



Mr Sean Goodchild Director, Compliance Operations Liquor & Gaming NSW Level 6 323 Castlereagh Street HAYMARKET NSW 2000 <a href="mailto:sean.goodchild@justice.nsw.gov.au">sean.goodchild@justice.nsw.gov.au</a>	Malcolm & Kerry Smith Premises Owners Albion Hotel c/o Mr Alan Chick Kell Moore Lawyers achick@kellmoore.com.au	Mr Allan Francis Ogilvie Former Licensee and Business Owner, Albion Hotel c/o Mr Rod Pogson Pogson Cronin Solicitors rod@pogsoncronin.com.au
Whitestone Hotel Group Pty Ltd C/o Mr Giles Woodgate Liquidator Level 8, 6-10 O'Connell Street SYDNEY NSW 2000	Mr Gulshan Dua Former Licensee Albion Hotel 1b Pine Street COBRAM VIC 3644	

6 January 2017

Dear Sir/Madam,

**Potential Third Strike under Part 9A of the *Liquor Act 2007*  
Albion Hotel, Finley**

On 2 August 2016, the Authority received a bundle of evidence or material under the cover of a letter dated 25 July 2016 from Mr Sean Goodchild, Director, Compliance Operations, Liquor & Gaming NSW (LGNSW) in his capacity as delegate of the Secretary of the NSW Department of Justice.

The LGNSW material informed the Authority that on 13 March 2016 a prescribed offence for the purposes of the "three strikes" disciplinary scheme in Part 9A of the *Liquor Act 2007* (Act) had been detected in relation to the licensed premises comprising the Albion Hotel trading at 155 Murray Street, Finley NSW 2731 (Premises).

The LGNSW material further informed the Authority that on 23 June 2016 a Penalty Notice Enforcement Order had been issued under the *Fines Act 1996* by the State Debt Recovery Office against the [then] licensee, Mr Gulshan Dua. This occurred while a second "strike" was in force against the Premises.

At its meeting on 14 December 2016, the Authority considered the LGNSW material and all submissions received in relation to that material. The Authority determined **not** to incur a third strike against the Premises pursuant to Part 9A of the Act.

Under section 36C of the *Gaming and Liquor Administration Act 2007*, the Authority is required to publish statements of reasons with respect to those types of decisions prescribed by clause 6 of the *Gaming and Liquor Administration Regulation 2016*. The attached statement of reasons has been prepared in the context of a high-volume liquor jurisdiction that requires the publication of statements of reasons as soon as practicable.

Yours faithfully

Philip Crawford  
**Chairperson**

For and on behalf of the **Independent Liquor & Gaming Authority**

## STATEMENT OF REASONS

### INTRODUCTION

1. On 2 August 2016, the Independent Liquor and Gaming Authority (Authority) received a bundle of material (LGNSW Material) under the cover of a letter dated 25 July 2016 (LGNSW Letter) from Mr Sean Goodchild, Director of Compliance Operations, Liquor & Gaming NSW (LGNSW) in his capacity as delegate of the Secretary of NSW Department of Justice (Secretary).
2. LGNSW advised that on 13 March 2016 a prescribed offence for the purposes of the “three strikes” disciplinary scheme in Part 9A of the Liquor Act 2007 (Act) had been detected by NSW Police in relation to the licensed premises comprising the Albion Hotel trading at 155 Murray Street, Finley NSW 2731 (Premises).
3. LGNSW further advised that on 23 June 2016 a Penalty Notice Enforcement Order (Order) had been issued by the State Debt Recovery Office (SDRO) under the *Fines Act 1996* in relation to a Penalty Notice that had been issued by NSW Police (Police) against the then licensee of the Premises, Mr Gulshan Dua, following detection of a “prescribed offence” in relation to the Premises.
4. LGNSW advised that the Order had issued at a time when a second “strike” was in force in relation to the Premises.
5. The Authority notes by way of background that the Premises operates pursuant to a hotel liquor licence number LIQH400114117, which permits the sale or supply of liquor for consumption on the Premises and off the Premises. An extract from the OneGov record of the licence as at 19 July 2016 which forms part of the LGNSW Material indicates that licensed trading hours are from Monday to Saturday between 5:00am to 12:00am and from Sunday 10:00am to 10:00pm – that is, the Premises may potentially trade across the maximum “standard” trading hours prescribed by section 12 of the Act for a hotel. The OneGov record indicates that as at 19 July 2016 the licence status was “suspended”.
6. At the time that the Authority received the LGNSW Material, licensing records indicated that the latest licensee on the record was Mr Gulshan Dua, while the last recorded business owner was Whitestone Hotel Group Pty. Ltd (a company that is in external administration pending winding up). The premises owners were recorded as Ms Kerry Smith and Mr Malcolm John Frank Smith, who remain the premises owners and are now in possession of the licence at the time of this decision.

