their removal from the Premises. The Business Owner submits that section 77 of the Act was enacted to enable licensed premises to physically remove people who refuse to move on. The venue has acted appropriately, on a number of occasions, by calling for Police assistance. The Business Owner submits that these matters should not be labelled by Police as “intoxication” events.

111. The Business Owner also refers to incidents where there was an allegation of an assault, even if that allegation was unfounded or not followed up by Police as an assault incident. The Business Owner refers to the following Events that it submits should not be classified as involving an “assault”:

- (i) Event 14 – the patron is allegedly assaulted by a security guard but upon viewing the CCTV footage Police noted in the COPS Report that security were acting in a justifiable manner.
- (ii) Event 30 – the venue’s manager, Mr Turcotte, speaks to a man who claims he did not receive a drink that he had paid for. Following an altercation with Mr Turcotte on the Premises an assault charge against

Mr Turcotte is dismissed by the Local Court on the basis of self-defence, with the benefit of the CCTV footage.

- (iii) Event No 32 - a man is refused entry to the Premises by reason of his intoxication and he alleges to Police that he was punched by the guard who refused him entry. CCTV is provided and proves that the alleged incident did not occur. The accuser did not want the matter investigated any further.
- (iv) Event 84 – a male patron visiting from South Africa refuses to leave the Premises and then complains of assault to Police when he is removed. His claims of assault are rejected by Police.
- (v) Event 108 - this matter involved a robbery in the toilets of the venue where the victim was confronted by 6 men, one of whom was initially suspected to be a security guard at the venue. Six weeks later Police met with the venue and advised that, following investigations, they no longer held any suspicion that any of the men involved with this incident were security staff of the Premises.
- (vi) Event 116 – a female patron seen on CCTV walking out of the male toilets on the Premises claims that she was sexually assaulted, but later withdraws the allegation.

112. The Business Owner makes the argument that the Applicant has only submitted Events that they consider to be adverse to the Premises and that Police have not put before the Authority their records of those business inspections that Police have conducted where “nothing adverse” was observed during the course of the inspection. The Business Owner estimates that Police conduct approximately 5-10 inspections per week.

113. In response to the Applicant’s submission that Events are more numerous after 3 am in the morning, the Business Owner submits that this is “not surprising” as that is when the venue experiences peak patronage. The Business Owner further submits that some events relied upon by the Applicant may occur a considerable time after the patron has departed the Premises – for example, a person detected with a PCA offence at 3 am may have left the Premises at 2 am.

114. In response to the Applicant’s submissions on incidents involving firearms, the Business Owner submits that two of the shooting incidents relied upon by Police

occurred inside the Premises while one of them occurred on the street outside the Premises. The first shooting incident occurred after OMCG members had forced their way into the Premises and a guard was breaking up a fight. The second shooting incident involved two men who were shaping up to each other on the Premises after a verbal argument at the venue. They had been involved in an earlier fight at the “Beachhaus” Hotel. They were separated by security staff and left via separate exits from the Premises. The shooter went “some blocks away” to retrieve a gun and then returned to shoot the victim on Darlinghurst Road.

115. With regard to Event 17, where an undercover Police officer entered the Premises with a concealed firearm, the Business Owner advises that it has now implemented walk through metal detectors, on the advice of its consultants.
116. On the Applicant’s submissions to the effect that staff of the licensed Business have been involved in acts of violence, the Business Owner contends that staff have acted appropriately in ejecting patrons or dealing with persons in Events number 3, 14, 28, 30, 32, 72, 90, 104, 110 and 128.
117. The Business Owner contends that Police have “lost confidence” in the manager, Mr Turcotte, by reason of their prosecution of him for assault and affray during 2010 (a matter that was successfully defended on the basis of self-defence) and by reason of another Police investigation of an assault during 2010 where Police believed Mr Turcotte knew the offender, which was denied by Mr Turcotte who states he did not see the incident in question. Mr Turcotte declined to provide a statement to Police about that matter, which “was his right”. Although Police had coercive powers to compel him to answer questions, they did not exercise those powers.
118. The Business Owner contends that the assault on Premises committed by two RSA Marshalls upon four patrons on 25 April 2012 has further contributed to Police concerns, as the staff members involved gave a false account of events to Police. The Business Owner contends that neither Mr Turcotte nor the licensee Mr Henry were present when that assault occurred. They submit that the continued employment of those RSA Marshalls from 25 April 2012 to 18 July 2012 has fuelled Police concerns.
119. Mr Turcotte contends that management of the venue did not see the CCTV footage that Mr Turcotte supplied to Police for that incident and that management “were not aware” of what the CCTV footage showed until that matter was raised by Police with them at the meeting of 18 July 2013. Upon that issue being raised with management, the two RSA Marshalls were dismissed.

120. The Business Owner notes that Police have also raised concerns about the non-delivery of CCTV requested by Police pertaining to 8 June 2012. The Business Owner submits that this problem arose by reason that Mr Turcotte was the only staff member able to operate the venue's CCTV system. He was having personal difficulties at the time involving his new born daughter, who was rushed to Westmead Hospital on 11 June 2012 and admitted once again on 21 June 2012. Attachment "R" to the Hatzis/Leeming Submissions are medical records of those matters. The Business Owner further contends that due to upgrading of the CCTV system in early May 2013, the system was only retaining footage for 14 days, not the 30 days as required by a condition of the licence. The Business Owner argues that this "unfortunate sequence of events" gave Police the impression that Turcotte was hindering their investigations.
121. The Business Owner contends that venue management are now cooperating with Police and that those records of Events involving "fail to quit" incidents that are relied upon by the Applicant are only available to Police because the venue called Police to the Premises in the first place.
122. On the issue of preventing intoxication, the Business Owner "vehemently denies" that there are high intoxication levels at the Premises. The Business Owner submits that the venue proactively removes people who "commence to show any possible signs of intoxication" and that in doing so, it complies with its duties under the law not to permit intoxication on the Premises. The Business Owner further submits that the claim by Police that victims of crime are too intoxicated to interview is an "exaggeration". The Business Owner refers to the fact that the Events disclose only one breach for the offence of permitting intoxication on the Premises and the observations of the Business Owner's consultant, Top Shelf, in this regard.
123. On the issue of incidents involving staff of the Business, the Hatzis/Leeming submission contends that of the seventeen incidents that have been identified by the Applicant in this regard, Events numbered 2, 5, 14, 18, 30, 32, 39, 44 55, 93, 98, 100, 104, 108, 110 and 128 involve allegations that are "unfounded".
124. On the issue of staff consuming alcohol on the Premises, the Business Owner advises that "contract dancers" engaged by the Business are permitted to consume alcohol and that there is no reason why they cannot be served responsibly - but they will be asked to leave the Premises if they are intoxicated. The Business Owner contends that it has a "strict policy" that all persons engaged in liquor service duties, including management, are not to drink. With regard to Event 37, it is submitted

that the dancer concerned recorded a blood alcohol level of 0.037, which was a “special range” PCA offence by reason of her driving with provisional licence.

125. In response to Event 7, Mr Turcotte instructs the Business Owner’s solicitors that he denies being on duty at the time of that COPS Report and that the date in question was not actually his birthday.
126. With regard to Event 120 (the detection of a venue manager on the street with a small quantity of cocaine on his person) the manager involved instructs the Business Owner’s solicitors that he found the drug on the Premises during the previous evening and was going to take it to Police, but due to his delay in doing so pleaded guilty to a possession charge and was fined \$500 by the Local Court. A letter from the venue manager’s solicitor regarding that prosecution is Attachment “T” to the Hatzis/Leeming submission.
127. With regard to the RSA Marshalls observed by Police to be consuming shots at the Bar, the Business Owner states that it was not aware of this incident and submits that it would be a breach of Policy, but that the RSA Marshalls involved no longer work at the Premises.
128. With regard to the occurrence of PCA offences, the Business Owner submits that Business promotes drink driving campaigns on its website (Attachment “U” of the Hatzis Leeming Submission); calls taxis for patrons upon request; and has “participated in trials of a breathalyser machine” on the Premises. The Business Owner further argues that the 20 Events involving PCA offences that are relied upon by the Applicant amounts to 1 incident every 2 months over the three and a half years of the period surveyed by the Application.
129. The City of Sydney’s aforementioned survey indicates that 16% of people leave the Kings Cross Precinct by private car. The Business Owner argues that given the estimated numbers of patrons that have been accommodated by the venue during the period surveyed by the Application, the number of drink drivers detected “can be said to be remarkably small”.
130. The Business Owner further argues that a person recording over 0.05 blood alcohol concentration will “not necessarily display outward signs of intoxication” and that the venue employs appropriately trained RSA staff and security guards who roam the Premises looking for potential signs.

131. The Business Owner concludes that “the retention of the current trading hours is consistent with expectations, needs and aspirations of the wider community” and this is “demonstrated by the popularity of the venue” and the letters of support and petitions provided by the Business Owner in its response to the Application. The Premises is one of only a small number of strip clubs in Kings Cross where a large number of licensed premises accommodate a peak influx of pedestrians several hours after midnight.
132. The Business Owner argues that the retention of the current licensed trading hours enhances employment opportunities for people in the live music industries (10 DJs are presently engaged by the venue) and in total the venue employs 37 people, plus between 25-40 contracted dancers at any one time. It argues that the risk of violence on the Premises is rated as “low” according to the Police ELORM risk rating model. The scheme administered by the Director General under Schedule 4 to the Act and the BOCSAR data for the suburb of Kings Cross indicates that recorded acts of violence have been decreasing over the past ten years.
133. The Business Owner submits that it takes its RSA responsibilities seriously, engages RSA Marshalls and trains its staff. It has introduced further measures such as walk through scanners and is a member of the Kings Cross Liquor Accord which includes a “Rapid Response Kings Cross Street Patrol” (a private security initiative).
134. The Business Owner concludes with the contention that granting the Application is “likely to destroy the business” resulting in “significant employment losses”. On the other hand the Business Owner submits that the Authority “can have confidence” that the Business will implement the advice of its hospitality industry consultant and “be entrusted to operate responsibly” with “relatively low adverse impact on the surrounding community and that “the continuation of the current 24 hours licence is in the public interest”.

PREMISES OWNER’S SUBMISSIONS OF 7 MAY 2013

135. On 9 May 2013 Mr Dion Manca, a solicitor from LAS Lawyers made the following submissions to the Authority on behalf of the Premises Owner, Sapphire Suite Pty Ltd - a company that is directed by Mr Hussein (Charlie) Saleh. Sapphire Suite Pty Ltd operates the licensed business known as “Sapphire Lounge” located on the ground floor of 70A Darlinghurst Road, Kings Cross. This submission includes:

- (i) Cover submission prepared by LAS Lawyers.
- (ii) Copy of the lease for the Premises.

- (iii) Title Search for the property of the Premises .
- (iv) Letter from Kings Cross Liquor Accord to the Premises Owner dated 22 April 2013.
- (v) Letter from the Premises Owner's accountant, Mr Anthony Kalagerou, explaining what he has been instructed are the incoming rental income and outgoing maintenance expenditure for the property of the Premises. In light of this he states that "any diminution to the rental income would prove catastrophic" for the Premises Owner.

136. Without purporting to repeat every argument made by the Premises Owner, the key contentions made by the Premises Owner may be summarised as follows:

- (i) If the Application is granted this would have "significant adverse impacts" upon the Premises Owner and Mr Saleh, who is a personal guarantor of that company's financial obligations.
- (ii) Mr Saleh has held his own licence for the Sapphire Lounge since 9 March 1998 and has only been the subject of one licensing prosecution which was dealt with by the Local Court under section 10(1)(a) of the *Crimes (Sentencing Procedure) Act 1999* on or about 17 September 2007.
- (iii) Mr Saleh is a "long standing member of the Kings Cross business community" and prior to operating the Sapphire Lounge operated a fast food business on the Ground Floor of 70A Darlinghurst Road and another nightclub called "Icebox".
- (iv) In 2004 Mr Saleh decided to redevelop the building at 70A Darlinghurst Road into a "high quality nightclub and restaurant". He did so to "entertain an increasingly gentrified area" and the demands of an increasingly discerning clientele.
- (v) Given the hard work that he has committed to developing the site, he is concerned as to the "dire consequences" that will flow from granting the Application. The Premises Owner submits that it is "not reasonable" for the Application to be granted by the Authority.
- (vi) The Premises Owner is "genuinely surprised" that Police have made this Application and the Premises Owner is "not in a position to address the incidents alleged by Police in relation to the Premises". Since receiving notice of the Police Application the Premises Owner has informed the lessee of the Premises Owner's expectations regarding regulatory compliance.

- (vii) The Premises Owner considers that the Business Owner is better equipped to respond to the Police allegations than the Premises Owner but nevertheless submits that the Application “seeks to put on a more negative spin on the alleged incidents than is readily discernible from the COPS Event descriptions.”
- (viii)The Premises Owner “commends” the Business Owner for engaging its consultant and implementing its recommendations.
- (ix) The Premises Owner submits that Mr Saleh has attended the Premises from time to time and “has not observed any matters to raise significant concerns about the operation of the Premises”.
- (x) The Premises Owner maintains a direct telephone line to the duty officer at Kings Cross Police to “enable him to report incidents taking place which require the urgent deployment of Police officers.”
- (xi) The Premises Owner submits that the Events are based upon COPS Reports with “extremely limited particulars provided”. The use of COPS Reports that are linked to licensed premises are problematic due to “the subjective nature of the reporting, minimal particulars, absence of significant investigation or testing of the parties and limited scope for venues to immediately respond or investigate”.
- (xii)The Premises Owner submits that the most frequently occurring type of incident in the Events are PCA offences and that “only 5 incidents of actual or alleged intoxication are included”. There are 9 alleged assaults and 11 assaults are confirmed.
- (xiii)The Premises Owner submits that by and large the actions of venue “appear reasonable, particularly when dealing with the refusal of entry”.
- (xiv)The Premises Owner submits that it is clear that the Business Owner has on numerous occasions cooperated with Police requests for assistance and those events “displace” the Police submissions of alleged uncooperative behaviour.
- (xv)The Premises Owner notes the Applicant’s acknowledgement that since a July 2012 meeting between venue management and Police, cooperation with Police has improved. The Premises Owner submits that there have been only 15 Events since that meeting and one of those was a meeting to discuss licensing issues.

- (xvi) The Premises Owner notes the training undertaken by Top Shelf consultants of venue staff during December 2012 and March 2013.
- (xvii) The Premises Owner notes that while a number of the Events allege that patrons were intoxicated, no steps were taken by Police to bring those matters before the Court to be proven beyond reasonable doubt. In light of the Business Owner's response to the Police Evidence Matrix, the Premises Owner submits that "only 5 incidents of intoxication and only 20 incidents of assault" (including unverified claims) appear to be reasonably attributed to the Premises over the relevant period.
- (xviii) The Premises Owner argues that it is "unfair" to "apportion blame" to the Business Owner for the use of firearms on the Premises and notes the positive measures taken to introduce walk through scanners.
- (xix) The Premises Owner recognises that "security contractors at times provide substandard security officers" and that "it appears that in the few circumstances where security and staff have had inappropriate involvement in perpetrating violence, the venue has adopted reasonable action by terminating the services of the people involved upon becoming aware of their involvement".
- (xx) The Premises Owner submits that it is unacceptable and irresponsible for staff members to consume alcohol while on duty, but the Premises Owner submits that "there appears to be significant dispute as to whether or not staff of the Business Owner were in fact consuming alcohol while on duty."
- (xxi) The Premises Owner submits that there appears to be "some reasonable basis" for the Police concerns about the ability of the former licensee to fulfil his role but that "measures have been introduced to reduce intoxication, including measures suggested by Police following from the July 2012 meeting." The Premises Owner endorses the decision of the Business Owner to dismiss the former manager and transfer the licence to another person.
- (xxii) The Premises Owner considers that Police concerns about shortcomings in the Plan of Management for the venue are "valid", but submits that these have been addressed through the Business Owner's engagement of its consultants.
- (xxiii) The Premises Owners submits that caution should be exercised before using linking data to link an event to licensed premises. The Premises Owner submits

that issues pertaining to the Precinct should be dealt with by Precinct wide measures such as those introduced by the legislature.

(xxiv) The Premises Owner submits that “the objects of the Act, the public interest historical context and commercial implications” are matters that the Authority should consider along with consideration as to whether revoking the ETA “will in fact result in any tangible positive outcome”.

(xxv) The Premises Owner submits that the revocation of this authorisation will have “significant adverse impacts on a number of parties” and “should only be considered in extreme circumstances”.

