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31 January 2016

Decision on Application for Long Term Closure Order – Dreamgirls, Potts Point (Liquor licence number LIQO624013611)

INTRODUCTION

- At 10:29am on 22 December 2015, the Independent Liquor and Gaming Authority (**Authority**) received an application dated 22 December 2015 (**Application**) from Mr Anthony Keon (**Applicant**), Director of Compliance and Enforcement, Office of Liquor, Gaming and Racing (**OLGR**) in his capacity as a delegate of the Secretary (**Secretary**) of the New South Wales Department of Justice.
- The Application is made under section 84 of the *Liquor Act 2007* (**Act**) and seeks the issue of a Long Term Closure Order in relation to the licensed premises known as “Dreamgirls”, located at B 77 Darlinghurst Road, Potts Point (**Premises**).
- The Applicant advises that an investigation by the Secretary pursuant to section 138 of the Act is underway in relation to the licensee, former licensee and close associates of the licensed business conducted on the Premises.
- The Applicant alleges, on the basis of the material provided in support of the Application, that serious breaches of sections 74(1)(b), 74(2), 74(3)(b) and 74(4) of the Act have occurred and are likely to occur in relation to the Premises.
- The Applicant contends that the relevant significant threat or risk to the public interest includes a threat to public health and safety from the supply of prohibited drugs and prohibited drug use on the Premises.

6. The Applicant further contends that the relevant significant threat or risk to the public interest includes a threat to public health and safety arising from the operation by the licensed business of an “illegal bar” in an unlicensed area of level 1 of the building in which the Premises is located, whereby liquor is sold to patrons for consumption in that area and patrons may also unlawfully smoke cigarettes and take illicit drugs in that area.
7. The Applicant submits that closure of the Premises for a period of 6 months (or until such time as the conditions specified on page 10 of the Application Letter are met) is necessary to prevent or reduce a “significant threat or risk to the public interest” for the purposes of section 84 of the Act.
8. The Applicant’s specified conditions which, if satisfied, would warrant the reopening of the Premises within the proposed 6 months closure period are stated as follows:
 1. The investigation into the current and former licensees or any close associates under section 138 of the Act has been finalised and any complaint pursuant to section 139 of the Act has been determined by the Authority;

or in the alternative, that the following occurs:

 1. A new licensee is unconditionally approved by the Authority; and
 2. The licence is restricted to standard trading hours; and
 3. Adult entertainment in the form of strip dancing/pole dancing or any other form of adult entertainment is prohibited on the Premises.

NOTICE OF APPLICATION

9. The Authority notes that the *OneGov* record of the licence for the Premises currently discloses that Mr David Lakepa is the licensee on the record for the Premises.
10. On 23 December 2015 Mr Lakepa was served with a copy of a Notice of Application issued by the Authority and served via the Applicant informing him that by reason of the gravity of the allegations contained in the Application and the pending expiry of a Short Term Closure Order issued by a Local Court Registrar on 20 December 2015 in relation to the Premises, the Authority was considering ordering the closure of the Premises for a period of 6 months from 7:00pm on Wednesday 30 December 2015 or until such time as the conditions specified by the Applicant at page 10 of the Application Letter have been met (discussed below).
11. In the Notice, Mr Lakepa was invited to provide any written submissions or evidence in response to the Application by no later than 5:00pm on Tuesday 29 December 2015. That period was later extended to 10:00am on Thursday 31 December 2015.
12. The business owner currently recorded on the licence document is a corporation, Royal Restaurant Pty Ltd (ACN 123 887 776), whose sole director is Mr Michael Francis Amante. Mr Amante was also served with a copy of the Application on 23 December 2015 and invited to make written submissions in response to the Application by no later than 5:00pm on Tuesday 29 December 2015. No response was provided by Mr Amante.
13. The Authority notes that Mr Dion Manca of the law practice *LAS Lawyers* acts for the licensee Mr Lakepa. Mr Manca advises that he also acts for the proposed new

licensee of the Premises, Mr Mohammad Swadaf bin Iqbal, and the proposed new corporate business owner, Restaurant Royale Pty Ltd (ACN 169 879 949).

14. The Applicant provided Mr Manca with advance notice of the Application on 22 December 2015. A copy of the formal Notice of Application issued by the Authority was sent to Mr Manca on 23 December 2015.
15. Although not required by the Act to consult with the property owner, the Applicant has also brought the Application to the attention of the freehold owner of the Premises, another company – CAMCO N.S.W. Pty Ltd.

MATERIAL ACCOMPANYING THE APPLICATION

16. The material provided to the Authority in support of the Application as it was initially filed comprises the following evidence, submissions or other material:
 - Statutory declaration by the Applicant dated 22 December 2015;
 - Application Letter dated 22 December 2015;
 - Tabs “A” through “I” referred to in the Application Letter (discussed below);
 - Signed notebook entries by OLGR Inspector Paul Drohan recording notes of interviews conducted with staff of the Premises dated 19-20 December 2015;
 - Signed notebook entries by OLGR inspector Sean Goodchild recording notes of interviews conducted with staff of the Premises dated 19-20 December 2015; and
 - Audio recordings of the interviews conducted on the Premises on 19-20 December 2015 between OLGR officers and the following staff of the licensed business:
 - Licensee Mr David Lakepa (22:53 minutes);
 - Waitress "Aoife" (8:14 minutes);
 - Waitress "Maria" (10:51 minutes);
 - Dancer/Stripper "Pariya" (8:09 minutes); and
 - Dancer/Stripper "Savana" (8:22 minutes).

(Application Material).

17. A further submission (**Applicant Further Submission**) was sent via email from the Applicant to the Authority’s consultant General Counsel, Mr Bryce Wilson (**General Counsel**), at 11:56am on 23 December 2015 clarifying certain aspects of the Application Letter that were raised in an email from General Counsel sent at 10:40am on that date.
18. Further submissions were made by the Applicant and the apparent business owner, Restaurant Royale Pty Ltd, following the voluntary closure of the Premises on 31 December 2015 and the imposition of new conditions upon the licence with effect from that date (see discussion of “Interim Measures” below).

THE APPLICATION LETTER

19. In the Application Letter, the Applicant seeks that the Authority make a Long Term Closure Order in respect of the Premises under section 84(1) of the Act. The Applicant submits that section 84 of the Act requires that the Authority be satisfied of a number of threshold issues to enliven a decision to make an order for long term closure of a licensed premises. Relevantly, the Authority must be satisfied that:

- The licensee or manager of the licensed premises is the subject of an investigation by the Secretary under section 138 of the Act or disciplinary action under Part 9 has been (or is proposed to be) taken by the Authority against the licensee or manager or a close associate of the licensee.
- A serious breach of the Act has occurred, or is likely to occur, on the licensed premises and the closure of the premises is necessary to prevent or reduce a significant threat or risk to the public interest. Circumstances in which there may be a significant threat or risk to the public interest include circumstances in which there is:
 - a threat to public health or safety, or
 - a risk of substantial damage to property, or
 - a significant threat to the environment, or
 - a risk of serious offences (having a maximum penalty of not less than 2 years imprisonment) being committed on the premises.

20. In summary, the Application Letter makes the following contentions and submissions:

Current investigation into licensee, former licensee and close associates under section 138 of the Act

21. The Applicant submits that OLGR is currently conducting an investigation under section 138 of the Act to ascertain whether a disciplinary complaint should be made under Part 9 of the Act in relation to the current and former licensees or any close associates.

Background Information about the Premises

22. The Applicant submits that the licensed business on the Premises operates under an on-premises “theatre public entertainment venue” liquor licence number LIQO624013611. The licence has the benefit of an extended trading authorisation and is authorised to sell or supply liquor between 5:00am and 5:00am, Monday through Sunday.

23. The Applicant contends that the venue operates primarily as a strip club, offering adult entertainment in the form of on-stage and private strip dancing shows to attending patrons.

24. The Applicant submits that Mr Lakepa has been the licensee of the Premises since 29 May 2014. The *OneGov* licence record for the Premises as at 21 December 2015 discloses that the current business owner of the business operating on the Premises is Royal Restaurant Pty Ltd, whose sole director is Mr Michael Francis Amante.

25. [However, as discussed below, the Authority notes that information provided by solicitors for the licensee indicates that the business is in the process of being transferred to another company, Restaurant Royale Pty Ltd, whose sole director is Ms Margaret Staltaro. Furthermore, evidence from the licensee suggests that Ms Staltaro is actually running the business, regardless of whether that sale of business has been perfected.]

26. The Applicant submits that Mr Amante has been the director of Royal Restaurant Pty Ltd since 12 February 2007 and was also a former licensee of Dreamgirls, from 14 November 2008 until 31 March 2011.
27. The Applicant notes that Mr Lakepa lodged an application to transfer the licence in respect of the Premises in August 2015 and Mr Mohammad Swadaf bin Iqbal is the proposed incoming licensee.
28. [The Authority notes that this application to transfer the licence from Mr Lakepa to Mr Iqbal remains subject to further investigation and has not been approved, provisionally or otherwise, by reason of certain information before the Authority. As a result, Mr Lakepa remains the licensee on the record at the time of this decision.]
29. The Applicant provides the following evidence or material in support of this information:
- **Tab “A”** of the Application Letter: *OneGov* record of the licence for the Premises as at 21 December 2015.
 - **Tab “B”** of the Application Letter: Liquor Licence Transfer Form lodged by LAS Lawyers on behalf of Mr Lakepa dated 20 August 2015.
30. The Applicant notes that Dreamgirls is located in the Kings Cross precinct, where a large number of licensed premises must comply with special licence conditions which are captured under the *Kings Cross Plan of Management*. Notably, the Premises is listed as being a “high risk” premises within the meaning of clause 53R of the *Liquor Regulation 2008 (Regulation)*.
31. The Applicant submits that the special conditions that the licensed business must comply with under the *Kings Cross Plan of Management* include a requirement to operate an approved linked Patron ID Scanner between the hours of 9:00pm and 1:30am, the observance of a 1:30am “lock out” and 3:00am last drinks, and the operation of a CCTV system to cover all publicly accessible areas of the Premises.
32. The Applicant contends that the building in which Dreamgirls is located comprises a basement level, a ground floor level, level 1 and level 2. The defined licensed area of Dreamgirls is the basement level only.
33. Patrons access the Dreamgirls Premises by descending a set of stairs from Darlinghurst Road. *Porky’s Nite Spot* brothel is located on the ground floor level of the building in which the Premises is located and is accessed by a separate doorway.
34. The Applicant contends that NSW Police and OLGR have become aware that the venue operators have also been using an area on level 1 of the building with access via a separate door from Darlinghurst Road immediately next to the Dreamgirls entrance.
35. The area on level 1 is not part of the licensed area of the Dreamgirls Premises and is not authorised for the sale or supply of liquor. For the purpose of this Application, that area is referred to as “the level 1 area”.
36. The Applicant describes the Dreamgirls Premises as comprising a ticket booth, a small bar, a stage area, private rooms for strip shows, and male/female toilets.

37. The Applicant contends that recent intelligence led NSW Police and OLGR inspectors to investigate allegations of drug supply by venue staff; drug use on the Premises by venue staff and patrons; unauthorised sexual contact between employees and patrons; and the operation of a clandestine bar in the level 1 area of the building (including its use outside of liquor laws and Kings Cross special licence conditions, including the 3:00am cease of service requirement).
38. The Applicant contends that Police and OLGR investigations resulted in Police exercising a search warrant on 19 December 2015 for the purpose of searching Dreamgirls, as well as the adjoining *Porky's* brothel and other areas located within the building in which the Premises is situated.
39. On 19 December 2015, Police also made an urgent telephone application to the Local Court under section 83 of the Act, seeking an order for a 72 hour short term closure of the Premises under section 82 of the Act. An order was made by Local Court registrar Mr Jeffrey Noel Reid at 12:47am on 20 December 2015. The Applicant provides a copy of that order and a copy of the statement of particulars upon which that order was sought at **Tab "C"** of the Application Letter that forms part of the Application Material.
40. The Applicant notes that the short term closure order was issued by the Local Court for the maximum period available under the Act of 72 hours, running from 2:00am on Sunday 20 December 2015 until 2:00am on Wednesday 23 December 2015.

The long term closure of the Premises is necessary to prevent serious breaches of the Liquor Act occurring

41. The Applicant contends that there is an extreme and continuing risk of the following breaches of the *Liquor Act* occurring:
- *Licensee permit premises to be used for the sale of prohibited drugs* contrary to section 74(1)(b);
 - *Licensee permit possession or use of prohibited drug* contrary to section 74(2);
 - *Employee or agent permit premises to be used for the sale of prohibited drugs* contrary to section 74(3)(b); and
 - *Employee or agent permit possession or use of prohibited drug* contrary to section 74(4).
42. The contended facts and circumstances giving rise to the Applicant's belief that serious breaches against the Act have occurred and are likely to continue to occur are as follows:
43. On 10 December 2015, the Kings Cross Local Area Command (**LAC**) Drug Unit established Strikeforce Larkhill to investigate the ongoing supply of prohibited drugs within the Premises.
44. On 10 December 2015, a Controlled Operation was authorised by NSW Police Assistant Commissioner Mick Fuller under the *Law Enforcement (Controlled Operations) Act 1997* authorising the conduct of controlled purchases of prohibited drugs inside the geographical area surrounding Dreamgirls.
45. On Friday 11 December 2015, undercover Police Officers (the **UC**) entered the Premises. Alcohol was purchased from the bar and the UC booked a 10 minute

private dance with an Asian stripper at a cost of \$70. During conversation, the stripper told the UC that a 1 hour private dance upstairs could be purchased at a cost of \$400.

46. At 11:20pm, the UC overheard a stripper say to another patron, "You can snort coke off my tits".
47. The UC engaged a Canadian stripper and asked her, "Do you know where we can get on", in reference to obtaining drugs.
48. The Canadian stripper said, "Just wait here, I will get Charlotte" [the Applicant notes that this is an apparent reference to Ms ... Waters].
49. At 11:53pm the UC negotiated to buy 1 gram of cocaine from "Charlotte" for \$350. "Charlotte" walked into the shower room and returned to where the UC was sitting. "Charlotte" leant over the UC and said, "Hey, so nice to see you again", while at the same time placing a small resealable plastic bag containing white powder into the UC's hand which was also holding a drink.
50. The Applicant provides a copy of the drug exhibit created by Police in relation to this supply at **Tab "D"** of the Application Letter.
51. The Applicant contends that about 1 minute later, Police conducting surveillance inside the Premises walked into the toilet and observed three venue strippers, including "Charlotte", openly snorting cocaine off their fingers, which they were seen dipping into a small resealable plastic bag. One of the strippers offered the cocaine to the surveillance officer.
52. The Applicant provides an email from Police dated 15 December 2015 detailing the findings of the UC and a surveillance observation report in respect of the inspection of the Premises on 11 December 2015 at **Tab "E"** of the Application Letter.
53. The Applicant further contends that on Thursday 17 December 2015, the UC entered the Premises at 10:50pm. The UC asked a female hostess how much it cost for a private show. The female gave the UC a price list and told him that he could choose a female who would "take you upstairs". She also stated to the UC, "You can drink and smoke and whatever up there".
54. The UC engaged a stripper named "Ash" and they walked into a room at the rear of the Premises. "Ash" removed her clothing and the UC asked "Ash" for "blow" [the Applicant notes that "blow" is a slang word for cocaine]. "Ash" said it was "three hundred and fifty dollars". The UC agreed to the price and "Ash" indicated that she would source it after the show. When the show finished, "Ash" said she would come and see the UC regarding the cocaine.
55. The Applicant contends that the UC then returned to the main bar area and saw "Ash" walk to the DJ booth and speak to Mr John Hopoate. The UC walked to the bathroom and upon walking out, "Ash" approached the UC and said, "Hey I can't help you with the stuff; the girl who can sort it out is booked out for a few hours". The UC said, 'Okay, no problem'.
56. The Applicant contends that the UC then engaged a stripper who introduced herself as "Katie". The UC asked "Katie" about the private 1 hour shows and "Katie" similarly indicated it was "upstairs" and you could "drink and smoke and whatever up there".

57. The UC walked to the cashier area near the entrance and handed Mr Hopoate \$400 for a one hour private show. The UC was holding a can of beer and the male cashier said, "You can't take those up there so ... scull them and you can buy more up there". The UC said, "They're almost full". "Katie" said, "There's a bar upstairs, you can buy more there".
58. The Applicant contends that at 1:10am the UC followed "Katie" up the stairs to the ground floor landing and turned left through a door which led up a set of stairs. At the top of the stairs was a large area with a bar to the right, a table in the middle and rooms at the end. "Katie" led the UC to room 5 and the UC asked how he could order a drink, to which she said, "A waitress will come around and take your order".
59. The Applicant further contends that when the private show was complete, "Katie" told the UC she needed to "accompany" him out of the room. On leaving the room the UC saw a large male, who was not wearing a shirt, bending over with a driver's licence in his right hand. The male was making a line of white powder on the table and snorting a line of what was believed to be cocaine through his nostrils.
60. The Applicant contends that the UC also saw a number of naked females dancing around the table with a number of males, some of whom had their shirts off and appeared intoxicated. The UC saw one female who was clearly drug affected; she was naked, her complexion was pale, her head was slumped back and she was dancing with her arms raised but her hands limp at the wrists. Her mouth was slightly open and her eyes were partially closed.
61. The Applicant provides a statement from the UC dated 18 December 2015 in respect of the inspection of the Premises on 17 December 2015 at **Tab "F"** of the Application Letter.
62. At about 11:45pm on Saturday 19 December 2015, Kings Cross Police executed four (4) search warrants at 71-85 Darlinghurst Road, Potts Point including search warrant number 2631/2015 inside Dreamgirls and search warrant number 2633/2015 inside the level 1 area. A drug detection dog was used to assist with the search.
63. The Applicant contends that the following detections were made as a result of the execution of those search warrants:

Dreamgirls (basement level)

- 1 x self-resealable plastic bag containing 0.32g crystal substance;
- 1 x self-resealable plastic bag wrapped in tissue containing 0.59g white powder;
- 2 x self-resealable plastic bags containing 1.81g white powder;
- 1 x sealed container containing white substance (unable to obtain weight);
- 6 x self-resealable plastic bags containing 3.71g white powder;
- 1 x self-resealable plastic bag containing 0.20g crystal substance; and
- 2 x blister packs containing 5 brown pills.

Level 1 area

- 1 x self-resealable plastic bag containing 1.33g white powder;
- 1 x self-resealable plastic bag containing 0.39g white powder; and
- 1 x self-resealable plastic bag containing 0.23g white powder.

64. The Applicant provides NSW Police property seizure/exhibit forms detailing the drugs seized on this occasion at **Tab “G”** of the Application Letter.
65. Also on 19 December 2015, Police arrested and charged Ms R Waters (“Charlotte”) for the drug supply that occurred on 11 December 2015. The Applicant provides a NSW Police prosecution *Facts Sheet* and Court Attendance Notice at **Tab “H”** of the Application Letter.
66. The Applicant submits that the open supply and use of drugs by both staff and patrons at the venue suggest that venue management play an active role in the organisation of drug supply and knowingly allow the open use of illicit drugs by patrons. Undercover operatives were able to purchase illicit drugs without any prior engagement with the venue and without being introduced to or establishing a relationship with staff prior to the purchase. In addition, OLGR and NSW Police officers observed employees and staff openly consuming illicit drugs within the Premises.
67. The Applicant submits that in this context, it is “completely incomprehensible” that venue management were unaware of the conduct in question. The Applicant contends that it is clear that there is an “extreme and continuing risk” of serious offences being committed against the *Liquor Act* in relation to drug possession, use and supply on the Premises.

The closure of the premises is necessary to prevent or reduce a significant threat or risk to the public interest

A threat to public health and safety due to drug supply and use

68. The Applicant contends that the management and employee “culture” at the venue creates an “extremely permissive” environment which in turn fosters a patron culture of open drug use.
69. The Applicant contends that the threat to public health and safety of patrons consuming illicit drugs is “serious”. The Applicant contends that the range of harms that may manifest include patrons experiencing adverse effects to drugs which may lead to vomiting, hospitalisation, or in extreme cases, death.
70. The Applicant contends that drug affected patrons may also experience “misadventure” and are more likely to be the victim or perpetrator of drug and/or alcohol related violence.
71. The Applicant contends that all of these harms are “probable” of occurring in the circumstances, should the venue be permitted to continue to trade under its current business model.

A threat to public health and safety due to the operation of an illegal bar

72. The Applicant submits that a key aspect of this Application relates to the operation of the level 1 area for the purposes of selling liquor and providing a lounge bar style venue where patrons can get private strip shows, smoke cigarettes (which is not allowed in Dreamgirls or any other public venue) and take illicit drugs.

73. The Applicant contends that the business model operated by Dreamgirls facilitates and encourages patrons to attend the unlicensed level 1 area to further indulge in strip shows, alcohol consumption and illicit drug use.
74. In addition to the allegations in paragraphs 20, 23, 24 and 25 of the Application Letter (noted above), which the Applicant contends evidence the operation and sale of alcohol in the (unlicensed) level 1 area, the Applicant contends that on 19 December 2015 five OLGR inspectors accompanied Police into the level 1 area for the purpose of determining whether there has been compliance with or a contravention of liquor legislation.
75. As part of this inspection, four patrons and four venue staff in the level 1 area were interviewed.
76. All four patrons interviewed advised that they had come to be in the level 1 area after first being on the Dreamgirls Premises and being offered private shows upstairs.
77. The Applicant contends that three of the four patrons interviewed by OLGR inspectors advised that they had purchased alcohol in the level 1 area.
78. The Applicant contends that four venue staff (two strippers and two waitresses) all advised OLGR that liquor was sold in the level 1 area. Patrons were able to pay for drink by cash or by an EFTPOS device that was located in the level 1 area.
79. The Applicant contends that two of the venue staff advised that their boss was “Kepa”, who is believed to be the current licensee on record of Dreamgirls, Mr David Lakepa.
80. The Applicant contends that OLGR inspectors observed a service bar which contained a bar fridge with beer and ice, drinking vessels, bottles of spirits, a jigger for measuring spirits, a nip pourer, mixers including soft drinks and energy drinks, and freshly cut lime for drink garnishes.
81. The bar contained bottles of Jim Beam bourbon, Belvedere vodka, Jack Daniel’s whisky, Smirnoff vodka, Canadian Club whisky, Gordon’s Gin, Oriloff vodka, Captain Morgan rum, Bundaberg rum, Johnny Walker whisky, Jameson whisky, and 11 cans of various beers. The Applicant provides a list of the alcohol seized from the level 1 area of the Premises at **Tab “G”** of the Application Letter.
82. The Applicant further contends that OLGR inspectors also observed the EFTPOS machine which was also seized by Police.
83. The Applicant contends that when Mr Lakepa was interviewed by OLGR inspectors on 20 December 2015, he was unable to articulate what his role as a licensee was throughout the shift, nor was he able to articulate what directions he gave to staff throughout a shift.
84. The Applicant submits that Mr Lakepa initially stated that he was unaware of private shows and the sale and supply of alcohol in the level 1 area and when asked how any sale of alcohol may have taken place in level 1 he replied, “Oh, I’m not sure, you’d have to ask the waitress”.
85. The Applicant contends that Mr Lakepa acknowledged to OLGR inspectors that waitresses work upstairs and that an intercom is located upstairs to communicate with staff downstairs in Dreamgirls. When later asked whether he denied the fact that

patrons consumed liquor on level 1, Mr Lakepa stated, "I'm not denying if they are drinking liquor. I don't know if they are. So, all I do is sit down, stand behind the register and that's it".

86. The Applicant contends that Mr Lakepa also initially stated to OLGR that he was unsure why strippers would take patrons upstairs for a private show. However, later in the interview Mr Lakepa stated that prices for a show upstairs are separate to any further charges for alcoholic beverages, contradicting his previous assertions that he did not know about alcohol being served and consumed on level 1.
87. The Applicant further contends that later in his interview, Mr Lakepa openly acknowledged to OLGR that he was aware of patrons being escorted upstairs for private shows and that waitresses would take orders downstairs for alcoholic drinks to be taken and consumed in the (unlicensed) level 1 area. Mr Lakepa further acknowledged that the level 1 area is not licensed and agreed that alcohol should not be supplied in that area.
88. The Applicant provides the following evidence or material in support of the above information:
 - A detailed OLGR file note dated 21 December 2015 providing further information in relation to the OLGR inspection of the level 1 area, including photographs (Tab "I" of the Application Letter).
 - The electronic records of interview conducted by OLGR on 19-20 December 2015 with the licensee and four other staff members of the Premises. The Applicant states that due to urgency of this Application, transcriptions are not available.
89. The Applicant submits that the risks associated with a regulated, late trading strip club in Kings Cross are "very high". Those risks are multiplied significantly when the same activity is occurring in a completely unregulated and unsupervised space.
90. The Applicant submits that special conditions apply to licensed strip clubs in Kings Cross to mitigate risk and include a requirement that all publicly accessible areas are covered by CCTV and that patron ID scanners are used to scan IDs of every patron attending the venue.
91. The Applicant contends that the licensed business "funnelling patrons into an unregulated and unsupervised space" not only demonstrates a complete disregard for NSW liquor laws (including unlicensed sales), but also creates a significantly heightened threat to public health and safety.
92. The Applicant submits that if an injury or assault occurred in such a space, responding emergency services may have great difficulty in locating the premises or venue management may not report such incidents for fear of the unlicensed area being exposed to scrutiny.
93. The Applicant further submits that if a patron was to experience serious health issues resulting from illicit drug use at the Premises it is "highly questionable" whether they would be offered the appropriate assistance from venue management. The Applicant submits that this risk is particularly heightened due to the "anything goes" culture that is apparently encouraged in the level 1 area of the building.

94. The Applicant submits that the operation of the level 1 area appears to be a deliberate attempt to subvert trading restrictions that apply generally to licensed premises and special conditions that specifically apply in the Kings Cross precinct and to high risk licensed premises. At the core of these special conditions are conditions that are intended to address significant public safety risks as well as apply an increased level of regulatory responsibility and reporting to licensed premises. The operation of ID scanners and CCTV, and the requirement to record and report incidents are all designed to provide Police and OLGR with regulatory oversight of the precinct and ensure that criminal activity can be detected and deterred.
95. The Applicant submits that the operation of the level 1 area is effectively a “black hole” that operates outside of the law with a deliberate intent to avoid regulatory oversight.

A risk of serious offences (having a maximum penalty of not less than 2 years imprisonment) being committed on the Premises

96. The Applicant submits that the *Drug Misuse and Trafficking Act 1985* provides penalties for prohibited drug supply. Supply of even a small quantity of drugs is punishable by maximum imprisonment of 2 years.
97. The Applicant submits that even the supply of a “small quantity” of a prohibited drug, including a supply of up to 30g of cannabis, a supply of up to 0.8g of ecstasy, or a supply of up to 1.0g of cocaine/heroin/amphetamine is punishable by significant penalties, exceeding 2 years imprisonment.
98. The Applicant contends, on the basis of the information contained in the Application Letter, that there is an “extreme risk” of drug supply occurring on the Premises.
99. The Applicant contends that the supply appears to be a highly coordinated operation involving venue staff. The Applicant submits that the evidence suggests that venue management know about the supply of drugs by strippers to patrons and in fact have a role in approving which patrons to whom drugs may be sold.

Applicant Submissions on the Venue’s Recent Compliance History

100. The Applicant submits that irrespective of the compliance history of the venue, the above information paints an “alarming picture” of the management and operation of the venue and raises serious concerns.
101. However, the Applicant characterises the recently detected conduct as “even more concerning” when considered against what the Applicant describes as the extremely poor compliance history of the venue, which demonstrates a “systemic and deliberate failure” to operate within the law. This, it is said, reinforces that the fact that continuing offending is “highly likely” in the absence of significant regulatory intervention.
102. The Applicant submits that as at 21 December 2015, the licence with respect to Dreamgirls has incurred two “strikes” under the “3 Strikes” disciplinary scheme provided by Part 9A of the Act.
103. The Applicant submits that “prescribed offences” giving rise to strikes are recognised as the most serious offences under the *Liquor Act 2007*.
104. The Applicant provides the following table detailing the recent history of prescribed offences occurring at Dreamgirls:

#	DATE	OFFENCE	DETAIL	RESULT
1	24 Jan 2014	Licensee fail to comply with conditions of licence (Kings Cross special conditions).	High-risk venue manager not present: Inspection undertaken by NSW Police identified that the licensee was not present and there was no high-risk venue manager present – only the approved manager, also a security guard, was in control of the venue. Representative of the business owner introduced Police to a third party and claimed he was the high-risk venue manager; this person was not approved as a high-risk venue manager at the time either.	First strike incurred.
2	31 Jan 2014	Licensee fail to comply with conditions of licence (Kings Cross special conditions).	CCTV not covering all publicly accessible areas: no cameras present in private rooms as required by regulations.	OLGR ED determined not to impose second strike.
3	27 July 2014	Supply liquor to a minor on licensed premises & licensee fail to comply with conditions of licence (Kings Cross special conditions).	ID scanning requirements not adhered to: A minor and over-age male attended the premises. Over-age patron had ID scanned by security on entry, but the minor was not asked for ID/did not present ID for scanning. The minor was subsequently supplied liquor and left unsupervised in the Premises when the over-age patron left the venue to visit Porky's, the adjoining brothel.	Second strike imposed.
4	25 Aug 2014	Licensee fail to comply with conditions of licence (Kings Cross special conditions).	CCTV not covering all publicly accessible areas: After repeated requests for CCTV footage relating to the above offence involving a minor, the licensee advised Police that a fault in the system meant that coverage of the stage area (where the minor was consuming liquor) was not available.	Referred to Authority – third strike not imposed.
5	7 Sept 2014	Licensee fail to comply with conditions of licence (Kings Cross special conditions).	RSA Marshal not wearing identifying clothing: OLGR inspectors unable to identify an RSA Marshal wearing appropriate clothing as required by the regulations. A female performer was observed wearing a high-visibility vest with the word "Security: across the back and handwritten "RSA Marshal" on the front, however was not performing the role of an RSA Marshal at the time. The staff member who identified himself as being engaged to carry out RSA supervisory duties was not wearing any clothing to identify him as an RSA Marshal.	Awaiting court outcome.
6	17 Dec 2015	Licensee fail to comply with conditions of licence (Kings Cross special conditions).	Fail to notify of ID scanner failure: licensee failed to notify Police and OLGR of ID scanner failure as required by the regulations.	Currently under investigation.