### OVERVIEW OF THE “THREE STRIKES” SCHEME

7. The disciplinary scheme provided by Part 9A (Scheme) was inserted into the Act by the *Liquor Amendment (3 Strikes) Act 2011*. Part 9A provides a supplementary scheme for taking disciplinary action against participants in the liquor industry that is separate from, and does not limit, the pre-existing disciplinary provisions contained in Part 9 of the Act.

8. The Scheme is reasonably complex, with provisions designating, *inter alia*:
- (i) those offences against the Act that are deemed to be “prescribed offences” which may potentially form the basis of a strike;
  - (ii) the circumstances in which a “relevant person” is deemed to have “committed” a “prescribed offence” in relation to a liquor licence for the purposes of the Scheme;
  - (iii) the parties who must be consulted before a decision maker (the Secretary in respect of a second strike or the Authority in respect of a third strike) may decide that a second or third strike should be “incurred”;
  - (iv) discretionary factors that must be considered before a decision maker may decide that a second or third strike should be “incurred”;
  - (v) the circumstances in which a strike commences, or ceases, to be “in force” against a licence.
9. Briefly, for a “strike” to be incurred, a relevant person must be deemed to have “committed” a “prescribed offence” in relation to the licensed premises in question.
10. The definition of “prescribed offence” provided by section 144B of the Act identifies eleven types of offences. The section states:

**144B Definitions**

**prescribed offence**, in relation to a licence, means an offence against any of the following provisions of this Act (or a provision of this Act or the regulations that is prescribed by the regulations) that was committed on or in relation to the premises to which the licence relates:

- (a) section 9 (sale or supply of liquor contrary to licence), but only where the offence relates to the sale or supply of liquor on or in relation to the premises outside of the trading hours for those premises,
  - (b) section 11(2) (breach of licence condition) but only in respect of conditions imposed under Division 3 or 4 of Part 6, section 144E or clauses 2A–5 or 7 of Schedule 4,
  - (c) section 73(1)(a) or (b) (permitting intoxication or indecent, violent or quarrelsome conduct),
  - (d) section 73(2) (selling or supplying liquor to an intoxicated person),
  - (e) section 74((1)(b) or (2) (permitting the sale, possession or use of a prohibited plant or drug),
  - (f) section 75(3) (failure to comply with a direction given by the Secretary),
  - (g) section 82(6) (failure to comply with a short-term closure order),
  - (h) section 84(7) (failure to comply with a long-term closure order),
  - (i) section 102A(2) (failure to comply with a notice issued by the Secretary),
  - (j) section 117(1), (2) or (8) (selling or supplying liquor to a minor or allowing such sale or supply),
  - (k) section 149 (licensees and managers liable for act of employees etc.) in respect of a contravention of section 73(2), 75(3) or 117(1) or (2).
11. Section 144C sets out those circumstances in which a “prescribed offence” is deemed to have been “committed” for the purposes of the Scheme. The section states:

#### 144C Committing a prescribed offence

- (1) *For the purposes of this Part, a person commits a prescribed offence if:*
  - (a) *a court convicts the person for the offence (whether or not it imposes any penalty), or*
  - (b) *an amount is paid under a penalty notice in respect of the offence, or*
  - (c) *a penalty notice enforcement order under the Fines Act 1996 is made against the person in respect of the offence.*
  
- (2) *However, if:*
  - (a) *the conviction is overturned on appeal, or*
  - (b) *the person elects, after an amount is paid under the penalty notice, to have the offence dealt with by a court, or*
  - (c) *the penalty notice, or the penalty notice enforcement order to the extent that it applies to the penalty notice, is withdrawn or annulled,*  
  
*any strike based on the conviction, penalty notice or enforcement order is revoked and any remedial action taken as the result of the strike ceases to have effect.*
  
