



Mr Stephen John Partridge
Licensee, Golden Sands Tavern
c/o Mr Craig Murray
CDM Lawyers
Level 1, 299 Elizabeth Street
SYDNEY NSW 2000

craig@cdmlawyers.com.au

Dear Mr Murray

**Application for Review of Decision to Incur Second Strike
against Liquor Licence under Part 9A of the *Liquor Act 2007*
GOLDEN SANDS TAVERN, Nambucca Heads**

The Independent Liquor and Gaming Authority (Authority) has completed its consideration of an application for review dated 6 November 2014 made by Mr Stephen John Partridge to the Authority under section 144H of the *Liquor Act 2007* (Act).

The Review Application concerns a decision made by Mr Paul Newson, Executive Director of the Office of Liquor, Gaming and Racing in his capacity as a delegate of the (then) Secretary of NSW Trade and Investment dated 16 October 2014, that a second "strike" should be incurred against the liquor licence of the Golden Sands Tavern, currently trading at 31 Bowra Street, Nambucca Heads. The strike is incurred pursuant to the *Three Strikes* disciplinary scheme in Part 9A of the Act.

The Authority has decided, pursuant to section 144I of the Act, to **confirm** the Reviewable Decision that a second strike be incurred. The Authority has decided to take no remedial action in respect of the second strike.

The outcome of the review was informally notified to you in an email from the Authority dated 18 June 2015.

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 2008. 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

Micheil Brodie
Chief Executive

18 AUG 2015

STATEMENT OF REASONS

INTRODUCTION

1. The Independent Liquor and Gaming Authority (Authority) has completed its consideration of an application for review under section 144H of the *Liquor Act 2007* (Act) dated 6 November 2014 (Review Application) that was filed with the Authority by Mr Craig Murray of CDM Lawyers, who acts for Mr Stephen John Partridge (Review Applicant).
2. The Review Application concerns a decision made by Mr Paul Newson, Executive Director of the Office of Liquor, Gaming and Racing (OLGR) in his capacity as a delegate (Delegate) of the (then) Secretary of NSW Trade and Investment (Secretary) dated 16 October 2014 (Reviewable Decision).
3. In the Reviewable Decision, the Delegate determined that a second "strike" should be incurred against the licence attaching to the premises trading as the "Golden Sands Tavern", located at 31 Bowra Street, Nambucca Heads (Premises). The strike is incurred pursuant to the *Three Strikes* disciplinary scheme provided by Part 9A of the Act (Scheme).
4. The Premises operates as a full hotel licensed business pursuant to liquor licence number LIQH400116705. The licence has the benefit of an extended trading authorisation which permits the sale or supply of liquor for consumption on the Premises beyond the standard licensed trading hours prescribed by section 12 of the Act. The total licensed trading hours are from 9:00am to 12:00am on Monday through Thursday, from 9:00am to 1:00am on Friday and Saturday and from 10:00am to 10:00pm on Sunday.
5. Authority licensing records from the *OneGov* database indicate that as of 14 May 2014, the licensee of the business operating on the Premises is an individual, Mr Stephen John Partridge (Licensee).
6. The Authority notes, however, that the licensee of the business at the time of the occurrence of the prescribed offences that gave rise to the incurring of the second strike was Mr Peter Gibbons (Former Licensee).
7. The owner of the licensed hotel business that currently operates on the Premises is a corporation, Clurbat Pty Limited (Business Owner). Licensing records indicate that on or around 14 May 2014, the current corporate Business Owner, Clurbat Pty Limited, took possession of the hotel as owner of the property from the former business owner, Barpeg Pty Limited, which was previously occupying the Premises pursuant to a lease.
8. The current corporate owner of the freehold in the Premises is Clurbat Pty Limited (Premises Owner). The director of the corporate Premises Owner is Mr Stephen John Partridge.
9. The Authority notes, however, on the basis of information provided in the Reviewable Decision that from 29 October 1999 until 14 May 2014, the Premises was owned in a partnership by two companies, Araine Pty Limited and Shannon Pacific Pty Limited.
10. From 14 May 2014, Clurbat Pty Limited became the Premises Owner. However, as noted in the Reviewable Decision, Clurbat Pty Limited has in fact been the Premises Owner since approximately 2008 or 2009, when the partnership between Araine Pty

Limited (of which Mr Partridge was a director) and Shannon Pacific Pty Limited was dissolved.

11. A Dun & Bradstreet credit check of Barpeg Pty Limited performed by Authority staff on 14 November 2014 indicates that as of that date, the company was recorded to be "in liquidation". The directors of Barpeg Pty Limited as recorded on that document are Ms Deidre Gibbons, Mr Peter Gibbons (the Former Licensee), Mr Garren Anthony Stig and Mr Bradley Wilson.
12. An updated ASIC search performed by Authority staff on 28 April 2015 discloses that Barpeg Pty Limited is currently under "external administration", with Mr Clifford John Sanderson of the insolvency company *Restructuring Works* acting in the role of appointed liquidator, pursuant to a creditors' voluntary winding up of the company.

SUMMARY OF REVIEWABLE DECISION

First Strike and Remedial Action

13. As disclosed in the Reviewable Decision, a first strike was automatically incurred against the licence on 4 February 2013. On that date, a Penalty Notice issued by NSW Police in respect of the prescribed offence of *licensee permit intoxication on licensed premises* (detected on 21 December 2012) was paid. The prescribed offence was thereby committed for the purposes of the Scheme.
14. On 30 August 2013, as a result of the incurring of the first strike, a delegate of the Secretary determined, pursuant to section 144E of the Act, to take remedial action in relation to the Premises (First Strike Remedial Decision). The delegate imposed two new conditions upon the licence.
15. The first condition required that a Plan of Management be implemented at the licensed premises by 30 September 2013, provided to all staff and made available for immediate inspection by NSW Police or OLGRI Inspectors from that date forward (Plan of Management Condition).
16. The second condition extended the period during which an RSA Marshal must be present on the Premises on Friday evenings (RSA Marshal Condition).

