



Mr Murat Kilic
Licensee
(or the person apparently in charge of the premises)
Imperial Hotel
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ERSKINEVILLE NSW 2043
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ATTN:
Mr Michael McGrath
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19 June 2015

**Notice of Short Term Closure Order
LIQH400103115 – Imperial Hotel, Erskineville**

Dear Sir/Madam

1. I refer to the Notice of Application for Short Term Closure Order (**Notice**) communicated by the Authority to the Imperial Hotel via email at 3:11pm on the afternoon of 18 June 2015 by the Independent Liquor and Gaming Authority (**Authority**).
2. The Notice concerned an application (**Application**) made to the Authority via email at 10:51am on 18 June 2015 by Mr Anthony Keon, Director of Compliance, Office of Liquor, Gaming and Racing (**OLGR**) in his capacity as a delegate of the Secretary (**Secretary**) of the NSW Department of Trade and Investment (**Applicant**).
3. The Application was made under section 82 of the *Liquor Act 2007* (**Act**) and seeks the issue of a Short Term Closure Order in relation to the Imperial Hotel located at 35-39 Erskineville Road, Erskineville (**Premises**).
4. The material provided by the Applicant comprises:
 - Statutory Declaration by the Applicant dated 18 June 2015
 - Application letter dated 18 June 2015
 - 19 pages of evidence or material provided in support of the Application and referred to in the Application letter as "Tab 1" to "Tab 5"

(Application Material).

5. On the basis of the Application Material, the Applicant contends that serious breaches of the Act, being breaches of sections 73 and 74 of the Act, have been recently detected in relation to the Premises by Police officers and OLGR inspectors.
6. The Applicant contends that a serious breach of the Act has occurred, or is likely to occur, being further breaches of sections 73 and 74 of the Act; and that closure of the Premises for a period of 72 hours from 5:00pm, 19 June 2015 is necessary to prevent or reduce a "significant threat or risk to the public interest" for the purposes of section 82 of the Act.
7. Under section 36C of the *Gaming and Liquor Administration Act 2007*, the Authority is required to produce and publish statements of reasons with respect to those types of decisions prescribed by clause 6 of the *Gaming and Liquor Administration Regulation 2008*. This letter has been prepared in the context of a high volume liquor jurisdiction and in the context of an application that requires expeditious determination by the Authority.

Summary of Application

8. Briefly, the Applicant submits that the Premises has a "full" hotel liquor licence number LIQH400103115 and is authorised to trade 24 hours per day Monday through Saturday and from 5:00am to midnight on Sunday.
9. The Applicant contends that the Hotel business regularly conducts "large scale ticketed weekend events" from 9:00pm, and trades up until 7:00am the following morning.
10. The Applicant submits that Mr Murat Kilic has been the licensee (**Licensee**) of the Premises since 26 April 2015 and that the business owner of the Premises is a company, Atesh Pty Ltd, which was recorded as the business owner (**Business Owner**) on 26 April 2015.
11. The Applicant submits that Mr Kilic was the licensee of another on-licensed premises (a nightclub) from September 2011 to April 2015 and after making several allegations about the conduct of that business, the Applicant alleges the following recent matters arising in relation to the current Premises:

*"On Sunday 14 June 2015 covert OLGR Inspectors conducted observations of the Hotel between 12.30am and 6.30am. During this period Inspectors observed bar staff engaged in the sale and supply of alcohol in the Spice Cellar Bar (Basement) administer and supplying a prohibited drug. Inspectors also observed patrons supplying and self-administering illicit drugs and a number of intoxicated patrons throughout the Hotel. A File Note of the inspection is attached at **Tab 1**.*

*NSW Police also conducted an inspection earlier in the evening and identified at least three patrons that were intoxicated on the premises. COPS Event E57964836 relates (**Tab 2**).*

74(2) of the Act – Licensee permit possession or use of prohibited drug (multiple counts)

74(4) of the Act – Employee or agent permit possession or use of prohibited drug (multiple counts)

At about 2.45am on Sunday 14 June 2015, whilst conducting an inspection of the Hotel, Inspectors observed a male staff member engaging with another male staff member wearing a walkie talkie clipped to his pants behind the alcohol servery bar. At this time one of the barpersons was observed to reach behind the cash register and present to the other bar person what appeared to be a chewing gum bottle. The bar person then took out a small torch, opened the lid and illuminated the contents to the other bar person.

A short time later OLGR Inspectors observed two of the three bar staff on duty each remove and consume a white tablet from the container immediately followed by the consumption of water. One of the bar persons then secreted the chewing gum bottle behind the cash register and continued to serve patrons alcoholic beverages. At this time OLGR Inspectors contact Newtown licensing police for an immediate response. At around 3.00am Police attended the premises and located the prohibited drug MDMA secreted in a chewing gum container. Four venue staff were arrested, conveyed to Newtown police station and interviewed in relation to drug related offences. At the time the bar manager and another barman made admissions to administering the prohibited drug MDMA. The police investigation has resulted in the Bar Manager being charged with Possession and Supply prohibited drug and another bar person being charged with possession. Cops Event E58155007 relates (Tab 3).