- (3) *Prescribed offences that are committed in relation to a particular licence within a single 24 hour period are taken, for the purposes of this Part, to be a single prescribed offence.*

#### Incurring a First, Second or Third Strike

12. Under the Scheme, a first strike is automatically “incurred” once a “prescribed offence” is deemed to have been “committed”. By contrast, incurring a second or third strike is a *discretionary* matter, requiring that an assessment be made by the relevant decision maker as to whether the strike *should* be incurred, having regard to the seriousness of the harm that *may* have resulted from, or been associated with, the commission of the prescribed offence and a number of other statutory considerations listed below.
13. Pursuant to section 144D of the Act the decision whether or not a second strike should be incurred is made by the Secretary, while the decision whether or a not a third strike should be incurred is made by the Authority.
14. For a third strike to be incurred, section 144D(3) prescribes that a “relevant person” must have “committed” a “prescribed offence” in circumstances where *two strikes* are already “in force” in relation to the licence.
15. The Authority must then decide whether a third strike *should* be incurred, taking into account:
  - (i) the seriousness of any harm that may have resulted from, or been associated with, the commission of the offence; and
  - (ii) any other matter that may be prescribed by the regulations [the Authority notes that the Regulation does not prescribe any such matters for the purposes of this section of the Act].

## Consultation Requirements

16. Section 144G(2)(a) of the Act lists those third parties who must be notified and invited to make a submission, within a specified period of not less than 21 days, when a decision maker makes a reviewable decision under the Scheme. These third parties include the licensee of the relevant premises, the approved manager (if any), any person notified to the Authority as an interested person in the licensed business pursuant to sections 41 or 55 of the Act, the owner of the licensed premises, each former licensee or approved manager who may be adversely affected by the decision (if a third strike) and any other person prescribed by the Regulations.
17. Furthermore, section 144G(2)(b) of the Act requires a decision maker to have regard to any submissions received, within a specified time period of not less than 21 days, from a person referred to in section 144G(2)(a), NSW Police, LGNSW and the New South Wales Bureau of Crime Statistics and Research (BOCSAR).

## Relevant Considerations

18. Section 144G(2)(c) of the Act prescribes statutory considerations which a decision maker must take into account, to the extent that the decision-maker considers them relevant, when deciding whether to incur a second or third strike. Each of those considerations are discussed in the findings section of this decision below.
19. Section 144G(3) provides that nothing in section 144G prevents a decision-maker from taking into account “any other matter that the decision maker thinks is relevant to the proper making of a decision under this Part”.

## Expiry of Strikes

20. Pursuant to section 144D(4) a strike “comes into force” on the day upon which the prescribed offence that caused the strike is *deemed* to have been “committed”. Section 144D(5) provides that a strike against a licence *expires* three (3) years after the day upon which it came into force.

## CONSULTATION

21. The Authority Secretariat provided a copy of the LGNSW material to NSW Police, LGNSW, the Bureau of Crime Statistics and Research (BOCSAR), Mr Gulshan Dua, the former licensee, Whitestone Hotel Group Pty Ltd, the former corporate business owner and Mr Malcolm Smith and Ms Kerry Smith, the current premises owners and business owners of the Albion Hotel.
22. On 4 August 2016 the Authority received a brief email submission from Senior Sergeant Donna Thomas, South Region Command, Wollongong of NSW Police advising that the Hotel was at that time closed and had ceased trading prior to the start of June 2016. S/Sgt Thomas advised that Police had contacted Mr Dua who advised them that he did not have any further involvement with the hotel and had notified LGNSW to this effect. S/Sgt Thomas further advised that Police had spoken with Mr Smith, who advised them that he had informed Mr Dua and LGNSW that he will assume control of the licence as an owner in possession of the Premises.