Prescribed Offences Giving Rise to Second Strike

17. As detailed in the Reviewable Decision, on 21 September 2013, two further prescribed offences of *licensee sell/supply liquor outside authorised hours* and *licensee permit intoxication on licensed premises* contrary to section 9(1) and section 73(1) of the Act respectively were detected at the Premises by NSW Police.
18. On that occasion, three counts of the offence of *licensee fail to comply with conditions of licence* contrary to section 11(2) of the Act were also detected by Police, regarding a failure to comply with licence conditions requiring the licensee of the Premises to have an RSA Marshal present, to have a security guard on duty and to maintain an Incident Register.

[The Authority notes that these are not prescribed offences for the purposes of Part 9A of the Act.]

19. On 9 April 2014, the charges in relation to the offences detected on 21 September 2013 were heard at Bellingen Local Court. The then licensee of the Premises, Mr Peter Gibbons, was convicted of all five charges.
20. This amounted to the commission of the two prescribed offences within the meaning of section 144C(1)(a) of the Act and triggered the Secretary's consideration of whether a second strike should be incurred against the licence.
21. On 6 May 2014, OLGR invited written submissions in relation to a potential second strike against the licence. Submissions were sought from Mr Stephen Partridge in his capacity as the incoming licensee and as director of the corporate Premises Owner, Clurbat Pty Limited.
22. Submissions were also invited by OLGR from the Former Licensee (Mr Peter Gibbons) and the then business owner of the Premises (Barpege Pty Limited).
23. Submissions were also invited by OLGR from the other premises owners who were listed on the licence record (Arairie Pty Limited and Shannon Pacific Pty Limited) in relation to the time that the relevant offences were detected - that is, on 21 September 2013.
24. Although the legislation prescribes that submissions from the NSW Bureau of Crime Statistics and Research (BOCSAR) should also be considered, no invitation was made due to previous correspondence provided to OLGR from the Director of BOCSAR, Dr Don Weatherburn dated 7 October 2012 indicating that BOCSAR policy is not to volunteer submissions on any individual licensed premises for the purposes of the Scheme.
25. Out of all of the parties consulted by OLGR, only Mr Stephen Partridge, in his capacity as incoming licensee and as director of the current Premises Owner, Clurbat Pty Limited, made submissions to OLGR prior to the Delegate determining, in the Reviewable Decision, that a second strike *should* be incurred by reason of the range of potential harms that may be realised from the commission of the prescribed offence of selling or supplying liquor outside of authorised hours and the prescribed offence of permitting intoxication on licensed premises.

THE *THREE STRIKES* SCHEME

26. The disciplinary regime provided by Part 9A 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.
27. While incurring a first strike is an automatic process, once a prescribed offence is deemed to have been committed in accordance with section 144C of the Act, a decision to incur either a second or third strike is at the discretion of the relevant decision maker - and may not be made until consultation with a range of third parties has occurred and all relevant statutory considerations have been taken into account.
28. With regard to first and second strikes, the primary decision maker is the Secretary. Those decisions are reviewable by the Authority. With regard to third strikes, the primary decision maker is the Authority. The Authority's decisions with respect to third strikes are reviewable on the merits by the New South Wales Civil and Administrative Tribunal (NCAT).

29. 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.
30. Briefly, for a *strike* to be incurred, a relevant person must first *commit* a *prescribed offence* in relation to the licensed premises in question. The definition of "prescribed offence" is provided by section 144B of the Act and identifies eleven types of offences. Relevantly to this matter, 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 Director-General),
- (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 Director-General),
- (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).

31. 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.*

32. Section 144H contains general provisions relating to reviews made under Part 9A of the Act. As noted above, a decision to incur a second strike is made by the Secretary and is reviewable by the Authority. Additionally, a review application made under this Part automatically operates to stay a reviewable decision unless an order is made to the contrary. Section 144H of the Act states as follows:

144H Reviews generally

- (1) *An application for the review of a reviewable decision may be made by a person who is required to be notified of the decision under section 144G no later than 21 days after the person receives the notification.*
- (2) *An application is to be made:*
 - (a) *in the case of a decision of the Secretary – to the Authority, and*
 - (b) *in the case of a decision of the Authority – to the Civil and Administrative Tribunal as an application for an administrative review of the decision under the Administrative Decisions Review Act 1997.*
- (3) *Part 2 of Chapter 3 of the Administrative Decisions Review Act 1997 does not apply to an application to the Civil and Administrative Tribunal for an administrative review of a decision by the Authority under this Part.*
- (4) *An application for a review operates to stay the reviewable decision unless the body conducting the review otherwise directs.*
- (5) *The operation of any remedial action taken in respect of a strike is suspended during any time that the decision to impose the strike is stayed.*
- (6) *In determining an application for review under this section, the body conducting the review must take into account any matter that was required to be taken into account in making the reviewable decision that is the subject of the review.*

Requirements for a First, Second or Third Strike

33. Under the Scheme, a first strike is automatically *incurred* once a *prescribed offence* has 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. The decision to incur a second strike is made by the Secretary, while the decision to incur a third strike is made by the Authority.
34. For a first strike to be incurred, section 144D(1) prescribes that there must be *no strike* already incurred in relation to the liquor licence and that a *relevant person* must *commit* a prescribed offence.
35. For a second strike to be *incurred*, section 144D(2) prescribes that a *relevant person* must have *committed a prescribed offence* in circumstances where *one strike* is already *in force* in relation to the licence. The Secretary must then decide whether a second strike *should* be incurred "...because of the seriousness of any harm that may have resulted from, or been associated with, the commission of the offence".
36. 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. The Authority must then decide whether a third strike *should* be incurred, taking the following 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 *Liquor Regulation 2008* (Regulation) does not prescribe any such matters for the purposes of this section of the Act].

37. 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 at least 21 days, when a decision maker (the Secretary or the Authority, as the case may be) makes a reviewable decision. They include:
- (i) the licensee
 - (ii) the approved manager (if any)
 - (iii) any person whose name is provided to the Authority as an *interested person* in the business if notified to the Authority under section 41 or section 55 of the Act, and the owner of the licensed premises
 - (iv) if the decision is whether a third strike should be incurred - each former licensee or manager of the business who may be adversely affected by the decision; and
 - (v) any other person prescribed by the regulations.
- [The Authority notes that the Regulation does not prescribe any other parties for the purposes of this section of the Act].
38. Furthermore, section 144G(2)(b) of the Act requires a decision maker to notify and have regard to any submissions received within the specified time period from:
- (i) the New South Wales Police Force
 - (ii) the Office of Liquor, Gaming and Racing within the Department of Justice; and
 - (iii) the New South Wales Bureau of Crime Statistics and Research within the Department of Justice.