At approximately 4.00am that same evening, and subsequent to the arrest of four staff members, an OLGR Inspector attended the male toilets and was affronted by a male patron carrying a small zip lock bag containing white powder. At this time the patron said to the OLGR Inspector "You want a line?" The Inspector declined. Upon leaving the male toilet the Inspector observed a male aged approximately 40 years quickly push in the bathroom door. He was being followed by the tall male with his hand on the first male's shoulder assisting him. At the time the Inspector observed that the older male's nose and nostrils had a white substance in and on them and that the person's cheeks were full and looked as if they were bursting, similar to that of holding in vomit. Some of the contents of the male's mouth were spilling out and appeared to be of a foaming consistency.

Section 73(1)(a) of the Act – licensee permit intoxication (multiple counts)

About 12:46am on 14 June 2015 NSW Police conducted a business inspection of the Hotel. Upon going down to the Spice Cellar Police immediately identified a female assessed as being 'well affected' by liquor. Police continued their inspection and then observed a rush of security personnel to the female toilets. Police were informed that a female patron had been found 'passed out' in a toilet cubicle. The female had to be carried out by venue staff.

A short time later Police identified a male patron asleep on the mezzanine area. Police spoke with the male who appeared to 'moderately/well intoxicated' and was subsequently escorted off the premises by security.

Upon leaving the Hotel, Police spoke with the manager and raised concerns about the level of intoxication and the need for more proactive intervention by venue staff and security.

At around 2:55am that same evening, Inspectors observed a male seated on a lounge near the door in the front bar. The male was leaning on friends and his eyes were half closed. Inspectors formed the view that the male was intoxicated.

At around 4.30am, Inspectors observed a female they assessed to be heavily intoxicated. The female was lying slumped on the lounge leaning on a male. Her eyes were half closed and she kept rubbing her face. The Inspectors observed the female abruptly sit up, put her jacket on, only to immediately remove it again. Inspectors then observed the female enter the toilets, and whilst waiting for her to exit, were engaged by a male friend of the female. The male patron expressed concern to Inspectors that the female patron was taking a long time and stated that she was "pretty pissed". Inspectors did not observe the female exit the bathroom and were unable to subsequently locate her."

Alleged Threat to Public Interest

12. The Applicant identifies the alleged threat to the public interest is addressed in the following terms:

"Multiple and ongoing serious drug and alcohol related offences have been committed at the Hotel in a period of barely two months. NSW Police have supplied a summary of COPS events since the commencement of the current licensee's tenure in April 2015 which identifies a staggering 30 odd incidents where:

- o Hotel patrons have been found with illicit drugs in their possession,*
- o Hotel staff, including the licensee, have been suspected and/or observed consuming illicit drugs and*
- o Illicit drugs being found at the premises.*

These events also detail multiple incidents of intoxicated patrons and disturbance to the neighbourhood (Tab 4). Further observations by OLGR Inspectors are also attached at Tab 5.

The sheer number and consistency of Hotel patrons detected with illicit drugs is of significant concern, and the possession, supply and administration of the prohibited drug MDMA by the venue's Bar Manager and associated barman, and secondly, the observations of police on the licensee's first day of operation to be overtly affected by drugs whilst on duty, paints an alarming picture of the operation of the Hotel. COPS Event E57741750 relates (Tab 5).

This reckless indifference to public safety by the licensee and staff whilst charged with the supervision of licensed premises strikes at the very foundation of public safety, responsible service practices and paints an extraordinary picture of the permissive culture portrayed by venue management, and one where illicit drug use appears to be condoned and accepted.

A gamut of potential harms, both acute and chronic, can result from the consumption of illicit drugs combined with irresponsible alcohol service practices. These risks or threats are aggravated by the patently permissive environment manifesting in the repeated compliance failures of the licensee in regard to the possession, supply and use of illicit drugs by both staff and patrons.

A range of potential harms from drug use through to an individual experiencing misadventure or being a victim or perpetrator of drug and alcohol related violence with the associated potentially fatal consequences, are all harms probable of occurring in the circumstances should the venue be permitted to continue to trade. Indeed, the information supplied by Police provides clear examples of violent incidents that have been perpetrated on venue staff and Police by those under the influence of drugs and alcohol.

Despite repeated and intensive regulatory engagement (including weekly meetings with Police) the licensee and venue management have failed to implement even the most basic controls to address the clearly identified issues.