23. On 10 August 2016 BOCSAR sent an email to the Authority advising that it did not intend to make a submission.
24. On 25 August 2016 LGNSW sent an email to the Authority advising that it did not propose to make any further submission.
25. On 7 October 2016 Mr Malcolm Smith, a premises owner of the hotel, sent an email to the Authority enclosing a Statutory Declaration sworn on that date. In this declaration, Mr Smith stated that the licence fee has been paid and that appropriate documents have been lodged to transfer the licence to Mr Smith as premises owner of the hotel. Mr Smith stated that the former licensee and business owner, Mr Allan Ogilvie, has been evicted from the premises by Mr Smith and this “removed the risk” of any further problems occurring on the Premises. Mr Smith states that work has been undertaken to repair and prepare the hotel to be offered as a new leasehold. A number of enquiries have been made on the lease but they have been rejected by Mr Smith by reason that the proposed lessees did not meet the standards set down by the premises owners.
26. Mr Smith concludes the declaration with the statement that it is his “vision” that the new hotel operator/tenant will not only be committed to comply with liquor laws but also have a stringent focus on “family and food” so as to elevate the image of the hotel to become an asset to Finley, “as it was in the past”.
27. The Authority notes that no submission was received from Mr Dua, the licensee on the record at the time when the relevant prescribed offence occurred. Nor was any submission made by the former corporate business owner, Whitestone Hotel Group Pty Ltd, now in external administration pending winding up.

## FINDINGS

28. The LGNSW Material comprises the following documents:
  - **Attachment 1:** OneGov liquor licence extract for Premises as at 19 July 2016;
  - **Attachment 2:** LGNSW timeline of prescribed offences “committed” pursuant to s.144C in relation to the Premises from 12 April 2014 to 23 June 2016;
  - **Attachment 3:** Information regarding First Strike – Certificate of Conviction and Prosecution Fact Sheet;
  - **Attachment 4:** Information regarding Second Strike – Certificate of Conviction, Prosecution Fact Sheet and LGNSW decision to incur a second strike;
  - **Attachment 5:** Information regarding Potential Third Strike – SDRO information and Computerised Operational Policing System (COPS) Event Number 61154942 for incident detected by NSW Police on 13 March 2016.
29. The LGNSW Letter, read together with the LGNSW Material, satisfy the Authority, on the balance of probabilities, that the following events have occurred in relation to the Premises.

### First Strike

30. On 12 April 2014, NSW Police (Police) detected a group of prescribed offences on the Premises including three counts of *licensee sell/supply liquor outside authorised hours* contrary to section 9(1)(b) of the Act, one count of *licensee permit intoxication on licensed premises* contrary to section 73(1)(a) of the Act and one count of *licensee permit indecency on licensed premises* contrary to section 73(1)(b) of the Act.
31. On 4 November 2014 at the Albury Local Court the [then] licensee, Mr Allan Francis Ogilvie, was convicted of all five offences, fined \$300 for the offence of *licensee permit intoxication on licensed premises* and fined \$300 for the offence of *licensee permit indecency on licensed premises* and was directed to enter into a good behaviour bond for 12 months pursuant to Section 9(1) of the Crimes (Sentencing Procedure) Act 1999 in regard to the remaining three offences, resulting in a first strike being automatically incurred against the licence, pursuant to section 144C of the Act.

### Second Strike

32. On 16 May 2014, Police detected a further group of prescribed offences on the Premises including one count of *licensee/employee sell/supply liquor to intoxicated person* contrary to section 73(2) of the Act and one count of *licensee permit intoxication on the licensed premises* contrary to section 73(1)(a) of the Act.
33. On 4 November 2014 at Albury Local Court the [then] licensee, Allan Francis Ogilvie, was convicted of both offences and fined \$400 on each count. As the requirements of section 144C were satisfied a prescribed offence was deemed to have been “committed” and this enabled the consideration of the Secretary’s discretion to incur a second strike against the licence.
34. On 23 December 2014, a delegate of the Secretary decided, in the Second Strike Decision, that a second strike *should* be incurred in respect of the offence detected as occurring at the Hotel on 16 May 2014.

### Two Strikes Remain In Force

35. The decision to incur a second strike against the Hotel’s licence was the subject of an application for review by the Authority. The Authority notified the relevant parties on 1 July 2015 that the Authority had decided, pursuant to section 144I of the Act, to confirm the Reviewable Decision that a second strike be incurred. The Authority also decided to take no remedial action in respect of the second strike.
36. The Authority is satisfied, on the basis of business records published on the online “Three Strikes Register” at [www.olgr.nsw.gov.au/pdfs/threestrikesregister.pdf](http://www.olgr.nsw.gov.au/pdfs/threestrikesregister.pdf), that two strikes are currently in force with regard to the licence attaching to the Hotel as at the time of this decision letter.
37. The Authority notes that while multiple offences were committed on 12 April 2014 and on 16 May 2014, section 144C(3) of the Act provides that prescribed offences that are committed in relation to a particular licence within a single 24 hour period are taken, for the purposes of Part 9 of the Act, to be a single prescribed offence.

