

Our Ref: L 192
Your Ref:

| | | |
|---|--|---|
| <p>Mr Micah Jenkins Harris Wheeler Level 3 175 Scott Street NEWCASTLE 2300 <i>via email</i> <i>Micah.jenkins@harriswheeler.com.au</i></p> | <p>Mr Paul O'Sullivan O'Sullivan Saddington Level 4 23 Watt Street NEWCASTLE 2300 <i>Via email</i> <i>paul@ossad.com.au</i></p> | <p>The Resident Complainant c/o Mr Tony Brown <i>via email</i> <i>abr09112@bigpond.net.au</i></p> |
| <p>Mr Max Mitchell Local Area Commander NSW Police 30 Harriet Street WARATAH 2298 <i>via email</i> <i>mitc1max@police.nsw.gov.au</i></p> | <p>Mr Rod Slater Slater and Elias Level 4 99 Elizabeth Street SYDNEY 2000 <i>via email</i> <i>Rod.slater@slaterandelias.com.au</i></p> | |

20 August 2010

Dear Sir/Madam

**Final Decision on Applications for Review under section 153 of the *Liquor Act 2007*
Disturbance Complaint regarding numerous licensed premises in Hamilton, NSW**

BACKGROUND

1. I refer to the applications for review ("**Applications**") under section 153 of the *Liquor Act 2007* ("**Act**") regarding a decision made on 2 December 2009 and varied in minor respects on 16 December 2009 ("the **Decision**") under section 81 of the Act by a delegate of the Director-General of Communities NSW ("**Delegate**").
2. The Decision followed a conference that was convened by the Delegate over two days on 2 July and 12 August 2009 ("the **Conference**") and that involved, *inter alia*, the participation of legal representatives for the Northern Star, Gateway and Hamilton Station Hotels (collectively "the **NGH Hotels**"); legal representatives for the Kent and Beaumont Exchange Hotels (collectively "the **Kent/Beaumont Hotels**"); and legal representatives for the Sydney Junction Hotel.
3. The Conference was convened in response to a disturbance complaint filed under section 79 of the Act with the Office of Liquor Gaming and Racing ("**OLGR**") by a local resident of Hamilton ("the **Resident Complainant**") and a separate complaint filed by the Newcastle Local Area Commander of the NSW Police Force (the "**Police Complainant**"). Both

complaints alleged that the quiet and good order of the neighbourhood of numerous licensed premises located within the Newcastle suburb of Hamilton was being unduly disturbed. Representatives of both complainants also participated in the Conference.

4. In his Decision, the Delegate determined to impose twelve (12) new conditions (**Delegate's Conditions "a" to "l"**) upon the liquor licenses of the six hotels identified in paragraph 2 above (the "**Affected Hotels**"). A copy of the Delegate's Conditions, as amended by the Delegate on 16 December 2009 (bearing the Delegate's mark up) is attached to this decision letter.
5. Applications for review of the Decision were filed with the Authority by the Resident Complainant on 18 December 2009; by the Kent Hotel on 21 December 2009 and by each of the NGH Hotels on 22 December 2009. An Application was also filed by the Sydney Junction Hotel on 22 December 2009 but then promptly withdrawn by lawyers for that hotel, upon the proviso that the Authority would consult with the licensee as an interested party to the review.

SUMMARY OF DETERMINATION

The Authority has decided to **vary** in part, **confirm** in part, and **revoke** in part the Decision under review, and impose the following 11 conditions ("**Authority Conditions**") upon each of the licences of the Affected Hotels. The Authority Conditions will commence effect from Friday 27 August 2010 unless specified to the contrary:

Plan of Management

1. The licensee will develop and maintain a Plan of Management (Plan) for the licensed premises, the contents of which must be settled by the licensee with due regard to and following reasonable consultation with the Local Area Commander of NSW Police. A copy of the Plan must be lodged with the Director of Compliance, Office of Liquor, Gaming and Racing within 3 months of the date of this decision and within 14 days of any amendment to the Plan.

Compliance Audit

2. The licensee will ensure that at least every 6 months an audit of the licensed premises for compliance with the Plan of Management is carried out by a suitably qualified person who is not employed or in any ongoing financial arrangement with the licensed premises so as to ensure continuous compliance with the Plan of Management.

RSA Monitor

3. On Friday and Saturday evenings from 11.00 pm until closure the licensee will retain an employee or contractor whose sole function shall be to supervise and monitor responsible service of alcohol practices at the bar and to observe the responsible consumption of alcohol throughout the licensed premises.

Restricted service of alcohol from 10 pm

4. On Friday and Saturday evenings the following drinks must not be sold or supplied on the licensed premises during the restricted service period;
 - i. any drink (commonly referred to as a "shot") that contains no more than 30ml of spirits or liqueur and that is designed to be consumed rapidly,
 - ii. any drink containing more than 50% spirits or liqueur,

- iii. any ready to drink beverage with an alcohol by volume content of more than 5%,
- iv. any drink prepared on the premises that contains more than one 30ml nip of spirits or liqueur.

During the restricted service period, no more than;

- i. 4 alcoholic drinks (whether or not of the same kind), or
- ii. the contents of one bottle of wine,

may be sold or supplied on the licensed premises to the same person at any time.

In this clause:

ready to drink beverage means an alcoholic mixed beverage that is prepared by the manufacturer;

restricted service period in relation to the licensed premises, means the period between 10.00 pm and such later time (if any) at which the licensed premises are required to cease trading.

Orderly Precinct Strategy Requirements

5. The licensee is to implement the following "Orderly Precinct Strategy" requirements:

i. The licensee shall provide a monthly report to the local Liquor Accord Co-ordinator with details of each incident involving any persons who have been excluded from entry by reason of their having been identified by the licensee's staff as having engaged in the conduct described in subclause ii below.

ii. A person shall not be permitted entry to the licensed premises if it is known or should be reasonably apparent to staff or security contractors who are tasked with supervising entry to the premises that the person:

(a) has at any time during the previous 6 hours unlawfully consumed alcohol in a public place.

(b) has at any time during the previous 6 hours exhibited anti-social or aggressive behaviour in the vicinity of that premises, at any of the Affected Hotels, or any other place within the Hamilton central business district.

(c) has at any time during the previous 6 hours been argumentative, disorderly or abusive to the staff or patrons of that premises.

iii. If it becomes known or should be reasonably apparent to any of the licensee's staff or security contractors that any such person described in sub condition (ii) above has otherwise gained entry to the premises, the licensee's staff or security contractors shall take prompt and reasonable steps to remove that person from the premises.

iv. The licensee shall, following consultation with Police and within one month of the commencement of this condition, develop and display a sign on the exterior of the premises advising patrons of the circumstances in which they will be refused entry and the times when a lockout is in effect.

v. Free water stations shall be placed on every bar within the licensed premises.

vi. On Friday and Saturday evenings no liquor is to be taken off or carried away from the licensed premises after 10 pm.

vii. Signs must be prominently displayed in every bar area of the licensed premises, in lettering not less than 50 mm in height, advising patrons of the need to reduce noise and impact upon the local neighbourhood.

No stockpiling of drinks

6. The licensee shall ensure, by adequate supervision methods throughout the licensed premises, that no patron is stockpiling drinks. "Stockpiling" means that any one person has more than 2 unconsumed drinks at any one time (a patron may purchase up to 4 drinks at one time).

1 am Lockout on Saturday and Sunday

7. The licensee shall implement a lockout on Saturday and Sunday mornings as follows:

(i) The licensee must not permit patrons to enter the licensed premises after 1.00 am or before 5 am (the lockout period).

(ii) For the avoidance of doubt, patrons already present in the licensed premises before the start of the lockout period may;

(a) leave the licensed premises at any time, or

(b) remain on the licensed premises while the licensed premises are authorised to trade,

but are not permitted to re-enter the licensed premises during the lockout period.

Pre-closure procedures

8. On Friday and Saturday evenings the Licensee must conduct the following pre-closure procedures 30 minutes prior to closure:

(i) Sale and supply of alcohol must cease, and water and food continue to be served or made available.

(ii) Live entertainment must cease, and music, if any, must be limited to background levels and must not be audible outside the venue.

(iii) Lighting must be set at levels to indicate that the venue is in a staged close down procedure.

(iv) Announcements must be made within the licensed premises to advise patrons of: the need to respect neighbours by departing the area quickly and quietly, the availability of free water, transportation options, the presence of CCTV monitoring and that any anti social behaviour will be reported to police. These announcements must be made at 15 minute intervals until the last person has left the licensed premises.

Rubbish collection

9. During the period between one hour after closure and 7 am, the licensee shall arrange for one (1) rubbish collection to take place with a view to ensuring that all bottles and other drink containers are collected from the immediate environs of the licensed premises, including the adjoining footpath, gutters and roads up to a distance of 10 metres in every direction from the perimeter of the licensed premises.

Dispersal of patrons

10. On Friday and Saturday evenings, security officers must make reasonable efforts after midnight to encourage patrons not to linger within the perimeter of the licensed premises as they depart and to ensure that all patrons have left the environs of the licensed premises 30 minutes after closure. This obligation does not apply with regard to any person who seeks the assistance of hotel staff or security contractors by reason that they fear harassment or violence and/or any person who is participating in the operation of a secured taxi rank.

Information to staff

11. Within 14 days after the commencement of these conditions (or upon their engagement, whichever is the latter), the licensees must ensure that every member of staff and any security contractor is notified in writing of the conditions disclosed in this letter; the need to apply responsible service of alcohol practices at the licensed premises; details of available transport; the location of the 50 metre vicinity that applies to any excluded persons; and the location of any Alcohol Free Zones in Hamilton.

COMMENT

6. The two complaints were filed under section 79 (1) of the Act, which states:

- 79** (1) A person may complain to the Director-General that the quiet and good order of the neighbourhood of licensed premises are being unduly disturbed because of:
- (a) the manner in which the business of the licensed premises is conducted, or
 - (b) the behaviour of persons after they leave the licensed premises (including, but not limited to, the incidence of anti-social behaviour or alcohol-related violence).

The Police Complaint

7. The Police Complaint was filed with OLGR on 25 May 2009. In the cover submission, Police make a number of contentions that may be summarised as follows:

- (i) The Hamilton CBD has consistently suffered from high levels of alcohol related crime and antisocial behaviour for well over 5 years.
- (ii) Incidents of alcohol related assaults continue to be among the highest in the State, particularly on Friday, Saturday and Sunday.
- (iii) Levels of these assaults have remained high and can be largely attributed to an unacceptably high level of intoxication both on and outside licensed premises.
- (iv) Between March 2008 and 25 May 2009 Police have spent \$110, 000 on "Operation Viking" which includes bringing additional Police in from other commands, impacting upon the ability to police those other commands.
- (v) Police Command has lobbied for improvements to transport, including buses and trains and more secure taxi ranks for the Hamilton Entertainment Precinct ("HEP").
- (vi) Police have lobbied for improved CCTV in public places and the availability of toilet facilities.
- (vii) Police have supported voluntary initiatives such as the Hamilton Liquor Accord.

(viii) Many of the alcohol related incidents and much anti-social behaviour result from the migration of patrons between licensed premises, as the main street of Hamilton (Beaumont Street) contains some five hotels located within a distance of one kilometre.

(ix) Computerised Operational Policing System (“COPS”) data, recording where persons involved in local crime have had their last drink, indicate that 53% of all persons involved in an assault as either an offender or victim have consumed alcohol. This is above the State average of 46.4% and the Northern Region average of 50.9%.

(x) Of the persons who had consumed alcohol before coming into contact with Police, 73% were recorded as moderately affected or above by alcohol. Of those persons, 40% had consumed their last drink at licensed premises.

(xi) Police argue that the "rights of the majority of the community must prevail", in that there is a community expectation that people may walk the streets safely and not be exposed to unruly behaviour. There is also an expectation that people may feel safe in their homes.

(xii) The Hamilton CBD does not provide this, due to high levels of intoxication, resulting in violence and other unruly behaviour.

(xiii) There is a need to address this issue by licensed premises ceasing trading at 3 am and restricting entry from 1 am.

(xiv) The Hamilton area needs the opportunity to “clean up” before the commencement of daytime trade by other businesses.

(xv) Police propose that the following conditions be imposed upon the licences of the six hotels that are named in the Police Complaint (being the Affected Hotels):

“1. That the licensee develop and maintain a plan of management, the contents of which must be settled in conjunction with the police. A copy of the plan of management must be lodged with the Director of Liquor and Gaming within six weeks.

2. The licensee shall ensure that at least every 3 months a compliance audit of the premises is carried out by a person who is not employed or in an ongoing financial arrangement with the hotel so as to ensure continuous compliance with the Plan of Management.

3. That from 11.00 pm until closure (when the premises trades past midnight) the licensee will retain an employee whose sole function shall be that of a supervisor of responsible service of alcohol practices at the bar and to observe the responsible consumption of alcohol throughout the premises.

4. That the following restrictions and conditions will apply upon the sale of alcohol after 10.00 pm:

- a. No shots
- b. No mixed drinks with more than 30mls of alcohol
- c. No RTD drinks with an alcohol by volume greater than 5%
- d. Not more than 4 drinks may be served to any patron at the one time,
- e. That free water stations be placed on every bar.

5. That the sale and supply of alcohol shall cease 30 minutes prior to closing time.

6. That the licensee shall ensure, by adequate supervision methods throughout the premises, that no patron is stockpiling drinks. For this purpose stockpiling shall mean that any one

patron has more than 2 unconsumed drinks at any one time (a patron may purchase up to 4 drinks at the one time).

7. That within 14 days the licensee shall cause every member of staff to be notified in writing of these conditions and to be advised of the need to apply responsible service of alcohol practices.

8. That within a period of 3 months the licensee shall have, whether under the provisions of a uniform Plan of Management or otherwise, entered into an agreement with each of the other licensees the subject of the imposition of these conditions an arrangement for the sharing of a radio network to be used by management and security for the purposes of communicating with each of the other premises.

9. That no persons be admitted entry to the licensed premises after a 1 am.

10. That the licensed premises cease trade at 3 am."

(xvi) Police submit that their proposed conditions are "similar to" those conditions that were imposed upon licensees in the Newcastle central business district ("Newcastle **CBD**") by the former Liquor Administration Board ("**LAB**") during March 2008.

(xvii) Police submit that the Newcastle CBD has seen a dramatic decrease in the number of alcohol related assaults since the LAB decision was imposed.

(xviii) Police note that the Newcastle City Liquor Accord has adopted a number of further strategies to reduce the practice of street drinking and alcohol related crime. Police request that similar conditions be imposed in Hamilton along the lines of those initiatives.

8. Police submit material in support of their contentions, including a bundle of one-paragraph summaries of many COPS Reports recording attendances at various incidents that have been linked by Police to each of the Affected Hotels. Police also submit graphs illustrating Police data on assaults within Hamilton during the period from 20 March 2008 to 20 March 2009 occurring on Friday and Saturday evenings from 10 pm to 6 am and assaults within Newcastle during the same period and times, plus a further document detailing alleged offences that have been committed against liquor and gaming legislation by the licensees of Affected Hotels.

The Resident Complaint

9. The Resident Complainant has lived at her home located in a street that runs off Beaumont Street since February 1986. She filed two complaints with OLGR dated 26 February 2009 and 2 March 2009 respectively. An overview of the Resident Complainant's case is provided in a document entitled "Hamilton Area Complaints". This document describes the Resident Complainant having canvassed an undisclosed number of local residents as to whether they had any problems with people under the influence of alcohol or issues with late night trading.

10. The Resident Complainant reports, in general terms, that:

- most people would like the hotels closed at midnight
- some people canvassed had made adjustments to their homes due to people walking into yards, including security lights, taller fences and locking their gates
- a number of people complained to the Resident Complainant of people dumping bottles into their yards

- complaints were made to the Resident Complainant about vomiting on the footpath and into yards
- complaints were made to the Resident Complainant about people laying on the roads and gutters
- some people informed the Resident Complainant that they simply "turned the television up louder" in response to disturbances.

11. The Resident Complainant submits that the following issues need to be addressed:

- noise
- disturbance
- damage to private property
- trees pulled out or broken
- verbal abuse
- urinating into gardens, front yards and footpaths
- rubbish, glass and bottles deposited in yards and on the footpath
- general disturbance to the area in the early hours of the morning.

12. The Resident Complainant describes the following specific instances of disturbance that she believes, but cannot confirm, were caused by persons walking through the neighbourhood after patronising the late trading hotels:

- mirrors were broken on her car on 20 February 2008
- her trailer was found dumped two blocks away on 23 February 2008
- glass was smashed on the nearby street on 29 November 2008
- an "Energy Australia" street sign was removed and put on her car bonnet on 9 February 2009.

13. The Resident Complainant encloses with her Complaint a copy of an email that was sent by her to the Newcastle City Council on 29 November 2008 reporting smashed glass on the street near her home, noting that this is a risk to her grandchild. The email calls upon the Council to designate an Alcohol Free Zone from "at least Beaumont Street down Lindsay Street".

14. On a standard OLGR Complaint Form dated 26 February 2009 signed by the Resident Complainant, she writes that the quiet and good order of the neighbourhood of "Hotels within Hamilton Area Ncle NSW" is being unduly disturbed. The Resident Complainant cites:

- bad language - yelling fighting between each other
- damage being caused
- getting awoken at 3-4 am
- people urinating into garden and trees on footpath
- banging car doors in the early hours of the morning
- people entering premises - ringing door bell in the early hours of the morning.

15. The Resident Complainant states that she has installed "security screens and doors" including a "6ft high locking fence" at her home in response to these incidents. The Resident Complainant states that she seeks the following outcomes from the complaint process:

- respectable hours - responsible drinking
- Alcohol Free Zone within 1 km (from the Hamilton Hotels)

- a quicker response from the authorities.

16. The Resident Complaint includes, for the purposes of section 79 (3) of the Act, Authorisation Forms completed by several local residents and the Resident Complainant herself, all of whom reside within Hamilton. These documents state, with varying degrees of specificity, the individual licensed premises to which their complaints relate.

17. An Authorisation Form completed by the Resident Complainant that accompanied the complaint dated 26 February 2009 refers to:

"SJ Hotel, Hamilton Station, Kent Hotel, Northern Star Hotel, Exchange Hotel, Hamilton Hotel in Hamilton Area".

18. Authorisation Forms completed by other authorising residents variously specify:

"SJs, Hamilton Station Hotel, Kent Hotel, Northern Star Hotel, Exchange Hotel, Hamilton Hotel in Hamilton Area"; "Hotels within the Hamilton Area"; "Hamilton area and hotels within"; "Hamilton Hotels Area, Kent, SJs, Hamilton Station, Northern Star, Hamilton Hotels"; "Hamilton Hotel Area - Kent, SJs, Hamilton Station, Northern Star, Hamilton Hotel (All extended hour hotels)"; and "Hamilton Hotels Area, Kent, SJs, Hamilton Station, Northern Star, Hamilton Hotels (Extended Hours Hotel)".

19. The Resident Complainant's second Complaint Form dated 2 March 2009 is cast in wider, yet still general terms. The Resident Complaint here states that "Extended late trading Hotels in Hamilton & Newcastle CBD" are causing an undue disturbance to the neighbourhood and that the following outcomes are sought:

- closing of Hotels at 1am
- no glass of any kind after 10 pm every day
- Alcohol Free Zones within 1km of the Hotels
- quicker response from the authorities
- responsible drinking, respect to neighbourhood.

20. This Complaint Form is also accompanied by further Authorisation Forms completed by local residents of Hamilton and the Resident Complainant herself. These Authorisation Forms variously describe the relevant premises and neighbourhood that is subject to disturbance in the following terms:

"Hotels with late trading within the Hamilton Area and Newcastle CBD"; "All extended trading hotels in Hamilton Area and Newcastle CBD as patrons migrate between the 2 areas creating a disturbance" and "All extended trading hotels in Hamilton Area and Newcastle CBD areas as patrons migrate between the 2 areas creating disturbance."

