



Acting Superintendent Jennifer Scholz
Commander, Ashfield Local Area Command, NSW Police
14 Victoria Street
ASHFIELD NSW 2131

Ms Kathy Sun
Licensee
Queen KTV – Ashfield
[private address not published]

Ms Dania Xiao
Business Manager
Queen KTV – Ashfield
[private address not published]

The Directors
MY FANTASY Pty Limited
Business Owner, Queen KTV – Ashfield c/o JDK Legal
Level 5, 1 Castlereagh Street
SYDNEY NSW 2000

The Directors
Bade Pty Limited
Premises Owner, Queen KTV – Ashfield
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18 August 2016

Dear Sir/Madam

Decision on Complaint under Part 9 of the *Liquor Act 2007* in relation to Ms Kathy Sun, Licensee and Ms Dania Xiao, Close Associate and Queen KTV, Ashfield

I refer to the disciplinary complaint dated 5 February 2016 made to the Independent Liquor and Gaming Authority by Acting Superintendent Jennifer Scholz under Part 9 of the *Liquor Act 2007* against Ms Kathy Sun, the licensee of the licensed premises formerly trading as “Queen KTV – Ashfield”, located at Level 1, 283-285 Liverpool Road, Ashfield and Ms Dania Xiao, the business manager and a person interested in the business conducted on the premises.

At its meeting on 27 July 2016, the Authority decided to order, under section 141(2)(a) of the Act, that the licence for the Premises be cancelled; to order, under section 141(2)(f) of the Act, that Ms Kathy Sun be disqualified from holding a licence, being the manager of licensed premises, or being the close associate of a licensee in New South Wales for life; and to order, under section 141(2)(h) of the Act, that Ms Dania Xiao be disqualified from being the manager of licensed premises or from holding a licence or being the close associate of a licensee in New South Wales for a period of 10 years.

Please contact the Authority’s General Counsel via bryce.wilson@ilga.nsw.gov.au if you have any advice or enquiries about this letter or the attached reasons for decision. Rights of review of this decision are detailed at the end of the statement of reasons.

Yours faithfully

Philip Crawford
Chairperson
for and on behalf of the **Independent Liquor and Gaming Authority**

STATEMENT OF REASONS

INTRODUCTION

1. On 18 February 2016, the Independent Liquor and Gaming Authority (**Authority**) received a disciplinary complaint dated 5 February 2016 (**Complaint**) from Acting Superintendent Jennifer Scholz (**Complainant**), Commander of the Ashfield Local Area Command (**LAC**) of the New South Wales Police Force (**Police**) in her capacity as a delegate of the New South Wales Commissioner of Police.
2. The Complaint is made under Part 9 of the *Liquor Act 2007* (**Act**) against Ms Kathy Sun, the licensee (**Licensee**) of the licensed premises formerly trading as “Queen KTV – Ashfield”, located at Level 1, 283-285 Liverpool Road, Ashfield (**Premises**) and Ms Dania Xiao, the business manager and a person interested in the business conducted on the Premises (**Close Associate**).
3. The licensed business on the Premises operates pursuant to an on-premises liquor licence number LIQO660011559. The designated primary purpose of the licensed business that is recorded on the licence is “karaoke venue”.
4. The *OneGov* record of the liquor licence for the Premises current as of 22 January 2016 indicates that the licensed business is authorised to sell or supply liquor for consumption on the Premises during the following hours:

Monday	10:00am – 12:00 midnight
Tuesday	10:00am – 12:00 midnight
Wednesday	10:00am – 12:00 midnight
Thursday	10:00am – 12:00 midnight
Friday	10:00am – 2:00am
Saturday	10:00am – 2:00am
Sunday	10:00am – 12:00 midnight.
5. That is, the licence has the benefit of an extended trading authorisation within the meaning of section 49 of the Act.
6. The *OneGov* licence record indicates that the current owner of the business operating on the Premises is a corporation, MY FANTASY Pty Ltd, ACN 167 340 347 (**Business Owner**) and the current owner of the freehold in the building in which the Premises is located, Bade Pty Ltd, ACN 001 226 464 (**Premises Owner**).
7. The Authority notes that Acting Superintendent Scholz also made an application for a Long Term Closure Order in relation to the Premises pursuant to section 84 of the Act dated 5 February 2016 (**Long Term Closure Application**). Submissions in response to the Long Term Closure Application were received and a separate decision in relation to that Application was issued on 15 April 2016, ordering the Premises to close for a period of **six (6) months from 9:00pm on Friday 15 April 2016**.
8. This Complaint is based on the alleged adverse compliance history of both the Licensee and the Close Associate. The Complainant alleges that this adverse history has arisen through the “lack of appropriate management” of the Premises.
9. Briefly, the Complainant alleges that the following events have occurred on or near the Premises under the current management of the licensed business:

- Multiple breaches of licence conditions;
- Numerous incidents involving the detection of prohibited drugs and suspected overdoses from prohibited drugs on or near the Premises;
- Permitting intoxication of patrons (including minors) on the Premises; and
- Demonstrated reluctance of the management of the Premises to introduce strategies to respond to identified risks to patron, community and Police safety.

10. The Complainant seeks the following outcomes in relation to this Complaint:

- Impose a condition on the licence or any authorisation or approval held by the Licensee under this Act to be revoked; and
- Disqualify the Licensee, Kathy Sun from holding a licence or from being a manager of licensed premises as she is not a fit and proper person.
- Disqualify the Close Associate, Dania Xiao from holding a licence or from being a manager of licensed premises as she is not a fit and proper person.

11. The Complainant submits, on the basis of the evidence provided in the Complaint, that the overall social impact of disqualifying the Licensee and Close Associate will not be detrimental to the local or broader community and that the harms relating to serious intoxication and drug use within the venue can be directly attributed to the Premises and its lack of appropriate management.

MATERIAL BEFORE THE AUTHORITY

12. The Complainant has provided the Authority with a redacted version of the Complaint and a confidential version of the Complaint. The confidential version of the Complaint refers to certain background information and associated supporting material that the Complainant submits is sensitive law enforcement material, which includes confidential intelligence holdings (**Confidential Material**). The Complainant submits that the Confidential Material should not be released or disclosed to the Licensee or Close Associate and/or made publicly available.

