



Our Ref: L274

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4 December 2013

Dear Sirs

**Decision to Vary Extended Trading Authorisation Under Section 51(9)(b) the Liquor Act 2007  
"La La Land" – 6 Lawson Street, Byron Bay.**

**INTRODUCTION**

1. On 19 November 2012 the Authority received a letter dated 1 November 2012 ("the **First Police Submission**") from Superintendent Stuart Wilkins, the Local Area Commander of the Byron Tweed Local Area Command of New South Wales Police. The submission concerns licensed premises trading as "La La Land" located at Level 1, 6 Lawson Street, Byron Bay ("the **Premises**").
2. The submission was accompanied by an application form under section 53 of the *Liquor Act 2007* ("**Act**") to "change a liquor licence condition" with respect to liquor licence number LIQ00624013505 that attaches to the Premises.
3. Although the First Police Submission was framed as an application to "revoke" the venue's Sunday Extended Trading Authorisation ("**ETA**") and although it makes reference to section 53 of the Act, the Authority formed the view that the proper characterisation of the First Police Submission was that it was a request for the Authority to exercise its power, under section 51 (9)(b) of the Act, to vary the ETA that currently attaches to the licence.
4. To avoid any confusion the Authority advised Police and other interested parties on 26 March 2013 that, in light of the material provided in the First Police Submission, the

Authority was contemplating the exercise of its power to vary, of its own initiative, the ETA as it applies to Sunday evening/Monday morning so that instead of being licensed to trade until 3 am on a Monday morning, the Premises would be licensed to trade until midnight on Sunday.

5. Police did not request, and the Authority has not considered, whether to take action with regard to the ETA as it pertains to other days of the week.
6. Following the receipt of several written submissions from Police, the owner of the licensed business, La La Land Pty Ltd ("**Business Owner**") and the premises owner Sosiku Pty Ltd ("**Premises Owner**") the Authority decided, at its meeting convened on 1 July 2013, to vary the ETA so that the Premises will be licensed to trade until midnight on Sunday evenings. That is, the Premises will continue to have two hours of extended trading on a Sunday evening and licensed trading hours will remain unchanged from Monday evening through to Saturday evening.
7. The Authority's decision was notified to the parties in a short email from the Authority's General Counsel dated 2 July 2013. Liquor applications comprise a high volume aspect of the Authority's jurisdiction and, no doubt for this reason, the Act does not require the Authority to provide reasons for its decisions. However, the Authority has indicated in *Authority Guideline No 7* that it will consider providing reasons, on a case by case basis, subject to available resources. On this occasion, without purporting to repeat all of the arguments and contentions made among all of the submissions that were before the Authority at the time of its decision, this letter provides a summary of the reasons for the Authority's decision.

## **BACKGROUND**

8. The type of liquor licence that attaches to the Premises is an "on premises" licence, which is provided for by section 24 of the Act.
- 3 Sections 23 and 24 of the Act provide that the supply of liquor by an on premises licensee is *ancillary* to some other designated business purpose. That is, unlike premises that are licensed as hotels or general bars under sections 15 and 16 of the Act, the sale of liquor for consumption on premises cannot be the primary purpose of the business to which the licence relates.
- 4 The GLS record discloses the following designated business type(s) for licence number LIQO624013505:
  - "catering service"
  - "other public entertainment venue" and
  - "restaurant".

9. Standard licensed trading hours in New South Wales are prescribed by section 12 of the Act. They extend from 5 am to midnight on Monday through Saturday and from 10 am to 10 pm on Sunday.
10. At the time of the First Police Submission, the Premises had the benefit of an ETA that permits licensed trading beyond standard hours. The venue may sell or supply liquor for consumption on the Premises from 5 am to 3 am the following morning on Monday through Saturday and from 10 am to 3 am the following morning on Sunday.
11. Under section 49(8) of the Act, an ETA may be granted to certain types of licensed premises, including venues that have an on-premises licence. Once in effect, an ETA permits the licensed premises to trade for specified hours beyond those standard licensed trading hours that are prescribed by section 12 of the Act to which most licensed premises in New South Wales are subject.
12. Once an ETA is in effect with respect to licensed premises, section 51(9)(b) of the Act confers upon the Authority the power to *vary* or *revoke* an ETA from time to time. This power may be exercised upon application from the licensee, the New South Wales Commissioner of Police or the Director General of the New South Wales Department of Trade and Investment ("**Director General**"). The Authority may also vary or revoke an ETA on the Authority's own initiative.
13. Section 51(9) states:
  - (9) *An authorisation:*
    - (a) *is subject to such conditions:*
      - (i) *as are imposed by the Authority (whether at the time the authorisation is granted or at a later time), or*
      - (ii) *as are imposed by or under this Act or as are prescribed by the regulations,*
    - and*
    - (b) *may be varied or revoked by the Authority on the Authority's own initiative or on application by the licensee, the Director-General or the Commissioner of Police.*
14. Section 51 does not specify any statutory criteria or test that structures the Authority's exercise of its power to vary or revoke an authorisation, although it is apparent that the Authority may receive guidance from, amongst other things, the statutory objects

prescribed by section 3(1) of the Act and must have regard to the statutory considerations prescribed by section 3(2) of the Act.

15. Section 3 states:

*5 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.*

16. When considering whether to revoke or vary an ETA, the test is whether the proposed administrative action is in the public interest, informed by the statutory objects and considerations prescribed by section 3 of the Act.

17. In the matter before the Authority Police are only concerned with the venue's extended trading hours on Sunday evening/Monday morning. Instead of the Premises being licenced to trade until 3 am on a Monday morning, Police request that the Premises only be licensed to sell or supply liquor until midnight on Sunday evening. That is, the Premises would still enjoy extended trading for two hours on a Sunday evening (as standard trading hours require licensed premises in New South Wales to cease the sale

or supply of liquor at 10pm on Sundays). Police do not seek any change to the ETA in so far as it permits the 3 am cessation of licensed trading on the other six days of the week.

### **The First Police Submission**

18. In this submission Police refer to submissions that Police made to the Authority dated 28 October 2008 in response to an application that was made by the Business Owner on 8 October 2008 (“the **2008 Application**”) to vary what was then the Sunday licensed trading hours of the Premises.
19. The Authority notes that, with effect from 1 July 2008, the “on licence” that had been granted for the Premises by the NSW Licensing Court under the former *Liquor Act 1982* transitioned to an “on premises” licence under the current Act.
20. On that date the Premises inherited the extended licensed trading hours that it had enjoyed under the 1982 Act in that it was deemed to have been granted an ETA by the Authority, under the current Act, permitting it to trade from 5 am until 3 am the next day on Monday through Saturday and from 10 am until midnight on Sunday.
21. Licensing records maintained by the former Liquor Administration Board and now controlled by the Authority disclose that, as of the date of transition, the Premises enjoyed extended licensed trading hours under the 1982 Act that permitted it to trade from midday until 3 am in the morning Monday through Saturday. The Premises was able to trade until midnight on Sunday by reason that, under section 35C (3) of the 1982 Act, an on premises licence for a “nightclub” may trade until midnight in a non-metropolitan area like Byron Bay.
22. The 2008 Application sought a further extension of those extended licensed trading hours so that the business may sell or supply liquor until 3 am on Monday morning. The 2008 Application did not come before the Authority itself but it was granted by an Authority delegate (a Departmental officer with the power to assess certain types of liquor applications on the Authority’s behalf) and notified by letter dated 9 April 2009.
23. A further letter was issued by the delegate on 20 November 2009, referring to his decision of 9 April 2009 to vary the existing ETA from midnight Sunday to 3 am on Monday and attaching an amended extract of the GLS licence record.
24. The Police submission dated 1 November 2012 requests the Authority to “revoke” the ETA, so that the Premises would return to its pre 9 April 2009 Sunday trading hours - requiring it to close at midnight on a Sunday instead of 3 am on a Monday morning. Police state their rationale as follows:

*“Police submit that the approval of the Extended Trading Authorisation (Sunday 12 am to 3 am) has led to harm above an acceptable standard and has detracted from the amenity of community life of the Byron Bay area. Police request the authorisation [be] revoked to minimise further harm and contribute to a better Byron Bay area.*

*Police request the Authority to consider this application in the context of their knowledge of Byron Bay.”*

25. According to a chronology that accompanies this Police submission, Police have made several previous submissions to the Authority to the effect that the Authority should “review” the decision to approve 3 am Monday morning trading at the Premises. These submissions were made between 2009 and 2011 in the context of unsuccessful applications made by other Byron Bay on premises licensed venues (known as “Cheeky Monkeys”, “Liquid Bar” and “Cocomangas”) that had sought an extension of trading hours on Monday morning equal to that granted to La La Land.
26. The Police chronology further notes that an application was made by this licensed Premises during 2010 to further extend its late trading hours from 3am until 4 am seven days per week. Police note (correctly) that this application was withdrawn in early 2011 before it was determined.
27. In support of the First Police Submission, Police provide data from the Bureau of Crime Statistics and Research (“**BOCSAR**”) regarding the ranking of the Byron Bay Shire local government area (“**Byron LGA**”) for the relative occurrence of certain offences; an Office of Liquor Gaming and Racing (“**OLGR**”) *Social Profile Report* from February 2009 (which the Authority notes provides certain historical crime and demographic data for the Byron LGA); a spreadsheet summarising all Computerised Operational Policing System reports (“**COPS Reports**”) that Police have linked to the Premises on Sunday evenings/Monday mornings and the full text of COPS Reports that Police rely upon in support of their submission to the Authority.
28. Although the First Police Submission provided COPS Reports of events going back some years, in its letter to the parties dated 26 March 2013 the Authority advised the parties that, for the sake of certainty, it would only be considering Police reported events that have occurred subsequently to the extension of the ETA in April 2009 until February 2013 (“the **Relevant Period**”).

## **The Business Owner's Initial Response to the First Police Submission**

29. Hatzis Cusack solicitors act for the Business Owner. In their initial response dated 1 February 2013 they attach a copy of their previous submissions made by the Business Owner to Mr Dominic Herschel, then Acting Director of Licensing, dated 15 December 2008, in support of the 2008 Application, as well as new evidence or other material in support of retaining 3 am Monday morning trading. The new material included photographs of the venue; the Responsible Service of Alcohol ("RSA") policy of the Business; letters from third party business owners and real estate agents in support of retaining 3 am trading on Monday morning]; a letter from Byron Bay Taxis]; the Business Owner's analysis of the numerous Computerised Operational Policing System (COPS) Reports from April 2009 that were provided with the Initial Police Submission; and a letter from the Hon Penny Sharpe MP, then Parliamentary Secretary for Transport .
30. The key points that the Authority takes from the Business Owner's submission may be summarised as follows.
31. The Business Owner questions whether section 53 is the appropriate section of the Act for Police to rely upon and, if so, whether an application to vary licence conditions should not first be made to the Director General under section 54, giving the licensee an opportunity for merits review of any decision therefrom.
32. The Business Owner notes that, when an ETA is first granted, section 49(8) of the Act requires a decision maker to be satisfied, when granting an ETA, that RSA practices will be in place and that approval of the authorisation would not give rise to "frequent undue disturbance" to the quiet and good order of the neighbourhood.
33. The Business Owner submits that, when the Authority granted 3 am trading on Monday morning in a decision dated 8 April 2009, the Authority was "necessarily satisfied" that the Premises would not cause frequent undue disturbance if the approval was granted. The relevant "neighbourhood" at issue in this matter is the "town of Byron Bay".
34. The Business Owner argues that it would be "highly anomalous" for the Authority to now revoke or vary that authorisation without first being satisfied that the extended trading in question was giving rise to disturbance to the neighbourhood that is both "frequent" and "undue".
35. The Business Owner notes that Byron Shire Council has granted development approval to use the Premises as a nightclub without any restriction as to time. Council was required to be satisfied, when granting that development approval, that the likely social

and environmental impacts would be acceptable, per section 79C(1)(b) *Environmental Planning and Assessment Act 1979*.

36. The Business Owner submits that the variation of the ETA by the Authority in April 2009 followed the enactment of the *Liquor Act 2007*, which for the first time permitted nightclubs in non-metropolitan areas to regularly trade beyond midnight on Sunday evenings. The grant of post-midnight trading on a Sunday was made in accordance with this “legislative policy”.
37. The Business Owner describes the venue as an “upmarket” nightclub (photographs are provided), with a strict and extensive Plan of Management and Security Management Plan. The Business Owner describes the Premises as a “relatively intimate” venue, hosting “no more than 280 persons”. The venue attracts many acclaimed Australian and international musical acts, including DJs and live bands.
38. The Business Owner contends that Sunday nights are “particularly popular with local hospitality industry workers” given that other venues in Byron Bay do not trade past midnight on a Sunday. Hospitality workers tend not to work Mondays, so Sunday night is analogous to “Friday night drinks” at the end of the working week. These hospitality workers, it is submitted, have a positive impact on the clientele at the Premises, “given their industry training and moderate drinking”.
39. The venue is designed to be “female friendly”. It attracts wedding parties, conference attendees and corporate groups. The Business Owner contends that none of the following factors, that have been identified in the research of Briscoe and Donnelly (2001) as being associated with a concentration of assaults on premises, is present at this venue:
  - (i) patronage that is dominated by younger males
  - (ii) lower levels of comfort
  - (iii) overcrowding
  - (iv) aggressive bouncers
  - (v) discounted drinks
  - (vi) poor ventilation
  - (vii) lack of cleanliness
  - (viii) inadequate bar staff
  - (ix) lax attitude to controlling intoxication.
40. The Business Owner notes that the Initial Police Submission discloses **116** events that have occurred in the three and a half years from April 2009 to October 2012. Of those events, on the Business Owner’s analysis:

- (i) 34 are Police business inspections only - Police regularly report “no issues”
- (ii) 20 have “no apparent link to the Premises or its patrons”
- (iii) 1 was recorded by Police as “rejected”.

41. Of the **61** matters that the Business Owner says do relate to the Premises or its patrons:

- (i) 21 involve PCA matters
- (ii) 11 involve “move on” directions where the person complied
- (iii) 4 involve “move on” directions where the person did not comply
- (iv) 9 involve stealing or lost property (which it submits arises solely from a concentration of persons on premises and not any failure regarding RSA)
- (v) 3 involve offensive language or conduct incidents
- (vi) 1 involves a drug detection
- (vii) 1 involves a search with nothing found
- (viii) 1 involves a mental health issue with the person concerned
- (ix) 1 involves a traffic matter
- (x) 2 involve persons who left the venue showing signs of intoxication
- (xi) 1 involves a breath analysis with no offence committed
- (xii) 1 is just designated an “occurrence” only
- (xiii) 8 involve assaults linked to the Premises (which averages below 3 per year since April 2009).

42. The Business Owner estimates that it would have received 45,000 patrons from April 2009 to October 2012. The Business Owner contends that the “nature” of the events identified by Police is “less problematic” than for other late trading venues. The Business Owner submits that this reflects the licensee’s strict harm minimisation practice and its use of security on all nights providing a firm but non-threatening presence.

43. The Business Owner submits that it works to reduce harm arising from drink driving by providing free soft drinks to designated drivers and calling taxis free of charge. While the Nightrider bus service no longer operates, due to a lack of Government support, there are abundant taxis available in Byron Bay - and as the Premises is the only late trading venue open in the township of Byron Bay on a Sunday evening/Monday morning, the local taxi fleet is “dedicated” to patrons of the Premises during those hours.