(xxvi) The Premises Owner submits that the Business Owner has taken action to address regulatory issues voluntarily when raised by Police in the past, including the implementation of Crime Scene Preservation Guidelines, an upgrade of CCTV, dress code modification and use of glassware.

(xxvii) The Premises Owner distinguishes this matter from the Authority’s decision of 22 July 2011 (published on the Authority’s website) to revoke the extended trading authorisation for the “Eye Bar” (another on premises licensed venue in Kings Cross) - by reason that, *inter alia*, the Eye Bar had been subject to 23 Penalty Notices and two Short Term Closure Orders. The Premises Owner contends that while Police involved the freehold owner in that previous matter, Police did not consult with the Premises Owner before making this Application. The Premises Owner further submits that the regulatory environment in which the Eye Bar operated pre-dated the recent legislative reforms for the Kings Cross Precinct.

(xxviii) The Premises Owner states that the lessee “generally complies with its obligations to pay rent and outgoings in a punctual manner”.

(xxix) The Premises Owner further contends, by reference to a letter provided by its accountant, that the Premises Owner is currently “unable to obtain rent sufficient to cover its costs and has operated at a loss”.

(xxx) The Premises Owner contends that should the Application be granted, the value of its property would be reduced, as the commercial potential of the Premises will be reduced. This will “exasperate (*sic*) the financial difficulties of the lessor”.

- (xxxii) The Premises Owner contends that it has “significant commitments to finance providers” that are secured by a mortgage over the Premises, along with personal guarantees from Mr Saleh. The Premises Owner submits that the revocation of the extended trading authorisation will “be likely to close the Business” and it will be “inevitable” that the Premises Owner will be in default of the mortgage. The Premises will be “commercially worthless” without the extended trading authorisation and a mortgagee sale would not raise sufficient funds to discharge the secured amount, with the result that Mr Saleh will be called upon to meet his personal guarantee with regard to the Premises.
- (xxxiii) The Premises Owner submits that its commercial interests should be considered in light of the objects of the Act to ensure “a balanced development of the liquor industry”.
- (xxxiv) The Premises Owner submits that “only in the most extreme circumstances” should the revocation of an extended trading authorisation be entertained by the Authority.
- (xxxv) The Premises Owner submits that the Kings Cross Precinct is “unique” given the multitude of licensed premises and that “the effect of removing a single premises is likely to be negligible in terms of impact on the amenity of the neighbourhood”. The status of the Precinct has, it is argued, been recognised by the legislature through Division 2 or Part 8 of the Act and through the changes introduced through the Plan of Management legislation.
- (xxxvi) The Premises Owner contends that the Premises is not operating in a manner that results in “frequent undue disturbance to the neighbourhood” nor is it causing “disturbance of the quiet and good order of the neighbourhood” by reason of the Precinct in which it is situated.
- (xxxvii) The Premises Owner submits that the Authority should give notice as to what action it proposes to take, so that the Premises Owner may consider whether or not to take legal action against the Business Owner pursuant to the Lease for the Premises. The Premises Owner contends that its rights to re-enter the Premises under clause 19.2 of the lease are limited to circumstances when the lessees or licensee is convicted of an offence or an adverse finding is made in disciplinary proceedings that may render the licence liable to be cancelled, suspended or forfeited. The Premises Owner notes that it also has rights under covenants provided in clause 19.3(b) and 19.3(d) of the lease.

(xxxvii) The Premises Owner contends that it has “absolutely nothing to do with the operation of the business” and that it has “no interest at all in the business”. The Premises Owner is “merely the landlord”.

(xxxviii) The Premises Owner submits that revocation of the extended trading authorisation is “not an appropriate solution” as it will not only impact the person responsible for the day to day management of the business but also the Premises Owner which has “nothing to do with the business which is said to have caused the issues”.

(xxxix) The Premises Owner submits that the Application is “in reality” a disciplinary complaint that has been submitted under the guise of an application to revoke an extended trading authorisation. The Premises Owner submits that were the Authority to revoke the authorisation it should only do so on a “temporary” basis.

FURTHER SUBMISSIONS FROM NSW POLICE DATED 3 JUNE 2013

137. On 3 June 2013, after seeking an extension of time, Police filed and served further submissions in reply to the Business Owner and the Premises Owner’s submissions. This Police material comprises:

- (i) Police submission letter dated 12 May 2013.
- (ii) Annexure 1 – copies of “offensive” responses to Bada Bing Petition by patrons of the venue .
- (iii) Annexure 2 – COPS Report 49613842 regarding the assault of a well intoxicated person after leaving the Premises on 14 September 2012.
- (iv) Annexure 3 – Record of “000” emergency call to Police regarding the victim of an assault in hospital on 14 September 2012.
- (v) Annexure 4 – (six video files).
- (vi) Annexure 5 – BOCSAR data for suburb of Potts Point.
- (vii) Annexure 6 – Example of COPS Reported event that has “rejected” status .
- (viii) Annexure 7 – Example of COPS Reported licensing offence event that is “accepted”.
- (ix) Annexure 8 – Excel Spread sheet showing all Level 1, 2 and 3 Premises in Kings Cross as of the date of that submission.
- (x) Annexure 9 – COPS Report E50315875 for an assault incident at 1 43 am on “27 March 2013” (which the Authority notes might be an error as the report. was created on 19 March 2013). The assault recorded occurred on the Premises and notes that there was no CCTV coverage on balcony.

- (xi) Annexure 10 – Police Facts Sheet dated 14 June 2013 for the prosecution of the licensee of the Premises for failure to comply with licence conditions regarding CCTV.
- (xii) Annexure 11 – OLGR Compliance Section Report to the Director General on Kings Cross dated 10 August 2012.
- (xiii) Annexure 12 – OLGR “source documents” relating to the Premises (these mainly comprise extracts from the Incident Register maintained by the Premises).
- (xiv) Annexure 13 – COPS Report 50699418 for an intoxicated ejected patron harassing others at 3.40 am on 23 February 2013.
- (xv) Annexure 14 – Infringement Notice record for an event of 23 February 2013
- (xvi) Annexure 15 - Alcohol Linking Data showing liquor last consumed at the Premises for the event of 23 February 2013.
- (xvii) Annexure 16 – COPS Report E 50696804 2.45 am on 23 February 2013 – Police escort an intoxicated person off the Premises and then get involved with an altercation while dealing with accused and co-accused, who are arrested by Police and released later that evening from the Police station.
- (xviii) Annexure 17 – COPS linking data for E 50696804 noting that the person of interest last drank at the Premises.
- (xix) Annexure 18 – Police Facts Sheet H50081130 for the prosecution of a person for resisting arrest and offensive conduct relating to event E 50696804 of 23 February 2013.
- (xx) Annexure 19 – ALEC glassing data for the Sydney Central Local Area Command of NSW Police.
- (xxi) Annexure 20 - Material regarding liquor promotions at the Premises.
- (xxii) Annexure 21 – Material regarding promotions at the Premises.
- (xxiii) Annexure 22 – Material regarding Bada Bing Membership Promotion.
- (xxiv) Annexure 23 – COPS Information Report I46048667 recording a person identified as “Rick” and associated with the Rebels OMCG being on the Premises at 1.45 am on 21 August 2011. Police spoke to the person who reportedly said that he “wasn’t there on club business” but “just with friends”.
- (xxv) Annexure 24 – Photograph of Rebels OMCG colours, being a confederate flag.
- (xxvi) Annexure 25 - Photograph of person subject to an Information Report I46048667 bearing confederate flag tattoo .
- (xxvii) Annexure 26 - Photograph of “Rick’s” hand showing the number 13 tattoo
- (xxviii) Annexure 27 – Images of Mr Alex Vella wearing “Rebels” colours.
- (xxix) Annexure 28 – Photograph of a “Rebels” OMCG member with “13” tattoo

- (xxx) Annexure 29 - Statement by Mr Jonathan Turcott, General Manager, Bada Bing 15 April 2012 noting the presence of "Ricky" and a fight that occurred on 8 April 2012 involving several unidentified "Middle Eastern" men on the Premises who were speaking Arabic.
- (xxxi) Annexure 30 – Statement by Mr Tiasuitele Saipia, a security guard at the Premises, dated 11 April 2012 regarding a shooting on the Premises on 8 April 2012.
- (xxxii) Annexure 31 – Statement by Mr Tiasuitele Saipia, a security guard at the Premises, dated 19 November 2012 in the matter of *DPP v Ciano* regarding a shooting on Premises on 8 April 2012 .
- (xxxiii) Annexure 32 - Statement by Mr Ului Leha, a security guard at the Premises dated 13 November 2012 regarding a fight involving "Rick" and a shooting on the Premises on 8 April 2012.
- (xxxiv) Annexure 33 – Photograph of "Rick" inside the Premises with staff.
- (xxxv) Annexure 34 – Photograph of strippers at the Premises, taken from website of the Business.
- (xxxvi) Annexure 35 – Statement by Senior Constable Maryanne Stanford dated 23 May 2013 regarding her request for CCTV from the Premises on 27 April 2012 regarding the Police investigation of an assault on Premises.
- (xxxvii) Annexure 36 – Statement by Sgt Brett Mills dated 23 May 2013 regarding the request for CCTV from the Premises on 27 April 2012 regarding the investigation of an assault on Premises.
- (xxxviii) Annexure 37 – Premises Incident Register extract 12 August 2012.

138. On the issue of community demand for the availability of late night adult entertainment, the Applicant contends that the venue "attracts a class of patronage who have been refused entry or excluded entry or excluded from other venues for intoxication or disorderly behaviour" or "who have pre-fuelled on alcohol prior to attending Kings Cross". This, in turn, results in high rates of patrons being refused entry to the Premises because they are intoxicated.

139. On the totality of COPS Reports kept by Police for the Premises, the Applicant states that it has not disclosed all of its COPS Reports for the purposes of this Application. Police records indicate that there are a total of 1249 COPS Reports, 141 intelligence reports and 40 "cases" linked to the Premises dating back to 2006.

140. The Applicant states that there is a total of 295 Business Inspections recorded in the COPS Database for the Relevant Period and a total of 514 Business Inspections recorded on the Database since 2006. The classification of those COPS Reports (that are not before the Authority) including events that are drug related, gang related,

organised crime related, or events with “no associated factor” or those that have been simply recorded under the category “high police visibility”.

141. The Applicant submits that it is impossible with available resources to examine every COPS Report on the COPS Database linked to the Premises. Furthermore, the Applicant does not see the value of swamping the Authority with every Business Inspection that they have recorded or providing reams of material that may not be substantiated or that may be irrelevant to the purposes of this Application.

142. Police provide a graph to provide some comparative data on assaults recorded against other on premises licensed venues in Kings Cross that have a similar type of licence - specifying a either nightclub or theatre as the designated primary business purpose. This graph is prepared on the basis of the “raw data” for Police reported alcohol related assaults during the period from 17 May 2009 to 8 December 2012. According to this data the Premises recorded 61 such incidents; *Candy’s Nightclub* had 86 incidents; *Club 21* had 10 incidents; *Disco Nightclub* had 53 incidents; *Dreamgirls* had 29; *Hugo’s Lounge* had 17; *La Panic* had 23; *Sapphire Lounge* had 43; *Showgirls* had 57; *The Backroom* had 13 incidents; The Village had 21 incidents and *Tunnel* nightclub recorded 37 alcohol related assaults.

143. The Applicant further states that not all incidents of reported assaults on the COPS Database have been provided in support of this Application. Police have only relied upon incidents where there is evidence, by way of a Police record, linking the person engaged by Police to the Premises - such as a record that the person last drank on the Premises.

144. In response to the Business Owner’s submission that care should be taken when relying upon Events linked by Police to the Premises, the Applicant that they rely upon a range of material in support of the Events identified - including COPS Reports with observations made by Police officers, victim and witness statements, CCTV footage and Incident Register information.

145. The Applicant submits that the Business Owner’s attempt to disassociate itself from these COPS reported Events “is a further illustration of the licensee’s failure to acknowledge or take responsibility for the conduct of the Premises and the manner in which it trades.”

146. With regard to Event 9, the Applicant disagrees with the Business Owner’s submission that the Event does not disclose any abrogation of responsibility by the venue. The Applicant contends that this incident is appropriately linked to the

Premises by reason that it involved a patron of the Premises who was assaulted just as he left the Premises at 5.15 am in the morning on Sunday morning, causing undue disturbance.

147. With regard to Event 21, the Applicant submits that this incident, the occurrence of which is not in dispute, involved three members of the Commanchero OMCG forcing their way into the Premises, prompting a large Police response and assaulting a Police officer - causing fear to patrons and disturbance to the neighbourhood. The occurrence of this incident is properly linked to the Premises as it is the result of this Premises exercising late trading.

148. With regard to Event 24, the Applicant submits that this incident, the occurrence of which is not in dispute, involved a female who was well affected by alcohol and drugs seeking entry to the Premises at 4.10 am on a weekday morning by pushing past a security guard and producing a prohibited drug from her bra - then telephoning the "000" emergency line complaining that he drugs had been stolen by the security guard. Police attended the scene and searched the young woman before taking her into custody. The Applicant submits that this Event is properly linked to the Premises because the incident did cause disturbance to the good order and amenity of the neighbourhood and is a result of the Premises exercising late trading.

149. With regard to Event 72, the Applicant submits that this incident is relevant because it involved a female patron who, on the evidence available, was inside the Premises where she consumed alcohol to the point that she became seriously intoxicated and was escorted from the Premises by venue security for her intoxication and for annoying other patrons. The Applicant submits that Ambulance officers informed Police that the patron was highly intoxicated. Police say that the evidence establishes that alcohol was a factor in the occurrence of this Event and that the incident demonstrates a "complete disregard" of RSA principles. Police contend that this incident amounted to a breach of section 73 of the Act (permitting intoxication on Premises).

150. With regard to the exercise of the extended trading authorisation generally, the Applicant refers to the observations of Hall J in *McMillian and Anor v Director General of Communities NSW* [2009] NSWSC 1236 at paragraphs 101 -102 where His Honour stated (in the context of a case examining section 79 of the Act):

"101. Section 49(8)(b) reflects the fact that extended trading is an aspect of the business of a licensed premises which itself can, without further specificity,

be associated with undue disturbance. That section restricts the granting of an extended trading authorisation where the 'extended trading period' will result in the 'frequent undue disturbance of the quiet and good order of the neighbourhood of licensed premises'.

102. Accordingly, the Act itself in s 49(8)(b) recognises undue disturbance arising from (being the result of) the fact of extended trading."

151. The Applicant submits that careful consideration has been given to the selection of Events in support of the Application. Police have taken into account the fact that extended trading is being exercised by the Premises; the impact that this exercise is having on the neighbourhood and the risk posed by the type of crime and the frequency of incidents that are linked to the location of the Premises during extended trading hours.
152. On the issue of the status of the Premises under the "declared premises" scheme provided by Schedule 4 of the Act, while the Business Owner contends that there have been only 5 such incidents during the last reporting period (calendar year 2012) the Applicant contends that nine (9) incidents of violence on Premises should be recorded against the Premises for Round 9.
153. The Applicant notes that while separate COPS Reports may be created by Police for individual offence incidents, it is possible that several offences have occurred yet subsumed into one "incident" for the purposes of the Schedule 4 scheme that is administered by the Director General. The Applicant refers to *McHugh Holdings Pty Limited v Director General Communities NSW and Anor* [2009] NSWSC 1359 by way of illustration of this distinction. The Applicant further notes, by way of example, that Event 104 actually involved the assault of four persons upon the Premises, but this incident has only been submitted as one "Event" for the purposes of this Application.
154. The Applicant submits that just because a licensed business does not rank as a Level 1 or 2 "declared premises" under Schedule 4, it does not follow that there should be no regulatory concern as to how a licensed business is conducted. The Applicant argues that if Schedule 4 was the only benchmark then no one should have any concerns about Kings Cross, because no venue in Kings Cross is on the list of declared premises.
155. The Applicant submits that while acts of violence occurring on licensed premises are serious matters, violence is not the only form of adverse impact that is

generated by extended licensed trading hours upon the neighbourhood. Anti-social behaviour, including yelling and screaming in the middle of the night, intoxication requiring the assistance of Police or Ambulance staff, drink driving and malicious damage to neighbouring premises or public passenger vehicles “significantly impact the amenity of the neighbourhood”.

156. The Applicant submits that this Application “has clearly demonstrated frequent undue disturbance to the amenity of the neighbourhood” arising from the exercise of late licensed trading by the Premises.