Further statutory considerations for second and third strikes

39. Section 144G(2)(c) of the Act provides a list of statutory considerations which a decision maker must take into account, to the extent that the decision maker considers them relevant to a decision whether to incur a second or third strike:

144G Matters to be considered by the Secretary and Authority

- (2) ...
(c) ...
- (i) *whether the licensed premises were "declared premises" within the meaning of Schedule 4 to the Act at the time when the offences that caused a strike are alleged to have been committed;*
 - (ii) *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;*
 - (iii) *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;*
 - (iv) *the history and nature of violent incidents that have occurred in connection with the licensed premises;*
 - (v) *whether other action would be preferable;*
 - (vi) *whether there have been changes to the persons who are the licensee, manager or business owner;*
 - (vii) *whether there have been changes to the business practices in respect of the business carried on under the licence;*
 - (viii) *any other matter prescribed by the regulations [the Authority notes that no such matters are prescribed by the Regulation at the time of this decision letter].*

40. 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

41. Timing is important under the Scheme. 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. This is not the same as the date when the offence actually occurred.
42. That is, once a second or third strike has been determined, the strike comes into force from the date of conviction for the prescribed offence, the date of payment of any Penalty Notice issued in respect of the offence, or the date when the State Debt Recovery Office (SDRO) issues a Penalty Notice Enforcement Order in respect of an unpaid Penalty Notice for the offence, as the case may be. However, section 144D(5) provides that a strike against a licence *expires* three (3) years after the day upon which it came into force.

MATERIAL BEFORE THE AUTHORITY

The OLGR File

43. A copy of the entire bundle of material before the Delegate at the time the Reviewable Decision was made (OLGR File) was released to the Authority for the purposes of the review on 14 November 2014.
44. In summary, the material before the Delegate in the OLGR File comprises the following:
45. Briefing memo prepared by OLGR Senior Compliance Officer Mr Dimitri Argeres to the Delegate, OLGR Executive Director Mr Paul Newson dated 15 October 2014 (OLGR Briefing Memo). In summary, the OLGR Briefing Memo provides a short history of the nature of the prescribed offences giving rise to the first strike and the consideration of the second strike.
46. Attachment A to the OLGR Briefing Memo is a timeline of relevant events in relation to the history of prescribed offences detected on the Premises.
47. Attachment B to the OLGR Briefing Memo is a briefing note from NSW Police, Alcohol and Licensing Enforcement Command (ALEC) containing the narrative of COPS Event number E53522716 for 21 and 22 September 2013 in relation to the prescribed offences giving rise to the consideration of a second strike against the licence.
48. Attachment C to the OLGR Briefing Memo is a copy of the letter sent to Mr Stephen John Partridge in his capacity as incoming licensee and director of the corporate Premises Owner, Clurbat Pty Limited inviting written submissions in relation to the proposed decision to incur a second strike against the licence. This letter is in almost identical terms to the letters sent by OLGR to the Former Licensee (Mr Peter Gibbons), the Business Owner (Clurbat Pty Limited) and the premises owners which were listed on the licence at the time the relevant prescribed offences were detected (Arairie Pty Limited and Shannon Pacific Pty Limited).
49. The OLGR Briefing Memo to the Delegate notes that in a decision by the Authority in respect of the imposition of a second strike on the licence of *Hue Karaoke*, the Authority applied a broad reading of the legislative test set out in section 144D(2)(c) of the Act, which takes into account a range of *potential* harms that *may* have arisen from the commission of the relevant prescribed offences under consideration.

50. The OLGR Briefing Memo submits to the Delegate that the nature of the prescribed offences detected on 21 and 22 September 2013 demonstrates a disregard for the liquor legislation and licence conditions, rather than a lack of controls or conditions imposed upon the Premises. The OLGR Briefing Memo notes that the venue is already subject to a number of existing conditions to assist in the management of intoxication and to prevent the sale or supply of liquor outside authorised hours, including the Plan of Management Condition and the RSA Marshal Condition.
51. The OLGR Briefing Memo notes that following the detection of the prescribed offences on 21 and 22 September 2013, Mr Partridge effectively evicted the then licensee and then business owner and has successfully applied to become the current licensee. OLGR note that local licensing Police, in their submission to OLGR, advised that there have been *no issues* with the Premises since the change of licensee.
52. The OLGR Briefing Memo submits that the positive and proactive intervention on the part of the current Licensee (Mr Partridge) has directly addressed and reduced the risk of harm that arose due to the conduct of the Former Licensee, Mr Peter Gibbons. In light of this, and the *wilful nature* of the offending, the OLGR Briefing Memo recommends that a second strike be incurred, but that no further remedial conditions be imposed upon the licence.
53. Attachment D to the OLGR Briefing Memo is a submission to OLGR from Mr Partridge in his capacity as incoming licensee and director of the corporate Premises Owner dated 21 May 2014. Briefly, the Licensee contends that he only became aware of the pending prosecutions of the Former Licensee in *February 2014*, several weeks after the then lessees of the business had been notified of those prosecutions.
54. The Licensee contends that he then immediately contacted his solicitor and arranged a meeting with Senior Sergeant Jason Maxwell of Nambucca Heads Police Station for the purpose of advising him that the lessee, Barpeg Pty Limited, would be issued with a notice in relation to breach of the terms of the lease.
55. The Licensee submits that following the notification of the breach of lease, the lessee vacated the Premises on 5 March 2014. Mr Partridge and his wife personally assumed operation of the Premises thereafter, and an application has been lodged with the Authority to have the licence transferred to Mr Partridge.
56. The Licensee contends that he and his wife have owned and operated approximately 10 hotels or taverns from Kempsey to Ballina over the past 25 years, transforming them "...through a combination of extensive renovation and professional management, into safe, family friendly venues offering excellent food, accommodation and hospitality".
57. The Licensee contends that since assuming the operation of the Premises, a substantial amount of work to the Premises was carried out, existing staff were retrained and new staff were recruited and trained as necessary in relation to the responsible service of alcohol (RSA), underage persons and general compliance with the liquor and gaming legislation.
58. The Licensee contends that during the time of his operation of the Premises, he has maintained contact with local and licensing Police and has had no negative comments.
59. The Licensee contends that Police have stated to him that the previous lessees themselves were the cause of concern and that their surrendering the lease has gone a long way in addressing [Police] concerns. The Licensee also contends that Police are of

the belief that the licence attaching to the Premises had adequate conditions to provide for its good operation.