At a meeting conducted by Newtown police with venue management on 10 June 2015 the venue gave undertakings to inter-alia, undertake a zero tolerance to drug use, and to use 'wands' and voluntary searches of pockets to assist in the identifying potential drug use. The inspections carried out by both OLGR and NSW Police on 14 June 2015 clearly demonstrate that these controls have not been implemented.

The profound absence of venue controls was further manifested at a meeting of Newtown Police, OLGR and venue management on 17 June 2015 following the arrest and charging of staff for illicit drug possession. This meeting only served to heighten OLGR's and NSW Police's concerns regarding the insufficient controls at the venue and the grossly inadequate response to the issues that arose from the weekend. At the meeting, venue management indicated that:

- o Despite staff drug use and arrests, they did not intend on holding a staff meeting until Tuesday 23 June 2015*
- o The venue does not have a written drug policy*
- o The venue does not have written procedures for dealing with intoxicated patrons*
- o The venue does not have a formalised induction process for new staff to address these significant issues.*

It is clear from discussion held that the venue, despite some recent changes, has fundamental flaws and inadequacies in terms of its internal management and controls. Many of the initiatives proposed by the venue will not take place for some weeks and do not address the immediate threat of serious offences occurring or threat to public safety concerns as detailed within this submission.

The clear recidivism and repeated drug detections indicates the licensee is nonresponsive to regulatory engagement, including previous remedial intervention, and throws light on a comprehensive failure to observe fundamental licence obligations and an inability to implement adequate management and compliance practices. It is asserted that the measures sought in this application are required to address the ongoing risk where other regulatory action does not appear to be effective in changing behaviour.

Based on the venue's history of serious offences (in a relatively confined period of time), the fundamental failures around adequacy of management and compliance culture, and the real and immediate threat to public interest, and in particular threats to public health and safety, it is submitted that the likelihood of future contraventions is extreme, and the only appropriate action is to require the venue to close. Both NSW Police and OLGR are of the firm view that, without significant regulatory intervention, the likelihood of further intoxication and illicit drug use this weekend at the venue is severe, and as such presents an unacceptable risk to the community."

Summary of Application Material

- 13.** The Application Material comprises reports of alleged adverse incidents linked by the Applicant to the Premises (**Events**).
- 14.** Most of the Events are sourced from NSW Police Computerised Operational Policing System reports (**COPS Reports**). COPS Reports usually comprise contemporaneous reports prepared by individual Police officers that are logged on the COPS database after that officer has dealt with an incident or received reports of an incident. COPS

Reports are typically presented in narrative form and may include observations of what the officer saw or what witnesses told the officer about an incident, which may or may not include an offence.

15. Tab 2 (COPS Report 57964836) concerns an Event that occurred during Police attendance at the Hotel at 12:46am on 14 June 2015. The full text of this Report has been provided by the Applicant.
16. Tab 3 (COPS Report 58155007) concerns an Event that occurred during Police attendance at the Hotel at around 2:55am on 14 June 2015.
17. Tab 4 to the Application letter comprises a Table summarising 21 COPS Reported Events in relation to the Premises dating from 18 April 2015 to 14 June 2015.
18. Tab 5 to the Application letter comprises three (3) records of Events recorded by way of OLGR compliance records dated 10 May 2015, 24 May 2015 and 14 June 2015. The full text of this Report has been provided by the Applicant.
19. Tab 6 (COPS Report 57741750) concerns an Event that occurred during Police attendance at the Hotel at around 8:00am on 26 April 2015. The full text of this Report has been provided by the Applicant.

Alleged Intoxication or violent/quarrelsome conduct Events

20. The Application refers to six Events that record patrons or staff of the Premises who are either intoxicated or engaging in indecent, violent or quarrelsome conduct on the Premises.
21. This material is apparently provided in support of the Applicant's contention that offences against section 73(1) of the Act either have occurred or are likely to occur. The Events are as follows:
22. **Summary COPS Report dated 18/04/2015, 12:20am, COPS Reference Number E57488022.** Police received reports from patrons that there had been a brawl prior to their arrival; however they were unable to locate any persons involved. The Licensee denied any knowledge of a brawl occurring. Whilst outside the Premises, Police observed a patron drop a pack of cigarettes containing marijuana and cocaine. Police subsequently charged this person.
23. **Summary COPS Report dated 18/04/2015, 2:00am, COPS Reference Number E57694340.** Police conducted a business inspection of the Premises, at which time they observed security escort an intoxicated person from the Premises. The intoxicated person was unable to stand without assistance and was observed vomiting. An ambulance was called to render assistance to the intoxicated person.