157. The Applicant submits that section 51(9)(b) of the Act provides the ability for the Commissioner of Police to make an application to address harms associated with extended trading hours, and to reduce the likelihood of incidents occurring that are attributable to the extended hours of a licensed premises.

158. The Applicant submits that while BOCSAR data suggests that incidents of alcohol related violence are in general decline across NSW, BOCSAR data specific to the suburb of Potts Point for the period between January 2009 and December 2012 indicates that the number of alcohol related assaults recorded in Kings Cross continues to “fluctuate” – from 158 in 2009, to 171 in 2010, to 146 in 2011 to 157 in 2012.

159. The Applicant submits that this data shows that the majority of alcohol related assaults in Kings Cross occur between midnight and 3 am with the next most prevalent time period being between 3 am and 6 am.

160. With regard to those Events where the Business Owner disputes that any assault actually occurred, the Applicant submits that Event 32 should be accepted by the Authority as an adverse Event, notwithstanding the Business Owner’s submissions, by reason that the alleged victim did actually attend Kings Cross Police station claiming to have been punched in the face by a security guard of the venue; the victim did actually have injuries consistent with an assault and the victim was actually conveyed to Hospital where he received sutures. The Applicant notes that the alleged assault was not captured on venue CCTV, but that this does not mean that the incident did not occur. Furthermore, the Applicant submits that Event 32 included a failure by the manager to provide Police with an incident register and the licensee was issued with a Penalty Notice for that breach. Moreover, the Applicant contends that the manager told Police that the Business did not keep records of staff employed on the Premises. The Applicant submits that COPS entries for this matter record note that that the victim was later vague about the circumstances of the

assault and could not add anything further to the matter - but the victim did not indicate, as suggested by the Business Owner, that he did not want to pursue the matter. The Applicant submits that the Authority should find that an assault did occur on the Premises, as alleged.

161. The Applicant also refers to Event 84 (which the Authority notes involved a male South African tourist who allegedly made a racist remark to security staff and then complained that he was assaulted by those staff). The Applicant believes that the tourist was lawfully removed from the Premises by venue security but maintain that the Event is relevant to this Application by reason that it constitutes a disturbance incident - whereby the patron failed to leave the Premises when requested and that patron was moderately affected by alcohol. The Applicant notes that although the assault claim made by the tourist was recorded as "rejected", Police did record a second incident of the tourist having breached licensing legislation.

162. The Applicant refers to Event 116, which involved Police receiving an emergency "000" phone call at 3.50 am on 9 August 2012 from a manager of the Premises stating that a woman had reported being sexually assaulted in the male toilets of the Premises. The Applicant submits that the Event remains relevant by reason that Police did attend the Premises and did find the woman in a distressed state near the cash booth of the venue. Police established a crime scene in the male bathroom after securing that area. The woman then declined an ambulance and would not discuss the matter in detail, while claiming that she had been raped inside the male bathrooms before storming off the Premises and hailing a taxi. After further contact, the woman would not make a statement to Police and the investigation is now "suspended". The Applicant submits that there is nothing to confirm that the incident did not occur and the incident has not been "rejected" by Police.

FURTHER SUBMISSIONS FROM BUSINESS OWNER DATED 18 JUNE 2013

163. On 18 June 2013 Mr Hatzis filed further submissions in reply to the Police material of 3 June 2013 on behalf of the Business Owner. This material comprises:

- (i) Submission from Tony Hatzis, Katzis Cusack, dated 18 June 2013.
- (ii) Appendix 1 – two emails from the venue to Tony Hatzis advising that Police inspections had been conducted on 31 May 2013 and 15 June 2013 with no issues arising.
- (iii) Appendix 2 – letter from Ms Elizabeth Tydd, OLGR to Jonathan Henry dated 30 May 2013 advising that 5 incidents of violence on premises have been attributed to the Premises in the latest assessment of the Premises for the purposes of Schedule 4 of the *Liquor Act 2007*.

- (iv) Appendix 3 – Ministerial Press Release dated 30 May 2013 noting only one venue in Kings Cross remains on the list of violent premises .
- (v) Appendix 4 – COPS Report E46038012 dated 14 October 2011 noting that after being called to attend the Premises Police subsequently formed the impression that no assault occurred. Also attached is a related COPS telephone record of a phone call by the complainant with Police material noting that the complainant had been asked to leave a number of times and the complainant was highly racist about the Premises security staff and moderately affected by alcohol.
- (vi) Appendix 5 – Statement by John Gaitanis, former licensee of the Premises dated 13 March 2013 regarding the events of 26 January 2013.
- (vii) Appendix 6 – Statement by John McKinnon dated 30 January 2013 regarding the events of 26 January 2013.
- (viii) Appendix 7 - File Note by Tony Hatzis of a meeting with Sgt Brett Mills on 30 May 2013 regarding CCTV at the Premises, OMCG and use of a walk in scanner, and that two ex- Police officers would be conducting training of staff.
- (ix) Appendix 8 – Letter from Top Shelf Training (a consultant engaged by the Business Owner) to Hatzis Cusack dated 14 June 2013 regarding training conducted at the Premises.
- (x) Appendix 9 – Photograph of Bar Century.
- (xi) Appendix 10 – Information about how to make a “Long Island Ice Tea” cocktail.
- (xii) Appendix 11 – Letter to the Authority (undated) from the partner of John Turcotte detailing some personal difficulties that they have had.

164. Very briefly, the further submission from Mr Hatzis notes that while the Applicant has focused on the 129 Events that it has attributed to the Premises, the Authority should consider other “favourable objective indicators” such as the Police ELORM risk assessment of the Premises; the venue’s non-appearance on the Schedule 4 list of “declared premises”; the low number of assaults on premises attributed to the Business (5 during 2012) relative to the total number of assaults on premises attributed to Kings Cross as a whole (213 for the 2011-12 year) and lower than average recorded rates of patrons “showing signs of intoxication” compared to other venues in Kings Cross, as measured by the 2012 OLGR Audit of licensed premises in Kings Cross which recorded during an 18 month survey period. That OLGR report noted that 27, 713 incidents had been recorded on incident registers which averages at 10 incidents per month occurring at 118 licensed venues. The Business Owner submits that it is a measure of management’s commitment to work with Police that it has dismissed staff who have lost the confidence of Police and that the new licensee, Mr Russell has joined a joint training seminar conducted by Police and external consultants.

165. The Business Owner refers to the Applicant's submission that the petitions provided by the Business Owner include offensive handwritten testimonials from what Police say are inebriated patrons. (The Authority notes that some patrons state their reasons for supporting the venue as: "cunt smells good"; "I love cunt"; "I love cunt and shit"; "I get horny"; "don't kick these good cunts out they are sickos"; "fuck the dogs that wanna close the bing down.. don't ruine (sic) it.. long live the cross" and "I love tits and pussy"). The Business Owner submits that these examples account for only 10 responses out of the 508 provided and Police cannot tell from the handwriting whether the persons providing those testimonials were actually intoxicated.
166. The Business Owner submits that closing this venue will only cause patrons to attend one of the other 26 venues open until 5 am in Kings Cross; that the Plan of Management legislation was enacted to address disturbance in the wider Precinct; and that "as those reforms continue to be implemented and the overall drinking culture in Kings Cross continues to change, it may well reduce the number of intoxicated and disorderly people on the streets who thereafter present themselves at venues".
167. Police advise that there have been 809 Business Inspections of the Premises since 20 June 2006. The Business Owner equates this to 115 inspections per year or 2 inspections per week on average. The Business Owner submits that this means that the venue is subject to a "very high level of Police scrutiny".
168. The Business Owner disputes the Police table identifying a selection of 12 nightclub/theatre licensed venues in Kings Cross by way of comparison of the assault figures attributed to the Bada Bing, which ranks third in that list, by reason that the Police data does not include venues with a Hotel licence, and that Club 77 (which the Authority notes is a nightclub in William Street Darlinghurst) is not included; and that the method chosen unfairly inflates incidents attributed to the Premises, because is located close to the busiest intersection in Kings Cross (Darlinghurst and Bayswater Roads); and because the table does not indicate the number of persons served by each business or their trading hours.
169. The Business Owner submits that the Applicant's reference to assault data recorded across the Kings Cross Local Area Command includes areas such as Woolloomooloo, Darlinghurst, Rushcutters Bay and Elizabeth Bay and Potts Point, whereas the BOCSAR data for the suburb of Kings Cross shows a 37% reduction in assaults since 2007/8.

170. The Business Owner acknowledges that the venue is “not perfect”, but that a balanced approach should be taken by the Authority and credit given for the venue disciplining staff when that is appropriate.
171. The Business Owner submits that while the Applicant contends that the venue is giving rise to undue disturbance, the venue has never been the subject of a complaint for undue disturbance under section 79 of the Act.
172. The Business Owner submits that Events involve assaults in cases where the occurrence of an assault is “highly doubtful” or rejected by Police in their own records. The Business Owner refers to Events 14, 30, 32, 84 and 116 as examples.
173. The Business Owner submits that the venue has now undergone crime scene preservation training in 2012 and 2013 conducted by management and Sergeant Mills of Kings Cross LAC. With respect to the Police allegation that the former licensee Mr Henry failed to preserve a crime scene on 27 January 2013, the Business Owner advises that Mr Henry is defending that alleged breach of licence condition in the Local Court on the basis that he did not see any visible signs of injury to the female patron who is said to be the victim of violence on Premises.
174. The Business Owner refers to the Police submission that the anti-intoxication measures it has imposed are the provision of free water and the removal of patrons after they have become intoxicated. The Business Owner submits that it also engages 2 RSA Marshalls on busier nights and does not discount drinks.
175. The Business Owner refers to the Applicant’s submission that the venue’s own Incident Register records that 14 people were intoxicated on the Premises. The Business Owner contends that this is really a reference to “people showing possible signs of intoxication” and it is not evidence “that people’s faculties were impaired to the point of intoxication”.
176. The Business Owner refers to the comments of the High Court of Australia in *CAL No 14 Pty Ltd v Motor Accidents Insurance Board* [2009] HCA 47 (which the Authority notes was a negligence case) where the Court stated at paragraph 53:

“It is difficult for an observer to assess whether a drinker has reached the point denoted by those expressions [intoxication, inebriation and drunkenness]. Some people do so faster than others. Some show signs of intoxication earlier than others. In some, the signs of intoxication are not readily apparent. With some there is a risk of confusing excitement, liveliness and high spirits with

inebriation. With others, silence conceals an almost complete incapacity to speak or move. The point at which a drinker is at risk of injury from drinking can be reached in many individuals before those signs are evident. Persons serving drinks, even if they undertake the difficult process of counting the drinks served, have no means of knowing how much the drinker has ingested before arrival. Constant surveillance of drinkers is impractical. Asking how much a drinker has drunk, how much any particular bottle or round of drinks the purchaser intends to drink personally or how much will be consumed by friends of the purchaser who may be much more or much less intoxicated than the purchaser, would be seen as impertinent. Equally, to ask how the drinker feels, and what the drinker's mental capacity is, would tend to destroy peaceful relations, and would collide with the interests of drinkers in their personal privacy"

177. The Business Owner submits that it has only been the subject of one charge of permitting intoxication on Premises that has been sustained against the venue, notwithstanding the number of patrons it has accommodated, estimated to be 100,000 persons and two inspections by Police each week on average. The Business Owner submits that it would expect more prosecutions for permitting intoxication on premises if the venue were lax in its service practices.
178. In response to the Applicant's Submission in reply the Business Owner submits that it no longer serves "Long Island Iced Tea" or the "Bada Bing special" cocktails that are identified by the Applicant.
179. In response the Applicant's submission that permitting the venue's dancers to drink on the Premises makes them vulnerable to sexual assault, the Business Owner submits that to its knowledge, no dancer has been sexually assaulted on the Premises. In response to the Event whereby a dancer was removed from the Premises by reason of her intoxication in late 2011, the Business Owner submits that this demonstrated the venue's approach to managing intoxication on Premises and that the Police material indicates that the dancer had consumed 2 drinks and 3 cocktails before coming to the Premises that evening. While the manager noted that she had become more intoxicated while she was on the Premises, the Business Owner submits that there is "no evidence" that she drank while on the Premises.
180. In response to the Applicant's submission that the Business does actually engage in liquor promotions, the Business Owner submits that those events referred to as "Industry Sundays" require the presentation of proof of employment in the hospitality industry whereupon \$8.50 drinks may be purchased for \$5.00. The

Business Owner submits that this 40% discount is “within OLGR Liquor Promotion Guidelines” and that the \$10.00 cocktail represents a discount of “only 33%”. The Business Owner submits that its one free drink promotion upon entry to the 2011 Christmas Party that is identified by the Applicant was also within OLGR Guidelines and that the free bottle of champagne provided on a person’s birthday is only supplied to those with “diamond” or “gold” membership which costs \$400 or \$300 per annum respectively.

181. The Business Owner denies the Applicant’s submission that OMCG members “frequent” the Premises. The Business Owner concedes that Kings Cross has attracted OMCG and OMCG members “in the past” and that Events numbered 1 and 2 involved OMCG members who had forced their way in to the Premises.

182. The Business Owner submits that the Rebels OMCG member identified by Police as “Rick” or “Ricky” was on the Premises without wearing gang colours. The Business Owner submits that Mr Turcotte told Police that Rick was “always well dressed” and “never caused any trouble in the club” and that Mr Turcotte told Police that he did not know that he was a “bikie”. While the record indicates that an RSA Marshall knew he was a bikie the Business Owner submits that the staff member “does not say why he thought so”.

183. The Business Owner submits that the Police ELORM model rated the Premises at either medium or low risk for criminal intelligence category and that the detection by OMCG/OCG members on the Premises does not mean that the venue is “frequented” by them.

184. On the “no touching” rule, the Business Owner accepts its responsibilities in this regard and the Police material includes incidents where it has been enforced but submits that “compliance has proved challenging”.

185. On the issue of adverse incidents involving staff, the Business Owner submits that on those occasions where members of staff have acted unlawfully or inappropriately (the Business Owner refers to Events 110 and 128) the staff have been dismissed.

186. On the issue of Police access to CCTV, the Business Owner submits that Event 14 is an example of how Police have been provided with CCTV by the Premises, in response to a false allegation of assault made against a security staff member.

187. The Business Owner submits that Police have not had regard to the measures that the venue puts in place to address drink driving by its patrons. The Business Owner

submits that comparative data should be provided by Police pertaining to other licensed premises in Kings Cross.

188. In response to the Applicant's submission to the effect that the area is partly residential, the Business Owner submits that it has not received complaints from the occupiers of nearby premises about the manner in which the Business is conducted.

FURTHER SUBMISSION FROM THE PREMISES OWNER DATED 20 JUNE 2013

189. On 20 June 2013, Mr Manca filed a further submission for the Premises Owner, comprising a 27 pages letter. This submission repeats many of the arguments previously made by the Premises Owner in response to the Application, while further critiquing the Events relied upon by the Applicant and adding the following further submissions:

- (i) The Premises Owner "is prepared to take whatever action is required to protect its interest in order to avoid adverse action being taken against the licence".
- (ii) If the operation of the Business is considered by the Authority to be unacceptably adverse to the public interest, then the revocation of the extended trading authorisation is "not an appropriate solution", as it "impacts on persons other than the operators who are responsible for the alleged adverse impacts".
- (iii) The "historical purpose" of the "regime of disciplinary complaints" was to ensure that the operators of licensed premises traded responsibly and that where appropriate, adverse action could be taken against the interests of those who were responsible for improper management. This allowed the licence itself to remain unaffected so as to preserve the interests of the Premises Owner, who often as in this case is an "innocent party".
- (iv) The Applicant has failed to address the Premises Owner's submissions dated 3 June 2013.
- (v) The Applicant's submissions do not recognise the separate interests of the Premises Owner and the Business Owner in this matter.
- (vi) The Applicant refers to the objects of the Act and submits that while the supply of liquor must be in line with community expectations it is "not unreasonable" to argue that the community "would expect" that a person in the position of Mr Saleh, who has worked so hard for a long period developing his business should

not have his interests “dismissed outright” by Police “merely because he is engaged in the business of leasing licensed premises.”

(vii) The Premises Owner submits that the “community expectation” is that the Premises Owner should be given an opportunity to “rectify the alleged issue” and that he obliged to prevent it from re-occurring in the future.