13. The Authority gave preliminary consideration to this matter at its meeting of 24 February 2016 when it determined to give notice of the Complaint and provide the respondents (the Licensee and the Close Associate) and any other interested parties with only the *redacted* version of the Complaint Material. The Members of the Authority have not considered the Confidential Material and do not consider that it is necessary to do so in determining this Complaint. The Confidential Material is not disclosed in this decision letter. That is, the Authority has determined this Complaint on the basis of the evidence or material that was disclosed to the respondents only.

14. Briefly, the material provided by the Complainant to the Authority accompanying the Complaint comprises the following:

- Cover Letter to the Complaint addressed to the (then) Chief Executive of the Authority, signed by Detective Superintendent Murray Reynolds, Commander of the NSW Police Drug and Alcohol Command dated 11 February 2016 (**Cover Letter**).
- Further letter in relation to the Complaint from Senior Constable Thomas Melia of the Crime Management Unit of Ashfield LAC dated 28 January 2016 (**Further Letter**).

- Complaint Form signed by Acting Superintendent Scholz dated 29 January 2016.
- 32-page Complaint Letter signed by Acting Superintendent Scholz dated 5 February 2016 (**Complaint Letter**).
- Annexures 1 through 56 comprising further evidence or material provided by the Complainant in support of the Complaint.

(referred to collectively as the **Complaint Material**).

COMPLAINT LETTER DATED 5 FEBRUARY 2016

15. The Complaint Letter is the primary document setting out the Complainant's case. It provides a brief description of the physical layout of the Premises and notes that the Premises operates pursuant to an on-premises liquor licence number LIQO660011559, with a designated sub-type of "karaoke venue". The letter notes that the licensed business is authorised to engage in licensed trading from 10:00am to 12:00 midnight on Sunday through Thursday and from 10:00am to 2:00am on Fridays and Saturdays.
16. The Complainant identifies that the Business Owner is a company, MY FANTASY Pty Ltd, ACN 167 340 347. The Complainant states that checks of ASIC [Australian Securities and Investments Commission] business records, conducted by Police on 19 January 2016, indicate that the directors of that company are Mr Zhenrong Huang and Ms Dania Xiao. Ms Xiao is also the nominated secretary of the business, as of 6 January 2016.
17. The Complainant identifies the Premises Owner as another company, Bade Pty Ltd, ACN 001 226 464.
18. By way of background, the Complainant notes that on 3 July 2014, *Hatzis Cusack Lawyers* made an application for the provisional transfer of liquor licence number LIQO660011559 (**Transfer Application**) from the previous licensee, Mr Ying Hong Li, to the current licensee, Ms Kathy Sun.
19. The Complainant submits that Police received the Transfer Application and commenced conducting probity checks on the proposed licensee. An extensive investigation and review was completed by Police who determined that the proposed transferee of the licence (Kathy Sun) was not a "fit and proper person" to be the licensee. This submission was forwarded to the Authority on 4 September 2014.
20. The Complainant submits that on 11 November 2014, a delegate of the (now) Secretary of the Department of Justice working within the (then) Office of Liquor, Gaming and Racing sent a submission to the Authority objecting to the application to transfer the licence to Ms Sun.
21. However, the Complainant contends that according to Authority records, no email or correspondence regarding the above submissions was forwarded to Ms Sun for a response. The Complainant contends that no determination to *confirm* the Transfer Application was ever made by the Authority and that the Licensee, Ms Sun, remains provisionally *approved* as licensee since provisional approval was determined by the Authority on 7 July 2014.

Grounds of Complaint

22. The Complainant specifies six (6) grounds of complaint (**Grounds**) that are available under section 139(3) of the Act.

In relation to the Licensee:

23. **Ground 1** is available under section 139(3)(b) of the Act, which provides:

...that the licensee or manager has failed to comply with any of the conditions to which the licence is subject.

24. **Ground 2** is available under section 139(3)(f) of the Act, which provides:

...that the licensee or manager has engaged in conduct or activities that are likely to encourage misuse or abuse of liquor (such as binge drinking or excessive consumption).

25. **Ground 3** is available under section 139(3)(i) of the Act, which provides:

...that the licensee is not a fit and proper person to be the holder of a licence (whether for the same reason as that set out in section 45(5) or otherwise) or the manager is not a fit and proper person to be the manager of the licensed premises (whether for the same reason as that set out in section 68(4A) or otherwise).

In relation to the Close Associate:

26. **Ground 4** is available under section 139(3)(j) of the Act, which provides:

...that the close associate is not a fit and proper person to be a close associate of a licensee.

In relation to both the Licensee and the Close Associate:

27. **Ground 5** is available under section 139(3)(s) of the Act, which provides:

...that the licence has not been exercised in the public interest.

28. **Ground 6** is available under section 139(3)(t) of the Act, which provides:

...that the continuation of the licence is not in the public interest.

COMPLAINT MATERIAL

Police Business Inspections of the Premises since Ms Sun became Licensee

29. The Complainant contends that Police attended the Premises for the purpose of conducting inspections of the Queen KTV business on numerous occasions between 7 July 2014 (when Ms Sun became the Licensee) and 15 July 2015.
30. The Complainant provides several reports sourced from the NSW Police Computerised Operational Policing System (**COPS Reports**), each of which, as submitted by the Complainant, “portrays the manner that the business was operated which progressively deteriorated due to lack of supervision and control over the licensed premises by the Licensee, the Business Manager and their staff”.
31. The Authority notes that COPS Reports typically provide a contemporaneous narrative of observations made by the reporting officer and/or information provided to Police officers

that is recorded in the NSW Police COPS database. What follows is a summary only of the COPS Reports provided by the Complainant:

32. **COPS Report number E57230587 – 10:46pm on Sunday 27 July 2014.** Police observed that the emergency lights were not illuminated at the main entrance and that staff were not wearing identification in contravention of Condition “3080” on the licence.
33. **COPS Report number E55105814 – 3:00am on Tuesday 29 July 2014.** Whilst conducting a walkthrough of the Premises, Police observed that no staff members were wearing name badges or identification; there was no signage on the entry to the “Bar” room; the exit light at the upstairs entry foyer was not operational; the front door to the Premises was locked while the Premises was trading and patrons were still in attendance; there was no signage at the front door relating to the details of the Licensee and persons were exiting through the rear “emergency exit”. Police also observed that two of the private karaoke rooms (room “777” and the “VIP” room) had half-finished, open bottles of *Corona* beer and *Hennessy* whisky on the tables.
34. **COPS Report number E271296893 – 11:26pm on Friday 22 August 2014.** Whilst conducting a walkthrough of the Premises, Police observed that the bar in the main VIP room on the right was unattended by staff members, while customers were inside. Police also spoke to the Business Manager, Ms Dania Xiao, whom Police report “continuously gave false information to Police” regarding the “promotion” girls in the venue. Police record an observation in this Report that the use of female “promotion” girls does not comply with responsible service of alcohol (**RSA**) requirements. Police comment that the female “promotion” girls are actually a service provided by the licensed business, upon payment by the customers, and their role is to drink with and serve/pour alcohol to patrons.
35. **COPS Report number E187633498 – 10:00pm on Friday 29 August 2014.** Whilst conducting a walkthrough of the Premises, Police observed that there were no staff members attending the VIP lounge area. A customer was seen behind the bar, causing Police to believe that patrons are serving themselves with alcoholic beverages. Police also observed 10 female workers in the back room, none of whom had an RSA Certificate.
36. **COPS Report number E57544582 – 11:34pm on Monday 8 September 2014.** Whilst conducting a walkthrough of the Premises, Police observed that the “VIP” main room had customers, but was unattended by any staff members. One male was removed from the Premises by Police due to being “well intoxicated”. Police also discovered a room with about 10 female workers waiting for clients in one of the karaoke rooms. None of these women had an RSA Certificate.
37. **COPS Report number E55837376 – 11:56pm on Monday 15 September 2014.** Whilst conducting a walkthrough of the Premises, Police noticed a room occupied by about 10 males and 10 females, with each female seated beside a male. These females were the same female workers who had been seen by Police on numerous previous business inspections. All of the female workers failed to provide Police with identification and RSA certification. Police determined that the business was still employing workers with no RSA Certificates.
38. **COPS Report number E56124564 – 11:07pm on Tuesday 30 September 2014.** Police report that as they entered the Premises for the purpose of conducting a business inspection, they were able to see people “scuffling around”. The bar in the main room was unattended, with customers “rushing out of the room” as Police arrived. All of the

female workers on the Premises at this time excluding Dania Xiao and Coco Wang failed to provide RSA certification to Police.

39. **COPS Report number E108891302 – 12:28am on Sunday 12 October 2014.** Police report that whilst conducting a walkthrough of the Premises, Police observed a male in one of the karaoke rooms smoking. The Business Manager stated that she was unaware of the patron smoking on the Premises, however Police observed that smoke could be smelt throughout the Premises. Police also enquired about the status of the fire alarms and the Business Manager was unable to show Police the control panel or if the fire alarms were in fact operational.
40. **COPS Report number E56778268 – 11:30pm on Saturday 8 November 2014.** During a joint licensed premises audit with Police, NSW Health, Ashfield Council and the NSW Fire Brigade, Police detected one small resealable plastic bag containing what Police believed to be cocaine on the floor. The exhibit was seized and later weighed, returning a reading of 0.50 grams. No fingerprints were found on the drug bag. The COPS Report notes that the substance is currently being analysed.
41. In the second drawer behind the front reception desk, Police sighted several packets of branded cigarettes (in contrast to the plain packaged cigarettes sold within Australia) and a single crushed packet of plain packaged *Winfield Blue* cigarettes. Inside the *Winfield* cigarette packet, Police located an amount of a substance suspected of being methylamphetamine wrapped in plastic. This item was seized by Police and later weighed, returning a reading of 2.0 grams. The COPS Report notes that the substance is currently being analysed.
42. Police also attempted to seize CCTV footage from the Premises; however the person in charge of the licensed premises at the time could not provide any.
43. **COPS Report number E199423797 – Saturday-Sunday 8-9 November 2014.** Police further report with regard to the above business inspection that Police observed patrons smoking in each of the four private rooms that were occupied, and that employees were not wearing identification in contravention of licence condition “3080”. When Police enquired about who was responsible for pouring drinks in the four karaoke rooms, Ms Xiao stated that “customers pour their own drinks” and that, with regard to compliance with RSA requirements, staff observe patrons through the CCTV cameras. Police note in the COPS Report that they have “serious concerns” regarding RSA and the current practices in place for the monitoring of alcohol consumption at the Premises.
44. The COPS Report notes that the Ashfield Licensing Officer involved in the audit issued the Licensee with infringement notices for failing to comply with conditions of the licence, namely failing to produce CCTV footage; staff not wearing name badges and/or uniforms; and no signage advising patrons to leave the Premises quietly and not cause any disturbance to neighbours. The COPS Report also records that Compliance Notices (written warnings) were also issued to the Licensee in relation to the venue not displaying prescribed particulars.
45. **COPS Report number E56266470 – 11:30pm on Saturday 10 January 2015.** Police report that they had difficulty entering the Premises. The front entrance door was locked, however the lights inside the stairwell were well lit and there were numerous cars parked outside the Premises, which Police believed were owned by customers of Queen KTV.
46. **COPS Report number E57274273 – 12:10am on Sunday 18 January 2015.** Police report that upon entering the Premises for a business inspection, Police noticed a number of people who appeared to be attempting to either evade Police or conceal liquor

related offences within the Premises. Inside the karaoke rooms, Police noticed the smell of cigarettes in the air and unclean dishes and drinks were left on the chairs. Police also noticed that there were a disproportionately large number of females in the rooms, compared with males. These females claimed to be customers but Police suspected they were working at the Premises.

47. **COPS Report number E59909084 – 12:20am on Saturday 28 March 2015.** Police had difficulty entering the Premises as the ground floor entrance was shut and locked. After a security guard opened the door, Police observed a group of young people who had entered the Premises. The Business Manager, staff and security guard all failed to stop the young persons to check their identification. Police checked their identification and all of the young persons were “just over 18 years old”.
48. **COPS Report number E58060519 – 2:55am on Saturday 9 May 2015.** Police report that during a night patrol, Police observed three persons of Asian appearance exiting the Premises, one of whom was obviously well affected by alcohol.
49. **COPS Report number E60238889 – 2:17am on Saturday 23 May 2015.** Police had difficulty entering the Premises, observed that the business was still trading outside its authorised trading hours and located a lit cigarette on the floor right in front of the reception area.
50. **COPS Report number E59375239 – 12:45am on Thursday 16 July 2015.** Police observed an intoxicated male who had consumed an unknown number of alcoholic drinks at the Premises urinating in public. The male was issued with Criminal Infringement Notice number 4926072773 for the offence of “offensive behaviour”.