The Delegate's Conference - day one

21. The Conference was split over two days as a result of orders obtained by the licensee of the Beaumont Exchange Hotel from the Supreme Court of New South Wales in the matter of *Smith v Director General of Communities NSW* [2009] NSWCS 1236 where it was held that the hotels named in this disturbance complaint were entitled, as a matter of procedural fairness, to access and have a reasonable opportunity to respond to the source data (primarily COPS Reports) upon which the Police Complaint was based. (The initiating Police Complaint had provided only one paragraph summaries of each incident and not the full text of the COPS Reports for the various events reported to have occurred at or linked to the Affected Hotels).

22. The first day of the Conference on 2 July 2009 was primarily concerned with submissions made by the two Complainants. Mr Phillip Boulten, Senior Counsel for the Resident Complainant, noted from the outset that his client had not received a copy of the Police Complaint, nor any of the material relied upon by Police in support of that complaint. He submitted that it was a fundamental breach of due process for all parties to the Conference other than the Resident Complainant to enjoy access to that material. Mr Boulten noted that OLGR had previously pressed the Resident Complainant to particularise those venues from which the problems she describes had emanated, yet it was physically impossible for her to see from which venues persons causing these disturbance had departed.
23. Mr Boulten observed that as a result of the Supreme Court's decision in *Smith*, OLGR had gone to great efforts to accord procedural fairness to the hoteliers, yet the Resident Complainant did not enjoy access to the "foundational" material upon which the Police Complaint relies. Mr Boulten pressed the Delegate for access to that material.
24. The Delegate responded that OLGR had received two separate complaints, and although they were being heard together and concerned similar licensed premises, there was no provision in the legislation for the Delegate to provide a copy of the Police Complaint to the Resident Complainant.
25. Mr Boulten responded that the Act envisages that a Conference may be convened with multiple complainants and that it was not possible for the Delegate to "unscramble the egg of material" presented at the Conference to "quarantine" the Resident Complainant's information from the Police information. He contended that the Resident Complainant would be unable to respond to issues raised in the Conference without access to the Police information. Mr Boulten submitted that the Act does not prevent release of the Police material to the Resident Complainant and that the doctrine of procedural fairness requires it.
26. The Delegate decided that the Resident Complainant's case should stand on its merits, without adoption of the Police case, and that if her complaint fails for want of evidence, then that is an issue for the Resident Complaint.
27. Counsel for the Kent/Beaumont Hotels, Mr Tony Hatzis, intervened at this point and confirmed with the Delegate his understanding that an OLGR Inspector's Report dated 12 June 2009 had been previously provided by OLGR to the hotels, but this report would now "not be read" by the Delegate. Rather, OLGR had arranged for a new Inspector's Report to be prepared for the Delegate's consideration and this new report would be released to the hotels for their consideration on 9 August 2009.
28. The Police Complainant, Superintendent Max Mitchell, then took the Conference through the Police Complaint. In summary, his key points were:
- (i) The Police Complaint primarily focuses upon Friday and Saturday nights in Hamilton between the hours of 10 pm and 6 am and over a period from about 1 January 2008 to the end of June 2009.
 - (ii) There were 43 assaults and 91% of those assaults were alcohol related. 27 occurred in outdoor public places, 9 occurred within licensed premises and 4 occurred within residential premises.
 - (iii) In 2007, there were 69 recorded assaults in Hamilton.

(iv) Police mapping illustrates the location of incidents involving assaults, street offences, intoxicated persons or resisting arrest/assaulting Police in relation to the strip of licensed premises that runs along Beaumont Street to the Gateway Hotel in North Hamilton.

(v) Police note that they have included incidents of domestic violence in these figures, by reason that the Newcastle City LAC is "ranked number 4 in New South Wales for domestic violence assaults". When attending these incidents, Police record where a relevant individual has had their last drink.

(vi) Police note that their classification of assault events is derived from the *Crimes Act 1900*, whereby two or more individuals are involved in "some form of altercation", whether physical or verbal.

(vii) Police draw the Delegate's attention to those considerations that the Delegate must consider when making a determination under the Act. He notes subsection 3 (2) (a) of the Act:

"the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour)"

and subsection 3 (2) (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."

(viii) One of the main issues arising from Police involvement in the drafting of the New South Wales *State Plan* was the reduction of alcohol-related crime in the community. (The Authority notes that one objective that is stated in Chapter 7 of the *2010 State Plan* is "to reduce alcohol-related crime, including assaults, through high visibility policing and the use of new powers to impose conditions on licensed premises which continue to have high rates of assault").

(ix) The Hamilton Liquor Accord has seen late night traders adopt some voluntary measures that are similar to conditions that were imposed by the LAB upon Newcastle CBD premises, but these voluntary measures "have had little impact in reducing anti social behaviour in Hamilton".

(x) During April 2009 Police notified the Hamilton Liquor Accord that premises were the subject of a section 79 complaint that had been brought by Local Residents and Police. Police suggested to those venues that they adopt a number of further strategies similar to those that were imposed by the LAB upon late trading venues in the Newcastle CBD, but "no progress was made" with regard to this request.

(xi) Police crime statistics indicate that from 20 March 2008 to 20 March 2009, Hamilton has seen a "19 per cent increase" on the previous year in assaults, while the Newcastle CBD reported a 41 per cent decrease for the same periods.

(xii) From 1 January 2009 to 24 May 2009, Newcastle and Newcastle West experienced a "29 per cent decrease" on the previous year in reported assaults when there was a "39 per cent" increase in assaults for Hamilton for the same periods.

(xiii) Superintendent Mitchell advised the Conference that, in response to the levels of violence and anti social behaviour over the six months preceding the Conference, Police have "additionally resourced the Hamilton and Newcastle CBDs with 48 plan and task

operations". He advises that "307" officers have been rostered with "767" individual hours worked in the performance of high visibility policing, at a cost of "\$30,000". Superintendent Mitchell argues that:

"the taxpayers of our community and the State continue to be paying for police resources to be deployed to an area where we have and are fighting against the increased number of assaults and anti social behaviour because of alcohol intoxication".

(xiv) Police perform business inspections at licensed premises in groups of four or six, to avoid Police being approached and assaulted, which is what happens if Police conduct inspections in pairs.

(xv) Superintendent Mitchell advised the Conference that there had been recent breaches of the Act committed by the licensees of some of the Affected Hotels, including two offences committed on 31 January 2009 by the licensee of the Beaumont Exchange Hotel; three further offences committed on 1 February, 21 March and 28 March 2009 by the licensee of the Beaumont Exchange Hotel; two offences committed on 29 March 2009 by the licensee of the Kent Hotel; two offences committed on 28 February 2009 and 3 April 2009 by the licensee of the Sydney Junction Hotel and one offence committed by the licensee of the Hamilton Station Hotel on 28 September 2008.

(xvi) Police see "no issue" with bus, rail or taxi services being adversely affected by any changes to venue closing times.

(xvii) Police note that only one of the three taxi ranks in Hamilton is a secure rank. The availability of bus and rail services in Hamilton is "not a significant issue".

(xviii) Police have looked at the issue of the migration of patrons to the Hamilton venues from the Newcastle Jockey Club ("NJC"), the Energy Australia stadium and other surrounding areas. Police advise that "they do not impact significantly upon the Hamilton area."

(xix) Police have conducted overt and covert surveillance of the NJC and are "very, very satisfied with the work the NJC does in the community" and note some measures undertaken by that venue with regard to restricting alcohol sales, security and patron behaviour.

(xx) Superintendent Mitchell contends that:

"the underlying issue toward the anti social behaviour and alcohol-related crime in the area has been and continues to be excessive levels of intoxication. This is exacerbated by the extended trading hours of licensed premises, and the irresponsible practices that some premises use."

(xxi) In response to the assertion that Police are not working with licensees, he contends that licensees "have the power to directly impact upon patron behaviour before it deteriorates and have chosen not to."

(xxii) Superintendent Mitchell concludes with the comment that: "the fear associated with violence and anti social behaviour is unacceptable". He argues that there must be a shift in regulatory approach:

"from treating the problem to treating the cause of the problem – from being reactive to proactive to the high levels of intoxication resulting in violence and

unruly antisocial behaviour. In an effort to reduce this violence, there is a need to address the cause by imposing strict trading restrictions such as ceasing trading at 3 am and restricting entry to premises at 1 am. And obviously, the conditions that I have sought from the Director are outlined within our initial submission.”

29. Following the Police presentation, the Delegate confirmed that Police shall provide all the COPS Reports upon which the Police case is based to the respondent hotels over the following few days. The Delegate requested that both complainants ensure that their complaints were furnished to Newcastle City Council ("the **Council**") prior to the second date of the Conference, to enable the Council to comment upon that material.

30. Mr Hatzis then provided a preliminary response to the Complaints for the Kent/Beaumont Hotels. The key points of his address were:

(i) While Police are painting a picture of assaults in Hamilton going up, and assaults in the Newcastle CBD going down, when one examines the source information upon which the Police case is based, in two cases Police themselves do not believe an allegation of assault and mark an incident as “doubtful”. In one further case police record they do not believe the allegation but record the matter as an assault. These incidents underline the importance of “combing through” the COPS Reports to “see what is truly and properly regarded as anti social behaviour or assault and what is not.”

(ii) Mr Hatzis denied, on behalf of the Beaumont Exchange Hotel, the incident reported to the Conference by Superintendent Mitchell regarding the bullying of an off duty police officer from another command on 7 June 2009, while he attempted to gain entry to the venue and was accused of being "intoxicated" by security staff. Mr Hatzis submits that both his clients, the Kent/Beaumont Hotels, “make no apologies for rigorously enforcing responsible service of alcohol. If signs of intoxication or possible intoxication are identified, people are challenged, people are engaged, and people, if they show such signs, are asked to leave.”

(iii) The Kent/Beaumont Hotels “welcome” the level of Police operations in Hamilton licensed premises and on the street and the “visibility and deterrence that it presents”. His clients cannot possibly detect small quantities of drugs on the person of patrons, but rely upon Police to use their powers to do so.

(iv) On the alleged commission of two licensing offences by the licensee of the Kent Hotel, these matters are before the Courts and have been vigorously defended. The Delegate should give “no weight” to these matters.

(v) On the alleged commission of five licensing offences by the Licensee of the Beaumont Exchange Hotel, Mr Hatzis comments that two incidents occurred in January 2009 and no charges have been laid with respect to those alleged breaches of the Act. The other three matters are being defended before the Courts. He submits that no inference should be drawn against his clients for those matters.

(vi) The Beaumont Exchange Hotel is subject to “fairly intense scrutiny”. Its records show that there have been 350 police walk throughs over the 15 months period for which the Police data applies, yet there have been only a relatively small number of offences. Mr Hatzis foreshadowed making further submissions once his clients had the opportunity to consider the full text of the COPS reports to be provided by Police.

31. Following Mr Hatzis' initial comments, Mr Paul O’Sullivan, Solicitor for the NGH Hotels, asked Superintendent Mitchell and Mr Boulten directly whether they would press any

complaint against another of his clients, the Hamilton Hotel (not to be confused with the Hamilton Station Hotel) given that the Police case does not disclose that the licensee of the Hamilton Hotel had committed any offences and there were no assaults linked by Police to this venue.

32. Superintendent Mitchell reserved his view and stated that the Delegate was entitled to consider those matters. Mr Boulten advised the Conference that the Resident Complainant has "got not much concern at all about the Hamilton Hotel".
33. Mr Boulten then went on to observe that the evidence shows that there is significant migration between hotels in Hamilton and that if, as a neighbourhood, one splits up major licensed premises and excludes some from the considerations of the Conference, then common sense dictates that if the Delegate imposes conditions on three, four or five of the hotels and they are caused to close early, the remaining hotels that have late closing hours will become the attraction to all of the patrons who are currently spread out amongst the eight, nine or ten hotels.
34. Upon questioning by the Delegate, Mr O'Sullivan advised that while the Hamilton Hotel was licensed to trade until 2.30 am, it rarely does so, in most instances closing at midnight. Mr O'Sullivan submitted that there was no Police case against this hotel and further noted the Resident Complainant's comments about having not much concern about this hotel. The Delegate thereupon determined, in response to a direct application by Mr O'Sullivan, that the Hamilton Hotel shall be "excluded" from the Conference.
35. Mr Boulten asked Superintendent Mitchell whether Police had any objection to the provision of a copy of the Police Complainant to the Resident Complainant. The Superintendent advised the Conference that he did not, but this was a matter for the Delegate. The Delegate reiterated his view that each complaint should stand on its merits and that it was not open to the Resident Complainant to say now that "Police have provided evidence for me to support my complaint."
36. Mr Boulten concluded the first day of the Conference by once again pressing the Delegate, without success, for access to the Police material and any response made by the Affected Hotels to that material, arguing that section 80 of the Act and the general law doctrine of procedural fairness require this.

The Delegate's Conference - day two

37. On 12 August 2009 the Conference re-convened and Mr Boulten referred to his client's written request to the Delegate dated 20 July 2009 that the Conference be extended to include the Wickham Park Hotel, Hamilton RSL Club, Gallipoli Legion Club and the NJC (the "**Four Additional Premises**") by reason that those premises contribute to the problems of the Hamilton area.
38. Mr Boulten also attempted to tender an earlier version of the OLGR Inspector's Report dated 10 June 2009, together with the material supporting the recommendations in that report, including a DVD, photographs, OLGR license history records and Venue Compliance records maintained by OLGR's enforcement section.
39. The Delegate re-iterated his advice that he would not read this version of the OLGR HEP Report and that a new report was being prepared by OLGR inspectors for distribution among the parties. The Delegate explained that he was taking this course by reason that the 10 June 2009 version "contained conclusions and recommendations which I wasn't willing to accept, and I was more interested in a factual report from our inspectors."

40. Mr Boulten returned to the issue of access to the Police Complaint, submitting that as a matter of "fundamental fairness" the Resident Complainant should receive a copy of that material, and this issue was highlighted by the service upon the Resident Complainant of further written submissions from the respondent hotels. Those submissions analyse and criticise the Police material and also make submissions in response to the Resident Complainant's complaint, by reference to matters arising from the Police material.
41. Mr Boulten further observed that submissions had apparently been made by some of the responded hotels requesting that the Delegate disqualify himself from the Conference on the ground of apprehended bias. He submitted that the Resident Complainant was entitled to see those submissions, given that the continuation of the Conference is a matter that directly impacts upon her.
42. The Delegate informed the Conference that an application had been made to him regarding his role and power to continue the Conference. The Delegate noted that his power to continue the Conference arises from a delegation signed by the Director-General on 29 July 2009 as clarified by section 30 of the *Interpretation Act 1987*. Prior to that date he was acting pursuant to an earlier delegation issued by the former Director of Liquor and Gaming.
43. The Delegate ruled that he was not satisfied that there was any issue of apprehended bias arising from the nature of his office. He was now acting as a delegate of the Director-General, who, as a consequence of the *Public Sector Employment and Management (Departmental Amalgamation) Order 2009* was now conferred with the relevant decision making power under the Act.
44. Mr Boulten tendered information that his client had extracted material from the latest (July 2009) OLGR Report on the Hamilton Entertainment Precinct ("**HEP Report**") in addition to certain news reports from the *Sydney Morning Herald* website about police linking data for licensed premises for the period from August 2007 to July 2008.
45. Mr Boulten enquired whether there had been any recent OLGR inspections of the respondent hotels and, if so, the outcome. In response to this enquiry, a Manager of OLGR's enforcement section, Mr Peter Freeman, informed the Conference that since February 2008 his office had conducted more than 40 on-site audits and had written up over 120 covert and overt hours of inspection of the late trading premises and this formed the basis of the new OLGR HEP Report dated 8 July 2009. OLGR continued to monitor patron behaviour and intoxication in Hamilton and this "remained consistent" with the observations made by OLGR prior to the July report. Mr Freeman states that the views expressed in his report of July 2009 are in line with the current late night trading situation in Hamilton.
46. Mr Hatzis then commenced his substantive submissions to the Conference on behalf of the Kent/Beaumont Hotels. He first sought confirmation of whether any advice had been received by the Delegate from the Newcastle City Council ("**NCC**") as to the facilities available in the Hamilton Area.
47. In response, the Delegate read to the Conference the NCC's written advice to him that the public toilets in Beaumont Street were open from 6 am to 6pm seven days per week. On the issue of whether the NCC had any protocols to enforce Alcohol Free Zones, Council advised the Delegate that there were:

"no existing NCC protocols. NCC is carrying out a review of all Alcohol Free Zones and considering whether it is appropriate for Council officers to enforce the legislation".

48. Council further advised the Delegate that:

"the enforcement of Alcohol Free Zones was a police responsibility up until recent changes in AFZ legislation. As a consequence NCC is carrying out a review of all AFZs and considering whether it is appropriate for council officers to enforce the legislation."

49. On the cost to the NCC of any criminal damage or other property damage in Hamilton per annum, Council advised that:

"we do not break down our figures for property damage either by suburb or by cause of damage. For example, damage by accident or negligence is not differentiated from that which may or may not be caused from anti social behaviour. In addition, figures for repair to council property are not broken down into amounts for each suburb."

50. Mr Hatzis then elaborated upon the Kent/Beaumont Hotels' substantive response that had been outlined in written submissions to the Delegate. He noted that his comments were directed to both the Police Complaint and the Resident Complaint. His key points may be summarised as follows:

(i) One of the objects of the Act is for liquor regulation to be conducted in a way that is consistent with the expectations, needs and aspirations of the community. A petition submitted to the Delegate and arranged by his clients was signed by 2250 persons, 2000 of them being hotel patrons and 250 being residents of Hamilton.

(ii) The community supports the provision of these "important facilities" by the hotels and they oppose the restrictions that are being sought by Police.

(iii) The Delegate must consider the responsible development of the music, entertainment, tourism and hospitality industries. The entertainment precinct provides important employment opportunities for many people in the hotel and entertainment industry.

(iv) The Delegate must consider:

"whether the sale of liquor contributes to the amenity of community life and it's not just people who are asleep in their homes. That's also the amenity afforded to people to be able to engage in social interaction and receive entertainment in their community and that's an important function which these hotels serve".

(v) Use of the expression "undue disturbance" in the Act is important because Parliament recognises that the conduct of any hotel will cause some level of disturbance as people come and go they raise their voices and so on. There will be some level of anti social behaviour. It is only when that becomes "undue" that this is a cause for concern and triggers the Director-General's powers, and only where that is caused either by the conduct of hotels or the conduct of hotel patrons after they leave hotels.

(vi) Some of the matters being raised by Police do not relate either to the conduct of hotels or the conduct of hotel patrons, as has been addressed in Mr Hatzis' written submissions.

(vii) The Delegate's decision must be based upon evidence and the Delegate must take into account the nature of the area, in this case an entertainment precinct of eight hotels, two registered clubs, and a nearby racecourse from which people come to the venues.

(viii) The Kent/Beaumont Hotels are two of the larger hotels among six hotels that participate in the Hamilton Liquor Accord. The Kent Hotel has an entertainment authority from Council to accommodate 447 persons. The Beaumont Exchange Hotel has authority to accommodate 350 people.

(ix) The Kent/Beaumont hotels have established the following voluntary harm minimisation measures, including:

- From November 2008, a 1.30 am lockout on Friday and Saturday nights - being the same commencement time as the compulsory lockout that is in effect in the Newcastle CBD. (Mr Hatzis submits that the 1 am lockout sought by Police may encourage patrons to migrate from Hamilton to the Newcastle CBD venues, so there should be a level playing field.)
- From midnight, for the last three hours of trading, the hotels engage RSA Marshals to monitor the venue and ensure that people do not over consume alcohol.
- From midnight, there are drink restrictions in place regarding the types of drinks available for purchase on premises, plus free water stations.

(x) In August 2008 the hotels wrote to Superintendent Mitchell through the NSW Branch of the Australian Hotels Association proposing a 10 point plan of initiatives and seeking police cooperation and information sharing about people on the streets who might be causing trouble. They received no response to this communication.