Applicant Submissions on Threat to Public Interest

105. The Applicant submits that recent events and ongoing prescribed offences throw a light on a comprehensive failure to observe *Liquor Act* objectives, fundamental licence

practices and an inability to implement adequate management and compliance practices.

106. The Applicant submits that the regulatory measures sought by this Application are required to address the “ongoing risk” where there has been a “deliberate attempt to subvert NSW law”. The Applicant contends that other regulatory action does not appear to be effective in changing behaviour.
107. The Applicant contends that both NSW Police and OLGR are of the firm view that, without significant regulatory intervention, the likelihood of further drug and alcohol offences at the venue is “severe”, and as such presents an “unacceptable risk” to the community.
108. The Applicant submits that OLGR and NSW Police have “no confidence” in the current operators’ commitment to effect any change.
109. The Applicant contends that the licensed business on the Premises suffers from “fundamental flaws and inadequacies” in terms of its internal management and controls.
110. The Applicant contends that ongoing drug supply from employees and previous breaches of the *Liquor Act* indicates that the licensee is “deliberately resistant” to regulatory engagement.
111. The Applicant submits that the combination of “very late” licensed trading hours and strip club style entertainment in the Kings Cross precinct poses particular operational challenges and will require a considerable change in the culture and management of the Premises to “reduce the risk of staff or agents of the licensee permitting the use of the premises for the use or sale of suspected prohibited drugs”.
112. The Applicant contends that the “clear recidivism” and “repeated drug detections” shows a comprehensive failure to observe fundamental licence obligations and an inability to implement adequate management and compliance practices.
113. The Applicant asserts that the measures sought in this Application are required to address the ongoing risk where other regulatory action does not appear to be effective in changing behaviour. An escalation in regulatory intervention is now required.
114. The Applicant concludes with the submission that, based upon the venue’s history of serious offences, the operation of a clandestine bar, the fundamental failures around adequacy of management and compliance culture, and the real and immediate threat to the public interest, and in particular threats to public health and safety, the likelihood of future contraventions is “extreme” and the only appropriate action is to require the venue to close until a more comprehensive disciplinary investigation can be completed or until such time as there are significant material changes to the business model and operation of the Premises (such as reverting to standard trading hours).

Order Sought by OLGR

115. To address this immediate and continuing harm, the Applicant requests, in the initial Application, that the Authority exercise its power to order the licensee to close the licensed premises under section 84 of the Act for such period that the Authority sees

fit (the maximum period prescribed by clause 28 of the *Liquor Regulation 2008* being 6 months), or until such time (not exceeding 6 months) that the following occurs:

1. The investigation into the current and former licensees or any close associates under section 138 of the Act has been finalised and any complaint pursuant to section 139 of the Act has been determined by the Authority;

or in the alternative, that the following occurs:

1. A new licensee is unconditionally approved by the Authority; and
2. The licence is restricted to standard trading hours; and
3. Adult entertainment in the form of strip dancing/pole dancing or any other form of adult entertainment is prohibited on the Premises.

SUMMARY OF APPLICATION MATERIAL

116. Accompanying the Application Letter were nine (9) documents provided by the Applicant in support of the Application. A brief summary of those documents is as follows:

117. Tab “A” of the Application Letter – Extract from the *OneGov* licensing database for the licence to the Premises as at 21 December 2015 indicating that the licensee on the record is Mr David Lakepa, while the business owner on the record is Royal Restaurant Pty Ltd (ACN 123 887 776).

118. Tab “B” of the Application Letter – Application form seeking the transfer of the liquor licence in respect of the Premises. This document was prepared by *LAS Lawyers* on behalf of Mr Lakepa and filed on 20 August 2015. The document indicates that the proposed new licensee of the business once the transfer is approved is Mr Mohammad Swadaf bin Iqbal and the proposed new business owner is Restaurant Royale Pty Ltd (ACN 169 879 949).

119. Tab “C” of the Application Letter – Notice of Urgent Short Term Closure Order under section 82 of the Act issued in relation to the Premises by Local Court Registrar Jeffrey Reid at 12:47am on 20 December 2015, plus the Urgent Application for a Short Term Closure Order under section 83 of the Act made by Superintendent Michael Fitzgerald of Kings Cross LAC Police dated 19 December 2015.

120. Tab “D” of the Application Letter – Photograph of Drug Exhibit number X0002653439: prohibited drug supplied by “Charlotte” (Ms Waters) to an undercover OLGR inspector at approximately 11:53pm on 11 December 2015 on scales, displaying a total weight of 0.96 grams including packaging.

121. Tab “E” of the Application Letter – email from Senior Sergeant Donna Murphy, Kings Cross Police to OLGR inspector Matt Weber dated 15 December 2015 reporting undercover Police observations on the Premises between 10:41pm and 11:59pm on 11 December 2015, and attaching an Observation Report in respect of those observations prepared by Constable Ben Hall of Kings Cross Police.

122. Tab “F” of the Application Letter – witness statement by undercover Police officer “Damien” (assumed name) attached to the NSW Police Special Services Group dated 18 December 2015 recording observations on the Premises on 17 December 2015.

- 123. Tab “G” of the Application Letter** – NSW Police Property Seizure/Exhibit Forms dated 20 December 2015 in respect of the execution of Search Warrant numbers 2633/2015 and 2631/2015 regarding the search of the Premises conducted on 19-20 December 2015.
- 124. Tab “H” of the Application Letter** – NSW Police prosecution *Facts Sheet* in *Police v Waters* for allegedly supplying a prohibited drug, being cocaine, on the Premises, contrary to section 25(1) of the *Drug Misuse and Trafficking Act 1985*, plus a Court Attendance Notice for 5 January 2015 in relation to the matter.
- 125. Tab “I” of the Application Letter** – OLGR File Note dated 21 December 2015 prepared by OLGR inspector Matt Weber recording observations by OLGR officers of the Premises on 19 December 2015 (including photographs).

APPLICANT FURTHER SUBMISSION DATED 23 DECEMBER 2015

- 126.** At 10:40am on 23 December 2015, General Counsel sent an email to the Applicant, copying the licensee’s solicitor, seeking clarification of the following issues arising from the Application Letter:

I refer to the Long Term Closure Order Application filed with the Authority yesterday.

The Authority is yet to give a formal notice of the Application to the licensee although I note that you have provided advance notice of the Application material to the licensee's solicitor yesterday. I am copying the licensee's solicitor in this communication.

Before the Authority proceeds, it seeks clarification of the following issue arising from the Application letter dated 22 December 2015.

A central part of the Application is the alleged threat to the public interest/ public health and safety posed by the operation of an "illegal bar" on Level 1 of the building in which the Dreamgirls licensed premises is located.

The nature of the "illegality" arising from the Level 1 bar has not been specified to any great extent, by reference to the Act or other legislation.

If it is your position that the licensee, employees or agents of the licensee or other persons either have, or are likely to have, committed serious breaches of section 8 and 9 of the Act on Level 1 then for the sake of clarity this should be stated in an amended application letter.

I note that the discussion of Level 1 in the Application letter also makes reference to people smoking in that area and the nature of that alleged illegality should also be specified if the application is to be amended.

The Authority will await your advice before proceeding with this matter further.

- 127.** The Applicant Further Submission was sent at 11:56am on 23 December 2015 in response to the above email from General Counsel. It states:

For the purpose of clarification, the information in the application strongly supports that the unlawful sale and supply of liquor has been occurring in the level 1 area. The level 1 area is not licensed, and therefore sale and supply of liquor in this area could give rise to offences under section 7 of the Liquor Act 2007 (selling liquor without a licence) and section 8 of the Act (keeping or using unlicensed premises). Further, the supply of liquor from the licensed downstairs area to the unlicensed area could give rise to offences under section 9 of the Act.

As part of the investigation that has been commenced under section 138 of the Act by OLGR the following matters will be included in the investigation in relation to the illegal bar operating on level 1:

- *Whether any person has committed offences by selling liquor without a licence - **Liquor Act 2007 section 7***
- *Whether any person has opened, kept or used an unlicensed premises for the purpose of selling liquor - **Liquor Act 2007 section 8(a)***
- *Whether any person has permitted an unlicensed premises to be opened, kept or used for the purpose of selling liquor - **Liquor Act 2007 section 8(b)***
- *Whether any person had the care or management of any unlicensed premises opened, kept or used for the purpose of selling liquor - **Liquor Act 2007 section 8(c)***
- *Whether any person assisted in conducting the business of any unlicensed premises opened, kept or used for the purpose of selling liquor - **Liquor Act 2007 section 8(d)***
- *Whether the licensee or an employee or agent sold liquor or caused or permitted liquor to be sold contrary to the authority conferred on the Dreamgirls licence by allowing for 'take away' liquor to be sold and removed from Dreamgirls to another premises or whether liquor has been sold on premises other than premises on which the licensee is authorised to sell liquor – **Liquor Act 2007 sections 9(1) and 9(3)**.*

The above offences do not strictly relate to offences occurring 'on the licensed premises', and therefore were not considered to be directly relevant to the threshold test set out a section 84(2)(c). However, these matters are extremely relevant to the Authority's broader consideration of the significant threat or risk to the public interest attributable to the operation of Dreamgirls, as argued in our application. The above list is not an exhaustive scope of investigation, and OLGR will approach the investigation with flexibility to investigate and action matters as information arises through the course of the investigation.

I also note your query in relation to smoking on the premises. Section 8 of the Smoke-free Environment Act 2000 makes it an offence for an occupier to allow smoking in a smoke-free area. An enclosed public place such as the level 1 area above Dreamgirls is considered to be an enclosed public place and hence a smoke-free area for the purposed of the legislation. It is further noted that under section 77(2)(c) of the Liquor Act 2007 a person may be turned out of a licensed premises if they smoke, within the meaning of the Smoke-free Environment Act 2000, while on any part of the licensed premises that is a smoke-free area within the meaning of that Act.

I trust the above information assists the Authority.

PROGRESS OF THE APPLICATION

Service of the Application

- 128.** On the afternoon of 23 December 2015, the Application Material and the Applicant Further Submission was served by OLGR upon *LAS Lawyers*. A copy was also served by NSW Police upon Mr Michael Amante (sole director of Royal Restaurant Pty Ltd). Another copy was served upon Ms Staltaro, the sole director of Restaurant Royale Pty Ltd, who personally acknowledged receipt of the material.
- 129.** While not expressly required by the Act to be consulted, out of an abundance of caution the Authority also brought the Application Material and Applicant Further Submission to the attention of persons associated with two companies that have recently been recorded as owners of the property where the Premises is located – Camco Pty Ltd and Camco N.S.W. Pty Ltd.

130. OLGR advised the Authority that on 24 December 2015, NSW Police served the Application material upon Mr Jason Camuglia, a director of Camco N.S.W. Pty Ltd, who confirmed on 30 December 2015 that the premises owners listed on the licence record were aware of the Application. No contact has been made by the premises owners with the Authority in relation to this matter.

First request from Mr Manca seeking an extension of time – 23 December 2015

131. At 10:44am on Wednesday 23 December 2015, having received advance notice of the Application on 22 December 2015, Mr Manca sent an email to the Authority seeking until 25 January 2016 to make submissions in reply to the Application.
132. His stated reasons for seeking this extension included the pending closure of his office at 12:00pm on 23 December 2015 until 11 January 2016 and his clients' intention to engage Senior Counsel (who, while not specified, was said to be unavailable over the Christmas/New Year period). Mr Manca submitted that a reasonable opportunity to prepare submissions would be "at least 14 days after" his office re-opened for 2016.
133. The Authority's Chief Executive considered this request and the Authority advised that this request for an extension had been declined. The Authority advised that by reason of the gravity of the allegations and the expiry of a Short Term Closure Order issued in respect of the Premises by the Local Court at 2:00am on 20 December 2015, the Authority would be proceeding with the Application without regard to public holidays or leave arrangements.
134. The Authority further noted that the Application Material was not extensive, and that once the Notice was issued it would be expecting to receive submissions in response to the Application "within a few days".

Second request from Mr Manca seeking an extension of time – 28 December 2015

135. By email sent at 2:20pm on 28 December 2015, Mr Manca made a repeat request for an extension of time to respond to the Application until 5:00pm on 25 January 2016.
136. The reasons cited by Mr Manca for this extension were that there was insufficient time for the licensee to make "meaningful and effective" submissions by reason of the unavailability of legal and/or legal support staff over the Christmas/New Year period and the difficulty in locating and interviewing necessary witnesses for the purpose of adducing evidence for the licensee's response to the Application.
137. Further, Mr Manca advised the Authority that from the evening of Wednesday 23 December 2015, the proposed new business owner, Restaurant Royale Pty Ltd, had engaged the firm Tactical Training Group (TTG) to "actively supervise day to day operation of the Premises to ensure continuing compliance with existing licence conditions and statutory obligations".
138. Mr Manca advised that the "level 1 area" has now been securely locked by TTG and no other person has access to the area. The engagement of TTG and the securing of the level 1 area was said to continue "for the foreseeable future". Mr Manca advised that he had informed OLGR officers Matt Weber and Sean Goodchild of these arrangements on the evening of 23 December 2015.

Email from Mr Manca to the Authority – 3:25pm on 28 December 2015

- 139.** In this email, Mr Manca sought further material in relation to the Application in the following terms:

I note that we have been served with a USB disc that contains audio of a number of interviews.

Further, the application refers to interviews with patrons and the file note at Tab I provided what appears to be edited or incomplete transcriptions of the interviews.

Please provide complete transcripts of all of these interviews as soon as possible. It is unreasonable to expect my clients to attend to transcription of the evidence relied upon by the applicant before submissions can be prepared. A transcript of the interviews will allow me to properly deal with the evidence and interview the witnesses in conference. If I have to do this myself it will further delay the preparation of reply submissions and severely prejudice my clients.

Please also provide a copy of the application (including all supporting material to it) for the controlled operation referred to at paragraph 13 of the long term closure application along with a copy of the certificate that we infer from paragraph 13 was provided by Assistant Commissioner Fuller.

The information regarding the controlled operation is critical as it appears to be the primary foundation of the long term closure order application.

Without this further material, my clients suffer prejudice in properly responding to the case of the applicant and the Authority does not have all material evidence before it that is necessary for it to properly exercise its statutory functions.

I look forward to your prompt reply.

Email Response from the Authority to Mr Manca – 28 December 2015

- 140.** In this email from the Authority's General Counsel to Mr Manca, Mr Wilson advised Mr Manca that the Authority Members were considering Mr Manca's request for an extension of time and noted that a similar request had been made on 23 December 2015 and rejected by the Authority.
- 141.** General Counsel also informed Mr Manca of the circumstances in which an extension of time had recently been granted to lawyers for the *Bada Bing* strip club in Kings Cross in response to another Long Term Closure Application, on the basis that the business owners of Bada Bing had agreed to voluntarily cease trading on the licensed premises until 7 days after the requested extension date (19 January 2016). Solicitors for the business owner had filed a form voluntarily suspending the licence with immediate effect until 26 January 2016.
- 142.** General Counsel enquired whether the business owners of Dreamgirls were contemplating a similar voluntary closure and suggested the terms by which this could take place, in similar terms that had been entertained by the Authority in the Bada Bing matter.
- 143.** In a further email from General Counsel to Mr Manca sent at 7:08pm on 28 December 2015, General Counsel advised that the Authority had not been provided with any transcripts by the Applicant. Nevertheless, staff of General Counsel's private law practice had prepared informal transcripts as an *aide memoire* for the Authority over the previous weekend.

144. These transcripts were forwarded to Mr Manca for use as an *aide memoire* to the sound recorded interviews and on the proviso that these were not professional transcripts and the parties should primarily rely upon the sound recordings.
145. General Counsel also advised that Mr Manca's request for documentation from NSW Police regarding the controlled operation on the Premises had been forwarded to the Applicant shortly after that request was made. Mr Manca was advised that the production of that documentation was a matter for the Applicant and if not produced, Mr Manca could make submissions on that.

Further email from Mr Manca to the Authority – 7:51pm on 28 December 2015

146. In this email, Mr Manca responded to the General Counsel's request for advice as to whether the business owner would be closing the Premises voluntarily, advising that he could not get instructions on that before 8:00pm (as had been proposed by General Counsel) and that the circumstances of his client's business were different from his understanding as to what had transpired with respect to Bada Bing in that Bada Bing had not put in place a "comprehensive solution" immediately after the Police raids on 19-20 December 2015.
147. Mr Manca submits that this proposal of voluntary closure of the business is "disproportionate" and "ultra vires" of the Authority's discretion to grant an extension and indicative of bias. Mr Manca requests that the Authority "be reasonable" and "alive to the objects of the Act", which are, in part, to encourage and develop businesses and not to close them down when there is "no ascertainable danger to public health and safety".

Further email from the Authority to Mr Manca – 8:15pm on 28 December 2015

148. The full text of General Counsel's response to Mr Manca's previous email states as follows:

Your allegation of bias is unfounded.

I have merely informed you of the basis upon which the Authority recently granted an extension to Bada Bing. That advice was provided for the sake of parity with the approach taken by the Authority in that matter.

Bada Bing moved very swiftly to voluntarily close its premises and provide executed documents voluntarily suspending its licence.

It is entirely a matter for your client whether it proposes to voluntarily close its business.

If it does, that may logically have a bearing on the necessity of issuing an order.

The Members have now had a chance this evening to consider your request for an extension of time. As things stand, the Authority has decided to maintain the timetable specified in the Notice of Application.

Email from the Applicant to the Authority – 9:44am on 29 December 2015

149. The full text of the Applicant's email response to the licensee's request for a copy of the application for the controlled Police operation and a certificate issued in relation to that controlled operation states as follows:

OLGR does not have a copy of the controlled operation and do not rely on any material forming part of the controlled operation as part of our application.

I have also spoken with NSW Police this morning and been advised that this material would not be released to us in any case.

Email from the Authority to Mr Manca – 1:27pm on 29 December 2015

- 150.** In this email, General Counsel advised Mr Manca that while the Authority considers it in the public interest for this Application to proceed efficiently and notes the risks associated with the new year and holiday period, the Authority had nevertheless decided to grant a short extension for the licensee to provide submissions in response to the Application by no later than **10:00am on Thursday 31 December 2015**.

SUBMISSIONS IN RESPONSE TO NOTICE OF APPLICATION

Submission from Business Owner – 29 December 2015

- 151.** Notwithstanding the extension of time granted by the Authority, Mr Manca provided a submission on behalf of his clients in response to the Application on the afternoon of 29 December 2015.
- 152.** The full text of the covering email to that submission states as follows:

Following your communication to me last night at 8:16pm that the Authority had effectively declined to grant my clients an extension of time to make submissions on relation to the application, by deciding “to maintain the timetable specified in the Notice of Application” I have committed time last night and today to complete submissions and made alternative arrangements for my holidays for the remainder of the week. By the time I received your email below the preparation of the submissions was substantially concluded. In any event, what is effectively little more than an additional business day to complete submissions is hardly a reasonable extension of time and is woefully inadequate to enable proper analysis and investigation of the material relied upon in support of the application; to obtain further particulars of the application; to obtain relevant source material upon which the application is based; to confer relevant witnesses; to properly prepare reply evidence and to prepare comprehensive submissions in reply to the application.

I further note that we have not received complete transcripts of the witness interviews, or copies of the Controlled Operation application and certificate that were requested yesterday.

It is in this context, and without prejudice to my clients’ rights, which are expressly reserved, that I submit limited submissions in reply to the application along with statutory declarations from each Margaret Staltaro and Arthur Burchett dated 29 December 2015 which are attached hereto.

- 153.** In the Submission Letter dated 29 December 2015, Mr Manca notes that the outcomes sought by the Applicant (set out at page 10 of the Application Letter) are that:

1. The investigation into the current and former licensees or any close associates under section 138 of the Act has been finalised and any complaint pursuant to section 139 of the Act has been determined by the Authority;

or in the alternative, that the following occurs:

1. A new licensee is unconditionally approved by the Authority; and
 2. The licence is restricted to standard trading hours; and
 3. Adult entertainment in the form of strip dancing/pole dancing or any other form of adult entertainment is prohibited on the Premises.
- 154.** Mr Manca submits that the Applicant's proposed alternative conditions would "effectively destroy and change the whole nature of the existing business, rendering Conditions 2 and 3 untenable".
- 155.** With regard to the Applicant's alternative Condition 1, Mr Manca submits that a liquor licence transfer application form has already been lodged with the Authority on or about 18 August 2015, seeking to replace the current licensee, Mr Lakepa, with the proposed new incoming licensee, Mr Mohammad Swadaf bin Iqbal.
- 156.** Mr Manca submits that the Authority "has failed" to deal with that application in over 4 months and that there is an "urgent need" for that licence application to be considered and processed now.

Licensee's submissions on the licensee and business owner of Dreamgirls

- 157.** Mr Manca advises that he acts for the licensee, Mr David Lakepa and that as of Monday 21 December 2015 he also acts for Ms Margaret Staltaro, the sole director of Restaurant Royale Pty Ltd.
- 158.** Mr Manca submits that Ms Staltaro has "only recently" through Restaurant Royale Pty Ltd, entered into a contract to acquire the full interest in the business operating on the Premises.
- 159.** Mr Manca's clients submit that prior to Royale Restaurant Pty Ltd entering into the contract to acquire the full interest in the business, Ms Staltaro and Mr Michael Amante were directors of Royal Restaurant Pty Ltd (the company listed on the licence record as the current business owner).
- 160.** They further submit that Mr Amante acted as the managing director of that business and it was "under his management and with his compliance practices" that the Premises incurred a number of "strikes" [pursuant to Part 9A of the Act]. Mr Manca advises that Ms Staltaro (through Restaurant Royale Pty Ltd) has purchased Mr Amante's interest in the business in order to "remove him" from the Premises and the operation of the business and to take over it herself.
- 161.** Mr Manca's clients submit that on 20 August 2015, an application to transfer the licence from Mr Lakepa to Mr Iqbal and to replace the business owner with Restaurant Royale Pty Ltd was lodged with the Authority (provided by the Applicant at **Tab "B"** of the Application Letter).
- 162.** Mr Manca repeats his earlier submission that the Authority has failed to process the liquor licence transfer and contends that this failure has, in part, led to the current licensee remaining in control of the Premises "for too long". He submits that by reason of the failure of the Authority to deal with this transfer application in over 4 months, the Authority is "estopped" from making any further decisions about the licence attaching to the Premises unless and until it now deals with the liquor licence transfer application.

163. Mr Manca submits that as a result of the Authority's failure to determine the liquor licence transfer, Mr Lakepa remains the licensee of the Premises and he is responsible for the day to day operation of the business. Royal Restaurant Pty Ltd is still registered as the business owner.
164. Mr Manca submits that this situation is "not the management reflective of the current intended ownership of the business" and it has "hindered effective and substantial improvement" in relation to the management and operation of the business.
165. Mr Manca refers to section 84 of the Act, which provides the power pursuant to which the Authority may make a long term closure order, and clause 28 of the Regulation, which provides that the Authority cannot require the closure of a licensed premises for a period of more than 6 months.
166. Mr Manca submits that section 84(2) of the Act is made up of three (3) mandatory factors that are required to be satisfied before a Long Term Closure Order may be lawfully issued.
167. Mr Manca argues that section 84(2)(b) of the Act has not been satisfied in that no "reasonable opportunity" to make submissions to the Authority has been afforded to the licensee.
168. Mr Manca notes that a separate written application was made for an extension of time to make submissions in response to the Application until 5:00pm on 25 January 2016 by reason of the complexity of the allegations raised and the difficulties faced by the licensee in locating appropriate witnesses and preparing sworn statements during the Christmas holiday period. However, this application was refused by the Authority.
169. Accordingly, Mr Manca submits that the licensee has not been provided with a reasonable opportunity to make detailed or effective submissions and to adduce proper evidence in relation to the application.
170. Mr Manca submits that despite the "unreasonable" amount of time permitted, some "limited" material was able to be prepared in the form of statutory declarations of Ms Margaret Staltaro and Mr Arthur Burchett in reply to the application, each dated 29 December 2015 (the **Reply Evidence**).
171. Mr Manca submits that, given the time restrictions imposed and the Authority's "refusal" to grant an extension of time to prepare submissions, the licensee is "seriously prejudiced".
172. Mr Manca submits that section 84(2)(b) of the Act has not been satisfied and an order under section 84 cannot be made, because the Authority's power to do so has not been enlivened.
173. Mr Manca submits that section 84(2)(c) of the Act involves a "two pronged test". First, that the alleged breaches in fact occurred and second, that the closure of the premises is necessary to prevent or reduce a significant threat or risk to the public interest.
174. With regard to the first part of the test, Mr Manca submits that it is "unclear" as to the nature of the alleged breaches by the licensee. The Applicant Further Submission dated 23 December 2015 clarifying the nature of the alleged illegality of the bar operating on the level 1 area explains that OLGR has commenced an investigation in

relation to the level 1 bar and that possible breaches of the *Liquor Act 2007* that may be relevant as a result include sections 7, 8(a), 8(b), 8(c), 8(d), 9(1) and 9(3) of the Act.

175. Mr Manca contends that the email from General Counsel “correctly” points out that such alleged breaches are “not relevant” for the purposes of the making of a long term closure order as section 84(2)(c) requires a “serious breach of the Act to have occurred, or to be likely to occur on the licensed premises”.
176. Mr Manca argues that, to the extent that there are any allegations that serious breaches of the Act have occurred due to the level 1 bar, such breaches “could not have possibly occurred on the licensed premises”, which is accepted to be confined to the basement level of 77 Darlinghurst Road, Kings Cross as per the description of the Premises in the *OneGov* licence record provided by the Applicant at **Tab “A”** of the Application Letter.
177. Mr Manca submits that any possible breaches arising from the operation of the level 1 bar are “matters which are not relevant to section 84(2)(c) of the Act”. By their very nature, all of the possible offences the subject of the investigation referred to in the Applicant’s email of 23 December 2015 “must occur away from licensed premises, otherwise the essential elements of the offences are not able to be made out and there would be no offence”.
178. Mr Manca submits that the Applicant “appears” to rely upon alleged breaches of sections 74(1)(b), 74(2), 74(3)(b) and 74(4) of the Act. However Mr Manca argues that, to the extent that the Applicant alleges that the licensee has committed any breaches of section 74 of the Act, these allegations “have yet to be proven”.
179. Mr Manca submits that a prosecution for a breach of section 74 of the Act would need to be proven to the criminal standard – beyond reasonable doubt. Mr Manca submits that it is “clear” that there would be “considerable doubt” as to whether or not any breaches of section 74 were in fact committed, particularly subsections 74(1)(b) and 74(2). Mr Manca submits that the Authority:

...could not be satisfied for the purposes of the first limb of section 84(2)(c) unless there was either an admission by the licensee as to a breach of section 74 or a finding of guilt by a Court of competent jurisdiction.

180. Mr Manca submits that there is “no evidence” that forms part of the Application to suggest that the licensee was aware of the Premises being used for the sale of prohibited drugs or that prohibited drugs were possessed or being used by persons on the licensed premises.
181. Mr Manca submits that an alternative to the first limb of the test in section 84(2)(c) is that the Authority may be satisfied that a serious breach of the Act is *likely* to occur. Presuming that the Applicant relies upon alleged *future* breaches of section 74, for the reasons set out above, Mr Manca submits that the Authority cannot be satisfied that future breaches of section 74 are likely to occur, as there is “absolutely no evidence” that breaches of section 74 have taken place in the past or have been proven to have taken place.
182. Further, Mr Manca submits that the Authority can be satisfied that “significant changes” have been made to personnel and management, as referred to in the

statutory declarations by Ms Margaret Staltaro and Mr Arthur Burchett (discussed below), so it is “not likely” that breaches of section 74 will occur in the future.

- 183.** Mr Manca submits that there is “no evidence of any observations of any other breaches of the Act occurring on the licensed premises” during the Police and/or OLGR operations referred to in the Application Letter which took place on 11 December 2015, 17 December 2015 and 19 December 2015. The Applicant only appears to rely upon the alleged breaches of section 74 of the Act.
- 184.** With regard to the second part of the test in section 84(2)(c) of the Act, Mr Manca submits that there is “no longer any significant threat or risk to the public interest” by reason that “positive steps have already been taken” on and from 23 December 2015, including:
- Employment changes since the Police operation on 19 December 2015:
 - Ms Waters (the dancer “Charlotte”) has had her engagement with the Premises terminated;
 - The licensee Mr Lakepa’s employment has been terminated as a consequence of the business being sold, with the termination to have effect on approval of the application to transfer the licence. The termination has effectively taken place now as he is no longer responsible for overseeing the day to day operations of the Premises, although he remains legally responsible;
 - Access to the level 1 area has been closed; and
 - Independent contractors have been engaged “for the foreseeable future to advise, oversee operations and ensure compliance”.
- 185.** Mr Manca repeats his earlier submissions dated 28 December 2015, which state that the “prospective” business owner, Restaurant Royale Pty Ltd, engaged the firm TTG to supervise the day to day operation of the Premises by the current high risk manager and proposed licensee Mr Mohammad Iqbal, to “ensure continuing compliance with existing licence conditions and statutory obligations”.
- 186.** In addition, the “level 1 area” has been securely locked by TTG and they have the only keys. The engagement of TTG and the securing of the level 1 area “will continue for the foreseeable future”.
- 187.** Mr Manca submits that, given that these measures are now in place and there is “no evidence” that there has been “any serious breach of the Act” or “likely future serious breach of the Act” on the days that the Premises has traded since the short term closure order issued at 2:00am on 20 December 2015 expired at 2:00am on 23 December 2015, the long term closure of the Premises is “not urgently required or necessary”. Accordingly, Mr Manca submits that section 84(2)(c) of the Act cannot be satisfied.
- 188.** Further, the Applicant has indicated that an investigation is currently being undertaken pursuant to section 138 of the Act. If, as a result of that investigation, complaint action is taken, then the Applicant can advance submissions as to any disciplinary action that should be taken in the event that the complaint is established and the Authority considers that it is appropriate in the circumstances for disciplinary action to be taken.