60. Attachment E to the OLGR Briefing Memo comprises three emails, as follows:
61. Further submission to OLGR from the Licensee, Mr Partridge dated 11 September 2014. In this email submission, the Licensee advises that he and his wife have continued to personally operate the Golden Sands Tavern and that they have substantially changed the public perception of the venue in a positive way. The Licensee submits that he and his wife participate in the local Liquor Accord, continue to be responsible community members and consult with local Police to gauge whether there are any concerns with the operation of the Golden Sands Tavern. The Licensee submits that the consideration of a second strike has arisen from the previous management and their "...disregard for their responsibilities and the existing licence conditions" which, when complied with, provide for the effective and safe operation of this licensed business.
62. Submission from Licensing Senior Constable Dean Magennis of Mid North Coast Local Area Command dated 8 May 2014. In this brief email submission, Senior Constable Magennis provides a brief overview of the prescribed offences giving rise to the consideration of a second strike. He notes that since the matters were brought to the attention of the Premises Owner, Mr Partridge, the lease with the Former Licensee, Mr Peter Gibbons, was terminated and Mr Partridge has taken possession. Senior Constable Magennis notes that Mr Partridge has applied to be the new licensee and that since he has been running the Premises, Police have had no issues.
63. Senior Constable Magennis contends that the business operating on the Premises has been a problem in the past mainly due to there being no supervision on busy trading nights when the Former Licensee had been absent.
64. Further submission from Sergeant John Lawrie, Mid North Coast Licensing Coordinator attached to Port Macquarie Police Station dated 8 September 2014. In this brief email submission, Sergeant Lawrie advises that the new licensee, Mr Partridge is also the owner and notes that since Mr Partridge has assumed control of the business, there have not been the same compliance issues that [Police] have seen in the past.
65. Sergeant Lawrie proposes that the Plan of Management Condition imposed by a delegate in the First Strike Remedial Decision be updated to reflect the new Licensee's approach, noting that the condition was imposed in the context of operation of the venue by the Former Licensee.
66. Sergeant Lawrie submits that the prescribed offences giving rise to the second strike consideration are more a case of stupidity than a lack of controls [and] conditions but also contends that the Premises has, in previous years, posed issues for Police including while the property was owned by the current Premises Owner.
67. Sergeant Lawrie contends that the Premises Owner has leased the hotel to third party licensees who have committed breaches, been disqualified and in the case of the most recent previous management, been evicted subsequent to Local Court convictions. Sergeant Lawrie submits that Police believe that Mr Partridge's current operation of the hotel business is *not long term*.
68. Reviewable Decision dated 16 October 2014. The Reviewable Decision provides a brief background of the prescribed offences giving rise to consideration of a second strike. It briefly summarises all the submissions received by OLGR and makes findings on the statutory considerations prescribed by section 144G of the Act.

69. The Delegate was satisfied that the licensed premises were not declared premises within the meaning of Schedule 4 to the Act when the offences occurred; that there is no information indicating that the venue's size was a contributing factor in the commission of the prescribed offences and that there is no evidence to suggest that the venue has a history of alcohol related violent incidents.
70. The Delegate noted the submissions made by the current Licensee that it would be preferable to take no action in this instance, as the conduct leading to the commission of the prescribed offences is directly attributable to the Former Licensee.
71. The Delegate was satisfied that the current Licensee participates in the local Liquor Accord, has made changes to the venue's operating procedures and improved staff training.
72. The Delegate noted that the change of licensee as of 14 May 2014 is another important step taken by the venue toward ensuring appropriate practices and procedures are implemented in order to reduce the risk of subsequent prescribed offences and that local licensing Police appear satisfied with the manner in which the licensed business is currently being operated.
73. The Delegate was satisfied that there are a range of potential harms that could be realised from the prescribed offences. The supply of liquor outside authorised hours indicates to the Delegate a *complete failure* of the venue's systems and controls - a lack of adequate control over the supply of liquor increases the potential for intoxication, with a commensurate increase in the risk of alcohol related harm.
74. In relation to the offence of permitting intoxication, the Delegate notes the many potential harms that may arise when a staff member noticeably affected by liquor himself is serving liquor to others, as outlined in the COPS Event.
75. The Delegate was satisfied that this second prescribed offence demonstrates a *serious failure* by the Former Licensee to make adequate and timely arrangements following the detection of the prescribed offence giving rise to the first strike and that this failure contributed to an increased risk of alcohol related harm and presented an undue risk of compromising patron and community safety.
76. The Delegate notes that the Premises Owner indicated to OLGR that following the first strike, a meeting was held with the Former Licensee to discuss the prescribed offence and subsequent strike action and a liquor licensing consultant was engaged to develop the Plan of Management for the Premises.
77. The Delegate was satisfied that, notwithstanding this assistance provided to the Former Licensee, there "...appears to be a failure on the part of the Premises Owner to undertake due diligence and monitoring to ensure that the venue was being operated in a manner compliant with the liquor and gaming legislation".
78. The Delegate notes that the subsequent prescribed offences were detected on the Premises less than one month after the Former Licensee was notified of the first strike.
79. The Delegate acknowledges the prompt, positive action taken by the current Licensee in terminating the lease held by the Former Licensee and states that the Licensee's actions in personally assuming control of the licensed premises and implementing a number of harm minimisation measures were commendable.