44. The Business Owner submits that the Premises' Monday morning trading fulfils the needs of hospitality workers and tourists for a late night venue in an international resort town like Byron Bay. On the basis of the letters in support of the venue provided with this submission and by reference to a Visitor Profile Survey commissioned by Byron

Shire Council and Tourism Research Australia, the Business Owner submits that there is a “clear and overwhelming public expectation” that such a venue be available. The Business Owner submits that 56% of visitors to Byron Shire were recorded by that Visitor Profile Survey as expecting “enjoyable entertainment and nightlife” on their visit and the survey recorded that these expectations were exceeded.

45. The Business Owner argues that local business owners are usually “the first to object” to a late trading premises if there are adverse impacts from the operation of that premises, but in this case local business owners “positively and overwhelmingly support” the retention of late trading hours.
46. The Business Owner submits that public expectations are entitled to receive considerable weight pursuant to the statutory object stated under s 3(1)(a) of the Act. The Business Owner refers to the numerous letters in support of maintaining late trading hours that it has provided from nearby local businesses and real estate agents who lease private accommodation in Byron Bay.
47. The Business Owner contends that removing the venue’s late trading hours would only encourage persons to “satisfy their social needs in unregulated environments”, such as in public places or in private accommodation.
48. The Business Owner submits that the Police material does not establish that the Premises is causing “frequent undue disturbance to the neighbourhood” on a Sunday night/Monday morning.

#### **Authority Request for Further Submissions from Byron Shire Council, OLGR and Police**

49. Following a prima facie assessment of the material provided by Police and the Business Owner’s initial response of 1 February 2012, the Authority formed the view that this was not an application under section 53 of the Act, but a request for the Authority to vary an existing ETA under subsection 51(9)(b) of the Act.
50. Although Police had not made any formal “application” under section 51(9)(b) of the Act, the Authority resolved to consider the exercise of that power, on its own initiative, on the basis of the material before it.
51. On 26 March 2013 the Authority wrote to the Police representative, the OLGR Director of Compliance and the licensee’s solicitors advising that the Authority was contemplating the exercise of its power under section 51(9)(b) of the Act. This letter noted that there were three options open to the Authority:

- vary the ETA so that the Premises must cease trading at midnight on Sunday evening, as requested by Police
- vary the ETA so that the Premises must cease trading at some other time between midnight Sunday and 3 am Monday
- take no action with regard to the ETA, as proposed by the licensee.

52. Notwithstanding that Police had provided COPS reports of events linked the Premises dating back to 2002, the Authority advised the parties that it would be focussing upon incidents linked to the venue occurring after midnight on a Sunday evening during the period from 9 April 2009 to 28 February 2013.

### **Byron Shire Council's Submission dated 8 March 2013**

53. On 8 March 2013 the Authority wrote to Byron Shire Council seeking its advice on any adverse incidents recorded by Council during the Relevant Period. Council's letter in response to this request is dated 21 March 2013. Briefly, Council advised that there is development consent in effect for use of the Premises, without time restrictions and that:

- (i) Council has received no complaints about the Premises during the Relevant Period.
- (ii) During the Relevant Period the business has made three development applications to Council that have been the subject of objections.
- (iii) During the Relevant Period the State Government repealed provisions under the *State Environmental Planning Policy (Temporary Structures and Places of Public Entertainment) 2007*. The review provisions of that instrument with respect to Places of Public Entertainment had provided a mechanism by which Council could review such matters as patron numbers, noise and fire safety to the extent that they were not specified in development conditions.
- (iv) Council compliance officers undertake strategic enforcement inspections with respect to licensed premises in concert with Police and NSW Fire Brigade from time to time. During the Relevant Period:
  - On 16 November 2010 Council issued a \$3000 Penalty Notice to the owner of the Premises for carrying out development work between 2 and 16 November 2010 without consent.
  - On 3 February 2011 Council served upon the business owner and operator an Order under the Environmental Planning and Assessment Act in relation to inadequate fire safety measures.
  - On 20 December 2012 (*sic* – this should apparently refer to 2011) a \$3000 Penalty Notice was issued to the business in relation to use of an

unauthorised deck on the Premises at 11.16 pm on 18 November 2011. (The Authority notes that, as detailed in the licensee's response below, this Penalty Notice was defended by the owner of the Premises and subsequently withdrawn by Council during October 2012.)

54. Council notes that Police maintain a detailed history of complaints against certain Byron Bay businesses and Council also refers the Authority to the published BOCSAR crime data pertaining to the Byron Bay LGA.

### **Submissions from the Director of Compliance, OLGR dated 10 April 2013**

55. The Authority notes that law enforcement functions under the Act are shared between the Director General (through staff working for the Compliance Section of the Office of Liquor Gaming and Racing) and New South Wales Police .
56. On 10 April 2013 the Director of Compliance, OLGR, made a submission to the Authority ("**OLGR Submission**") with certain observations informed by OLGR's compliance records for the Premises.
57. The Director notes that for reasons that are unclear there are actually two on premises licences in existence and attaching to the Premises - LIQO624013505 and LIQO600491022. Both licences enable licenced trading until 3 am after Sunday evening. OLGR's compliance records only pertain to licence number LIQO624013505. The Director makes the following representations to the Authority
58. First, on 2 April 2013 the licensee was invited by the Director to show cause why a 50% discount on drinks that was being offered between 11pm and midnight on Saturday nights should not be prohibited by way of a direction under s102A of the Act.
59. Second, on 25 March 2013 the licensee was put on notice that the venue may be classified as a "level 2" declared premises for the purposes of Round 9 of the scheme of special licence conditions under Schedule 4 to the Act. The licensee has been given the opportunity to have twelve (12) incidents of violence that are reported as having occurred on the Premises during the relevant 12 month period reviewed by Police and the Director General before the list of declared premises is finalised for inclusion in Schedule 4. The Director notes that three (3) of the twelve incidents that were then before the Director General pertain to Sunday late trading hours.

(The Authority notes that OLGR subsequently advised that 3 of the 12 incidents of on-premises violence that were initially attributed to the venue for the purposes of Round 9 have, upon review by Police, been accepted as not properly attributed to the Premises

for the purposes of the Director's General's administrative scheme. OLGR advise that the Premises will be classified as a "Level 3" premises for the purposes of Round 9. This accords with the Business Owner's submissions).

60. Third, the Director advises that from 9 April 2009 to 31 December 2012, BOCSAR data provided to OLGR indicated **27** incidents of violence recorded as having occurred on the Premises. **8** of those incidents occurred on a Sunday and **7** of them occurred during late hours on a Sunday.

61. With effect from 21 March 2013, members of the Byron Bay Liquor Accord, including the Premises, have adopted trial harm reduction measures for a period of 6 months to September 2013.

#### **Further Submission from Police dated 5 April 2013**

62. On 5 April 2013 Police provided a supplementary submission, attaching some further COPS Reports of events linked by Police to the Premises, pertaining to the period from 9 November 2012 to 24 February 2013. These are discussed below.

#### **Business Owner's Submission in Response to the Police, OLGR and Byron Shire Council dated 29 April 2013**

63. On 29 April 2013 Hatzis Cusack on behalf of the Business Owner made further written submissions in response to the supplementary COPS Reports, the OLGR Submission and the information provided by Byron Shire Council.

64. Briefly, the key points raised by the Business Owner in response to the further Police material, in the Authority's view, are:

- (i) There are only 8 events among the additional COPS reports that concern Sunday nights.
- (ii) There was 1 business inspection that revealed "no issues",
- (iii) There was 1 assault occurring inside the venue.
- (iv) There were 3 "move on" directions – one involved a person who had been excluded by security and two "did not show any apparent link to the venue".
- (v) There were 2 PCA events – one involving a P plate driver with a 0.048 blood alcohol concentration, the other involved a person described by Police as "slightly affected" with low range 0.065 reading.