THE DRAFT DECISION

190. Following the receipt of written submission from the parties, on 31 July 2013 the Authority wrote to the Applicant and Business Owner inviting them to participate in a further procedure whereby the Business Owner and Applicant were requested to provide written responses to a series of questions (resembling interrogatories) formulated by the Authority’s General Counsel on each of the 129 Events.

191. This supplementary process was proposed with a view to narrowing down the factual issues raised by the 129 Events, to ascertain whether or not the Applicant and Business Owner accepted that certain key facts pertaining to each Event actually occurred, and if so, whether or each Event was reasonably attributable to the exercise of the extended trading authorisation. It was foreshadowed that, following receipt of those responses, the Authority would consider convening a Conference between all three of the parties (Complainant, Business Owner and Premises Owner) that would focus upon only those Events that remained in dispute.

192. On 6 August 2013 the Business Owner wrote to the Authority declining to answer the Authority’s questions, submitting that the questions posed either indicated a measure of bias or, in some cases, concerned matters that the Business Owner was not in a position to answer (in that they occurred away from the Premises). In any event the Business Owner preferred to rely upon the summary of the facts pertaining to each Event that it had previously provided in its written submissions.

193. In light of that advice the Authority decided to determine the Application on the papers. The Authority has drawn no adverse inference from the Business Owner’s decision not to participate in the proposed supplementary procedure.

194. On 19 August 2013 the Authority delivered a letter to the parties advising that the Members would convene to consider the Application on 21 August 2013. Enclosed with that letter was a disc containing a consolidated PDF document (Master PDF) comprising the Application and all evidence, submissions or other documents before the Authority - along with a Table, prepared by staff assisting the Authority, setting out the Applicant and the Business Owner’s competing summaries of the facts

pertaining to the 129 Events that Police attribute to the exercise of the extended trading authorisation by the Premises and upon which the Application is based.

195. Also provided under the Authority's letter was an Index of all submissions before the Authority. The Authority's letter noted that in addition to the Master PDF the Authority was in possession of audio visual material, particularly the CCTV footage that had accompanied the Police submissions.

196. In light of the around 2800 pages of material and time required to go through all the documents pertaining to each Event (and the Authority's competing demands in its liquor, gaming and casino jurisdiction) the Authority convened to consider the matter on 21, 26 and 28 August 2013.

197. On 6 September 2013 the Authority sent an email to the parties attaching a short form Draft Decision letter, the purpose of which was to identify the Authority's findings that the Authority was then disposed to make on key factual matters pertaining to each Event and to indicate whether or not the Authority was minded to attribute each Event to the exercise of the extended trading authorisation. Those matters were set out in a Schedule to the Draft Decision.

198. The Draft Decision also put the parties on notice that having considered, on a cumulative basis, those Events that it considered were reasonably attributable to the exercise of the extended trading authorisation, in light of the statutory objects and considerations prescribed by section 3 of the Act and all of the submissions before it, the Authority was satisfied that there Police had provided a reasonable basis to warrant revoking the extended trading authorisation in the public interest.

199. Nevertheless, taking into account:

- the location of the Premises in the Kings Cross Precinct, an area that has traditionally provided this type of entertainment during late trading hours;
- the recent insertion of section 116A into the Act along with related Regulations that impose further restrictions upon all late trading venues in the Kings Cross Precinct;
- the recent removal, albeit belatedly, of the former General Manager of the Premises, Mr John Turcotte;

- the recent engagement by the Business Owner of industry consultants to advise and conduct training with regard to regulatory compliance; and
- the decline in the number of Events attributable that are evident from the Application during 2012 by comparison to 2010 and 2011 and the absence of Police Events attributable to 2013 (reflecting the fact that this Application was apparently signed off in January 2013);

the Authority was minded to take the following administrative action instead of revoking the extended trading authorisation:

200. First, in response to the Application, the Authority proposed to vary the extended trading authorisation pursuant to section 51(9)(b) of the Act so that licensed trading shall cease at 3 am daily.

201. Second, informed by the Application and submissions, the Authority was minded to impose, on the Authority's own initiative and pursuant to section 53 (1)(b) of the Act, the following new conditions upon the licence of the Premises:

- i. The licensee shall implement a lockout whereby no patron may be permitted to enter the premises after 2 am until close of trade for that day. For the avoidance of doubt, patrons who are on the Premises before 2 am may leave the premises at any time or remain on the premises while the premises are authorised to trade, but are not permitted to re-enter the premises while the lockout is in effect.
- ii. The licensee shall install a sign in a prominent, well lit and legible position outside each street level entry point to the Premises, in letters not smaller than 50mm in height, that read:

"NO ADMITTANCE AFTER 2AM

By decision of the Independent Liquor and Gaming Authority it is a condition of the liquor licence that no patron may be admitted to the premises after 2 am. Any patrons who leave the venue after 2 am will not be readmitted."

("Proposed Administrative Action").

202. The Draft Decision notified the parties that its final decision would commence effect 7 days after the date of the Authority made its final decision on the Application.

203. Following advice from the Business Owner that it's new Senior Counsel, Mr Mark Robinson, would be unavailable for much of September 2013 the Authority invited the Applicant to make a final round of written submissions in response to the Draft Decision by 13 September 2013 and for the Business Owner and Premises Owner to make their final written submissions by 30 September 2013.

SUBMISSIONS ON THE DRAFT DECISION

204. The Authority has received the following final submissions in response to the Draft Decision:

- (i) Submission from Police dated 13 September 2013
- (ii) Submission from the Business Owner dated 30 September 2013
- (iii) Further Submission from the Business Owner (a letter from the Business Owner's accountant) dated 1 October 2013
- (iv) Submission from the Premises Owner dated 30 September 2013
- (v) Late Submission from the Business Owner dated 22 October 2013 (a report from the Business Owner's compliance consultants, "Top Shelf").

APPLICANT'S RESPONSE TO DRAFT DECISION – 13 SEPTEMBER 2013

205. On 13 September the Applicant provided a submission in response to the Draft Decision, the main points of which may be summarised as follows:

- (i) Police maintain their view that the ETA should be revoked, not varied.
- (ii) The CCTV footage provided by Police "clearly illustrates the violence and disorderly behaviour" associated with the ETA.
- (iii) The extended hours "attract people who are intoxicated, disorderly and violent" and who have been "prevented access elsewhere" and who cause disturbance contrary to the objects of the Act.
- (iv) It is insufficient for the Business Owner to plead that they remove intoxicated persons from the Premises when the objects of the Act "mandate" the prevention of intoxication
- (v) If the Business Owner is correct in its submission that it does not "permit" intoxication on the Premises, then there is "no other explanation for the presence of intoxicated persons on the Premises as evident from the Application".
- (vi) Event No **104** as "typical" of the violence associated with the Premises, whereby two RSA Marshalls committed an unprovoked assault upon four patrons. That the Business Owner submits that they were not "senior staff" is a "clear

indication of the mindset of the business operator” whereby the Business Owner fails to recognise its “culpability” for a “significant criminal incident”.

- (vii) While the Premises is of a type of licensed premises that one may find in Kings Cross, that is “not a sufficient argument” to maintain extended trading hours when the evidence provided by the Applicant reveals a “regularity of unacceptable incidents”.
- (viii) The Applicant submits that there are numerous other businesses offering the same type of entertainment without the equivalent number of intoxication and violence related incidents.
- (ix) The Applicant argues that if there is an expectation in the community for that type of adult entertainment, then there must be an expectation that patrons may enter licensed premises that are safe and that remain safe for them while they are on the premises.
- (x) The Applicant concludes that the Authority should make its decision on the extended trading hours of the Premises guided by the following factors that are identified in the Draft Decision:

- the number of shootings
- the number of violent incidents on the Premises
- the number of intoxicated people found on the Premises
- the number of intoxicated people trying to enter the Premises
- the number of people who have been charged with PCA offences after leaving the Premises
- the number of intoxicated people who have become involved in violent incidents after leaving the Premises
- the number of Adverse Events involving staff
- the number of “breaches of the Liquor Act”.

- (xi) Finally, the Applicant submits that if the absence of any Police evidence with regard to 2013 is an impediment to *revoking* the extended trading authorisation, Police are ready to provide further evidence regarding to further events that have occurred in 2013.

Alternative Police Proposal

206. While the Applicant maintains that the extended trading authorisation should be revoked, in the alternative it is proposed that the Authority **vary** the authorisation so that the Premises be licensed to trade as follows:

- Monday to Saturday, 5 am to 2 am.

- Sunday from 10 am to 10 pm.

207. The Applicant submits that this alternate proposal would be consistent with the objects of section 3 of the Act, resulting in a “balanced” approach to the sale, supply and consumption of liquor on the premises which would facilitate the public interest”. The Applicant submits that the relevant public interest would be served by:

- a reduction in the use of Police resources, AND
- the safety of the public at large, AND
- a reduction on the load on the public health system, AND
- that will be brought about through a “reduction of alcohol related violence”.

BUSINESS OWNER’S SUBMISSION DATED 30 SEPTEMBER 2013

208. The Business Owner’s main submission in response to the Draft Decision is a submission from Mr Tony Hatzis of Hatzis Cusack solicitors dated 30 September 2013. In this document the Business Owner submits that that the imposition of a 3am closing time with a 2 am lockout will, on weekends, have the effect of ceasing liquor sales at 2 am on Saturday and Sunday mornings by the operation of section 53C of the *Regulation*.

209. Hatzis Cusack state that “on our instructions” the effect of this action “will be to make the business unviable”. The Business Owner provides an Affidavit from Mr Kyriacos Papadopoulos, sole company director of the Premises Owner, dated 30 September 2013. Hatzis Cusack submits that “we are instructed” that the venue will not be able to attract “the best entertainers” should the Draft Decision be implemented - in that those entertainers will be “far more likely “to seek contracts elsewhere”. This, it is said, would “accelerate the unviability” of the Business.

Business Owner’s submission on Proportionality

210. Hatzis Cusack submit that in the Draft Decision, the Authority finds that **84** of the **129** Events relied upon by the Applicant that have occurred over “some three and a half years” involved a reasonable nexus to the exercise of the ETA. The Business Owner estimates that it would have accommodated “some 350,000 persons” during the Relevant Period and that 84 Adverse Events is equivalent to “one event every two weeks” or “approximately one event for every 4,000 patrons passing through the venue”. The Business Owner says that in this context the Draft Decision represents a “disproportionate response”.

211. The Business Owner submits that “the rate of events cannot reasonably constitute a disproportionate drain on Police resources” and that “no convincing evidence of this has yet been adduced by Police”.

212. The Business Owner contends that the Draft Decision, if implemented, will “effectively close down the venue” and this will in turn result in:

- (i) Loss of livelihood of the Business Owner
- (ii) “Likely” loss of Mr Papadopoulos’ family home
- (iii) Loss of employment for a large number of staff
- (iv) Loss of opportunities for contract dancers
- (v) Loss of “a major entertainment venue patronised by 100,000 patrons per year”.

Business Owner’s submission on balancing statutory objects

213. The Business Owner notes that while the other objects of the Act are mentioned, the Authority has not given sufficient weight to:

- the expectations, needs and aspirations of the community – as demonstrated through the petitions presented by the Business Owner in its earlier submissions, and the “recent election by subscribers of the *Time Out Sydney* iPhone application of Bada Bing as “Sydney’s leading nightclub”.
- the responsible development of related industries such as music entertainment, tourism and hospitality – including the fact that the venue is an “important outlet for musicians and djs” - demonstrated by a testimonial provided by the organiser of the Australian Independent Music Awards that forms part of the Business Owner’s submissions.

Business Owner’s submission on “harm minimisation”

214. The Business Owner submits that the statutory object is not to prevent harm *absolutely*. That cannot be done. The use of the word “minimise” in section 3(2)(a) is “consistent with the need to weight all relevant factors.”

215. The Business Owner submits that “an approach which requires the venue after certain hours, because there has been past episodes of harm occurring after those hours, reflects an approach that goes beyond harm minimisation”.

Business Owner's submission on "causation"

216. The Business Owner submits that:

"for the Authority to give due weight to specific incidences of violence and socially offensive behaviour, it must first find that the specific instances were directly related to and caused by the premises. This is an essential step before finding that any reduction in trading hours would advance the objects of harm minimisation (*Kordister v Director of Liquor Licensing* [2012] VSCA 325, [189], [195] and [196]."

217. The Business Owner notes that the Authority has given weight to events involving violent or intoxicated persons who were refused entry to the Premises. The Business Owner says that the Authority "correctly" acknowledged that the Business is not, strictly speaking, "at fault" for those incidents but the Authority is being "unreasonable" to find that these Events "demonstrate a propensity for violence, excessive drinking and alcohol related disturbance by people drawn the premises during late trading hours". The Business Owner argues that the fact that those persons attempted to gain entry to the Premises is "not related to and caused by the Premises".

218. The Business Owner takes issue with the Authority's characterisation of Event No 2 – which involved a shooting that occurred on Darlinghurst Road, shortly after the shooter and victim had been involved in a physical altercation on the Premises. The Business Owner argues that the two men had been involved in another altercation at a different venue prior to this incident and the incident relates more to that previous incident than the service of liquor at Bada Bing.

219. The Business Owner takes issue with the Authority's finding that this Event is "indicative of a culture of patrons who are attracted to the venue by reason of the type of venue and its late hours". The Business Owner says this finding is "wrong" and ignores the fact that "the majority of patrons are well behaved and do not engage in altercations".

220. The Business Owner submits that its venue has not been identified as a "level 1" or "level 2" declared premises in any of the nine rounds of the scheme administered by the Director General since the introduction of the scheme in 2008 for the classification of licensed premises under Schedule 4 to the Act.

221. The Business Owner submits that the NSW Police "ELORM" statistical model which assigns a risk rating to the venue shows the Premises is at only "moderate" risk for

violence and “moderate” for the risk of all offences and this “stands in stark contrast” to the Authority’s findings on the “culture” of its patrons.

222. The Business Owner takes issue with the refusal of entry to aggressive males in Event No 4. The Business Owner submits that there are 26 late trading venues operating in the Precinct between 4 and 5 am. The Business Owner submits that “if this incident is indicative of anything it is indicative of the venue’s determination to exclude people who might act inappropriately and thereby create a higher risk of alcohol related harm.”

Business Owner’s submission on “intoxication”

223. The Business Owner submits that it is “particularly unreasonable” for the Authority to continually find that the venue’s patrons are “intoxicated”. Intoxication is defined in the Act by reference to overt and manifest signs of intoxication. The Business Owner submits that such signs need to be “noticeable” in that they would be observable by any reasonable person in the position of the licensee or his staff members *Starkie v Von Tobruk* [2007] WASC 51. The Business Owner submits that “unless some of these signs are actually evident in a particular case, there is no basis for any licensee to exclude a person”.

224. The Business Owner refers to its submissions dated 18 June 2013 regarding the High Court’s observations to the effect that it is “impractical and counterproductive to seek to exclude people before they begin to show any signs of intoxication”. The Business Owner submits that:

“In many of the events reviewed by the Authority, there is simply no evidence of any outward or manifest signs of intoxication that should have been readily observable by the licensee or his employees within the venue. In some cases a finding of “intoxication” has been made regarding a patron hours after the event (such as events 31, 64, 74 and 97) and in circumstances where the person has a self-serving motive to suggest that they were at a greater level of vulnerability. In other cases (such as event nos 29 and 70) the proximate cause of the person’s behaviour was something other than the person’s consumption of alcohol at the venue. Yet based on such incidents, the Authority has been quick to draw a conclusion that there is “a culture of patrons drinking to excess on the premises”.

225. The Business Owners submits that the “objective record” is that the Premises has been subject to 809 recorded business inspections by Police since 20 June 2006 and that during this time the Business has only been found to have committed the offence of “permit intoxication” on one occasion. The Authority’s findings as to a

culture of patrons drinking to the point of intoxication “fly in the face” of this statistic.