80. However, the Delegate finds that the fact that the licensee of the business has since changed and the venue is currently operating without any identified concerns from local licensing Police does not have a material effect on the assessment of the seriousness of harm that may have arisen as a result of the prescribed offences.
81. The Delegate notes that there is no guarantee that the Premises Owner will continue to remain in control of the licensed business. The Delegate decided that a second strike should be incurred against the licence because of the seriousness of the harm that may have resulted from, or been associated with, the commission of the offences in question.

THE REVIEW APPLICATION

82. The Review Application material comprises the following material:
83. Review Application Form signed by Mr Stephen John Partridge in his capacity as Licensee and director of Clurbat Pty Limited, the current corporate Business Owner and Premises Owner dated 1 November 2014.
84. Submission Letter from Mr Craig Murray of CDM Lawyers to the Authority dated 6 November 2014. This submission argues that a second strike should not have been incurred against the licence. Briefly, the Review Applicant submits that the decision to impose a second strike is not fair or appropriate based on the circumstances of the prescribed offences which Mr Murray submits "...may not have been clearly set out" in the previous rounds of submissions.
85. The Review Applicant attaches a copy of the agreed facts that were tendered to Bellingen Local Court on 9 April 2014.

[The Authority notes that this document is not a Prosecution Facts Sheet but appears to be a summary of the events occurring on 21 and 22 September 2013 as contended by the *defendant* in those matters.]

86. The Review Applicant contends that the intoxicated patron identified on the Premises on 21 and 22 September 2013, when the prescribed offences giving rise to the consideration of the second strike were detected, was Mr Brad Wilson, a director of the former corporate business owner, Barpeg Pty Limited.
87. The Review Applicant submits that after considering this matter, Local Court Magistrate Walker reduced the amounts of the Penalty Notices in respect of the offences of permitting intoxication and selling or supplying liquor outside authorised trading hours from \$1,100 to \$800.
88. The Review Applicant submits that this action indicates that his Honour "...could not have considered that these matters fell into the most serious category of offence" and that the convictions recorded in this case are at the "...lower end of the scale of objective seriousness".
89. The Review Applicant submits that the majority of the persons who re-entered the Premises after closing time on the evening of 21 September 2013 were employees of the then hotel business and that although alcohol was supplied, it was not sold.
90. The Review Applicant argues that it may be inferred that there was no intention to make a profit from this conduct. The Review Applicant submits that the environment was contained in that the venue was locked and it was not the case that any members of the public could enter the Premises outside of licensed hours.

91. The Review Applicant contends that the people who re-entered the Premises after closing time were acting on a *frolic of their own*. The Review Applicant contends that the *licensee* appointed by the business owner at the time, Former Licensee Mr Peter Gibbons, was in Sydney over the weekend of 21 and 22 September 2013.
92. The Review Applicant submits that these hotel employees *abused the trust* of the then licensee Mr Gibbons and ultimately the current Licensee and director of the now corporate Business Owner/Premises Owner, Mr Stephen Partridge, who continues to face great loss as a result of the incident, whereas the former lessees occupying the hotel and formerly operating the hotel business have now moved on.
93. The Review Applicant contends that Mid North Coast Licensing Police are of the belief that this incident was not attributable to a lack of control or conditions, and that Police are satisfied that adequate conditions and controls currently exist at the Premises.
94. The Review Applicant contends that the remedial conditions imposed upon the licence – pertaining to the preparation of a Plan of Management and the engagement of RSA Marshals at certain times – as a result of the detection of an intoxicated patron on the Premises on 21 December 2012 had been strictly complied with *until* the occurrence of the incident on 21 and 22 September 2013.
95. In response to the Police contention made in their submission dated 8 September 2014 addressing the potential second strike, to the effect that the current Business Owner/Premises Owner (Clurbat Pty Limited) has historically leased the hotel to licensees who have faced serious adverse regulatory action, the Review Applicant contends that the previous tenants of the Premises, Mr Kevin Edmunds, Mr Phillip Archer and Mr Peter Gibbons were all experienced hoteliers and that the Business Owner/Premises Owner had no valid reason to refuse the contract with those lessees and had "...every reason to believe that they would comply with the terms of their lease".
96. The Review Applicant contends that after Mr Partridge was made aware of the events of 21 to 22 September 2013, he issued the then tenant and business owner, Barpeg Pty Limited, with a letter dated 19 February 2014 in relation to arrears of rent and outgoings and a notice of breach of covenants of the lease with respect to failure to repaint and re-carpet the hotel and failure to notify the lessor of the criminal charges faced by the Former Licensee.
97. The Review Applicant submits that since the eviction of the previous lessee (Barpeg Pty Limited), Mr Partridge and his wife have continued to personally operate the Golden Sands Tavern and that they have "...substantially changed the public perception of the venue in a positive way" through improvements to the décor, street profile, bistro offerings, further staff training and personal input into the business.
98. The Review Applicant contends that he is an active participant in the local Liquor Accord and regularly consults with local and Licensing Police, and that he and his wife "...continue to be responsible community members" by supporting such organisations as Little Athletics, the local Racing Club and The Nambucca *Riverfest*.
99. The Review Applicant contends that he and his wife have owned and operated several hotels from Kempsey to Ballina over the past 26 years and have converted many rundown hotels into "...safe, family friendly venues offering excellent food, accommodation and hospitality" and are committed to continuing this at the Golden Sands Tavern.

100. The Review Applicant contends that the actions by the former lessees, committed in the absence of the Former Licensee, have "...caused a substantial impact on a once viable business" and have served to devastate the value of the property.
101. The Review Applicant requests that the Reviewable Decision be stayed pursuant to the operation of section 144H(4) of the Act and that the Authority revoke the decision under review.

[The Authority notes that a stay is automatically effected by filing this type of review application with the Authority under Part 9A of the Act.]

102. Annexure A to the Review Application is a copy of the Reviewable Decision dated 16 October 2014.
103. Annexure B to the Review Application is a copy of the agreed facts that were tendered to Bellingen Local Court on 9 April 2014.
104. Annexure C to the Review Application is a copy of the notice of breach of lease sent by Clurbat Pty Limited to the former business owner, Barpeg Pty Limited on 19 February 2014.

Supplementary Affidavit from Review Applicant dated 10 November 2014

105. On 10 November 2014, the Review Applicant provided a supplementary affidavit and annexures largely identical to the Review Application filed with the Authority on 6 November 2014.