Mr Manca submits that, the Applicant seeking that the Authority order a long term closure of the Premises “based solely on unproven allegations” relating to potential drug supply and use on the licensed premises, when there is an ongoing investigation yet to make any findings, renders the Application “entirely premature and inappropriate”.

189. Finally, Mr Manca submits that it is clear from the statutory declarations and supporting material provided in the Reply Evidence and can be taken as a “logical consequence” of closure of the Premises that “substantial adverse outcomes” will be felt by the current and proposed business owners, staff, contractors to the business and the general public who wish to resort to venues of this nature as part of their leisure, recreation and socialisation if a long term closure order is made. It is “not in the public interest for such adverse outcomes to be incurred if they can be avoided”.
190. Mr Manca submits that the adverse outcomes to the public interest that would result from the long term closure of the Premises can be avoided without any risk of harm to the public interest by the continued operation of the Premises, as changes have been implemented which have “proven effective” to prevent the matters that form the basis of the Application from recurring.
191. **Statutory declaration by Ms Margaret Staltaro, sole director of Restaurant Royale Pty Ltd dated 29 December 2015.** In this declaration accompanying Mr Manca’s submission, Ms Staltaro states that she was previously a director of Royal Restaurant Pty Ltd (the corporate business owner currently recorded on the *OneGov* licence record), along with Mr Michael Amante. Ms Staltaro and Mr Amante were effectively partners in the operation of the business of Dreamgirls; however Ms Staltaro “took a passive role” while Mr Amante was the “managing director” and handled the day to day operation of the business.
192. Ms Staltaro states that she resigned as a director of Royal Restaurant Pty Ltd in around June 2015, and Mr Amante continues to be the sole director of Royal Restaurant Pty Ltd.
193. Ms Staltaro states that throughout late 2014 and early 2015, she became concerned about the operation of the Dreamgirls business as she had become aware of a number of compliance matters that had been raised and a number of penalty notices that had been issued to the licensee for technical matters that were “completely avoidable with appropriate practices in place”, for example, an RSA marshal not wearing a high visibility vest. However, other more serious matters involving a minor accessing the Premises and consuming alcohol were “very concerning”. Ms Staltaro states that:
- ...much of the poor management was due to the influence of Mr Amante who had a casual attitude to the way the business was operated and was less focused on compliance than ensuring that all patrons had a good time.*
194. Ms Staltaro states that as a result of her concerns for the business if Mr Amante continued to allow it to be managed as he had previously, Ms Staltaro decided it would be best to acquire Mr Amante’s interest in the business and take sole control of it, and install new management staff.
195. Ms Staltaro states that she resigned as a director of Royal Restaurant Pty Ltd and established a new entity, Restaurant Royale Pty Ltd, which entered into a contract to purchase the business from Royal Restaurant Pty Ltd on 30 July 2015.

196. A copy of the executed contract is provided at **Annexure “A”** to Ms Staltaro’s statutory declaration.
197. Ms Staltaro notes that the completion of the contract is conditional on the transfer of the licence from Mr Lakepa to the proposed new licensee, Mr Mohammad Iqbal, and also the resolution of proceedings relating to possible “strikes” being imposed on the licence [under Part 9A of the Act].
198. Ms Staltaro states that she intends for Restaurant Royale Pty Ltd to complete the contract upon satisfaction of the condition regarding the transfer of the liquor licence.
199. The Authority notes that Annexure A is a copy of a contract for sale of business without the intervention of an agent. The Vendor is Royal Restaurant Pty Ltd and the Purchaser is Restaurant Royale Pty Ltd. The contract date is 30 July 2015. The “Completion Date” is specified to be the 42nd day after the contract date. The contract is signed by Mr Michael Amante on behalf of the Vendor and by Ms Margaret Staltaro on behalf of the Purchaser.
200. The Authority notes that the sale of business takes the form of a standard form contract with various printed clauses, plus some additional provisions that the parties have added to the standard form, including, *inter alia*, clause 35, entitled “Liquor Licence”:

35. Liquor Licence

35.1 *The Vendor discloses that the Liquor Licence is currently subject to two strikes (as defined in the Liquor Act 2007) and that the Vendor is aware of circumstances where it is alleged that the Licensee has committed a further two prescribed offences which could potentially lead to the recording of a further two Strikes.*

35.2 *The parties agree that if any Strike is imposed on the licence before the Completion Date, or, before the Completion Date there are circumstances which could give rise to a Strike then the Purchaser may:*

- a. *Give the Vendor written notice of its intention to rescind the Contract; or*
- b. *Require the Vendor to commence any proceedings commenced by the Authority or any other person or entity in respect of the Strike or to otherwise do all things necessary to attempt to have the Strike removed from the Licence.*

35.3 *In the event that the Purchaser serves a notice pursuant to clause 35.2a clause 23 of the printed clauses shall apply.*

35.4 *In the event that the Purchaser serves a notice pursuant to clause 35.2b the completion date shall be extended to 21 days after the Strike is removed or the purchaser receives written confirmation from the Authority or any other relevant regulatory or enforcement body that no Strike is to be recorded against the Licence.*

35.5 *In the event that the Strike is not removed or the written confirmation referred to in clause 35.4 above is not received by 90 days after the date of this contract, the Purchaser may rescind this contract and the provisions of clause 23 of the printed clauses shall apply.*

35.6 *This contract is subject to and conditional upon the approval of the Transfer Application. The Purchaser shall within 14 days of the date of this Contract deliver to the Vendor’s solicitor all documents required by the Authority to effect the Transfer Application including but not limited to, any application forms required by the Authority, copies of identification of the proposed transferee, a National Police Certificate in*

respect of the proposed transferee and the filing fee. The documents shall be duly executed on behalf of the Purchaser and the Transferee.

35.7 *Upon receipt of the documents referred to at clause 35.6 above, the Vendor shall procure the execution of the Licensee where required and shall attend to lodgement of the Transfer Application. The Transfer Application shall nominate the Completion Date as the date upon which the transfer of the Licence is to take effect and the Transfer Application is to be approved.*

35.8 *In the event that the Transfer Application is approved prior to the Completion Date, the Purchaser and Transferee shall hold the Licence on trust for the Vendor until completion and if this contract is rescinded or terminated after the approval of the Purchaser and Transferee must immediately cause the Licence to be transferred to the Vendor and the Vendor's nominee upon receipt of a written request to do so.*

35.9 *Each party authorises the other to make enquires of the Authority as to the listing and progress of the Transfer Application.*

35.10 *The Purchaser warrants that it is not aware of any matters which may form the basis of any objection against it or the Transferee which might be taken against the Transfer Application. Any breach of this warranty shall be deemed to be default under this Contract on the part of the Purchaser.*

35.11 *The Purchaser shall agree to indemnify and pay upon request to do so, all costs and expenses incurred by the Vendor if the Transfer Application, or any of them, are unsuccessful.*

- 201.** Ms Staltaro states that she informed Mr Amante that it was her intention to install a new management team at the Premises and that she would not be making an offer to re-employ Mr Lakepa as licensee. Mr Amante sent a letter of termination to Mr Lakepa, a copy of which is provided at **Annexure “B”** to Ms Staltaro’s statutory declaration. The termination letter provides that the effective date of termination is the date of approval of the transfer of the licence from Mr Lakepa to Mr Iqbal.
- 202.** Ms Staltaro states that an application to transfer the licence to Mr Iqbal was lodged with the Authority in late August 2015. However, the application has not yet been approved and Ms Staltaro’s solicitors informed her that when they contacted the Authority about the progress of that application, they were advised that the application is “contentious” because of the possibility of a strike being incurred on the licence and there was a delay in processing the application as a result.
- 203.** Ms Staltaro states that following the events of 19 December 2015, she has sought to become involved in the operation of the licensed business to protect her interests as prospective business owner, even though the licence transfer application has not been approved and the completion of the contract for the sale of the business has not yet taken place.
- 204.** Ms Staltaro states that she has engaged TTG to conduct an audit of the operation of the business and supervise its conduct for the purposes of ensuring compliance and to recommend any changes to be implemented to improve compliance and minimise risk.
- 205.** Ms Staltaro states that she has been working closely with Mr Arthur Burchett of TTG to implement changes to management and operations so that any threat or risk to the public interest as a result of the operation of the Premises is reduced. Ms Staltaro intends to maintain a relationship with TTG as an external consultant to monitor the conduct of the business to ensure future compliance is improved and risk minimised.

206. Ms Staltaro further states that she advised Mr Amante and Mr Lakepa that she did not want Mr Lakepa to be involved in the operation of the Premises and that Mr Iqbal (who is also an approved high risk manager) is to be in charge of operations and that he will be supervised and supported by TTG.
207. Ms Staltaro states that she has informed the entertainer contracted to perform at the Premises who was arrested in relation to drug matters on 19 December 2015 [the Authority notes that this is an apparent reference to “Charlotte” (Ms Raya Waters)] that her services are no longer required at the venue as a result of her “misconduct”.
208. On 23 December 2015 during a staff meeting, Ms Staltaro, along with Mr Iqbal and Mr Burchett, directed all staff and contractors of the business that the Dreamgirls business has “zero tolerance to drug use, possession and supply” at the Premises. Signage has been erected in various conspicuous locations within the Premises, stating:

Dreamgirls has zero tolerance with the sale, supply and use of drugs on these premises. All incidences will be reported to the Police.

209. Ms Staltaro also states that she has taken action to ensure that the use by members of the public of the area on level 1 of the building has ceased. The door providing access to level 1 has been “locked” so that it is inaccessible to anyone, except Mr Burchett who is the only person in possession of a key to the lock. Ms Staltaro states that she will “ensure” that level 1 of the building is not used by the general public at any time for any purpose.
210. Finally, Ms Staltaro states that there are a number of staff members and contractors to the business who will suffer if the business is subject to a long term closure order. Ms Staltaro provides at **Annexure “C”** to her statutory declaration copies of emails and letters from staff members and contractors describing the impacts that a closure of the business will have on them personally.
211. **Annexure “A” to Ms Staltaro’s statutory declaration dated 29 December 2015** – signed contract for the sale of the Dreamgirls business from Royal Restaurant Pty Ltd to Restaurant Royale Pty Ltd dated 30 July 2015. As noted above, the completion of the contract is conditional on the transfer of the licence from Mr Lakepa to the proposed new licensee, Mr Mohammad Iqbal, and also the resolution of proceedings relating to possible “strikes” being imposed on the licence [under Part 9A of the Act]. Restaurant Royale Pty Ltd intends to complete the contract upon satisfaction of the condition regarding the transfer of the liquor licence. Attached to this document is the OneGov licence record for the Premises as at 20 March 2015.
212. **Annexure “B” to Ms Staltaro’s statutory declaration dated 29 December 2015** – notice of termination of employment issued by Mr Michael Amante, director of Royal Restaurant Pty Ltd to Mr David Lakepa dated 31 July 2015. The full text of this Notice states as follows:

We give you notice that we have agreed to sell the business. We advise that the new owners do not wish to re-employ you as licensee due to the offences that have been committed at the venue while you have held the licence.

As a result, we have no other option but to terminate your employment and give you advanced notice so that you can try to get employment elsewhere.

We require you to remain in your position as licensee until the licence has been transferred to the licence holder nominated by the new owners. We expect that this will take place by the end of August 2015.

We will pay all of your employee entitlements after completion of your last shift.

We are sorry that our relationship has had to end this way but it is out of our control.

- 213. Annexure “C” to Ms Staltaro’s statutory declaration dated 29 December 2015 –** copies of letters and emails from 10 employees or contractors of the Premises opposing the long term closure of the Premises. The full text of these letters and emails is provided below.

- 214. Letter from a dancer/stripper at Dreamgirls [name not published] dated 22 December 2015,** which states:

I am writing to express the importance of my employment at Dream Girls in Kings Cross. As a dancer I am given the flexibility of working my own hours and working around my busy schedule. I recently opened a business in 2015 on the South Coast of NSW, where I reside. Working at Dream Girls has helped me to establish my business at 21 years old and contributed to its growth. Loss of employment at Dream Girls would result in a critical outcome for my new business. I would as a result loose [sic] all that I have invested into my business, as my income from Dream Girls is currently supporting my business and personal outgoings such as rent and bills. Having a business in a small town takes persistence and hard work. The folding of my business would also result in the loss of employment for 4 of my staff members.

I have been working at Dream Girls for 6 months and have not found a better working environment in Sydney. The staff and management are highly professional and supportive. The stress caused by my loss of employment would also be detrimental to my mental health. Finding employment at another establishment in Sydney would not be an option for me, as in 2 years of working at venues in the city, no venue provides the same positive work environment as Dream Girls.

Please do not hesitate to contact me, as I am happy to provide any further information on the hardship that my loss of employment at Dream Girls will result in.

- 215. Letter from a duty manager at Dreamgirls [name not published] dated 23 December 2015,** which states:

My name is [name not published], I am a manager at Dreamgirls. The recent closure of Dreamgirls has placed extreme hardship on not only myself, but also our entire staff: Security, Bartenders, Waitresses, Dancers, and Management. Many of whom have families, school fees, debts, and many other financial commitments.

I, myself, have just returned from visiting family overseas and am currently in financial strife due to my commitments in Canada. I have been heavily relying on my employment at Dreamgirls to recover my travel costs. The abrupt closure of Dreamgirls has left me in an extremely difficult position, as I will no longer be able to make rent this month as a result of this.

This is but one example of how the sudden closure of Dreamgirls is having an adverse affect [sic] on many of us, who are now suffering at a critical, and costly time of year. I ask that you please take these facts into consideration, and allow Dreamgirls to keep its doors open.

Thank you for taking the time to read and consider this letter.

216. Letter from Mr Mohammad Swadaf bin Iqbal, the proposed licensee of Dreamgirls (undated, accompanying Ms Staltaro's statutory declaration of 29 December 2015), which states:

My name is Mohammad Swadaf Bin Iqbal, 25 years old from Bangladesh. I came in Australia July 2009 and I have completed BBA from Victoria University, Sydney. Right now I am holding 485 (Temporary Graduate Visa).

I have been working in Dream Girls, Potts Point since November 2014. I am working fulltime as a Bar supervisor in Dream Girls and that's the only place I am working right now. Besides supporting myself [sic] in Australia, I always send money back home Bangladesh to my Wife. On top of that soon I have to launch my permanent residency application, which is costing me a lot. I am moving to new house because my wife is coming to Australia soon. She will be totally depending on me.

At this stage, loosing [sic] job at Dream Girls will be the biggest Nightmare for me. My current life and future plan will be badly effected [sic] if I loose [sic] my job at Dream Girls because it will not be that easy to get another job and settle my position at the new job. So I humbly request to the authority to consider all my co-worker's [sic] and my current situation before they take any decision.

217. Letter from a dancer/stripper at Dreamgirls [name not published] dated 23 December 2015, which states:

I am writing this letter in regards to the imposed shut down of Dreamgirls Kings Cross and why I feel it will be injustice to the current staff members as well as myself.

As a long term employee I have watched the cross go through massive changes. I have been a part of that change and to see one of the iconic Kings Cross clubs be shut down will not only hurt the support the income helps me with but will also hurt the general economy of the suburb itself.

As a dancer, a mum, and a current law student, this income from Dreamgirls has helped me give opportunities to my daughter which she might have missed out on had we only been surviving on my partner's wage. The allowance that I can work nights means I am able to jointly support my family, while still providing quality care time during the day for my daughter.

The income I receive from Dreamgirls has given me the opportunity to study another career so once I am fully qualified I can leave my spot to another budding student who uses this career choice for the same reason.

The option to go work at another club has crossed my mind however none of the other clubs offer the security and safe family atmosphere that Dreamgirls has given me over the past 8 years. While an exciting career choice this is, I have never once felt uncomfortable or pressure from any of the managers or patrons. I don't abuse alcohol or drugs and I can confidently tell you that the club owners/managers have never once put our lives at risk for the sake of the income of the club. They monitor who comes in and I don't think I ever seen a violent event inside the club whilst being employed there.

To take away Dreamgirls your [sic] taking away one of the safest places for girls to dance and be employed in the Cross. You are taking away the income that helps me study and give my daughter a comfortable life and your adding to the stress it would usually take off my partner having to support an extra two people on average wage.

I think with the proper education/ meetings to the current employees of Dreamgirls the problems regarding the closure of Dreamgirls can be fixed and I think that the closing of Dreamgirls is not getting rid of the problem it's just moving it to another location.

Thank you for taking my statement into consideration and I sincerely hope that Dreamgirls stays open.

I can be contacted on the above Number/address for confirmation of anything in this letter.

218. Email from a barman at Dreamgirls [name not published] dated 23 December 2015, which states:

Hi my name is [name not published]. My position is barman at Dreamgirls. I've been very happy working in Dreamgirls. Customers are all good. Staffs [sic] are all good in manners and respect everyone, this make me feels working with family. Hoping through this hard times [sic], Dreamgirls can be operate as normal again. Ifthe [sic] club is shut, it really affects me to pay my rent and living cost very serious. And since last Saturday I'm scared to be lost my job [sic]. Especially in this month, it's very hard to get ajob [sic] right now because it's too late of almost New Years. I'm really hoping if the club can be operate like normal again. Cheers.

219. Email from a dancer/stripper at Dreamgirls [name not published] dated 23 December 2015, which states:

My name is [name not published] and I am a dancer/performer at Dreamgirls club in Potts Point. This is just a quick email to appeal for the re-opening of the club as this decision will directly affect myself and many others around me. The club is my only source of income and I need it to keep the roof above my head, to pay my bills and all my expenses, especially during the busiest and most expensive time of the year. I highly value my work place and would be devastated to see it go, not just for financial reasons but also for the love of working there with all my colleagues.

It is imperative to myself and many others that the club remain in business.

220. Email from a waitress at Dreamgirls [name not published] dated 23 December 2015, which states:

My name is [name not published] but everyone here called me Vicky. I am a waitress for over a year. I am an international student who from Thailand. That you guys know Sydney is the one of high cost living and I need this job back to support my education and my life. I need Dreamgirls back!! Dreamgirls is like my home here. You all here like my family in Sydney.

Thank you very much. Thanks Dream girls!!

221. Email from a dancer/stripper at Dreamgirls [name not published] dated 23 December 2015, which states:

My name is [name not published] as my state [sic] name, I am a stripper. Many people saids [sic] King cross is very dangerous but I am disagree [sic] because I have been working at Dreamgirls for 3 years and I never have trouble or problem at all. People at Dreamgirls are very nice and friendly, every time when I come to work I feel like I coming home. Dreamgirls is the only place that I work to support myself to pay rent, car, living and supporting my family. As you know I am come from a different country even I am a citizen of Australia but my English is not very good, so I can't work many places.

After was what happened on Saturday 19th December 2015, I was severely shocked and couldn't sleep for a few day [sic] because At first I thought they are terrorise [sic]. I'm feeling very sad because Dreamgirls have to shutdown [sic], I feel like I am losing my home. I would like to have my home back.

222. Email from a dancer/stripper at Dreamgirls [name not published] dated 23 December 2015, which states:

I [name not published] am a dancer for dreamgirls and I would be greatly affected by it closing, as I am one of the only incomes in my family. I suffer chronic migraines so I cannot have a regular job as I never know when I will suffer one. This club gives my [sic] the flexibility I need so I can continue to support my family.

223. Email from a dancer/stripper at Dreamgirls [name not published] dated 23 December 2015, which states:

My name is [name not published] and I have been working at Dreamgirls on and off for a number of years. I am [sic] a dancer there and mainly work weekends. At the moment this is my only source of income and with a mortgage and related bills (i.e. body corporate, rates, insurances etc) losing this job would create a large amount of stress especially as it's Christmas time and finding alternate work takes time.

Dreamgirls is an amazing place to work, every friend I have met through that club so losing it would not just be a financial loss. The girls there a [sic] well looked after and management do whatever they can to help us out when we need it.

224. Statutory declaration by Mr Arthur Burchett, Hospitality Consultant and Vocational Trainer/Assessor at Tactical Training Group Pty Ltd dated 29 December 2015. Briefly, Mr Burchett provides a background of his employment with TTG, noting that TTG is a specialist Registered Training Organisation which is a market leader in the design and implementation of nationally accredited staff training programs servicing the needs of business on a national basis. Mr Burchett states that TTG is also an approved provider of various mandatory training programs and nationally accredited education and staff training programs for current and prospective employees within industries such as hospitality and retail food businesses. TTG also runs a program targeting high school students known as “SMART”, which provides education about the harmful physical and social effects of alcohol use.

225. Mr Burchett states that he has personally been involved in the hospitality industry for around 18 years and has previously held the position of a director of a registered club and that he has been involved in vocational training for around 8 years. Mr Burchett has also been approved by OLGR as a facilitator, enabling him to conduct accredited Responsible Service of Alcohol and Responsible Conduct of Gambling courses.

226. On 23 December 2015, TTG through Mr Burchett was appointed by Ms Staltaro to supervise the operations of the Dreamgirls business. The role of TTG was to analyse and observe the conduct of the business and to recommend and implement any changes believed necessary in order to ensure compliance with the various regulatory provisions and licence conditions that apply to the operation of the business, including but not limited to the *Liquor Act 2007*. In particular, Mr Burchett's role was to make recommendations to ensure that the matters arising from the Police operation on 19 December 2015 are addressed and not repeated.

227. Mr Burchett states that he has been “working closely” with Ms Staltaro and Mr Iqbal every day since 23 December 2015 to supervise the operations of the business. Mr Burchett has been on site every day that Dreamgirls has traded since 23 December 2015.

228. Mr Burchett states that he has met with Kings Cross Licensing Police on 23, 24 and 26 December 2015 to discuss with Police what the major concerns are in relation to

the operation of Dreamgirls and in the Kings Cross precinct generally, and what is required to achieve the “acceptable benchmark of compliance, practices and behaviours in the Premises”.

- 229.** Constable Mullins of Kings Cross Licensing Police advised Mr Burchett on 26 December 2015 that he expects a policy of “zero tolerance” on drugs, for security staff to be fully compliant with their obligations, for there to be “full compliance” with special licence conditions imposed on premises in the Kings Cross precinct and for the entertainers at the Premises to comply with the legislation and licence conditions.
- 230.** Mr Burchett states that an operator of a licensed premises has “limited powers” when it comes to preventing the use of illicit drugs on the premises – for example, venue staff and security have no power to search customers. Mr Burchett has recommended that signs be displayed in conspicuous positions in the Premises regarding a zero tolerance of the venue on the use of drugs on the Premises. This recommendation has been actioned by the venue and signage is now in place. Attached at **Annexure “A”** to Mr Burchett’s statutory declaration are four photographs depicting the display of this new signage in place at the venue.
- 231.** Mr Burchett states that both Ms Staltaro and Mr Iqbal have “been very open to implementing recommendations” and have assisted Mr Burchett to have his recommendations implemented.
- 232.** Mr Burchett has also caused for the door leading to level 1 of the building to be “securely locked with a large padlock”. Mr Burchett states that he holds “the only key to the padlock”, but that he has provided a key to Mr Iqbal so as to enable him to access the foyer area to store the ID scanner. Attached at **Annexure “B”** to Mr Burchett’s statutory declaration is a photograph of the door with the padlock.
- 233.** Further, Mr Burchett has created a number of operational resources for use at the Premises as part of the “re-induction and further education” of staff and contractors to enhance compliance and create a “culture of compliance”. Attached at **Annexure “C”** to Mr Burchett’s statutory declaration are copies of these operational resources.
- 234.** Mr Burchett states that he has conducted an audit of the operations of the Premises by completing the OLGR format checklist for compliance, and found that the venue “meets all of the compliance measures provided for in that checklist”.
- 235.** Whilst on the Premises each night of trade from 23 December 2015, Mr Burchett states that he has monitored all aspects of the business and noticed that all of his recommendations have been implemented and all relevant licence conditions and legislation are being complied with.
- 236.** Mr Burchett states that he has made “specific observations” of front door staff refusing entry to the Premises to persons who are already intoxicated or whose identification has expired. He has also specifically observed bar staff, waitresses, security, RSA marshals and management asking customers to leave when they have been approaching intoxication. Further, Mr Burchett has observed that staff are being “proactive” in preventing drug use on the Premises by conducting “regular toilet checks and management constantly monitoring all areas under camera surveillance”.
- 237.** Mr Burchett concludes with the statement that with his “ongoing involvement as an external consultant and new management, Dreamgirls will operate as a very safe environment for all staff and customers in the best interest of the community”.

- 238. Annexure “A” to Mr Burchett’s statutory declaration dated 29 December 2015** – four photographs depicting the display of new signage in place at the venue, which reads: “Dreamgirls has zero tolerance with the sale, supply and use of drugs on these premises. All incidences will be reported to the Police”.
- 239. Annexure “B” to Mr Burchett’s statutory declaration dated 29 December 2015** – photograph of the door to the level 1 area of the building, which is now secured by a large padlock.
- 240. Annexure “C” to Mr Burchett’s statutory declaration dated 29 December 2015** – operational resources created by Mr Burchett for use at the Premises as part of the “re-induction and further education” of staff and contractors. The operational resources provided by Mr Burchett include a document entitled “Employee Information”, a document entitled “Dancer Information” and the Dreamgirls “House Policy” (discussed below).
- 241. “Employee Information” document** which states at its conclusion: “Dreamgirls enforces a responsible service of alcohol environment and a drug free venue. Any breaches will be instant dismissal and reported to the Police”.
- 242. “Dancer Information” document** which states, relevantly:

I understand the following points and acknowledge whilst working with Dreamgirls I will follow them and if I do break the rules/laws will face instant dismissal and referred to the Police.

1. *DREAMGIRLS WILL NOT TOLERATE ANY SALE, SUPPLY OR USE OF DRUGS WITHIN THE PREMISES. DREAMGIRLS PROMOTES A DRUG FREE VENUE.*
2. *It is a condition of our license and the law in NSW that:
Audience participation involving physical contact or sexual activities is prohibited either on the stage or in any part of the licensed premises (License condition 240)
This means touching customers in a sexual manner in a show, during your podium or in the club is illegal.*
3. *It is also a condition of our license that:
Entertainers are not to leave the defined stage areas during their performances. When leaving the staged areas at the end of their performances they are to wear at least a “G” string at all times. (License condition 260)
This means at NO TIME are you to leave the podium during your performance.*

Dreamgirls can be fined and lose their license should you violate these laws. If you are found breaching these laws you will be financially liable for any fine/s issued.

- 243. Dreamgirls “House Policy”,** the full text of which states as follows:

Welcome to Dreamgirls.

Our House Policy states:

1. *The Dreamgirls management and staff will work hard to ensure all patrons enjoy a friendly, safe and relaxed atmosphere.*
2. *Patrons will be asked to leave for loud swearing, offensive language, intoxication and/or offensive or unsocial behaviour [sic].*

3. *Patrons will be asked to leave and barred for any form of violence or intimidation.*
4. *No drinks, alcoholic or non-alcoholic, are to be brought into Dreamgirls.*
5. *Management reserves the right to refuse entry.*
6. *No opened drinks or glasses are to be taken off the premises from the basement level.*
7. *No gang colours or paraphernalia of any description are allowed in Dreamgirls.*
8. *Patrons will be asked to leave and barred for the possession or dealing of drugs in or surrounding Dreamgirls, you will be asked to leave if asking for the sale or supply of drugs and reported to Police.*
9. *CCTV camera's [sic] monitor inside and outside the hotel premises 24 hours a day.*
10. *If you are asked to leave the hotel or the area immediately surrounding the hotel, and you fail to do so, you will be barred from the hotel, the Police will be called and you may be fined and charged. If you are barred from the hotel, and you re-enter the hotel or the immediate surrounding area, the Police will be called and you may be fined and charged.*
11. *No touching of the dancers will be permitted.*
12. *Dreamgirls will not have any promotions which are deemed unacceptable under the Liquor Act.*
13. *No take away sales will be permitted.*
14. *After midnight the following drinks will not be sold: any drink that is commonly designed to be consumed rapidly (commonly known as a shot), any drink containing more than 50% spirits or liquor [sic], any ready to drink containing more than 5% alcohol, any drink that contains more than 30mls of spirit or liqueur.*
15. *After midnight no more than four alcoholic drinks, or one bottle of wine, can be sold or supplied to the same person at a time.*
16. *After 2am no more than two alcoholic drinks can be sold or supplied to the same person at a time.*
17. *At 3am no alcoholic beverages are to be sold.*
18. *An RSA marshal shall be engaged performing RSA marshalling duties from midnight.*
19. *Between 9pm-1:30am Dreamgirls will have in operation an approved linked ID scanner. Staff operating this will have completed Privacy competency training.*
20. *Dreamgirls will not admit any patrons after 1:30am due to "lockout" legislation.*
21. *Drinks will not be sold in any form of glass.*

We trust that you will enjoy your time at Dreamgirls.

INTERIM MEASURES AGREED BETWEEN THE PARTIES ON 31 DECEMBER 2015

244. After the Authority convened to give preliminary consideration to the Application on 30 December 2015, the Authority's Chief Executive sent an email to the Applicant and Mr Manca advising as follows:

The Authority has given preliminary consideration to the Long Term Closure Order Application dated 23 December 2015 with regard to the licensed premises known as "Dreamgirls" located at B77 Darlinghurst Road, Potts Point 2011 (Premises).

No final decision on the Application has yet been made.