(xi) The Kent Hotel makes the following points arising from its examination of the full text of COPS Reports upon which the Police case is based:

- there were 41 assaults in Hamilton, not 43 as contended in the Police statistics
- 4 of the 41 assaults did not take place during 2009 but the preceding year, which means there were 37 assaults during the period that was identified by Police
- 10 of those 37 assaults were "rejected" by Police in that Police themselves do not believe an actual assault occurred in the event reported
- 3 of the assaults are "considered doubtful" by Police
- 4 of the assaults were "domestic matters", one of which involved a husband and wife, neither of whom had visited a hotel
- 2 of the assaults were youth gang assaults that occurred in Gregson Park late at night when a group of eight to ten youths assaulted people passing through that park
- 4 of the assaults involved hotel patrons who were the *victims* of assaults while walking home, when the perpetrator had no connection to the hotel
- 5 of the assaults involved matters that "did not involve any hotel at all"
- 2 of the assaults involve claims that hotel security used excessive force when removing a person from the hotel.
- only 7 matters are "reasonably attributed in fairness" to hotel patrons over a six month period between eight hotels and two registered clubs operating in the entertainment precinct.

51. Mr Hatzis makes the following submissions regarding the Police claim that there were 43 offences on the premises of the Beaumont Exchange Hotel over a 15 month period:

- 14 of those incidents were business inspections, whereby Police walk through the premises and these reports "disclose no offence" yet have been included to exaggerate the Police statistics
- 2 further matters involve no offence
- 1 incident is a "move on" direction whereby someone is asked by Police to move on from outside the Hotel and it is recorded as an event against the hotel
- 1 incident is a noise complaint whereby the Hotel complies with a request to turn down the music
- 7 incidents are stealing offences whereby one patron takes property from another - in circumstances that are "not something attributable to the manner of operation of the premises nor the conduct of persons leaving the premises"
- 4 matters involve offensive language or behaviour by a person who was refused entry to the premises
- 5 incidents involve allegations of intoxication on premises which are "strenuously denied" by the hotel and being defended in the courts. Two have not been prosecuted.
- of the 8 assaults on premises reported by Police over 15 months, six involve allegations of assault made against hotel staff by people asked to leave and who do not comply and one of the remaining assaults involved a female hotel patron who was sought out by her male partner and who assaulted her there, which the hotel asserts has "nothing to do with the operation of the hotel".

This left, it was submitted, "only one assault" occurring by one hotel patron on another over the entire 15 month period.

52. Mr Hatzis makes a number of submissions with regard to the Police claim that there were 19 offences occurring elsewhere in the community but linked to the Beaumont Exchange Hotel. He submits that:

- 4 incidents involve assaults where the only link was that the victim drank at the hotel
- 3 incidents involve "domestic matters"
- 1 incident occurred 60 kilometres away at Metford, near Maitland
- 5 incidents involve people urinating in the streets
- 3 incidents involve malicious damage claims, two of which involved "domestic disputes."

53. With regard to the Kent Hotel, of the 81 offence incidents reported by Police to have occurred on the premises over 15 months, Mr Hatzis submits that:

- "a quarter" of those incidents are business walk throughs, with people being searched by Police with the assistance of drug dogs and nothing found, yet the incident has been recorded against the hotel
- of the 17 assault incidents recorded at the Kent Hotel, 5 reports note that Police do not believe the claim of assault
- 2 of the incidents recorded involve the robbery of hotel patrons in a public park late at night by youth gangs.

54. On the Police claim that rates of assault in the Newcastle Local Government Area are the highest in the State, Mr Hatzis submits that there is "no data" to support this claim. He submits that the Bureau of Crime Statistics and Research ("**BOCSAR**") website records that

the Newcastle LGA ranks 27th of the 141 LGAs throughout the State. On rates of domestic violence, Newcastle LGA ranked 43rd in 2007 and was "outside the top 50" in 2008. For liquor offences, Newcastle LGA ranks 84th, 72nd for offensive language, 21st for malicious damage offences and 38th for offensive conduct.

55. Mr Hatzis submits that street drinking is an issue in Hamilton and this is evident from the OLGR video surveillance material. He submits that Alcohol Free Zones are not being policed by Council and that enforcement is required by both Police and Council. Mr Hatzis argues that some of the street drinking involves people who are associated with late night food outlets such as the Oasis Food Court that opens to 4 am and which, he contends, act as a "magnet" for people. He contends that some of the street drinking "is just people wanting to drink in the streets."
56. Mr Hatzis submits that public urination in the neighbourhood is an issue, but the hotels do not let patrons back into the premises after the voluntary 1.30 am lockout commences. He argues that public toilets need to be open in Hamilton after 6 pm.
57. Mr Hatzis argues that the Police proposed lockout from 1 am would be stricter than the 1.30 am lockout that is now in effect in the Newcastle CBD, which was implemented in circumstances involving "very high levels of crime and anti social behaviour".
58. Nevertheless, the Kent/Beaumont Hotels are "happy to comply with a 1.30 lockout" as this provides an even playing field, does not disadvantage any other commercial operator nor provide an incentive for patrons to go from one place to another. Mr Hatzis submits that there is no suggestion that the voluntary lockout has not been enforced at his client's premises.
59. Mr Hatzis argues that hotels "act as refuges" in that they provide a deterrence to violence and anti social conduct and help Police with their enquires if problems do arise.
60. Nevertheless, Mr Hatzis advised the Conference that his clients would "embrace" such further initiatives as:
 - the adherence to strict plans of management that set out how the premises shall operate and how the premises will prevent intoxication and anti social behaviour, with compliance to be subject to six monthly auditing
 - the engagement of RSA Marshals on Friday and Saturday from 11pm
 - the commencement of drink restrictions (that presently commence at midnight) from 10pm
 - the cessation of alcohol sales 15 minutes before closing, which is at 3 am
 - the cessation of takeaway sales from 10 pm on Friday and Saturday nights.
61. Mr Hatzis contends that the problem with take away liquor is not one of persons purchasing take away from the hotels and consuming it in the streets, but persons purchasing the alcohol "in bulk" and bringing it from home. He states that people have been seen by OLGR officers consuming alcohol in taxis before coming to see live entertainment at the hotels.
62. With regard to the July 2009 OLGR HEP Report, Mr Hatzis comments that the document contains "sweeping conclusions" with "very little by way of hard data" and in turn seems to rely upon the Police material, which Mr Hatzis submits does not establish undue disturbance.

63. Mr Hatzis submits that his clients want to work in partnership with Police and do not accept that people should be fearful of hotels. Hotels "provide a safe environment" and "make the whole area much safer".
64. Mr Hatzis observes that while Council welcomes any reduction in anti social behaviour, they have not raised a specific complaint in these proceedings against the hotels.
65. As for the Resident Complaint, Mr Hatzis observes that her complaint discloses four specific incidents - that a street sign was removed; mirrors were broken on her car; a trailer was dumped and glass was smashed on the street.
66. Mr Hatzis submits that the Resident Complainant lives "400 metres from the nearest hotel" and there is no evidence to suggest that the above incidents relate to the actions of any hotel patron.
67. Mr Hatzis concedes that the Resident Complainant need not establish that "this particular drunk did this particular damage" but submits that there must be evidence by which a decision maker can be reasonably satisfied that any such activity is attributable to the action of a hotel patron.
68. Mr Hatzis refers to a surveillance report commissioned by his clients at the Resident Complainant's premises over three consecutive weekends and submits that this material "highlights that there is nothing in the nature of anti social behaviour observed by the gentlemen who conducted that surveillance".
69. Mr Hatzis concludes with the submission that the Act requires the Delegate to make his decision based upon evidence. The evidence in the Resident Complainant's complaint is not sufficient to satisfy the Delegate that her complaint has been made good.
70. Mr Boutlen raised with the Delegate that Mr Hatzis had just addressed police material about which his client knows nothing, apart from what has been said at the Conference and that he also referred broadly to his written submissions to the Delegate about the OLGR Report to which the Resident Complainant does not have access. Mr Boulten sought access to a copy of all material that the Kent/Beaumont Hotels have provided to the Delegate to enable a response and to discern whether there is anything in the Kent/Beaumont submissions that contradicts the OLGR material that suggests that the Beaumont Exchange is operating with high levels of intoxication and inadequate security.
71. On this submission, the Delegate decided that he will consider the OLGR Report and submissions made by the parties on that report, but he did not propose to provide the Resident Complainant with submissions by the hotels on that report. The Delegate changes his position later in the Conference and requested that the Resident Complainant be provided with the Kent/Beaumont Hotels' written submissions; the Beaumont Exchange Hotel's DVD presentation; the Beaumont Exchange Hotel's RSA documentation; the Kent/Beaumont Hotels' respective plans of management; the letters and petitions in support of the Kent/Beaumont Hotels, the DVD submission by the Hamilton Business District Committee officers; and the video surveillance material regarding the Resident Complainant's home.
72. Mr Rod Slater, solicitor for the Sydney Junction Hotel, then addressed the Conference and his key points may be summarised as follows:

- (i) The Licensee of the Sydney Junction Hotel, Mr Paul Norberry, is an experienced hotelier, having been a licensee and part owner of the Hotel since 2005 and having been employed as a hotel manager for a period of 12 years prior to that.
- (ii) The Licensee and his wife reside on the premises.
- (iii) The Sydney Junction Hotel received extended trading hours in July 1992 when the former NSW Licensing Court allowed it to trade until 5 am on the day following Monday to Saturday and to midnight on Sundays. The Hotel has "never traded those hours" and for at least the 12 months preceding the Conference it has voluntarily traded until 3 am only and is currently observing other voluntary restrictions devised by the Hamilton Liquor Accord.
- (iv) In addition to the standard noise conditions the Hotel has a requirement on its licence for two licensed security guards to patrol from the hotel to Donald Street from 11pm until half an hour after closing.
- (v) The Hotel employs 26 staff, most of whom live in Hamilton, including two apprentice chefs trained by a head chef, with plans to increase the apprenticeships to three.
- (vi) The Hotel engages local security companies and a local DJ. A local person runs the trivia nights on Tuesday and Thursday evenings and the karaoke facility is run by two local persons. The four or five cleaners are locals.
- (vii) The Hotel secures produce locally, including fruit and meat supplies. The Hotel spends \$2500 per month on products purchased from a local chemical supplier.
- (viii) The Hotel supports a number of charities and other worthy causes, including the Spastic Centre, a local public school and the local refugee community, as detailed in written submissions to the Delegate.
- (ix) The Hotel has been proactive with regard to the local community, including improvements to lighting to illuminate the area outside the Hotel.
- (x) The Hotel is located across the road from Hamilton Railway station. There have been a number of incidents involving people arriving by train "in an unsuitable condition" and the licensee has arranged with the station manager and Police to phone the Hotel to enable security staff to deal with any persons exhibiting intoxication or anti social behaviour. They share intelligence.
- (xi) The Hotel is in discussions with Telstra to arrange for Telstra to install additional security lighting on telephone posts, to be paid for by the Hotel.
- (xii) The Hotel has submitted a proposal to the Delegate that security officers and Police officers patrol from the precinct from Gateway Hotel to the Beaumont Exchange Hotel.
- (xiii) It is noted that the six people who authorised the Resident Complaint have not appeared at the Conference.
- (xiv) The July 2009 OLGR HEP Report refers to 42 on-site audits resulting in 20 penalty notices and 24 compliance notices. There have been four notices sent to the Sydney Junction Hotel between 27 February 2009 and 6 June 2009, two of which relate to the current proceedings.

(xv) The OLGR reference in the HEP Report to an incident on 22 March 2009 involved open liquor containers being removed by patrons from the premises after midnight. This was resolved by agreement with OLGR and with the issue of a notice to the licensee under section 75 of the Act to prevent people taking open containers of liquor off premises.

(xvi) The OLGR reference in the HEP Report to an incident on 6 June 2009 involving failure to comply with a licence condition involved a failure of security officers to patrol an area that they were required to patrol. A mistake was made, the Licensee paid the fine and there has been compliance ever since.

(xvii) The Sydney Junction Hotel is complying with the voluntary lockout from 1.30 am.

(xviii) On the reference by OLGR to street drinking, "for some time" the Sydney Junction Hotel has not allowed takeaway liquor sales after 10 pm, so any persons drinking on the street late are not purchasing their liquor from this premises.

(xix) The Sydney Junction Hotel is not aware of any persons being prosecuted for breach of the Alcohol Free Zone and notes the correspondence from Council to the Delegate on the issue. The Hotel notes that Council signage nearby appears to be out of date.

(xx) The Hotel notes that due to closure times for public toilets and the 1.30 am lockout there are virtually no public areas that can be used for the purpose of going to the toilet.

(xxi) The Hotel resists the conditions sought by the Resident Complainant.

(xxii) There is "no evidence" for the Police submission that "the underlying issue to all the anti social behaviour and the alcohol related crime is excessive levels of intoxication, exacerbated by the long trading hours of licensed premises and the irresponsible practices that some premises use."

(xxiii) In particular, there is no evidence of discounting or other retail practices by the Sydney Junction Hotel that encourages irresponsible drinking.

(xxiv) On the Police call for a "proactive" approach, the Hotel says that it is has taken proactive steps and has made proposals for hotel security to work in concert with Police to deal with what appears to be a "roving problem" of people in the streets with liquor, perhaps purchased from other venues or brought from home to the precinct. The licensee has installed three audio visual cameras to provide additional surveillance outside the premises.

(xxv) On the two offences identified by Police against the licensee himself, the Hotel submits that on balance and given the intense scrutiny of the premises the licensee is doing his best to comply with the legislation.

(xxvi) Appendix A to the Police Complaint (illustrating Police data) does not differentiate between domestic and non domestic assaults. It is not clear whether some offences are occurring outside the map of the locality as that locality has been identified by Police.

(xxvii) The Police video footage of the Hamilton area does not provide evidence supporting the Police position with regard to the Sydney Junction Hotel.

(xxviii) On the Police assault statistics presented at day one of the Conference for the period from January 2008 to June 2009, the Sydney Junction Hotel's analysis is that:

- of the 43 assaults identified by Police in Hamilton, the Hotel could find only 38 assaults.
- 10 of those incidents are noted as "rejected" by Police, which leaves 28 assaults.
- 13 of those assaults involved no comment regarding intoxication.
- Police evidence only discloses 14 alcohol related assaults in Hamilton from January 2008 to 19 June 2009.
- while Police assert that 91% of the assaults in Hamilton for the relevant period were alcohol related, the hotel submits that only 32.5% were alcohol related. Police have overstated the factor of alcohol in the assault figures that are discussed in the Police Complaint.
- the Hotel could only find 8 assaults occurring on licensed premises, and in its view only three of those assaults were alcohol related.

(xxix) On the Police assault statistics for 2007, of the 69 assaults in the Hamilton area claimed by Police to be alcohol related, the Sydney Junction Hotel contends that there are only 37, when one removes those incidents for which there is no comment as to alcohol or those incidents that are "rejected" by Police. Police have overstated the role of alcohol in the assault figures that they have presented for 2007.

(xxx) On the more general "offences" identified by Police as having occurred on the premises of the Hotel from January 2008 to March 2009, the majority of these incidents did not result in any offence under the Act.

(xxxi) Of the 39 alleged offences cited by Police the Hotel says:

- 12 involve drug inspections or drug detections
- 7 involve stealing on premises
- 2 are domestic related
- 13 incidents have no mention of the intoxication levels of the victims or persons of interest
- 10 incidents described persons well affected by alcohol
- 9 incidents describe persons slightly affected
- 2 incidents are questionable
- 2 are not affected by alcohol at all
- of the 10 incidents involving persons well affected, 4 involved security performing their duties within the scope of section 77(5) of the Act, which allows security staff to use reasonable force in refusing entry or asking someone to leave and 2 involved incidents outside the Hotel relating to the licensee and his agents performing their duties under the Act

(xxxii) Of the incidents occurring elsewhere but linked by Police to the Hotel, the Sydney Junction Hotel contends that one incident involved no offence at all, but Police simply talking to a person who is intoxicated or drug affected. The Hotel questions the accuracy of what a person says to Police about where they last drank in those circumstances.

(xxxiii) On the Prescribed Concentration of Alcohol (PCA) offences linked to the Sydney Junction Hotel, the Hotel questions whether the drivers intercepted by Police are telling the truth about where they last drank.

(xxxiv) The Hotel submits that when a person commits an offence of exceeding the prescribed blood alcohol content of ".05" (grams of alcohol per 100 millilitres of blood) this does not equate to that person being "intoxicated". People who are going to drink and drive

will do so regardless of whether they drink at the Sydney Junction Hotel, at home, at a restaurant or a dinner party.

(xxxv) On the question of whether a licence condition with regard to CCTV should be imposed, the Hotel states that if there were some industry consultation with regard to a uniform system of security surveillance, the Sydney Junction Hotel would be happy to comply, but the licensee has spent a "lot of money" on the Hotel's CCTV system, installing new cameras. Police have visited the Hotel to obtain CCTV footage for events that have nothing to do with the subject of this Conference, but such footage is provided to assist Police.

73. Mr Paul O'Sullivan, solicitor for the NGH Hotels, made the following submissions on behalf of his clients:

(i) He endorses the analysis of the Police material that was provided by Mr Hatzis on behalf of the Kent/Beaumont Hotels.

(ii) He notes that the NGH Hotels have proffered, in written submissions to the Delegate, licence conditions that would be acceptable to them.

74. With regard to the 27 offence incidents attributed by Police to the Northern Star Hotel from January 2008 to July 2009, Mr O'Sullivan submits:

- 7 actually resulted in offences
- 2 of those 7 arose from staff informing police of drug possession
- 1 resulted from the conduct of a lodger at the Hotel with a history of mental illness
- 3 resulted from persons being asked to leave due to their behaviour
- 1 was a failure to quit offence
- only 1 could be attributed to the management of the Hotel.
- there is no evidence of any actual assault being linked to the Northern Star Hotel over the 15 months from January 2008 to March 2009.

75. Of the 11 offence incidents occurring elsewhere but linked by Police to the premises, the Northern Star Hotel submits:

- there are 4 actual offences
- of those 4 offences, one took place at Maitland
- 1 offence involved offensive language
- 2 offences involved offensive behaviour

76. OLGR Venue Compliance Reports for all OLGR activity for the period from January 2008 to 30 June 2009 disclose that OLGR audits had resulted in no identified breaches of liquor and gaming legislation nor recommendations made by OLGR officers in respect of that Hotel.

77. The Northern Star Hotel submits that the Police information presented to the Conference is inaccurate and misleading. On its reading, only five matters have led to persons being charged with criminal offences.

78. On behalf of the Hamilton Station Hotel, Mr O'Sullivan notes that the Hotel was purchased by its present owners on 15 December 2008 and Mr O'Sullivan's submissions are made from the date of purchase.

79. With regard to the 44 on-premises offence incidents identified by Police over the 15 months period:

- 12 actually resulted in offences
- only 2 incidents occurring since the purchase date have resulted in an offence, one for offensive language and one for failure to quit.

80. Mr O'Sullivan notes that from January 2008 to June 2009 OLGR Venue Compliance Reports disclose no breaches of liquor and gaming legislation and no adverse recommendations made by OLGR inspectors.

81. With regard to a serious brawl observed by OLGR officers at the Hamilton Station Hotel at 1.19 am on 21 March 2009, this incident arose when a patron was evicted for antisocial behaviour and became engaged in an aggressive altercation with security staff. The Hotel met OLGR on 22 March 2009 to discuss the issue and then engaged a security consultant, Mr George Askew of Compliance Wise to review the Hotel's security procedures and the Hotel implemented his recommendations.

82. With regard to the Gateway Hotel, Mr O'Sullivan submits:

- (i) This venue is the only venue in Newcastle which caters almost exclusively for the gay and lesbian community.
- (ii) It is a venue with "almost total lack of patron migration to or from that venue" to other licensed premises in Hamilton and Newcastle.
- (iii) The venue provides a safe environment for persons from the gay, lesbian, bisexual or transgender ("GLBT") community, as noted in letters in support from the welfare agencies including ACON and Karuna Inc.
- (iv) The venue would consent to a 1.30 am lockout.
- (v) The venue's circumstances warrant that it be treated in isolation. It is located in Islington, not Hamilton, some 500 metres from the nearest hotel in the Hamilton precinct.
- (vi) There is an "almost total lack of incidents or events complained of by the Police at this venue".
- (vii) Over the 15 months period identified by Police, there are 8 events identified as occurring on the premises, two of which resulted in persons being charged. Of those, one resulted from staff informing Police about drug possession and one resulted from persons being asked to leave the premises by staff due to their behaviour or intoxication.
- (viii) The lack of offences identified by Police on premises or linked to the Hotel would alone warrant excluding this hotel from the complaint.
- (viii) OLGR Venue Compliance Reports for the Gateway record no breaches of liquor and gaming legislation from January 2008 to June 2009.
- (ix) There have been no breaches of the Act by the corporate licensee or its approved manager within the relevant period.