RESPONSE TO CONSULTATION ON REVIEW

106. On 14 November 2014, OLGR and Licensing Police attached to the Mid North Coast Local Area Command were forwarded a copy of the Review Application and invited to make further submissions in relation to the matter.
107. BOCSAR were also notified of the Review Application and invited to make written submissions as required by Part 9A of the Act. In accordance with their usual practice, that agency advised on 16 February 2015 that they did not propose to make any submissions on the matter.
108. On 28 April 2015, Mr Clifford John Sanderson of *Restructuring Works*, the appointed liquidator of the former business owner, Barpeg Pty Limited, was also notified of the Review Application and invited to make submissions on the matter by 20 May 2015.
109. Given that Mr Partridge is the Licensee and the director of the corporate Business Owner/Premises Owner, the Authority is proceeding on the basis that the Premises Owner is on notice of the Review Application. That has been communicated to Mr Murray in an email dated 28 April 2015.

Further submission from Police dated 1 December 2014

110. On 1 December 2014, Senior Constable Dean Magennis from Mid North Coast Local Area Command Licensing Police provided a brief email submission to the Authority.
111. The Police submission comprises a very brief Cover Submission and is accompanied by records sourced from the NSW Police Alcohol Related Crime Information Exchange

(ARCIE) database in relation to incidents recorded at the Premises for the periods January to December 2013; and December 2013 to November 2014.

112. Police submit that they have received "...no negative feedback from the local community" since Mr Partridge assumed control of the Premises and that the number of incidents requiring Police attendance at the Premises due to violence or other offences had dropped.
113. Police submit that the attached ARCIE Licensed Premises Overview records show a vast improvement in the management of the licensed premises since the Premises Owner assumed control, and the number of incidents where Police were either involved or linked to the Premises has decreased.
114. Briefly, the ARCIE data indicates that for January 2013 to December 2013, there were 27 incidents occurring within the Premises requiring Police attendance. However, there were only seven incidents occurring within the Premises requiring Police attendance for the period from December 2013 to November 2014.

No further submission from OLGR

115. After initially requesting an extension of time within which to make further submissions on the matter, OLGR advised the Authority on 3 December 2014 that they did not propose to make any further submissions on this matter in addition to the OLGR File provided to the Authority.

Further submission from Review Applicant dated 9 March 2015

116. The submission from Police dated 1 December 2014 and the complete OLGR File of material before the Delegate were forwarded to the Review Applicant on 15 February 2015. Any further submissions in reply from the Review Applicant were requested by 9 March 2015.
117. On 9 March 2015, the Review Applicant, through his solicitor Mr Craig Murray, provided the Authority with a brief further submission letter in reply.
118. Briefly, the Review Applicant notes that three of the documents on the OLGR File are "untitled" and contain no content.

[These documents, which were in ".eml" format, were later forwarded to the Review Applicant on 28 April 2015 in PDF format, noting that they comprise documents that the Review Applicant should be familiar with from the primary decision making process.]
119. In response to the comments made by Sergeant Lawrie in his submission dated 8 September 2014 that the prescribed offences giving rise to the consideration of a second strike are "...more a case of stupidity than a lack of controls [and] conditions", the Review Applicant submits that it is the "stupidity" of two of the *previous tenants* and not the Review Applicant that is at issue.
120. The Review Applicant submits that he continues to rely upon the affidavit and annexures sworn on 10 November 2014 and the submissions made in the initial Review Application dated 6 November 2014.
121. The Review Applicant argues that any assertion (made by Police) that he and his wife are not intending to maintain control of the business on the Premises is "...not a relevant consideration" given that the Review Applicant is currently 61 years of age.

122. The Review Applicant argues that the Golden Sands Tavern is "...made of brick and metal and is at no more risk of attracting unsuitable operators than any other" licensed establishment.
123. The Review Applicant's solicitor submits that any potential licensee or close associate will be required to pass the "strict probity requirements" outlined in the Act, Regulation and case law including *Sakellis v Police* (1968) 88 WN (NSW) 541 at 548; *Hughes and Vale Pty Limited v NSW (No.2)* (1955) 93 CLR 127 at 156-157 and *Australian Broadcasting Tribunal v Bond* (1990) HCA 33; 170 CLR 321.
124. The Review Applicant's solicitor submits that incurring a second strike on the licence would "...seriously affect the property value and our client's livelihood" and requests that the Authority apply the principle set out in *Briginshaw v Briginshaw* [1938] HCA 34; (1938) 60 CLR 336 in arriving at a determination on this matter.

Final submission from Review Applicant dated 11 May 2015

125. The Review Applicant was given an opportunity to make final submissions in the form of a statutory declaration in response to three PDF documents that had formed part of the OLGR File released to the Review Applicant that he was unable to open (by reason that OLGR had produced the material in .eml format).
126. On 11 May 2015, the Review Applicant, through his solicitor Mr Murray, provided the Authority with an affidavit sworn on 11 May 2015.
127. Briefly, the Review Applicant makes the following further observations or contentions in his affidavit:
 - (i) On 25 April 2015 (ANZAC Day 2015) two OLGR Compliance Officers attended the Premises and asked the Review Applicant how the second strike had come about and what had been done to "rectify" the situation since. The Review Applicant advised the OLGR Compliance Officers that some staff had been "let go" and others had been retrained.
 - (ii) The Review Applicant submits that he explained to the Compliance Officers that as well as completing a weekly compliance checklist, regular staff meetings and management meetings are held at the Premises. Additionally, all staff are required to read the licence and have signed a document to the effect that they understand the conditions on the licence.
 - (iii) The Review Applicant notes that he "forgot to mention" to the OLGR officers on 25 April 2015 that staff at the Premises are also required to complete a risk matrix which includes "...compliance obligations, risk controls, remedial action and executive action".
 - (iv) The Review Applicant submits that a *licence signage checklist* is completed on a weekly basis by staff at the Premises and checked by management to ensure that the signage at the venue is compliant with the relevant liquor and gaming legislation.
 - (v) The Review Applicant submits that a *hotel licence checklist* is operated and completed by the management team at the Premises to ensure "...thorough understanding and compliance at all times".
 - (vi) The Review Applicant submits that a staff induction process is also in place at the Premises, which presents staff with a staff induction handbook. The staff induction handbook includes the RSA policy and procedures for the Premises, as well as other useful information for new and existing staff. The Review Applicant submits that the staff induction handbook is reviewed and updated regularly and that all updates are read and signed by staff continuously.