24. **Summary COPS Report dated 26/04/2015, 8:00am, COPS Reference Number E57741750.** Police observed 30 to 40 persons congregating in the service station opposite the Premises. Police assessed these persons as being either affected by alcohol and/or prohibited drugs. These persons made admissions to being patrons at the venue. Police subsequently approached the Premises and spoke to security. The security personnel also displayed signs of intoxication. Police subsequently entered the Premises and identified numerous patrons also affected by alcohol and/or prohibited drugs. The Licensee was at the premises and spoke to police. The Licensee was unsteady on his feet, not aware of personal space, his pupils were dilated and he was sweating. Police were of the opinion that the Licensee was also affected by drugs.
25. **Summary COPS Report dated 3/05/2015, 6:20am, COPS Reference Number E57793650.** Police conducted a business inspection of the Premises. Police identified and ejected four patrons for intoxication.
26. **Summary COPS Report dated 31/05/2015, 6:00am, COPS Reference Number E57944145.** Police identified numerous patrons who were assessed by Police as being "well affected" by alcohol on the Premises and were ejected by both Police and security staff.
27. **Summary COPS Report dated 06/06/2015, 1:20am COPS Reference Number E56854410.** Police conducted a business inspection of the Premises, at which time a female patron was assessed by Police as being seriously intoxicated. She was found asleep in a chair and was being assisted by two other patrons. Security and venue staff were unaware of her state. The female patron was subsequently asked to leave.
28. **Full text COPS Report dated 14/06/2015, 12:50am, COPS Reference Number E57964836.** Police conducted a business inspection of the Premises, at which time they observed security staff locate an unconscious female patron in the toilet. The female patron was assisted from the Premises by security. Police located another male patron who was assessed as being heavily intoxicated. This male patron was subsequently asked to leave. Police raised concerns regarding intoxication levels with venue management.

Alleged Drugs on the Premises Events

29. The Application also refers to nine (9) Events that involve patrons or staff on the Premises engaging in sale or use of drugs on the Premises.
30. This material is apparently provided in support of the Applicant's contention that offences against section 74(2) and 74(4) of the Act either have occurred or are likely to occur:

31. **Summary COPS report dated 18/04/2015, 12:20am, COPS Reference Number E57488022.** Police conducted a business inspection, at which time they observed numerous clear resealable bags on the floor indicating drug use within the Premises. Whilst outside the Premises, Police observed a patron drop a pack of cigarettes containing marijuana and cocaine. Police subsequently charged this person.
32. **Summary COPS report dated 25/04/2015, 1:20am – 2:00am, COPS Reference Numbers E57731150 / E876205990.** A drug dog operation was conducted at the Premises. The drug dog identified a patron inside the Premises. The patron was searched and a prohibited drug, being marijuana, was located. Police issued a cannabis caution. Whilst conducting the search, a small bag containing white powder, believed to be a prohibited drug, was located in a bathroom on the Premises.
33. **Summary COPS report dated 15/05/2015, 10:50pm – 11:35pm, COPS Reference Numbers E57356070 / E58060946 / E58781916 / E57984234 / E57902050.** A drug dog operation was conducted at the Premises. The drug dog identified a male patron inside the Premises. The male patron was searched and a prohibited drug, being cannabis, was located. Police issued a cannabis caution. The drug dog identified another male patron inside the Premises. The male person made admissions to being in possession of cannabis. This person was searched and a prohibited drug, being two MDMA tablets, was located. Police charged this person. Police observed another male patron inside the Premises throw a small resealable bag containing white powder, believed to be a prohibited drug, onto the floor of the Premises. The drug dog identified this patron. Police charged this person. The drug dog identified another patron. This patron was searched and a prohibited drug, being cannabis, was located. Police issued a cannabis caution. Whilst conducting this activity, Police located a bag that contained 18 MDMA capsules which had been discarded on the floor of the Premises.
34. **Summary COPS report dated 23/05/2015, 1:35am, COPS Reference Number E58187259.** Police conducted a business inspection of the Premises. Police located a patron who appeared to be under the influence of a prohibited drug. This patron was searched and a prohibited drug, being cannabis, was located. Police charged this person.
35. **Summary COPS report dated 30/05/2015, 12:30am – 12:45am, COPS Reference Numbers E59948687 / E58129557 / E58129257.** A drug dog operation was conducted at the Premises. A male person queued up to enter the Premises was identified by the drug dog and a search located a prohibited drug, being cocaine. Police charged this person. The drug dog identified another male patron inside the Premises and a search located a prohibited drug, being cannabis. A cannabis caution was issued. The drug dog identified another male person inside the Premises and a search located a prohibited drug, being one MDMA tablet. Police charged this person.