Short Term Closure Order and Supporting Evidence – 15 January 2016

51. The Complainant submits that, following a “rapid increase in the number of adverse incidents and serious licensing issues” at Queen KTV detected by Ashfield LAC towards the end of November 2015, Police made an application for a Short Term Closure Order pursuant to section 82 of the Act. This Order number 1/2016 was made and issued by Deputy Registrar Evans of Parramatta Local Court on the evening of Friday 15 January 2016 and remained in force until 9:55pm on Monday 18 January 2016.
52. The Complainant submits that this short term closure application was based upon a number of adverse incidents that have been recorded in the NSW Police COPS database. The following is a brief summary of those COPS Reports:
53. **COPS Report number E60301169 – 12:30am on Saturday 28 November 2015.** During this inspection, Police observed a large group of Pacific Islander males with a few Middle Eastern males and females in the main function room. Police observed two DJs, 12 empty vodka bottles and other assorted alcoholic drinks, and a patron smoking in the main function room. Police also observed cigarette butts across several tables.
54. **COPS Report number E60205843 – 12:30am on Sunday 29 November 2015.** Police report attending the Premises for a business inspection, where they observed a number of patrons with no shirts on. Some patrons were “heavily affected” by an intoxicating substance and were displaying signs of alcohol or drug use. Police observed only one security guard at the time. Police located an unconscious female on the footpath outside the Premises who was suffering from a suspected overdose of the prohibited drug GHB (gamma hydroxybutyrate). Police also observed vomit in several places at the front entrance and staircase leading up to the venue; the main bar area was unsupervised;

the Premises was over the authorised maximum patron capacity; and there was evidence of persons smoking throughout the licensed premises.

55. **COPS Report number E60685141 – 1:30am on Saturday 19 December 2015.** Police report that plainclothes officers observed a group of males immediately outside the Premises using prohibited drugs suspected of being cocaine. Inside the upstairs function room on the Premises, Police observed numerous people who appeared to be intoxicated or under the influence of drugs. Police located prohibited drugs suspected of being cocaine and “ice” (methamphetamine), as well as drug paraphernalia associated with the use of cocaine and GHB. Police also observed a male who appeared to be suffering from an overdose of the prohibited drug GHB.
56. **COPS Report number E60472651 – 3:00am on Saturday 27 December 2015.** Police report attending the Premises for a business inspection, noting that the closing time for the licensed premises is 2:00am. Police had difficulty entering the Premises and observed minors in the karaoke rooms, whose identification had not been checked by security or staff. Police report that all of these individuals appeared to be affected by intoxicating liquor or some other substance, suggesting that alcohol had been served after 2:00am. Police also located white powder residue suspected of being cocaine, as well as a clear resealable plastic bag containing a clear yellow and brown substance believed to be amphetamine. Police could also smell cigarette smoke and observed cigarette butts on the tables and on the floor.
57. **COPS Report number E61810987 – 10:20am on Monday 28 December 2015.** Police attended the Premises for a business inspection and observed that the Business Manager was not wearing her name badge as a requirement in accordance with Condition “3080” on the licence.
58. **COPS Report number E59004030 – 11:11pm on Saturday 2 January 2016.** Police observed that the three smoke detectors located in the main VIP room were covered tightly with multiple layers of clear plastic wrap. Police also observed numerous cigarette butts and ash located on the floor of room “999” and five “pieces of white solid powder substances” suspected of being “a piece from a tablet” on the ground near the sofa.
59. **COPS Report number E59303909 – 11:25pm on Friday 8 January 2016.** During this inspection, Police identified a breach of a condition on the licence, in that the Licensee was not wearing a name badge and a further breach of a licence condition/*Plan of Management* in that the Premises was not operating pursuant to a *House Policy*.
60. **COPS Report number E59871032 – 10:30pm on Saturday 9 January 2016.** While conducting a business inspection on this occasion, Police observed the sale of liquor contrary to authorisation, in that liquor was not being supplied ancillary to karaoke entertainment; obstructions to fire exits, egress paths inside the Premises and lack of safety concerning signage; and cigarette butts in the toilets and karaoke rooms.
61. **COPS Report number E59782411 – 2:00am on Sunday 10 January 2016.** During this business inspection, Police observed an intoxicated male vomiting in the street just outside the Premises. Police also observed that employees of the business were not wearing identification contrary to Condition “3080” on the licence. Inside the Premises, Police located a half smoked cigarette and prohibited drugs suspected of being GHB and cocaine.

Summary of Complainant’s Case for Disciplinary Action under Part 9 of the Act

62. The Complainant contends that at 10:00am on Tuesday 19 January 2016, Police met with the Licensee (Kathy Sun) and Business Manager (Dania Xiao) of the Premises to discuss the issues associated with the venue and to discuss what their plans were for the future to ensure that further breaches are not committed and that there is no risk to public health and safety.
63. During the course of the meeting, it was established that the Licensee, Ms Sun, owns 49% of the business and that a person she knows only as “Aunty” has the majority of the share in the business, with 51%.
64. The Licensee stated that “Aunty” is the mother of the former director, Chao (Peter) Gao, who operates *Muse Karaoke* in Sydney. Police were advised that the Licensee only knew Mr Gao for a short period of time prior to becoming a business partner.
65. Ms Sun further advised Police that Mr Gao left as a director of MY FANTASY Pty Ltd about a year prior to this meeting. Police were also advised that the Licensee had no previous experience in the liquor industry prior to becoming the Licensee of the venue.
66. Police raised concerns with the Licensee about the ownership and operations of the venue in circumstances where the director running the licensed venue is a minority shareholder and does not know the full name of the majority shareholder. It was also established that “Aunty” was not aware of the Short Term Closure Order.
67. The Licensee stated that she was intending to fly to China the following day (20 January 2016) to stay with her mother in China for 3 months. Throughout the meeting, the Licensee reiterated her intention to depart from Australia, leaving the Business Manager, Dania Xiao, in charge.
68. The Complainant contends that Police have previously told both the Licensee and the Business Manager that they do not believe that Ms Xiao is a fit and proper person to manage the venue or to act as the licensee in Ms Sun’s absence. Police noted that Ms Xiao was present at the Premises on occasions when “drugs were openly being used by patrons within the venue, intoxication was rife and the liquor licence was not complied with”.
69. The Complainant further contends that during this meeting on 19 January 2016, Police asked the Licensee what she believed were the concerns that Police had with the venue. She stated, “Drugs, intoxication, minors and supervision”.
70. Police then asked the Licensee to explain her understanding of the liquor licence for the Premises. The Licensee stated that her staff were required to wear name tags and that intoxication was not permitted. Police enquired about the *Plan of Management* condition [the Authority understands this to be an apparent reference to Condition “3020” on the licence for the Premises] and she stated that she did not understand it.
71. The Complainant submits that the Licensee has been the *provisionally approved licensee* of the Premises since 7 July 2014 and “has not got any understanding of the requirements of her liquor licence”.
72. The Complainant contends that during this meeting on 19 January 2016, Police asked the Licensee what she had done since the Short Term Closure Order was issued. The Licensee stated that she had prepared a three page *Management Plan* document with Ms Xiao, with the intention that this document would replace the existing 10-page *Plan of Management* document. Within the revised *Plan* document, the Licensee states that all staff must read and understand all of the conditions on the liquor licence. Police raised