83. Mr O'Sullivan submits that the Delegate should take no action against the NGH Hotels by reason that the source material supporting the Police case is "fundamentally flawed".

84. With regard to the Resident Complaint, Mr O'Sullivan submits that:

(i) The Resident Complainant has not made any complaint against the Gateway Hotel, but only the Northern Star and Hamilton Station Hotels

(ii) The Resident Complaint does not identify any incident at or linked to the NGH Hotels

(iii) The Resident Complaint does not complain of the manner in which any of the NGH Hotel businesses have been conducted

(iv) There is no evidence in the Resident Complaint that would support a finding of undue disturbance by the NGH Hotels

(v) The Resident Complainant was not known to any of the NGH Hotels prior to the making of this complaint nor did she make contact with them to discuss any cause for complaint

(v) The Delegate should take no action against the NGH Hotels in response to the Resident Complaint.

85. Superintendent Mitchell concluded the Police submissions to the Conference with the following points in reply to the various criticisms levelled by the Affected Hotels at the Police Complaint:

(i) With regard to those COPS Reports whereby an assault incident is marked "rejected" - that usually means that while there is no argument that an assault actually took place, the relevant individuals (in particular the victims or witnesses) are either unreliable, not in a fit state to complain or are not willing to come forward and take the matter further. The classification of a matter by Police as "rejected" does not mean that an incident did not occur.

(ii) Research conducted by Australian Institute of Criminology and the Australian Bureau of Statistics indicates that there is, in fact, a high percentage of non-reported incidents. A study in 1998 indicated that 70 percent of victims of alcohol related assaults did not report incidents to police. In 2005, a study indicated that 65 percent of males did not report assaults to Police. Males reportedly do not regard a push or even a punch to be of such a nature that they wish to take the matter further.

(iii) COPS Reports designated as "Business Inspections" are relevant because these inspections generally give rise to cautions with regard to intoxication, overcrowding, signage, security arrangements, gaming issues, patron behaviour and noise levels.

(iv) On Mr Hatzis' commentary regarding BOCSAR data by Local Government Area, the Police data cited on the first day of the Conference regarding rates of alcohol related violence and domestic violence is data compiled by the Newcastle City Command.

This data compares the Newcastle Command against the 79 other Police Commands in the State. It is not data by reference to BOCSAR Local Government Areas. With regard to alcohol related crime, Newcastle is ranked number 2 in the State. With regard to domestic violence, the Newcastle Command is number 4 in the State.

(v) On the role of the Council, in practice Council relies upon Police for law enforcement. It does not have the rangers or other officers available to undertake this level of enforcement, particularly with regard to Alcohol Free Zones.

(vi) Police submit that the Delegate is entitled to rely upon COPS Reports when making a decision in this matter. Superintendent Mitchell quotes observations made by his Honour Justice Hall of the New South Wales Supreme Court in *McGuinness and Anor v State of New South Wales and Ors* [2009] NSWSC 40 regarding the use of BOCSAR crime statistics by administrative decision makers who are contemplating the imposition of licence conditions upon a licensed premises – in that BOCSAR statistics:

“do not report the definitive record of chronicles of fact based upon evidentiary analysis of information from all relevant sources of information. The data derived from COPS, the evidence established, provides information 'that is vital in gauging the relative risk posed by various types of crime and the location and the suburbs that are most at risk' ”

(vii) The Hamilton precinct is said to pose a “risk to the general community”. He comments:

"I get tired of my officers and ambulance officers that we've heard over recent times of having to deal with assaults, dealing with patrons that are intoxicated and they have act of violence against - whether it's my police officers or ambulance officers, that's the sort of fact we're dealing with. Not every time but certainly it is an issue."

(vii) In the OLGR HEP Report, OLGR inspectors have provided "an independent (from Police) and highly skilled report" with regard to what is occurring in the precinct.

(viii) Police are seeking a consistent approach to all premises in the Hamilton entertainment area, which is why Police are seeking the imposition of licence conditions against those premises that are subject to the Police Complaint.

86. Mr Boulten makes some concluding submissions to the Delegate on behalf of the Resident Complainant, including:

(i) For the purposes of a section 79 complaint "disturbance" is not limited to alcohol related violence or antisocial behaviour. It can be more general than that.

(ii) The evidence of the Resident Complainant is supplemented by evidence from the OLGR Report on the precinct, which includes covert surveillance that demonstrates the accuracy of the Resident Complaint regarding people who leave the Hamilton area.

(iii) The OLGR report includes audio visual material, conducted over a period of time that demonstrates problems with the way licenced premises are being conducted, including:

- persons being allowed to drink in an area of the Beaumont Exchange Hotel that was not licensed for that purpose at that hour.
- many people seen leaving the premises in an entirely intoxicated state.
- the lack of reporting of incidents detected by OLGR, indicates that the Police statistics are "the tip of an iceberg"
- the "sickening violence" caught by OLGR surveillance of a brawl outside the Hamilton Station Hotel on 21 March 2009 at 1.09 am.

(iv) The Affected Hotels have, through the various submissions of their lawyers, attempted to "debunk the bleeding obvious". Mr Boulten submits that:

"The bleeding obvious is that there is much more violence, much more antisocial behaviour, much more noise and many more people just walking down extremely quiet streets at 3 o'clock in the morning talking on their mobile phones, eating pizza and generally waking people up, all of whom would not be there if the pub wasn't open at 3 o'clock in the morning, than that which is displayed in the official statistics or figures."

(v) The Police case is not an overstatement, but rather a "modest understatement" of the extent of actual disturbance. In summing up Mr Boulten argues:

- There is a public interest in having licensed premises operate well and their patrons behave themselves.
- There is a public interest in ensuring that places like Hamilton do not suffer undue effects from the profitable business of running licensed premises.
- There is little that has been presented here that suggests that there is a real need for tourists or people travelling long distances to come to an "entertainment hot spot like Hamilton" or to enable Hamilton, a suburb of Newcastle, to become a "sophisticated night life place".
- The Act suggests that the section 79 complaint process is meant to address neighbourhood problems. To highlight one hotel over another would not be an effective way of dealing with the issues. Unless there are some attempts to standardise conditions, the problem will not go away, but will continue.
- It is encouraging that some of the licensees are prepared to accept more stringent conditions and this gives some force to the Delegate taking regulatory action, but the Resident Complainant does not accept that closing the hotels at 1.30 am is good enough.
- It seems perverse that the hotels which attract people are then painted as the safe havens for those people who are being assaulted around those premises to go to.
- The resolution of this complaint will have wider significance to liquor regulation throughout the State.
- The Resident Complainant seeks that "significant conditions" be imposed upon the licensees in order to better manage the premises and to provide a better lifestyle for all involved including the patrons of those hotels.

The Application for Review by the Resident Complainant

87. The Resident Complainant's case on review is set out in the cover letter from Mr Phillip Boulten SC dated 18 December 2009. Very briefly, the key points were:

- (i) The Decision was varied on 16 December 2009 without consultation with the Resident Complainant.
- (ii) The Conditions imposed by the amended Decision will not materially reduce the incidence of anti social and alcohol related violent crime in the neighbourhood of the Hamilton Hotels.
- (iii) The Decision imposed no reduction in trading hours. At present, Hamilton hotels are licensed to trade until 5 am although they observe a voluntary closure at 3.30 am. The Resident Complainant sought that trading hours be wound back to midnight or 1 am at the latest. Police sought 3 am.
- (iv) The current voluntary practice of 3.30 am closure is unsatisfactory.

- (v) An OLGR Inspector's Report to the Delegate dated 10 June 2009 recommended bringing the Hamilton licenses in line with the Newcastle CBD Hotels, that are required to cease trading at 3am.
- (vi) Incidents of alcohol related disturbance have continued since the Conference.
- (vii) A BOCSAR report issued in December 2009 on the restricted availability of alcohol in Newcastle concludes that there was a significant decrease in the proportion of assaults occurring after 3 am.
- (viii) The Authority is requested to add a condition on "all relevant Hamilton licenses requiring them to cease trading at 1.00 am."
- (ix) The 1.30 am lockout imposed by the Delegate has been imposed in circumstances where the hotels have voluntarily observed a lockout from 1.30 am, which will result in no change to trading conditions that have been in place for more than a year.
- (x) Insufficient premises were covered by the Decision. The 10 June 2009 OLGR HEP Report addressed concerns about patrons from the Wickham Park Hotel, Hamilton RSL, Gallipoli Legion Club and Newcastle Jockey Club.
- (xi) Conditions imposed should apply to every night when a premises trades past midnight. On 16 December 2009 the Delegate varied the application of Condition "k" (which concerns requirements of security staff to disperse patrons) from every night when a premises trades past midnight, to Wednesday through Saturday nights. Condition "c" which requires a supervisor to monitor RSA, is restricted to Friday and Saturday only.
- (xii) The evidence shows that there are "alarming levels of unacceptable intoxication, violence and anti social conduct in Hamilton, especially after 3.30 closing". The current voluntary 3.30 closing time and voluntary 1.30 lockout will not be materially affected by the Conditions imposed and the Decision is likely to produce no substantial change to the order of the neighbourhood.

The Application for Review by the Kent Hotel

88. The Kent Hotel's case in support of its Application for review dated 21 December 2009 is set out in the cover letter from Harris Wheeler lawyers dated 21 December 2009. The stated grounds of the Application, without elaboration, were simply:

- (i) the decision was against the weight of evidence;
- (ii) the decision was unreasonable; and
- (iii) the evidence adduced by the complainants does not justify the imposition of the conditions by the Delegate.

89. After referring Harris Wheeler to *Authority Guideline 02/09* (that requires any new evidence or submissions to be filed with an application for review) and requesting that the Kent Hotel explain the substance of its grievance in sufficient detail for the Authority to understand the case on review, Mr Micah Jenkins, Solicitor, submitted a letter dated 24 December 2009. Briefly, the key points made on behalf of both the Kent Hotel and the Beaumont Exchange Hotel for the review are:

- (i) Their case on review relies upon the various submissions made to the Delegate before the Decision was made, including a letter to the Delegate dated 10 August 2009 with submissions in response to the Police Complaint; a short letter to the Delegate dated 10 August 2009 with submission on a surveillance report; a letter to the Delegate dated 14 September 2009 with submissions on BOCSAR statistics; and a letter to the Delegate dated 14 October 2009 reporting on intoxication proceedings brought against these two hotels.
- (ii) The Conditions imposed by the Delegate "constrain the hotel's right to legally trade from their premises" and imposes "significant new ongoing costs upon them".
- (iii) The Resident Complainant has "no legitimate interest" which would qualify her as a person aggrieved to seek review of the decision under section 153 of the Act. She resides 400 metres from the nearest licensed premises.
- (iv) The Resident Complaint did not identify behaviour attributable to patrons of any licensed premises.
- (v) Independent surveillance undertaken over a number of weekend evenings outside her residence showed no disturbance over the surveillance period.
- (vi) The evidence before the Delegate did not support a finding of "undue disturbance" and it is appropriate for the Authority to find that the undertakings voluntarily given by the Hamilton Liquor Accord members in November 2008 are adequate to prevent undue disturbance to the neighbourhood.

The Applications for Review by the NGH Hotels

90. On 22 December 2009 Mr Paul O'Sullivan filed one page Applications, in similar terms, on behalf of the Northern Star, Gateway and Hamilton Station Hotels dated 22 December 2009. The grounds stated, without elaboration, were simply:

- (i) the Decision was against the weight of evidence; and
- (ii) the Decision was unreasonable.

91. After referring Mr O'Sullivan to *Authority Guideline 02/09* and requesting that his clients explain the nature of their grievance in sufficient detail for the Authority to understand their case on review, Mr O'Sullivan submitted three further letters on behalf of his respective clients dated 23 December 2009.

92. Briefly, the key points made on review are:

- (i) His clients only seek review of the Delegate's Conditions "d", "f(viii)", "j" and "k". The imposition of these conditions is not consistent with the evidence.
- (ii) The Resident Complaint contained no evidence of behaviour of persons after they left any of his clients' hotels that would result in finding an undue disturbance of the quiet and good order of the neighbourhood of the Hotels.
- (iii) Police did not complain of any offences by the licensees of his clients' hotels.

- (iv) The Police Complaint relied heavily upon incidents at or linked to his clients' Hotels and the number of such incidents was "low" and "extremely low" in the case of the Gateway Hotel.
- (v) The Police Complaint did not rely upon any assaults occurring in the suburb of Hamilton linked to the Hotels.
- (vi) A compliance analysis by OLGR disclosed no breaches at the Hotel for the period 1 January 2008 to 30 June 2009.
- (vii) The decision to impose the Conditions complained of upon his clients' liquor licenses was unreasonable and contrary to the evidence.

Consultation by Authority on Review

- 93. Shortly before Christmas 2009 OLGR provided the Authority with fifteen (**15**) discs, in either CD or DVD format. OLGR advised the Authority that this material contained electronic copies of all material before the Delegate when the Decision was made.
- 94. The OLGR discs contain hundreds of pages of documents, including the Police Complaint, the Resident Complaint, submissions from the Affected Hotels to the Delegate and OLGR reports on the Affected Hotels. There is also a good deal of audio-visual material, comprising surveillance footage recorded by Police and OLGR officers that forms part of the July 2009 HEP Report regarding the Hamilton entertainment precinct. The Authority has considered all of that material.
- 95. Sets of the OLGR discs, lever arch folders containing all of the Application material filed the Applicants and transcripts obtained by the Authority of the two days of Conference, were provided to all Affected Hotels, the Resident Complainant and the Local Area Commander of Police (the Police Complainant) under cover of a letter dated 20 January 2010. That letter invited parties to make submissions on the substantive Applications and the Kent Hotel's Stay Application.
- 96. Upon analysis of the individual COPS Reports in the course of preparing this determination, it became apparent that some, but not all, of the several hundred full text COPS Reports had been reduced to electronic form by OLGR and provided to the Authority on the OLGR discs. A hard copy set of the full text COPS reports for all Affected Hotels (some 9 large lever arch files of material) was obtained separately by the Authority from the Police Complainant on 15 June 2010, reproduced and then released to the Resident Complainant on 24 June 2010 for the sake of completeness. The Authority understands from Police that all Affected Hotels were provided with a hard copy of the full text COPS Reports during the primary decision making process.
- 97. During January 2010 the Authority received written submissions from all interested parties on the preliminary question of whether the Kent Hotel's application for a stay of the Delegate's Decision should be granted.
- 98. On 5 February 2010 the Authority issued its decision on the Stay Application, directing that only Conditions "d" and "f(iii)" of the Delegate's Decision, which had not yet commenced effect and required the establishment and maintenance of a common radio network among the Affected Hotels, be stayed pending the Authority's final determination.

99. Consequently, the Affected Hotels have remained subject to all of the other Delegate's Conditions (which commenced effect on 11 December 2009) throughout the course of this review.

100. From 11 February to 31 March 2010 the Authority received several further submissions from the Resident Complainant and the Affected Hotels addressing the merits of the Decision, developing and responding to their respective Applications for review.

101. Mr Rod Slater, Solicitor, made several submissions to the Authority for the Sydney Junction Hotel in its capacity as an interested party. In his submissions dated 17 February 2010 the Hotel reiterated the arguments advanced during the primary decision making process about the Police statistics, and stated the Hotel's position on review as follows:

- (i) Had it not been for the Application for review by the Resident Complainant, the Sydney Junction Hotel would have been content with the Decision.
- (ii) The Resident Complaint was supported by eight local residents. One of those residents has since withdrawn his authorisation.
- (iii) On the material before the Authority, the Resident Complainant was only authorised to make the initiating Complaint. There is no evidence that she was authorised to file the Application for review.
- (iv) On the Resident Complainant's submission that she was denied access to the Police complaint material at the Conference and hence denied procedural fairness, even if the Delegate was in error, no mischief was done because the Delegate actually took into account the Police material when determining the matter.
- (v) The Police material was attacked by all the Affected Hotels because of "gross exaggeration" by the Police in their statistics.
- (vi) Police made a submission late in the Conference that the Alcohol Free Zone was not being policed. On 2 July 2009, Council admitted to the Conference that their park rangers were not policing the Alcohol Free Zone.
- (vii) Police and OLGR inspectors allege that patrons of the Hamilton Hotels were wandering up and down Beaumont Street with opened bottles of liquor in the early hours. These containers could not have come from the Sydney Junction Hotel because this premises does not sell takeaway liquor after 10pm.
- (viii) The Delegate allowed local residents to participate in the Conference and air their grievances.
- (ix) The Delegate considered the detailed submissions of the Affected Hotels in response to the Resident Complaints.
- (x) The Delegate gave a "considered decision" which did not interfere with the trading hours of any Affected Hotel.
- (xi) The Conditions imposed by the Delegate were sought by Police, who have the principal responsibility for enforcing liquor related matters.
- (xii) Police have not sought review of the Delegate's Decision.

(xiii) The Decision contains a provision for review by the Delegate. The Resident Complainant may make further representations to OLGR at the six month review point.

(xiv) The Delegate's Decision should not be disturbed.

102. The Authority's consultation process became protracted through a tendency of the parties, particularly the Resident Complainant, to raise new issues or evidence in support of a position, thus necessitating a further right of reply from opposing parties.

103. While the Authority usually expects review applicants (pursuant to *Authority Guideline 02/09*) to present any new submissions or evidence upon filing an application for review, it gave some latitude to all parties in light of complaints made by the Resident Complainant as to procedural fairness during the primary decision making process (discussed below) and the unusual complexity of this multi-party dispute.

104. The Resident Complainant was assisted with her complaint and review by Mr Tony Brown. The new evidence filed on review by Mr Brown included, *inter alia*, a statutory declaration dated 17 February 2010 filed by the Resident Complainant and enclosing expert opinion from Dr Kypros Kypri, a senior research fellow from the School of Medicine and Public Health at the University of Newcastle.

105. Briefly, Dr Kypri's statutory declaration annexes the following research papers:

- Jones C et al "The impact of restricted alcohol availability on alcohol related violence in Newcastle, NSW" *Crime and Justice Bulletin*, November 2009
- Stockwell T and Chikritzhs T "Do relaxed trading hours for bars and clubs mean more relaxed drinking? A review of international research on the impacts of changes to permitted hours of drinking" *Crime Prevention and Community Safety*, 2009
- Chikritzhs T and Stockwell T "The Impact of Later Trading Hours for Australian Public Houses (Hotels) on Levels of Violence" *Journal of Studies on Alcohol*, 2002
- Chikritzhs T and Stockwell T "The impact of later trading hours for hotels on levels of impaired driver road crashes and driver breath alcohol levels" *Addiction*, 2006
- Donnelly N et al "Liquor outlet concentrations and alcohol-related neighbourhood problems" *Alcohol Studies Bulletin*, April 2006
- Livingston, M "Alcohol outlet density and assault: a spatial analysis" *Addiction*, 2008
- Livingston, M "A Longitudinal Analysis of Alcohol Outlet Density and Assault" *Alcoholism: Clinical and Experimental Research*, June 2008.

Dr Kypri contends that the above local and international research provides "compelling evidence" in support of restricting trading from "no later than 1am in the Hamilton Entertainment Precinct", and that there is a case for restricting closing times further to "reduce what has become a considerable burden of alcohol related harm."

106. The Resident Complainant's new evidence also included a letter from the Police Association dated 12 March 2010 expressing concern as to the impact of alcohol related violence upon its members and supporting the case for greater restrictions upon licensed premises in Hamilton.

107. On 23 February 2010 the Resident Complainant also submitted to the Authority a presentation made by Newcastle Police to a Newcastle Council Forum on 22 February 2010.