36. **Summary COPS report dated 30/05/2015, 1:50am, COPS Reference Number E58328766.** Police conducted a business inspection of the Premises, at which time two male patrons were located inside a toilet cubicle. Snorting noises could be heard coming from the cubicle. These patrons were spoken to by Police and they made admissions to consuming a prohibited drug, being cocaine. Both males were searched prior to being ejected from the Premises. No drugs were located.
37. **Summary COPS report dated 31/05/2015, 6:00am, COPS Reference Number E57944145.** Police conducted a business inspection of the Premises, at which time small resealable bags used to carry drugs were located on the ground of the bar floor.
38. **Summary COPS report dated 06/06/2015, 3:00am, COPS Reference Numbers E58987953 / E208834897.** Police conducted a business inspection of the Premises at which time two male patrons were located within a cubicle in the toilets. A search of one of the male patrons located prohibited drugs, being MDMA tablets and cocaine. Both patrons were removed from the Premises and the offending patron was issued a Court Attendance Notice.
39. **Full text COPS report dated 14/06/2015, 2:55am, COPS Reference Number E58155007.** Police attended the Premises in response to drug activity by staff, reported by OLGR Inspectors. Prohibited drugs were detected behind the bar in a chewing gum container. Four Hotel staff were arrested and interviewed.

OLGR Compliance Records

40. The Applicant also refers to three recent OLGR recorded Events that the Applicant contends raise concerns as to the level of compliance by the Hotel with sections 73 and 74 of the Act:
41. **10/05/2015, OLGR Reference Number C15/0015499.** Disturbance complaint by local resident. This complaint relates to the behaviour of patrons leaving the Premises.
42. **24/05/2015, 4:00am – 5:25am, OLGR Reference Number OA15/0015815.** Between 4:00am and 5:25am on Sunday 24 May 2015, OLGR Inspectors attended the Premises to conduct an inspection. This inspection identified the following issues of concern:
- (i) A very high level of patrons identified as being moderately to well-affected by liquor.
 - (ii) Numerous patrons were observed to be falling asleep within the venue.
 - (iii) Security was ineffective in patrolling the entire of the Premises and engaging with patrons.

- (iv) Patrons were observed urinating in the alley next to the service station.
- 43.** These issues were raised with the Licensee and Security Manager and a number of recommendations made to the Licensee, including:
- (i) Constant roaming guards in each area (lounge, public bar and basement) to appropriately monitor levels of intoxication. Roaming guards were observed on the evening, however there were gaps.
 - (ii) Lounge area on ground floor: lighting quite dim. *Increased lighting* will assist venue staff in ensuring patrons are adequately monitored and assessed.
 - (iii) Increase proactive approach by security to remove patrons who are approaching intoxication, as well as regular staff (including bar staff) engagement with patrons to minimise potential concerns. General patron alcohol levels appeared very high.
 - (iv) Ensure unimpeded access to bathrooms is available at all times – in an attempt to restrict the patronage in the upstairs smoking area, security were impeding access to the level 1 bathrooms from the ground floor. Patrons were observed urinating in the nearby streets.
 - (v) Staff and security to assist in the effective dispersal of patrons, while being mindful of the surrounding residences. An adequate monitoring of patron intoxication levels whilst in the venue may also reduce any potential for disturbance.
- 44.** **14/06/2015, 1:30am – 6:30am, OLGR Reference Number OA15/0003415.** A covert inspection was conducted by OLGR Inspectors, which identified the following issues of significant concern:
- (i) Patron Management/Entry was assessed as “poor”. Prior to entering the venue, security and staff ushered patrons into a line. Security randomly checked the identification of patrons prior to entering the Premises, but did not use [which the Authority understands to be a reference to a metal detector] or conduct voluntary searches of patrons and/or handbags for prohibited drugs or other contraband. Security and staff did not engage with patrons whilst they were waiting to enter the Premises.
 - (ii) RSA Practices were assessed as “poor”. Water stations were observed at bar areas, however there was no active promotion of water observed. No food or the promotion of food was observed within the Premises. Staff were observed to “free pour” spirits for patrons [which the Authority understands to be a reference to pouring liquor without spirit measures]. On one occasion, bar staff in the Spice Cellar (Basement) were observed to free pour Jack Daniels into a 7oz. vessel

and supply the drink to a patron without payment. The vessel contained more than 30mL of spirit. The patron was then observed to walk behind the bar and consume the drink rapidly, in the presence of the staff member, prior to leaving the bar area. Shots were observed being sold to patrons after 5:00am. Security staff were observed to conduct inspections on the Premises; however they failed to adequately engage with patrons or conduct RSA duties. One security guard was observed in the back bar on two occasions to be talking and playing on his mobile phone for several minutes. No identifiable RSA Marshals were observed during the course of the inspection. During the course of the inspection, several patrons were observed throughout the Premises displaying various signs of intoxication.

- (iii) Drug Use was assessed as "prevalent". Bar staff working behind the bar in the Spice Cellar (Basement) were observed supplying other staff with a chewing gum container, with those staff consuming the contents of the container. Police were notified and attended the Premises. A chewing gum bottle containing suspected prohibited drugs was located behind the bar. Four staff working behind the bar were arrested by Police. An inspection of the toilets identified further drug use by patrons at the venue. Drugs were offered to OLGR Inspectors. At this time, a patron was observed to have a white substance on his nostril and appeared to be drug affected.