226. The Business Owner submits that the NSW District Court has accepted that “no matter what steps are taken, it will not be possible to prevent some intoxication on licensed premises” - *R v Kenny* NSWDC (18 July 2008, Blackwell J, Unreported).
227. The Business Owner submits that the objective record on intoxication is “to its credit” and has been brought about by the “rigorous exclusion” of persons who “show possible signs of intoxication”.
228. The Business Owner submits that many of the Authority’s findings that the patron was intoxicated are based on COPS Reports where there has not been an opportunity for venue staff to assess the relevant patron at the relevant time.
229. The Business Owner submits that “intoxication” has been used by Police in the COPS Reports to describe persons who are affected by alcohol to any reasonable degree, rather than the standard prescribed by section 5 of the Act.
230. The Business Owner refers to Event No 67. The Business Owner contends that the woman in question was assessed by police as “sober” when she was dropped off at HMAS Kuttabul. The Business Owner submits that it was “not reasonably open” for the Authority to find that the woman was intoxicated on the “very limited evidence before the Authority”.
231. The Business Owner refers to the Authority’s finding on Event 25 that the person was likely to be intoxicated at the venue having been detected by Police driving with a 0.15 PCA reading. The Business Owner argues that just because the driver was recorded with a high level PCA offence, this does not necessarily make it likely that when he was on the Premises he was exhibiting the behaviours noted in *Starkie v Von Tobruk*.
232. The Business Owner submits that in order to lawfully find that the person was intoxicated at the venue there must be evidence of some outward manifest signs of intoxication that would be reasonably observable to the bystander at the venue.
233. The Business Owner refers to its submissions dated 18 June 2013, indicating that over a two month period identified by the Business Owner in that submission, only 14 people displaying outward signs of possible intoxication were recorded by the Business as having been removed from the venue. The Business Owner contrasts

this with the 2012 OLGR Audit of the Kings Cross Precinct, which found an average of 10 incidents per venue per month. That, it is submitted, is “at odds” with the Authority’s draft finding that there is a culture of people drinking to excess on the Premises.

Business Owner’s submission on the recent history of the Premises

234. The Business Owner further submits that “the current year, 2013 is wholly absent from the Authority’s reasoning and determination.”

235. The Business Owner submits that since December 2012 the business relationship with Police has experienced a marked improvement and this has been acknowledged by Police.

236. The Business Owner notes that it removed the former licensee, Mr John Henry on recommendation from the consultants engaged by the Business. The new licensee, Mr Russell has presented himself to Police. The Business Owner notes that Sergeant Brett Mills of Kings Cross Police has conducted Crime Scene Preservation Training of staff on 18 July 2013.

237. The Business Owner notes what it describes as a “marked decline” in the Events found by the Authority to have a reasonable nexus to the exercise of the authorisation. There were 30 found by the Authority in 2010, 24 in 2011 and 22 in 2012.

238. The Business Owner submits that the implementation of Part 5A of the *Regulation*, which commenced on 7 December 2012, has, according to a Press Release from the Minister dated 6 July 2013, been successful in reducing the number of assaults in the Kings Cross Precinct by one third. A second round of such measures will be implemented soon, including a requirement for ID scanners, enhanced barring orders, provisions to enable the revocation of RSA credentials and additional levels of management in high risk venues, including measures that restrict the service of alcohol which the Business Owner submits are “likely to have resulted in a substantial reduction in the number of intoxicated person who might otherwise attempt to gain entry to Bada Bing”.

239. The Business Owner submits that these recent developments establish that the Authority’s findings “cannot provide a sufficient or lawful predictive basis for findings as to likely future events”. The 10 months that have passed since the last Event, combined with these recent developments make it “entirely unsafe” for the

Authority to lawfully conclude that early closure is required, by reason of that past conduct.

Business Owner's submission on the benefits of late trading

240. The Business Owner submits that the Draft Decision fails to give “due weight” to the location of the Premises in Sydney’s “pre-eminent” late trading precinct of Kings Cross and that the Premises has traded for many years as an adult entertainment venue.
241. Sydney City Council research from 2009 indicates that “ Sydney’s night time economy generated \$15.1 Billion of revenue and represented 28.4% of all jobs”.
242. The Business Owner submits that the Authority appears to have ignored the reduction in assaults in the Precinct from April 2007 to March 2012 that has been identified in the Business Owner’s earlier submissions.
243. The Business Owner submits that the Authority “appears to have ignored” the Responsible Service of Alcohol provisions at the venue that are noted at pages 1273-1281 of the Police’s initial submissions - including two RSA Marshalls looking for signs of intoxication .The Business Owner submits that “all of this evidence is uncontested”.

Business Owner's submission on Event 118

244. The Business Owner challenges as “demonstrably wrong” the Authority’s finding on Event 118 where police suspected that bar staff were “free pouring” drinks. The Business Owner annexes a transcript from a Police interview with Rebecca Nolan which states that while bar staff may appear to free pour alcohol all bottles are affixed with stoppers and that evidence is corroborated by Ms April Ross – that evidence is “unchallenged by Police”. The Authority’s draft finding on this Event that bar staff were engaging in risky behaviour by free pouring drinks is “at odds with the evidence contained in the Police submission.”
245. The Business Owner submits that the Draft Decision “ignores” the risk profile assigned by the Police ELORM model to the Premises by comparison to other venues. The Business Owner refers to Section 8 of its submission dated 6 May 2013. Police have not submitted any updated ELORM data for the Premises.

Business Owner's submission on the impact upon Police resources

246. The Business Owner submits that the Authority's finding that the Premises is giving rise to a disproportionate drain upon Police local Police resources and other resources is made "without evidence".
247. The Business Owner refers to para 8.15 and 8.16 of its submission dated 6 May 2013, which refers to those Kings Cross venues with the largest number of assaults and notes that Bada Bing did not rate a mention in those lists.

Submission requesting detailed reasons

248. The Business Owner submits that the Authority has made "over generalised findings" on the lack of diligence by managers with regard to compliance with licence conditions - such as the condition requiring no touching. The Business Owner submits that it is "not a lack of diligence but the difficulty in enforcing this condition" which requires a "change of mindset among dancers performing at the venue".
249. The Business Owner submits that the Authority's findings of laxity with regard to the supervision of intoxication levels are a product of accepting Police observations without regard to the Business Owner's evidence on its RSA practices.
250. The Business Owner says that it is "inappropriate" for the Authority to make prejudicial remarks about the management of the business without providing more precise reasons and particularised findings.
251. The Business Owner seeks reasons on why the matters identified by the Authority in support of its decision to reduce the hours rather than revoke the ETA are not matters that "negate" the predictive value of the 84 events relied upon in the Draft Decision for taking action.
252. The Business Owner questions why closing its venue earlier would achieve the objects of the legislation when patrons would simply attend the other 33 venues that are open between 3 and 4 am which the Business Owner says have a combined patron capacity of 8,433 persons.
253. The Business Owner submits that Police have not provided updated ELORM data because it is likely that this venue is rated at a lower level than other licensed premises such as:
- Trademark Hotel

- Candy's Nightclub
- Showgirls
- 77
- Sugarmill Hotel
- World Bar
- Crest Hotel

254. The Business Owner submits that those other venues have been recorded as among the worst venues for assaults in Kings Cross, whereas Bada Bing has not featured on that list, nor has it been a Level 1 or 2 "declared premises" under Schedule 4 of the Act.

255. In the alternative, if a reason for reducing hours is to reduce exposure to troublesome would-be patrons seeking a strip club, the Business Owner argues that those persons will simply seek such entertainment at nearby venues such as:

- Showgirls
- Dreamgirls
- Stripperama
- Love Machine

256. The Business Owner seeks that the final reasons should address these points.

Business Owner's alternative proposal for reduced hours

257. Without any admission of liability the Business Owner proposes alternative action whereby the licenced hours be amended as follows:

- The Premises may trade between Midday and 5 am the next morning on Monday, Tuesday, Wednesday and Thursday (except when one of those days is a public holiday)
- The Premises may trade between Midday and 6 am the next morning on Friday, Saturday, Sunday and Monday.

258. The Business Owner submits that this proposal would still cause financial damage but it is "possible" that the venue might remain open with reduced staff.

259. The Business Owner undertakes to engage its consultants Pickard and Smith to review the conduct of the venue one weekend per month and provide reports to the Authority and Kings Cross Police by the middle of the succeeding month.

260. The Business Owner “reserves its rights” with regard to the Draft Decision.

Affidavit of Mr Kyricaos Papadopoulos Dated 30 September 2013

261. In this sworn statement the sole company director and “major shareholder” of the Business Owner makes the following contentions:

- (i) The Business Owner operates the Business under a lease from the Premises Owner Sapphire Suite Pty Ltd.
- (ii) The rental to be paid is \$259, 587 per annum, plus “outgoings” of approximately \$60, 000 per annum.
- (iii) The lease expires on 28 February 2014.
- (iv) The Business Owner has an option to renew the lease for a further term of 4 years.
- (v) Mr Papadopoulos has “personally guaranteed” due performance and observance of the covenants of the lease.
- (vi) The sale of liquor is an integral part of the Business.
- (vii) The Business offers adult entertainment in the form of “strip” entertainment “as well as “mainstream dance facilities”.
- (viii) The Business engages DJs and occasional live bands.
- (ix) The Premises has traded with an extended licensed trading hours for “many years” and prior to the acquisition of the lease in 2004.
- (x) The Business commenced in 2005 and has enjoyed 24/7 licensed trading hours throughout that period.
- (xi) A “large majority” of turnover is derived from liquor sales.
- (xii) Some income is derived from door charges and private strip shows.
- (xiii) The Business generally trades in accordance with customer demand, which means it generally opens from Monday to Thursday from 8pm to 6am the next day and from Friday to Sunday from 8pm to 7 or 8 am the next day.
- (xiv) As an adult entertainment venue “Bada Bing” is often attended by patrons “as their last venue after they have been out to dinner and/or drinks at another venue”. For this reason it is “particularly important” that the Business check people for signs of intoxication before entry” and the venue “refuse a good many people who present at the door showing signs of intoxication”.
- (xv) Mr Papadopoulos has been managing director since the Business first opened.
- (xvi) Approximately 18% of revenue of the Business is earned before midnight.
- (xvii) Approximately 18% of revenue is earned from midnight to 2 am.
- (xviii) Approximately 40% of revenue is earned from 2-4 am.

- (xix) Approximately 25% of revenue is earned from 4-5 am although due to Regulations that commenced in December 2012 all Kings Cross Premises may not serve liquor between 4 and 5 am.
- (xx) Approximately 20% of revenue is earned between 5 am and close.
- (xxi) Approximately two thirds of all trade is conducted on Friday and Saturday nights.
- (xxii) If the Business is required to close at 3 am and have a lockout at 2 am the Business will lose 60% of its revenue and immediately become unviable, become insolvent and be forced to close in a short period of time.
- (xxiii) All other adult entertainment venues in Kings Cross (*Show Girls, Dream Girls, Stripperama and Love Machine*) trade until at least 5 am most nights of the week.
- (xxiv) Given the “nature of the patronage for adult entertainment venues” trading in the early hours of the morning is an “essential feature” of such business.
- (xxv) Should the Business close this will result in the loss of the following jobs:
- 3 bar staff – 2 on week nights
 - 2 glass collectors – 1 on week nights
 - 2 cashiers – 1 on week nights
 - 1 licensee who works “four shifts a week” and who is relieved by a “senior manager” when not on duty
 - 2 RSA Marshalls on Friday and Saturday nights
 - 6 waitresses – 3 on week nights
 - 2 cleaners
 - 3 security guard contractors – 2 engaged during the week.
- (xxvi) Approximately 10-20 strippers are engaged by the Business at any one time, who are not employed but earn money through tips and fees paid for private strip performances
- (xxvii) A “number” of disc jockeys are also engaged by the venue.
- (xxviii) Mr Papadopoulos and his wife derive their income from the Business – including wages plus dividends paid by the Business.
- (xxix) Should the Business close Mr Papadopoulos apprehends that he will not be able to pay the \$1 million dollar mortgage on the family home.

Annexures to Business Owner Submissions

262. The Business Owner annexes the following material to its submission on the Draft Decision:

- (i) Attachment 1- copy of screen shot from “Time Out” mobile phone application showing the Club to be the most popular club with users of that mobile device application at that time
- (ii) Attachment 2 – Media Release by Minister for Hospitality dated 6 July 2013 “Kings Cross Plan of Management a Success So Far”
- (iii) Attachment 3 - Media Release by Minister for Hospitality dated 13 September 2013 “ID Scanners to Operate in High Risk Kings Cross Venues”
- (iv) Attachment 4 – Extract of Interview between Police and Ms Rebecca Nolan, a bar staff member regarding *Police v Jonathan Henry* where she discusses “free pouring” and the use of stoppers in alcohol bottles. Also provided is an extract from a statement by Ms April Ross, another bar staff member for the same matter.

Letter from Angelopoulos and Michael Accountants dated 1 October 2013

263. In this short unsworn letter the Business Owner’s accountant states that the Company derives a “significant” amount of its revenue after 3 am and that “we believe” that closure of the business at 3 am will be “unsustainable” and will result in “financial hardship” for Mr Papadopoulos and his family.

PREMISES OWNER’S SUBMISSION DATED 30 SEPTEMBER 2013

264. Briefly, the main points made by the Premises Owner in response to the Draft Decision are as follows:

- (i) The Authority should give “due consideration” and “equal weight” to all of the statutory objects and considerations prescribed by section 3.
- (ii) Adverse findings against the Business Owner should not result in an “unjust” outcome for the Premises Owner.
- (iii) The Premises Owner submits a valuation from Mr Phil Rennie dated 30 September 2013 which demonstrates a “significant reduction” in the value of the freehold should the liquor licence attaching to the Premises be varied as proposed by the Authority in the Draft Decision. The valuer provides a value of the property as currently leased and a value should the Draft Decision be implemented (the Premises Owner has asked that these figures not be disclosed, but the Authority observes that there is a substantial difference in the two valuations).

- (iv) The Premises owner submits a report from the Premises Owner's accountant, Mr Kalogerou, dated 30 September 2013 which, it is said "demonstrates the financial impact" that the implementation of the Draft Decision will have on the Premises Owner business. The Premises Owner has requested that the Authority not disclose the specific financial information provided. Without disclosing figures, the Authority notes that in this brief, unsworn letter the Premises Owner's accountant makes some observations as to the adverse impact that may flow to the Premises Owner on the assumption that the Business Owner becomes unable to pay the rent in accordance with the current lease dated 18 April 2008 and if the Business Owner does not renew the lease. (The Authority notes that the accountant does not provide a counterfactual as to what income the Premises may earn from an alternative tenant should the Draft Decision be implemented). The Accountant also provides observations as to what may occur under certain financial arrangements should the value of the property be reduced in line with the valuer's estimate.
- (v) The Premises Owners submits that it purchased the property of the Premises subject to the existing lease "which was unfortunately not particularly strong with respect to covenants relating to the liquor licence". The Premises Owner contends that this was likely due to the "vastly different regulatory environment".
- (vi) The Premises Owner further contends that it had "no opportunity to intervene even if it had a contractual capacity to do so" because it was "simply not aware of the alleged incidents that the applicant had attributed to the performance of the operator of the business."
- (vii) The Premises Owner submits that the Draft Decision "does not acknowledge the wider impacts of a decision of this nature for the liquor, tourism entertainment and hospitality industries"
- (viii) The Premises Owner submits that the Authority has "failed to ensure" that the Applicant provides comparative material about other licensed venues in Kings Cross.
- (ix) The Premises Owner submits that the Applicant is the only party in a position to disclose comparative material about the performance of other premises in Kings Cross. The Premises Owner submits that the Authority should draw a "negative inference" from the failure by Police to produce such material.
- (x) The Premises Owner further submits that updated material for 2013 should be provided about the Premises "to identify the context of events attributed to Bada Bing" and to ascertain whether recent legislative developments are having a positive impact with the Premises and the Precinct generally.

- (xi) The Premises Owner submits that the strongest clause it has in the lease agreement is clause 19.2 which provides that if adverse findings are made in “disciplinary proceedings” then the lessor has a right of re-entry.
- (xii) The Premises Owner submits that “it is not appropriate” for Police to bring “what is essentially a disciplinary complaint” under section 51 of the Act.
- (xiii) The Premises Owner submits that it is “prepared to operate the business” should the current lease be terminated and proposes to do so through a related company - Sapphire Lounge Pty Ltd - which has “operated in the area for a significant period of time”.
- (xiv) The Premises Owner submits that the Authority “can have confidence” that the business will be better managed” under the Premises Owner.
- (xv) The Premises Owner “has a significant stake” in the orderly operation of the Business because of the “multitude” of obligations it has to support the Premises Owner’s Director Mr Saleh and his family.
- (xvi) The Premises Owner submits that the Applicant has not in any way challenged the good character of Mr Saleh or his “significant experience” as a long standing Kings Cross business proprietor.
- (xvii) The Premises Owner submits that granting the Application would “not necessarily be effective” in addressing the harms identified by the Applicant.
- (xviii) The current lease expires on 28 February 2014. The lessee is required to serve notice of its intention to exercise the option by no later than 28 November 2013. That is unlikely to occur if the Authority finally determines the matter in line with the Draft Decision.
- (xix) The Business Owner will suffer no significant ongoing detriment if they do not take up the option of the lease, but the Premises Owner will be “burdened with its obligations as mortgagee”, with “significantly less capacity to derive income” from the Premises.
- (xx) The Premises Owner notes that “interests associated with the lessee” have acquired the freehold of the Bank Hotel at 42 Darlinghurst Road Kings Cross and contends that these parties intend to operate “a similar style venue” to the current Bada Bing operation. The Hotel licence is authorised to trade until 5am daily. This will enable the lessee to continue to operate close to the current address which will seriously undermine the effect of taking action against the Premises.
- (xxi) The Premises Owner submits extracts from the GLS system and ASIC searches that demonstrate that Asteri Holdings Pty Ltd is now the licensee of the Bank Hotel. An ASIC search discloses that Mr Manthos Papadopoulos is the current sole officer of that company and he and Kyriacos Papadopoulos are the shareholders.