this as an issue as the Licensee indicated that she herself did not know the licence conditions.

- 73.** The Complainant contends that the Business Manager, Ms Xiao, stated during this meeting that she had read the conditions on the licence. It became apparent to Police that she had read the licence when Ms Sun first became licensee and had not read it since. Ms Xiao stated to Police that the venue had been “focussing on serving patrons and watching their behaviour and were not paying attention to the liquor licence conditions”.
- 74.** The Complainant submits that Police records indicate that the Licensee and Business Manager were well aware of the liquor licence conditions as they had previously been issued with Penalty Notices, Compliance Notices and verbal warnings as outlined in the venue’s compliance history above.
- 75.** The Complainant contends that Ms Xiao stated to Police that the venue has girls on site who are not employees, but get a commission at the end of the night based on the amount of liquor sold. Police raised concerns over this due to the Licensee stating that she was trying to prevent intoxication and be responsible, but she had people within the venue who had a personal financial interest in patrons spending and consuming large amounts of liquor. When this was raised during the meeting, Ms Xiao stated that the commission was also based on food. When Police noted that the venue has “low to no food sales”, Ms Xiao stated that the venue provides “free food”. The Complainant contends that Police tried to clarify this statement, which indicated that the “promotion” girls could receive a commission based on the distribution of free food. Ms Xiao could not answer or clarify this during the meeting.
- 76.** The Complainant submits that after reviewing the business information provided by the Licensee and Business Manager/Close Associate during the meeting, it became apparent that that information was contrary to recent checks of ASIC company records for MY FANTASY Pty Ltd (ACN 167 340 347). According to ASIC records from 19 January 2016, the directors of that company are listed as Mr Zhenrong Huang and Ms Dania Xiao. Dania Xiao is also the nominated secretary of the business, effective as of 6 January 2016.
- 77.** The Complainant contends that at no time during the meeting did Ms Xiao make reference to or mention the fact that she was the director or secretary of the company. The Complainant states that Police are uncertain of the reasons or motivation for not disclosing such information to Police, and submits that this non-disclosure gives rise to the ground of complaint available under section 139(3)(j) of the Act – that the close associate is not a fit and proper person to be a close associate of a licensee (Ground 4 of this Complaint).
- 78.** The Complainant notes that Police have submitted an application under section 84 of the Act seeking the long term closure of the Premises for a period not exceeding six (6) months or until certain conditions are met. The conditions may include, however are not limited to, the following:

 1. The disciplinary complaint made pursuant to Part 9, section 139 of the Act against the current licensee Kathy Sun is determined by the Authority.
 2. The development consent issue with Ashfield Council is resolved.
 3. The Licensee amends the *Plan of Management* for the Premises to include the following:

- a. The Licensee or their employee must notify the Officer in Charge of Ashfield Police Station within half an hour if any item suspected of being a prohibited drug is located on the Premises. The Licensee must obey all reasonable requests of Police in relation to the notification.
- b. Liquor is not to be removed from the karaoke rooms by patrons.
- c. Entertainment provided on the Premises is limited to karaoke only.
- d. Sale and supply of liquor in the licensed premises shall cease at least thirty (30) minutes before the end of trading hours; all liquor to be removed from public access when the Premises is not authorised to sell or supply liquor for consumption on the licensed premises; and the Licensee is to ensure that all patrons are removed from the Premises within thirty (30) minutes of the expiration of the hours of trade.
- e. The sale, supply and consumption of alcohol on the Premises is regulated as follows:

The sale, supply and consumption of full-bottled spirits is prohibited. The sale and supply of spirits is only permitted in standard 30mL nips. Management shall not permit (BYO) bring your own alcohol nor shall they store or hold alcohol for patrons on the Premises. Patrons order drinks from their karaoke room using an intercom connected to the bar area. Bar staff then deliver the drinks to the karaoke room and monitor patrons for signs of intoxication. Liquor is not to be sold or supplied to patrons in the waiting area. No more than one drink containing liquor per person per transaction.
- f. Signage shall be displayed at entrances, exits and in the reception area stating “NO ALCOHOL IS TO BE BROUGHT ONTO THE PREMISES”. The wording is to be not less than 50 millimetres in height and in clear bold print.
- g. The Licensee must maintain a register, in the form approved by the Secretary, in which the Licensee is to record the details of any incident referred to in section 56 (or the regulations made under that section) that occurs during the standard trading period and any action taken in response to any such incident.
- h. Approved Manager to be present when the Licensee is absent.
- i. The licensee must ensure a record for karaoke room hire, times, and the service of alcohol to the karaoke rooms is kept and maintained and made available to Police and Special Inspectors upon request for inspection.
- j. A copy of the *Plan of Management* must be available to staff at all times when the Premises is authorised to be open and the *Plan of Management* must be produced to Police or Special Inspectors immediately upon demand.

79. The Complainant submits that:

...the above information provides evidence that Queen KTV is not being adequately supervised. The reckless indifference to public safety by the Licensee and Manager whilst charged with the supervision of a licensed premises strikes at the very foundation of public safety and responsible service practices.