108. According to Police, there were 516 assaults across the Newcastle Police Command for those the three months from November 2009 to January 2010 and 246 were "alcohol

related". 59% of alcohol related assaults during that period occurred between 9 pm and 3 am and 32% occurred on Friday and Saturday nights. For that period there were 133 street offences in the Command, of which 109 or 82% were alcohol related. Newcastle (35 incidents) and Hamilton (25 incidents) were the "hot" suburbs for alcohol related street offences. 37% of all alcohol related street offences were committed between 9pm and 3am on Friday and Saturday nights.

109. The Resident Complainant's new evidence also included a copy of a presentation to the same Newcastle City Forum by Dr John Wiggers of NSW Health, regarding alcohol related deaths and admissions to public hospitals in the Hunter New England Area. His data demonstrated that the rate per 100, 000 of population for alcohol attributed deaths and hotel separations has increased from 1993-94 to 2006-07 and is currently trending upwards for both men and women.
110. From 1998-99 to 2007-08 there was a 31.5% overall increase in alcohol related hospital admissions according to the *NSW Population Health Survey 2008*. Dr Wiggers argues that a review of the literature, including the work of Babor T *et al* (WHO) 2006 *Alcohol - no ordinary commodity* and the National Drug Research Institute (NDRI) 2007 *Restrictions on the sale and supply of alcohol: Evidence and outcomes* provides strong evidence that restricting trading hours is "moderately effective" as a harm reduction measure.
111. Dr Wiggers cites the work of Chikritzhs *et al* (2002 and 2006) indicating that an increase in trading hours by 1 hour from midnight to 1 am in Perth corresponded with a 54.5% increase in assaults in or around licensed premises. He also notes the work of Livingston, *et al* presented to the 2009 ADF "*Thinking Drinking*" Conference that indicates a positive association between the density of licensed premises in Victoria (both on-licence and off-licence) and assaults; and a positive association between the density of premises and domestic violence, particularly for off-licence premises.
112. Dr Wiggers also noted the above mentioned work of Jones *et al* comparing the levels of non-domestic violence related assaults in Newcastle CBD and Hamilton before and after the introduction of restrictions on trading hours in Newcastle CBD in April 2008.
113. That data shows that from April 2007-March 2008 there were 361 assaults in the Newcastle CBD and 94 in Hamilton. This was before the LAB Decision that wound back closing times in the Newcastle CBD from as late as 5 am to either 3 or 3.30 am depending upon the premises. The LAB also imposed a lockout for some venues in the Newcastle CBD that commences at 1.30 am. In the year following the LAB decision, there were only 258 recorded assaults in the Newcastle CBD, while the numbers for Hamilton had a slight increase, to 103.
114. Jones *et al* note among their conclusions the potential role that negative media publicity, reforms to the *Liquor Act 2007* and other licensing activity may have played in these figures. The authors comment that "even if the reductions were due to restrictions imposed by the LAB, we cannot say for certain that it was the reduction in trading hours, the lockout the other restrictions or simply better management practices that produced the effect."
115. The Police Complainant was provided with copies of communication from the parties throughout the course of the review. Superintendent Mitchell had not sought review of the Delegate's Decision and simply advised the Authority in an email dated 25 January 2010 that:

"In my opinion the delegate has made a thoughtful and appropriate decision based upon facts presented in the best interests of the industry and community.

I will await the outcome of the substantive review. If necessary I would be more than happy in clarifying the police position if need arose."

Final evidence

116. On 3 May 2010 the Authority wrote to the Resident Complainant, the Police Complainant and the Affected Hotels requesting that they address five matters of which the Authority sought further clarification.
117. First, the Police Complainant was requested to provide a breakdown of COPS Reports for all events that Police now rely upon for the purposes of the review, detailing when those events occur, by time of day. The purpose of this request was to give Police the opportunity to reconsider which assault events they wish to press as linked to the Affected Hotels and give the Authority a better sense of the time of day when the Police recorded events are occurring.
118. Second, the Affected Hotels were requested to provide a breakdown of their revenue for two sample Friday evenings and two sample Saturday evenings in November 2009 that preceded the commencement of the Delegate's Decision - with a percentage breakdown, by hourly increments, from 6 pm to 5 am, as to the time of evening when revenue is received from all sources. The purpose of this request was to gain a "snapshot" as to the time of evening when the Affected Hotels tend to derive their revenue review, given that the economic impact of any new regulatory impost will be a relevant consideration.
119. Third, the Authority sought comment from the interested parties on the legality and practicality of the Delegate's Condition "d" and "f(iii)-f(v)" mandating the agreement and maintenance of a common radio network by the licensees and their security contractors.
120. Fourth, the Authority sought comment from the interest parties on the Delegate's Condition "e" restricting service of alcohol from 10 pm, noting that similar restrictions imposed by Schedule 4 of the Act upon the most violent premises in the State commence at midnight.
121. Fifth, the Authority invited comment on the requirement imposed by the Delegate that the Affected Hotels collect bottles and drink containers for a distance up to 100 metres from each premises from the time of closure until 7 am.
122. The parties filed written submissions addressing these matters in late May 2010. On 26 May 2010 Police filed a revised spread sheet (the "**Police Spreadsheet**") of all COPS Reports linked to each of the Affected Hotels upon which they now rely upon for the purposes of this review. The Police Spreadsheet identifies all reports of assaults, intoxication, offensive conduct, prescribed concentration of alcohol and other incidents that Police claim establish that the manner of operation of the Affected Hotels or the behaviour of their patrons gives rise to an undue disturbance to the neighbourhood.

The Authority Meeting of 27 May 2010

123. On 27 May 2010 the Authority convened a meeting at Newcastle University with legal representatives of the Resident Complainant, the Police Complainant and all the Affected Hotels. Mr Paul Norberry, licensee of the Sydney Junction Hotel, appeared on his own behalf.

124. The purpose of this meeting was to enable each of the parties to make oral submissions to the Members of the Authority for a maximum of 30 minutes each, and to answer any questions from the Members about their respective positions. Parties were forewarned that the time for filing new evidence had now passed.
125. The central argument made by Mr Boulten for the Resident Complainant was that it is perverse for Affected Hotels to, on the one hand, depict their venues as places of refuge, whose late night operations deter anti-social behaviour and enable cooperation with law enforcement and, on the other hand, deny responsibility for disturbances to the neighbourhood.
126. Mr Boulten highlighted two of the most serious reported incidents of alcohol related violence in Hamilton that are before the Authority. Mr Boulten presented audio visual surveillance from the July 2009 OLGR HEP Report of a protracted and violent brawl that occurred outside the Hamilton Station Hotel on 21 March 2009 that was recorded by OLGR inspectors performing surveillance of the venue. Mr Boulten also noted the alleged alcohol related manslaughter of a man on Beaumont Street at around 3 am on 28 November 2009. That matter is currently before the Courts.
127. Mr Boulten advised the meeting that the Resident Complainant seeks a 1 am closure time and a lockout commencing two hours before closure. Mr Boulten noted OLGR's assessment of the Hamilton precinct in the July 2009 HEP Report that:
- “the level of intoxication discernibly increases as premises trade towards 3 am”.
- He argues that the Police material submitted in this case and statistics from other places that have a concentration of licensed premises demonstrate that:
- “it's like there is a switch. A switch that gets turned on imperceptibly at 1am. It goes from nice to nasty. And it gets nastier over the next two or three hours.”
128. Mr Boulten submitted that there has been no reported reduction in assaults in Hamilton since the introduction of voluntary closure times for five of the Affected Hotels from 3.30 am and the introduction of a voluntary lockout from those premises at 1.30 am. He reiterates that the decision of the Delegate made no effective change to that position and that the only means of reducing alcohol related violence was to make consistent changes, across the precinct, to closing and curfew times. Mr Boulten submitted that the winding back of closure times in Newcastle CBD had brought about a 32% reduction in alcohol related assaults.
129. Mr Michael Spartalis, Counsel for the Police Complainant, argued that there is “tons and tons” of material presented in the Police Complaint that links alcohol fuelled violence to the Affected Hotels. He notes that the licensees are critical of the Police data, as were the licensees of premises located within the Newcastle CBD in 2007 when Police sought new licence conditions for that area. He contends that since the imposition of new licence conditions in the Newcastle CBD there has been a “vast reduction” in crime. He submits that the Supreme Court of New South Wales has accepted the use of Police intelligence reports (COPS Reports) for many years and that the material presented in this matter was gathered in the same way as it was gathered for the purposes of the 2008 LAB decision regarding the Newcastle CBD.
130. Mr Spartalis disputes the argument made by the Kent Hotel that, just because a hotel patron was the victim of an assault (and not the perpetrator), then such incidents should

be disregarded. He rejects the argument that, just because the parties to an assault noted in a COPS Report are or have been in a domestic relationship, then this incident should be disregarded.

131. Mr Spartalis further submits that, just because a COPS Report records Police doubts about a victim's evidence as to how an assault occurred, this does not mean that no assault actually happened.
132. Mr Spartalis comments that Police have no way of verifying the accuracy of the "unaudited" figures, provided by the Affected Hotels in response to the Authority's letter of 3 May 2010, indicating the times of evening when they derive their revenue on the four sample Friday and Saturday evenings. He submits that the common radio network that was imposed by the LAB in the Newcastle CBD and is in operation (as a voluntary measure) among five of the six Affected Hotels is a "necessity".
133. Mr Spartalis argues that the Delegate's restriction of liquor availability on premises from 10 pm has "nothing to do" with Schedule 4 of the Act and that it is now open to the Authority to reduce or monitor alcohol sales pursuant to section 81 (2).
134. Finally, Mr Spartalis submits, with regard to the Delegate's Condition requiring collection of garbage to a distance of 100 metres from a venue, that if a mess is being made by patrons leaving a hotel, then the Authority is entitled to impose that condition.
135. Mr Spartalis concluded that the conditions imposed by the Delegate should not be disturbed upon review, although when questioned by the Authority's Chairman, Mr Spartalis clarified that this position was predicated upon Police concerns that the Authority may *liberalise* the Conditions that had been imposed by the Delegate.
136. Mr Hatzis, for the Kent and Beaumont Hotels, reiterated that the Authority should consider all the relevant considerations required by the Act and focus upon whether the actual evidence of disturbances in Hamilton rises to the degree of an "undue" disturbance. He argues that the Hamilton area has a preponderance of restaurants and is "very different" in character from the Newcastle CBD. It is an area that is subject to frequent surveillance by Police on the beat.
137. Mr Hatzis argues that his clients, two large hotels, have initiated their own harm reduction measures since late 2007, including limitations on the type of drinks available in the evening. He advises that from early 2008 there has been a 2 am lockout at his clients' premises and from November 2008 the Hotels agreed to a range of further voluntary measures through their participation in the Hamilton Liquor Accord, including a 1.30 am lockout, shut down procedures, RSA Marshalls after midnight, restrictions on drinks and free water stations. His clients use a common radio network because they have common management and a common security contractor. The Kent/Beaumont Hotels propose to continue with these voluntary initiatives regardless of the outcome of these proceedings.
138. Mr Hatzis submits that the evidence shows that there is an element of crime on the streets and in homes. To some extent this is associated with hotels but to a "great extent" it is not associated with hotels or hotel patrons. Mr Hatzis submits that the Police case regarding intoxication levels and assaults linked to hotels is exaggerated.
139. Mr Hatzis submits that there is an issue of street drinking, pre-fuelling by people coming to the Hamilton precinct and some underage drinking. He submits that there is a problem of people urinating in public who cannot access public toilet facilities late at night. He submits that there is an issue with street gangs and with late night food outlets and argues

that his clients are tarnished with some of the problems arising from those factors when incidents of disturbance occur near their premises.

140. Mr Hatzis submits that the statistics relied upon by the Resident Complainant demonstrated that alcohol related assaults in Newcastle are some "two and half times higher" than in Hamilton, even after the LAB's restrictions. He argues that having a 1 am lockout in Hamilton may encourage patron migration to the Newcastle CBD.
141. Mr Hatzis contends that the July 2009 OLGR HEP Report simply accepts the Police figures on face value and the Report contains "generalised subjective assessments" to which the Authority should give "little weight".
142. On the Delegate's restrictions upon take away liquor sales after 10 pm, Mr Hatzis advises that there are, within 200 metres of the Beaumont Exchange Hotel, two other venues that continue to sell alcohol after 10 pm.
143. He reiterates his clients' previous submissions that there is insufficient material to establish undue disturbance when the full text of the COPS Reports is considered against what the Act requires. He concludes with the submission that the law reforms implemented under the Government's new "Hassle Free Nights" program offer a better alternative for a precinct wide approach.
144. Mr O'Sullivan, on behalf of the NGH Hotels, distinguishes his clients' case from that of the Kent and Beaumont Hotels in that they only object to some of the Delegate's conditions.
145. Mr O'Sullivan submits that there should be no licence condition that mandates a common radio network condition and effectively mandates cooperation between businesses that are in competition with each other.
146. Mr O' Sullivan emphasises the unique nature of the Gateway Hotel as the only gay venue in Newcastle. He notes that this premises is located in the (neighbouring) suburb of Islington, not Hamilton and is a "destination" venue in its own right that is not subject to patron migration from other venues.
147. Mr O'Sullivan submits that the restriction on takeaway liquor sales should apply from midnight, not 10 pm. He submits that this is an unwarranted inconvenience to those persons who may patronise the many local restaurants and wish to buy take away liquor on the way home.
148. On the Delegate's imposition of a 100 metres radius for rubbish collection, Mr O'Sullivan argues that this is neither practical nor reasonable. In the case of the Hamilton Station Hotel, it would require the licensee to clean the railway line, the railway gates and the station itself. He submits that a more appropriate impost, acceptable to the NGH Hotels, would require the licensee to clean rubbish in the "immediate vicinity of the hotels".
149. Mr O'Sullivan submits that almost the entirety of the evidence submitted by Police applies to Friday and Saturday nights and that it is not reasonable to impose requirements for extra security on other evenings given the number of persons attending his clients' premises on other evenings.
150. Mr O'Sullivan endorses the submissions made by the Kent/Beaumont Hotels with regard to the Police evidence. He further submits that the Resident Complainant did not present any evidence to substantiate any link between the incidents complained of and the Affected Hotels.

151. Mr O'Sullivan submits that there is nothing in the Complainants' evidence that would justify imposing restrictions upon trading hours. He advises that the Gateway Hotel is licensed to trade until 5 am and does so on Thursday, Friday and Saturday nights. The Northern Star and Hamilton Station Hotels are licensed to 3 am and midnight on Sundays and generally trade to their limit.
152. Mr Paul Norberry relayed to the Conference his personal experience as the licensee of the Sydney Junction Hotel. He explained that he was satisfied with the Decision under review but noted the cost and time involved with engaging expert advisers to comply with new regulatory measures such as Plans of Management, audits and so on. Mr Norberry expressed concern that there should be scope for review of any new conditions and that the burden of obligations not simply be allowed to accumulate upon a business over time, requiring a licensee to submit documentation that is simply filed away and then forgotten.
153. Mr Norberry comments that it is in no hotelier's interest to have violence or intoxication on premises and observes from his own experience that the laws prohibiting public drinking are not being enforced.

Submissions made in response to the Authority's Draft Decision

154. On 19 July 2010 the Authority released a Draft Decision, disclosing 11 Draft Conditions that the Authority was then minded to impose and inviting the parties to comment by 2 August 2010.
155. Criticisms of the Draft Decision made by Mr Tony Brown for the Resident Complainant dated 2 August 2010 include that the Authority did not consider extending its review to those additional venues that the Resident Complainant had requested the Delegate to consider; that the Authority was wrong to characterise this review as a "merits" review; that the Authority has erred by not making findings on some 16 alleged errors of law committed by the Delegate during the primary decision making phase; that the Authority provided minimal reasons for its small changes to the Delegate's "defective" decision; that the Authority's decision to not restrict trading times was contrary to the "substantial independent evidence" including BOCSAR criminological research on the 2008 imposition of trading restrictions in the Newcastle CBD; and that the Authority had not mentioned the Resident Complainant's reference to the alleged alcohol related homicide in November 2009 or the serious brawl that occurred outside the Hamilton Station Hotel.
156. The Resident Complainant further submits that the Authority has given insufficient weight to harm minimisation or the Resident Complainant's core submission, which relies upon the observations made by OLGR in the July 2009 HEP Report, that: "the consumption of liquor by patrons is the single most prominent causal factor for violence and anti social behaviour within the HEP. The level of intoxication discernably increased as premises trade towards 3 am".
157. The Resident Complainant submits that the Draft Decision places insufficient weight upon the Police analysis that intoxication increases towards 3 am; that the Police were unwilling to express dissatisfaction with the Delegate's Conditions because they are also a NSW Government agency; that it is "nonsensical" for the Authority to wind back the lockout to 1 am yet impose no mandatory closing times; that the parties were not given the opportunity to present evidence on the Authority's conclusions regarding the assault rates in Newcastle CBD and Hamilton; that a recent venue in Newcastle CBD has been refused a liquor licence by the Authority; that there should be a uniform closing time in Hamilton of 2.30 am; that while a 1 am lockout accords with the initial Police complaint it only brings

Hamilton in line with the “earliest” lockouts in effect in the Newcastle CBD; and that the Authority has committed a “serious legal error” by not reopening its review to seek a copy of a compliance report that was reportedly prepared by Mr George Askew for the lawyers for the Kent and Beaumont Hotels.

158. The Resident Complainant adds that the Authority’s Draft Condition requiring venues to prepare Plans of Management should enable the Resident Complainant to participate in the preparation of those documents; that RSA Monitors should be on duty from 10 pm; that the Affected Hotels should be required to perform rubbish collection up to a 100 metre radius; that licence conditions requiring signage on premises are “tokenistic”; that the Delegate had no capacity to refuse the Resident Complainant’s tender of the June 2009 version of the HEP Report; that the Draft Decision did not note the Resident Complainant’s critique of surveillance conducted upon the Resident Complainant’s premises; that the Draft Decision fails to address the Resident Complainant’s arguments that the Hotels’ applications for review were made out of time; that the Authority’s General Counsel “may have provided” advice to the Hotels that their applications were filed in time and accordingly has a “conflict of interest”; and that the Authority should act with the same degree of independence shown by the LAB when it reduced trading hours in the Newcastle CBD.
159. In submissions filed on behalf of the Kent Hotel dated 2 August 2010, lawyers Harris Wheeler, in consultation with Mr Tony Hatzis and Mr Mark Leeming SC, focus upon the Authority’s Draft Condition proposing a 1 am lockout. The Kent Hotel argues that because the Authority has found that there was little evidentiary basis for the Resident Complaint, it follows that her complaint and subsequent review application are “invalid and lack any credibility”.
160. The Kent Hotel submits that the Authority’s statements to the effect that it will not conduct a “forensic analysis” of the COPS Reports discloses legal error, in that the Authority is obliged to conduct a qualitative analysis of the evidence; and that Justice Hall’s comments from the *McMillan* case regarding section 79(1)(a) of the Act go to the requirements for making a valid complaint and do not excuse the Authority from properly assessing the competing factual claims made in the material before the Authority.
161. The Kent Hotel further contends that the Authority’s Draft Decision has misapplied the statutory test as to what constitutes a “disturbance” when finding that prescribed concentration of alcohol offences are “disturbances” in the relevant sense. The Hotel submits that sections 79 to 81 of the Act are designed to “protect the general amenity in the environment in the vicinity of the hotels” and that:
- “the mere presence of alcohol in a motorist’s bloodstream would not even be noticed by residents or others in the vicinity of the hotels. They would simply be unaware of it and could not be said to be disturbed by the fact”.
162. In submissions filed by the licensee of the Beaumont Exchange Hotel dated 2 August 2010, Mr Stewart Smith explained that while disappointed with the Delegate’s Decision, his hotel did not file an application for review as he was content to adhere the Conditions imposed by the Delegate. It was only when he became aware that the Resident Complainant was seeking a midnight closure and an 11 pm curfew for all hotels that he became actively engaged in this review.
163. In response to the Draft Decision, Mr Smith contends that the Authority incorrectly concludes that the judgment in *McMillan* provides that there is a direct nexus between late night trading authorisations and undue disturbance; that the Authority erred in law when

concluding that the operation of the Affected Hotels or the behaviour of their patrons when leaving the venues creates an undue disturbance to the quiet and good order of the neighbourhood; that the Authority has failed to consider that while Beaumont Street has five hotels within the distance of one kilometre, there are also 22 licensed restaurants, a registered club, a theatre restaurant, an outdoor fast food court that trades until 5 am, two secure taxi ranks and a railway station; that in the wider Hamilton locality away from Beaumont Street there are two registered clubs, a race track, harness racing track, football stadium and another three hotels; and that Hamilton includes a diverse socio economic and ethnic mix, with “high density and low cost rental accommodation, a high density of student accommodation and one of the largest housing commission compounds/estates (approximately 700 units) in the Hunter region”.