Legislation

45. Section 82 of the Act provides as follows:

82 Short-term closure of licensed premises

- (1) *An authorised officer or the Authority may, by notice served on a licensee or a person apparently in charge of licensed premises, order the licensee to close the licensed premises from a time specified in the order until a later specified time.*
- (2) *An authorised officer or the Authority may only make an order under this section:*
 - (a) *on the application of the Secretary or the Commissioner of Police, and*
 - (b) *only if the authorised officer or the Authority (as the case requires) is satisfied that a serious breach of this Act has occurred, or is likely to occur, on the premises and that the closure of the premises is necessary to prevent or reduce a significant threat or risk to the public interest.*
- (3) *Without limiting the generality of subsection (2), circumstances in which there may be a significant threat or risk to the public interest include circumstances in which there is:*
 - (a) *a threat to public health or safety, or*
 - (b) *a risk of substantial damage to property, or*
 - (c) *a significant threat to the environment, or*
 - (d) *a risk of serious offences (having a maximum penalty of not less than 2 years imprisonment) being committed on the premises.*
- (4) *An order may not require the closure of premises for a period longer than 72 hours.*

- (5) *Subject to subsection (4), an order may require the closure of premises until specified conditions are met.*
- (6) *A licensee must not fail to comply with an order made under this section.
Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.*
- (7) *More than one order closing the same premises may not be made under this section in any period of one week.*

46. Section 3 of the Act provides as follows:

3 Objects of Act

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

47. Section 73 provides as follows:

73 Prevention of excessive consumption of alcohol on licensed premises

- (1) *A licensee must not permit:*
 - (a) *intoxication, or*
 - (b) *any indecent, violent or quarrelsome conduct,**on the licensed premises.*
Maximum penalty: 100 penalty units.
- (2) *A licensee or an employee or agent of a licensee must not, on the licensed premises, sell or supply liquor to an intoxicated person.*
Maximum penalty: 100 penalty units.
- (3) *A person (other than a licensee or an employee or agent of a licensee) must not, on licensed premises, supply liquor to an intoxicated person.*
Maximum penalty: 10 penalty units.
- (4) *If an intoxicated person is on licensed premises, the licensee is taken to have permitted intoxication on the licensed premises unless the licensee proves:*
 - (a) *that the licensee, and the licensee's employees or agents, took the steps set out in subsection (5), or*

- (a1) *that the licensee, and the licensee's employees or agents, took the steps set out in the guidelines under subsection (5A) to prevent intoxication on the licensed premises, or*
 - (b) *that the intoxicated person did not consume alcohol on the licensed premises.*
- (5) *For the purposes of subsection (4)(a), the following are the relevant steps:*
- (a) *asked the intoxicated person to leave the premises,*
 - (b) *contacted, or attempted to contact, a police officer for assistance in removing the person from the premises,*
 - (c) *refused to serve the person any alcohol after becoming aware that the person was intoxicated.*
- (5A) *The Secretary is to issue guidelines relating to the prevention of intoxication on licensed premises. Such guidelines are to be made publicly available in such manner as the Secretary considers appropriate.*
- (6) *In the application of this section to an on-premises licence that relates to a catering service, a reference to licensed premises does not include private domestic premises except for the purposes of subsection (2).*

48. Section 74 provides as follows:

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

- (1) *A licensee must not permit the licensed premises to be used for the sale of:*
- (a) *any goods that the licensee suspects of being stolen, or*
 - (b) *any substance that the licensee suspects of being a prohibited plant or a prohibited drug.*
- Maximum penalty: 50 penalty units.*
- (2) *A licensee must not permit the possession or use on the licensed premises of any substance that the licensee suspects of being a prohibited plant or a prohibited drug.*
- Maximum penalty: 50 penalty units.*
- (3) *An employee or agent of a licensee or a person (other than the licensee) in charge of licensed premises must not permit the licensed premises to be used for the sale of:*
- (a) *any goods that the employee, agent or person suspects of being stolen, or*
 - (b) *any substance that the employee, agent or person suspects of being a prohibited plant or a prohibited drug.*
- Maximum penalty: 50 penalty units.*
- (4) *An employee or agent of a licensee or a person (other than the licensee) in charge of licensed premises must not permit the possession or use on the licensed premises of any substance that the employee, agent or person suspects of being a prohibited plant or a prohibited drug.*
- Maximum penalty: 50 penalty units.*
- (5) *It is a defence to a prosecution for an offence under this section if it is proved that the goods concerned were not stolen or that the substance concerned was not a prohibited plant or a prohibited drug.*