128. Annexure 1 to the Review Applicant's affidavit is a copy of the risk matrix developed by management staff at the Premises. The risk matrix lists the risks, controls, remedial actions and executive actions for the four key obligations under the licensing and gaming legislation of signage, licence conditions, minors and (prevention of) intoxication.
129. Annexure 2 to the Review Applicant's affidavit is a copy of the weekly licence signage checklist which assesses compliance with liquor and gaming signage requirements under the relevant legislation.
130. Annexure 3 to the Review Applicant's affidavit is a copy of the hotel licence checklist, dated March 2012. This document appears to originate from the OLGR website and provides information such as the licence number, licence name and contact details for the hotel.
131. Annexure 4 to the Review Applicant's affidavit is a copy of the title page of the staff induction handbook. This document notes that the directors of the Premises are John and Jenny Partridge, and the managers of the Premises are Jacqui Vella and Chris Partridge. The document notes that the staff induction handbook contains an introduction, a section on expectations and standards, and a declaration. The document also has a short declaration for members of staff to sign, to acknowledge that they have read and understood the information contained in the handbook.

No Submission from Mr Sanderson, appointed liquidator of Barpeg Pty Limited

132. The appointed liquidator of the former business owner, Barpeg Pty Limited was also invited to make submissions in relation to this review.
133. Mr Sanderson advised the Authority on 14 May 2015 that he did not propose to make a submission on behalf of the former business owner in relation to this matter.

DECISION ON REVIEW AND REASONS

134. The Authority has considered the Review Application and all the submissions before it pertaining to the Review Application.
135. *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 material provided by OLGR, the submissions from the Review Applicant to the Authority and the Authority's consideration of Schedule 4 to the Act, that the Premises is not currently a "declared premises" and was not a declared premises when the relevant prescribed offences were committed.*
136. *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 notes that there is no evidence, submissions or material before it regarding the regulatory implications of the size, patron capacity and/or layout of the Premises.*
137. The Authority notes the findings made by the Delegate in the Reviewable Decision in relation to the consideration in section 144G(2)(c)(ii) that there was no information before the Delegate to indicate that the size of the venue was a contributing factor in the commission of prescribed offences detected as occurring on the Premises on 21 to 22 September 2013. The Delegate also noted that the NSW Police COPS Event report

for that incident discloses that only a small number of patrons and staff were present while the venue was supplying liquor after licensed hours. The Authority is satisfied as to those findings for the purposes of this review.

138. The Authority is satisfied, on the material before it, that the size and patron capacity of the licensed premises has no impact on the ability of the Licensee to prevent the commission of prescribed offences on the Premises.
139. *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 material provided by OLGR, that there is a history of multiple prescribed offences committed on the Premises, particularly in relation to offences of permitting intoxication on licensed premises. The occurrence of these offences has not been contested by the parties in this matter, although the Review Applicant has made submissions on the quantum of the penalties issued by the Local Court.
140. While the Authority accepts that the current Licensee was not the licensee of the licensed business at the time when the prescribed offences giving rise to the incurring of the second strike were detected on the Premises, the Authority is satisfied, on the basis of the material before it, that the prescribed offence of permitting intoxication was detected as occurring on the Premises on 21 December 2012. A first strike was incurred in respect of this offence on 4 February 2013 and two remedial conditions were imposed during August 2013.
141. The Authority notes that the prescribed offences giving rise to consideration of this second strike were detected on 21 September 2013 - within just a few weeks of the imposition of two remedial conditions upon the licence for the Premises in connection with the incurring of the first strike. The second prescribed offence was *committed* for the purposes of the Scheme on 9 April 2014, when the Former Licensee, Mr Gibbons, was convicted of permitting intoxication on the Premises and trading outside of the hours authorised on the licence.
142. However, it is of some concern to the Authority that following the first prescribed offence of permitting intoxication on licensed premises and the subsequent imposition of remedial conditions upon the licence, this did not seem to have caused the then licensee, the then business owner or the Premises Owner to take care or make sufficient changes in business practices to avoid committing another two prescribed offences that were detected by Police on 21 and 22 September 2013 (one count of permitting intoxication on licensed premises and one count of trading outside of the hours authorised on the licence).
143. The Authority notes the Review Applicant's submission that following the incurring of the first strike, a meeting was held between the Former Licensee and the director of the corporate Premises Owner to discuss the prescribed offence and subsequent strike action; and a liquor licensing consultant was engaged to develop the Plan of Management for the Premises.
144. However, given the brief period of time between the incurring of the first strike and the date of detection of the prescribed offences giving rise to the second strike, the Authority is of the view that the above noted actions taken by the Premises Owner in response to the incurring of the first strike were inadequate and did not represent sufficient changes in business practices to avoid the commission of further prescribed offences.