(vi) There was 1 refuse entry event – whereby a person was appropriately refused entry due to intoxication.

(vii) The Business Owner submits that this low number of adverse events, particularly during the busiest time of year, shows that the venue is well run and that Sunday nights are giving rise to low levels of violence.

65. In response to the OLGR Submission, the Business Owner advises that he paid \$15,000 for the second licence with a primary service authorisation “in case it can be sold for value at a future date”. Hatzis Cusack advise that “there is no proposal to activate that licence” and the boundary of this second licence has been reduced to a “broom closet” (that is, a nominal area within the Premises).

66. In response to the regulatory action taken by OLGR with regard to an alcohol promotion, the Business Owner advises that the 11pm “Happy Hour” promotion was introduced after “deep discounting” by the “local competitor businesses”. In response to a notice issued by OLGR to the licensee to cease that promotion after 9pm, the Business no longer offers it.

67. The Business Owner submits that, following a review by Police of the Round 9 events attributed to the Premises, the number of assaults has been reduced from 12 to 9 – the venue will not be a “Level 2” premises for the latest round of declared premises for the purposes of Schedule 4. Of the 9 incidents of violence now attributed to the Premises over the 2012 calendar year, only 2 of them occurred during Sunday/Monday late hours. The Business Owner submits that it should be considered a “low to moderate” risk for the occurrence of assault on the Premises.

68. The Business Owner submits that the Byron Liquor Accord has introduced a voluntary 1.30 am lockout, with no “doubles” (double shots of spirits) to be served at any time and no drinks with over 30mls of alcohol after midnight. The Accord also requires no service of jugs of alcoholic drinks, “shooters” or ready to drink beverages with over 5% alcohol at any time; a 4 drink limit per person after midnight and no energy drinks with alcohol after 2 am. Participating venues shall have at an RSA Marshall (which the Authority notes means a person tasked with roaming through the venue to monitor and report on the intoxication levels of patrons) on duty after midnight. The Business Owner submits that the Premises will observe these voluntary undertakings during the 6 months trial.

69. The Business Owner submits that it has undertaken an updated risk assessment for the “schoolies” period. (The Authority notes that this is a reference to the end of school

year period in which certain resort towns, particularly Byron Bay, receive an influx of high school age youths.)

70. The Business Owner notes that, in addition to the 34 business inspections that are evidenced in the COPS Reports where “no issues” were detected by Police, the OLGR Submission discloses the conduct of 10 OLGR inspections since July 2009 and on only 1 occasion were any issues identified – a case involving a security guard allegedly without a NSW RSA certificate. A prosecution arising from that incident was dealt with by the District Court with no conviction recorded (as evidenced by a letter from Mr Owens’ solicitor dated 28 September 2011) pursuant to section 10 of the *Crimes Sentencing and Procedure Act 1999*.

71. The Business Owner notes that Byron Shire Council discloses no complaints to Council about the operation of the Premises and makes no observations from Council Rangers about the Premises. Of the three enforcement actions that Council advises it has taken for planning violations, the Business Owner submits that:

- (i) The Penalty Notice issued by Council on 3 February 2011 was issued to the Premises Owner, not the Business Owner, and it arose from a failure to provide a fire safety assessment report. That report was provided to Council in April 2011.
- (ii) The Penalty Notice of December 2011 regarding use of an unauthorised deck was withdrawn by Council and the charge dismissed by the Court on 18 October 2012, as verified by a letter from the venue’s solicitor dated 22 October 2012.

72. The Business Owner submits that the supplementary material provided by Police and OLGR should give the Authority comfort that:

- (i) the venue does not give rise to “frequent undue disturbance to the neighbourhood”;
- (ii) the venue is professionally managed and run and has joined in the Byron Liquor Accord initiatives;
- (iii) the venue has generated a low number of adverse events compared to the numbers of people who have utilised the venue; and
- (iv) 3 am trading services the needs of tourists and local hospitality workers.

### Further submission from Police dated 3 May 2013

73. Police replied to the Business Owner's submission of 29 April 2013 with the following further material:

- (i) A short submission dated 3 May 2013. This refers to the licensee's participation in trial measures voluntarily agreed by the Local Liquor Accord, including no service of shots. Police then refer to the statement of Senior Constable Singerland which Police say indicates that the Premises is acting contrary to the "spirit" of that undertaking. The submission also notes discussions between Police and the licensee on 3 May 2013 whereby the licensee proposes to redevelop the first floor of the Premises. A concept diagram for this proposal is provided to the Authority. Police believe that the increased patron capacity that will be enabled through the proposed renovations will "have a detrimental effect on the local community under the current circumstances"
  
- (ii) A statement from Senior Constable Singerland dated 13 April 2013 regarding a covert inspection of the Premises from 9 am on 11 April 2013 until 3 am the following morning. The officer states that at 10.35 pm he saw a group of females on the front deck overlooking the street, all consuming in a synchronised manner "short" glasses of clear liquid with lemon and salt (which the Authority notes is a traditional accompaniment to a Tequila shot). The officer then attempted to purchase a shot of tequila with a beer and was told that "we are not allowed to sell shots in Byron Bay anymore, it's the new law so I have to put ice in it". The officer also noted that some patrons were wearing pink wrist bands with the words "La La" written on it. Patrons explained to the officer that the wrist bands enabled them to get free entry to the Premises and purchase \$3 drinks. The officer describes how at around 10.15 pm on 12 April 2013 the officer observed two females handing out wrist bands on the street. The females informed the officer that they provide "free entry into the La La nightclub and a \$3 drink". When requested, they offered to give him more than one wrist band.
  
- (iii) A statement from Sergeant Tapley dated 3 May 2013. This statement refers to and extracts the text of licence conditions requiring uniformed security officers to be provided on Thursdays through to Saturdays from 10 pm until closing or the last patron has left the immediate vicinity of the Premises, whichever is later. The condition requires that at least one officer is to conduct "regular patrols" in the vicinity of the Premises to ensure that

patrons do not loiter or linger in the area or cause annoyance or disturbance to the neighbourhood. The officer states that at 10.40 pm on Friday 12 April 2013 the officer commenced observation of the Premises in plain clothes and there were two security staff posted out the front of the Premises at that time and there were three security staff outside after 11pm. Police conducted observations until 12.20 am on 13 April 2013 and at no time during that period of observation did they observe patrols along Lawson Street, other than one incident when a security staff member walked away and returned with pizza for the others. The officer states that further observations were conducted on Saturday 13 April 2013 from 10pm. The officer describes how at 12.37 am on Sunday 14 April 2013 he discussed with the licensee the absence of any apparent security patrols outside the venue, which Police say had been observed during periods of one hour and twenty minutes on one occasion and one hour and twenty minutes on the second occasion. The licensee told Police that security staff have been patrolling Lawson and Fletcher Streets. Police also discussed the promotion of free entry and \$3 drinks (that would usually cost \$7 or \$8) via the distribution of arm bands to potential customers. The licensee advised that people can only get one drink up until 11 pm and can only use one wrist band each. The girls handing out the arm bands are engaged by a third party promotional company and are paid on commission, depending upon the number of wrist bands redeemed.

(iv) A Liquor Administration Board letter dated 6 December 2004 advising that an application to redefine the licensed boundary of the Premises had been approved. This letter attaches a Licensing Court approved plan highlighting the boundary of the Premises as approved on 29 November 2004. (The Authority notes that the apparent intent of Police providing this document is to contrast the scale of the proposed renovated Premises discussed with the licensee on 3 May 2013 with the Premises as previously licensed by the Court).