However, on the basis of the material before the Authority and subject to consideration of any further submissions from the parties, the Authority is contemplating issuing an Order under section 84(6) of the Liquor Act 2007 closing the Premises from 7pm on 31 December 2015 for a period of 6 months OR until the following conditions are satisfied:

- 1. Minor building works are completed to ensure that:*
 - (a) patrons of the Premises cannot access level 1 of the building in which the Premises is located*
 - (b) liquor cannot be supplied from the Premises to level 1 of the building in which the Premises is located*
 - (c) the level 1 area is not capable of being used in relation to the licensed business operations conducted on the Premises*
 - (d) CCTV is installed at all points of potential access between the Premises and level 1 of the building in which the Premises is located providing constant coverage of those access points with audio visual footage retained by the licensed business operating on the Premises for at least 30 days.*
- 2. Minor works are completed, designed to minimise the risk of drug taking in any part of the Premises including:*
 - (a) Installing violet lights in toilet areas*
 - (b) Removal of flat surfaces in toilet areas*
 - (c) The elimination of any areas (other than inside toilet areas) on the Premises that are difficult to observe by staff of the Premises in the normal course of their duties.*
- 3. The completion, by a suitably qualified independent compliance consultant, of a new Drug Prevention Policy for the Premises, to be prepared in consultation with the Secretary of the Department of Justice or his nominee. Such consultation must give the Secretary at least five (5) business days to consider and comment before the being approved by the licensee of the Premises.*
- 4. The removal of all internal communication devices facilitating contact between staff of the licensed business on the Premises and level 1 of the building in which the Premises is situated.*
- 5. The provision of a written report to the Chairperson of the Authority evidencing how and when conditions 1-4 have been satisfied.*

The Applicant is invited provide any final written submissions in response to this email copying the Licensee Solicitor no later than 12:00 pm 31 December 2015 and the Licensee is invited to provide any final written submissions in response to this email by no later than 3 pm 31 December 2015 via email to the Authority's General Counsel at bryce.wilson@ilga.nsw.gov.au.

Submission from Mr Manca – 8:53am on 31 December 2015

245. In this email, Mr Manca provided a final submission on behalf of the licensee and Restaurant Royale Pty Ltd in response to the Authority's proposed Order and conditions for reopening the Premises, as notified in its email to the parties of 30 December 2015. The full text of Mr Manca's email states as follows:

I am instructed as follows.

1. *My clients maintain their position as set out in our submissions in reply to the application that ILGA does not have power to make an order pursuant to s84 because the licensee has not been given a reasonable opportunity to make submissions in response to the application, contrary to s84(2)(b). The basis upon which it is submitted that there has been a failure to provide a reasonable opportunity to make submissions has been clearly identified in our submissions.*
2. *As a consequence, ILGA has no jurisdiction to make orders in relation to your application. Any order made by ILGA in such circumstances would be the subject of a judicial review application in the Supreme Court.*
3. *Aside from the above jurisdictional problem, the preliminary view of ILGA to make an order to close the premises for six months or until the conditions described in the email below are satisfied is grossly unreasonable as it has the certain consequence of requiring the premises to be closed for at least a period during which the Secretary is considering the Drug Prevention Policy to be prepared by an independent consultant on behalf of our client. ILGA has effectively provided our client with less than 24 hours to consider a position where there is no option but to close the premises at least for some time. There is a clear issue of a denial of natural justice and procedural fairness by the conduct of ILGA in relation to this preliminary view. This is exacerbated by the fact that the premises has traded without any evidence of issues or non-compliance since the expiration of the short term closure order on 23 December 2015, and the fact that clear positive evidence of compliance and an absence of any repetition of the matters which form the basis of the application for the long term closure order has been submitted.*
4. *Notwithstanding all of these matters, we are instructed that our clients would be prepared on a without prejudice basis to have the application resolved in the following manner:*
 - a. *The application for the transfer of the licence to Mr Iqbal is approved immediately; and,*
 - b. *A condition is imposed on the licence in the following terms:*

"The authorisation of the Premises to sell and supply alcohol for consumption on the Premises pursuant to the Licence is voluntarily suspended until the following conditions are satisfied:

1. *Minor building works are completed to ensure that:*
 - (a) *patrons of the Premises cannot access level 1 of the building in which the Premises is located*
 - (b) *liquor cannot be supplied from the Premises to level 1 of the building in which the Premises is located*
 - (c) *the level 1 area is not capable of being used in relation to the licensed business operations conducted on the Premises*
 - (d) *CCTV is installed at all points of potential access between the Premises and level 1 of the building in which the Premises is located providing constant coverage of those access points with audio visual footage retained by the licensed business operating on the Premises for at least 30 days.*
2. *Minor works are completed, designed to minimise the risk of drug taking in any part of the Premises including:*
 - (a) *Installing violet lights in toilet areas*

- (b) *Removal of flat surfaces in toilet areas*
 - (c) *The elimination of any areas (other than inside toilet areas) on the Premises that are difficult to observe by staff of the Premises in the normal course of their duties.*
- 3. *The completion, by a suitably qualified independent compliance consultant, of a new Drug Prevention Policy for the Premises, to be prepared in consultation with the Secretary of the Department of Justice or his nominee. Such consultation must give the Secretary at least five (5) business days to consider and comment before the being approved by the licensee of the Premises.*
- 4. *The removal of all internal communication devices facilitating contact between staff of the licensed business on the Premises and level 1 of the building in which the Premises is situated.*
- 5. *The provision of a written report to the Chairperson of the Authority evidencing how and when conditions 1-4 have been satisfied."*
- 5. *The above condition in effect accepts the proposed conditions indicated by ILGA, however does not require the making of any order pursuant to s84 (which our clients say is beyond power in the current circumstances). The only material difference otherwise in what I am instructed to propose as a condition on the licence is in respect of condition 3, whereby it is only necessary for the Drug Prevention Policy to be submitted to the Secretary before the premises may recommence its authorisation for the sale and supply of liquor, rather than having to await the outcome of consultation with the Secretary (which is entirely outside the control of the Premises). It is inappropriate that the premises should have to remain closed until consultation with the Secretary is concluded. If the Secretary is not satisfied with the terms of the Drug Prevention Policy, then a separate application can be made in the future in that regard.*
- 6. *In the event that you are agreeable to my proposal above to resolve the application, I am instructed that my clients will agree to accept the imposition of our proposed condition today, which will of course have the effect of closure of the premises until our clients address the matters required by the condition. It will clearly take some time for our clients to address the matters. As such, our clients are giving a significant concession in circumstances where there exist clear rights for judicial review of the handling of the entire application on multiple bases, and the premises has in fact traded after the expiration of the short term closure order with no repeat of the matters complained of in the application and positive steps have been taken to ensure ongoing compliance.*
- 7. *Our clients reserve all of their rights. This communication should not be interpreted as an admission that ILGA has jurisdiction to make an order pursuant to s84 in this case (which is in fact denied). Our clients have merely proposed a compromise position in order to resolve the application without the need for steps to be taken to obtain relief in the Supreme Court.*

Submission from OLGR – 10:29am on 31 December 2015

246. At 10:29am on 31 December 2015, the Applicant provided a response to Mr Manca's above email, the full text of which states as follows:

I refer to both the email from Mr Brodie and Mr Manca's proposal in reply.

The Applicant is agreeable to conditions specified in Mr Manca's proposal below (that need to be satisfied before the venue can recommence trade) - specifically noting that the requirement to seek approval from the Secretary on the drug policy has been removed.

However, the Applicant still has considerable concerns surrounding the control and management of the venue.

The Applicant request that any recommencement of trade also be conditional on a new licensee, and any financially interested parties, being unconditionally approved by the Authority. I note that there is a current application to transfer the licence to Mr Iqbal and Mr Manca requests that this be immediately approved. However, the Applicant submits that a more prudent approach, in light of recent issues, is that the Authority require a renewed submission period (however short and including publication on the noticeboard) so that all stakeholders have an opportunity to provide submissions in consideration of recent events; or in the alternate, require a new application to be lodged. Such an application could be dealt with concurrently with any remedial works undertaken by the premises.

It is our understanding that the licensee, Mr Lakepa has not attended the premises since the Short Term Closure Order and is no longer in control of the premises. We are also of the understanding that Mr Amante, as sole director of the current approved business owner, Royal Restaurant Pty Limited, is no longer involved in the management or control of the venue.

This view is supported by Ms Staltaro's statutory declaration where she states that she has instructed that Mr Lakepa is to have no further involvement in the venue, and that Mr Iqbal 'is to be in charge of operations' (at paragraph 9). In addition, paragraphs 7-11, in which Mr Staltaro states that she engaged TTG, held a staff meeting and terminated an employee, clearly demonstrate that she is in control of the venue.

Based on this material and, in the absence of the approved licensee, it is questionable whether the licence can be exercised or that section 61 can be availed. At present it is not clear as to who is legally responsible for the venue under the Liquor Act should further breaches be detected.

Given the issues identified in the application and the need for absolute regulatory certainty, we would submit that it necessary to have absolute clarity in relation to who is exercising the licence in order for it to recommence trade.

While we are of the view that the Authority can make an order under section 84, whether it chooses to do so or accepts a voluntary suspension is a matter for the Authority.

Further Submission from Mr Manca – 11:46am on 31 December 2015

- 247.** At 11:46am on 31 December 2015, Mr Manca provided a further email submission to the Authority, the full text of which states as follows:

It is the position of my clients (being Mr Lakepa and Restaurant Royale Pty Limited) that the application for transfer of the licence lodged 20 August 2015 should be dealt with as soon as possible, and that until it is approved, Mr Lakepa remains legally responsible for the conduct of the business. Just because Mr Lakepa has received a directive from the proposed business owner through the current business owner (see paragraph 9 of the statutory declaration of Ms Staltaro) that he is not wanted by the proposed business owner (for reason of protecting the commercial interests of the proposed business owner and ensuring future compliance) to be involved in the operation of the business of the licence, does not remove his legal liability and responsibility for the operation of the business of the licence. In any event, Mr Iqbal as agent of the licensee and as a high risk manager has the requisite authority to exercise the responsibilities of the licensee in the absence of the licensee, which is clearly contemplated by cl. 53GA(2) of the Liquor Regulations.

It is submitted that in the event of any further breaches before the transfer of licence is approved, the responsible party will be Mr Lakepa. Obviously, the greater the delay

in dealing with the existing transfer application from Mr Lakepa to Mr Iqbal, the greater the potential prejudice to Mr Lakepa who remains legally responsible for the operation of the business of the licence and for commercial reasons must not involve himself in the operations of the business, but rather rely upon his approved manager Mr Iqbal to discharge these obligations on his behalf. Contrary to the applicant's submissions, there is no doubt as to who is legally responsible for the conduct of the business of the licence – it is Mr Lakepa. This will continue to be the case until the licence is transferred.

Further, there is no s61 issue that arises. The application to transfer the licence to Mr Iqbal lodged on 20 August 2015 was made pursuant to s60. There has been no application made pursuant to s61(2) and it is not intended that any such application be made.

There is no evidence that the circumstances contemplated by s61(1)(a) or (b) arise as there has been no eviction of Mr Lakepa (because there is no evidence that he holds a lease or any other right to occupy the premises personally) and there is no evidence that the premises owner has come into possession of the premises. IN fact the premises owner has not even made a submission in relation to the application, despite having been served with the application. In relation to s61(1)(c) the evidence shows that while Restaurant Royale Pty Limited has entered into a contract to purchase the business, it is conditional, and has not yet been completed. Therefore the current business owner as recorded on the licence, Royal Restaurant Pty Limited remains the business owner, and Mr Lakepa remains in the employ of it, at least until the licence transfer is approved, as per the letter of termination annexed to the statutory declaration of Ms Staltaro. It appears that the only basis upon which the applicant's submission as to the application of s61 could be made is in respect of s61(1)(d) by alleging that Mr Lakepa does not have the capacity to comply with his obligations pursuant to s91. As set out above, while he remains licensee, Mr Lakepa has retained responsibility for the conduct of the business. At any time that Mr Lakepa is absent from the premises (which due to the circumstances is likely to be for the foreseeable future) Mr Iqbal an approved high risk manager will be discharging Mr Lakepa's obligations to supervise and manage the conduct of the business of the licence. Pursuant to the operation of s91(1A) the legal effect of Mr Lakepa's absence and the presence of Mr Iqbal is that Mr Iqbal becomes personally responsible for the management and supervision of the premises. Therefore, s61(1)(d) does not arise because Mr Lakepa is not offending s91(1) of the Act, because it is acknowledged that his role in personal management and supervision of the conduct of the business of the licence in his absence is in fact delegated to any approved high risk manager pursuant to s91(1A).

For the above reasons, there is no s61 issue that arises in this case. If breaches are detected before the licence transfer is approved, it will be either Mr Lakepa or Mr Iqbal (or any other approved high risk manager) that will be legally responsible.

It is submitted that the proposed further condition to the recommencement of the authorisation to sell and supply alcohol at the premises being the unconditional approval of an application for the transfer of the licence would only be acceptable if ILGA immediately determined the current outstanding application for transfer of the licence to Mr Iqbal, and that any further delay to this, for the purposes of seeking further stakeholder submissions or any other purpose is totally inappropriate and unreasonable. The fact is that the application was lodged over 4 months ago. There has been ample opportunity for stakeholders to make submissions in respect of the application and for it to be determined. There has been no adequate explanation for the delay in the exercise of the obligations to determine the application by ILGA. There have been no submissions provided to the transferor or transferee in respect of that application. It is open for the parties to the transfer application to seek judicial relief in the form of a writ of mandamus in the circumstances, and all rights in this regard are reserved.

Authority Email to the Parties – 2:31pm on 31 December 2015

248. At 2:31pm on 31 December 2015, General Counsel sent an email to the parties in response to Mr Manca's further submission urging the immediate transfer of the licence to Mr Iqbal.

249. General Counsel advised the parties as follows:

The Authority has considered the email exchange between Mr Manca and the Applicant this morning and Mr Manca's further submission urging the immediate transfer of the licence to Mr Iqbal.

The Authority is concerned that in reality Mr Lakepa is no longer complying, nor has the capacity to comply with the requirement under section 91(1) of the Act to be responsible at all times for the personal supervision and management of the business on the Premises. That is, the requirement of section 61(1)(d) has been satisfied.

It is apparent from Mr Lakepa's interview with OLGR that he has been recently exercising a very limited and inadequate role on the Premises. The Authority notes with concern Mr Lakepa's statements to the effect that Margaret (Staltaro) and Mohammad (Iqbal) are actually running the business, and were running the business at the time of the recent events giving rise to the Application.

Those matters are germane to the proposed formal transfer of the licence to Mr Iqbal.

However, the effect of Mr Lakepa's apparent cessation of responsibility for the Premises since the Short Term Closure Order (noting that the Premises Owner has not moved to take possession of the Premises) is that the business owner is deemed to be the holder of the licence for a period of 28 days through the operation of section 61(3)(a) of the Act.

The Authority is of the view that in substance Restaurant Royale Pty Ltd is effectively acting as the business owner (notwithstanding that the sale of business has not been perfected) and is deemed to be the licensee for a period of 28 days since Mr Lakepa ceased acting as licensee, which appears to have been the case since the Short Term Closure Order.

This means that it is open to Restaurant Royale to make a fresh application to the Authority, during this 28 day period to either transfer the licence to its nominee or in the alternative, retain the licence and appoint a qualified approved manager.

It is a matter for the business owner as to whether it transfers the licence or holds the licence and appoints an approved manager but the Authority notes its prima facie concerns about the management of the business arising from the recent regulatory history and the information before the Authority - which may need to be addressed in relation to the proposed licensee and any close associates going forward.

Regardless of who actually serves as licensee or approved manager, the Authority's immediate concern is reducing the risk arising from its satisfaction that serious breaches of section 74 of the Act have occurred on the balance of probabilities and the in light of the significant threat or risk to the public interest that the Applicant has demonstrated - namely the risk of patrons of the licensed business being funnelled into an unlicensed nearby area within the building and the risk of offences against section 74 of the Act arising through the conduct of the licensee, employees or agents of the licensee - particularly with regard to the possession, use or supply of substances suspected of being a prohibited drug on the Premises.

The Long Term Closure Application remains on foot and is pending determination. The Authority remains minded to issue an Order but would be satisfied that the necessity for issuing such Order has abated were the following to occur:

1. *The Secretary impose, by consent of the licensee, with effect from today, the following new licence conditions pursuant to section 54 of the Liquor Act: (being the conditions proposed by Mr Manca)*
 1. *Minor building works are completed to ensure that:*
 - (a) *patrons of the Premises cannot access level 1 of the building in which the Premises is located*
 - (b) *liquor cannot be supplied from the Premises to level 1 of the building in which the Premises is located*
 - (c) *the level 1 area is not capable of being used in relation to the licensed business operations conducted on the Premises*
 - (d) *CCTV is installed at all points of potential access between the Premises and level 1 of the building in which the Premises is located providing constant coverage of those access points with audio visual footage retained by the licensed business operating on the Premises for at least 30 days.*
 2. *Minor works are completed, designed to minimise the risk of drug taking in any part of the Premises including:*
 - (a) *Installing violet lights in toilet areas*
 - (b) *Removal of flat surfaces in toilet areas*
 - (c) *The elimination of any areas (other than inside toilet areas) on the Premises that are difficult to observe by staff of the Premises in the normal course of their duties.*
 3. *The completion, by a suitably qualified independent compliance consultant, of a new Drug Prevention Policy for the Premises, and submission of the Drug Prevention Policy for the Premises to the Secretary of the Department of Justice or his nominee.*
 4. *The removal of all internal communication devices facilitating contact between staff of the licensed business on the Premises and level 1 of the building in which the Premises is situated.*
 5. *The provision of a written report to the Chairperson of the Authority evidencing how and when conditions 1-4 have been satisfied.*
2. *The Authority undertakes to determine, on a provisional basis, a fresh application to transfer the licence to be made by Restaurant Royale Pty Ltd to its nominee by 5pm next Friday 8 January 2016. The Authority is not in a position to "immediately" approve the transfer of the licence to Mr Iqbal particularly in light of the material now before it.*

Noting the Applicant's request for an opportunity to make submissions on any such transfer application, the business owner will file such application by midday on Monday 4 January 2016, with the Applicant to make any submissions or evidence in reply addressing the suitability of the nominee (honesty, knowledge and ability) to manage late trading licensed premises by midday Wednesday 6 January 2016. All submissions are to be made to this email.

3. *The directors of Restaurant Royale Pty Ltd and (to avoid doubt) Royal Restaurant Pty Ltd shall file an executed Voluntary Suspension of the Licence Form to the Authority's General Counsel by no later than 4 pm today specifying closure of the business from **5pm today until 5pm 8 January 2016.***

*I look forward to your response to this proposal before **4pm today**.*

Imposition by Secretary of New Licence Conditions under Section 54 of the Act

- 250.** Following the above email from General Counsel, a course of further communication between the parties ensued, resulting in the imposition of new licence conditions by a delegate of the Secretary (who is also the Applicant in this matter) under section 54 of the Act, to take effect from 5:00pm on 31 December 2015 (**Section 54 Decision Letter**).
- 251.** The Section 54 Decision Letter imposes licence conditions that are similarly worded to the five conditions specified in the email of 2:31pm from General Counsel above, save for making clear that the licensee must ensure, prior to the recommencement of trade, that these five conditions are complied with.
- 252.** Notably, the Section 54 Conditions (reflecting the position agreed between the Applicant and Mr Manca on 31 December 2015) did not make provision for the Secretary to be consulted on the Drug Policy to be prepared by the business, as initially proposed by the Authority's General Counsel. As discussed below, the adequacy of the *Drug Policy* that was furnished by the business on 12 January 2016 is a cause of controversy between the Applicant and the business.
- 253.** The Section 54 Decision Letter further notes that the business has given a commitment to voluntarily suspend the exercise of its licence from 5:00pm on Thursday 31 December 2015 until 5:00pm on Friday 8 January 2016, but notes that due to operational circumstances the business will be unable to file the appropriate paperwork until Monday 4 January 2016.

FURTHER DEVELOPMENTS

Transfer Application and Voluntary Suspension of Licence

- 254.** Notwithstanding Mr Manca's advice that the business would file a new licence transfer application form and suspension of licence document with the Authority by Monday 4 January 2016, those forms were not actually filed with OLGR until the afternoon of 7 January 2016 and not actually received by the Authority until around 9:30am on Friday 8 January 2016.
- 255.** In the licence transfer application form dated 4 January 2016 (**Transfer Application**), Restaurant Royale Pty Ltd (which is described on the form as the "deemed business owner pursuant to ILGA finding of 31/12/15") seeks to record the following transaction:
- Transfer the licence from the existing licensee, Mr David Wilhelm Lakepa to the proposed new licensee, Mr Mohammad Swadaf bin Iqbal; and
 - Record a change of the existing business owner, Royal Restaurant Pty Ltd (whose sole director is Mr Michael Amante) to the proposed "new" business owner, Restaurant Royale Pty Ltd (whose sole director is Ms Margaret Staltaro).
- 256.** The Transfer Application form states that this transfer is to take effect from 8 January 2016.

Letter from the Authority's Chief Executive to Mr Manca – 8 January 2016

257. On 8 January 2016, the Authority's Chief Executive sent a letter to Mr Manca acknowledging receipt of the Transfer Application and restating the Authority's view that Restaurant Royale Pty Ltd is in fact the business owner and was in fact operating the business to which the licence relates at relevant times. The Chief Executive advises that the previous application to transfer the licence made in August 2015 is now out of date and that the fresh Transfer Application is the application now under consideration.

OLGR Submission Opposing Transfer Application – 8 January 2016

258. On 8 January 2016, OLGR made submissions to the Authority in response to the Transfer Application, copying Mr Manca. These submissions objected to the proposed transfer of the licence to Mr Iqbal, raise concerns that the management of Restaurant Royale Pty Ltd were in fact operating the business at the time of the Police and OLGR raids in December 2015 and submit that it is “inconceivable” that they were not aware of the “open use of illicit drugs by patrons” and the operation of the “unauthorised bar on Level 1”.

OLGR Submission in relation to Ms Margaret Staltaro

259. In relation to Ms Margaret Staltaro (the sole director of Restaurant Royale Pty Ltd), OLGR contends that Ms Staltaro has been in control of the Premises for some time preceding the short term closure order issued on 19 December 2015. Notably, Ms Staltaro was present at the Premises when the search warrant giving rise to the short term closure order was executed.
260. OLGR contends that Ms Staltaro was also present on the Premises on 24 October 2015 and 1 November 2015 respectively, as evidenced by reports sourced from the NSW Police Computerised Operational Policing System (**COPS**) database in relation to COPS event numbers E59406456 and E59160927 (attached at **Tab “A”** of OLGR's submissions).
261. OLGR contends that on 24 December 2015, OLGR Senior Compliance Officer Fowler had a conversation with Mr Michael Amante, during which Mr Amante advised OLGR, *inter alia*, that he did not attend the venue any longer and “has not had any control over the licence” since 5 October 2015; that the correct current business owner was “Royal Restaurant, with Margaret Staltaro in charge”; and that as far as he was aware, Mr David Lakepa was still the licensee of the Premises. A file note of this conversation is attached at **Tab “B”** of OLGR's submissions.
262. In further support of OLGR's position that Ms Staltaro has been in control of the Premises for an extended period of time prior to the issue of the short term closure order on 19 December 2015, OLGR contends that during a record of interview between NSW Police and Mr Iqbal on 26 December 2015, Mr Iqbal stated, *inter alia*, that Ms Staltaro is his current employer; that Ms Staltaro employed him and he only receives instructions from Ms Staltaro regarding the ongoing management of the Premises; that Mr Amante no longer works at the Premises and neither he (Mr Iqbal) nor Mr Lakepa reports to Mr Amante; and that Ms Staltaro attends the Premises on weekends when it is trading. A copy of this record of interview is attached at **Tab “C”** of OLGR's submissions.

- 263.** OLGR submits that Ms Staltaro has “adverse compliance history” with regard to an offence involving possession of a prohibited drug for which she was charged and subsequently sentenced on 13 August 2013 at Downing Centre Local Court. Briefly, this matter relates to the possession of an “ice pipe” (paraphernalia related to the use of methylamphetamine) which was located in Ms Staltaro’s handbag during a vehicle search conducted by Police on 23 May 2013. Police also located a small resealable plastic bag containing clear granules of what was believed to be the prohibited drug methylamphetamine. The drug was weighed and returned a reading of 0.18 grams.
- 264.** The Court found that the offence was proven, but did not record a conviction pursuant to section 10 of the *Crimes (Sentencing Procedure) Act 1999*. OLGR submits that this charge is “particularly relevant when taken into consideration with the recent instances of employee drug use and supply at Dreamgirls”. A copy of the NSW Police prosecution *Facts Sheet* for charge number H51747138 in relation to this matter is attached at **Tab “D”** of OLGR’s submissions.

OLGR Submission in relation to Mr Mohammad Iqbal

- 265.** OLGR submits that Mr Iqbal has been an employee of Dreamgirls since 2014 and was “principally in charge of the bar within the Premises”. OLGR notes that Mr Iqbal was described by Mr Lakepa and Ms Staltaro as being an “approved high risk manager” on the Premises. OLGR notes that under section 91 of the Act, a high risk venue manager has the same legal responsibilities as the licensee at the times that they are managing the premises.
- 266.** OLGR submits that contemporaneous records of NSW Police in the form of COPS reports (attached at **Tab “A”** of OLGR’s submissions) record Mr Iqbal as being in charge of the Premises, and therefore also legally responsible under the Act, on multiple occasions prior to 19 December 2015, as summarised below:
- **COPS event number E57972315.** On a walkthrough business inspection of the Premises conducted at 12:15am on Sunday 28 July 2015, Police state that they spoke with the “manager” Mr Iqbal.
 - **COPS event number E29124521.** On a walkthrough business inspection of the Premises conducted at 11:20pm on Sunday 20 September 2015, Police state that they spoke with the “manager” Mr Iqbal.
 - **COPS event number E59406456.** On a walkthrough business inspection and RSA audit on all staff conducted at 11:55pm on Saturday 24 October 2015, Police state that they spoke with the licensee [Mr Lakepa]. Ms Staltaro was also present at the Premises. Mr Iqbal, who was identified as “bar staff”, had his RSA qualifications checked.
 - **COPS event number E59160927.** On a walkthrough business inspection of the Premises conducted on 1 November 2015, Police state that they spoke with Mr Lakepa and that Ms Staltaro was also present at the Premises.
 - **COPS event number E60095371.** On a walkthrough business inspection/covert audit of the Premises conducted at 1:00am on Thursday 19 November 2015, Police that they spoke with the licensee Mr Lakepa and that Mr Iqbal, who was identified as “bar staff”, had his RSA qualifications checked.

- **COPS event number E60211666.** On a walkthrough business inspection of the Premises conducted at 10:40pm on Thursday 24 December 2015, Police state that they spoke with Mr Iqbal, who presented himself to Police as the “manager”.

267. OLGR submits that the supporting material attached to this submission “clearly shows” that both Ms Staltaro and Mr Iqbal have been directly involved in the management and the operation of the Premises prior to 19 December 2015, and that Ms Staltaro has been in effective control of the Premises since “at least October 2015”.

268. OLGR submits that the:

...apparent complacency by Ms Staltaro and Mr Iqbal towards the unauthorised activities which were occurring at the Premises demonstrates a lack of commitment towards managing the Premises in compliance with the law and demonstrates that Mr Iqbal and Ms Staltaro are not suitable to hold a liquor licence for a high risk premises such as Dreamgirls.

269. OLGR refers to section 45(5A) of the Act and submits that, on the basis of the material provided, the threshold test in section 45(5A) cannot be satisfied for either the proposed licensee, Mr Iqbal, or the proposed business owner, Restaurant Royale Pty Ltd and its sole director Ms Staltaro, and accordingly the Transfer Application should be rejected.

270. In the event that the Authority disagrees with the above submission, OLGR submits that a “prudent course of action” is for the Authority to require Restaurant Royale Pty Ltd to complete a community impact statement in respect of the application to transfer the licence, pursuant to section 48(2)(f) of the Act. OLGR submits that “given the significant issues which have been identified at the Premises and the increased level of interest from all stakeholders, it is in the public interest to require formal community consultation to occur”.

Notice of Resumption of Trade with *Drug Prevention Policy* – 12 January 2016

271. At 7:53pm on 12 January 2016, Mr Manca sent an email to the Authority advising that by reason that each of the Section 54 Conditions have now been satisfied, the business intends to commence trade that evening.

272. Mr Manca attaches an undated 2-page report prepared by Mr Arthur Burchett of Tactical Training Group Pty Ltd explaining how the business had satisfied the Section 54 Conditions. Mr Manca also attaches a *Dreamgirls Drug Prevention Policy* prepared by Mr Burchett. The Drug Policy is two pages and one paragraph in length and is accompanied by a one paragraph resume of Mr Burchett’s employment experience.

Report on Compliance with Conditions imposed pursuant to section 54 (undated)

273. In this report, Mr Burchett states that he has conducted an inspection of the venue for the purposes of determining compliance with the conditions imposed on 31 December 2015. The full text of this report states as follows:

Condition 1

- *Compliant. The sole access to level 1 is a door accessed from Darlinghurst Road which is positioned immediately beside the access to the basement. Both doors to the basement and level 1 are located within a small recessed threshold*

area set back slightly from the Darlinghurst Road pavement. The door leading to level 1 has been boarded up with timber sheets and fixed with screws and bolts.

- Compliant. As the sole means of access between the basement and level 1 has been closed as a result of the works referred to at item (a) above, liquor cannot be supplied from the basement to level 1.
- Compliant. As the sole means of access between the basement and level 1 has been closed as a result of the works referred to at item (a) above, level 1 cannot be used in relation to the licensed business operations conducted at the basement of the premises.
- Compliant. CCTV cameras are been installed at the sole potential access point between the basement and level 1, being the door to level 1 accessed from Darlinghurst Road. An audio recording device has been installed above the threshold are between the doors to the basement and level 1.

Condition 2

- (a) Compliant. Violet lights have been installed in toilet areas.
- (b) Compliant. Flat surfaces reasonably capable of being used for the preparation of drugs for consumption have been removed from toilet areas.
- (c) Compliant. No areas other than inside toilet areas are difficult to observe by staff in the normal course of their duties.

Condition 3

Compliant. I have prepared a Drug Prevention Policy which is attached to this report.