164. Mr Smith further contends that there are well known issues relating to street prostitution in nearby Islington, close to the Sydney Junction Hotel, Hamilton Station Hotel and Gateway Hotel and all of this should be taken into account when considering patron migration and alleged incidents of anti social behaviour.
165. Mr Smith adds that the Authority should take into account the evidence of public support for the operations of the Beaumont Exchange Hotel that is before the Authority, including 31 letters in support from local businesses and community organisations, a petition signed by 68 residents who live within a 100 metre radius of the Hotel, 128 residents who live in the suburb of Hamilton and 1,129 patrons of the Hotel opposing the imposition of conditions upon the licence. Mr Smith further notes an audio visual presentation in support of the Affected Hotels from the Hamilton Business Committee.
166. With regard to the Police and OLGR audio visual material, Mr Smith submits that some of this footage includes homeless people and people suffering from mental illness who wander Beaumont Street at all hours and are not patrons of any hotel; that some of the footage does not conclusively show that people are intoxicated, as distinct from “highly excited or simply silly people”; and some footage depicts venues that are not the subject of this complaint.
167. On the Police evidence of PCA offences, Mr Smith states that such offences “are not legally or socially acceptable” but are not the result of bad management by the Affected Hotels, which encourage safe driving and the use of taxis; that the only person who would be aware of a PCA offence would be the arresting Police officer and the offending driver; that from 1 January 2008 to 31 March 2009 there were only 21 PCA offences linked to the Beaumont Exchange Hotel and a majority of them were low range PCA offences; that the Authority should not trust evidence given by arrested drivers as to where they last drank; that the Authority should not have regard to incidents involving people in domestic relationships or those who seek to get back at security staff who have evicted them; and that the Authority should specify by event numbers which COPS reports it has relied upon and which it has disregarded, including which domestic incidents it has relied upon.
168. Mr Smith adds that in its Draft Decision that the Authority has failed to demonstrate regard to the order of occupancy of the residents and the Affected Hotels and the fact that each of the Hotels has provided entertainment and has traded until 3 am since around 1992. Mr Smith submits that until this complaint neither the Hamilton Liquor Accord nor the Hamilton District Business Committee had received any complaints from the Resident Complainant nor any other residents about the late trading of their premises.
169. Mr Smith continues that he has no objection to a condition requiring a compliance audit. He submits that the proposed restriction upon take away liquor sales will cause significant commercial disadvantage, with nearby competitors able to supply take away liquor after

10 pm. He submits that any such restriction should be confined to the higher risk evenings of Friday and Saturday night.

170. Mr Smith contends that the lockout should commence at 1.30 am, as imposed by the Delegate, because the 1 am start proposed in the Draft Decision is “unreasonable and against the weight of evidence”. He submits that the Police position was that the conditions imposed by the Delegate were “working well” and Police are best placed to advise on the rate of assaults in Hamilton.
171. Mr Smith submits that the Authority has failed to consider advice from OLGR, contained in the June 2009 HEP Report, that there ought to be a “level playing field” between Hamilton and Newcastle. Mr Smith submits that it is unreasonable for the Authority to find that the assault rates are lower in Hamilton than in the Newcastle CBD yet impose a lockout of 1 am in Hamilton when the lockout that was imposed by the LAB in Newcastle commences at 1.30 am.
172. Mr Smith argues that a 1.30 lockout should apply so that the premises in Newcastle CBD are not commercially advantaged and so that residents, tourists and other visitors to Newcastle CBD and Hamilton are not “confused” by the various lockout times.
173. Mr Smith contends that he will suffer “significant financial hardship and commercial disadvantage” if subject to a 1 am curfew; that this disadvantage will flow onto “many restaurants, cafes and food outlets located in Beaumont Street”; that a 1 am curfew will cause people to patronise hotels in Newcastle CBD or Maitland in preference to Hamilton; and “worse still, a culture will be created where people will not come to Hamilton at all”.
174. Mr Smith argues that, using Schedule 4 of the Act as a benchmark, Parliament has seen fit to impose a 2 am lockout for “Tier 1” venues, while the Beaumont Exchange Hotel has never been a venue that has been subject to the imposition of special conditions under Schedule 4; that a 1 am lockout could create more issues, in that if a lockout commences too early it “risks forcing people to mill on the street searching for human interaction, toilet facilities and entertainment.”
175. Mr Smith requests that the last sentence of the Authority’s Draft Condition requiring the dispersal of hotel patrons after midnight should be amended to state: “This obligation does not apply with regard to any person who seeks the assistance of hotel staff or security contractors by reason that they fear harassment or violence OR with respect to any person who is participating in taxi ranks operating as secured taxi ranks”. This amendment is sought to enable the secure taxi rank, staffed by two security officers who have been engaged through the Government’s “Hassle Free Nights” initiative since 13 April 2010 will be operating outside the Hotel from 11 pm to 4 am on Friday and Saturday evenings.
176. In a submission dated 2 August 2010, Mr Rod Slater, Solicitor for the Sydney Junction Hotel, urges the Authority to reconsider the 1 am lockout that was proposed in the Authority’s Draft Decision. Mr Slater notes that it is an object of the Act under section 3 (1) (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”.
177. Mr Slater notes the Police position, advised to the Authority in response to the commencement of this review was that “the delegate has made a thoughtful and appropriate decision based upon facts presented in the best interests of the industry and the community”. Mr Slater adds that during the Authority Meeting of 27 May 2010, Counsel for the Police submitted that the conditions imposed by the Delegate should not be changed.

178. On the issue of how the Resident Complainant was dealt with by the Delegate, Mr Slater submits that any failure to provide her with access to the Police Complaint material did not adversely affect her, as the Delegate ultimately took into account the Police material.
179. Mr Slater notes that, while the Resident Complainant and authorising residents have had the opportunity to make oral submissions, they have chosen to voice their concerns through their legal representatives, Mr Boulten and Mr Brown. None of these parties have ever approached the licensee of the Sydney Junction Hotel seeking resolution of their complaints.
180. Mr Slater submits that the concerns of the community have been voiced in most detail by the Police. The licensee of the Sydney Junction Hotel accepts that there has been undue disturbance, but Police have not sought review of the Delegate's decision and have expressed their satisfaction with it. The Authority should not interfere with the Delegate's Decision.
181. In his submission on behalf of the NGH Hotels dated 2 August 2010, Mr Paul O'Sullivan directs his comments to the Authority's Draft Conditions that restrict take away liquor sales and the 1 am lockout.
182. On the take away liquor restriction, Mr O'Sullivan contends that the material before the Authority does not justify a 10 pm take away liquor restriction and requests the Authority to consider a restriction no earlier than 11 pm. He submits that there was little evidence before the Authority of persons purchasing liquor at licensed premises and consuming it on the streets.
183. On the 1 am lockout, Mr O'Sullivan submits that the 1.30 am lockout imposed by the Delegate should not be disturbed; that it is unwise to have different lockouts in the Hamilton and Newcastle areas; that staggered lockouts are likely to give rise to "significant patron migration" from Hamilton to Newcastle; that such migration will strain the already pressured transport systems; that such migration may increase antisocial behaviour in Newcastle CBD; and that it is unfair and unreasonable for a stricter lockout to apply in Hamilton than the lockout condition that is prescribed by Schedule 4 of the Act for "Tier 1" hotels.

DETERMINATION

184. The Authority has considered the many arguments posed by the interested parties on review. While the Authority is not obliged by the Act to provide a full statement of reasons, it is the Authority's practice to provide a concise explanation of its decision when it performs a review under section 153 of the Act.

Valid complaints made against all six of the Affected Hotels

185. The Authority is satisfied, having considered all the documentation that accompanies the initiating Resident Complaint that she identified, with sufficient specificity:
- Sydney Junction Hotel
 - Hamilton Station Hotel
 - Northern Star Hotel
 - Kent Hotel
 - Beaumont Exchange Hotel
 - Hamilton Hotel

as premises that were subject to her complaint.

186. However, complaints framed by the Resident Complainant along the lines of “all extended trading hotels in Hamilton Area and Newcastle CBD” are, in the Authority’s view, cast too broadly to meet the minimum requirements of section 79 of the Act, as explained by the Supreme Court of New South Wales in *McMillan and Anor v Director-General of Communities NSW* [2009] NSWSC 1236.

187. In order to make a valid complaint, a complaint should be made with sufficient specificity to identify the one or more licensed premises that are the alleged source of undue disturbance to the relevant neighbourhood.

188. It follows that the Authority accepts the submission, made during the course of the review by Mr Paul O’Sullivan that no valid complaint was made by the Resident Complainant against his client the Gateway Hotel.

189. Nevertheless, the Police Complaint clearly identified the Gateway Hotel as a subject of the Police Complaint and it was therefore open to the Delegate to invite representatives of that premises to the Conference and consider taking regulatory action against that hotel. As the Gateway Hotel has now itself sought review of the Decision, it is open to the Authority to consider the merits of the Decision as it applies to that hotel.

190. The Authority is satisfied that the Police Complainant made valid complaints against all six of the Affected Hotels.

All Applications for review were made within time

191. The Resident Complainant argued in numerous submissions to the Authority that the Applications filed by the Kent Hotel and the NGH Hotels were made out of time. Clause 76(1) of the Liquor Regulation 2008 ("**Regulation**") requires, *inter alia*, that an application to the Authority under section 153 of the Act for review of a decision of the Director-General must:

"(a) be made within 21 days of the day on which the decision was made."

192. The Resident Complainant's argument arises from the fact that there are three components to the Decision under review. It is apparent that the Delegate drafted a statement of reasons and that this document is dated 30 November 2009. However, the Delegate did not release that document on that date but later prepared a formal decision letter, dated 2 December 2009, that refers to and encloses the statement of reasons. The Authority has confirmed with staff assisting the Delegate that this material was released to the parties on 2 December 2009. It is apparent that the Delegate then made some minor amendments to the Conditions that were imposed on 2 December 2009 and that the amended Decision was then released in mark up (as attached to this decision) to all parties on 16 December 2009.

193. It is common practice for administrative decision makers to draft statements of reasons and to then to later enclose that material under the cover of a formal decision letter notifying the decision. The Authority is satisfied that the final and operative Decision was not perfected until 2 December 2009, when the covering decision letter was signed off by the Delegate and communicated to stakeholders.

194. It would effectively deprive review applicants the benefit of the 21 days appeal period provided by the Regulation were an unreleased statement of reasons, prepared by a decision maker several days prior to the release of the formal decision letter, to constitute the date from which the appeal period is to be calculated.

195. The Resident Complainant has questioned whether the amended decision of 16 December 2009 was validly made, by reason that it was drafted following consultation with the Affected Hotels but not the Resident Complainant. The Authority does not need to determine this issue, because it is satisfied that a reviewable decision was made on 2 December 2009 and that it has jurisdiction to consider all five of the Applications for review. The Resident Complainant has had ample opportunity to articulate and supplement her case on review and redress any disadvantage that may have arisen from a lack of consultation by the Delegate prior to the Delegate releasing the amended decision of 16 December 2009.

The Resident Complainant's standing to seek review of the Decision

196. The Resident Complaint was duly authorised by several other local residents of Hamilton. The Authority does not accept the argument, advanced by the Kent/Beaumont Hotels, that she is too remotely located from the Affected Hotels and is not a "person aggrieved" by the decision and therefore may not seek review of the Decision under section 153 of the Act.

197. The Authority is satisfied that the Resident Complainant's home, where she has lived since 1986, is sufficiently proximate to those licensed premises that were validly identified in her complaint to have an interest in the quiet and good order of the relevant neighbourhood. It would be perverse to interpret section 153 of the Act as denying a person who was duly authorised and otherwise qualifies as a complainant for the purposes of section 79 of the Act, the right to seek review of the very decision that arose from her complaint.

198. The Resident Complainant has an interest in the outcome of this review by reason of her status as an authorised complainant under the Act and in the alternative, the alleged impact of the conduct complained of upon her property. This rises above the degree of interest that may be held by an ordinary member of the Hamilton community.

Resident Complainant's claim of denial of procedural fairness during primary decision process

199. The Resident Complainant's submissions on review contained a repeated focus upon the alleged denial of procedural fairness by the Delegate in refusing to enable access to the Police Complaint during the primary decision making process.

200. It is apparent from the Conference transcript that the Delegate formed the view that the Police Complaint was a separate matter to the Resident Complaint and that both complaints could be addressed in parallel during the same Conference. One perspective, reflected in the submissions of Mr Rod Slater, Solicitor for the Sydney Junction Hotel, is that the Police material was not actually "adverse" to the Resident Complainant's case and in any event there was little prejudice to her by reason that this material was ultimately taken into account by the Delegate in support of the Decision.

201. The difficulty with the Delegate's approach is that it became apparent, particularly after the Kent/Beaumont Hotels had secured the release of the full text of COPS Reports to all Affected Hotels, that the Hotels' case in response to *both* complaints of undue disturbance had become intertwined. The Affected Hotels' oral and written submissions to the Delegate became heavily focussed upon matters arising from the Police COPS Reports, and this placed the Resident Complainant at some disadvantage during the Conference in

appreciating the nature of the Affected Hotels' various claims that their premises were simply not giving rise to an undue disturbance.

202. In the Authority's view, if a situation arises whereby a resident complainant makes a disturbance complaint against the same premises complained of by either the Police or a Consent Authority, and a Conference is convened to discuss all the issues arising from all complaints, it is preferable for all relevant material to be released to all the parties. The Authority's own practice is to do this in relation to review applications and it urges the Director-General and her Delegates to follow this practice in considering and dealing with disturbance complaints.

203. There may be issues relating to victim privacy or the preservation of certain Police or operational intelligence that require material to be released with redactions or in a modified form. In this case, Police did not object to the production of the Police Complaint to the Resident Complainant. The Act did not prevent that material from being released to the Resident Complainant.

204. Nevertheless, the merits review process provides an opportunity to cure any inadvertent procedural errors that may have arisen during the primary decision making process. In addition to contesting the merits of the decision, the parties to a review under s153 are entitled to allege, in their submissions, that aspects of the decision or the decision making process disclose legal error. Such submissions may go to the weight that the Authority should give to any findings made by the primary decision maker or otherwise guide the Authority away from making similar errors upon review.

205. However, it is not necessary for the Authority, when issuing this Decision, to traverse each and every error that is alleged to have been committed by the Delegate. The Authority has reconsidered the complainants and the respondents' material afresh, with a view to reaching the correct or preferable decision on the basis of all the material now before it.

No extension of the review to the Hamilton Hotel, Wickham Park Hotel, Newcastle Jockey Club, Gallipoli Legion Club and Hamilton RSL

206. The Resident Complainant pressed the Authority in a number of submissions to extend the Review to the above mentioned premises.

207. As for the Hamilton Hotel, the Authority has described above the circumstances in which the Delegate determined to exclude that premises from further participation in the matter on day one of the Conference, hence excluding that premises from the scope of the Decision under review.

208. The Delegate did so in the absence of any Police case against that premises and following a concession made by the Resident Complainant's Senior Counsel that his client has "not much concern at all about the Hamilton Hotel".

209. As for the Wickham Park Hotel, Newcastle Jockey Club, Gallipoli Legion Club and Hamilton RSL, none of those further premises were named in the initiating complaints filed by either the Resident Complainant or the Police Complainant.

210. During the Conference, the Delegate was pressed by the Resident Complainant to extend the Conference to those four premises. The Delegate had the power to do so but it is implicit from the transcript and the written Decision under review that the Delegate decided to not exercise that power. Accordingly, those premises were not subject to any

further consultation by the Delegate, nor did they fall within the scope of the Delegate's Decision.

211. Section 80 of the Act makes clear that the Director-General must provide an opportunity to a licensed premises to participate in a conference (if a conference is to be convened) or have a reasonable opportunity for the licensee to make submissions if the Director-General is contemplating taking action against a premises arising from a disturbance complaint. In other words, consultation with a licensee is a condition precedent to the making of a valid decision involving their licensed premises under section 81 of the Act.

212. It is apparent that, in the case of the Hamilton Hotel, the Delegate decided, under section 80 (1) of the Act, to take no further action against that premises. It is further apparent that the Delegate did not exercise his discretion under section 80 (4) of the Act to extend the Conference to the four further premises, notwithstanding the Resident Complainant's request to do so.

213. The Authority does not have a general jurisdiction to review the legality or the merits of all decisions made by the Director-General under the Act. The Authority may only review those specified categories of reviewable decision that are set out in section 153 of the Act. Relevantly, this includes, in subsection 153(1)(c):

"a decision under section **81** (Decision by Director-General in relation to complaint)" [emphasis added]

214. In the Authority's view, it cannot now "look behind" the final and operative decision made by the Delegate under section 81 of the Act with regard to the Affected Hotels and examine the merits of the Delegate's preliminary decisions that were made under section 80 (1) or section 80 (4) of the Act. Furthermore, the Authority could not, upon review, extend its review to those premises for which no valid initiating complaint was made under section 79 of the Act at first instance.

215. Even if the Authority is wrong in its interpretation of its jurisdiction, there was no sufficient body of material before the Authority is capable of supporting a finding of undue disturbance against any of those premises.

Late request to re-open the Review

216. Following the Authority's meeting with the parties on 27 May 2010, the Resident Complainant notified the Authority that there had been local news reports of a compliance report that had apparently been leaked to the press. The Authority understands that Mr George Askew was engaged by lawyers for the Kent/Beaumont Hotels during 2009 with a view to preparing a report pertaining to certain matters arising from this disturbance complaint, but Mr Askew's report was not ultimately tendered by the Kent/Beaumont Hotels to the Delegate, nor has it been made available to the Authority in any evidence or other material filed on review.

217. The Authority advised the parties at its meeting of 27 May 2010 that the time for submission of evidence had passed and that the Authority would not have any regard to references to Mr Askew's report. The Authority does not have unlimited resources and in the usual case expects a review applicant to present any new evidence or submissions *upon filing an application*. It does not, in the interests of procedural fairness, propose at this very late stage to re-visit this matter, which would require yet another round of consultation with interested parties.

Sufficient evidence or other material to satisfy the Authority of undue disturbance

218. As previously noted, section 79(1) enables a person to complain to the Director-General that the quiet and good order of the neighbourhood of licensed premises is being unduly disturbed because of either (a) the manner in which the business of the licensed premises is conducted or (b) the behaviour of persons after they leave the licensed premises (including, but not limited to, the incidence of anti social behaviour or alcohol related violence).
219. While the focus of many submissions to the Delegate and the Authority concern the level of assaults occurring in Hamilton, there may be a spectrum of conduct that constitutes "disturbance" to the quiet and good order of the neighbourhood for the purposes of section 79 of the Act.
220. Disturbance events may range in seriousness from assaults, to people engaging in offensive conduct, to intoxication offences, through to patrons who are only mildly affected by liquor, yet talk loudly on their way home from a licensed premises and wake up the neighbours. In this matter, the Police Complaint relies upon a range of disturbance events that have been linked to the Affected Hotels.
221. Some degree of disturbance is to be expected from the operation of any licensed premises. Disturbances that might be considered acceptable if occurring earlier in the evening (for example, people making noise getting into their cars) may have a greater tendency to constitute an "undue" disturbance if occurring at 2 am.
222. The Supreme Court of New South Wales has provided some guidance as to how a decision maker should approach a complaint based upon subsection 79 (1) (a) of the Act. In *McMillan and Anor v Director General of Communities NSW* [2009] NSWSC 1236 at paragraphs 100-103 and 110 of the judgement, Justice Hall observed:

100 Section 79(1) (a) of the Act, which refers to disturbance arising because of the "*manner in which the business of the licensed premises is conducted*", does not refer to discrete disturbance creating activities which may be carried out by a business. The section conveys a more general notion of the conduct of the business involving the sale and supply of liquor. The distinction between "*business*" and "*activity*" is one that is made by the Act itself (see, for example, s.45 (3) and (5)). Section 79(1) employs the former term, not the latter.