#### **Final Submission from the Business Owner dated 17 May 2013**

74. On 17 May 2013 the Business Owner provided a final submission in response to the statements contained in the further Police submission of 3 May 2013.
75. This submission also addressed certain NSW Roads and Maritime Services alcohol related road accident and fatality data regarding the Byron Shire LGA ("**RMS Data**"). The Authority had been on notice of the RMS Data since September 2012, when it convened a public meeting to consider an application made by Woolworths Ltd for a new

packaged liquor licence that would attach to a proposed new “Dan Murphys” liquor outlet in Byron Bay. The RMS Data was provided to the Business Owner for comment.

76. The key points made in this further submission, in the opinion of the Authority, may be summarised as follows:

- (i) The Premises “is not providing shots or shooters”, pursuant to the Local Liquor Accord trial.
- (ii) On 11 April 2013 the Accord “was in effect” and the Premises “was not serving liquor from shot or shooter glasses”.
- (iii) While female drinkers were observed by Police that evening “consuming drinks rapidly” the Business Owner submits that “it will take some time for the cultural change that is intended by the Accord to take effect”.
- (iv) The drink promotions that were observed by Police are “within OLGR Guidelines”.
- (v) The licence condition requiring external patrols of the Premises that is described in Sergeant Tapley’s statement “does not specify any particular periodicity with which such patrols must be conducted”. At the time of the Police observations noted in Sergeant Tapley’s statement there were “few patrons leaving the Premises”.
- (vi) The licensee has inspected the CCTV footage that was requested by Police. It shows patrols being conducted by the venue “around midnight” on the Friday in question and “numerous times” on the slightly busier Saturday in question. The Friday and Saturday evening CCTV video is available on You Tube at the following hyperlinks, respectively:
  - a. <http://youtu.be/zBs3wT-k--w>
  - b. <http://youtu.be/pTozXKfpzok>
- (vii) The proposed concept for refurbishment of the Premises that is noted in Constable Seddon’s submission of 3 May 2013 “does not involve any redefinition of the licensed area”.
- (viii) The additional COPS Reports provided by Police on 25 April 2013 covered a period of 4 months, over the busiest time of year. The low number and frequency of those additional COPS Reports demonstrate that the nature of

adverse recorded incidents is on the whole less problematic than would be expected of a late trading venue. This is a function of the venue's RSA practices, security staffing and clientele (which includes "fewer" 18 to 21 year olds, more hospitality workers and a preponderance of functions and corporate groups).

- (ix) The RMS submission to the Authority dated 4 September 2012 appears to be based on LGA specific information that is not published and the source of "that data cannot be tested". As for the published RMS document "Road Traffic Crashes in New South Wales" – 2011, that data discloses a risk of being involved in a casualty crash in the Byron LGA of 1 in 192 (comparing the number of crashes to the 2011 Census resident population). The risk for New South Wales as a whole was 1 in 258. However, if one allows for the large numbers of visitors to the LGA, the risk is "probably closer to the State average".
- (x) While the RMS submission states that 47% of drink drivers recorded a high range blood alcohol concentration, the Police COPS Reports presented to the Authority in this matter disclose 30 PCA offences, "only 6 of which were high range".
- (xi) The number of PCA events linked to the Premises by Police in the COPS Reports is "about 7 per year". The Business Owner estimates that it has accommodated some 70,000 persons across all nights across the year. This, the Business Owner contends, suggests the "quantity of liquor consumed at our client's venue is far less than consumed in other venues or less regulated environments".

#### **Submission from the Premises Owner dated 21 June 2013**

77. On 21 June 2013 the Authority received an email submission from Mr Peter Roger, the director of Sosiku Pty Ltd, a company that owns the freehold to the Premises and that leases the Premises to the Business Owner. That email states:

*Re: La La Land Byron Bay*

*Dear Sir,*

*I am an Australian registered medical practitioner working in Byron Bay. I first started work here 40 years ago and consequently have had many years of experience in medical issues in Byron Bay hospital including after-hours trauma.*

*Since 1985, I have been a director of a company, Sosiku P/L which is the owner of the real estate structure at 6 Lawson Street, Byron Bay. La La Land has been one of our tenants since 1999.*

*Since then, most of my dealings with La La Land have been with their director, Mr Luke Thomas and I have found him to be trustworthy and law-abiding. Their current manager, Mr S. Owens has been in day to day charge for several years now and he has also been trustworthy and reliable. Mr Thomas has always been at pains to assure me that he runs a "tight ship" and is most particular in seeing that this establishment practices the highest standards when it comes to alcohol service.*

*While having a pecuniary interest, through their rent payments, in La La Land's business activities, I also have an over-riding desire to not have alcohol-fuelled violence in our town and certainly in our premises.*

*Responsible service of alcohol, has, I have been informed by Mr Thomas, always been practised by La La Land and from my experience at the Byron Hospital, alcohol violence victims have rarely, if ever, been associated, with La La Land.*

*I do not have any objection to their Sunday evening/ Monday morning 3am licence.*

*Thanking You*

*Peter Roger.  
Director, Sosiku Pty.Ltd  
6 Lawson Street, Byron Bay.*

## **REASONS**

### **Adverse Events Found by the Authority**

78. The Authority notes the following COPS Reported incidents (“**Events**”) which appear on their face to be attributable to the exercise of the ETA between midnight and 3 am on a Monday morning.

#### **April – December 2009**

79. For the period April-December 2009:

- i. 12.30 am Monday 8 June 2009 E39653884 – major car accident involving a driver committing a mid- range PCA offence (0.13) after last drinking at the Premises .
- ii. 3.45 am Mon 15 June 2009 E 37534632 - high range PCA offence (0.15) after drinking at the Premises .
- iii. 12.30 am Mon 7 September 2009 E 38867246 – an intoxicated male was refused entry to the Premises and abusing and threatening staff outside the Premises to an extent that required Police intervention. The person of interest argued with Police before moving away but then returned to the

Premises at 1.30 am and was issued by Police with a Penalty Notice for refusing to leave the vicinity of licensed premises.

- iv. 2.00 am Mon 21 September 2009 E 38426643 – moderately intoxicated male had been in a fight on the Premises according to security staff and was seeking another fight outside the Premises as Police arrived to deal with the matter.
- v. 1.55 am Mon 28 September 2009 E 38785246 – Police saw an intoxicated female leaving the Premises after she had been requested to leave. Police considered her to be a danger to herself and transported her to her residence .
- vi. 2:00am Mon 30 November 2009 E127831598 - patron ejected from Premises early in morning, argued with and assaulted Police at the Police station.
- vii. 12.00am Mon 30 November 2009 E E344288791 – male patron was ejected from Premises due to intoxication. At about 12.15 am the person tried to re-enter the Premises unsuccessfully and was given a Penalty Notice by Police for attempting to re-enter the licensed premises after a direction to leave.

#### **January – December 2010**

80. For the period January-December 2010:

- i. 2:00 am Mon 11 January 2010 E 76662301 – victim ejected from the Premises after being involved in a fight on the Premises. The victim lost property on the Premises .
- ii. 2:00 am, Mon 18 January 2010 E 569172590 – men were parked outside the Premises, offering young women lifts home for \$5. Police directed them to move on by reason of their intimidating behaviour.
- iii. 2.45 am Mon 8 February 2010 E 39658324 – mid range PCA offence (0.08) after the driver last drank at the Premises.
- iv. 11.00 am Mon 22 February 2010 E39806324 – the driver was detected committing a low range PCA offence (0.075). Notwithstanding that this was a low range PCA offence detected at 11 am, the Authority is satisfied, on the basis of the driver’s admission that the driver drank 9 schooners of beer on the Premises until 2 am earlier that morning .
- v. 2.20 am Mon 8 March 2010 E 40601929 – males were required to be issued with “move on” directions by the Police after they were refused entry to the Premises by reason of their intoxication .
- vi. 3.25 am on Mon 15 March 2010 E 77598702 – mid range PCA offence (0.095) after driver last drank at the Premises.