Condition 4

Compliant. The works referred to at item 1(a) above prevent physical passage to level 1 from the basement. The intercom that was located behind the DJ booth in the basement has been removed and wiring cut.

Condition 5

Compliant. The submission of this report satisfies this condition.

Dreamgirls Drug Prevention Policy dated 5 January 2016

274. The cover page to the *Drug Prevention Policy* states as follows:

I Arthur Burchett, employed by Tactical Training Group as a Hospitality Consultant/Trainer Assessor with 18 years industry experience, consisting of being a Director of a club to holding Senior Management positions within the industry. I also teach OLGR approved courses and courses in hospitality up to Advance Diploma. I have put the Drug Prevention Policy together for Dreamgirls to meet the requirements asked by the governing bodies.

275. The full text of the *Drug Prevention Policy* states as follows:

Introduction

Dreamgirls has a duty of care to all staff and customers to ensure a Drug free environment. Dreamgirls is committed to ensuring the venue is free from selling, supplying or using of any illegal drugs. This policy is for all management, supervisors and employees (including contractors) of Dreamgirls.

Aim

The aim for the Drug Prevention Policy is to ensure that Dreamgirls is operating a venue free of selling, supplying or the use of illegal drugs in the venue.

Scope

The policy is for Dreamgirls, located at Basement 77 Darlinghurst Road Potts Point 2011 and applies to management, bar and wait staff and dancers working in the venue.

Codes of behaviour

Dreamgirls staff will not sell, supply or use illegal drugs on the premise.

Dreamgirls staff will not have any associates enter the venue to sell, supply or use illegal drugs on the premise.

Dreamgirls staff will report immediately to management anyone who approaches them to sell, supply or use illegal drugs.

Dreamgirls staff will report immediately to management if they see anyone sell, supply or use illegal drugs.

Dreamgirls patrons will not sell, supply or use illegal drugs on the premise.

Roles**Management**

Ensure that toilet areas and private rooms (as well as any other secluded areas) are adequately monitored by staff and security to deter the use, sale and supply of illegal drugs.

Ensure that any flat surfaces within the toilet areas of the premises which are reasonably capable of being used for the preparation of drugs for use (such as cocaine powder) are removed to reduce the opportunities to prepare drugs for use. Install and maintain violet lighting in the toilet areas to discourage drug use in those areas. Patrolling the venue to ensure no illegal activity is occurring within the premise. Checking CCTV cameras for any suspicious activities occurring.

To identify and act on anyone they or staff members see or suspect of selling, supply or the use of illegal drugs. Any patron so suspected is to be asked to leave the premises and the matter is to be recorded in the incident register. In relation to any person directly observed to sell, supply or use illegal drugs in the venue, management are to contact Police for further action and record the matter in the incident register.

To act on any reports of the sale, supply or use of illegal drugs within the premise including recording in the incident register any occurrence relating to the sale, supply or use of illegal drugs and reporting to Police.

Ensure that signage is erected in conspicuous places at the entry to the premises and throughout the premises advising patrons of a zero tolerance policy as to drug use, sale and supply at the premises.

To ban patrons from future attendance at the venue if caught selling, supplying or using illegal drugs.

To hand over to Police any drugs confiscated from patrons.

To terminate the employment of any staff member selling, supplying or using illegal drugs on the premise.

To hold a counselling session with any staff member suspected of the sale, supply or use of drugs.

To review the policy annually.

Staff

Hourly toilet checks to show presence.

Aware and alert of what is happening around them.

To report to management anyone they see selling, supplying or using illegal drugs on the premise

To report to management any information passed on to them about the sale, supply or use of drugs on the premise.

Discipline

Any staff member suspected of selling, supplying or using drugs will have a counselling meeting with the licensee to discuss the suspicions, the outcome of this meeting will be dependent on the discussions and evidence in the meeting. This meeting is to be documented. Counselling services will be provided to the staff member to follow through with.

Any staff member suspected numerous times will need to show evidence they are attending counselling services to continue working at Dreamgirls.

Any staff member caught selling, supplying or use of drugs will be terminated and reported to the police.

Any customer caught selling, supplying or use of drugs will be reported to the police.

Support Services

If you know of anyone or you need professional help, support services that are available are:

*Family Drug Support
1300368186*

*Lifeline
131114*

Police Submission Opposing Transfer Application – 13 January 2016

- 276.** On 13 January 2016, Sergeant Luke Skinner of the Licensing Unit of Kings Cross Police provided a submission to the Authority objecting to the Transfer Application.
- 277.** After providing a brief summary of the recent history of the Premises, Sergeant Skinner makes the following submissions:

Police Submissions on Proposed Licensee – Mr Mohammad Swadaf bin Iqbal

- 278.** Sergeant Skinner notes that Police received a copy of the Transfer Application on 11 January 2016. Police records indicate that Mr Iqbal has been employed at Dreamgirls since 2014, and information from the COPS database outlines his duties as being the “bar manager”. Police submit that as a result of this, Mr Iqbal has had “regular contact and interaction with Police”.
- 279.** Police provide a list of COPS events that relate to Mr Iqbal and his interaction with NSW Police since the commencement of his employment at Dreamgirls at

Annexure “A” to the Police submissions. A brief summary of these COPS events is as follows:

- **COPS event number E57972315.** On a walkthrough business inspection of the Premises conducted at 12:15am on Sunday 28 July 2015, Police state that they spoke with the “manager” Mr Iqbal.
 - **COPS event number E29124521.** On a walkthrough business inspection of the Premises conducted at 11:20pm on Sunday 20 September 2015, Police state that they spoke with the “manager” Mr Iqbal.
 - **COPS event number E59406456.** On a walkthrough business inspection and RSA audit on all staff conducted at 11:55pm on Saturday 24 October 2015, Police state that they spoke with the licensee [Mr Lakepa]. Ms Staltaro was also present at the Premises. Mr Iqbal, who was identified as “bar staff”, had his RSA qualifications checked.
 - **COPS event number E60095371.** On a walkthrough business inspection/covert audit of the Premises conducted at 1:00am on Thursday 19 November 2015, Police that they spoke with the licensee Mr Lakepa and that Mr Iqbal, who was identified as “bar staff”, had his RSA qualifications checked.
 - **COPS event number E60211666.** On a walkthrough business inspection of the Premises conducted at 10:40pm on Thursday 24 December 2015, Police state that they spoke with Mr Iqbal, who presented himself to Police as the “manager”.
- 280.** Police submit that during the course of Mr Iqbal’s duties as a manager and bartender, Police “firmly believe” that Mr Iqbal would have had clear knowledge of the “illegal unauthorised ongoing activity” occurring within the Premises and the illegal bar located on level 1.
- 281.** Police submit that it is “inconceivable” that Mr Iqbal was not aware of the operation of the upstairs unlicensed bar by reason that extra income was being added into the Premises’ daily takings from the operation of this illegal bar; numerous employees moved between Dreamgirls and the illegal upstairs bar; and an intercom unit was being used to facilitate communication between Dreamgirls and the unauthorised bar on level 1.
- 282.** Police submit in the alternative that if Mr Iqbal was truly unaware of the above, then he is “incompetent” and fails to meet the test prescribed by section 45(5A) of the Act.
- 283.** Police submit that Mr Iqbal has shown a “blatant disregard for the legislation” by allowing the unauthorised activities to occur both within Dreamgirls and the illegal bar located on level 1. These offences “were not a reasonable and honest mistake, but an informed decision by staff to ignore legislative requirements”. Police submit that if the Transfer Application is granted, the business operating on the Premises “will continue to conduct business in a way that is detrimental to the public and may result in serious harm occurring”.

Police Submissions on Proposed Business Owner – Restaurant Royale Pty Ltd and Ms Margaret Staltaro, Sole Director

284. Police records indicate that Ms Staltaro has had “an ongoing involvement” with the Premises, as evidenced by her presence at the Premises on several occasions whilst Police have been conducting business inspections.
285. Police contend that Ms Staltaro was present when NSW Police executed a search warrant at the Premises which gave rise to the issue of a Short Term Closure Order in relation to the Premises on 19 December 2015.
286. Police submit that they are “concerned” about Ms Staltaro’s involvement in being the sole director of the corporate business owner and in daily operation of a licensed premises, given her criminal history, which includes a charge for an offence involving possession of a prohibited drug [the Authority notes that this is the same offence relied upon by OLGR in its submissions of 8 January 2016]. Police provide a copy of the NSW Police prosecution *Facts Sheet* for charge number H51747138 in relation to this matter at **Annexure “B”** to the Police submissions.
287. Briefly, this matter relates to the possession of an “ice pipe” (paraphernalia related to the use of methylamphetamine) which was located in Ms Staltaro’s handbag during a vehicle search conducted by Police on 23 May 2013. Police also located a small resealable plastic bag containing clear granules of what was believed to be the prohibited drug methylamphetamine. The drug was weighed and returned a reading of 0.18 grams.
288. Ms Staltaro was charged and subsequently sentenced on 13 August 2013 at Downing Centre Local Court in respect of this offence. The Court found that the offence was proven, but did not record a conviction pursuant to section 10 of the *Crimes (Sentencing Procedure) Act 1999*.
289. Police also provide two COPS events that relate to Ms Staltaro and her interaction with NSW Police during business inspections of the Premises at **Annexure “C”** to the Police submissions. A brief summary of these COPS events is as follows:
- **COPS event number E59406456.** On a walkthrough business inspection and RSA audit on all staff conducted at 11:55pm on Saturday 24 October 2015, Police state that they spoke with the licensee [Mr Lakepa]. Ms Staltaro was also present at the Premises in the DJ booth.
 - **COPS event number E59160927.** On a walkthrough business inspection of the Premises conducted at 1:15am on Sunday 1 November 2015, Police identified Ms Staltaro at the Premises in the DJ booth.
290. Police contend that, given Ms Staltaro’s involvement with the business and her presence on the Premises, she would have had clear knowledge of the ongoing illegal activity occurring within Dreamgirls and the illegal bar located on level 1 and that if she was truly unaware, then she is “incompetent” and fails to meet the test prescribed by section 45(5A) of the Act.
291. Police further contend that in the declaration section of the Transfer Application Form, which was signed and dated by Ms Staltaro on 5 January 2016, she has failed to comply with the following requirement:

When lodging this application with the Independent Liquor and Gaming Authority, the application must immediately before or within two working days lodge a copy of this application at the police station nearest the premises.

292. Police believe that this is another example of the Premises and its staff “failing to comply with legislative and documented procedures” in respect of operating a licensed premises. Police only received notification of the Transfer Application via email from the Authority on Monday 11 January 2016.

Police Submissions on Royal Restaurant Pty Ltd – Shareholders and Directors

293. Police have concerns about financial arrangements currently in place between Royal Restaurant Pty Ltd and Edge Point Holdings Pty Ltd, which as of 1 July 2015 was listed as a shareholder in Royal Restaurant Pty Ltd. The sole director of Edge Point Holdings is Mr John Ibrahim.
294. Police refer to COPS event number E57700944 (attached at **Annexure “D”** to the Police submissions) which states that on Friday 22 May 2015, Licensing Police observed Mr Ibrahim leaving the Premises in the company of two other males. Further checks were conducted and it was revealed that Mr Ibrahim had not scanned into the Premises upon entry. While speaking to Police, Mr Ibrahim stated that he was an employee of Dreamgirls.
295. Police believe that Mr Ibrahim is “not a fit and proper person to be associated with a licensed premises within the Kings Cross Precinct, nor is he of good character”. Police submit that Mr Ibrahim “should not have, or maintain any business partnerships or close association with a licensed premises or a person operating a licensed premises”.
296. Police provide at **Annexure “E”** to the Police submission ASIC searches for Royal Restaurant Pty Ltd (ACN 123 887 776) and Edge Point Holdings Pty Ltd (ACN 078 558 951) and submit, on the basis of that material, that they are unable to comment further on the current business or financial arrangements or shareholders of Royal Restaurant Pty Ltd and Edge Point Holdings Pty Ltd or to determine John Ibrahim’s “true financial interest” in Royal Restaurant Pty Ltd.
297. Police conclude that they are “extremely concerned” with the illegal activity that has occurred at the Premises and believe that it has the potential to expose patrons, staff and the wider community to serious harm and displays the Premises’ “belligerent attitude” towards the responsibility of operating a high risk venue with the prescribed Kings Cross precinct.
298. Police contend that Mr Iqbal and Ms Staltaro do not meet the test prescribed by section 45(5A) of the Act. Police object to the Transfer Application, given the “information known to Police and the fact that parties listed on this application have been employed or present at the Premises whilst illegal unauthorised activity was occurring”.

OLGR Further Submission on Long Term Closure Application – 13 January 2016

299. At 9:47pm on 13 January 2016, the Applicant made a further submission to the Authority pressing the Authority to issue a long term closure order under section 84 of the Act, notwithstanding the business owner's response to the Section 54 Conditions.
300. OLGR submits that the threat to the public interest identified in the Application remains and warrants the closure of the Premises until such time as OLGR completes its section 138 investigation into the Premises that is currently underway.

- 301.** OLGR submits that it is apparent that the business owner, Restaurant Royale Pty Ltd, through Ms Staltaro, was running the business at the time of the Police and OLGR raids on the Premises in December 2015. OLGR submits that notwithstanding the measures implemented by the business pursuant to the Section 54 Conditions, the basis for closing the Premises remains as the likelihood of further offending is “extreme”.
- 302.** OLGR questions whether the consultant engaged to prepare the *Drug Prevention Policy* is a “suitably qualified independent compliance consultant” as required by the wording of the relevant Section 54 Condition, and whether the *Drug Prevention Policy* furnished by the business is adequate.
- 303.** OLGR submits that the *Drug Prevention Policy* is “rudimentary and appears to have been compiled in haste with limited thoughtful consideration”; is not to the standard one would expect in a situation where there are serious allegations of drug supply and open drug use on the Premises; and “does not provide sufficient detail” to guide staff and management on the steps that should be taken when drug use or drug supply is detected on the Premises.
- 304.** OLGR contends that their inspectors attended the Premises on the afternoon of 13 January 2016 and met with Ms Staltaro, who had a “very limited knowledge” of the *Drug Prevention Policy* and struggled to answer very basic questions about the *Policy*.
- 305.** OLGR submits that while technical compliance may have been achieved, the policy appears “pointless” unless staff and management are aware of such a policy and are adequately trained. OLGR submits that this “demonstrates a complete lack of understanding or ability in relation to being able to implement practices to detect and act upon instances of drug use and drug supply on the Premises”.
- 306.** OLGR contends that during the inspection of the Premises on 13 January 2016, OLGR inspectors observed the following:
- The DJ booth is not covered by CCTV, and CCTV coverage of the rear of the venue is insufficient as patrons appear small and dark.
 - The CCTV monitor which shows the entry door to the level 1 area can only be viewed from a monitor located in *Porky’s* brothel, which is next door to Dreamgirls.
 - 2 x resealable plastic bags containing white powder residue believed to be a prohibited drug (cocaine) were located in the shower on the Premises used by the strippers, which OLGR submits is “extremely concerning” given the intense regulatory action preceding this inspection. A photograph is attached to these submissions.
 - Both Mr Amante and Ms Staltaro were present but it was unclear as to who was in control of the Premises. In the company of Ms Staltaro, Mr Amante advised that he continues to take care of the banking and finances.
 - Mr Amante advised that all electronic transfer of funds have been directed to a bank account named Restaurant Royale since July 2015.

- When Ms Staltaro and Mr Amante were questioned together on who would be responsible for a current high level management decision in relation to Dreamgirls, Mr Amante answered that he would. Ms Staltaro did not dispute this.
- 307.** OLGR acknowledges the view of the Authority that Restaurant Royale Pty Ltd is the deemed licensee of Dreamgirls for a period of 28 days from when Mr Lakepa relinquished control of the licence. However, OLGR submits that there “remains significant doubt” over who is actually in control and who is legally responsible for the venue’s operation.
- 308.** OLGR maintains its objection to the Transfer Application and is currently investigating possible offences committed against section 66 of the Act, as the current licensee (by virtue of being a business owner in possession of the licence under section 61 of the Act) has failed to appoint an approved manager as required by section 66(1)(a) of the Act.
- 309.** OLGR contends that in a recent record of interview conducted on 6 January 2015, Mr Amante advised OLGR officers that the level 1 area generated over 50% of the venue’s revenue. OLGR submits that this information gives even more weight to its submission that it is inconceivable that Ms Staltaro did not know about the operation of the level 1 area, and that this “shows a deliberate and financially motivated decision to operate outside of the law”.
- 310.** In these circumstances, OLGR submits that it is “untenable” for Restaurant Royale Pty Ltd to be “approved” as a business owner or to be allowed to currently operate the Premises.
- 311.** If, in the event that an alternate view is adopted and the business owner on the record (Mr Amante’s company, Royal Restaurant Pty Ltd) is considered to be the business owner, on the basis that Mr Amante appears to be continuing to exert influence over the venue, then OLGR submits that it is also relevant for the Authority to consider Mr Amante’s criminal history which OLGR describes as “extremely concerning”.
- 312.** Attached to OLGR’s submission is an extract of *JusticeLink* Court outcome records from the Attorney-General’s Department disclosing Mr Amante’s charges of what OLGR describes as “serious offences” including aggravated entry to a dwelling in company with a weapon, which resulted in a custodial sentence in 2009. Mr Amante’s record also includes more recent offences of possess/use prohibited weapon and supply prohibited drug, as summarised in the following table:

OFFENCES 2006-2010			
DATE	OFFENCE	DETERMINED	OUTCOME
27/12/06	Drive whilst disqualified Exceed speed limit 15-30km/h Use unregistered vehicle Use uninsured vehicle Fail to appear in accordance with bail	26/08/08	Guilty plea April 2007, arrest warrant issued September 2007 Convicted <i>in absentia</i> , bail forfeited
05/02/07	Civil claim by Heggies Bulk Haulage	30/03/07	Judgment of \$7,754
12/04/07	Driver not disclose identity to Police	28/05/07	Fine \$1,000

14/06/07	Not give particulars to other driver Drive vehicle recklessly/furiously or speed/manner dangerous Negligent driving (not occasioning death/GBH)	26/08/08	Section 9 bond Licence disqualified
20/12/07	Use false instrument to obtain	26/08/08	Fine \$800
16/09/08	2 x destroy or damage property <= \$2,000 3 x common assault 1 x drive vehicle recklessly/furiously or speed/manner dangerous 5 x drive while disqualified from holding a licence 1 x negligent driving (not occasioning death/GBH) 1 x affray – T1 1 x class A motor vehicle exceed speed limit > 15km/h and <= 30km/h 1 x use unregistered registrable class A motor vehicle 1 x obtain money etc. by deception <= \$2,000 1 x use uninsured motor vehicle	21/05/09	Ultimately adjourned and then dismissed
18/06/09	Licensee fail to comply with conditions	21/10/09	Guilty plea. Fine \$700
11/12/09	1 x aggravated enter dwelling with intent – offender in company – S1 2 x demand property with menaces with intent to steal – T1 1 x specially aggravated enter dwelling with intent – dangerous weapon – S1		Title deeds ordered returned Imprisonment of 1 year, 3 months to commence on 21 September 2011 and expiring on 20 December 2012 with a non-parole period of 9 months. The offender is to be released to supervised parole on 20 June 2012.
13/01/10	Drive whilst disqualified x 4	13/01/10	Breach of bond Licence disqualified for 2 years

RECENT OFFENCES

CASE DETAILS	DATE	COURT	STATUS
2011/00117399 002 Ronald John Dean-Willcocks as liquidator of Avilion Group Pty Ltd t/as United Venue Protection v Michael Amante t/as Dreamgirls – Notice of Motion Civil	13/03/14	Local Court – Civil – North Sydney	Motion Managed 4 April 2014 (case open)
2012/00027987 001 R v Michael AMANTE – Actual offence – Goods suspected stolen given other not entitled (not motor vehicle)	28/01/12	District Court – Criminal – Sydney Downing Centre	Determined 10 April 2013 (case closed)

2012/00027987 002 R v Michael AMANTE – Actual offence – Goods suspected stolen given other not entitled (not motor vehicle)	28/01/12	District Court – Criminal – Sydney Downing Centre	Determined 10 April 2013 (case closed)
2012/00027987 003 R v Michael AMANTE – Actual offence – Publish etc. false misleading material to obtain property – T1	28/01/12	District Court – Criminal – Sydney Downing Centre	Determined 10 April 2013 (case closed)
2012/00027987 004 R v Michael AMANTE – Actual offence – Publish etc. false misleading material to obtain property – T1	28/01/12	District Court – Criminal – Sydney Downing Centre	Determined 10 April 2013 (case closed)
2012/00268606 001 R v Michael AMANTE – Actual offence – Possess prohibited drug	29/08/12	Local Court – Criminal – Sydney Downing Centre	Determined 26 September 2013 (case closed)
2014/00161134 001 R v Michael AMANTE – Actual offence – Drive motor vehicle during disqualification period – 2nd+ offence	29/05/14	Local Court – Criminal – Sydney Downing Centre	Determined 18 February 2015 (case closed)
2014/00253378 001 R v Michael AMANTE – Actual offence – Goods in personal custody suspected being stolen (not motor vehicle)	28/08/14	Local Court – Criminal – Sydney Downing Centre	Determined 10 October 2014 (case closed)
2014/00253378 002 R v Michael AMANTE – Actual offence – Possess or use a prohibited weapon without permit – T2	28/08/14	Local Court – Criminal – Sydney Downing Centre	Determined 18 February 2015 (case closed)
2015/00187454 001 R v Michael AMANTE – Actual offence – Supply/ knowingly take part in the supply of prohibited drug	25/06/15	Local Court – Criminal – Central	Active (case open) 11 February 2016
2015/00187454 002 R v Michael AMANTE – Actual offence – Supply/ knowingly take part in the supply of prohibited drug	25/06/15	Local Court – Criminal – Central	Active (case open) 11 February 2016
2015/00187454 003 R v Michael AMANTE – Actual offence – Possess prohibited drug	25/06/15	Local Court – Criminal – Central	Active (case open) 11 February 2016
2015/00187454 004 R v Michael AMANTE – Actual offence – Possess prohibited drug	25/06/15	Local Court – Criminal – Central	Active (case open) 11 February 2016
2015/00187454 005 R v Michael AMANTE – Actual offence – Possess prohibited drug	25/06/15	Local Court – Criminal – Central	Active (case open) 11 February 2016
2015/00187454 006 R v Michael AMANTE – Actual offence – Supply/ knowingly take part in the supply of prohibited drug	25/06/15	Local Court – Criminal – Central	Active (case open) 11 February 2016

2015/00187454 007 R v Michael AMANTE – Actual offence – Possess prohibited drug	25/06/15	Local Court – Criminal – Central	Active (case open) 11 February 2016
2015/00187454 008 R v Michael AMANTE – Actual offence – Possess prohibited drug	25/06/15	Local Court – Criminal – Central	Active (case open) 11 February 2016
2015/00314084 001 R v Michael AMANTE – Bail Application – Director of Public Prosecutions v Michael AMANTE	21/10/15	Supreme Court – Criminal – Sydney	Bail application determined 8 December 2015 (case closed)

- 313.** In relation to the Application for a long term closure order, OLGR submits that the Section 54 Conditions will not be effective in addressing the risks that have been identified, in light of recent information about the Premises.
- 314.** OLGR submits that for the reasons set out in the initial Application, the “ongoing confusion around control of the business”, and the “greyness around who is currently responsible” for the Premises, closure of the venue is necessary to prevent ongoing risks to public safety.
- 315.** OLGR submits that irrespective of who (in reality) is in control, and who is ultimately providing instructions to Mr Manca, it is clear that the responses that have been provided on behalf of Dreamgirls are “clearly inadequate” and there is already evidence of continuing illegal activity at the Premises.
- 316.** OLGR further submits that:

...the response to date does not demonstrate the actions of a responsible business operator acknowledging the seriousness of the issues set out in the closure application, giving those issues careful and considered thought to assess risks, and to respond to those risks to substantially rectify deficiencies in the business model and structure to ensure the risk of illicit drug activity or other illegal activity is prevented on the licensed premises.

- 317.** OLGR advises that it is “highly likely” that the current active investigation into the activities of the business under section 138 of the Act will result in the making of a disciplinary complaint to the Authority under section 139 of the Act and that it is appropriate that the Premises be ordered to close until such time as OLGR has completed its investigation under section 138, by reason of the “clear and ongoing significant threat or risk to the public interest” and the “disingenuous and insufficient response” from interested parties.

Authority Request for Further Information on Transfer Application – 13 January 2016

- 318.** On 13 January 2016, Authority staff emailed Mr Manca, requesting the following further information or records in relation to the Transfer Application:
- Full ASIC extract for the proposed business owner, Restaurant Royale Pty Ltd and the Premises owner, Camco N.S.W. Pty Ltd.
 - Full personal details of any natural person that will have an interest in the licence and seeks to be recorded as an interested party.

- Full ASIC extract for any corporation that will have an interest in the licence and seeks to be recorded as an interested party.
- Current National Police Certificates for Mr Iqbal and Ms Staltaro.
- Copy of a land title search showing Camco N.S.W. Pty Ltd is the Premises owner.

319. Mr Manca advised by return email that he would be in a position to provide a response to the submissions on the Transfer Application received from OLGR and Police by Friday 22 January 2016.

Letter from Authority Advising No Provisional Transfer – 14 January 2016

320. At around 2:00pm on 14 January 2016, the Chief Executive emailed Mr Manca, copying Police and OLGR, advising that the *prima facie* concerns raised by NSW Police and OLGR preclude the Authority from approving a provisional transfer of the licence to Mr Iqbal. The letter notes that a final decision on the Transfer Application remains pending, subject to consideration of any final submissions on the Transfer Application.

Email from Authority on Long Term Closure Application – 14 January 2016

321. At 4:07pm on 14 January 2016, General Counsel emailed the parties with regard to the further submission from OLGR dated 13 January 2016 pressing the Authority to determine the Long Term Closure Application notwithstanding the interim measures agreed between the parties on 31 December 2015 and recorded in the Section 54 Decision Letter by a delegate of the Secretary on that date.

322. General Counsel noted that in addition to the Long Term Closure Application and the submissions made in response to the Application by Mr Manca in December 2015, the Authority now has before it some further material, including:

- Liquor licence transfer application filed by Mr Manca with OLGR on 7 January 2016 and received by the Authority on the morning of 8 January 2016.
- OLGR submission on the proposed transfer of the licence dated 8 January 2016.
- Letter from the Authority acknowledging the transfer application dated 8 January 2016.
- Police submission on the proposed transfer of the licence dated 13 January 2016.
- Letter from the Authority dated 14 January 2016 advising that it would not be approving the transfer of the licence to Mr Iqbal on a provisional basis.

323. Noting that the Applicant has taken issue with the quality of the *Drug Prevention Policy* that was furnished on behalf of the business operating on the Premises on the evening of 12 January 2016, General Counsel invited the Applicant to provide further submissions elaborating on the said deficiencies of this *Policy* by no later than 6:00pm on 14 January 2016, copying Mr Manca.

324. The Authority invited Mr Manca to make any final submissions as to why a Long Term Closure Order should not be issued for a period of 6 months or until such time as the conditions specified by the Applicant in its submission of 13 January 2016 are satisfied. These submissions were to be made via email, copying the Applicant, by no later than 5:00pm on Monday 18 January 2016.

OLGR Further Submission on *Drug Prevention Policy* – 14 January 2016

325. At 5:59pm on 14 January 2016, Mr Sean Goodchild made a further submission to the Authority on the Premises' *Drug Prevention Policy* on behalf of the Applicant. The full text of that email states as follows:

Thank you for your email. The email invites OLGR to elaborate on the asserted deficiencies of the Drug Prevention Policy by 6pm this evening.

Firstly it is important to point out that OLGR's main concern relates to the ability of current management to actually understand and willingly implement a Drug Prevention Policy. A Drug Prevention Policy on paper may be well intentioned and may aim to address the risk of drug use, sale and supply but in the absence of any demonstrated commitment from venue management for effective implementation, any Drug Prevention Policy is futile.

OLGR suggests that the Drug Prevention Policy submitted for Dreamgirls does not provide the level of structure and guidance required in circumstances where venue management have already demonstrated a lack of understanding or willingness in being able to implement a Drug Prevention Policy. This is highlighted by the fact that after only one night's trade, OLGR inspectors located resealable plastic bags containing drug residue in the shower at the premises despite the Drug Prevention Policy purportedly being in place.

The introduction section of the Drug Prevention Policy asserts that Dreamgirls has a 'duty of care' to ensure a drug free environment. It does not explain that venue staff and management may be criminally liable to offences under section 74 of the Liquor Act for permitting use, sale or supply of drugs on a licensed premises. The Policy should set out the offences provisions in clear plain English terms so venue management and staff are clearly warned about the criminality of the use or sale of drugs on licensed premises.

The Policy does not provide adequate guidance on what should be done if drugs are found by staff. It does not explain when they should report an incident or specifically who they should report to. An example of a policy which provides clear guidance is a metropolitan venue which recently implemented the following policy for drugs found by venue staff:

PROCEDURES FOR ILLICIT DRUGS FOUND ON PREMISE BY STAFF

If you find illicit drugs or a controlled substance on premises while on your shift, as an employee of the XXXXXX Hotel you are required to do the following:

- 1) Inform the Manager on Duty or Licensee IMMEDIATELY and hand the substance to them.
- 2) The Manager/Licensee will immediately lock the substance in the controlled substance lockable red box located in the Managers office and log the find in the controlled substance log book (green ring binder).
- 3) The Manager/Licensee MUST call XXXXXXXX LOCAL COMMAND on (02) XXX XXX to inform them there is an item to pick up at the venue. Please ensure you record the name of the Police person you speak with.
- 4) When filling in the log book the following MUST be recorded:

- DATE FOUND

- TIME FOUND
 - FOUND BY
 - LOCATION
 - DESCRIPTION OF SUBSTANCE
 - QUANTITY
 - MANAGER, name & sign
 - POLICE name, sign, date
- 5) An entry MUST be made in the managers [sic] report as per point 4). So a hand over of information can be achieved, in case the Police are delayed in reporting to venue.
 - 6) If Police are on site after the retrieval of the substance, they should be informed immediately to expedite matters.