### **Basis For Potential Third Strike**

38. It is not contested by any party that two strikes continue to be in force in relation to the Premises at all relevant times. Notwithstanding this, the premises owners submit that the Authority should determine not to incur a third strike against the licence.
39. The LGNSW letter dated 25 July 2016 indicates that a subsequent prescribed offence was detected by NSW Police on **13 March 2016**, while two strikes were in force.
40. As noted above, section 144B(a) of the Act provides that a prescribed offence includes the sale or supply of liquor contrary to licence, but only where the offence relates to the sale or supply of liquor on or in relation to the premises outside of the trading hours for those premises.
41. The LGNSW material includes a document entitled COPS Event 61154942 (Report) created on 13/03/2016. This appears to be an extract from a COPS Report created by NSW Police.
42. The Authority notes that COPS reports typically provide a contemporaneous narrative of an event observed by Police, or witness reports provided to Police of an incident, or both.
43. The Report notes that the event occurred on the Premises and the licensee at the time was Mr Gulshan DUA while the “manager” was Mr Allan OGILVIE. After noting the licensed trading hours on the licence, the Report states that about 1.00am on Sunday 13 March 2016, Police officers attended the Albion Hotel and observed that the front internal window blinds were pulled down giving the appearance that the hotel was closed. Police drove to the rear of the hotel and observed a female exit the rear door of the hotel. Police also saw two males in the rear cage smoking area of the hotel each with a “middy” glass of beer. Police went to the side of the hotel and observed through the window that the lights in the front bar were still on. Police opened the front door to the bar and observed approximately eight patrons walking out the door of the hotel. Police observed a male and female patron sitting at the front bar, the female drinking from a ready to drink can of Johnny Walker Red Whiskey and mixer with the male drinking from a can of “XXXX Gold” beer.
44. The Report continues that Police observed the “manager” (which the Authority understands to mean business or duty manager, not approved manager) Mr Allan Ogilvie standing behind the bar in the service area of the bar holding a glass of beer with a handle. Police spoke with Mr Ogilvie regarding the licensed trading hours and Ogilvie stated “I can trade to 2.00am”. Police informed Ogilvie he was only permitted to trade to 12.00am. Ogilvie stated “I thought the hotel licence went to 2.00am”. Ogilvie informed Police that he locked the doors at 12.00am and sold alcohol to only three or four patrons after 12.00am. The COPS Report notes there was no CCTV operating in the hotel and there were no dockets, receipts or printouts of any type in the cash register.
45. The COPS Report also states that about 5.55pm on Friday 1 April 2016, Mr Dua, the licensee, attended the Finley Police Station. Mr Dua was issued with an official caution before agreeing to take part in a recorded interview. Mr Dua stated that he was aware the trading hours were 5.00am to 12.00am Monday to Saturday and



10.00am to 10.00pm Sunday. Mr Dua advised that he did not give Mr Allan Ogilvie, who was the bar manager on duty, any instructions. Mr Dua stated that he was licensee of the hotel at the time of when Police detected the hotel trading late on 13 March 2016. Mr Dua was informed by Police he would be receiving an infringement notice for the offence of a liquor licensee keeping premises open outside of authorised hours.

46. While LGNSW have not provided the Authority with a copy of the actual Penalty Notice issued by Police for the alleged offence on 13 March 2016, the SDRO Report that accompanies the LGNSW Material records that the Penalty Notice number 4926584567 was **not paid** and that SDRO issued a Penalty Notice Enforcement Order (Order) on 23 June 2016. The prescribed offence was deemed to have been “committed” for the purposes of section 144C of the Act – thus triggering consideration of the Authority’s discretion under section 144D(3) of the Act to determine whether a third strike should be incurred in relation to the Premises.