- vii. 3.35 am on Mon 15 March 2010 E 239620192 – high range PCA offence (0.0195) after driver last drank at Premises .
- viii. 1.40 am on Mon 5 April 2010 E 40882628 – a Byron Bay Blues Festival-goer complained to Police that she was denied entry to the Premises at this time by reason that she was allegedly intoxicated and “too old”. After arguing with a security guard she fell over and suffered a minor injury. CCTV footage revealed that complainant had lost her footing after she pushed a security guard. Police observed that staff of the Premises was not at fault. Staff reported that the complainant was “intoxicated, argumentative and generally psycho”. Complainant was satisfied that Police had followed the matter up and did not seek further action. Police record the incident status for the assault claim as “rejected”. The Authority does not consider that an assault occurred, but is satisfied that the event is relevant in that it provides an example of the venue’s late operation attracting an intoxicated person by reason that the Premises is the only venue open in the area during these hours and that disturbance was created by that person to an extent that requires the intervention of Police.
- ix. 12.10 am Mon 10 May 2010 E 40368530 – person of interest had been drinking at the Premises and was engaging in a struggle with another male on the street nearby. Police were required to issue a move on direction.
- x. 12:00 am Sunday 6 June 2010 E 41265721 – male patron assaulted on the Premises.
- xi. 3.35 am Mon 7 June 2010 E 41407607 - high range PCA offence (0.170) committed by driver who stated he had been drinking at the Premises between 6pm and midnight.
- xii. 12.00 am Mon 26 July 2010 E 41983969 – drug detection - Police observed the accused, a known Byron drug supplier, leaving the Premises. The accused was searched on the street and Police found a small plastic bag of what was suspected to be cocaine plus twenty tablets admitted by the person to be 4 grams of ecstasy.
- xiii. 12.45 am Mon 9 August 2010 E 43467582 – Police called to the Premises after large group of males caused a brawl on the Premises. Two of the males were removed and on the street nearby the Premises. The two males who were removed are noted in Police intelligence records to include a member of the “Rebels” Outlaw Motorcycle Gang (“**OMCG**”) and the other male is recorded as an associate of the Rebels. Neither males were wearing clothing indicating gang affiliation.
- xiv. 12.50 am Mon 30 August 2010 E 44033784 - Police were stopped by a female outside the Premises claiming she had been assaulted by another female inside the Premises. The complainant had no visible injuries, was intoxicated

and abusive to Police. Police found no CCTV or witnesses for the incident but believe there “may have been a minor assault”.

- xv. 2.50 am Mon 6 September 2010 E 41976556 – a male patron was heavily intoxicated and asked to leave the Premises. The patron failed to comply with a Police move on direction, swore at Police and was arrested. The patron refused to enter the Police vehicle and was capsicum sprayed twice. The patron was too intoxicated to be interviewed at the Police station and refused to permit fingerprinting. Police are seeking an order that the accused be fingerprinted and photographed .
- xvi. 12.30 am Mon 22 November 2010 E 42446847 – Police intervened in an altercation on the street between two male patrons who, according to security staff, had just been removed from Premises due to their intoxication. Both patrons were issued with move on directions by Police.

### **January to December 2011**

81. For the period January to December 2011:

- i. 12.30 am Mon 17 January 2011 E 43693469 - intoxicated male was refused entry to the Premises, argued with and threatened security requiring the intervention of Police, who moved him on. The Event is relevant as it is an instance of an intoxicated person creating disturbance to a point that requires Police intervention and who is attracted to the site of the Premises because it is the only late trading venue open at this time in the neighbourhood.
- ii. 3.20 am Mon 31 January 2011 E 43179714 - mid range PCA offence (0.103) by a driver who last drank at the Premises.
- iii. 12.45 am Mon 14 February 2011 E 43165570 - mid range PCA offence (0.116) by a driver who last drank at Premises (and who stated he had consumed ten shots) .
- iv. 3.10 am Mon 14 February 2011 E 43265444 - mid range PCA offence (0.138), driver last drank at the Premises .
- v. 4.00 am Mon 28 February 2011 E 84449401 - low range PCA (0.072), driver last drank at the Premises .
- vi. 2.45 am Mon 11 April 2011 E 44701542 – high range PCA (0.167), driver last drank at Premises .
- vii. 1.40 am Mon 18 April 2011 E 46356984 - business inspection, "intoxicated persons" were noted. A female intoxicated person complained to Police about security staff by reason of her being denied entry. A security officer was uncooperative with Police and initially would not provide his licence to them when requested. The Authority considers this disturbance event to an

event that is considered adverse to the Premises in two respects. First, it is an instance of an intoxicated and unruly person being attracted to the site and creating a disturbance requiring Police intervention because the venue is the only late trading licensed venue in this neighbourhood that is open at that late hour. Second, the Authority notes and accepts that security staff were not cooperative with Police when Police became involved.

- viii. 12.40 am Mon 23 May 2011 E 45011469 - offensive conduct, person urinating on a shop driveway after drinking at the Premises .
- ix. 1.03 am Mon 27 June 2011 E 45202079 - high range PCA offence (0.156) by a driver who last drank at the Premises .
- x. 12.31 am Mon 4 July 2011 E 45326158 - Police attended the Premises to deal with two intoxicated males who were refusing to leave. At 1.18 am Police detected a high range PCA offence (0.150), being the same person who was spoken to earlier by Police for failure to quit.
- xi. 12.20 am Mon 4 July 2011 E 44994376 – a male person was refused entry for his intoxication and then returned to the Premises 5 mins later and began abusing and pushing security staff, requiring the intervention of Police. The person was aggressive to Police .
- xii. 12.15 am Mon 11 July 2011 E 45146946 – a female who was handing out flyers on the street on behalf of the Club was assaulted by a female person of interest for no apparent reason. The incident is attributable to the operation of the Premises because the promotional worker would not have been on the streets promoting the availability of the licensed venue during this early hour if the Premises was not trading.
- xiii. 3.00 am Mon 1 August 2011 E 46006678 - mid range PCA offence (0.078) by a driver who last drank at Premises .
- xiv. 1:00 am Mon 17 October 2011 E46021134 - female patron assaulted by another female in the toilets on the Premises causing injuries to the victim's teeth, face and body.
- xv. 2.13 am Mon 24 October 2011 E 45771644 - low range PCA offence (0.063) by a driver who last drank at the Premises .
- xvi. 3.10 am Mon 7 November 2011 E 48369084 - mid range PCA offence (0.084) by a driver who last drank 6 beers on the Premises .
- xvii. 1.55 am Mon 19 December 2011 E 46309736 - an intoxicated male patron was removed from Premises for intoxication and fighting inside the Premises. He then became increasingly abusive towards security staff outside, using offensive language, causing malicious damage to a phone booth and a vehicle before punching a victim in the mouth. The accused was arrested by Police and issued an Infringement Notice for offensive behaviour.