The Discipline section of the Drug Prevention policy does not provide sufficient structure to venue management and staff. For example it states that a staff member suspected of selling, supplying or using drugs will have a counselling meeting with the licensee (noting that it is unclear as to exactly who that is at the current time) and that the outcome of this meeting will be dependent on the discussions and evidence in the meeting. The Policy does not explain what the range of outcomes is (such as written warning, final written warning, suspension, demotion, termination, immediate termination etc) or in what factors would influence the outcome. An example of a policy from a metropolitan venue which sets out such factors is as follows:

The appropriate disciplinary action will depend on the individual circumstances of each matter. In making this decision management will take into account factors such as the seriousness of the employee's behaviour, the risk posed to the safety of the employee and others, and any previous breaches of this policy. A counselling session will be arranged with an employee who receives a warning and will cover information such as:

- the obligations and responsibilities of the employee
- the risk posed for safety of the employee and others
- the serious and unacceptable nature of the person's behaviour
- the consequences for future breaches of the policy
- the employee's reasons as to why alcohol or other drugs was used to the extent that they are in an unfit state to work

An employee who receives a final written warning will be counselled by their manager or supervisor as set out above and will be required to demonstrate that the threat to work performance and/or safety has been effectively addressed before they are permitted to return to work. The final written warning will have the effect that any further breaches of this policy may result in termination of their employment. Employees will not be paid for the period for which they are unfit for work.

It is quite possible that the counselling meeting under the Dreamgirls Policy could be a quick informal chat with no repercussions for venue staff.

I trust the above assists in clarifying OLGR's concerns with the Drug Prevention Policy. It is noted that it is not common for licensed venues to have a need to draft a Drug Prevention Policy and benchmarking for such documents is limited. The need for such a document suggests serious problem in itself, and the seriousness of allegations about drug use and sale at Dreamgirls raises the expectations of OLGR as the regulator of the level of documentation that should be provided to address the problem. It is the submission of OLGR that the Dreamgirls Drug Prevention Policy falls well short of what would be expected from a management group that acknowledges the flaws in past practice and is making a genuine attempt to resolve a defective compliance culture.

Request for Extension of Time by Mr Manca – 18 January 2016

- 326.** At 3:15pm on 18 January 2016, Mr Manca emailed the Authority (copying the Applicant) seeking an extension of time until Friday 22 January 2016 to make final submissions on both the Long Term Closure Application and the Transfer Application. The full text of this email states as follows:

Given that it appears that the Authority is revisiting the long term closure application, and that it will take into account further material in doing so, including the OLGR and Police submissions on the transfer application, the OLGR submission of 13 January 2016 and OLGR submissions regarding alleged deficiencies with the Drug Prevention Policy, my clients require an adequate opportunity to make submissions in reply.

Our clients have not even been allowed a week to respond to the further material.

Further, we have recently been provided with copies of recordings of interviews conducted by OLGR officers with Mr Lakepa and Mr Amante in January 2016. These have not been transcribed and we have yet to view these. We have no idea as to the duration of the recordings. These recordings could be relevant to matters raised in submissions from the applicant. In fact, the applicant has made direct reference to an interview conducted with Mr Amante on 6 January 2016. It does not appear to be the case that the applicant has made this evidence available to the Authority, however he is making submissions based on such material.

The applicant's submission refers to enquiries having been made with Mr Burchett. We request further particulars of such enquiries including the context, circumstances and purpose of such enquiries and any documents evidencing the matters referred to in the submissions regarding Mr Burchett. We will then be in a position to seek instructions and obtain further material from Mr Burchett. We are not currently in a position to do so.

The applicant's submission also refers to alleged questioning of Ms Staltaro by OLGR inspectors on 13 January 2016. We require further particulars of the alleged questioning including the context, circumstances and purpose of the questioning and any documents evidencing the matters referred to in the submissions regarding the questioning of Ms Staltaro.

We further request that the applicant clarify the arrangements made by his officers to inspect the premises on 12 January 2016 and 13 January 2016, including details as to the person that officers contacted and communicated with to co-ordinate the inspection and whether or not they contacted Mr Amante or Ms Staltaro for this purpose. This material is relevant to the applicant's submissions relating to Mr Amante's involvement in the business and the alleged "ongoing confusion around control of the business".

The applicant's submissions refer to the application for transfer of the licence lodged on 8 January 2016 and objections to that application. We are instructed to request that the Authority provide copies of all submissions received in respect of the application to transfer the licence lodged on 20 August 2015.

Further, as a consequence of the alleged deficiencies of the Drug Prevention Policy, our clients have engaged a new third party consultant with a class 2A security licence to review the policy and provide a report. We have yet to receive the review report, however our clients should be entitled to rely upon it to support any submissions in reply.

We are instructed to request that the applicant provides the further particulars and documents requested above by no later than close of business tomorrow 19 January 2016 and that the time for my clients to make submissions in relation to the application be extended to 5.00pm on 22 January 2016.

- 327.** At 5:41pm on 18 January 2016, the Authority granted Mr Manca's request for an extension to put on any evidence or material in relation to the Long Term Closure Application and the Transfer Application by 5:00pm on Friday 22 January 2016. The Authority also sought access to the two additional sound recordings referred to in Mr Manca's email and requested a copy from the Applicant as soon as practicable.

OLGR Advice on Two Interviews with Messrs Amante and Lakepa – 18 January 2016

- 328.** At 6:19pm on 18 January 2016, OLGR provided the following advice in relation to the two additional sound recordings referred to in Mr Manca's earlier email:

To clarify the audio recordings were not provided to Mr Manca by OLGR. It is our practice to provide a copy of the recording to the person being interviewed as was the case with Mr Lakepa and Mr Amante. I can only assume that Mr Lakepa and Mr Amante then provided a copy to Mr Manca.

The interviews form part of our section 138 investigation and our investigation into alleged criminal offences and it is submitted that it is not necessary the interviews to be considered for the long term closure application. OLGR has referred to one fact in the submission to the Authority dated 13 January 2016 which asserts that Michael Amante said that the level area accounted for more than 50% of revenue. The balance of the content from Mr Lakepa's and Mr Amante's interview are not relied upon in the long term closure application. OLGR could provide the extract of the question and answer from Mr Amante's interview in respect to the content that is included in the OLGR submission of 13 January. The applicant asserts that the current material comprising of the long term closure application, the objection to transfer, and the further submission of 13 January provide sufficient information for Mr Manca to provide an informed submission on in respect to the proposed long term closure.

If the Authority does not agree with this position, we will take steps to arrange for the delivery of the two audio files tomorrow.

I also note OLGR's concern that release of the interviews to the various parties could prejudice OLGR's ongoing investigation (notwithstanding that Mr Manca appears to be acting for both current and former business owners, and the former and current licensee). OLGR investigators are still planning to interview a number of key individuals for the purpose of the ongoing investigation (including Ms Staltaro). For obvious reasons, it is generally not our practice to provide copies of recorded or transcribed interviews to the various parties subject to an ongoing investigation.

- 329.** At 6:46pm on 18 January 2016, General Counsel sent the following email to the parties:

First, the Authority will prefer transcripts to the audio recordings if professional transcripts are available.

Recordings may be of assistance if a portion of the transcript is unclear from the transcript.

Second, I suggest that by midday tomorrow you provide to Mr Manca and myself that portion of the transcripts that you wish to reply upon for the purposes of this Application.

You may also provide the complete transcript to me separately and confidentially with submissions as to why this material should not be disclosed to third parties.

The Authority will then decide whether (a) it even wishes to consider the full transcript and (b) if so, the extent to which it may rely on that material for the purposes of the Long Term Closure Application and (c) if reliance is to be had upon that confidential material, whether disclosure to the business owner is required.

OLGR Submission of Excerpt from Amante Interview – 19 January 2016

330. In response to the submissions from the Applicant that it does not rely upon the additional interviews with Mr Michael Amante and Mr David Lakepa other than in respect of Mr Amante's statement that the level 1 area was generating over half of the revenue for the Dreamgirls business, at 11:52am on 19 January 2016 OLGR provided the Authority and Mr Manca with a brief excerpt only of the transcript of the interview between Mr Amante and OLGR inspectors Brett Fowler and Matt Weber that was conducted on 6 January 2016 (**Amante Interview**).

331. The Applicant has submitted that it does not wish to rely on the rest of the Amante Interview or the interview with Mr Lakepa dated 6 January 2016 (**Lakepa Interview**) in respect of the Long Term Closure Application.

332. The full text of the excerpt provided by OLGR states as follows:

MR WEBER: Yeah. So on a good night – on a Friday/Saturday night - - -

MR AMANTE: Yep.

MR WEBER: - - - what percentage of revenue would level 1 - - -

MR AMANTE: The last – last six/seven months?

MR WEBER: Yeah.

MR AMANTE: Over half.

MR WEBER: Really? That much?

MR AMANTE: Yeah.

MR WEBER: Okay. Did you tell Margaret that that made up such a sizeable portion?

MR AMANTE: No.

MR WEBER: So where did – when she looked at the books and saw - - -

MR AMANTE: She wouldn't know. She wouldn't know. She wouldn't know what – she – she's not – she wouldn't – not – she wouldn't know the – the room numbers are the same downstairs as they are upstairs. She didn't even – she didn't know – like, she didn't know about that. She just looked at the – the money that – the money that came in. She wouldn't know – and it's on two separate sheets but to – to her it's just all one big booking sheet. She doesn't – she wouldn't know.

333. In an email sent from the Authority's General Counsel to the parties at 5:34pm on 19 January 2016 the Authority noted that the Applicant does not rely upon the balance of the Amante Interview or the Lakepa Interview. The Authority notes that Mr Manca is in possession of the sound recordings of those interviews and unless he wishes to make submissions arising from some specific aspect of those recordings the parties

should assume that this material is not before the Authority for the purposes of this Application.

First Request for Further Information by Mr Manca – 9:07am on 20 January 2016

334. At 9:07am on 20 January 2016, Mr Manca emailed the Authority, copying the Applicant, requesting further information and clarification of several issues. The full text of that email states as follows:

There remain a number of matters unresolved from my communication of 18 January 2016. It appears that the Authority has only had regard to the sound recordings of interviews with Mr Amante and Mr Lakepa. My communication raised the following further matters referred to in the applicant's submissions which are required to be addressed before I can properly put submissions in reply:

- 1. Further particulars of enquiries with Mr Burchett including the context, circumstances and purpose of such enquiries and any documents evidencing the matters referred to in the submissions regarding Mr Burchett.*
- 2. Further particulars of the alleged questioning of Ms Staltaro including the context, circumstances and purpose of the questioning and any documents evidencing the matters referred to in the submissions regarding the questioning of Ms Staltaro.*
- 3. Clarification of the arrangements made by the applicant's officers to inspect the premises on 12 January 2016 and 13 January 2016, including details as to the person that officers contacted and communicated with to co-ordinate the inspection and whether or not they contacted Mr Amante or Ms Staltaro for this purpose.*
- 4. Copies of all submissions received in respect of the application to transfer the licence lodged on 20 August 2015.*

In addition to these matters, a further relevant matter has arisen subsequent to my communication of 18 January 2016. That matter is the circumstances by which the plastic resealable bags were allegedly discovered on the premises by OLGR inspectors on 13 January 2016. We request that the applicant provide further particulars as to the circumstances by which OLGR inspectors allege to have discovered the resealable bags, including but not limited to statements from relevant officers present at the inspection relating to their observations at the time.

In our communication of 18 January 2016, we requested that the applicant provide the further material by 5.00pm on 19 January 2016, and that our clients be afforded a further 3 clear business days after that to provide submissions in reply. We submit that in all of the circumstances it is appropriate that the applicant be directed to provide the material requested above, and that our clients be permitted a further 3 clear business days after provision of all of the material to file their submissions in reply.

Email from Authority in Response to Mr Manca's Email – 9:21am on 20 January 2016

335. The Authority's General Counsel sent an initial reply to Mr Manca's above email at 9:21am on 20 January 2016, the full text of which states as follows:

- 1. The Authority does not have the sound recordings of the two interviews. The Authority has advised that as things stand it will only be considering that extract of the Amante transcript provided by Mr Goodchild. If you wish to make a specific submission on some other part of those two sound recordings that the Authority understand are in your possession, you may do so.*

2. *You have received all the submissions that have been made on the transfer application - the OLGR response and the Police response. Naturally you are also on notice of any communication with licensing staff.*
3. *The Authority has made no directions for further particulars and it is open to you to provide a final response to the Application, on the basis of the material now before the Authority, as described to you in my email of 4.07 14 January 2016 and supplemented by that portion of transcript provided by Mr Goodchild from the Amante interview.*

Second Request for Further Information by Mr Manca – 9:58am on 20 January 2016

336. At 9:58am on 20 January 2016, Mr Manca sent a second email, making further arguments in support of his request for access to further material from the Applicant and the Authority. The full text of that email states as follows:

I set out below the position of my clients in response to the stated position of the Authority, adopting your numbering.

1. *Noted. It is submitted that in respect of an application of this nature, which may have substantial consequences for a business owner and/or licensee, it is appropriate that the applicant discloses all material in its possession relevant to the matters for determination, not just material that supports its application.*
2. *We have received all submissions in relation to the licence transfer application lodged 7 January 2016, however we requested all submissions in relation to the licence transfer application lodged on 20 August 2015. This application related to the same proposed licensee and same proposed business owner as the application lodged 7 January 2016. The material may be relevant given that the OLGR and Police submissions objecting to the current transfer application primarily focus on the alleged involvement or knowledge of Ms Staltaro and Mr Iqbal in the alleged illegal operation of the premises on 19 December 2015 (and/or prior to this) but also other matters, and whether or not there were any other matters relied upon by any stakeholder objecting to the original application lodged 20 August 2015.*
3. *The Authority should make directions for the provision by the applicant of the material that we have requested because the applicant has made reference to those matters in his submissions, without providing the evidence. If the Authority was to determine the application and have regard to the applicant's submissions in relation to the matters for which we have requested further material, it could be reasonably argued that the Authority would not be exercising its powers fairly as our client's rights to a fair hearing would be undermined by not having access to, nor the opportunity to test alleged evidence upon which the applicant's submissions are based and any decision would be based on speculation or suspicion, rather than evidence.*

For the above reasons, I repeat my request that the Authority:

1. *Provide directions to the applicant to provide:*
 - c. *Further particulars of enquiries with Mr Burchett including the context, circumstances and purpose of such enquiries and any documents evidencing the matters referred to in the submissions regarding Mr Burchett.*
 - d. *Further particulars of the alleged questioning of Ms Staltaro including the context, circumstances and purpose of the questioning and any documents evidencing the matters referred to in the submissions regarding the questioning of Ms Staltaro.*

- e. *Clarification of the arrangements made by the applicant's officers to inspect the premises on 12 January 2016 and 13 January 2016, including details as to the person that officers contacted and communicated with to co-ordinate the inspection and whether or not they contacted Mr Amante or Ms Staltaro for this purpose.*
 - f. *Further particulars as to the circumstances by which OLGR inspectors allege to have discovered the resealable bags, at the premises during the inspection on 13 January 2016, including but not limited to statements from relevant officers present at the inspection relating to their observations at the time.*
2. *Provides copies of all submissions received in respect of the application to transfer the licence lodged on 20 August 2015.*
 3. *Permit my client a further 3 clear business days after provision of all of the above material to file their submissions in reply.*

Our clients reserve all of their rights. I look forward to your response.

Authority Direction to Applicant – 2:05pm on 20 January 2016

337. The Authority emailed the parties with its position in response to Mr Manca's requests for further information in an email sent at 2:05pm on 20 January 2016 in the following terms:

The Authority Members have considered Mr Manca's two emails of this morning requesting the production of more material by the Applicant and more time to respond to that material.

Out of an abundance of caution and in the event that this further material may assist Mr Manca to prepare a response to the Long Term Closure Application (noting this material is not currently before the Authority in respect of the Long Term Closure Application) the Authority makes the following directions.

With regard to the four points enumerated in Mr Manca's email of 9:07am today:

1. *The Authority makes no direction in respect of further information regarding Mr Burchett.*
2. *The Authority directs OLGR to provide any record, evidence or material regarding OLGR's recent questioning of Ms Staltaro, to the extent that it forms the basis of the conclusions or opinions reached by OLGR about Ms Staltaro that have been communicated by OLGR's in relation to this Application.*
3. *The Authority notes the powers of inspectors provided by Part 4 of the Gaming and Liquor Administration Act 2007 and makes no direction with regard to this point.*
4. *The Authority directs OLGR to provide any further particulars, record, evidence or material currently before OLGR that form the basis of OLGR's allegations as to its discovery of the resealable plastic bags on the premises.*

*The Authority requests OLGR to respond to these directions via email by **5pm today**, copying Mr Manca.*

*The Authority notes that it has already extended the timetable for submissions until **5pm** this Friday at Mr Manca's request. This was in order to accommodate the further material that was before the Authority in relation to the Application as noted in my email of the afternoon of 14 January 2015.*

*The Authority does not propose to further extend the timetable for final submissions addressing the merits of the Application should OLGR respond to the Authority's directions by **5pm** today.*

The Authority may entertain a day for day (or hour for hour) extension if OLGR requires further time to respond to these directions. The Authority will consider such extension should the need arise.

As for the request for any third party submissions made to the Authority in relation to the August 2015 licence transfer application, the Authority notes its previous advice that this application is no longer under consideration. The Authority notes that OLGR do not rely on any third party submissions in respect of the August licence transfer application in relation to the Long Term Closure Application.

Nevertheless, for the sake of transparency the Authority has instructed licensing staff to prepare a bundle of all third party communication relating to that August application and that bundle is attached to this email for Mr Manca's information.

Further Material Produced by OLGR – 3:25pm on 20 January 2016

- 338.** At 3:25pm on 20 January 2016, OLGR produced a copy of a file note drafted by OLGR inspector Matt Weber which reports on the inspection of the Premises conducted on 13 January 2016 (**OLGR File Note**) in response to the Authority's directions of earlier that afternoon. The cover email to this further material states as follows:

Please find attached a copy of a file note drafted by Matt Weber which reports on the inspection at the premises on 13 January 2016. This is the relevant material which satisfies points 2 and 4 of your email below. Irrelevant parts of the file note have been redacted. To clarify, the file note contains information relating to:

- *'the recent questioning of Ms Staltaro' – see page 7 of the file note, and*
- *The 'discovery of resealable plastic bags' – see page 6 of the file note.*

The opening 3 paragraphs on page 1 of the file note explain the circumstances in which OLGR inspectors attended the venue.

- 339.** The introduction to the OLGR File Note states as follows:

About 2pm Wednesday 13 January 2016 OLGR Inspectors Matt Weber, Brett Fowler, Mark Miller, and James Shand attended Dreamgirls, 77 Darlington Road, Potts Point.

The purpose of the visit was to assess compliance with s.54 LA 2007 conditions that were imposed on the liquor licence and that needed to be complied with prior to re-opening, which occurred on Tuesday night, 12 January 2016.

Upon entry into the venue inspectors observed the owner of Dreamgirls Michael Amante and the proposed owner Margaret Staltaro. A few minutes later Senior Constable Peter Mullans, Kings Cross Licensing Police, arrived at the venue in the company of a female Senior Constable.

- 340.** With regard to the “discovery of resealable plastic bags” on the Premises, the OLGR File Note refers to “Photo 8” (which is a photograph of two small, clear resealable plastic bags containing white powder residue located next to soap containers in a shelf in the shower area of the Premises) and states as follows:

A further room was observed during the CCTV audit, being a shower room. Amante stated the room was occasionally used for private shows conducted in the area. Amante stated patrons would sit on one of the bench seats and a female would perform in front of them. Amante stated the large shower area would not be used. The

shower area was not covered by CCTV. Amante stated that he would often use the shower, as well as some of the performers on occasion.

During assessment of the CCTV coverage OLGR inspectors located two small, clear plastic resealable bags containing powder residue next to soap containers on a shelf in the shower area. See Photo 8. Amante could not explain how the bags came to be there, other than to state they may have been there for a while. Amante yelled for a cleaner to enter who cleaned up the bags.

- 341.** With regard to “the recent questioning of Ms Staltaro”, the OLGR File Note refers to “Photo 10” (which is a photograph of a staff induction form that includes a single point in respect of the venue’s *Drug Prevention Policy*) and states as follows:

Inspectors enquired with Staltaro and Amante regarding the content of the drug policy. Neither could confirm what the policy contained other than Staltaro mentioning an employee would be provided help. At the time of the inspection an appropriate drug policy that is given to employees was not able to be produced, other than a single point on a staff induction form. See Photo 10. Staltaro contacted Mr Burchett from Tactical Training Group on the telephone. Burchett advised he is still compiling a drug policy to present to staff and stated that at the moment any drug policy discussed with new and current employees is only done verbally.

During the inspection of the venue it was evident that Amante is in charge and responsible for making decisions and speaking for the venue. Staltaro appeared nervous, provided little, if any input, and whenever she was asked a question would instinctively look to Amante for guidance. When Staltaro was asked a direct question it was met with vague, unsure answers.

Towards the end of the inspection Inspector Weber asked Amante, “If a high-level management decision needed to be made today, who makes the call?” Without hesitation, Amante responded, “Well, me!” Staltaro responded, “Well, I’d like to have an opinion.”

Final Submissions from the Business Owner – 22 January 2016

- 342.** At 5:00pm on 22 January 2016, Mr Manca provided final submissions in response to the Applicant’s further submissions of 13 January 2016. The full text of this submission letter is as follows:

Background

1. *On 29 December 2015, submissions were advanced opposing the making of an order pursuant to s84. We continue to rely upon such submissions.*
2. *ILGA gave preliminary consideration to the application and on 30 December 2015 notified the parties that it considered that it was not necessary for an order to be made pursuant to s84 on the basis that certain conditions were imposed on the licence. It was submitted on behalf of the licensee, proposed licensee and proposed business owner that while ILGA had no power to make an order, and without prejudice to that position, a slightly modified version of the proposed conditions would be agreed to be imposed on the licence, and the licence would be voluntarily suspended until the conditions were complied with. The conditions were imposed on 31 December 2015, by qualified consent and were complied with by 12 January 2016 (as evidenced by the report of Mr Burchett filed 12 January 2015).*
3. *Notwithstanding the imposition of the conditions and satisfaction of same, the applicant has on 13 January 2016 sought to press his application and again requested that ILGA make an order for the closure of the premises. The applicant relies upon a submission dated 13 January 2016 along with:*

- a. *Email with further comment on asserted deficiencies of the Drug prevention Policy dated 14 January 2016;*
 - b. *Email dated 19 January 2016 attaching the extract from an interview with Michael Amante on 6 January 2016;*
 - c. *Email dated 20 January 2016 attaching a file note of an inspection of the premises by OLGR officers on 13 January 2016; and,*
 - d. *The original submission and attachments dated 22 December 2015.*
4. *It is submitted that there is no material difference to the circumstances of the premises since ILGA determined that it was not necessary to make an order on 30 December 2015 and the date of the applicant's further submission seeking to again press his application, which would be relevant to the matters for consideration of ILGA when determining whether or not to make an order.*
 5. *The further material submitted by the applicant is generally material which is in the most part, irrelevant to the question of whether or not an order should be made by ILGA pursuant to s84 of the Act. The applicant's further submissions contain generalised complaints and suspicion, however deviate far from the relevant issues for determination and the statutory power to be exercised by ILGA and are mostly not based on cogent evidence.*
 6. *The only new matters raised by the applicant that were not before ILGA when it indicated its position as a result of its preliminary consideration on 30 December 2015 can be summarised as follows:*
 - a. *Objection to the application to transfer the licence to Mr Iqbal lodged 7 January 2016;*
 - b. *Alleged deficiencies with the Drug Prevention Policy submitted on 12 January 2016;*
 - c. *Concerns regarding the coverage of CCTV cameras in the premises, including an alleged potential breach of cl. 53H of the Liquor Regulation detected on 13 January 2016; and,*
 - d. *Concerns regarding alleged illicit drug use at the premises as a result of OLGR officers allegedly discovering 2 resealable plastic bags on the premises on 13 January 2016.*
 7. *The only new matters raised by the applicant that could be relevant in any way to the exercise of power by ILGA pursuant to s84 are matters which disclose that a serious breach of the Act has occurred or is likely to occur on the licensed premises. Therefore, the matters relating to the objection to the application to transfer the licence to Mr Iqbal are totally irrelevant, and the alleged deficiencies in relation to the Drug Prevention Policy are not directly relevant, as they do not relate to serious breaches of the Act. There may be some isolated, limited and indirect relevance of the alleged deficiencies in the Drug Prevention Policy if ILGA was satisfied that breaches of s74 of the Act had been committed, however for the reasons previously submitted and expanded upon below, ILGA could not reasonably make a finding that serious breaches of s74 have in fact been committed on the licensed premises.*

Objection to Liquor Licence Transfer

8. *The matters relied upon as the basis for objection to the proposed licensee form holding the licence and the proposed business owner from being a close associate of the licensee are generally based on some allegation that the proposed licensee and sole director of the proposed business owner were involved in or aware of the alleged breaches detected prior to the short term closure order being made.*
9. *While the specific objections will be directly addressed in separate submissions, it is noted that such objections are based on speculation and inference, rather than any direct evidence.*

10. *The matters which form the basis of the objections to the licence transfer are not matters which relate to alleged serious breaches of the Act occurring on the licensed premises, and are therefore not relevant matters for consideration by ILGA to trigger a power to make an order pursuant to s84.*

Drug Prevention Policy

11. *While it is not admitted that Mr Burchett was not suitably qualified as required by the condition imposed on 30 December 2016, in recognition of the criticisms of the Drug Prevention Policy, a review of the Drug Prevention Policy and compliance with the s54 conditions imposed on 31 December 2015 has been directed to be undertaken by Matthew Harrison of Australian Frontline Services Pty Limited. Mr Harrison is the holder of a class 2 security licence with categories 2A, 2B, 2C and 2D. The final report and final amended Drug Prevention Policy has not yet been received at the time directed for filing of these submissions, however it is submitted that ILGA not make any determination until Mr Harrison's final report and final amended Drug Prevention Policy is received.*

Alleged Serious Breaches of Act – s84(2)(c) – Applicant's New Material

12. *As a consequence of the above, the only possible matters that arise from the new material submitted by the applicant that could be relevant to enliven the power of ILGA to make an order pursuant to s84 are:*
- a. *An alleged breach of cl. 53H of the Regulation arising from alleged inadequacies in cctv camera coverage; and,*
 - b. *An alleged breach of s74 of the Act arising from the alleged discovery of 2 resealable bags on the premises;*

both said to be identified during an inspection of the premises by OLGR officers on 13 January 2016 at around 2.00pm.

CCTV Coverage

13. *It is noted that the applicant submits on page 2 of his letter dated 13 January 2016 that OLGR officers reported that during their inspection on that day, the DJ booth was not covered by CCTV cameras. There is no evidence before ILGA to support such a submission. The document entitled "Dreamgirls Inspection File Note" refers to a CCTV audit at page 6, however there is no evidence of the observations made during that audit or the result of that audit.*
14. *It is submitted that there was no offence committed against cl. 53H on 13 January 2016.*
15. *There is no evidence that the premises were open for trade at the time of the OLGR inspection on 13 January 2016. Relevantly, cl. 53H(1)(a) requires a licensee to maintain a cctv system to record continuously from opening time until one hour after the premises are required to close. If the premises were not open during the OLGR inspection on 13 January 2016, then it is not necessary to have any cctv system recording, and the coverage of the cameras at that point is irrelevant to the question of whether or not an offence has been committed during the hours of trade.*
16. *Further, cl. 53H(d)(iii) only requires the cameras of the system to cover all publicly accessible areas on the premises. It is submitted that the DJ booth is an area to which no public access is permitted, and access is restricted to staff and contractors only, much like the areas behind a bar where beverages are prepared for service and back of house areas such as store rooms, garbage rooms and cleaner rooms. Therefore, even if it is established (despite the*

absence of any evidence before ILGA demonstrating same) that the cctv camera coverage did not extend to include the DJ booth during trading hours of the premises, there was no requirement to do so because the DJ booth is not contained within a publicly accessible area.