HOTEL SUBMISSIONS IN REPLY

49. When making the Application, the Applicant advised the Authority that the Licensee of the Premises was overseas. Accordingly, the Notice was sent via email to the Hotel and to Mr Michael McGrath, who the Applicant was informed was left in charge of the Hotel.
50. The Hotel was invited to provide any new evidence by way of statutory declaration and any written submissions by way of a letter to the Chief Executive. Noting that the Authority's practice is to afford respondents around 24 hours to reply, the Hotel was given until 2:00pm on 19 June 2015 to provide any evidence or submissions.
51. The Hotel responded by way of a letter from Mr Chris Thompson of Gwynne Thompson solicitors. Mr Thompson acts for the Licensee, Mr Kilic, and the Business Owner, Atesh Pty Ltd.
52. Briefly, the key points made by the Hotel in response to the Application are as follows:
- The Hotel notes that it did not receive the Notice from the Authority until 3:10pm on 18 June 2015. OLGR have had several days to prepare the Application and NSW Police have had "considerably more time" to put together their summaries and file notes/observations.
 - The Hotel accepts that a number of persons have been arrested and charged with drug offences on the Premises, but in the absence of any information as to the outcome of those matters, the Authority should give reduced weight to that information.
 - The Hotel submits, particularly in relation to the matters recorded in the OLGR File Note, that the Licensee or Hotel staff did not have the opportunity to form their own view as to whether the patrons who were identified by OLGR inspectors as intoxicated were, in the assessment of Hotel staff, intoxicated at that time.
 - The Hotel has not been provided with the full text of COPS Reports for the Events that are summarised in Tab 4 to the Application. The material in Tab 4 includes information that the Licensee or staff were undertaking their duties as required by law – that is, evicting persons from the Premises.
 - The Hotel contends that Police have a significant presence on the Hotel premises, including during early morning hours, on weekends. On Mr Thompson's instructions, no infringement notices or breach action has been instigated against the Licensee or staff in relation to the matters described in the COPS Reports.
 - The Hotel staff who were involved in the drug incident on the Premises who were identified by OLGR Inspectors have been terminated.

- Hotel management met Police around the time of the current Licensee assuming responsibility for the Premises. In that meeting it was indicated that the Premises had a “prior history of incidents”. The Hotel submits that a failure by the Applicant to provide a “full history” of matters linked to the Premises “unfairly portrays the Licensee in an unfavourable light”.
- The Licensee contends that he has been endeavouring to change certain aspects of weekend trade but that “as yet he has not successfully implemented a suitable substitute form of entertainment to achieve that”.
- Mr Thompson is instructed that there is a push to have more midweek and varied events so that the focus at the Hotel moves away from “clubbing on weekends”.
- The Licensee is currently returning from overseas and is “shocked” about the Application. He refutes any assertion of personal misconduct on 26 April 2015 as alleged in Tab 4.

53. The Hotel then outlines the following alternative action that it submits should move the Authority to exercise its discretion not to issue the Order:

- The Licensee has cut short his overseas trip and while he was due to return on 23 June 2015, he now expects to be “in Sydney by 10pm tonight [19 June 2015].
- The Hotel business is the Licensee and his partner's “major livelihood” and he has invested significant funds in the business.
- The Licensee was intending to employ a full time manager who has many years' experience and is of good standing (his resume is attached) to be responsible for the licence. However, that process has been delayed by two factors – first, the Licensee being away on overseas business as an internationally recognised DJ and second, the proposed employed manager has recently had a death in the family.
- The Licensee proposes to implement a new and tighter Plan of Management that will incorporate a new drug policy and alcohol management policy. A Plan imposed by Council pursuant to the development consent is in effect but the Licensee proposes to amend it with a comprehensive drug and alcohol policy. The Plan of Management is attached to the submission.
- The Licensee proposes to implement a new Alcohol Management Policy with certain restrictions on alcohol and RSA Marshals. The Policy is attached.

- The Licensee proposes to implement and display the Drug Policy that is attached.
- The Licensee proposes to implement an independent Private Security guard with a drug dog, to commence from midnight on 19 June 2015.
- The Licensee has requested the current Security Contractor to submit an updated Security Management Plan. The existing Plan is attached. Management have requested "additional staff" for this weekend's trade. Usually 17 staff are available. Management will be canvassing new security contractors shortly, but they have concluded that to employ a new contractor at short notice this weekend is not appropriate. The current Contractor will provide a briefing to staff at the commencement of trade.
- Management have employed three RSA Marshals for this weekend's trade.
- Management will have a core management team on duty tonight, [19 June 2015] in addition to the Licensee. The Hotel submits that this is "significantly more experienced than the team that was in place on 14 June 2015".
- The Applicant has used emotive language in its submissions on the threat to the public interest. The Licensee does not condone use of illicit drugs on the Premises; but no matter how rigorous, no licensed premises can eliminate the risk of drugs on the premises.
- The Licensee should be allowed to implement the new measures and be an "educator" to staff on duty tonight.
- The Licensee and his partner are personal guarantors under the lease for the Premises. [Figures as to the annual lease and the bank guarantee are provided but not published by the Authority.]
- The closure of the Premises would have a "major impact" on the Licensee's livelihood and a significant number of staff who are employed on the weekend.
- A number of other functions are being negotiated with corporate clients and closure of the Hotel would cause significant reputational damage.
- The Hotel acknowledges that the public interest outweighs the private interests of the operator, but those private interests are valid.
- To make the Order sought in circumstances when Hotel Management have put in place measures to prevent recurrence of the recent events would be "punitive".