## **January to October 2012**

82. For the period January to October 2012:

- i. 1:00 am Mon 9 January 2012 E47258442 – male patron punched to his face on the Premises, attended Byron Hospital and Police were requested to attend Hospital. CCTV shows the men pushing each other but not the actual assault. The assault victim does not wish to pursue the matter.
- ii. 12.00 am Mon 6 February 2012 E 47305458 - male patron is punched to the face by another unknown male on the Premises, requiring stitches at Byron Hospital. The person of interest could not be identified and Police believe is likely a tourist.
- iii. 3.15 am Mon 26 March 2012 E 49281480 - Police disperse a fight outside the Premises involving up to 20 young adults after a fight that occurred inside the Premises caused all 20 patrons to be ejected. Police note that the earlier fight was not reported to Police by the venue. Most of the persons present during this incident were either security staff or employees from the Byron Bay nightclub "Cheeky Monkeys".
- iv. 3.25 am Mon 26 March 2012 E 47815468 - Police directed a group of men who were well affected by liquor and who were fighting inside and outside the Premises. One of the men continued to cause disturbance in the street as he walked away by yelling and swearing and getting in people's faces, requiring Police to intervene once again and direct him to leave the CBD for six hours. The male appeared to be under the influence of drugs and alcohol and was searched by Police without detection of illicit drugs .
- v. 2.48 am Mon 28 May 2012 E 47611537 – a very intoxicated male was on the street after drinking at Premises. Police took him home out of concern for his wellbeing.
- vi. 3.20 am Mon 15 October 2012 E 49001935 - after an initial physical altercation between two male patrons who were shoving each other on the Premises, the male patron/person of interest followed the male patron/victim outside after he left and the person of interest got into fight with the victim and his girlfriend. The person of interest was arrested and taken to the Police station by reason of his level intoxication and issued with an infringement notice for offensive language.

## **November 2012 to February 2013**

83. For the period November 2012 to February 2013:

- i. 1.30 am Monday 19 November 2012 – E 52313588 – assault by one male patron upon another occurred on the Premises after a minor previous interaction on the Premises. The assault victim attended Byron Hospital. The incident of violence on Premises had not been reported to Police by the venue and had not been recorded on the venue’s incident register when Police inspected it.
- ii. 12.50 am Monday 24 December 2012 – E 51917387 – security staff from the Premises reported the presence of a male loitering near Premises who had been previously barred from the Premises due to his habitual drug use. Police searched the man without result and issued a move on direction.
- iii. 12.10 am Monday 7 January 2013 – E 51056453 – male person of interest was affected by alcohol and threw a glass bottle in direction of Premises security staff and Police. When questioned by Police the male said he did it in retaliation for being denied entry to the Premises at about 11.50 pm that evening. Security staff were unwilling to provide statements about the assault with a bottle, so Police issued a Penalty Notice for the excluded person re-entering the vicinity of licensed premises.

84. The Authority is satisfied on the balance of probabilities, on the basis of the COPS Reports and having considered the Business Owner’s submissions in reply, that the Events actually occurred. The COPS Reports are contemporaneous reports made by Police who have considerable experience in the assessment and identification of intoxicated persons. The Authority is of the view that COPS Reports are generally reliable and that there is nothing before the Authority that would indicate their unreliability.

85. Even if the Authority were not satisfied that all of the Events had actually occurred, the number of Events and their nature is such that the Authority would not come to any different determination of the public interest in the circumstances. The number of Events and their nature gives the Authority cause for concern as to the extent of alcohol related anti-social conduct that is being caused or affected by or is associated with the relevant ETA.

86. Where the Authority has found in some incidents that the person engaged by Police was “intoxicated” the Authority does not purport to find that the licensee committed the offence of *permitting* intoxication on the Premises, which is subject to a defence available under section 73(5) of the Act. As noted by the Business Owner, there is not one Event where an actual incident of permitting intoxication on Premises has been established.

87. The Authority does not accept the Business Owner's submission that the Authority's power under section 51(9)(b) of the Act to vary or revoke an ETA is confined to circumstances when it is satisfied that the grant of an authorisation has given rise to "frequent undue disturbance" to the neighbourhood within the meaning of section 49(8) of the Act.
88. While section 49(8)(b) of the Act does prescribe a threshold test that must be satisfied before any ETA may be granted, it does not follow that that this threshold requirement confines the Authority's power to vary or revoke an authorisation once it has been granted. In the absence of criteria structuring the Authority's power, the Authority considers that its power to vary or revoke an ETA under section 51(9)(b) of the Act is a broader power to vary or revoke an ETA from time to time, if it is in the public interest to do so.
89. The Authority has noted that in the most recent period (from October 2012 to February 2013) there were fewer adverse Events linked to the Premises, which the Authority considers may be a likely consequence of the Premises being on notice of the Application and subject to regulatory scrutiny. While the Premises may well have redoubled its efforts in managing patron disturbance occurring on or near the Premises, and that is a positive development, the incidents found by the Authority over a reasonable period of time satisfy it that *patrons* of the Premises are engaging in frequent alcohol related disturbance and anti-social conduct and there is a reasonable nexus between the occurrence of that conduct and the exercise of the ETA between midnight on Sunday evenings and 3 am on Monday mornings. Much of this conduct is occurring in neighbouring streets away from the immediate vicinity of the Premises or on the roads of Byron Bay as patrons drink drive home on Monday morning.
90. The Relevant Period under consideration for the purposes of this decision provides a reasonable basis upon which to survey whether the continued exercise of the Sunday/Monday late trading hours is in the public interest. The Events range in seriousness – from assaults occurring *on the Premises*, to assaults involving patrons of the venue occurring *off and nearby the Premises* within the Byron Bay CBD; to PCA offences committed by late trading patrons driving away from the Premises after patrons were last drinking on the Premises; to alcohol related offensive conduct or other alcohol related disturbance incidents involving patrons of the Premises in neighbouring streets. All of these Events identified by Police have involved an impost upon Police time and most represent a real or potential danger to the patrons themselves and to other members of the community.

91. The Authority has critically examined all of the COPS Reports that post-date 8 April 2009, when a decision to vary the existing ETA to permit 3 am licensed trading hours on a Monday morning trading was granted by an Authority delegate.
92. Considered cumulatively, the Authority is satisfied that the COPS Reports disclose a moderate problem with violence occurring *on* the Premises. With a patron capacity of 280 persons the venue is not small, but of medium scale in relative terms. Nevertheless - and likely due to its long licensed trading hours - the Premises has come to the attention of the Director General as a “Level 3” venue with 9 incidents of violence of Premises (confirmed for the purposes of that scheme) reported during the 12 month period ending in December 2012. This means that the venue was only 3 incidents of violence on premises short of attracting the imposition of special licence conditions under Schedule 4.
93. The Authority is satisfied that Police have demonstrated a real and persistent problem with patrons of the venue “externalising” alcohol related anti-social conduct upon the local community, particularly the neighbourhood of the Byron Bay CBD. Patrons of the Premises are frequently engaging in alcohol related disturbance and other anti-social conduct, to an extent that requires Police intervention, on Monday mornings during and immediately after the extended trading period. This misconduct is occurring outside and near the entry point to the Premises or, frequently, in nearby streets within the Byron Bay CBD.
94. Any venue with late trading hours runs the risk of exposure to patrons who are tired and/or subject to the effects of consuming alcohol for prolonged periods - whether that have been drinking on the premises or at other places before migrating to the later trading venue. By the very reason of its late trading hours, a venue like the Premises is at a greater risk of exposure to patrons who are affected by alcohol, who attempt to enter the Premises when in no fit state to do so and who pose an elevated risk to the safety of staff, other patrons or themselves and other members of the community either on the Premises or after leaving it.
95. The Police material further discloses a persistent problem of patrons driving away from the Premises, though Byron Bay and to other locations while committing mid to high range PCA offences early on Monday mornings. The Authority considers PCA offences to be a particularly serious form of alcohol related anti-social conduct with potentially grave adverse impacts upon the neighbourhood and the local community.
96. The Authority is satisfied that this late trading licensed venue is likely to host a minority of patrons who have been on the Premises for a prolonged period, have arrived at the

Premises after drinking at other venues, and are over the legal limit to drive yet willing to risk driving home from the Premises. That particular alcohol related threat to the public interest is manifest on the basis of the COPS Events before the Authority.