101 Section 49(8) (b) reflects the fact that *extended trading* is an aspect of the business of licensed premises which itself can, without further specificity, be associated with undue disturbance. That section restricts the granting of an extended trading authorisation where "*the extended trading period*" will result in the "*frequent undue disturbance of the quiet and good order of the neighbourhood of the licensed premises*".

102 Accordingly, the Act itself in s.49 (8) (b) recognises undue disturbance arising from (being the result of) the fact of extended trading. The provisions of s.79 (1) (a) do not refer to disturbance from specific or individual business "*activities*". Like the provisions of s.49 (8) (b), they comprehend the notion of the conduct of the "*business*" on licensed premises (which, in this case, must be taken as including extended trading).

103 Viewed in this light, I do not consider it incumbent upon a complainant to identify in a complaint under s.79 (1) the factual matters that explain what particular activities in the extended trading period caused the alleged disturbance or how they caused it. Extended trading is itself a fact and one that the legislature in s.49 (8) (b) has recognised can result in "*undue disturbance*".

....

110 A complaint under s.79 is not to be analysed in the way of an information or indictment that pleads a statutory offence, involving a number of constituent “elements”

223. Much of the Police Complaint concerns disturbance events that are linked to the Affected Hotels through section 79 (1) (b) of the Act. The Authority does not propose to provide a forensic analysis of each of the several hundred COPS Reports upon which the Police Complaint relies. That is, it does not propose to provide an exposition, in this decision letter, of each and every COPS Report now before it. The process of writing up the Authority’s analysis and findings on each incident would consume an unreasonable amount of the Authority’s resources and result in a decision letter of some several hundred pages in length.
224. The Authority is satisfied that the majority of COPS Reports that have been listed by the Police in the Police Spreadsheet disclose relevant incidents of disturbance for the purposes of a complaint made under section 79 of the Act.
225. To avoid doubt, the Authority has considered the full text of all COPS Reports and has made a qualitative assessment of that material, taking into account the criticisms levelled at that material by the Affected Hotels.
226. The comment in the Authority’s Draft Decision to the effect that the Authority had considered the COPS Reports on a “cumulative” basis was intended to convey that the Authority has considered the cumulative effect of that material, in the context of all the material now before it – that is, the COPS Reports, the July 2009 OLGR HEP Report, the Police and OLGR audio visual evidence and the applications and submissions from all parties. The expression “cumulative” was not intended to suggest that the detail of each COPS Report had not been appraised, or that it had been appraised on a cursory or uncritical manner, without reference to the Hotels’ submissions.
227. In light of the generality of the Resident Complaint, the Police material provides much of the evidentiary support for the complaint against the Affected Hotels. While the Authority accepts that the Resident Complaint was genuine, that complaint alone does not disclose sufficient evidence or other material to enable the Authority to find undue disturbance by any of the Affected Hotels that were identified in that complaint.
228. The Authority has determined the question of undue disturbance primarily by reference to the Police Complaint. The Authority has also had reference to a considerable amount of material regarding disturbance to the precinct that is contained in the revised July 2009 OLGR HEP Report and the hotel’s submissions on all of that material.
229. This HEP Report contains observations made by OLGR inspectors who have statutory responsibilities in regulatory matters. The HEP Report advises that OLGR compliance officers have, since 1 January 2008, conducted 42 onsite audits within the HEP resulting in the issue of 20 penalty notices, 24 compliance notices and 63 best practice recommendations. Between 13 March 2009 and 21 June 2009 their activities have also focussed upon assessing patron migration and behavioural trends, late night patron transport, venue security operations, street drinking and responsible service of alcohol practices.
230. OLGR’s conclusions from that body of surveillance work, include, *inter alia*:

“Street Drinking and the carrying away of liquor

Observations made by compliance officers confirm street drinking is common place in the HEP and is more concentrated in the vicinity of licensed premises and in public seating areas of Beaumont Street.

Between 10pm and 1:30am on Friday and Saturday evenings it is common place to observe persons alighting from trains, private vehicles, buses and taxis whilst carrying open containers of beer and pre mixed products. These products are openly consumed and discarded within line of sight of licensed premises security prior to seeking entry.

The prevalence of street drinking is exacerbated by the sale of liquor by HEP hotels to migrating pedestrian traffic between the hours of 10pm and midnight, and further, by the carrying away of opened drinking vessels/containers from licensed venues after 10pm. Discarded beer and premixed glass bottles and cans were regularly observed littering the footpath, carriageway and entrances to business and private premises...

Patron Behaviour

Observations made by compliance officers support the view that the consumption of liquor by patrons is the single most prominent causal factor of violence and antisocial behaviour within the HEP. The level of intoxication discernibly increases as premises trade towards 3am.

It is common place in the later part of Friday and Saturday evenings to observe patrons leave premises displaying high intoxication levels and for these persons to engage in antisocial behaviour including public urination, offensive conduct, assaults, yelling, swearing and causing disturbances to the neighbourhood.

Officers report observing patrons who had been refused entry to or removed from licensed premises to loiter in the vicinity of the licensed premises with minimal intervention by security officers or enforcement of the 50 meter exclusion zone.

Conversely, patrons observed to be refused entry to licensed premises due to intoxication levels were seen to then be permitted entry to another licensed premises in the HEP.

On two occasions violent incidents were witnessed in the immediate vicinity of venues involving intoxicated patrons and security officers. On both occasions police were not contacted by the licensed premises involved...

Late Night Food Outlets

The HEP contains five late night food outlets with four of those located in the 'Oasis' Food Court situated on the corner of Beaumont Street and Cleary Street opposite the Kent Hotel.

It is common place for late night patrons to migrate to and congregate around the 'Oasis' and partake of light meals prior to accessing the HEP's late night transport options. The Oasis regularly operates to 4am...

Amenity of the Neighbourhood

All late trading Hotels in the HEP provide various forms of entertainment including live bands, disc jockeys, karaoke and soloists. Noise (amplified music) emanating from licensed premises is at times clearly audible outside licensed premises after midnight. Patron noise in the form of loud voices, laughing, yelling and swearing also emanates from smoking areas and outdoor areas of licensed premises."

231. The Hotels have cautioned that OLGR's observations contain sweeping generalisations that are not supported by specific incidents and that OLGR otherwise defers to the Police material. The Authority accepts that the HEP Report is pitched at the level of an overview of the precinct and by its nature is less specific than the individual COPS reports, but there

is a good deal of audio visual material recorded by both Police officers and OLGR inspectors demonstrating a range of unacceptable conduct and persons in various states of intoxication, either directly outside licensed premises or on the streets close by.

232. This footage demonstrates how the licensed premises in Beaumont Street can become crowded with late night visitors. There are considerable numbers of persons shown milling around the footpath, either directly outside or nearby the licensed premises, late on busy nights. Some of these persons may not have entered any licensed premises, but it is not credible for some of the hotels to propose that the few late trading take away food stores act as a "magnet" for people to hang around the precinct and cause disturbance, yet the late trading licensed premises do not.
233. There is audio visual evidence of street drinking, but this liquor may or may not have been purchased from the Affected Hotels. This footage, in addition to the observations of OLGR in the July 2009 HEP Report that the carrying away of open vessels and packaged liquor from licensed premises contributes to street drinking and associated anti-social behaviour, satisfy the Authority that some limitation on the availability of takeaway liquor within the precinct after 10 pm is warranted, to minimise the scope for late night street drinking to be exacerbated by liquor that is made available at the Affected Hotels.
234. Such restrictions will need to be complemented by the proper enforcement of prohibitions against public drinking within Alcohol Free Zones, as some street drinking may involve liquor that was acquired from sources other than the Affected Hotels.
235. The Authority is satisfied that each of the Affected Hotels, either because of the manner in which the business of their licensed premises is conducted and/or the behaviour of persons after they leave those premises, has given rise to undue disturbance, although it must be said that Police evidence of the extent of disturbance varies from hotel to hotel.
236. The Gateway Hotel has relatively fewer disturbance incidents attributed to it by the Police Complaint, but there is still sufficient material before the Authority to indicate that its patrons have caused undue disturbance, particularly through the commission of PCA offences. The Authority regards the commission of PCA offences by patrons leaving any licensed premises as a particularly serious matter, posing a potentially fatal risk to the safety of the neighbourhood.
237. COPS Reports provide contemporaneous accounts of Police activity. They do not necessarily establish to a criminal standard of proof that any offence was committed, but they do show, in the most part, that Police have been involved in many incidents that are relevant to the Authority's consideration of whether the operation of the Affected Hotels and/or the conduct of their departing patrons is causing undue disturbance.
238. Some of the Affected Hotels have sought to minimise or eliminate from consideration those COPS Reports that do not tend to disclose any "fault" or "responsibility" on the part of the management or staff of their licensed premises.
239. It has been submitted, for example, that the Authority should not take into account or give little weight to: assaults that took place within the context of a domestic relationship; altercations caused by patrons who have refused to leave the premises and then complained about the manner of their ejection by security staff; incidents whereby a victim was assaulted or robbed on their way home, after drinking at a hotel, yet the perpetrator had no reported link to the hotel; or incidents involving persons who last drank at licensed premises before being intercepted by Police for committing a prescribed concentration of alcohol offence. It has been suggested that a Police record of an assault event should not

be taken into account in this context if the matter did not proceed to court and result in a conviction.

240. In the Authority's view, COPS Reports disclosing any of the above types of incidents may be (and in this matter have been) considered as relevant forms of "disturbance" for the purposes of assessing a complaint made under section 79 of the Act. Individual COPS reports have been considered on their merits, in the course of conducting this review. These types of incidents may be taken into account so long as the reported disturbance can be said to have occurred because of either the manner in which the business of the licensed premises is conducted or the behaviour of persons after they leave the licensed premises.
241. In its Draft Decision the Authority expressed the view that there must be some reasonable geographic or temporal nexus between a recorded disturbance and either the manner in which the relevant business is conducted or the behaviour of patrons departing that premises. In making this observation, the Authority does not purport to liberalise the statutory test for "disturbance" that is specified by section 79, as was contended by the Kent Hotel in its submissions on the Authority's Draft Decision. On the contrary, the Authority makes the point that not all behaviour that technically occurs "after" a patron leaves licensed premises should be reasonably attributed to that premises. Similarly, when persons depart a premises and then create a disturbance some distance away from the relevant neighbourhood, that event may also be discounted for the purposes of subsection 79 (1) (b).
242. By way of illustration, say a couple leave a hotel at 2 am and walk home having an argument. They later resume that argument at their nearby residence at 11 am, to the extent that Police are then called upon to deal with a disturbance. At this later point in time, it may no longer be reasonable to attribute the disturbance to the hotel, whereas had the Police been called to their dispute while they were on the way home or after getting home from the hotel, the event could be taken into account. However, the mere fact that the couple are in a domestic relationship should not, of itself, discount their behaviour from consideration in the context of assessing a disturbance complaint.
243. Furthermore, the Authority does not accept the proposition that it cannot, in this context, have regard to disturbances when the reported *victim* of an assault (but not the perpetrator) was the relevant party who had departed a hotel. Patrons leaving late trading licensed premises may be tired, emotional and affected by alcohol to various degrees. They may be more vulnerable to taking risks or engaging in conduct that leads to them becoming embroiled in disturbance events. In the Authority's view section 79 (1) (b) enables a disturbance incident to be taken into account whether or not the party who departed the premises was, strictly speaking, the *perpetrator* of the relevant incident.
244. Moreover, section 79(1) (b) does not require that staff of a licensed premises be "at fault" for the behaviour of its departing patrons for their patrons' behaviour to be taken into consideration. If, for example, a patron creates a disturbance after being removed from the premises by hotel security staff, then that event may be considered a form of "disturbance" that is subject to complaint.
245. In its submissions on the Draft Decision, the Kent Hotel argued that PCA offences that are committed by patrons after they depart from licensed premises do not constitute a relevant "disturbance". The Kent Hotel refers the Authority to decisions of the Western Australian Supreme Court in *Re Hudson Gallery* (2004) 37 SR (WA) 192 adopting a statement of the Full Court of the Supreme Court of South Australia in *Hackney Tavern Nominees Pty Ltd v McCleod* (1983) SASR 207 in support of the proposition that the

concept of “disturbance” is concerned with “a person’s peace in the usual, regular enjoyment of his property”.

246. As for the relevant “neighbourhood”, the Kent Hotel has referred the Authority to the decision of the New South Wales Supreme Court in *Carrall v Moss and Ors* [1980] 2 NSWLR 473. In that case (in the context of reviewing a decision of the former NSW Licensing Court on the question of whether a new licence applicant may cause disturbance to the quiet and good order of the neighbourhood for the purposes of section 29 (1) (g) of the *Liquor Act 1912*) the Court held that it was necessary for the Licensing Court to have defined the relevant “neighbourhood” with some precision, in geographic terms, and that the “neighbourhood” in this sense means something more than the immediate vicinity of the premises but something less than the surrounding locality or suburb. The Kent Hotel submits that motorists who are intercepted by Police outside the relevant neighbourhood are not creating a disturbance within that neighbourhood.

247. The Authority accepts that a resident’s “peace in the usual regular enjoyment of his property” is one aspect of what the concept of “disturbance” entails. While there is no binding authority in this jurisdiction as to whether a PCA offence constitutes a form of “disturbance” for the purposes of section 79, the Authority notes the observations made by the New South Wales Court of Appeal in *Metropolitan Licensing Inspector v Shultz* (1988) 12 NSWLR 134 with regard to the equivalent section 104 of the former *Liquor Act 1982*. In that case, the Court commented (per Samuels JA at page 136) that:

“this provision is designed to deal with a nuisance generated by the conduct of persons resorting to the licensed premises. It may certainly be said that for that conduct, or for most of it, the licensee is responsible and he must answer for it”

and (per Mahony JA at page 143):

“the purpose of the section is essentially to protect the public in the neighbourhood of the licensed premises. The mischief which the section deals is not mischief arising merely from the conduct of the licensee.”

248. In 2010, most reasonable persons would regard drink driving (at any blood alcohol concentration that constitutes an offence) in their neighbourhood as a serious threat to the amenity of that neighbourhood. Drink driving is one of the most dangerous acts that any patron leaving a licensed premises may commit.

249. It is a form of unruly conduct that may, in the Authority’s opinion, constitute a “disturbance” for the purposes of section 79 (1) (b). The fact that local residents may not actually be aware that a motorist is drink driving through their neighbourhood need not be determinative of whether that conduct can be taken into account in this context. Local residents may be similarly unaware that a departing hotel patron is caught by Police urinating in a quiet public street, but that does not discount the incident as a “disturbance” to the quiet and good order of the neighbourhood.

250. Furthermore, the fact that a drink driver may not be intercepted by Police until they are outside the relevant “neighbourhood” does not preclude consideration of that conduct when assessing a disturbance complaint. It is the offending motorist’s act of drink driving through the neighbourhood of the licensed premises that constitutes the relevant disturbance to the quiet and good order of that neighbourhood.

251. As for what actually constitutes the relevant “neighbourhood” for the purposes of a section 79 complaint, Justice Hall observed in *McMillan* that:

“Neighbourhood” means a “nearby or surrounding area, the vicinity ...” by reference to a given point: Oxford English Dictionary.

252. For the purposes of this decision, the Authority has proceeded on the basis that the “neighbourhood” extends in a 1 km radius in all directions from each of the Affected Hotels.

253. The Affected Hotels are entitled to defend their management practices. They rightfully note that the making of a COPS Report does not, of itself, prove any offence. However, the Authority is satisfied that the majority of the COPS Reports submitted by Police in this matter are relevant to the Authority's assessment of whether an undue disturbance is occurring for the purposes of section 79 of the Act. They reveal, when considered alongside all the material disclosing disturbance in Hamilton, a pattern of disturbance associated with the Affected Hotels that can only be considered as undue.

254. A COPS Report is generated when some incident has prompted a Police officer to engage that matter and then write up the event for future reference. This may or may not lead to any further investigation. It may or may not lead to the issue of a Penalty Notice or the prosecution of any person for an offence.

255. In the Authority's view, a record of a disturbance incident that has arisen because of the manner in which a business is conducted or the conduct of its departing patrons (be they *victim* or *perpetrator*) may comprise relevant information that may be taken into account when determining whether a complaint under section 79 of the Act has been established.

256. The Authority has identified a minority of COPS Reports listed on the Police Spreadsheet that disclose no relevant link of any party to any Affected Hotel. Those matters have not been counted.

257. The Authority has also not counted incidents of the theft on premises of patrons' unattended wallets, handbags, mobile phones or other items; nor those business inspections whereby drug residue was detected on a person by a Police dog on premises but no offence occurred. On the basis of those reports, without more, it is difficult to see how a “disturbance” that is caught by either subsection 79 (1) (a) or (b) has occurred.

258. The Authority has disregarded a very few prescribed concentration of alcohol incidents that, upon examination, were attributed on the Police Spreadsheet to a different hotel than the premises that was actually noted by the arresting officer on the COPS Report. There were a few COPS events that have been listed on the Police Spreadsheet twice and that the Authority has not double counted.

259. However, the Authority has not simply discounted all COPS Reports that were classified as “business inspections” as it was urged to do by the Kent/Beaumont Hotels. Some of these reports include Police observations as to noise, intoxication levels, crowding and available security, even if the officers have exercised their discretion not to issue a penalty notice or take further regulatory action. Business inspections may or may not record information that is relevant to a section 79 complaint. These reports are to be assessed on their individual merits.

260. The Police Complaint makes the core submission that the late trading Affected Hotels are imposing a burden upon the community in that additional Police hours are required to

patrol this busy precinct effectively to ensure public safety and manage the risk of, or the consequences of disturbance. This diversion of Police resources is said by the Police Complainant to require assistance from other commands. The Authority has no reason to doubt this submission.

261. While the Authority has made its finding of undue disturbance on the basis of the material before it, it considers it more likely than not, as contended by Police and the Resident Complainant, that the COPS Reports tendered in this review understate the real levels of alcohol related disturbance occurring in Hamilton. The Authority notes, from the Australian Bureau of Statistics (“ABS”) *Australia Yearbook 2006*, the following figures from research derived from the 2002 *National Crime and Safety Survey* (NCSS) - a household survey, conducted by the ABS relating to a 12-month period ending in April 2002 - that found a substantial degree of under reporting of assaults to Police:

ASSAULT REPORTING RATES TO POLICE, By age group - 2002

| Age group (years) | Males | Females | Persons |
|-------------------|-------|---------|---------|
| | % | % | % |
| 15-19 | 23.6 | 16.5 | 20.6 |
| 20-24 | 25.4 | 27.0 | 25.9 |
| 25-34 | 37.7 | 28.8 | 33.1 |
| 35-44 | 35.1 | 33.6 | 34.3 |
| 45-54 | 38.4 | 32.1 | 35.5 |
| 55-64 | 35.2 | 35.2 | 35.2 |
| 65 years and over | 51.3 | 31.2 | 43.1 |
| Total | 32.8 | 28.4 | 30.8 |

Conditions imposed by the Authority

262. The Authority has considered afresh what, if any, regulatory action should be taken in light of its finding that the Affected Hotels have given rise to undue disturbance. It has considered the provisions of section 81 of the Act and has turned its mind to the objectives of the Act and the statutory considerations that are set out under section 3:

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.