- There is unlikely to be a recurrence of circumstances that would give rise to a serious offence on the Premises. The steps to be taken by the Licensee will reduce any threat or risk to the public interest.
- The Hotel submits that the Authority should not issue the Order.

DECISION

54. The Authority is satisfied, on the basis of the Application Material, particularly but not limited to the full text COPS Reports and the OLGR records regarding conduct involving staff of the Premises on 14 June 2015, that the Order should be issued to close the Premises for 72 hours from 7:00pm on 19 June 2015.
55. The Authority is satisfied that a serious breach of this Act has occurred, or is likely to occur, on the Premises and that the closure of the Premises is necessary to prevent or reduce a significant threat or risk to the public interest.
56. On the material before it and on the balance of probabilities, the Authority is satisfied that there is, at this time:
 - a likelihood of permission of intoxication on the Premises contrary to section 73(1) of the Act, and/or
 - a likelihood of the sale of liquor to an intoxicated person on the Premises contrary to section 73(2) of the Act, and/or
 - a likelihood of permission, by an employee or agent of the Licensee, or a person in charge of the Premises (other than the Licensee) for the Premises to be used for the sale of any substance suspected by that employee, agent or person as being a prohibited drug contrary to section 74(3) of the Act, and/or
 - a likelihood of permission, by an employee or agent of the Licensee, or a person in charge of the Premises (other than the Licensee) of the possession or use on the Premises of any substance suspected by that employee, agent or person as being a prohibited drug contrary to section 74(4) of the Act.
57. The Authority is satisfied that although the Licensee *plans* to diversify the entertainment focus of the venue away from "weekend clubbing" that such alternative entertainment plans are not yet in effect for this weekend.
58. The Authority accepts the Licensee's submission that part of the Application Material indicates that his staff were carrying out their legal obligations by evicting patrons.
59. The Authority is nevertheless satisfied that there has been a very recent detection of well intoxicated patrons and prohibited drug use on the Premises, some of which

involved misconduct on the part of employees of the Hotel or agents of the Licensee who have permitted such conduct.

60. The Authority has had regard to the fact that the Licensee will be returning from overseas later this evening, and that he plans to implement a number of reforms to management of the Premises, including a new Drug and Alcohol policy.
61. The Authority accepts that additional staff, including RSA Marshals will be on the Premises this evening, and the proposed use of a drug dog, although the Authority is satisfied that there will be no change to the security contractor this weekend.
62. The Authority notes and accepts the Licensee's contention that those staff who were recently detected as being allegedly involved with the supply or use of prohibited drugs on the Premises have been terminated.
63. Nevertheless, the Application Material satisfies the Authority that use of prohibited drugs and patrons drinking to the point of intoxication pose a substantial threat to the public interest. The Application Material (particularly the OLGR records) also satisfies the Authority that there has been an absence of effective control over the responsible supply of alcohol on the Premises.
64. The very late licensed trading hours combined with the current focus on weekend nightclub style entertainment (noting that the Licensee is, by his own submission, a DJ of international renown) pose particular operational challenges and will require a considerable change in the culture and management of the Premises to reduce the risk of staff or agents of the Licensee permitting intoxication or use of the Premises for the use or sale of suspected prohibited drugs.
65. The Authority is not satisfied that the Licensee can turn around that culture and those practices immediately after getting off a plane from Europe at 10pm on 19 June 2015.
66. The Authority accepts the Licensee's contention that closing the Premises for this weekend will have a substantial adverse impact upon the Licensee and his staff, albeit that such impact has been neither quantified nor estimated.
67. Nevertheless, as conceded by the Licensee, the Authority gives greater weight to the public interest in the prevention of intoxication on licensed premises and the use of licensed premises for the use or sale of prohibited drugs.
68. In making this Order the Authority has also considered the objects and considerations provided by section 3 of the Act, but gives weight to section 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 section 3(2)(b) of the Act –

the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,

ORDER

69. Pursuant to section 82(4) of the Act, the Authority orders that the Imperial Hotel be closed from 7pm on 19 June 2015 for a period of 72 hours.

TIME OF ORDER 18:50 19 June 2015.

A handwritten signature in blue ink, appearing to read 'M Brodie'.

Micheil Brodie
Chief Executive
Independent Liquor and Gaming Authority.