(xxii) The Premises Owner submits that “it is likely that the issues identified with respect to which the Bada Bing has operating in the past will present in relation to the operation of the Bank Hotel”. It is contended that it is “very likely” that were the Draft Decision to be implemented, the Business Owner will reopen business on the premises of the Bank Hotel. This means that the Premises Owner will be the only party who is adversely affected by the Authority’s decision.

Annexures to the Premises Owner Submission

265. The Premises Owner attaches the following material to its submission on the Draft Decision:

- (i) Annexure 1 is a valuation of the property of the Premises by Mr Phil Rennie dated 30 September 2013.
- (ii) Annexure 2 is an unsworn and unsigned letter from Anthony Kalogerou, Premises Owner’s accountant, dated 30 September 2013.
- (iii) Annexure 3 is an ASIC Search for Marathon Enterprises Pty Ltd – the Business Owner Company disclosing sole director Kyriacos Papadopoulos and shareholders Kyriacos and Manthos Papadopoulos.
- (iv) Annexure 4 is a GLS extract for the Bank Hotel, which records that the licensee is Asteri Holdings Pty Ltd.
- (v) Annexure 5 is an ASIC Search for Asteri Holdings Pty Ltd whose sole director is Mathos Papadopoulos and shareholders are Kyriacos and Manthos Papadopoulos and Fairville Holdings Pty Ltd.
- (vi) Annexure 6 is an Land and Property Information property title search for two properties in Darlinghurst owned by Asteri Holdings Pty Ltd.

LATE SUBMISSION BY THE BUSINESS OWNER

266. On 22 October the Business Owner’s solicitors Hatzis Cusack purported to file a report from the Business Owner’s consultants with further observations on the operation of the Premises. On 24 October Police objected to the receipt of this later submission. Without repeating the observations in that document the Authority has decided to consider it.

REASONS FOR DECISION

Adverse Events Found by the Authority

267. Of the 129 adverse events relied upon by the Applicant, the Authority notes the following COPS Reported incidents (“**Events**”) which appear on their face to be attributable to the exercise of the extended trading authorisation:

- (i) Event 1: 3 am on 17 June 2007 – A brawl occurred on the Premises involving “Comanchero” OMCG members. One security guard was shot in buttock and another was shot in the groin. The “Sergeant at Arms” of the Comanchero OMCG was convicted of assault and received a sentence of 23 months imprisonment.
- (ii) Event 2: 2 am on 17 May 2010 - Two male patrons were involved in an incident of physical violence on the Premises and after being removed from the venue one of those patrons involved in the altercation retrieved a gun and shot the other patron in the leg and groin while the two men were on the street in Darlinghurst Road.
- (iii) Event 3: 4 am on 23 May 2009 – A male patron was intoxicated and caused a physical altercation with venue security staff after he was behaving inappropriately towards female staff. This altercation resulted in injuries including bleeding from the patron’s face and nose.
- (iv) Event 4: 5.55 am on (Sunday) 9 August 2009 – Several aggressive, intoxicated males caused a disturbance at the entry to the Premises after being denied entry. One of the men was bloody from facial injuries when Police engaged them. The men were arrested for failing to leave the vicinity of the Premises when required.
- (v) Event 5: 2 am on 22 August 2009 - Glassing assault on the Premises perpetrated by a female worker engaged by the Business upon a female patron at the venue. The assault victim, who received four stitches to her face, was intoxicated and unfit to make a statement to Police when they attended her in hospital.
- (vi) Event 7: 5 am on 9 October 2009 – The Manager of the Premises, Mr John Turcotte, was noticeably affected by alcohol while on duty when engaged by Police.

- (vii) Event 8: 2 am, 19 November 2009 – Assault on the Premises by a male patron upon another male patron. During this altercation one of the men fell down the stairs, resulting in an injury to his face and ear and requiring hospital treatment.
- (viii) Event 10: 2.20 am, 28 December 2009 – A stripper is detected by Police engaging in physical contact with a patron during performance. A compliance notice was issued to the licensee by Police.
- (ix) Event 13: 1.30 am, 24 January 2010 – A male patron is required to leave the Premises due to his level of intoxication and then creates a disturbance outside the Premises by refusing to leave the vicinity when requested, requiring the involvement of Police and resulting in the issue of a Penalty Notice to the patron for failing to leave the vicinity of licensed premises.
- (x) Event 14: 4 am 26 February 2010 – A male patron was asked to leave the Premises due to his level of intoxication, then refused to leave and attempted to re-enter the venue, struggling with security staff. The male fell onto the ground in the process, resulting in large cut and swelling to his forehead and requiring treatment by an ambulance.
- (xi) Event 15: 9.45 pm on 21 March 2010 – A plain clothes Police officer passes through venue security staff for a covert business inspection. Notwithstanding being inspected by security staff using a hand held “wand” device, the officer is able to enter the Premises with his concealed firearm undetected.
- (xii) Event 16: 2.45 am on 21 March 2010 – Two male patrons of the Premises became engaged in a melee outside the Premises with a number of other males on Darlinghurst Road after last drinking on the Premises. Police intervened in the melee and directed the two patrons to move on.
- (xiii) Event 17: 3.55 am on 27 March 2010 – Police detected the contravention of a licence condition requiring that two licensed uniformed security guards be present inside the Premises whenever the venue is open for trading.
- (xiv) Event 18: 4.30 am on 23 March 2010 – Police investigated an allegation of assault made by a female passer-by. The security staff member questioned by Police refused to comment, neither confirming nor denying the allegation. The matter is relevant only in that it indicates some lack of cooperation with Police by security staff at a high risk venue.

- (xv) Event 19: 1.30 am on 12 April 2010 – An intoxicated male patron was detected by Police on the Premises and the licensee was issued with an infringement notice for permitting intoxication on the Premises.
- (xvi) Event 20: 1.55 am on 17 April 2010 – Four males were involved in a physical altercation on Kellet Street. One male, who had last been drinking on the Premises and was seen by Police throwing punches, fled the scene requiring a Police chase into the Vegas Hotel where he was apprehended. The male was moderately affected by alcohol.
- (xvii) Event 21: 2.45 am on 9 May 2010 - Three male members of the Comanchero OMCG caused a physical altercation with venue security staff while attempting to gain entry to the Premises. The incident required the intervention of a numerous Police officers, one of whom received a back injury when a security guard fell upon her during the course of a struggle with the OMCG members in the stairway/entrance to the Premises. This resulted in the Police officer being off work for one month. The OMCG members were charged with affray, fail to quit and assault. One of the OMCG members was convicted and received a 2 years Bond, and ordered not to enter any part of Kings Cross or Darlinghurst for 12 months.
- (xviii) Event 23: 3.25 am on 27 May 2013 - A male patron was asked to leave the Premises due to his level of intoxication. The patron was requested by Police to stay 50 metres away from the Premises but then continued to argue with Police, creating disturbance and precipitating his arrest for failure to quit, for which the patron was issued an infringement notice by Police.
- (xix) Event 24: 4.10 am on 3 June 2013 – An intoxicated female under the influence of alcohol and/or cocaine created a disturbance at the entry to the Premises after brandishing a bag of cocaine to a security guard, who seized the drugs from her. The female dialled the “000” emergency line to report the theft of her drugs by the security guard. Police attended and arrested the female, who received a 2 year bond under section 10 of the *Crimes Sentencing Procedure Act 1999*.
- (xx) Event 25: 3.40 am on 4 June 2012 – A patron of the Premises was detected by Police driving through Surry Hills while committing a high range PCA offence with a prescribed concentration of alcohol breath analysis reading of 0.15. The patron had been last drinking on the Premises between 9.45 pm and 3.10 am.

- (xxi) Event 28: 3 am on 30 July 2010 – A male patron of the Premises was ejected for touching or trying to touch the strippers while they were performing. The male, who was intoxicated when engaged by Police, was injured after falling down the stairs. The patron then was abusive to Police outside and near to the entry of the Premises.
- (xxii) Event 29: 3.40 am on 30 July 2010 –A male patron’s misconduct precipitated a physical altercation on the Premises with the Manager, Mr Turcotte and security staff. The patron suffered a black eye, swelling and sore ribs as a result of the altercation. When prosecuted for assault Mr Turcotte and the security staff were found by the Local Court to have acted in self- defence.
- (xxiii) Event 31: 12.20 am 15 August 2010 - A male patron, who was moderately intoxicated when engaged by Police, attempted to trip over a police officer as the officer moved through the Premises to conduct a business inspection. The patron was removed from the Premises by Police.
- (xxiv) Event 33: 12.01 am on 22 August 2010 – Police detected that the licensee was failing to maintain an incident register for the Premises for the months of June, July and August 2010 as required by a condition of the licence. An infringement notice was issued by Police for breach of this condition.
- (xxv) Event 35: 3-3.45 am on 30 August 2010 - Female patron was asked to leave the Premises by venue staff due to her level of intoxication. The female then attempted to re-enter the Premises, causing a physical altercation with security staff. Police intervened in the disturbance occurring outside the Premises.
- (xxvi) Event 36: 4.45 am on 5 September 2010 – A male patron was detected by Police urinating in a public place in Kings Cross after last drinking on the Premises. When engaged by Police the patron was intoxicated. The patron was issued with an infringement notice for offensive conduct.
- (xxvii) Event 37: 12.15 am on 11 September 2010 – A stripper was detected by Police engaging in physical contact with a male patron during her performance. The licensee was issued with an infringement notice for breach of a licence condition.
- (xxviii) Event 39: 1.40 am on 26 September 2010 – A group of female patrons were removed by venue staff from the Premises. The patrons then refused to leave the vicinity when directed by security staff and then refused to leave when Police intervened and directed them to do so. One of the patrons hindered and

assaulted a Police officer and that patron was arrested and charged with resisting arrest and assaulting a police officer, receiving a two year bond under section 10 of the *Crime (Sentencing Procedure) Act 1999*.

(xxix) Event 40: 1.30 am on 26 September 2010 – As she was exiting the Premises a female patron got into a physical altercation with a male who was queuing to enter the Premises. The female patron then began yelling at security staff from a location of about 10 metres away from the entry to the Premises. Police then intervened and directed her to move on but the patron did not comply. Police issued her with an infringement notice for failing to leave the vicinity of licensed premises.

(xxx) Event 41: 3 am on 17 October 2010 - A brawl occurred on Darlinghurst Road involving some 10-12 males. One of the males involved in this brawl was last drinking on the Premises and was moderately affected by alcohol when engaged by Police, who observed him to be throwing punches. Police wrestled with this male to the ground.

(xxxi) Event 42: 3.45 am on 17 October 2010 – A male patron was detected urinating in a public place in Kings Cross after last drinking on the Premises. The male was cautioned by Police.

(xxxii) Event 43: 3.40 am on 30 October 2010 – A male patron got involved in a physical altercation with a person or persons unknown in the men's toilets and was robbed of his wallet in the process. The patron suffered a swollen lip from the altercation and was escorted off the Premises by venue security before reporting the alleged robbery to Police. The alleged perpetrator denied the assault and claimed that the male patron was trying to buy cocaine on the Premises. The patron did not wish to pursue his assault claim with Police after his wallet was recovered.

(xxxiii) Event 44: 4.30 am on 30 October 2010 - There was a physical altercation on the Premises resulting in two male patrons being ejected from the Premises. One of those patrons suffered a broken jaw and was bleeding from the mouth when engaged by Police. That patron spat blood into a Police officer's mouth. One of the patrons punched a glass panel of a neighbouring business while outside the Premises. The Manager, Mr Turcotte, told Police that he did not know what happened and declined to provide Police with a statement as to what had occurred.

- (xxxiv) Event 47: 12.15 am on 3 November 2010 - A male patron was removed from the Premises for touching strippers while they were performing. The patron then began yelling and pushing a security guard while outside the Premises. The patron swung a punch at a security guard and had to be physically restrained by Premises security staff until Police arrived. The patron was intoxicated when engaged by Police and was issued with an infringement notice for failing to quit licensed premises.
- (xxxv) Event 50: 4 am on 17 December 2010 - A male patron was removed from the Premises and then continued to argue with venue security staff outside the Premises. The patron was intoxicated when engaged by Police, to the point whereby he was stumbling onto the roadway and was assessed to be at risk of harm to himself. The patron was taken into Police custody at Surry Hills Police Centre for his own protection and released the next morning. Following his release, the patron returned to the Police station at about 7.35 am and abused Police officers, and was then issued an infringement notice for offensive language.
- (xxxvi) Event 52: 3.35 am on 29 December 2010 - A male patron was punched in the face by another male patron on the Premises. The assault victim was conveyed to hospital for treatment for injuries to his nose and eye. This fight on Premises caused security staff to eject people from the venue and Police intervened when a member of the public informed them of what was occurring.
- (xxxvii) Event 54: 3.30 am on 2 January 2011 – A male patron was engaged by Police while intoxicated, in public, near the El Alamein fountain in Kings Cross after leaving the Premises. He told Police that he had so many drinks that he had lost count.
- (xxxviii) Event 55: 4 am on 9 January 2011 - A female patron had been ejected from the Premises by security. The patron was intoxicated when engaged by Police and was screaming loudly at Police and venue security staff outside the Premises. Police issued an infringement notice against the patron for offensive conduct and the patron was moved on.
- (xxxix) Event 58: 4.20 am on 15 January 2011 - A male patron bit a female patron on her cheek in the course of an altercation on the Premises. The female patron's wound was such that it required first aid and the male was ejected from the Premises. The male patron was engaged by Police outside the

Premises while arguing with another male. The male patron was arrested for the assault and Police applied for an Apprehended Domestic Violence order.

- (xl) Event 60: 3.00 am on 26 February 2011 – A male patron was detected by Police engaging in physical contact with a stripper while she was performing, contrary to a condition of the licence. An infringement notice was issued to the licensee by Police for breach of a licence condition.

- (xli) Event 61: 6.20 am on 27 February 2011 – Two men were by fighting on Darlinghurst Road after last drinking on the Premises. They were both moderately intoxicated when engaged by Police.

- (xlii) Event 64: 5.00 am on 12 April 2011 - A female patron, a tourist, was drinking on the Premises until 5 am and went home to her residence at 5.15 am. The patron attended Kings Cross Police station at 5.40 pm to report losing her handbag. The patron advises Police that she could not remember where she left her bag because she was too intoxicated. The Event is only relevant by reason that the patron, who was on the Premises until 5 am recounts being too drunk to know where she left her handbag.

- (xliii) Event 65: 2.25 am on 16 November 2011 - A security guard flagged down Police to remove a female from the stairway/entry to the Premises, who had been refused entry to the venue at the cashbox and was now herself refusing to leave the stairway to the Premises. The female was abusive to Police and refused to cooperate with Police requests to provide identification or to leave the vicinity when directed by Police to do so. The female was arrested and charged by Police for failing to leave licensed premises.

- (xliv) Event 67: 5 am on 13 May 2011 -A female patron had left the Premises and was on the street, near the Premises, when she was engaged by Police. The female was speaking to a group of males and was observed by Police to be intoxicated to the point of dropping her hand bag and having difficulty picking it up again off the ground. Police conveyed the patron to her nearby residence at HMAS Kuttabul having assessed her as vulnerable.

- (xlv) Event 69: 2.35 am on 25 April 2011 – A male patron was detected by Police engaging in physical contact with a stripper in a private room during her performance, contrary to a condition on the licence. A warning was issued by Police to the licensee.