263. In the Authority's view, the Delegate made a considered decision that quite properly endeavoured to balance the competing considerations under the Act, in light of the material then before him. The Authority has considered afresh what regulatory action, if any, is reasonable and proportionate in light of the requirements of the Act and all the material now before it.
264. The Authority has confirmed the Delegate's Conditions "c", "g" and "f(vii)" and has varied the Delegate's Conditions "a", "b", "e", "f(i)", "f(ii)", "f(vi)", "f(viii)", "f(ix)", "f(x)", "l", "j", "k" and "l". The Authority has revoked Delegate's Conditions "d" and "f (iii)", "f(iv)" and f(v).
265. The variation to Delegate Conditions "e", "f(viii)", "h", "i" and "k" will mean that these measures shall now only apply on the high risk evenings of Fridays and Saturdays, when greater numbers of patrons are likely to be on premises.
266. Briefly, the Authority is satisfied that the Licensees of the Affected Hotels should take this opportunity to prepare Plans of Management with a view to providing a premises specific response to managing the risks of alcohol related harm and disturbance. The Authority considers that such Plans should entail some consultation with Police, but sign off is ultimately the responsibility of the licensee. The Authority does not accept that it is reasonable or practical to interpose local residents into the preparation of these management documents, as was submitted by the Resident Complainant. The Authority is satisfied that auditing these Plans should occur on a six monthly basis and that three monthly audits, as initially proposed by Police, would amount to an excessive regulatory burden.
267. The Authority is satisfied that RSA monitors should be on duty on the high risk evenings of Friday and Saturday, from 11 pm until closure. This is a reasonable risk management measure in light of the issues identified in the Police and OLGR material regarding alcohol related disturbance and intoxication linked to the Affected Hotels, which mainly concerns Friday and Saturday evenings.
268. The Authority is satisfied that the on premises restriction regarding service of alcohol that was proposed by Police and imposed by the Delegate from 10 pm should be retained for Friday and Saturday evenings only. This measure is, in the Authority's assessment, a reasonable and prudent impost to minimise the potential intoxication levels that may occur as the Affected Hotels trade later on high risk evenings.
269. The Authority notes that such restrictions are more onerous than a similar licence condition that Parliament has seen fit to impose upon the State's most violent premises under Schedule 4 of the Act, in that the Authority Condition commences at 10 pm rather than midnight (although for the sake of comparison, the Schedule 4 condition applies every night of the week).
270. The regulatory policy that underlies Schedule 4 does not prevent a decision maker from implementing premises-specific measures when determining a disturbance complaint under section 81 of the Act. The Authority's present concern is to impose measures to address the case of undue disturbance before it. The material before the Authority disclosing disturbance is largely focussed upon Friday and Saturday evenings but is not confined to issues of violence.
271. The Authority is satisfied that all of the Orderly Precinct measures that were crafted by the Delegate under Delegate Condition "f", save for the requirement to maintain a common radio network, are reasonable and proportionate mandatory requirements aimed at reducing the scope for disturbance events to detract from the amenity of the

neighbourhood. They have been retained by the Authority, subject to some minor variation to the drafting of those conditions. As discussed below, the Authority has more substantially varied Delegate Condition “f (viii)” regarding take away liquor sales.

272. The Authority has given careful consideration to whether there should be any restriction upon the purchase of take away liquor, particularly in light of submissions received from the NGH Hotels that this will pose an unwarranted inconvenience to those in the community who may, for example, wish to purchase liquor after patronising one of the many local restaurants or when otherwise heading home. In response to the Draft Decision, the NGH Hotels requested the Authority to consider an alternative commencement time of 11 pm. The Authority further notes the Beaumont Exchange Hotel’s submission that if this measure is to be imposed it should be confined to the higher risk Friday and Saturday evenings.
273. The Authority acknowledges that this measure may cause some inconvenience to responsible adults in Hamilton and it will also have some indeterminate adverse economic impact upon the Affected Hotels, but is persuaded by the Police and OLGR evidence that street drinking is a real problem in the precinct on Friday and Saturday nights. The OLGR HEP Report contains observations from OLGR inspectors that the problem of street drinking becomes apparent from 10 pm.
274. The Authority is satisfied that restricting take away purchases from the Affected Hotels is an appropriate measure that should commence from 10 pm, but only on Friday and Saturday evenings. The Authority has varied the Delegate’s Condition “f (viii)” (which had imposed a 10 pm restriction for every night of the week) by reason that the Police and OLGR material that underpins this action is heavily focussed upon the situation in Hamilton on Friday and Saturday evenings.
275. Non-compliance with a licence condition may constitute an offence against the Act. Conditions imposed upon a licence should be cast in terms that are sufficiently certain, reasonable and workable. The Authority has varied the drafting of the Delegate’s Conditions “f (i)” and “f (ii)” to enhance certainty and to avoid imposing liability upon a licensee for conduct that a licensee’s staff or contractors may not reasonably be aware of.
276. The Authority has decided to revoke the Delegate's Condition "d" and Condition "f (iii)-(v)" which mandate that a licensee “ensure” the agreement and maintenance of a common radio network with other licensees. The Authority regards a common radio network as a positive and useful voluntary initiative, which is already in effect among some licensed premises in Hamilton and according to advice provided by Police at the Authority Meeting of 27 May 2010 has had some success in Newcastle. The Authority encourages all licensed premises in Hamilton to consider participating in this initiative.
277. However, elevating this initiative to the status of a licence condition will not only require a licensee to ensure the compliance of his or her own staff and security contractors but somehow “ensure” the agreement and co-operation of third parties with whom a licensee is in close competition. In the Authority's view, a licence condition that is imposed upon premises under section 81 of the Act should, in the usual case, regulate only the affairs of the actual premises to which the relevant licence attaches.
278. The Authority notes that, effective from 15 June 2010, Part 8 of the Act was amended by the *Liquor Legislation Amendment Act 2010* to confer specific new powers upon the Director-General to designate and compel the participation of licensees in Precinct Liquor Accords. Licensed premises within those precincts may also be required to contribute financially towards certain regulatory initiatives that may be implemented on a precinct

wide basis. Those new powers may form a more appropriate basis for the imposition of any “multi party” initiatives.

279. The Authority has decided, giving weight to the considerations under subsections 3 (2) (a) and 3 (2) (c) of the Act, that the Delegate's Condition "h" should be varied to commence at 1 am rather than 1.30 am.
280. The Authority notes that five of the six Affected Hotels have implemented a voluntary lockout from 1.30 am on Saturday and Sunday mornings since November 2008. While those and other self regulatory measures imposed under the rubric of the Hamilton Liquor Accord are laudable, they have not prevented the undue disturbance that the Authority has found in the course of considering this review. The Authority accepts that there is some considerable public support for the availability of late night licensed venues in Hamilton, but is satisfied that some further intermediate regulatory response is now warranted, with a view to reducing the scope for late trading to give rise to undue disturbance.
281. While the Delegate's Condition “h” had imposed a lockout that would apply every day of the week, the Authority has decided to vary this condition so the lockout will now only apply on Saturday and Sunday mornings. The Authority has made this decision by reason that Friday and Saturday evenings are, in the Authority's experience, the high risk evenings from a harm minimisation perspective and it is those evenings that are the focus of Police and OLGR material disclosing disturbance linked to the Affected Hotels.
282. The Authority has not, at this time, decided to impose restrictions upon the trading hours of the Affected Hotels. In doing so it has given weight to the opinion of Police, provided during the Authority's Meeting of 27 May 2010 that they do not regard mandatory restrictions upon trading hours as necessary at this time in light of the other restrictions imposed upon the Affected Hotels. However, the Authority may revisit the issue if it becomes necessary.
283. The Resident Complainant made numerous submissions in support of restricting trading hours, emphasising BOCSAR research that indicated a drop in the reported incidents of alcohol related assaults in the Newcastle CBD that followed winding back trading hours from 5 am to 3.30am.
284. The OLGR licensing database and advice provided to the Authority at the meeting of 27 May 2010 confirm that the Kent/Beaumont Hotels are licensed to 3 am Monday to Saturday and midnight on Sundays and trade to those hours. The Northern Star Hotel is licensed to 3 am Monday to Saturday and midnight on Sunday and trades to those hours. The Gateway Hotel is licensed until 5 am from Monday to Saturday and to midnight on Sunday and usually trades to its limit on Thursday Friday and Saturday. The Hamilton Station Hotel is licensed to 3 am Monday to Saturday and midnight on Sunday and trades to its limit. The Sydney Junction Hotel is licensed to 5 am Monday to Saturday and midnight on Sunday, but trades voluntarily until 3 am only.
285. In making this decision the Authority has focussed upon the situation in Hamilton. The Authority notes that closing hours of five of the six Affected Hotels are limited either by licence or voluntary practice to 3 am on Friday and Saturday evenings. Only one venue, the Gateway Hotel, actually trades to 5 am. The Authority notes that the overall numbers of reported alcohol related assaults have been considerably lower in Hamilton than the Newcastle CBD, both before and after the LAB Decision.

286. The Resident Complainant has argued that the Authority's Draft Decision to not restrict trading hours evidences a failure to give proper weight to the criminological and public health research before the Authority that explores the link between alcohol availability and rates of alcohol-related harm. Alternatively, the Resident Complainant argues that the Authority has applied an incorrect standard of proof when considering this evidence.
287. To avoid doubt, the Authority has applied the civil standard of proof when fact finding on this review. The Authority accepts the general proposition, supported by criminological research, that reducing trading hours across a precinct that has a concentration of licensed venues may reduce the rates of alcohol related harm occurring in and around that precinct.
288. However, the Authority is not in any way bound by the approach taken by the LAB in April 2008 - a decision that was made in response to a very different trading environment in the Newcastle CBD. The Authority has decided that the preferable response to the material now before it is to wind back the lockout, while stopping short of restricting trading hours. In so doing, the Authority has focussed upon the nature of the case against the Affected Hotels and the submissions made by the Hotels addressing that material. Again, the material presented by the Police and OLGR with regard to the Affected Hotels is not simply concerned with assaults, but a range of other forms of disturbance to the neighbourhood caused by patrons leaving licensed premises.
289. The Authority acknowledges that its decision to wind back the lockout may cause some as yet indeterminate financial loss to the Affected Hotels, to the extent that patrons who may have previously entered five of those premises between 1 am and 1.30 am on Saturday and Sunday mornings will no longer be able to do so. In the case of the Gateway Hotel, the Authority acknowledges that patrons who may have entered that premises between 1 am and closing time on Saturday and Sunday mornings will no longer be able to do so.
290. The Authority has not imposed this measure lightly. The Authority accepts that there is demonstrated support among some local residents and other hotel patrons who live further afield for the availability of late trading hotels in Hamilton. It has considered all the submissions provided by the Affected Hotels, including financial information that suggests (on the basis of four sample evenings in late 2009) that the great bulk of their revenue is derived before 1 am on Friday and Saturday evenings. The Authority has taken into account the fact that, by not restricting trading hours, patrons may continue to be entertained and the Affected Hotels may continue to derive revenue from the provision of liquor, gaming and other services to those who elect to remain on premises beyond the lockout.
291. The Authority has decided that some modest wind back of the lockout is, in any event, warranted in order to tilt the regulatory balance in favour of harm minimisation and residential amenity. The Authority is not satisfied that simply maintaining the status quo with regard to late night access to Affected Hotels will significantly address the undue disturbance that the Authority has found, nor will it significantly reduce the demands placed upon Police when responding to or managing the risk of late night disturbance events.
292. The Authority is not satisfied that this decision will cause an exodus of patrons who would normally patronise venues in Hamilton to venues in the Newcastle CBD, some 3 kilometres away. The Authority notes that even before the Delegate's Decision, trading times both within and across licensed premises in the Hamilton and Newcastle CBD precincts were not uniform.

293. The Authority considers that most prospective patrons seeking a night out are more likely to select a licensed venue (or choose an entertainment precinct) based upon demographic factors and the type of services available than whether a venue locks its doors at 1 or 1.30 am. Given the intense local media scrutiny that is associated with this matter, the Authority is satisfied that consumers will soon become aware of and adapt to the new regulatory environment in Hamilton. The Authority is not satisfied that consumers will be “confused” by the imposition of a 1 am lockout at six of the licensed venues in the Hamilton precinct. Furthermore, the Authority prefers the advice of Police, contained in the Police Complaint, that they do not see any difficulties with local transport arising from their proposed 1 am lockout.
294. Finally, several of the Affected Hotels have submitted that the Delegate’s Condition imposing a 1.30 am lockout should not be disturbed, by reason that Police supported the Delegate’s Decision and did not seek review of that Decision.
295. At the Authority Meeting with the interested parties on 27 May 2010, Counsel for the Police Complainant clarified, when questioned by the Authority, that the Police view that the Delegate’s Decision should not be disturbed was predicated upon concerns that the Authority may *liberalise* the Delegate’s Conditions.
296. On 26 July 2010, following the release of the Authority’s Draft Decision, the Police Complainant communicated to the Authority his “satisfaction” with the Draft Decision, which proposed a 1 am lockout.
297. In any event, four of the Affected Hotels and the Resident Complainant have sought review of the merits of the Delegate’s Decision under section 153 of the Act. By doing so they have enlivened the Authority’s jurisdiction and the Authority is obliged to reach its own conclusions as to the correct or preferable decision.
298. The Authority will revisit the question of trading hours should there be any significant liberalisation of the voluntary trading hours at any of the Affected Hotels, or should new evidence come to light indicating that the situation with regard to undue disturbance across the precinct is deteriorating.
299. The Authority has decided to vary the requirement imposed the Delegate’s Condition “j” that the Affected Hotels must perform a garbage collection from closing time to 7 am over a 100 metre radius. It has done so in response to some of the practical issues raised by the Affected Hotels, particularly the NGH Hotels.
300. The Act does not expressly delimit the geographic scope of any mandatory obligations that may be imposed upon licensees *vis a vis* public space beyond the immediate environs of their licensed premises. On the evidence available, the Authority considers it appropriate and proportionate to compel the Affected Hotels to effect one (1) collection of bottles and alcohol containers within a ten metre radius of their premises before 7 am the next day, with a view to ameliorating the potential impact that patrons departing the premises, or persons who may be attracted to loiter near late trading premises, are having upon the streetscape of the neighbourhood.

Sunset provision and review of Authority conditions

301. The Authority notes the submission made by Mr Norberry of the Sydney Junction Hotel to the Authority Meeting of 27 May 2010 that there should be some scope for review of any conditions that may be imposed by the Authority in this matter. The Authority has decided to impose its conditions for a period of fifteen (15) months from the date of this letter and will revisit the operation of the conditions twelve (12) months from the date of this letter.

302. The interested parties are invited, after the conditions have been in effect for twelve months and following the filing of the Affected Hotels' second 6 monthly audit, to make written submissions on the public interest (including the cost benefit) of maintaining any of the conditions that have been imposed by the Authority beyond the 15 months' period.

Yours sincerely

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

Chris Sidoti
Chairperson

Annexure

CONDITIONS IMPOSED BY THE DELEGATE (as of 16 December 2009)

- a. The licensee shall develop and maintain a plan of management for the licensed premises, the contents of which must be settled in consultation with the police. A copy of the plan of management must be lodged with the Director of Compliance, Office of Liquor, Gaming and Racing within six weeks of being settled between the licensee and police and every time it is amended.
- b. The licensee shall ensure that at least every 6 months a compliance audit of the licensed premises is carried out by a suitably qualified person who is not employed or in an ongoing financial arrangement with the licensed premises so as to ensure continuous compliance with the Plan of Management.
- c. On Friday and Saturday nights, from 11.00 pm until closure (when the licensed premises trades past midnight) the licensee will retain an employee or contractor whose sole function shall be ~~that of supervisor of~~ **to supervise and monitor** responsible service of alcohol practices at the bar and to observe the responsible consumption of alcohol throughout the licensed premises.
- d. By 1 March 2010 the licensee shall have, whether under the provision of a uniform Plan of Management or otherwise, entered into an agreement with each of the other licensees the subject of the imposition of these conditions, an arrangement for the sharing of common a radio network to be used by management and security for the purposes of communicating with each of the other premises.
- e. The following drinks must not be sold or supplied on the licensed premises during the restricted service period;
 - i. any drink (commonly referred to as a "shot") that contains no more than 30 ml of spirits or liqueur and that is designed to be consumed rapidly,
 - ii. any drink containing more than 50% spirits or liqueur,
 - iii. any ready to drink beverage with an alcohol by volume content of more than 5%,
 - iv. any drink prepared on the premises that contains more than one 30ml nip of spirits or liqueur.

During the restricted service period, no more than;

- i. 4 alcoholic drinks (whether or not of the same kind), or
- ii. the contents of one bottle of wine,
may be sold or supplied on the licensed premises to the same person at any time.

In this clause:

ready to drink beverage means an alcoholic mixed beverage that is prepared by the manufacturer;

restricted service period, in relation to the licensed premises, means the period between 10.00 p.m. and such later time (if any) at which the licensed premises are required to cease trading.

- f. The licensee is to operate an 'Orderly Precinct Strategy' in accordance with the following:
- i. The licensee shall provide a monthly report to the local Liquor Accord Co-ordinator with details of each incident involving a person/s identified as being involved in incidents referred to below.
 - ii. A person shall not be permitted entry to the licensed premises if a staff member or security is aware that the person:
 - Has at any time during the previous 6 hours within the precinct unlawfully consumed alcohol in a public place,
 - Has at any time during the previous 6 hours within the precinct exhibited anti-social or aggressive behaviour,
 - Has at any time during the previous 6 hours within the precinct been argumentative, disorderly or abusive to venue staff or patrons.
 - ~~Is in possession of alcohol.~~
 - iii. Where a person is identified in these circumstances, the licensed premises must make a general broadcast of the incident on the common radio channel so as to inform other licensed premises in the precinct.
 - iv. Staff at the licensed premises must maintain a communication link on a common radio channel with other licensed venues in the precinct.
 - v. The channel must be monitored so as to properly inform licensed premises staff of actions that should be taken.
 - vi. The licensee is to work with police to develop a sign which is to be displayed on the exterior of the licensed premises in the vicinity of each entrance, advising patrons of the circumstances for which they will be refused entry to the licensed premises.
 - vii. Free water stations are to be placed on every bar within the licensed premises.
 - viii. No liquor is to be taken off or carried away from the licensed premises after 10pm.
 - ix. Signs must be prominently displayed in every bar area of the licensed premises, in lettering not less than 50mm in height, advising patrons of the need to lessen noise and impact upon the local neighbourhood.
 - x. Staff should be aware and able to inform patrons of: details of available transport, the location of the 50m exclusion zone, and the location of any Alcohol Free Zones.
- g. The licensee shall ensure, by adequate supervision methods throughout the licensed premises, that no patron is stockpiling drinks. For this purpose stockpiling shall mean that any one patron has more than 2 unconsumed drinks at any one time (a patron may purchase up to 4 drinks at the one time).

- h. (1) The licensee must not permit patrons to enter the licensed premises after 1.30 am or before 5 am (the lockout period).
(2) For the avoidance of doubt, patrons already present in the licensed premises immediately before the start of the lock out period may;
 - a. leave the licensed premises at any time, or
 - b. remain on the licensed premises while the licensed premises are authorised to trade but are not permitted to re-enter the licensed premises during the lock out period.
(3) This clause does not prevent a resident of the licensed premises from entering the licensed premises during the lock out period.

- i. The licensee must conduct the following pre-closure procedures 30 minutes prior to closure:
 - i. Cease sale and supply of alcohol, and continue to serve or have water and food available.
 - ii. Cease live entertainment, and music, if any, must be limited to background levels and must not be audible outside the venue.
 - iii. Lighting must be set at levels to indicate the venue is in a staged close down procedure.
 - iv. Announcements must be made within the licensed premises to advise patrons of: the need to respect neighbours by departing the area quickly and quietly, the availability of free water, transportation options, and CCTV monitoring and that anti-social behaviour will be reported to police.
 - v. These announcements must: be audible in all public areas of the licensed premise, and be made at 15 minute intervals until the last person has left the licensed premises.

- j. ***Between cease of trade and 7.00 a.m.*** ~~Within one (1) hour after cease of trade~~ the licensee is to cause a rubbish collection of all bottles and all alcohol containers from within a 100m radius of the licensed premises.

- k. ***On Wednesday to Saturday nights when*** ~~On any night~~ the licensed premises trades past midnight, security officer(s) ***must advise patrons to*** disperse patrons from the immediate area of the licensed premises at the cease of trade. Security officer(s) are to maintain a presence outside the licensed premises until all patrons have left the vicinity of the licensed premises.

- l. Within 14 days of the imposition of these conditions, the licensee shall cause every member of staff to be notified in writing of these conditions and to be advised of the need to apply responsible service of alcohol practices at the licensed premises.