### Section 144G(2) Considerations

47. The Authority has considered the LGNSW Material and all the submissions, evidence or other material before it. The Authority makes the following findings on the statutory considerations prescribed by section 144G(2)(c) of the Act, to which the Authority must have regard when considering whether or not a third strike *should* be incurred in relation to the Premises.
48. By reference to section 144G(2)(c)(i) of the Act (which requires a decision maker to consider whether the licensed premises were “declared premises” within the meaning of Schedule 4 when the offences that caused a strike are alleged to have been committed) the Authority is satisfied, on the basis of the LGNSW Material and Schedule 4 to the Act, that the Hotel is not currently a “declared premises” and was not a declared premises when the relevant prescribed offence was “committed” (within the meaning of section 144C of the Act) on 23 June 2016 nor when the prescribed offence was detected by Police on 13 March 2016.
49. By reference to section 144G(2)(c)(ii) of the Act (which requires a decision maker to consider the size and patron capacity of the licensed premises and how this may impact on the ability of the licensee or manager to prevent the commission of prescribed offences) the Authority finds that there is no information on the evidence and submissions before it to suggest that the venue’s size was a contributing factor in the commission of the particular prescribed offence now under consideration or the ability of the licensee to prevent the commission of prescribed offences on the Premises generally.
50. By reference to section 144G(2)(c)(iii) of the Act (which requires a decision maker to consider the history and nature of the commission of prescribed offences by relevant persons in relation to the licence or on or in relation to the licensed premises) the Authority is satisfied, on the basis of the LGNSW Material, that over the past two years there has been a history of prescribed offences on the Premises, particularly offences of permitting intoxication on the premises and trading outside of licensed trading hours. Those offences and the material establishing those offences are discussed in relation to the First and Second Strikes above.

51. The Authority notes that the prescribed offence of *licensee keep premises open outside authorised hours* giving rise to the consideration of the potential third strike that is now subject to consideration by the Authority, was detected on the Premises on 13 March 2016, around two years after the occurrence of the prescribed offence giving rise to the second strike.
52. By reference to section 144G(2)(c)(iv) of the Act, which requires a decision maker to consider the history and nature of violent incidents that have occurred in connection with the licensed premises, the Authority finds no evidence or information in the material before the Authority to indicate any significant history of violence on or in connection to the Premises.
53. Section 144G(2)(c)(v) of the Act requires a decision maker to consider whether other action (that is, other than incurring a strike) would be preferable. The Authority has reviewed all of the material before it and notes that neither LGNSW nor Police have taken a position on whether or not a third strike should be incurred or whether any alternative action would be preferable to incurring a strike.
54. The Authority accepts the statutory declaration from the premises owner Mr Smith, that he has evicted the former business owner and licensee, Mr Ogilvie. The Authority is further satisfied on the basis of this statement that work has been undertaken to repair and prepare the hotel to be offered for a new lease and that the vision of the property owner is that any new operator will be committed to legislative compliance and also have a focus on running a family and food oriented venue. Having regard to all of its findings under section 144G(2)(c) of the Act, including the changes in relevant persons responsible for the Premises discussed immediately below, the Authority does not consider that any alternative regulatory action is needed at this time.
55. By reference to section 144G(2)(c)(vi) of the Act (which requires a decision maker to consider whether there have been any changes to the persons who are the licensee, manager or business owner), the Authority is satisfied, on the basis of the statutory declaration from Mr Smith and LGNSW licensing information provided to the Authority by licensing staff that that at the time of making this decision there have been significant changes to the persons who were the licensee and the manager of the Hotel. The former licensee Mr Dua and the former business owner/business manager Mr Allan Ogilvie no longer have any involvement with the operation of the hotel.
56. LGNSW licensing records for the Premises confirm that since 13 May 2016 the following developments have occurred in relation to the licence:
  - In July 2016 the former Lessee/Licensee (Mr Ogilvie) vacated the Premises.
  - On 5 August 2016, the premises owner Mr Malcolm Smith submitted an application to transfer the liquor licence to his nominee, Ms Tabitha Smith.
  - On 2 September 2016, a “cease to trade” notice was lodged with LGNSW by Mr Smith.
  - On 28 September 2016, Mr Gulshan Dua was removed as licensee on the record of the Albion Hotel.