- (xlvi) Event 70: 2.10 am on 5 June 2011 – A security guard from another venue pursued a male along Darlinghurst Road and into Bayswater Road, by reason that the male had allegedly stolen bottles of alcohol from that other licensed premises. Two males and a female then became involved in a physical struggle in the middle of Bayswater Road. When Police attempted to move all the parties off the road, the female resisted and pushed back at Police, verbally accusing Police and attempting to bite a Police officer. The female involved was heavily intoxicated by liquor and/or under the influence of a prohibited drug when engaged by Police and had been last drinking on the Premises. The female was issued with an infringement notice by Police for offensive behaviour.
- (xlvii) Event 72: 3.30 am on 29 June 2011 – A female patron who was highly intoxicated when engaged by Police had been required to leave the Premises. This patron then deliberately lay down on the ground outside of the Premises and refused to leave the vicinity, falsely claiming to have been raped. The female has a history of mental illness and making false allegations and was taken away by an ambulance to hospital. This matter is a relevant incident of disturbance, notwithstanding the patron's mental illness, due to her state of her intoxication when engaged by Police.
- (xlviii) Event 73: 4.15 am on 1 July 2011 - A high level PCA offence was committed by a patron who had last drunk on the Premises and was detected driving by Police in Surry Hills. The patron drove through a red traffic light and was detected with a prescribed concentration of alcohol breath analysis reading of 0.15.
- (xlix) Event 75: 4.40 am on 1 August 2011 - A mid-range PCA offence was committed by a patron after last drinking on the Premises and being detected by Police while driving through Beaconsfield. The patron recorded a breath analysis reading of 0.138, and also engaged in negligent driving by colliding with a parked car and then another vehicle. The patron was conveyed to hospital for treatment.
- (l) Event 77: 1.00 am on 27 August 2011 – Police detected a stripper engaging in physical contact with two male patrons during her performance, contrary to a condition of the licence. Police issued the licensee with two infringement notices for breach of the licence condition.
- (li) Event 78: 6.15 am on (Sunday) 4 September 2011 - A male patron approached Police on Bayswater and Kellett Streets after drinking on the Premises and was

moderately affected by alcohol. The patron used offensive language when speaking to Police and Police pursued him after he ran away from them. Police issued the patron with an infringement notice for offensive conduct.

- (lii) Event 81: between 10pm and 3 am on 24-25 September 2011 – A sixteen year old female (minor) entered the Premises at around 10pm for the purposes of attending her brother’s birthday party. The minor remained drinking on the Premises until she left at 3 am. The minor became intoxicated after drinking two bourbon and cokes, 1 Malibu and solo and 1 shot of Galliano. The minor was then introduced to a considerably older male on the Premises, who purchased and supplied the minor with an unspecified number of “wet pussy” (vodka, schnapps and cranberry) shots, which the minor also consumed. The minor became intoxicated while on the Premises and after leaving at around 3am in a luxury car with the older male, the minor claims to have been sexually assaulted inside the private residence of this male. The minor advised Police on 14 November 2011 that she did not wish to take the sexual assault complaint further. While there is insufficient evidence to find whether a sexual assault occurred and the minor is likely to have obtained entry to the Premises using some form of false identification, the Event is relevant in that a 16 year old was able to remain on the premises for 5 hours and become intoxicated.

- (liii) Event 82: 13 October 2011 - In a matter related to Event 81, Police attended the Premises to investigate the alleged sexual assault of the minor on premises on 24 September 2011. Police issued a Notice to Produce, under the Gaming and Liquor Administration Act 2007, all camera CCTV footage for 10 pm to 3 am on 24-25 September 2011. The Notice required production of the footage by 22 October 2011, but the footage was not produced by the date specified. When Police returned to the Premises on 22 October 2011 to collect the CCTV footage they were informed by the manager, Mr Turcotte, that he had requested a staff member to produce the CCTV and that it would be produced in the next few days. When Police again requested production of the CCTV on 28 October 2011 Mr Turcotte advised that he had been ill all week and would try to retrieve the footage. On 29 October 2011 Mr Turcotte advised Police that the footage had been written over by the CCTV system and was unable to be retrieved. Mr Turcotte declined a Police request to be interviewed about his failure to comply with the Notice to Produce. Police issued the licensee with an infringement notice for failure to comply with a licence condition requiring the maintenance of CCTV for a period of 30 days.

- (liv) Event 83: 1.30 am on 9 October 2011 – A male patron was asked to leave the Premises due to his inappropriate conduct towards strippers. He refused to

leave. Security staff sought the assistance of Police to remove the patron, who was intoxicated and argumentative when Police engaged him. The patron was arrested for failing to quit licensed premises.

- (lv) Event 85: 2.38 am on 16 October 2011 - A male patron was intoxicated on the Premises and was affected by alcohol to the point that he was falling off his chair. The patron was asked to leave by Police by reason of his intoxication. The patron then became argumentative with Police and was issued with a move on direction by Police.
- (lvi) Event 90: 2.40 am on 19 November 2011 – A venue security staff member stood over a male patron, being a visiting member of the French Navy, by reason that the patron was not tipping the strippers. When the patron produced an envelope with \$500 cash in it from his pocket, the staff member took the envelope from him without his consent. After a complaint to Police and investigation the security staff member was dismissed by the Business for his misconduct.
- (lvii) Event 91: 2.10 am on 20 November 2011 – During a covert inspection Police detected a male patron intoxicated on the Premises. The patron was not removed until the Police officer brought the person to the attention of security staff.
- (lviii) Event 92: 2 am on 15 February 2011 – A stripper consumed 7 alcoholic drinks on the Premises between 9pm and 2 am. The stripper became involved in a physical altercation with a male patron near the exit to the Premises and was punched in the face by the male.
- (lix) Event 98: 4.30 am on 30 January 2012 – A male patron was intoxicated and fell asleep on the Premises. The patron became aggressive when awoken by security staff and required to leave the Premises. Outside the Premises the patron took off his shirt and was yelling at security staff in a very aggressive manner, standing a short distance away from the entry point to the Premises on Darlinghurst Road. As shown by CCTV footage, the patron was then punched in the face by a security guard of the Premises, who suddenly moved away from a group of other guards who were standing near the entry point of the Premises to walk over and hit the patron. Upon being struck, the patron fell to the ground where he lay motionless and bleeding and was left unattended for several minutes. A passer-by attended to the patron and an ambulance then arrived to take the patron to hospital for treatment. The patron, who has an extensive criminal history in Western Australia, did not pursue an assault claim.

One of the security guards provided a false account of the incident on the venue's Incident Register of the Premises. This guard's services were terminated by the Business as a result of this Event.

(lx) Event 100: 29 February 2012 - A male aggressively confronted venue security staff outside the Premises, shaping up against them. CCTV shows that several security staff from the Premises tackle the man and during the ensuing altercation the male is punched to the head and this renders him unconscious. After Police render assistance to the man he then stands up and throws punches in the direction of security staff. Police then arrest the male. Security staff declined to provide a statement about the incident. When Police requested CCTV from the duty manager he advised Police that only the licensee was able to operate the CCTV system. Police obtained the CCTV footage and reviewed it on 20 April 2012. Police records note that the male patron was intoxicated when they engaged the male and that he and last drank on the Premises.

(lxi) Event 102: 5.10 am on 14 March 2012 – A driver was detected by Police in Surry Hills committing a mid-Range PCA offence with a breath analysis reading of 0.145 while travelling in excess of the speed limit, swerving in her lane and then colliding with a parked car. The driver was last drinking on the Premises.

(lxii) Event 103: 1.34 am on 9 April 2012 - A male patron punched another male patron numerous times to the head on the Premises until the perpetrator was restrained by security staff. The perpetrator of the assault, a member of the "Rebels" OMCG, then produced a firearm and shot the assault victim in the shoulder while they were on the Premises. An ambulance attended to deal with the shooting victim.

(lxiii) Event 104: 3am on 25 April 2012 - Two RSA Marshals working on the Premises instigated a physical altercation on the Premises with four patrons, (three male and one female), without provocation. All four patrons received injuries as a consequence of this altercation. The female patron was struck to her head, knocking her unconscious. One of the male patrons involved in this incident was intoxicated and demanded the assistance of a nearby ambulance that was nearby the Premises. Two of the male patrons demanded the immediate assistance of this ambulance in an aggressive and intimidating manner, prompting the ambulance staff to call for Police assistance. One of the male patrons was taken to hospital for treatment. An incorrect account of the incident was recorded by the staff involved with the altercation in the venue's

Incident Register. The crime scene was cleaned up by staff, in contravention of a condition of the licence condition requiring preservation of the crime scene.

(lxiv) Event 105: 2.15 am on 5 May 2012 – A male patron was removed from the Premises by venue staff. The patron then argued with security staff outside the Premises, demanding re-entry. The patron was intoxicated when engaged by Police and was directed to leave the vicinity by Police. Police issued the patron with an infringement notice for failing to leave licensed premises.

(lxv) Event 107: 12.30 am on 26 May 2012 – Police detected a stripper engaging in physical contact with a male patron during her performance contrary to a condition of the licence. Police issued the licensee with an infringement notice for breach of this condition.

(lxvi) Event 108: 2.00 am on 8 June 2012 -A male patron was robbed in the male toilets of the Premises by a group of males whose identity is unknown.

(lxvii) Event 109: 11am on 6 July 2012 - On 20 June 2012 Kings Cross Police provided a written Notice to Produce for the production of some additional CCTV footage in relation to the Police investigation of Event 108, an alleged robbery of a patron on the Premises. The request was not complied with by the licensee. On 24 June 2012 Police attended the Premises once again seeking production of the additional CCTV footage. That request was not complied with. On 25 June 2012 staff of the Premises advised Police that they could not produce the additional CCTV footage sought because it was now more than 14 days after the event and the footage was no longer available. On 6 July 2012 Police attended the Premises to execute a search warrant that was issued by Newtown Local Court and took possession of the venue's CCTV hard drives. Police issued the licensee with an infringement notice for failing to maintain CCTV for 30 days.

(lxviii) Event 110: 5am on 10 June 2012 - Two male patrons fell down the stairs while existing the Premises, one of whom incurred a laceration to the side of his head as a consequence of the fall. CCTV of the incident indicates that one of the patrons had been pushed by an RSA Marshall as he was leaving down the stairs and this caused the two men to fall down the stairs.

(lxix) Event 111: 28 June 2012 - Police attended the Premises to request additional CCTV footage for their investigation of Event 110. The footage requested was not produced by reason that the Premises only kept footage for 14 days. An infringement notice was issued to the licensee for contravention of a licence

condition requiring that CCTV footage be maintained for 30 days. The infringement notice was dealt with by the Local Court under section 10 of the *Crime (Sentencing Procedure) Act 1999*.

- (lxx) Event 116: 3.15 on 9 August 2012 – A manager of the Premises made an emergency call to Police notifying a complaint made by a female patron of sexual assault on the Premises that allegedly occurred in the male toilet. While there is insufficient material to substantiate the claim of sexual assault, the incident is relevant as Police observed the complainant to be intoxicated when they dealt with her on the Premises.
- (lxxi) Event 117: 2.50 am on 11 August 2012 - A male patron was observed by Police during the conduct of a covert business inspection to consume three drinks at the bar in 10 minutes. The patron was seen to be unsteady on his feet and groping female staff. The patron was stopped by an RSA Marshall from taking off a companion's jumper. The patron appeared intoxicated to Police but was only required to leave when a plain clothes Police officer questioned an RSA Marshall about this patron.
- (lxxii) Event 118: 3:15 -4 am on 12 August 2012 - During a business inspection Police observed a female bar staff member to pour alcohol into glasses delivering amounts that appeared to be in excess of a standard 30 mls shot. The bar staff member did this on about 17 occasions over a period of 22 minutes. A female patron was observed to be intoxicated on the Premises. The female patron was only asked to leave by RSA staff after Police began speaking to her. The intoxicated female fell backwards while walking down the stairs to the exit.
- (lxxiii) Event 120: 4.35 – 5.00 am on 12 August 2012 - A brawl occurred involving four aggressive and intoxicated males on Bayswater Road. Police intervened to break up the brawl. Criminal infringement notices were issued to three of the participants for offensive conduct and two of those participants who were issued infringement notices were last drinking on the Premises.
- (lxxiv) Event 121: 3.20-4.00 am on 25 August 2012 - A male patron was observed by Police to be swaying and drowsy on the Premises. Police assessed him to be intoxicated. Police observed that the patron was advised by an RSA Marshall that he would be refused further service. The male stumbled as he walked down the exit stairs, prompting advice from venue staff to use the hand rail. Police also found a small ziplock bag on the Premises containing tablets with a "Lexus" symbol (which the Authority notes is a form of street branding

associated with the prohibited drug ecstasy) weighing 1.20 gms. These incidents are relevant only as an indication of the culture of patrons on the Premises, but do not establish that the licensee *permitted* intoxication or use of prohibited drugs on the Premises.

(lxxv) Event 122: 3.55 am on 26 August 2012 - A male patron was observed by Police to be slouched in his chair and touching female staff in an over familiar or inappropriate manner. The patron was observed by Police having difficulty walking in a straight line when he got up from his chair to go to the men's bathroom. The patron was intoxicated and was asked to leave the Premises by security staff when returning from the bathroom. The patron was observed by Police to stumble as he was leaving down the stairway, prompting advice from security staff to use the handrail. While the patron was removed by staff the incident is relevant in that it indicates the culture of patrons on the Premises.

(lxxvi) Event 123: 12.15 am on 1 September 2012 – A male patron was observed by Police vomiting into the urinal in the men's toilet. The patron was removed from the Premises by venue security by reason of his intoxication. While the patron was removed by staff the incident is relevant in that it indicates the culture of patrons on the Premises.

(lxxvii) Event 125: 2.45 am on 1 September 2012 – Police obtained a copy of promotional material for the venue as it was being distributed to passers-by. The promotional material did not provide the warning about sexually explicit content that was required by a condition of the licence.

(lxxviii) Event 127: 3.20 am on 1 October 2012 - A male person was denied entry to the Premises by a security guard by reason of the male's intoxication. The male returned to the entry of the Premises a short time later and hit the security guard in his face. Police intervened and perused the male along Darlinghurst Road and caught him in Kellett Way, where the male was arrested for assault.

(lxxix) Event 128: 3.45 am on 1 November 2012 – A male person attempted to gain entry to the Premises, was refused entry and then the male spat at the security guard. The security guard pushed the man away and then punched him in the face and knocked him to the ground. The male refused to give a statement to Police about the incident. Without attributing fault the Authority is satisfied that a physical altercation and at the entry to the Premises and it further indicates the culture of persons attracted to the venue.

268. The Authority is satisfied on the balance of probabilities, on the basis of the COPS Reports and accompanying material provided by Police and having considered the Business Owner's and Premises Owner's competing analysis of the Applicant's material, that the abovementioned Events actually occurred. The Authority observes, generally, that the COPS Reports are contemporaneous reports made by Police officers who have considerable experience in the assessment and identification of intoxicated persons.
269. Even if the Authority were not satisfied that all of the Events had actually occurred, the number of Events and their nature is such that the Authority would not come to any different determination of the public interest in the circumstances. The number of Events and their nature gives the Authority cause for concern as to the extent of alcohol related anti-social conduct that is being caused or affected by or is associated with the relevant extended trading.
270. Where the Authority has found that the person engaged by Police was "intoxicated", the Authority does not purport to find that the licensee committed the offence of *permitting* intoxication on the Premises, which is subject to a defence available under section 73(5) of the Act. As noted by the Business Owner, there is only one Event where an actual incident of permitting intoxication on Premises has been established.
271. The Business Owner placed much emphasis upon the fact that the venue is not included on the list of "declared premises" under Schedule 4 of the Act. However, the administrative scheme in Schedule 4 to the Act is only concerned with identifying and imposing special licence conditions upon licensed premises that experience the prescribed number of acts of violence committed *on the premises* during the preceding 12 months period. The Schedule 4 scheme is not concerned with other forms of alcohol related disturbance, such as acts of violence committed by patrons *after leaving licensed premises*, or the broad spectrum of alcohol related anti-social conduct that the patrons of licensed premises may engage in.
272. In this case, there is a demonstrated recent history on several occasions of violence perpetrated on the Premises or near the entry to the Premises – in most cases instigated by the misconduct of the venue's patrons. The patrons of this venue are also regularly participating in a range of alcohol related anti-social conduct that gives rise to disturbance to the neighbourhood and requires the intervention of Police. This conduct includes violence occurring on and off the Premises; offensive conduct committed on and off the Premises; drink driving offences committed off the Premises; public drunkenness committed off the Premises; violent, quarrelsome or disorderly behaviour at or near the entry to the

Premises and failing to quit or leave the vicinity of the Premises when lawfully directed to do so by either venue security staff or Police.