80. The Complainant submits that the evidence provided in the Complaint Material is sufficient to establish the grounds available under section 139(3)(s) – that the licence has not been exercised in the public interest (Ground 5 of this Complaint) and section 139(3)(t) – that the continuation of the licence is not in the public interest (Ground 6 of this Complaint).
81. The Complainant submits that all of the issues associated with the venue are due to a “lack of control” of the licensed premises by the Licensee, Business Manager and staff of the business. This lack of control and inadequate supervision has also given rise to all of the issues leading up to the Short Term Closure Order.
82. The Complainant submits that Police are not satisfied that the Licensee and Business Manager have the ability to operate the liquor licence for the Premises in a way that suits the public interest. Police believe that the Licensee, Kathy Sun, is not a fit and proper person to be the Licensee. Police are also of the opinion that the Business Manager, Dania Xiao, and any other staff member of the business cannot be considered a fit and proper person to be the licensee.
83. Further, the Complainant submits that the lack of measures put in place by the Licensee to ensure compliance with licensing legislation portrays a “failure to observe fundamental licence obligations and an inability to implement adequate management and compliance practices”.
84. The Complainant submits that the Licensee, Kathy Sun and the Business Manager/Close Associate, Dania Xiao are not competent to carry on with liquor licensing practices and that they ought to be found not to be “fit and proper” persons to be the holders of a liquor licence under the Act.

Outcomes Sought by the Complainant

85. The Complainant requests that the Authority take the following regulatory action should the Complaint be established:
 - (i) *Pursuant to section 141(2)(e) of the Act*, impose a condition to which the licence, or any authorisation or approval held by the Licensee under this Act, is to be subject or revoke or vary a condition to which the licence or any such authorisation or approval is subject; and
 - (ii) *Pursuant to section 141(2)(f) of the Act*, disqualify the Licensee, Ms Kathy Sun from holding a licence, or from being the manager of licensed premises or the close associate of a licence, for such period as the Authority thinks fit.

COMPLAINT MATERIAL

86. Accompanying the Complaint Letter were 56 Annexures provided by the Complainant in support of the Complaint. Some of these Annexures have been provided by the Complainant to the Authority on a confidential basis, by reason that they are classified as sensitive law enforcement material including confidential intelligence holdings which

should not be released or disclosed to the Licensee or Close Associate and/or made publicly available. As noted above, the Authority has not seen fit to consider the confidential material, and makes findings on the Grounds of Complaint based on the non-confidential material.

87. A brief summary of the *non-confidential* Annexures provided with the Complaint is as follows:
88. **Annexure 1** – copy of the licence record for the Premises retrieved from the NSW Police Alcohol Related Crime Information Exchange database, printed on 21 January 2016.
89. **Annexure 2** – proposed floor plan of the Premises prepared by *H3 Architects Sydney* dated 24 November 2010, including the proposed locations of 16 CCTV cameras.
90. **Annexure 3** – copy of the 2011 *Plan of Management* for the Premises. This document provides that the mission statement of the Queen KTV licensed business is as follows:

...to provide a licensed light entertainment facility, being a karaoke lounge, that ensures the comfort and safety of patrons and surrounding neighbours. Any sale of liquor will be subject to the relevant liquor licence being in place. As required, light meals of a nature and quantity consistent with the responsible sale, supply and service of alcohol will be available to be ordered whenever liquor is consumed.

91. The *Plan of Management* states, *inter alia*, that the development consent for the Premises prescribes a maximum patron capacity of 100 persons at any time; that persons who appear intoxicated will be refused entry; and that the proposed hours of operation of the Premises are to be limited to 10:00am until 1:00am on Sunday through Thursday and 10:00am until 4:00am on Friday and Saturday. The *Plan of Management* also contains provisions in relation to the liquor licence and alcohol consumption; hours of operation; trading frequency; transport and parking arrangements; security personnel and staff training; responsible service of alcohol measures; the Premises' CCTV system; complaint resolution; the Premises' Incident Register; the Liquor Accord; and consultation with Ashfield Council and Ashfield Police in relation to the *Plan of Management*.
92. Attached to the *Plan of Management* is the "House Policy" for "Fusion KTV" (now known as Queen KTV), which outlines the policies and procedures in place at the Premises to ensure the responsible service of alcohol, prevent underage drinking and prevent disruptive or anti-social behaviour.
93. **Annexure 4** – copy of the Community Impact Statement filed by *Grant Cusack and Associates* on behalf of Jia Jing Shi in respect of an application for an on-premises licence in relation to a karaoke venue with an extended trading authorisation for the Premises, dated 14 June 2011.
94. **Annexure 5** – Refusal of Development Application number 10.2009.031.4 seeking permanent use of the first floor of the premises located at 283-285 Liverpool Road, Ashfield as a karaoke lounge, determined by Ashfield Council on 11 December 2012.
95. **Annexure 6** – including material submitted confidentially by NSW Police. Annexure 6 contains the following documents:
 - **Annexure 6(a)** – document submitted confidentially by NSW Police.
 - **Annexure 6(b)** – document submitted confidentially by NSW Police.