17. *The incident register maintained by the premises records an inspection on the night of 12 January 2016 by Police Inspector Dunstan and a further inspection on the night of 13 January 2016 by Constable Mullan and no record of any concerns being raised with the cctv on those occasions.*
18. *Even if there has been an offence against cl. 53H, in all of the circumstances, where only a minor part of the venue is alleged to not be covered by the cctv cameras, such an offence could not be reasonably characterised as an objectively serious offence such that the powers of ILGA are triggered pursuant to s84(2)(c).*

Resealable Bags

19. *The applicant alleges that inspecting officers located 2 resealable plastic bags containing white powder residue within the shower on the premises during the inspection in the afternoon of 13 January 2016.*
20. *There is no evidence that the bags contained a prohibited drug. There is only a suspicion that the bags may have contained a prohibited drug.*
21. *There is no evidence as to when the bags first came to be in the shower room. There is only a suspicion that they were put there on the night of 12 January 2016.*
22. *The applicant submits that the bags “were immediately obvious” to OLGR inspectors. There is no evidence to support that submission. There is in fact evidence to support a position contrary to that submission. The premises has retained cctv footage of the inspection by the OLGR officers of the shower area in the afternoon of 13 January 2016 which indicates bizarre behaviour by officers. The footage depicts multiple officers enter the shower room area, and one officer enter the shower proper, which is outside the area covered by the camera (the area where the resealable bags are alleged to have been discovered) and remains there for a number of minutes, while another officer is positioned in the shower room seating area in view of the camera. It is not until some time after this that it appears that officers call Mr Amante and Ms Staltaro into the room. It appears that the officer who was in the shower proper remains in the shower until after all other people have left the area. We currently hold a copy of the footage on a USB drive which can be made available to the applicant and ILGA.*
23. *There have been no witness statements served in relation to the alleged discovery of the resealable bags, setting out the manner and circumstances in which these were discovered, and the sole piece of evidence relied upon by the applicant in relation to this matter is a short paragraph and photograph contained in a file note completed the day following the inspection.*
24. *It is unclear from the applicant’s submissions whether or not he alleges that the location of the bags constitute evidence of an alleged offence against s74 or any other offence against the Act having been committed on the licensed premises. If the resealable bags had not been found there would be absolutely no reason to suspect drug use at the premises or any alleged breach of s74. At its absolute highest, the fact that the resealable bags were located by OLGR officers on the premises may be indicative of possible drug use at the premises, but does not in any way establish an offence against s74 of the Act.*

25. *Further detailed submissions relating to the fact that no breach of s74 has previously been committed, even prior to the events of 19 December 2015 are set out below.*

Alleged Serious Breaches of Act – s84(2)(c) – Original Application

26. *The only breaches of the Act alleged to have taken place on the licensed premises relied upon by the applicant in the original application were:*
- a. *Licensee permit premises to be used for the sale of prohibited drugs – s74(1)(b);*
 - b. *Licensee permit possession or use of prohibited drug – s74(2);*
 - c. *Employee or agent permit premises to be used for the sale of prohibited drugs – s74(3)(b); and,*
 - d. *Employee or agent permit possession or use of prohibited drug – s74(4).*
27. *The applicant correctly concedes in his email communication to ILGA of 23 December 2015 that any possible alleged offences of sections 7, 8(a), 8(b), 8(c), 8(d), 9(1) and 9(3) of the Act which are currently being investigated are not relevant for the purposes of the making of a long term closure order, as s84(2)(c) requires the serious breach of the Act to have occurred, or to be likely to occur on the licensed premises.*
28. *We submit that any alleged offence of sections 7, 8(a), 8(b), 8(c), 8(d), 9(1) and 9(3) would be an irrelevant consideration for the purposes of ILGA making an order pursuant to s84, because such alleged offences cannot, by their very nature occur on the licensed premises. In any event, the potential for any future offences of that nature has been removed by the compliance with the conditions imposed on 31 December 2015, eliminating the need for any order, even if ILGA did have power to make such an order (which is denied).*
29. *We repeat the point previously made that there has been no prosecution for any alleged breach of s74, which would need to be proven to the criminal standard in order to be made out. The licensee has not made any admissions as to any breaches of s74. It is clear that there would be considerable doubt as to whether or not any breaches of s74 were in fact committed. ILGA could not be satisfied for the purposes of the first limb of s84(2)(c) unless there was either an admission by the licensee (or employee or agent of the licensee) as to a breach of s74 or a finding of guilt by a Court of competent jurisdiction.*
30. *There is absolutely no evidence that forms part of the application or the further material provided by the applicant subsequently to suggest that the licensee was aware of the premises being used for the sale of prohibited drugs or that prohibited drugs were possessed or being used by persons on the licensed premises.*
31. *The fundamental difficulty with any offence against s74 being proven is that in order to establish that an accused offender “permitted” any of the matters contemplated by s74, it is necessary to establish that the person had knowledge of the matters and the power and the authority to prevent them.*
32. *While a licensee may well have lawful authority to turn out from licensed premises a person who the licensee knows is using, possessing or selling drugs or has used, possessed or sold drugs on the premises, that authority can only be exercised if the licensee obtains that knowledge. Even if the facts establish that there was a person or persons using, or in possession of drugs on the premises and a person using the premises to sell drugs that is not sufficient to establish that the licensee permitted that activity, unless it can also be established that he knew about the activity and did not use his power and authority to prevent it from taking place.*

33. *In order to permit an activity, it must be established that the person was not only aware of it, but actively or expressly allowed the activity. In the matter of R v Jasper [2003] NSWCCA 139 A Crim 329, the Court of Criminal Appeal considered the question of “permitting” and “suffering” activities in the context of an alleged offence of supply of prohibited drugs contrary to s3 of the Drug Misuse and Trafficking Act 1985, where the prosecution relied upon an allegation that the accused permitted or suffered the supply of prohibited drugs by a third party. In Jasper Mason P said at paragraph 23:*

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

34. *There is absolutely no evidence that either Mr Lakepa (the licensee) Mr Iqbal (the proposed licensee) or Ms Staltaro (the sole officer of the proposed business owner and deemed licensee) had knowledge or awareness of any use of the premises for the sale of prohibited drugs, or the use and/or possession of prohibited drugs on the premises. Each of these people have been subject to questioning and interviews by the applicant’s officers and there is no evidence that any have ever even been asked any questions relating to their knowledge of any use of the premises for the sale of prohibited drugs, or the use and/or possession of prohibited drugs on the premises generally, or specifically in relation to any investigation of offences pursuant to s74.*

35. *Unlike other statutory regimes which create offences for the “permitting” of activities, such as the Drug Misuse and Trafficking Act, s74 does not include an alternative element of “suffering” an activity to be conducted. The inclusion of an element of “suffering” effectively reduces the threshold of proof from that required by the element of “permitting”. In R v Jasper, Mason P, at paragraph 22 said:*

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

36. *A corollary of His Honour’s statement above, is that where a statutory scheme (such as s74) provides that an offence is committed when an accused person “permits” an activity, it is not sufficient that the accused person merely passively or implicitly allows the activity, but rather it must be established that the accused person actively or expressly allows it. At its best, the material relied upon by the applicant which addresses the question of any offence pursuant to s74 would struggle to even establish that the licensee, proposed licensee or sole officer of the proposed business owner (and deemed licensee) passively or implicitly allowed the use of the premises for the sale of prohibited drugs, or the possession or use of a prohibited drug on the premises, let alone the active or express allowing of such activity.*
37. *Further, it is significant to note, that unlike the offence of permit intoxication under s73, there is no deeming provision contained within s74. A licensee is taken, pursuant to s73(4) to have permitted intoxication on licensed premises in the event that an intoxicated person is on the licensed premises (subject to some qualifications). The effect of the distinction between the offence of permitting intoxication under s73 and permitting the various forms of activities contemplated by s74 is that a licensee can be guilty of an offence against s73 even if he or she is not aware of the presence of the intoxicated person on the licensed premises, because the mere fact that the intoxicated person was on*

the licensed premises is sufficient to deem the permission of intoxication, whereas a person cannot be guilty of an offence against s74 merely because a person happens to possess or use a drug on the licensed premises.

38. *If it had been the intention of parliament to deem a licensee to have permitted a licensed premises to be used for the sale of a prohibited drug or the possession or use of prohibited drugs on licensed premises, by simple fact that drugs were detected being sold on the licensed premises and being possessed and used on licensed premises, there would have been a deeming provision expressly included in s74, in the same way that there is in s73. The absence of an express deeming provision in s74 fortifies the submission that in order to establish an offence against s74, it must be proven that the accused person not only knew and was aware of the various activities contemplated by s74, but that the person actively or expressly allowed such activities.*

Alleged Offences by Employees or Agents

39. *There is no evidence which forms part of the application to suggest that any employee or agent in charge of the premises was involved in the possession or use of any prohibited drug or permitted the premises to be used for the sale of prohibited drugs. The only person alleged in the application material to have sold or supplied prohibited drugs is the previous contractor dancer ... Walters [sic]. Ms Walters [sic] was simply a dancer contracted to perform at the premises. There is no evidence that she was in charge of the premises. It could not be reasonably submitted that Ms Walters [sic] was "a person (other than the licensee) in charge of" the premises and therefore there could not be any offence pursuant to s74(3)(b) or s74(4).*
40. *It would appear that s74(3)(b) and s74(4) are merely intended to provide alternative offences in circumstances where a person other than the licensee is in charge the licensed premises, such as when the licensee is not present. It is noted that in respect of these provisions, the licensee is not the person who is the potential accused, but rather some other employee or agent. There is no evidence that any employee or agent has been charged with an offence against s74(3)(b) or s74(4). There is only evidence of Ms Walters [sic] being charged with an offence under s25(1) of the Drug Misuse and Trafficking Act.*
41. *An alternative to the first limb of the test in s84(2)(c) is that the Authority may be satisfied that a serious breach of the Act is likely to occur. Presuming that the applicant relies upon alleged future breaches of s74, for the reasons set out above, the Authority cannot be satisfied that future breaches of s74 are likely to occur, as there is absolutely no evidence that breaches of s74 have taken place in the past or have been proven to have taken place.*

Conclusion

42. *Following the expiration of the short term closure order, the premises traded on 23, 24, 26, 27, 28 and 29 December 2015, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 January 2016 under the supervision of an external consultant, Mr Burchett. During this period the premises have been subject to numerous attendances by Police and OLGR officers, and no serious breaches of the Act have been identified as taking place on the licensed premises.*
43. *Positive action has been taken to improve the management of the premises from the position that it was in prior to the short term closure order.*
44. *The exercise of the statutory power pursuant to s84 by ILGA has significant consequences and should not be taken lightly. It is for this reason that the power is carefully limited by the statute. Before ILGA can make an order it must be satisfied pursuant to s84(2)(c) that:*

- a. *a serious breach of the Act has occurred on the licensed premises or is likely to occur on licensed premises; and,*
 - b. *The closure of the premises is necessary to prevent or reduce a significant threat or risk to the public interest.*
45. *It follows that the risk or threat to public interest contemplated by s84(2)(c) justifying the closure must have a direct relationship to the serious breach of the Act that has occurred or is likely to occur, and that there are no other reasonable means to prevent the risk or threat than to take the action to order the closure of the premises.*
46. *It is further submitted that the “necessity” referred to in the second limb of s84(2)(c) must be proximate in time to the alleged serious breaches and/or the threats and risks to the public interest posed by such serious breaches, and that in circumstances where the premises has traded on 16 nights since the short term closure order expired, and 9 nights since the inspection of 13 January 2016 with no evidence of any serious breaches of the Act identified or alleged, there is no need for any order to be made.*
47. *It is submitted that no serious breach of the Act has been committed on the licensed premises since the expiration of the short term closure order, and that the alleged breaches of s74 prior to the expiration of the short term closure order could not ever be established for the reasons given above. As a consequence, ILGA could not be satisfied as to the first limb of s84(2)(c) and therefore does not have power to make an order pursuant to s84.*
48. *It is submitted that in all of the circumstances, it is not necessary to order the closure of the premises in order to prevent or reduce the threat or risk of serious offences against the Act taking place on the licensed premises.*

LEGISLATION

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

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

- (1) *The Authority may, on the application of the Secretary or the Commissioner of Police, order a licensee to close the licensed premises from a time specified in the order until a later specified time.*
- (2) *The Authority may not make an order under this section unless:*
 - (a) *the licensee or manager of the licensed premises is the subject of an investigation by the Secretary under section 138 or an investigation by the NSW Police Force, or the licensed premises are the subject of a complaint under Division 3, or disciplinary action under Part 9 has been (or is proposed to be) taken by the Authority against the licensee or manager or a close associate of the licensee, and*
 - (b) *the licensee has been given notice of the application for closure of the licensed premises and has been given a reasonable opportunity to make submissions to the Authority in relation to the application, and*
 - (c) *the Authority is satisfied that a serious breach of this Act has occurred, or is likely to occur, on the licensed premises and that the closure of the premises is necessary to prevent or reduce a significant threat or risk to the public interest.*
- (3) *Without limiting the generality of subsection (2), circumstances in which there may be a significant threat or risk to the public interest include circumstances in which there is:*
 - (a) *a threat to public health or safety, or*

- (b) *a risk of substantial damage to property, or*
- (c) *a significant threat to the environment, or*
- (d) *a risk of serious offences (having a maximum penalty of not less than 2 years imprisonment) being committed on the premises.*

- (4) *An order ceases to have effect at the time specified or when a complaint concerning the licensee or manager of the premises is determined under this Act, whichever is the earlier.*
- (5) *An order may not require the closure of premises for a period longer than the period prescribed by the regulations.*
- (6) *An order may require the closure of premises until specified conditions are met but must not require closure for a period longer than that permitted under subsection (5).*
- (7) *A licensee must comply with an order made under this section.*

Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.

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

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

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

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

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

Maximum penalty: 50 penalty units.

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

Maximum penalty: 50 penalty units.

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

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

Maximum penalty: 50 penalty units.

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

Maximum penalty: 50 penalty units.

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

345. Relevantly to this Application, Part 2 of the Act, which sets out principal offences relating to the sale and supply of liquor, states as follows:

7 Licence required to sell liquor

- (1) *A person must not sell liquor unless the person is authorised to do so by a licence.*

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

- (2) *A person does not commit an offence under subsection (1) if the person is an employee or agent of a licensee and the sale is made in accordance with this Act and the authorisation conferred by the licence.*

- (3) *A person who is the occupier, manager or person apparently in control of any premises on or from which liquor is sold in contravention of subsection (1) is taken to have sold the liquor unless it is proved that the person:*

- had no knowledge of the sale, and*
- had used all due diligence to prevent the sale of liquor on or from the premises.*

8 Keeping or using unlicensed premises

- (1) *A person must not:*

- (i) open, keep or use any premises for the purpose of selling liquor, or*
- (ii) permit any premises to be opened, kept or used by another person for the purpose of selling liquor, or*
- (iii) have the care or management of any premises opened, kept or used for the purpose of selling liquor, or*
- (iv) assist in conducting the business of any premises opened, kept or used for the purpose of selling liquor,*

unless the premises are licensed premises or are otherwise authorised under this Act to be used for the sale or supply of liquor.

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

- (2) *A person who is found on, or who is found entering or leaving, any premises opened, kept or used in contravention of subsection (1) is guilty of an offence.*

Maximum penalty: 5 penalty units.

9 Sale or supply of liquor contrary to licence

- (1) *A licensee or an employee or agent of a licensee must not sell or supply liquor, or cause or permit liquor to be sold or supplied:*

- (a) in contravention of the conditions to which the licence is subject, or*
- (b) otherwise than in accordance with the authority conferred on the licensee by or under this Act.*

- (2) *Without limiting subsection (1), a licensee must not:*

- (a) keep licensed premises open for the sale or supply of liquor, or*
- (b) sell or supply liquor,*

at a time when the licensee is not authorised under this Act to sell or supply liquor.

- (3) *A licensee must not sell, or employ or permit another person to sell, liquor on premises other than premises on which the licensee is authorised by the licence or this Act to sell the liquor.*

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

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

3 Objects of Act

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

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

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

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

FINDINGS AND REASONS FOR DECISION

347. The Authority must take care when fact finding in the context of an application for a long term closure order. An application for a long term closure order is an administrative matter, and findings are made to the civil standard of proof.

348. However, in accordance with the principle enunciated by the High Court of Australia in *Briginshaw v Briginshaw* (1938) 60 CLR 336, the seriousness of the allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are matters that are relevant to deciding whether an allegation has been proved on the balance of probabilities.

349. Turning to the requirements of section 84 of the Act, the Authority is satisfied, for the purposes of section 84(1) of the Act and on the basis of the Application Material filed with the Authority on 22 December 2015, that an application has been made under section 84 of the Act by a delegate of the Secretary of the Department of Justice (the Applicant, Mr Anthony Keon) to the Authority seeking the closure of the Premises for a period of six (6) months or until the conditions proposed by the Applicant and as specified in the Application Letter have been satisfied.

350. With regard to section 84(2)(a) of the Act, the Authority is satisfied, on the basis of the advice provided by the Applicant in the Application Material and in particular the Application Letter to the Authority from the Applicant dated 22 December 2015, that the (then) licensee of the Premises, Mr David Lakepa (among other persons associated with the licensed business operating on the Premises) is the subject of an investigation by a delegate of the Secretary pursuant to section 138 of the Act.

- 351.** With regard to section 84(2)(b) of the Act, the Authority is satisfied that the (then) licensee has been given notice of the Application and has had a reasonable opportunity to make submissions on the Application.
- 352.** This finding is made on the basis of the Notice of Application issued by the Authority dated 23 December 2015 and email advice from the Applicant to the Authority that the Notice, Application Material and the Applicant Further Submission were served by OLGR officers upon Mr Dion Manca, the solicitor for the (then) licensee on 23 December 2015. The Authority further notes that prior to this service, advance notice was given by the Applicant to Mr Manca of the Application on 22 December 2015.
- 353.** The Authority is further satisfied, on the basis of the extensive course of email communication between the Authority, the Applicant and Mr Manca, (who acts for Mr Lakepa and the apparent business operator, Restaurant Royale Pty Ltd), that the licensee of the Premises has been given notice of the Application and a reasonable opportunity to make submissions in response to the Application.
- 354.** Although not required by section 84 of the Act, the Authority further notes email advice from the Applicant to the Authority dated 24 December 2015, that a representative of the premises owner company was served with the Notice, the Application Material and the Applicant Further Submission. The Authority notes that no submissions have been made by the premises owner in response to the Application, nor has any other contact been made by the premises owner with the Authority.
- 355.** The Authority has considered, but does not accept Mr Manca's submission that his clients have been prejudiced by not receiving a reasonable opportunity to make submissions on the Application.
- 356.** The Application Material is tightly focussed and not voluminous – comprising some 85 pages of documents and five sound recordings of interviews between OLGR inspectors and the licensee and four other staff of the Premises. The sound recordings of interviews are not lengthy, ranging from around 8 minutes in duration to 23 minutes in duration for the longest interview.
- 357.** The Authority notes that Mr Manca was provided with all of the evidence or material that is before the Authority and was given advance notice of that material by the Applicant.
- 358.** Notwithstanding Mr Manca's complaint that he was not given a reasonable opportunity to make submissions, he has nevertheless been able to provide detailed and focused submissions addressing the merits of the Application and has done so in less than the time provided by the Authority to do so.
- 359.** This first round of submissions was accompanied by two statutory declarations from a director of the proposed business owner and a compliance consultant engaged by the proposed business owner. He made those submissions by 5:00pm on Tuesday 29 December 2015 when the Authority had actually given Mr Manca a short extension until 10:00am on Thursday 31 December 2015 to do so.
- 360.** While Mr Manca has complained generally that he has not been able to access "appropriate witnesses" to make statements on behalf of the licensee in the time provided, he has not specified who he would have obtained further evidence from or the nature of that further evidence. Moreover, it is apparent from the attachments

provided to the two statutory declarations furnished by Mr Manca that numerous staff members of the business have been able to provide letters in support of the licensee's position or resisting the closure of the Premises in the time available.

- 361.** The Authority appreciates that Mr Manca has had to interrupt his holiday plans and that the conduct of this Application has proceeded prior to the expected return from leave of an (unspecified) Senior Counsel, but this has not prevented Mr Manca from making helpful and detailed submissions to the Authority addressing the legal and evidentiary issues raised by the Application.
- 362.** Given the gravity of the allegations made in the Application, the expiry of the Short Term Closure Order on 23 December 2015 and the extensive licensed trading hours of the venue, the Authority considered it in the public interest to proceed in an efficient manner, without undue delay.
- 363.** The liquor and gaming industry routinely operates on weekends and public holidays. The Authority must be in a position to respond to regulatory issues as and when they are brought before it, regardless of the time of year.
- 364.** In light of the modest amount of Application Material that is now before the Authority, the public interest in respect of section 74 and 84 of the Act and the statutory objects and considerations provided by section 3 of the Act, the Authority is satisfied that the licensee has had a reasonable opportunity to respond to this Application.
- 365.** The Authority notes that it has assisted Mr Manca by providing him with informal transcripts prepared by the Authority's General Counsel, of the five audio interviews that form part of the Application Material.
- 366.** The Authority notes that it is not in possession of any internal Police documentation giving rise to the certification of a controlled operation on the Premises, and accepts advice from OLGR that Police are reluctant to provide that material.
- 367.** The Authority nevertheless accepts, on the basis of specific advice from the Applicant, including the information provided in the Application Letter (verified by statutory declaration) and Police documentation in the form of an observation report referring to the said controlled operation, that evidence as to the possession and/or supply of a substance suspected of being a prohibited drug, being cocaine, was detected by Police pursuant to a controlled operation (Police reference CO15/391 authorised by Assistant Commissioner Mick Fuller on 10 December 2015 and conducted on 10 and 11 December 2015).
- 368.** In light of its decision to voluntarily close the Premises from 31 December 2015 to 12 January 2016 and the interim measures agreed with the Applicant on 31 December 2015, the apparent business owner (Restaurant Royale Pty Ltd) has had further opportunity to provide submissions or evidence in response to the Application, including in response to the further adverse submissions from Police and OLGR dated 8 and 13 January 2016 respectively, noted above.
- 369.** In circumstances where the Authority is not exercising judicial power or determining a criminal charge in respect of the possession or supply of prohibited drugs on the licensed premises, but exercising administrative power for the purposes of preserving the public interest in right of the *Liquor Act*, the Authority is satisfied that the business owner has had a reasonable opportunity to present its response to the Application.

Serious breaches of the Act

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

371. The Authority is satisfied that the following events occurred on the Premises on Friday 11 December 2015, as alleged by the Applicant:

- Undercover Police Officers (the **UC**) entered the Premises. Alcohol was purchased from the bar and the UC booked a 10- minute private dance with an Asian stripper at a cost of \$70. During conversation, the stripper told the UC that a 1-hour private dance upstairs could be purchased at a cost of \$400.
- At 11:20pm, the UC overheard a stripper say to another patron, “You can snort coke off my tits”.
- The UC engaged a Canadian stripper and asked her, “Do you know where we can get on”, in reference to obtaining drugs.
- The Canadian stripper said, “Just wait here, I will get Charlotte” [the Authority notes that this is an apparent reference to Ms Waters].
- At 11:53pm the UC negotiated to buy 1 gram of cocaine from “Charlotte” for \$350. “Charlotte” walked into the shower room and returned to where the UC was sitting. “Charlotte” leant over the UC and said, “Hey, so nice to see you again”, while at the same time placing a small resealable plastic bag containing white powder into the UC’s hand which was also holding a drink.
- About 1 minute later, Police conducting surveillance inside the Premises walked into the toilet and observed three venue strippers, including “Charlotte”, openly snorting cocaine off their fingers, which they were seen dipping into a small resealable plastic bag. One of the strippers offered the cocaine to the surveillance officer.

372. The Authority makes these findings on the basis of the evidence and material before it, being the information provided in the Application Letter, the Notice of Urgent Short Term Closure Order under section 82 of the Act issued in relation to the Premises by Local Court Registrar Jeffrey Reid at 12:47am on 20 December 2015, plus the Urgent Application for a Short Term Closure Order under section 83 of the Act made by Superintendent Michael Fitzgerald of Kings Cross LAC Police dated 19 December 2015 which is **Tab “C”** of the Application Letter, the email from Police to OLGR dated 15 December 2015 noting the observations of the UC and a copy of the drug exhibit created by Police in relation to the prohibited drug supply that occurred at the Premises on Friday 11 December 2015 that is **Tab “D”** of the Application Letter and a Surveillance Observation Report prepared by Constable Ben Hall in respect of the observations of the Premises by the UC at the inspection conducted on 11 December 2015 that is **Tab “E”** to the Application Letter.

373. The Authority is satisfied that the following events occurred on the Premises on Thursday 17 December 2015 and Friday 18 December 2015, as alleged by the Applicant:

- The UC entered the Premises at 10:50pm on Thursday 17 December 2015.
- The UC asked a female hostess how much it cost for a private show. The female gave the UC a price list and told him that he could choose a female who would then “take you upstairs”. She also stated to the UC, “You can drink and smoke and whatever up there”.
- At about 12:15am on 18 December 2015, the UC engaged a stripper named “Ash” and they walked into a room at the rear of the Premises. “Ash” removed her clothing and the UC asked “Ash” for “blow” [the Authority notes that “blow” is a slang word for cocaine]. “Ash” stated it was “three hundred and fifty dollars”. The UC agreed to the price and “Ash” indicated that she would source it after the show. When the show finished, “Ash” said she would come back and see the UC regarding the cocaine.
- The UC then returned to the main bar area and saw “Ash” walk to the DJ booth and speak to Mr John Hopoate. The UC walked to the bathroom and upon walking out, “Ash” approached the UC and said, “Hey I can’t help you with the stuff; the girl who can sort it out is booked out for a few hours”. The UC said, “Okay, no problem”.
- The UC then engaged a stripper who introduced herself as “Katie”. The UC asked “Katie” about the private 1 hour shows and “Katie” indicated it was “upstairs” and that you could “drink and smoke and whatever up there”.
- The UC walked to the cashier area near the entrance and handed Mr Hopoate \$400 for a one hour private show. The UC was holding a can of beer and the male cashier said, “You can’t take those up there so ... scull them and you can buy more up there”. The UC said, “They’re almost full”. “Katie” said, “There’s a bar upstairs, you can buy more there”.
- At about 1:10am on Friday 18 December 2015, the UC followed “Katie” up the stairs to the ground floor landing and turned left through a door which led up a set of stairs. At the top of the stairs was a large area with a bar to the right, a table in the middle and rooms at the end. “Katie” led the UC to “room 5” and the UC asked how he could order a drink, to which “Katie” said, “A waitress will come around and take your order”.
- When the private show was complete, “Katie” told the UC she needed to “accompany” him out of the room. On leaving the room the UC saw a male with a large build, who was not wearing a shirt, bending over with a driver’s licence in his right hand. The male was making a line of white powder on the table and snorting a line of what was believed to be cocaine through his nostrils.
- The UC also saw a number of naked females dancing around the table with a number of males, some of whom had their shirts off and appeared intoxicated. The UC saw one female who was clearly drug affected; she was naked, her complexion was pale, her head was slumped back and she was dancing with

her arms raised but her hands limp at the wrists. Her mouth was slightly open and her eyes were partially closed.

- 374.** The Authority makes these findings on the basis of the evidence and material before it, comprising the information provided in the Application Letter and the witness statement by undercover Police officer “Damien” (assumed name) attached to the NSW Police Special Services Group dated 18 December 2015 recording observations on the Premises on 17 December 2015 which is **Tab “F”** to the Application Letter.
- 375.** The Authority is further satisfied that at about 11:45pm on Saturday 19 December 2015, Kings Cross Police executed four (4) search warrants at 71-85 Darlinghurst Road, Potts Point including search warrant number 2631/2015 inside Dreamgirls and search warrant number 2633/2015 inside the level 1 area. A drug detection dog was used to assist with the search. The Authority is satisfied that Police made the following detections of substances suspected to be prohibited drugs on the Premises while executing those search warrants:

Dreamgirls (basement level)

- 1 x self-resealable plastic bag containing 0.32g crystal substance, which was located inside a female’s handbag on the bench in the locker room;
 - 1 x self-resealable plastic bag wrapped in tissue containing 0.59g white powder, which was located inside a black handbag in “locker 6”;
 - 2 x self-resealable plastic bags containing 1.81g white powder, which were located in one of the private rooms under the lounge;
 - 1 x sealed container containing white substance (unable to obtain weight), which was located in the cupboard near the bar;
 - 6 x self-resealable plastic bags containing 3.71g white powder, which were located within a handbag hanging on a hook in the shower room adjacent to the bar;
 - 1 x self-resealable plastic bag containing 0.20g crystal substance, which was located within a handbag hanging on a hook in the shower room adjacent to the bar; and
 - 2 x blister packs containing 5 brown pills, which were located in the DJ booth.
- 376.** The Authority is also satisfied that on 19 December 2015, Police made the following further detections of substances suspected of being prohibited drugs on level 1 of the building in which the Premises is situated:

Level 1 area

- 1 x self-resealable plastic bag containing 1.33g white powder, which was located on the top shelf at the corner of the bar;
- 1 x self-resealable plastic bag containing 0.39g white powder, which was located in the private room at the far back right under the lounge pillow; and

- 1 x self-resealable plastic bag containing 0.23g white powder, which was located in the private room at the far back right under the lounge pillow.
- 377.** The Authority makes these findings on the evidence and material before it, comprising the information provided in the Application Letter and NSW Police property seizure/exhibit forms detailing the drugs seized on 19-20 December 2015 which is **Tab “G”** to the Application Letter.
- 378.** With regard to the drugs detected on level 1 of the building, the Authority is satisfied that this area does not form part of the licensed Premises that is the subject of this Application (indicated on the licence as the basement level of 77 Darlinghurst Road).
- 379.** The Authority is satisfied that the level 1 area was being operated as a business by staff of the Premises and that patrons of the Premises were being funnelled into this unlicensed area and supplied alcohol by staff of the Premises.
- 380.** This finding is made on the basis of the information provided in the Application Letter, the NSW Police Property Seizure/Exhibit Forms dated 20 December 2015 in respect of the execution of Search Warrant numbers 2633/2015 and 2631/2015 regarding the search of the Premises conducted on 19-20 December 2015 outlining the prohibited drugs and alcohol located in the unlicensed level 1 area which is **Tab “G”** to the Application Letter and the OLGR File Note prepared by OLGR inspector Matt Weber dated 21 December 2015 recording observations by OLGR officers of the Premises on 19 December 2015 (including photographs) which is **Tab “I”** to the Application Letter.
- 381.** The Authority is further satisfied that the level 1 area was being operated as a bar and that staff of the Premises supplied alcohol to patrons of the Premises on the basis of the audio recordings of the interviews conducted on the Premises on 19-20 December 2015 between OLGR officers and the following staff members of the Dreamgirls business:
- Licensee Mr David Lakepa (22:53 minutes);
 - Waitress Aoife (8:14 minutes);
 - Waitress Maria (10:51 minutes);
 - Dancer/Stripper Pariya (8:09 minutes); and
 - Dancer/Stripper Savana (8:22 minutes).
- 382.** The Authority is satisfied that on 19 December 2015, Police arrested and charged Ms Waters (“Charlotte”) for the drug supply that occurred on the Premises on 11 December 2015.
- 383.** This finding is made on the basis of the information provided in the Application Letter, a copy of the drug exhibit created by Police in relation to the prohibited drug supply that occurred at the Premises on Friday 11 December 2015 that is **Tab “D”** of the Application Letter, a Surveillance Observation Report prepared by Constable Ben Hall in respect of the observations of the Premises by the UC at the inspection conducted on 11 December 2015 that is **Tab “E”** to the Application Letter and the NSW Police prosecution *Facts Sheet* in the matter of *Police v Waters* for allegedly supplying a prohibited drug, being cocaine, on the Premises, contrary to section 25(1) of the *Drug Misuse and Trafficking Act 1985*, plus a Court Attendance Notice for 5 January 2015 in relation to the matter which is **Tab “H”** to the Application Letter.