97. Drink driving is of particular concern in light of the relatively serious extent of alcohol related road crashes that have been indicated for the Byron Bay LGA by the RMS Data. The venue has the clear capacity to contribute to drink driving in Byron Bay during the late hours under present consideration by reason it is the only licensed premises open in the town at that time. For that reason the attribution of specific events to the Premises is clear and their association with the extended trading hours undeniable.
98. The Authority has not accepted the Police material uncritically. It has disregarded those COPS Events that do not expressly identify a link between the person who has come to the attention of Police and the Premises.
99. The Authority has only taken into account those incidents where the Authority is satisfied, on the balance of probabilities, that the alleged incident did occur and where there is a reasonable geographic and temporal connection to the exercise of the ETA between midnight and 3 am on a Monday morning.
100. In making these findings the Authority does not purport to make findings of criminal guilt. Notwithstanding the civil standard of proof, the Authority is mindful that the Authority should exercise appropriate care when fact finding if there is an allegation that the licensee or his staff or contractors (or third persons) have committed an offence or engaged in serious moral wrongdoing, pursuant to the principle in *Briginshaw v Briginshaw* (1938) 60 CLR 336.
101. For those COPS Events that have been found to be relevant adverse incidents for the purposes of this decision, the misconduct identified by Police was not usually “caused” or precipitated by staff or contractors of the licensed business.
102. Rather, the alcohol related crime or anti-social conduct in question involves misconduct by patrons of the Premises while they are on the Premises or after they have left or have been excluded from the Premises. In a minority of COPS Events found by the Authority there have been incidents of alcohol related disturbance involving persons seeking access to the Premises who, due to their intoxication and determination to enter the only late trading licensed premises in town, create disturbance outside the Premises to an extent that requires Police intervention.

103. The Authority notes that among the COPS Reports are numerous COPS business inspections conducted by Police where “no issues” were identified. The Authority does not count those incidents as adverse to the operation of the Premises per se. The Authority agrees that those reports provide evidence that the venue was operating without issues at the time of those inspections – albeit that the problems demonstrated in this particular matter more often pertain to patron misconduct occurring *off* the Premises than on it.
104. The numerous incidents of Police Business Inspections also underline the extent to which Police resources are required, week in, week out, to monitor and respond to any issues that may arise from the operation of a licensed venue that combines the risk factors of late trading, a nightclub mode of operation and location within a neighbourhood (the Byron CBD) with very high levels of alcohol related violence and anti-social conduct, according to the BOCSAR data before the Authority.
105. The extent of alcohol related violence and anti-social conduct faced by licensed premises throughout Byron Bay is no doubt exacerbated by the town’s status as a popular seaside resort. It is one that attracts a great many domestic and international visitors each year, including young adults passing through, on a transient basis, without any real connections to the local community.
106. Those factors simultaneously drive the demand for access to the one licensed venue that is open in the Byron Bay CBD between midnight and 3 am on a Monday and the capacity for patrons of the Premises to contribute to alcohol related violence or anti-social conduct requiring the intervention of Police - at a time of morning when other licensed premises have closed and the town is relatively quiet.
107. Among the Police material are several COPS Reports of lost property and theft incidents that occurred on the Premises – often involving the theft of wallets, handbags or mobile telephones occurring during late hours on a Monday morning. Although these incidents have consumed Police time they would only be relevant to the extent that the theft or loss was either perpetrated by staff or the product of some incapacity due to the abuse of alcohol on the Premises. The evidence or other material pertaining to those matters has not demonstrated a sufficient nexus to the operation of the business and they have not, in this case, been found by the Authority to be adverse to the Premises.

## **Conclusion**

108. While the focus of this decision has been the individual COPS Events that have been found to be linked to the exercise of the ETA on Monday mornings, the BOCSAR crime

and mapping data and the RMS Data for the Byron LGA and the town of Byron CBD which has been provided to the Authority underscore the challenging alcohol related crime and drink driving environment in which the Premises operates, particularly on weekends.

109. The Authority accepts that the Business Owner has demonstrated that there is a good deal of support among local business owners, including real estate agents and others who patronise the venue, for the retention of the Monday morning late trading hours. The Authority accepts that the town attracts a great many international and domestic tourists and that Byron Bay has a reputation as a “party town” for many young adults who visit the area and wish to use late trading licensed premises.

110. The Authority accepts that there is demand among visitors for the availability of licensed venues that are open in the evening. However, the availability of numerous licensed premises, including La La Land, with late extended trading hours across much of the week, provides extensive scope for locals and visitors to socialise and find live entertainment in the town - or for musicians and DJs to perform in the town.

111. While the Authority accepts that reducing licensed trading at this venue may cause some inconvenience to local hospitality industry workers who might otherwise chose to remain on the Premises until later on Monday morning, the Authority must consider the broader public interest when assessing where the balance lies and not just the convenience of employees within this particular industry - who may, like others in the community, be able to access this or other late trading venues at other times of the week. The Authority considers that it is not unreasonable for them and others who might use the Premises between midnight and 3am to forego that privilege on one night a week, in the interest of the well-being of the neighbourhood and the local community of Byron Bay.

112. The Authority has considered the argument presented by the Applicant, supported by some local real estate agents, to the effect that the late trading hours under consideration serve to provide a place where visitors can engage in the consumption of liquor in a regulated environment, rather than the alternative of hosting private parties in private holiday residences and causing disturbance in those locations.

113. While the Authority accepts that there may be problems arising from disturbance from the conduct of private parties in a town like Byron Bay, what is not clear is the extent to which retaining the three late trading hours at issue on a Monday morning will serve to *divert* what would otherwise be a problem of people choosing to host private parties in holiday accommodation. By contrast, there is a good deal of material before the

Authority demonstrating the types of alcohol related anti social conduct that patrons of the Premises are engaging in on the streets of Byron Bay.

114. The Authority considers that it is in the public interest to minimise harm and disturbance arising from the alcohol related misconduct committed by patrons or intoxicated persons seeking access to the Premises, in an area of the CBD that is demonstrably over exposed to alcohol related anti social behaviour, than attempt to address a broader social problem attributable to the abuse of *packaged\_liquor* in other parts of Byron Bay that may well be a problem regardless of the current extensive availability of licensed venues with late trading hours.

115. As demonstrated by the COPS Events that have been found to be relevant and applicable by the Authority, a late trading licensed business has the enhanced capacity to generate or attract patrons who engage in alcohol related violence, disorderly conduct or other serious anti -social conduct in Byron Bay, such as drink driving.

116. Notwithstanding the measures in place by which this venue supervises and controls patrons while they are on the Premises or in its immediate vicinity, patrons consuming alcohol at this or any licensed venue for extended periods of time are more likely to require removal for being intoxicated or quarrelsome and more likely to engage in a range of unruly conduct in the neighbourhood that causes disturbance that detracts from residential amenity or requires the intervention of Police. That is not in the public interest.

117. Notwithstanding the many patrons that the Business Owner estimates that it has successfully accommodated during the Relevant Period, the nature and number of the COPS Events that the Authority has found to be attributable to the exercise of the ETA satisfy it that it is in the public interest for the licensed trading hours of this venue to be varied so that the Premises may only serve or supply alcohol until midnight on a Sunday evening. This decision will enable the Premises to retain some measure of late trading on Sundays, while reducing the capacity of the Premises to attract a problematic minority of patrons who cannot conduct themselves in an orderly manner in the Byron Bay CBD, or who cannot resist the temptation to drink and drive during the early hours of Monday morning.

118. In making this decision the Authority has had regard to all of the objects and statutory considerations prescribed by section 3 of the Act, and has given weight to section 3(2)(a) of the Act, the need to minimise harm associated with the misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour), and

section 3(2) of the Act, the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of the community.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Chris Sidoti', with a horizontal line extending to the right.

Chris Sidoti

**Chairperson**

On behalf of the Independent Liquor and Gaming Authority