145. The Premises Owner failed to subsequently undertake due diligence and monitoring to ensure that the Premises was being operated in a manner compliant with the liquor legislation, following the imposition of a strike.
146. With regard to the recent regulatory history of the Premises, the Authority notes with concern that permitting intoxication on licensed premises was one of the prescribed offences giving rise to both the incurring of the first *and* the second strike now under consideration. The repeated commission of prescribed offences relating to the permission of intoxication on licensed premises is of particular concern to the Authority.
147. *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 is satisfied, on the basis of the Review Applicant's submissions and the Delegate's findings in the Reviewable Decision, that there is no evidence to indicate that there is any significant history of violent incidents that have occurred in connection with the Premises.
148. *Section 144G(2)(c)(v) of the Act requires a decision maker to consider whether other action would be preferable.* The Authority has reviewed all of the material before it in relation to this matter and considered whether any other action would be preferable (to incurring a strike).
149. The Authority notes the Police submissions that they have received "...no negative feedback from the local community" since the current Licensee assumed control of the Premises and that records sourced from the ARCIE database in relation to licensed premises show a vast improvement in the management of the hotel since Mr Partridge assumed control of the Premises.
150. The Authority also notes and accepts the Review Applicant's submissions that Mr Partridge and his wife are experienced hoteliers and that, subsequent to the incurring of the second strike against the licence, Mr and Mrs Partridge have evicted the previous licensee and previous business owner and implemented a number of significant changes to the manner in which the licensed business is operated, with a greater focus on ensuring compliance with the relevant liquor and gaming legislation.
151. However, having had regard to all of the evidence and material before it, the Authority is *not* satisfied that these factors warrant not incurring a second strike against the licence. The commission of the prescribed offences of selling or supplying liquor outside of the hours authorised on the licence and permitting intoxication on licensed premises that gave rise to the consideration of *this* second strike have the potential to cause a range of serious harms to patrons and staff of the Premises, as well as the wider community.
152. Furthermore, the Licensee has not specified what alternative action should be taken in order to address the prospect of further prescribed offences occurring in relation to the Premises.
153. *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 Licensee's submissions and the information contained in the Reviewable Decision, that there was a change of licensee from the Former Licensee, Mr Peter Gibbons to the current Licensee, Mr Partridge from 14 May 2014.
154. The Authority is also satisfied that the former business owner of the Premises, Barpeg Pty Limited, was evicted as the lessee of the Premises in February 2014 and

Mr Partridge's company, Clurbat Pty Limited became the Business Owner from 14 May 2014. The Authority is satisfied, on the basis of the Licensee's submission, that Mr Partridge assumed control of the Premises following the commission of prescribed offences giving rise to consideration of a second strike against the licence. However, the Authority notes that the Premises Owner has leased the hotel to problematic third party business owners in the recent past and has not ruled out, in response to Police concerns, handing over control of the Premises to another third party/tenant again in the near future.

155. The Review Applicant contends that whether or not the Review Applicant remains in control of the Premises is not relevant, but in the Authority's view it is difficult to give much weight to the Premises Owner's improved management of the Premises going forward when it is not clear whether the Premises Owner will actually maintain control of the business rather than lease it to a third party, which is clearly an option open to the Premises Owner.
156. *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 notes and accepts the Review Applicant's submissions that subsequent to the incurring of the second strike, staff have been retrained and all new employees are required to undergo a staff induction process. Additionally, all staff are required to read the licence and to sign a document to the effect that they understand the conditions on the licence.*
157. The Authority notes and accepts the Review Applicant's submission that a compliance checklist, licence signage checklist and risk matrix is completed weekly, while staff meetings and management meetings are regularly held at the Premises.
158. The Authority also notes, as stated in the Reviewable Decision, that the Delegate was satisfied that management staff at the Premises appear to be working closely with Police in order to minimise the risk of future prescribed offences occurring in connection with the Premises.

Does the Commission of either of the Two Recent Prescribed Offences Warrant a Second Strike?

159. The Authority has taken into account all of the material and submissions before it in relation to the Review Application currently before the Authority and the statutory considerations the Authority is required to address.
160. When determining whether a second strike *should* be incurred, the Secretary (and the Authority, upon review) must consider not only what harm *has* occurred in relation to the prescribed offences before the Authority, but what harm *may have resulted from*, or been associated with, these prescribed offences.
161. In this case, the prescribed offences at issue giving rise to the incurring of a second strike against the licence concern one breach of section 73(1) of the Act in relation to permitting intoxication on the licensed premises, and one breach of section 9(1) of the Act in relation to selling or supplying liquor outside of authorised hours.
162. Legislative provisions that regulate licensees with regard to the management of intoxicated persons on licensed premises are of fundamental importance to harm minimisation and the integrity of the regulatory Scheme imposed by the Act.

163. A failure to comply with the prohibition on permitting intoxication on licensed premises may impair the cognitive function of patrons and give rise to a range of likely adverse alcohol related harms - from noise, public disturbance and property damage on the Premises or in public places after leaving the Premises, to accidental or intentional injury caused to patrons or staff working on the Premises.
164. A failure to observe licensed trading hours may give rise to all of those harms, but also generates the broader harm of undermining public confidence in the regulation of the liquor industry and exposing law-abiding businesses to a commercial disadvantage.
165. When considering whether a second strike should be incurred, it is of some considerable concern that following the first prescribed offence of permitting intoxication on licensed premises and the subsequent imposition of remedial conditions upon the licence, this did not seem to have caused the then licensee, the then business owner or the Premises Owner to take care or make sufficient changes in business practices to avoid committing another two prescribed offences that were detected by Police on 21 and 22 September 2013 (one count of permitting intoxication on licensed premises and one count of trading outside the hours authorised on the licence).
166. With regard to the recent regulatory history of the Premises, the Authority notes with concern that permitting intoxication on licensed premises was one of the prescribed offences giving rise to both the incurring of the first *and* the second strike now under consideration.
167. The Review Applicant contends that incurring a second strike against the licence would "...seriously affect the property value and our...livelihood". While that may potentially be the case, the Review Applicant has not provided any evidence or material substantiating or explaining how the property value or his livelihood will be detrimentally affected and this contention is made in general terms with no specificity.
168. In any event, those potential commercial ramifications do not, in the circumstances of this case, provide a sufficient basis for the Authority not to incur a second strike against the licence in the face of a Scheme designed to remedy and prevent the recurrence of prescribed offences.
169. In conclusion, having regard to the facts and circumstances of this case and the statutory considerations outlined above, the Authority has determined that a second strike *should be incurred* against the licence, in light of the seriousness of any harm that may have resulted from, or been associated with, the commission of the prescribed offences of permitting intoxication on the Premises and selling or supplying liquor outside of the trading hours authorised on the licence.
170. The Authority confirms the Reviewable Decision under section 144I of the Act to incur a second strike against the licence in respect of the prescribed offences that are currently before the Authority.
171. 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.*

REMEDIAL ACTION AGAINST LICENCE OR LICENSEE

172. The Authority has decided not to take remedial action in relation to the second strike.



Micheil Brodie
Chief Executive
for an on behalf of the **Independent Liquor and Gaming Authority**

DATED 18 / 8 / 2015