273. The patrons of the Premises have featured in three particularly disturbing incidents of gun violence – including two shootings that have occurred inside the Premises during June in 2007 and April 2012 respectively and the one further shooting that occurred outside the Premises on Darlinghurst Road in May 2010 involving two men who had just been involved in an altercation inside the Premises.

274. The 2007 shooting incident has been accorded less weight by the Authority than it otherwise would have been given due to its occurrence some six years ago. Even so, the incidents of gun violence are matters of acute concern to the Authority. They demonstrate a most serious threat to the public interest posed by persons who chose to patronise this venue during extended trading hours. If, as emphasised by the Business Owner, the shootings involving gang members followed those persons forcing their way onto the Premises, then they can force their way in with a gun.

275. The Authority notes that the Business now utilises walk through scanners to screen for concealed weapons, which is a measure that was introduced on the advice of the Business Owner's consultants but the incidents of gun violence, involving organised crime figures, underscore the high risk of this type of venue for exposure to extreme violence and the attraction to the venue of organised crime figures and associates.

276. The Events found by the Authority are marked by the intoxication of the person or persons involved at the time that the person or persons come into contact with Police – which is either while they are still on the Premises or, more commonly, shortly after their removal or departure from the Premises. The persons involved are engaging in drunken and disorderly conduct to an extent that requires the engagement of Police. In some cases the conduct results in injuries necessitating the attendance of ambulance personnel and/or hospital treatment.

277. Much of the alcohol related anti-social conduct that is depicted in those Events that have been accepted by the Authority occurred either on the Premises or near the entry point to the Premises on Darlinghurst Road. Some of the Events occurred in neighbouring streets within the Kings Cross Precinct after patrons had been drinking on the Premises and had either left of their own accord or have been excluded due to their level of intoxication.

278. Of the PCA offences that have been relied upon the Applicant, the Authority had found, for the purposes of this decision, that the high range offences along with a

few mid-range PCA offence Events (at the upper end of the range and resulting in an accident) should be taken into account as relevant instances of alcohol related anti-social conduct perpetrated by patrons or staff of the Premises who last drank there. Those incidents most clearly demonstrate the extent to which patrons of the venue are willing to engage in this serious form of alcohol related anti-social conduct that poses a grave threat to the neighbourhood of the Premises and the local community as these patrons drive away.

279. The Authority is satisfied, having regard to the number and pattern of Events found by the Authority, that there has been repeated failure by the licensed Business to observe licence conditions - particularly conditions requiring no physical contact between entertainers and patrons on the Premises but also conditions requiring the maintenance of CCTV footage for 30 days, conditions requiring the maintenance of an incident register for three months and a failure on one occasion to observe a condition requiring two uniformed licensed security staff on duty inside the Premises.

280. These are not minor and technical matters. The “no physical contact” condition is a longstanding regulatory requirement that has been imposed upon venues like this to reduce the clear potential for this behaviour to escalate into unwelcome harassment or assault of the women working on the Premises, precipitating a response from venue security, and quickly escalating into violence or some other form of public disturbance as the troublesome patron is removed onto the street.

281. The Authority does not accept the Business Owner’s submission that these matters are difficult to enforce. The Authority considers it likely that the strippers engaging in this practice, who are contact workers, derive a commercial advantage from doing so - in that they are providing an enhanced “service”. That will in turn make them (and indirectly the venue) more attractive to a category of patrons (usually alcohol affected males) who may be incited to “push the envelope”.

282. It is a licensee’s responsibility to ensure compliance with this condition. A zero tolerance approach should have minimised the scope for the licensee’s exposure to this type of licensing offence. The Events identified by the Applicant and found by the Authority involve quite blatant breaches of the licence condition, detected only because Police happened to be on the Premises at the time.

283. The Authority is particularly concerned with those Events where the licensee has not complied with Police requests for the production of CCTV by the date requested in a Notice to Produce or when CCTV footage has been overwritten by the system in contravention of a condition of the licence of the licence.

284. Accepting that in one instance a manager's daughter was the subject of medical treatment which may well have distracted him from work matters, that is no excuse for this or any licensed business placed in a position whereby only one staff member is able to operate or access the system to produce the footage or the production of that CCTV is at the mercy of one person's availability or attention.
285. Similarly, the duty to maintain CCTV footage for 30 days is a clear obligation imposed by a condition of the licence. It is a licensee's responsibility to ensure compliance with this straightforward requirement. The Authority is not satisfied with the excuses offered by the Business Owner in this regard. Even if it was not venue management's intention to impede Police investigations with regard to the production of CCTV footage, that was its effect.
286. Events involving non-compliance with licence conditions have resulted in the issue of numerous Penalty Notice or Infringement Notices by Police to the licensees over the relevant period. The Authority is satisfied that these Events indicate a lack of diligence by management, staff and contractors working on the Premises with regard to regulatory obligations, notwithstanding the relatively high risk nature of this type of late trading venue. The non-compliance was demonstrated over a substantial period of time.
287. While the engagement of compliance consultants and the replacement of the licensee is a welcome development, the Authority is concerned that this Business Owner permitted the Premises to operate for some time under the responsibility of Mr Henry - a licensee who the Authority is satisfied, on the basis of the Applicant's submissions and the consultant's assessment, was inexperienced and in practice deferring to a manager of the Premises Mr Turcotte. The Authority is concerned that the rearrangement of staff at the Premises appears to be a belated development which has only occurred in response to the making of this Application and the previous notice given by Police in June 2012 that they were contemplating making a disciplinary complaint under Part 9 of the Act.
288. There are numerous Events found by the Authority where patrons who have been on the Premises have reached the point of intoxication and require removal from the Premises by venue staff, creating disturbance outside the Premises when refusing to accept their exclusion. In some cases they have been observed by Police to be intoxicated and that it is the attendance of Police that has prompted the removal of the persons involved.

289. While the Business Owner has identifies those measures it takes to manage the risk of intoxication (including RSA Marshalls staff training and the like) and the Events found by the Authority may not establish the licensing offence of “permitting” intoxication on Premises - which is subject to a defence available under section 73(5) of the Act – the large number of events involving intoxicated patrons creating disturbance demonstrate, in the Authority’s view, that there is a persistent problem with patrons of the venue drinking to the point of intoxication requiring their ejection and the apparent inability of the measures taken by the licensed Premises to manage that persistent problem.
290. The Events found by the Authority also disclose a persistent problem with alcohol affected patrons or prospective patrons who show little respect for venue security staff or Police when refused entry or directed to leave the Premises or the vicinity of the Premises, as the case may be. These people are so intoxicated and unruly that they fail to quit and engage in disturbance to a point that requires Police intervention.
291. The Authority considers this particular licensed venue to be a high risk licensed premises from a regulatory perspective by reason of its location in Kings Cross, its operation in the mode of a nightclub, its provision of live entertainment (disc jockeys and some musicians) and particularly through the combination of adult entertainment with the decision by the Business to exercise very late trading hours.
292. In addition to Events involving patrons who have been on the Premises before engaging with Police, the Events found by the Authority demonstrate a persistent problem with unruly persons - aggressive and/or intoxicated males and intoxicated, unruly females - who are apparently *attracted* to the venue by reason of the type of business that operates at this location and its very late trading hours. Both men and women have engaged in acts of violence, significant acts of disturbance and/or resisting or impeding Police officers or venue security staff in the conduct of their duties.
293. Any licensed premises may generate patrons who are high spirited and become rowdy or make some noise before or after leaving the venue. However, this Premises generates and attracts patrons whose conduct is violent, offensive, intimidating and a serious risk to themselves and others - including Police, staff and contractors working on the Premises.
294. While the Business Owner, its staff or contractors are not “at fault” for denying entry to intoxicated or aggressive persons, section 51(9)(b) – unlike the disciplinary provisions of the Act - are not concerned with attributing fault, but with the proper

regulation, in the public interest, of liquor related authorisations attaching to individual licensed premises.

295. It is worth emphasising that according to the Business Owner, this venue only has capacity to accommodate 220 persons – that is, it is a small to medium sized licensed venue in relative terms. The Authority notes the Business Owner's estimates as to the number of persons who may attend the Premises over the course of a year but the Authority is satisfied that the operation of the Premises during extended trading hours has been demonstrated, in the Events found by the Authority, to be generating a considerable impact upon local law enforcement resources and to some extent ambulance and hospital resources over the course of the relevant period.
296. The Business Owner and the Premises Owner have made submissions to the effect that the Police should have provided comparative data of the relative performance of other licensed venues in Kings Cross. While some comparative data has been provided in terms of alcohol related assault figures for other late trading venues in Kings Cross, it is not the function of this Authority to regulate Kings Cross on a precinct wide basis.
297. That is an option that is available to Parliament (which may regulate all licenced premises in New South Wales) and the Director General (who has the power to declare Precinct Liquor Accords). This Authority's role is to consider the particular licensed premises that are the subject of the particular application before it.
298. The Business Owner has repeatedly referred to Police ELORM risk rating data (which provides broad ratings for the relative likelihood of the occurrence of certain types of offences on licensed premises). The Business Owner submits that a comparative analysis should be undertaken with regard to other licensed venues in Kings Cross.
299. However, this Application is not confined to the risk of offences occurring on the Premises. It turns upon the 129 individually documented adverse events that Police have placed before the Authority which concern a range of alcohol related disturbance and misconduct committed by persons on and off the Premises. The Authority considers that evidence or other information such as COPS report recording individual incidents of alcohol related disturbance that are reasonably attributable to the exercise of the late trading authorisation is of greater probity to the Application before it than a comparative analysis of Police ELORM data for other venues in Kings Cross.

300. The Authority emphasises, again, that its decision is not based on any particular Event or type of Event (for instance, Events involving violence, Events involving breaches of licence conditions and Events involving intoxication and anti-social behaviour). Rather, it is the overall pattern of Events, and the various types of events identified, which, taken together, have caused the Authority to form a particular view as to what the public interest requires.
301. The Business Owner and Premises Owner have both made submissions emphasising the introduction of Plan of Management legislative reforms that affect all licensed venues in Kings Cross. As indicated in its Draft Decision, the Authority has taken those legislative reforms into account when deciding what action is appropriate to take in relation to the extended trading authorisation.
302. The Authority notes that the Plan of Management legislation does not extend to imposing early closing times on 24 hour licensed premises nor does it impose lockouts upon licensed premises. In this Application the Authority has been provided with a *premises specific case* for taking action with regard to the *extended trading hours*. The Authority must consider the Application made by Police on its merits and has done so in light of the competing submissions made by the Business Owner and Premises Owner.
303. The Authority is satisfied, on the material before it, that a stronger, *premises specific* regulatory response is required over and above the measures imposed upon the Kings Cross Precinct generally. The Authority is satisfied that it is in the public interest to reduce the capacity of *this particular licensed premises* to give rise to alcohol related violence, disturbance or other forms of alcohol related anti-social conduct perpetrated by patrons, prospective patrons, and (in some cases) staff of the Premises. That conduct has been demonstrated on a consistent basis over a substantial and recent period. The Authority is not satisfied that such conduct is unlikely to continue unless some action is taken to vary the extended trading authorisation.
304. While there has been some decline in the number of Events attributed to the Premises in 2012 by comparison to 2009/10, the nature, number and regularity of Events found by the Authority as reasonably attributable to the Premises over the entity of that survey period satisfies the Authority it is no longer in the public interest for the Premises to have the privilege of 24 hour licensed trading.
305. The Business Owner's submission in response to the Draft Decision is to the effect that the Authority should now reopen the matter and invite further Police evidence for 2013. That would necessarily extend the decision making process for another

two to three months while the Authority seeks further evidence from Police and provides a right of response from the Business Owner and Premises Owner and a right of reply to the interested parties before finally determining this matter.

306. In circumstances when the Business Owner and Premises Owner have been on notice of the amended Application since late March 2013, and given the substantial period covered by the Events (extending to December 2012) the Authority has decided not to re-open the matter for yet another round of submissions. It is the public interest for a determination on this Application to be made and for the Authority's decision to commence effect - particularly in light of the approaching festive/new year holiday season and the traditionally elevated risk faced by licensed premises generally in the Summer months.

307. As noted in the Draft Decision, the Authority has factored in some apparent decline in the number of found Events over the course of relevant period and the absence of 2013 evidence when deciding to vary, rather than revoke, the extended trading authorisation.

308. The Business Owner has submitted that the Authority may now have "confidence" in light of the Business Owner's change of licensee and manager and its engagement of a consultant. The change of personnel is a positive development, but the performance of the Premises over the past 3 years calls for some more substantial, enduring and mandatory harm minimisation measures over and above a change of personnel.

309. The Authority notes that the Business was conducted for some time under the tenure of a licensee of whom the Authority is satisfied, on the basis of the Police submissions and some acknowledgment by the Business Owner's consultant was too inexperienced and not assertive enough, deferring to a third party, Mr Turcotte. Re-arrangements were a response to the threat of regulatory action. Personnel may well change again.

310. Furthermore, many of the Events found in relation to this matter concern the conduct of patrons *outside* the venue or the unruly culture of persons attracted to the venue. The Authority doubts whether improved training of staff can really address the type of patrons who are attracted to the Premises or their demonstrated capacity to drink to a point that causes public disturbance when refused entry to, or ejected from the Premises.

311. The Authority is, however, confident that reducing the extended trading hours to 3 am, combined with a 2 am lockout, will substantially address this venue's capacity

to generate or attract patrons who create disturbance in the Kings Cross Precinct, while enabling the Business to retain some measure of late night trading.

312. After careful deliberation that is an outcome that balances the expectations of the community for late night entertainment with the public interest in reducing that capacity of *this* Premises to generate late night alcohol related disturbance.
313. This is not a decision that has been made lightly. While the Authority has taken into account the Business Owner's evidence that the Draft Decision will make the licensed Business unviable by reason of the mode in which the licensed business operates, the Authority notes that the mode of operation is a commercial matter that the Business Owner can control. In any event, while the viability of the business is something that the Authority takes into account, it cannot dictate the public interest to the exclusion of other considerations.
314. The Authority's consideration of the Business Owner and Premises Owner's submissions as to the substantial economic impact upon their respective businesses is one factor (along with the Kings Cross legislative reforms, a recent change of licensee and the nature of Kings Cross as a late night entertainment precinct) that has moved the Authority to *varying* the extended trading authorisation rather than *revoking* it. However, the Business Owner's desire to maximise its profits and the Premises Owner's desire to maximise the value of the commercial real estate are not, in the Authority's view, sufficient to displace the public interest in favour of winding back the licensed trading hours of the Premises in order to minimise the harm that arises from the operation of the Premises during extended hours.
315. The Authority accepts that there is consumer demand for this type of licensed venue, but those community expectations are displaced by the need the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour).
316. In conclusion, the unanimous decision of the Members of the Authority is to implement the Proposed Administrative Action that was identified in the Draft Decision. That is, the Authority has decided to **vary** the extended trading authorisation, pursuant to section 51(9)(b) of the Act, so that licensed trading shall cease at **3 am** daily.
317. Furthermore, the Authority imposes, on its own initiative and pursuant to section 53 (1)(b) of the Act, the following new conditions upon the licence of the Premises:

- I. The licensee shall implement a lockout whereby no patron may be permitted to enter the premises after **2 am** until close of trade for that day. For the avoidance of doubt, patrons who are on the Premises before **2 am** may leave the premises at any time or remain on the premises while the premises are authorised to trade, but are not permitted to re-enter the premises while the lockout is in effect.
- II. The licensee shall install a sign in a prominent, well lit and legible position outside each street level entry point to the Premises, in letters not smaller than 50mm in height, that read:

"NO ADMITTANCE AFTER 2AM

By decision of the Independent Liquor and Gaming Authority it is a condition of the liquor licence that no patron may be admitted to the premises after 2 am. Any patrons who leave the venue after 2 am will not be readmitted."

318. In making this decision the Authority has had regard to all of the objects and statutory considerations prescribed by section 3 of the Act, and has given weight to section 3(2)(a) of the Act, the need to minimise harm associated with the misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour), and section 3(2)(c) of the Act, the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of the community.

319. The measures imposed by the Authority in this decision will commence effect at 12.01 am on Wednesday 18 December 2013.

Yours sincerely



Chris Sidoti
Chairperson
For the Independent Liquor and Gaming Authority