384. The Authority is satisfied, on the balance of probabilities and for the purposes of this Application, that on 11 December 2015 a serious breach of section 74(3)(b) of the Act occurred when an employee of the licensed business, Ms Waters (“Charlotte”), supplied a substance suspected of being a prohibited drug (cocaine) to an undercover Police officer, thus permitting the Premises to be used for the sale of a substance suspected of being a prohibited drug.
385. The Authority is further satisfied, on the balance of probabilities and for the purposes of this Application, that on 11 December 2015, undercover Police also observed three strippers employed by the business (one of whom was Ms Waters) openly possessing and openly using a prohibited substance suspected of being cocaine within a toilet area of the Premises, in a manner that was readily observed by an undercover Police officer.
386. This finding is made on the basis of the Surveillance Observation Report prepared by Constable Ben Hall in respect of the observations of the Premises by the UC at the inspection conducted on 11 December 2015 that is **Tab “E”** to the Application Letter.
387. The Authority is satisfied that this conduct establishes a serious breach of section 74(4) of the Act in that three employees of the licensed premises both permitted the possession and use on the Premises of a substance suspected of being a prohibited drug (cocaine).
388. The Authority is satisfied that on 17 December 2015, another employee of the business named “Ash” negotiated the terms of supply of a prohibited drug while in a private room at the rear of the Premises.
389. This finding is made on the basis of the information provided in the Application Letter and the witness statement made by undercover Police officer “Damien” (assumed name) attached to the NSW Police Special Services Group dated 18 December 2015 recording observations in respect of the inspection of the Premises on 17 December 2015 which is **Tab “F”** to the Application Letter.
390. The Authority is further satisfied that on 19 December 2015, Police executed a search warrant and found the following substances suspected to be a prohibited drug on the Premises:
- 1 x self-resealable plastic bag containing 0.32g crystal substance, which was located inside a female’s handbag on the bench in the locker room;
 - 1 x self-resealable plastic bag wrapped in tissue containing 0.59g white powder, which was located inside a black handbag in “locker 6”;
 - 2 x self-resealable plastic bags containing 1.81g white powder, which were located in one of the private rooms under the lounge;
 - 1 x sealed container containing white substance (unable to obtain weight), which was located in the cupboard near the bar;
 - 6 x self-resealable plastic bags containing 3.71g white powder, which were located within a handbag hanging on a hook in the shower room adjacent to the bar;

- 1 x self-resealable plastic bag containing 0.20g crystal substance, which was located within a handbag hanging on a hook in the shower room adjacent to the bar;
- 2 x blister packs containing 5 brown pills, which were located in the DJ booth;
- 1 x self-resealable plastic bag containing 1.33g white powder, which was located on the top shelf at the corner of the bar;
- 1 x self-resealable plastic bag containing 0.39g white powder, which was located in the private room at the far back right under the lounge pillow; and
- 1 x self-resealable plastic bag containing 0.23g white powder, which was located in the private room at the far back right under the lounge pillow.

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

- 391.** The Applicant submits that the open supply and use of prohibited drugs by both staff and patrons at the venue suggest that venue management play an active role in the organisation of drug supply and knowingly allow the open use of illicit drugs by patrons.
- 392.** The Applicant submits that undercover operatives were able to purchase illicit drugs without any prior engagement with the venue and without being introduced to or establishing a relationship with staff prior to the purchase.
- 393.** The Applicant further submits that OLGR and NSW Police officers observed employees and staff openly consuming illicit drugs within the Premises.
- 394.** The Applicant submits that in this context, it is “completely incomprehensible” that venue management were unaware of the conduct in question.
- 395.** The Applicant contends that it is clear that there is an “extreme and continuing risk” of serious offences being committed against the *Liquor Act* in relation to drug possession, use and supply on the Premises.
- 396.** The Authority does not accept Mr Manca’s submissions to the effect that, with regard to the question of what “permitting” entails, the Authority cannot be satisfied as to the commission of breaches of section 74 of the Act, for the purposes of a decision made under section 84, prior to a conviction being secured.
- 397.** The Authority accepts that, on the material before it, there is no apparent prosecution for an offence against section 74 of the Act underway. The prosecution arising from the events of 11 December 2015 involves the prosecution of Ms Waters (“Charlotte”) for an offence against section 25(1) of the *Drug Misuse and Trafficking Act 1985*.
- 398.** However, the Authority does not require a criminal prosecution to be underway to find, on the balance of probabilities for the purposes of this administrative matter, that an offence against section 74 has occurred or is likely to occur.

399. The Authority does not require a conviction to be recorded against section 74 of the Act or an admission to such offence by a licensee in order to be satisfied that a closure order is necessary.
400. The purpose of section 84 of the Act is *protective* in respect of the public interest in respect of the *Liquor Act*. The public interest is informed by relevant offence provisions in the Act and the statutory objects and considerations prescribed by section 3 of that Act.
401. The purpose of an order under section 84 of the Act is not punitive. Findings may be made by the Authority, on the civil standard of proof, with due care taken in light of the seriousness of the allegations made. When issuing a closure order, the Authority is not purporting to find, on the criminal standard of proof, that a criminal offence has occurred. It is required to be satisfied, to the civil standard, that a serious breach of the Act either has occurred, or is likely to occur.
402. While serious breaches have already been established by the conduct of the strippers on the Premises described above, the Authority is also satisfied, on the basis of the information provided in the Application Material and in particular the Application Letter, the evidence as to the serious breaches of section 74 of the Act that are noted earlier in this decision letter, and the statements made by Mr Lakepa in the Lakepa Interview, that the (then) licensee Mr Lakepa more likely than not permitted the possession and/or use of a substance suspected of being a prohibited drug, cocaine, contrary to section 74(2) of the Act or alternatively the use of the Premises for the sale of a substance suspected of being a prohibited drug, cocaine, contrary to section 74(1)(b) of the Act.
403. While the Act does not define what “permission” by a licensee entails for the purposes of section 74 of the Act, the following guidance may be obtained from the common law:

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

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

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

Indifference or omission is “permission” within the plain meaning of that word where the party charged (1) knows or has reason to anticipate or suspect that the particular act is to be or is likely to be done, (2) has the power to prevent, (3) makes the fault in some duty of control or interference arising out of the circumstances of the case, and (4) thereby failed to prevent it. Knowledge of something likely to be done in the future may suffice, at least if that knowledge rises to the level of “shutting one’s eyes to the obvious”.

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

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

- 404.** The Authority notes the Business Owner's submissions on the alleged offences committed by employees of the business, that:

There is no evidence which forms part of the application to suggest that any employee or agent in charge of the premises was involved in the possession or use of any prohibited drug or permitted the premises to be used for the sale of prohibited drugs. The only person alleged in the application material to have sold or supplied prohibited drugs is the previous contractor dancer ... Walters [sic]. Ms Walters [sic] was simply a dancer contracted to perform at the premises. There is no evidence that she was in charge of the premises. It could not be reasonably submitted that Ms Walters [sic] was "a person (other than the licensee) in charge of" the premises and therefore there could not be any offence pursuant to s74(3)(b) or s74(4).

It would appear that s74(3)(b) and s74(4) are merely intended to provide alternative offences in circumstances where a person other than the licensee is in charge the licensed premises, such as when the licensee is not present. It is noted that in respect of these provisions, the licensee is not the person who is the potential accused, but rather some other employee or agent. There is no evidence that any employee or agent has been charged with an offence against s74(3)(b) or s74(4). There is only evidence of Ms Walters [sic] being charged with an offence under s25(1) of the Drug Misuse and Trafficking Act.

An alternative to the first limb of the test in s84(2)(c) is that the Authority may be satisfied that a serious breach of the Act is likely to occur. Presuming that the applicant relies upon alleged future breaches of s74, for the reasons set out above, the Authority cannot be satisfied that future breaches of s74 are likely to occur, as there is absolutely no evidence that breaches of s74 have taken place in the past or have been proven to have taken place.

- 405.** A question of statutory interpretation arises as to whether the words "employee" and "agent" as they appear in subsections 74(3)(b) and 74(4) of the Act simply mean an employee or an agent or whether they should be taken to mean "employee in charge of the licensed premises" or "agent in charge of the licensed premises".
- 406.** While the issue is not without doubt, it is the Authority's view that an employee or agent does not also have to be in charge of the licensed premises for the offence to be committed.
- 407.** The purpose of this provision is capture the conduct of persons who are not in charge of licensed premises and permit the relevant conduct to occur. The use of "agent" addresses the prospect of an independent contractor, such as a security guard, engaging in the proscribed conduct while not actually in charge of the licensed premises.

- 408.** The Authority is nevertheless satisfied that that Mr Lakepa and any other persons in charge of the Premises at the time of the Police action and OLGR inspections likely “permitted” the possession, use and supply of prohibited drugs on the Premises that is the subject of this Application.
- 409.** The Authority has reached this conclusion on the basis of the available, albeit circumstantial, evidence. It has had regard to the relatively small scale of the licensed Premises operating in the basement area of the building; the layout of the Premises as evident from the Application Material; the flagrancy of the use of cocaine on the Premises by a number of employees of the licensed business – which was observable by undercover Police without any apparent difficulty; the ease with which undercover Police were able to negotiate and procure the supply of prohibited drugs to them on the Premises by employees of the licensed business; the open offering of the availability of the use of prohibited drugs by employees of the licensed business in conjunction with the entertainment provided by the business (with one employee providing a patron with an offer to “snort coke off my tits” in a manner that was audible to undercover Police); and the movement of patrons and employees of the licensed business from the licensed area of the Premises to the level 1 area of the building where they were able to openly use cocaine (albeit outside of the licensed premises).
- 410.** The Authority is satisfied that the number of adverse observations made by Police as to drug possession, use, and supply detected within a short period of time indicates an ongoing culture on the Premises that is permissive of prohibited drug possession, use and supply on the Premises.
- 411.** The Authority accepts the contention advanced by the Applicant that it is “completely incomprehensible” in those circumstances that the licensee Mr Lakepa or other persons in charge of the Premises were unaware of the possession, use and supply of the prohibited drug cocaine on the Premises by patrons and staff of the licensed business.
- 412.** The Authority is fortified in this view by the account given by Mr Lakepa to OLGR officers of the minimal nature of his actual functions being exercised on the Premises. The Authority notes with concern the very limited description provided by Mr Lakepa of his relevant responsibilities as a licensee, as evident from the following exchange which forms part of the Lakepa Interview:

Q18 *OK. So in your role as licensee in the basement level of Dreamgirls - - -*

A *Yes.*

Q19 *- - - what’s your, um, what are your duties in a, in a normal shift, say tonight?*

A *Um, licensee. Just look after the club.*

Q20 *So that’s a management role, is it?*

A *Yes.*

Q21 *Um, so regarding the employees in, in the basement level - - -*

A *Yeah.*

Q22 *- - - who’s in charge of organising the employees throughout the shift?*

A *For the, for the rosters for tonight?*

Q23 *Yeah.*

A *Oh, it's normally Margaret, Margaret or, or myself who does the rosters. Or the other manager, um, his name is Mohammad and he goes by the name of Tasif.*

Q24 *OK. So what sort of interaction do you have with the, um, with the girls and other employees throughout the shift downstairs?*

A *What, what do you mean?*

Q25 *Well, you're the licensee, you're, you're, you're one of the managers - - -*

A *Yeah.*

Q26 *- - - um, tell me about what directions you give to your staff - - -*

A *Oh.*

Q27 *- - - through the shift.*

A *Um, oh, when they come in?*

Q28 *Throughout the shift.*

A *Oh, like, just, the normal job, tell them the rosters come in for the dancers, they do their shows downstairs and that's it.*

Q29 *Um, are you aware of any of the, uh, patrons that go upstairs, um, involving themselves in any other sort of activity up there?*

A *No. Nuh.*

Q30 *Have you, how often would you go upstairs yourself?*

A *Oh, probably, what, in, in a shift? Probably once, if not.*

Q31 *OK. And how long have you worked at Dreamgirls?*

A *Uh, as licensee, 2 years.*

Q32 *And altogether?*

A *Uh, probably, three, three and a half, probably, years.*

Q33 *OK. Are you aware of any private shows being conducted upstairs?*

A *Upstairs, no.*

Q34 *Are you aware of, um, the, the sale of alcohol upstairs?*

A *No. Just a, that, that storage up there was for separate storage from the drinks downstairs.*

Q35 *OK. So when you say storage, what are you talking about?*

A *Where we store the alcohol.*

Q36 *OK. So what alcohol are we talking about?*

A *Just spirits.*

Q37 OK. If, um, if patrons were served alcohol upstairs - - -

A Yes.

Q38 - - - how would that take place?

A Um, not sure. You're gunna have to ask the, ask the waitress.

Q39 OK.

INSPECTOR WEBER

Q40 And who's the waitress that works up there, David?

A Um, Becks.

Q41 Becks?

A Becks. Oh, I think her name is Rebecca but we usually call her Becks.

Q42 OK. And what's her duties involved?

A Just a waitress.

Q43 Waitress?

A Yeah.

Q44 And where, where does she normally perform her waitressing duties?

A Downstairs.

Q45 Downstairs?

A Yeah.

Q46 OK. Is there any intercom in the downstairs bars?

A Intercom for - - -

Q47 Intercom.

A Oh, to let, let us know down, yeah, there's an intercom upstairs.

Q48 What's the purpose of the intercom?

A Oh, just if they need anything, like, bottles of water or something like that.

Q49 OK. So you adamantly deny knowledge that clients are drinking liquor?

A I'm not denying if they're drinking liquor, I, I don't know if they are.

Q50 Yeah, OK.

A 'Cause all I do is, I sit behind the, or I stand behind the register and that's it.

INSPECTOR FOWLER

Q51 Yeah, OK. So as licensee, do you look after, what, what, what other things other than looking after the premises, do you look after the business accounts?

A Yeah, the paperwork.

Q52 *The paperwork?*

A *Yes.*

Q53 *OK. And do you look after, what else do you look after?*

A *Uh, rosters. Um, just all the patrons, oh, not patrons, um, like, just the rosters, yeah. Numbers, money.*

Q54 *Money?*

A *Mmm.*

Q55 *Does that include, um, EFTPOS payments?*

A *EFTPOS, yeah.*

Q56 *Yeah. Where are your EFTPOS terminals?*

A *There's one downstairs and, uh, one upstairs.*

Q57 *Why is there one upstairs?*

A *It's a spare one if the internet downstairs doesn't work. The one downstairs runs on the internet, straight into the, um, modem or something - - -*

Q58 *Yeah.*

A *- - - and the other one's wireless. So if that one loses connection, then we bring that one down.*

Q59 *OK. And where's it stored?*

A *In the, the store room.*

Q60 *Who's got access to the store room?*

A *Oh, everyone. Just the staff.*

Q61 *Is it locked?*

A *Oh, we locked it, yeah.*

Q62 *So how do you lock it, what lock?*

A *Oh, there should be a lock up there in the, when you walk in, on the, on your left, there should, there should be a padlock.*

Q63 *Yeah. David, has there been any issue with the EFTPOS machine downstairs tonight in the basement?*

A *Not tonight, but yesterday there was.*

Q64 *OK.*

A *We lost, we lost, um, lost the internet, the, last night or the night before.*

Q65 *So tonight, has it been functioning properly?*

A *Yes. We got the, the internet guy to come in and check it out. Apparently our bill wasn't paid yesterday, the other day.*

Q66 *So if the EFTPOS machine was functioning properly downstairs tonight, uh, would there be any reason to use the EFTPOS machine upstairs?*

A *No.*

Q67 *OK.*

413. On the basis of the above exchange, the Authority is satisfied, on the balance of probabilities, that Mr Lakepa's role was in practice so minimal that Mr Lakepa was wilfully blind as to the prospect of drug possession, use and supply at this high risk licensed premises by patrons or employees of the business, as alleged by the Applicant and found by the Authority.

414. The Authority notes the business owner's submissions to the effect that in order to "permit" an activity, it must be established that the person "was not only aware of it, but actively or expressly allowed the activity".

415. In support of this contention, the business owner refers to the Court of Criminal Appeal judgment in *R v Jasper* [2003] NSWCCA 139 A Crim 329 which the Authority notes was an appeal arising from the prosecution of a corrupt Police officer under the *Drug Misuse and Trafficking Act 1985*. At issue was the meaning of "permitting" or "suffering" the supply of prohibited drugs.

416. The business owner refers to paragraphs 22 and 23 of that judgement, per Mason P:

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

...

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

417. The Authority further notes the business owner's submissions that:

There is absolutely no evidence that either Mr Lakepa (the licensee) Mr Iqbal (the proposed licensee) or Ms Staltaro (the sole officer of the proposed business owner and deemed licensee) had knowledge or awareness of any use of the premises for the sale of prohibited drugs, or the use and/or possession of prohibited drugs on the premises. Each of these people have been subject to questioning and interviews by the applicant's officers and there is no evidence that any have ever even been asked any questions relating to their knowledge of any use of the premises for the sale of prohibited drugs, or the use and/or possession of prohibited drugs on the premises generally, or specifically in relation to any investigation of offences pursuant to s74.

...

At its best, the material relied upon by the applicant which addresses the question of any offence pursuant to s74 would struggle to even establish that the licensee, proposed licensee or sole officer of the proposed business owner (and deemed licensee) passively or implicitly allowed the use of the premises for the sale of

prohibited drugs, or the possession or use of a prohibited drug on the premises, let alone the active or express allowing of such activity.

418. Again, the Authority is not purporting to find whether any person is guilty of an offence to the criminal standard of proof. It is deciding whether, on the civil standard of proof and taking appropriate care when reaching that state of satisfaction (given the substantial adverse consequences for the business owner, its staff and the premises owner) that a serious breach of the Act either has occurred, or is likely to occur, and whether closure of the Premises is necessary to prevent or reduce a significant threat to the public interest.
419. The Authority notes the ordinary meaning in which “permit” was explained by the High Court of Australia in *Adelaide City Corp v Australian Performing Rights Association* (cited above). It is satisfied that Mr Lakepa’s conduct falls within this notion of what “permission” entails.

Approach to Reaching Satisfaction as to Serious Breach of the Act

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

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

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

and:

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

421. While the Authority accepts the business owner’s contention that there is no evidence that Mr Lakepa personally possessed, used, sold or supplied substances reasonably suspected of being prohibited drugs on the Premises, the Authority’s findings as to the possession, use and/or supply of prohibited drugs on the Premises by patrons and employees of the business satisfies the Authority that Mr Lakepa was so reckless as to whether or not the licensed premises was operating in compliance with section 74

of the Act in respect of the offences pertaining to prohibited drugs on licensed premises, as to constitute “permission” of that misconduct in the relevant sense.

422. The Authority is satisfied, on the basis of its above findings, that the possession, use and/or supply of prohibited drugs on the Premises was blatant. The relatively small scale of the Premises and the limited number of persons on the Premises during the time of the Controlled Operation conducted by Police further satisfies the Authority that Mr Lakepa was grossly negligent as to control of the use of prohibited drugs on the Premises, the Authority not having the benefit of any evidence regarding what measures, if any, were actually in place and the extent to which they were implemented to detect or manage the risk of prohibited drugs on the Premises during the nights in question. Mr Lakepa's description of his former role as licensee of the Premises satisfies the Authority that he was not actively involved in the management of that risk, which is a substantial risk or threat to the public interest in the context of a late trading high risk venue in Kings Cross.
423. While the Applicant does not rely on the conduct on Level 1 of the building as part of its case as to whether a serious breach of the Act has occurred, the Applicant relies on this conduct as demonstrating the nature of the ongoing risk to the public interest posed by the operation of this business.
424. The Authority is satisfied that the blatant funnelling of patrons by staff of this licensed business into a nearby unregulated area of the building for the purpose of selling or supplying liquor in and engaging in adult entertainment in an unregulated environment gives rise to serious doubts as to whether Mr Lakepa, or other persons in charge of the business at the time of the OLGR raids, can be relied upon to address the various ongoing regulatory risks that require careful management within a high risk licensed venue in Kings Cross.

Is Closure of the Premises Necessary at this time?

425. In *Commissioner of Police v Ryan* [2007] NSWCA 196, which the Authority notes was an appeal against a short term closure order issued under the former *Liquor Act 1982* against the Royal Hotel in Moree, the New South Wales Supreme Court of Appeal made the following observations on the approach to be taken by a decision maker when discerning whether a closure order is “necessary”:

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

The relevant purpose is sufficiently described as protective of the public interest or as preventative of harm to the public interest. Effectuating the purpose requires a prediction as to the existence and extent of a relevant threat or risk to the public interest. That evaluation may be based on a satisfaction that a serious breach of the Liquor Act has occurred in the past, or that such a breach is likely to occur in the future, on the premises. The threats may involve, but are not limited to, threats to

public health, safety or the environment. Relevant risks may include (but are not limited to) the risk of substantial damage to property, or of serious offences being committed on the premises.

426. The Authority has considered the business owner's submissions that:

ILGA gave preliminary consideration to the application and on 30 December 2015 notified the parties that it considered that it was not necessary for an order to be made pursuant to s84 on the basis that certain conditions were imposed on the licence. It was submitted on behalf of the licensee, proposed licensee and proposed business owner that while ILGA had no power to make an order, and without prejudice to that position, a slightly modified version of the proposed conditions would be agreed to be imposed on the licence, and the licence would be voluntarily suspended until the conditions were complied with. The conditions were imposed on 31 December 2015, by qualified consent and were complied with by 12 January 2016 (as evidenced by the report of Mr Burchett filed 12 January 2015).

427. That is not an accurate characterisation of the Authority's position. The Authority made clear to the parties on 30 and 31 December 2015 that it was contemplating issuing a closure order. It nevertheless invited the parties to consider a range of interim measures which, if implemented, *may* support a conclusion that the relevant threat or risk apparent from the Application has abated.

428. Negotiations then ensued between the Applicant and Business Owner on 31 December 2015 which resulted in the agreed Interim Measures, discussed above. The business owner voluntarily closed the Premises with a view to making a fresh application to transfer the licence. The business owner agreed not to reopen the business until further measures directed to removing access or communication between the licensed Premises and level 1, and the risk of prohibited drugs on the Premises, was addressed.

429. Notably however, the business owner did not accept the Authority's initial suggestion that any Drug Policy be devised in consultation with the Secretary (through the Compliance Section of OLGR). It appears that the Secretary did not insist on that requirement either.

430. Clearly enough, the risk or threat to the public interest had abated during the voluntary closure of the Premises. However, the following further events have transpired:

- The *Drug Prevention Policy* devised by the business owner and submitted to the Authority on 12 January 2016 has been criticised in detailed submissions from the Applicant as inadequate in addressing the risk of prohibited drugs on the Premises.
- The business owner's fresh application to transfer the licence of the Premises to Mr Mohammad Iqbal has been opposed in detailed submissions from OLGR dated 8 January 2016 and NSW Police in submissions dated 13 January 2016 including on the basis that Mr Iqbal was part of the management of the business conducted on the Premises at the time of the Police and OLGR raids that gave rise to the Application and that Ms Margaret Staltaro, who would become a close associate of the licence were the transfer to be granted, was also part of the management of the business conducted on the Premises at the time of the Police and OLGR raids.

- By reason of the Police and OLGR objections, the Authority was unable to approve the transfer application on a provisional basis. The Authority has advised the business owner that further probity assessments will be required with respect to the transfer of the licence.
- OLGR allege that they have detected further evidence of prohibited drug use in the shower area of the Premises used by strippers, in the form of small plastic resealable bags commonly used to hold prohibited drugs such as cocaine and an alleged breach as to a condition requiring CCTV coverage on the Premises.

431. The Authority is satisfied, for the purposes of this decision and on the basis of the further information and photographs provided by the Applicant, that OLGR did detect the small plastic resealable bags consistent with packaging used for prohibited drugs and did detect a breach with respect to CCTV coverage on the Premises. This provides further adverse evidence of the nature of the ongoing risk of drug use on the Premises by employees of the licensed business and raises further questions as to the ability of current management to manage regulatory compliance risk at a high risk licensed venue.

432. In submissions dated 13 January 2016, the Applicant has pressed the Authority to issue a Long Term Closure Order, notwithstanding the business owner's attendance to some of the matters agreed on 31 December 2015.

433. The business owner's final submissions argue that:

The only new matters raised by the applicant that were not before ILGA when it indicated its position as a result of its preliminary consideration on 30 December 2015 can be summarised as follows:

- a. *Objection to the application to transfer the licence to Mr Iqbal lodged 7 January 2016;*
- b. *Alleged deficiencies with the Drug Prevention Policy submitted on 12 January 2016;*
- c. *Concerns regarding the coverage of CCTV cameras in the premises, including an alleged potential breach of cl. 53H of the Liquor Regulation detected on 13 January 2016; and,*
- d. *Concerns regarding alleged illicit drug use at the premises as a result of OLGR officers allegedly discovering 2 resealable plastic bags on the premises on 13 January 2016.*

The only new matters raised by the applicant that could be relevant in any way to the exercise of power by ILGA pursuant to s84 are matters which disclose that a serious breach of the Act has occurred or is likely to occur on the licensed premises. Therefore, the matters relating to the objection to the application to transfer the licence to Mr Iqbal are totally irrelevant, and the alleged deficiencies in relation to the Drug Prevention Policy are not directly relevant, as they do not relate to serious breaches of the Act. There may be some isolated, limited and indirect relevance of the alleged deficiencies in the Drug Prevention Policy if ILGA was satisfied that breaches of s74 of the Act had been committed, however for the reasons previously submitted and expanded upon below, ILGA could not reasonably make a finding that serious breaches of s74 have in fact been committed on the licensed premises.

434. On the basis of the material before the Authority, as disclosed in this letter, the Authority is satisfied that a serious breach of the Act has occurred, or is likely to occur, being a breach of section 74(1)(b), 74(2), 74(3)(b) and 74(4) and that the long term closure of the Premises is necessary to prevent or reduce the risk of a serious threat to the public interest arising from the use, possession and supply of a prohibited drug (cocaine) on the Premises.

435. The Authority acknowledges the measures implemented by the business owner since the Interim Measures were agreed and enforced through the Section 54 Conditions, but accepts, on the basis of the Applicant's critique, that the *Drug Prevention Policy* furnished by the business owner is insufficient to manage the risk posed by a high risk venue. This brief *Policy* does not, in the Authority's view, provide sufficiently specified systems to detect, deal with and record drug detection on the Premises – whether that risk is posed by staff, contractors or patrons of the venue.
436. Without purporting to pre-empt a final decision on the application to transfer the liquor licence to Mr Iqbal, which remains pending, the Authority is satisfied, on the material before it (particularly Mr Lakepa's advice to OLGR inspectors), that Mr Iqbal and Ms Staltaro were running the business at the time of the events that gave rise to this Application. This raises a *prima facie* concern as to whether management of the business have the willingness or ability to ensure regulatory compliance at this time.
437. It is apparent that a searching assessment of the fitness and propriety of Mr Iqbal is now required, given that the Authority is unable to approve the licence transfer on a provisional basis. This will also necessitate an assessment of all persons who are close associates of the licence or have an interest in the Premises.
438. The Authority is also satisfied that a revised Drug Prevention Policy is required to effectively manage the risk of prohibited drug use, possession, supply and sale by any persons on the Premises.
439. The Authority is also satisfied that further evidence is required confirming that the recent building and CCTV works designed to prevent and monitor access to the Level 1 area have been made reasonably permanent and remain effective. These measures are designed to reduce the substantial threat to the public interest posed by staff or patrons of the Premises utilising this nearby area for the possession, use, sale or supply of prohibited drugs (cocaine) in association with the conduct of the licensed business on the Premises.
440. In making this decision, the Authority has had regard to the adverse financial impact that this decision will have upon the business owner, its staff and indirectly the premises owner.
441. While that financial impact has not been quantified in any submissions before the Authority, the Authority is satisfied that preventing or reducing a substantial threat to the public interest prevails over the private interests of the parties who own the Premises, or operate or are employed or engaged by the licensed business conducted on the Premises. The Authority accepts that the staff who have written letters attached to Ms Staltaro's statutory declaration dated 29 December 2015 will likely lose a source of employment as a result of this closure order while the Premises remains closed.
442. Allowing the business day on Monday 1 February 2016 for the business owner to notify its staff, the Authority is satisfied that the Premises should be closed from 8:00pm on 1 February 2016 for a period of 6 months or until persons acceptable to the Authority are confirmed as the licensee and/or approved manager and approved high risk manager of the Premises.

ORDER

443. The Authority orders, pursuant to section 84(1) of the Act, that the licensed premises known as Dreamgirls located at B 77 Darlinghurst Road, Potts Point NSW 2011 (licence number LIQO624013611) be closed for a period of six (6) months from 8:00pm on 1 February 2016 **OR** until all of the following conditions are satisfied, whichever is the earlier:

- (i) persons acceptable to the Authority are confirmed by the Authority as the licensee and/or approved manager and high risk approved manager of the Premises.
- (ii) the confirmed new licensee and/or approved manager has provided the Authority with a revised Drug Policy. This revised Drug Policy shall not be provided to the Authority until a reasonable opportunity has been provided to the Secretary of the Department of Justice (not fewer than 7 days) for the Secretary to consider a draft revised Policy and advise any reasonable requirements, in writing, as to the minimum content of the revised Policy.
- (iii) the confirmed new licensee and/or approved manager has provided the Authority with further evidence confirming that minor building works and CCTV coverage designed to restrict and monitor access to Level 1 of the building in which the Premises is located is reasonably permanent and remains in effect. This evidence shall not be provided to the Authority until the Secretary of the Department of Justice has had a reasonable opportunity (not fewer than 7 days) to comment on any reasonable requirements of the Secretary with respect to such building works and CCTV coverage.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'M Brodie', followed by a period.

Micheil Brodie
Chief Executive

for and on behalf of the **Independent Liquor and Gaming Authority**