- On 28 September 2016, Ms Smith became the licensee while Malcolm and Kerry Smith (the premises owners) became the business owners on the record of the licence.
57. The Authority further notes that in a decision under Part 9 of the Act dated 24 November 2015 the Authority found Mr Ogilvie to be not fit and proper to hold a liquor licence, disqualifying him from holding a licence, being an approved manager or a close associate of a liquor licence in New South Wales for a period of ten years – a period subsequently reduced to 5 years by the New South Wales Civil and Administrative Tribunal in a decision dated 25 August 2016. The Authority (and NCAT) gave Mr Ogilvie 12 months to divest his interest as a close associate of the Albion Hotel.
  58. By reference to section 144G(2)(c)(vii) of the Act, which requires a decision maker to consider whether there have been any changes to the business practices in respect of the business carried on under the licence, the Authority is satisfied, on the basis of the business owner's submission of 7 October 2016, that the premises owner will be seeking a new operator that is committed to comply with the liquor laws and have a focus on family and food so as to elevate the image of the hotel and become an asset to the town of Finley. The Authority is unable to make a finding at this stage as to the nature of any new business practices to be implemented on the Premises while the premises owners seek another tenant and hotel operator.
  59. The Authority notes advice from Senior Sergeant Thomas, South Region Command (NSW Police) dated 4 August 2016 that Police met with Mr Smith on 25 July 2016 and viewed work on the Premises in preparation for the hotel to operate under new management. This further supports the bona fides of the premises owner's position in this regard.

#### **Does the Commission of the Recent Prescribed Offence Warrant a Third Strike?**

60. The Authority has taken into account all of the material and submissions before it in relation to the potential third strike consideration currently before the Authority and the statutory considerations the Authority is required to address.
61. When determining whether a third strike should be incurred, the Authority must consider not only what harm *has* occurred in relation to the prescribed offence before the Authority, but what harm *may have resulted from*, or been associated with, this prescribed offence.
62. The Authority is satisfied, on the basis of the uncontested COPS Report, that on 13 March 2016 the then licensee, Mr Dua, committed the prescribed offence of keeping open licensed premises outside of the hours authorised by the licence. This type of offence represents a real risk of harm to patrons consuming liquor for a prolonged period. More broadly, this offence poses a threat to the integrity of the licensing regime. Ordinarily, the Authority would consider this prescribed offence to be a most serious matter, indicating a fundamental lack of regard for the liquor legislation by the licensee and that a licensed premises poses a threat to the public interest.
63. However, on the basis of Mr Smith's statutory declaration the Authority is satisfied that Mr Dua and former business owner, Mr Allan Ogilvie have ceased any association with the operation of the Hotel. Mr Ogilvie was responsible for the

prescribed offences giving rise to the first and second strikes and Mr Dua was responsible for the matter now under consideration.

64. On the material before it, and noting the lack of any strong position taken by Police or LGNSW Compliance in favour of a third strike, the Authority further accepts the submission from the premises owner that work has been undertaken to repair and prepare the hotel with a view to it operating pursuant to new business ownership and that the property owners intend that the hotelier be committed to complying with the liquor laws but have a stringent focus on family and food.
65. The disciplinary scheme under Part 9A of the Act is concerned with the regulation of licensed *premises*, not simply individual licensees. There may be occasions when the commission of a prescribed offence, considered in its context, warrants the incurring of a strike notwithstanding that the licensee, business owner or business management have since changed.
66. However, having regard to all the Authority's findings on the considerations prescribed by section 144G(2)(c) of the Act noted above, the Authority has decided that a third strike *should not be incurred* at this time. Clearly, the premises owners are on notice of the problematic recent history of this hotel and any further prescribed offences may well result in the incurring of further strikes.
67. In making this decision, the Authority has had regard to the statutory objects and considerations provided by section 3 of the Act, which states as follows:

### 3 Objects of Act

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

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

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

- (a) *the need to minimise the harm associated with the 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.*

68. If you have any enquiries about this decision please contact the case manager via email to [nerida.gordon@justice.nsw.gov.au](mailto:nerida.gordon@justice.nsw.gov.au).



Philip Crawford  
**Chairperson**

**Important Information:**

In accordance with section 13A of the *Gaming and Liquor Administration Act 2007* a relevant person (the Applicant or a person who was required to be notified of the prescribed Application and who made a submission to the Authority or the Secretary in respect of the prescribed Application) who is aggrieved by this decision may apply to NCAT for an administrative review under the *Administrative Decisions Review Act 1997*.

An application to NCAT must be made within 28 days of notice of this decision being published on the liquor and gaming website <https://www.liquorandgaming.justice.nsw.gov.au/Pages/ilga/decisions-of-interest/decisions-of-interest.aspx> and be accompanied by the fee prescribed by the regulations.

For more information please contact the NCAT Registry at Level 10 John Maddison Tower, 86-90 Goulburn Street Sydney. The NCAT website is at <http://www.ncat.nsw.gov.au/>