- **Annexure 6(c)** – document submitted confidentially by NSW Police.
 - **Annexure 6(d)** – document submitted confidentially by NSW Police.
 - **Annexure 6(e)** – document submitted confidentially by NSW Police.
 - **Annexure 6(f)** – document submitted confidentially by NSW Police.
 - **Annexure 6(g)** – document submitted confidentially by NSW Police.
 - **Annexure 6(h)** – document submitted confidentially by NSW Police.
 - **Annexure 6(i)** – non-confidential submission from the (then) Office of Liquor, Gaming and Racing dated 30 October 2014 objecting to the Transfer Application seeking to transfer the licence from Mr Ying Hong Li to Ms Kathy Sun.
- 96. Annexure 7** – document submitted confidentially by NSW Police.
- 97. Annexure 8** – NSW Police COPS Reports for event numbers E57230587, E55105814, E271296893, E187633498, E57544582, E55837376, E56124564, E108891302, E56778268, E199423797, E56266470, E57274273, E59909084, E58060519, E60238889 and E59375239 in relation to breaches of licensing legislation detected at the Premises between 27 July 2014 and 16 July 2015 (discussed in more detail above).
- 98. Annexure 9** – Printouts of job advertisements for “promotion girls” published on the websites backpackers.com.tv on 13 October 2014 and gumtree.com on 30 December 2015, including an English translation prepared by Constable Bi Liu of NSW Police dated 19 January 2016. The stated responsibilities of the role include “ensuring the customers are having a good time by keeping the party atmosphere alive, keeping rooms clean and tidy and promoting food and drinks” and “drinking alcohol, play games and singing with customers”.
- 99. Annexure 10** – NSW Police COPS printout of the Business Manager, Dania Xiao’s contact details, specifying a mobile phone number that the Complainant contends is a phone number used by Dania Xiao on the basis of prior Police calls to that mobile phone number.
- 100. Annexure 11** – Police Statement by Senior Constable Matthew Spooner dated 21 January 2016 in relation to the conduct of a joint Police, Council, NSW Health and Fire Safety Compliance licensing operation on 9 November 2014 specifically targeting two karaoke venues in Ashfield – VIP Karaoke Bar and Queen KTV. [The Authority notes that this Statement relates to the events described in COPS Report numbers E199423797 and E56778268.]
- 101. Annexure 12** – Development consent number 10.2009.031.1 issued by Ashfield Council to Tsang & Lee Architects Pty Ltd on 12 May 2009 approving the use of the first floor of the Premises as a “place of assembly (social gatherings and presentation room) during the day and a karaoke lounge in the evening and at night”, subject to a number of conditions pertaining to, *inter alia*, the operation and management of the Premises; construction; inspections; security; noise emissions; fire safety requirements and signage.
- 102. Annexure 13** – Development consent number 10.2009.031.2 issued by Ashfield Council to Mr Ying Hong Li (the former licensee of the Premises) on 12 May 2009 approving the

use of the first floor of the Premises as a “place of assembly (social gatherings and presentation room) during the day and a karaoke lounge in the evening and at night”, subject to a number of conditions pertaining to, *inter alia*, the operation and management of the Premises; construction; inspections; security; noise emissions; fire safety requirements and signage.

- 103. Annexure 14** – Development consent number 10.2009.031.3 issued by Ashfield Council to Mr Ying Hong Li (the former licensee of the Premises) dated 13 April 2011, being a modification pursuant to section 96(2) of the *Environmental Planning and Assessment Act 1979* of development consent number 10.2009.031. This document records the amendment of the description of the approved use of the Premises for the purpose of “a karaoke lounge day and night”, subject to a number of conditions pertaining to, *inter alia*, the operation of a *Plan of Management*; security; waste management; service of alcoholic beverages; and victim support.
- 104. Annexure 15** – Development consent number 10.2009.031.4 issued by Ashfield Council to New Face Entertainment Pty Ltd (the business owner of the Fusion KTV business formerly operating on the Premises) dated 11 December 2012, being a refusal of Development Application number 10.2009.031.4 seeking approval for the “permanent use of the first floor of the premises as a karaoke lounge”. This development application was refused by reason that:
- Condition A(4) of the development consent had not been complied with as the applicant had not contacted Ashfield Police for additional security measures to be implemented on the Premises;
 - Condition H(5) of the development consent had not been complied with as the management were not maintaining an “unfettered control” over the operation of the business and the patrons attending the Premises; and
 - There had been six (6) recorded incidents by Ashfield Police of drunken behaviour from patrons who had consumed alcohol at the Premises. Council was satisfied that the continuation of the use of the Premises was not in the public interest.
- 105. Annexure 16** – Photographs taken by Senior Constable Spooner during an investigation into the Premises conducted on 9 November 2014 [the Authority notes that these photographs relate to the events described in COPS Report numbers E199423797 and E56778268]. These photographs feature the interior and exterior of the Premises; signage on display at the Premises; the Premises’ menu; unopened packs of cigarettes found on the Premises; cigarette butts left in glasses at the venue; prohibited drugs (being cocaine and methamphetamine) found on the Premises; and photographs of management staff and employees of the Premises and their identification.
- 106. Annexure 17** – NSW Police Certificate of Presumptive Analysis in relation to COPS Report number E56778268 prepared by Senior Constable Matthew Jones of the Presumptive Drug Testing Team within the Forensic Services Group, dated 13 November 2014. This Certificate provides an indication of the prohibited drugs found on the Premises during the inspection on 9 November 2014, with Exhibit Number X0001117014 stated to contain 0.86 grams of methamphetamine and Exhibit Number X0001117015 stated to contain 0.40 grams of cocaine.
- 107. Annexure 18** – Audio-visual DVD of NSW Police interview with the Licensee, Kathy Sun and Business Manager, Dania Xiao at Burwood Police Station on 5 February 2015. The Complainant advises that a transcript of this record of interview has been requested.

- 108. Annexure 19** – list of NSW Police adoption questions (such as “Have you made these answers of your own free will?”) completed by independent officer Sergeant Brennan and Kathy Sun’s answers to the adoption questions in respect of the interview between Ashfield Police and the Licensee, Kathy Sun held at Burwood Police Station on 5 February 2015.
- 109. Annexure 20** – copies of three NSW Police Penalty Notices issued by Senior Constable Spooner to the Licensee, Ms Kathy Sun, in respect of breaches of licensing legislation detected on Sunday 9 November 2014, as follows:
- Penalty Notice number 4924047022 in relation to *Licensee fail to comply with condition of licence – CCTV condition (\$1,100)*.
 - Penalty Notice number 4924047031 in relation to *Licensee fail to comply with condition of licence – staff not wearing name tags/uniform (\$1,100)*.
 - Penalty Notice number 4924047040 in relation to *Licensee fail to comply with condition of licence – not display prescribed notice (\$1,100)*.
- 110. Annexure 21** – copies of two NSW Police Compliance Notices issued by Senior Constable Spooner to the Licensee in respect of breaches of licensing legislation detected on Sunday 9 November 2014, as follows:
- Compliance Notice number 141293 in relation to *Licensee not display prescribed notice in licensed premises*. The Notice advises that the above must be complied with by 1 March 2015.
 - Compliance Notice number 141292 in relation to *Licensee not display sign with prescribed particulars*. The Notice advises that the above must be complied with by 1 March 2015.
- 111. Annexure 22** – Notice to Produce pursuant to section 21 of the *Gaming and Liquor Administration Act 2007* issued to the Licensee by Senior Constable Spooner, requesting copies of all employment records for all current employees of the Queen KTV business; the current RSA Register and the approved *Plan of Management* for the Premises. Police requested the Licensee to furnish those documents by 12:00pm on 8 December 2014.
- 112.** Attached to the Notice to Produce is a copy of the documents that were provided by the Licensee, comprising:
- Table entitled “Queen Employees”, which lists the name, address, date of birth and mobile phone number of four employees of the business – Anqi Li, Wen Zhao, Dania Xiao and Mohammad Mardan.
 - Document entitled “RSA & Liquor License [*sic*] Conditions Outline”, which contains staff guidelines concerning, *inter alia*, checking patron identification; responsible service of alcohol requirements; CCTV, the drug policy at the Premises; and transport arrangements.
 - Photocopies of the RSA Competency Cards for employees Anqi Li, Wen Zhao, Dania Xiao and Mohammad Mardan.
- 113. Annexure 23** – Notice to Produce pursuant to section 21 of the *Gaming and Liquor Administration Act 2007* issued to the Licensee by Senior Constable Spooner on 9

November 2014, requesting CCTV footage for the period from the time the Premises opened for trade on Saturday 8 November 2014 until 1:00am on Sunday 9 November 2014. Police requested the Licensee to provide that CCTV footage by 12:00pm on 11 November 2014. [The Complainant notes that this CCTV footage was not provided by the Licensee.]

114. Annexure 24 – Notice to Show Cause under section 102A of the Act and notice of a proposed licence condition under section 54 of the *Liquor Act 2007* issued by Mr Anthony Keon, A/Director Compliance of the (then) Office of Liquor, Gaming and Racing to Mr Ying Hong Li, the former licensee of the Fusion KTV business formerly operating on the Premises, dated 26 March 2014. The Show Cause Notice raises concerns with the document entitled “Queen Karaoke Bar Rules 2014”, which contains procedures for staff including:

- “Your first drink is with your client and then you must drink at least one time with every other customer in the room”;
- “Make the customers drink more”; and
- “Always refill cups with alcohol when they are empty”.

115. OLGR gave notice of an intention to issue the following direction under section 102A of the Act:

The licensee must not carry on, or permit on the licensed premises any activity which involves provided written or verbal instructions to staff which require staff to:

- a. “make customers drink more”; or
- b. “always refill cups with alcohol when empty”; or
- c. “drink at least one time with every customer in the room”; or
- d. follow any similar instructions to encourage patrons to consume alcohol or which require staff to consume alcohol.

116. OLGR also proposed to impose the following new condition on the licence for the Premises under section 54 of the Act:

The licensee must ensure that staff involved in the sale, supply, or service of alcohol on the licensed premises do not consume alcohol whilst on duty.

117. Mr Li was requested to make submissions in response to the proposed action under sections 54 and 102A of the Act by 4:00pm on Wednesday 9 April 2014.

118. Annexure 25 – NSW Police COPS Reports numbers E60301169, E60205843, E60685141, E60472651, E61810987, E59004030, E59303909, E59871032 and E59782411 (discussed in more detail above).

119. Annexure 26 – Police Statement by Constable Joseph Haklany of the Ashfield Proactive Crime Team dated 12 January 2016 recording his account of observations made of the Premises and immediate surrounds during a business inspection on 19 December 2015. [The Authority notes that this inspection on 19 December 2015 relates to the events described in COPS Report number E60685141.]

120. In his Statement, Constable Haklany notes that he observed that most of the patrons at the venue were intoxicated by alcohol and/or prohibited drugs. He also observed patrons at the venue using prohibited drugs and a highly drug intoxicated patron needed to be conveyed by ambulance to hospital. Prohibited drugs and drug paraphernalia were detected on the Premises. Constable Haklany also observed patrons smoking cigarettes inside the venue.

121. At a further inspection of the Premises on 2 January 2016 [the Authority notes that this inspection on 2 January 2016 relates to the events described in COPS Report number E59004030], Constable Haklany observed breaches of licence conditions in relation to patrons being permitted to smoke cigarettes inside the Premises. Constable Haklany observed that the smoke detectors inside the Premises were covered by clear plastic wrap.
122. Attached to this Statement by Constable Haklany are a floor plan of the Premises; a test record in relation to the fire detection system at the Premises conducted by Skips Fire Service NSW Pty Ltd on 24 September 2015; and several photographs depicting the smoke detectors at the Premises covered by clear plastic wrap.
123. **Annexure 27** – Police Statement by Constable Keelin Woulfe of the Ashfield Proactive Crime Team dated 21 December 2015 recording her account of observations made of the Premises and immediate surrounds on 19 December 2015 with regard to prohibited drug use on the Premises, alcohol and/or drug intoxicated patrons on the Premises, breaches of licence conditions requiring security staff to check patron identification, and patrons smoking cigarettes inside the Premises. [The Authority notes that this inspection on 19 December 2015 relates to the events described in COPS Report number E60685141.]
124. **Annexure 28** – Police Statement by Sergeant Melanie Leaity of Ashfield LAC dated 2 January 2016 recording her account of observations made of the Premises and immediate surrounds on 19 December 2015 with regard to prohibited drug use on the Premises, alcohol and/or drug intoxicated patrons on the Premises, breaches of licence conditions requiring security staff to check patron identification, and patrons smoking cigarettes inside the Premises. [The Authority notes that this inspection on 19 December 2015 relates to the events described in COPS Report number E60685141.]
125. This Statement by Sergeant Leaity also records her account of observations made of the Premises and immediate surrounds on 27 December 2015 with regard to the presence of minors on the Premises contrary to a licence condition, the detection of prohibited drugs on the Premises, the service of alcohol outside of authorised trading hours, and patrons smoking cigarettes inside the Premises. [The Authority notes that this inspection on 27 December 2015 relates to the events described in COPS Report number E60472651.]
126. **Annexure 29** – Police Statement by Constable Andrew Couch of Ashfield LAC dated 12 January 2016 recording his account of observations made of the Premises and immediate surrounds on 19 December 2015 with regard to the presence of intoxicated persons on the Premises and the detection of prohibited drugs on the Premises. [The Authority notes that this inspection on 19 December 2015 relates to the events described in COPS Report number E60685141.]
127. **Annexure 30** – Police Statement by Senior Constable Bao Tran of Ashfield LAC dated 10 January 2016 recording his account of observations made of the Premises and immediate surrounds on 19 December 2015 with regard to the presence of intoxicated persons on the Premises (including a highly drug affected patron who needed to be conveyed to hospital), the detection of prohibited drugs on the Premises and patrons smoking cigarettes inside the Premises. [The Authority notes that this inspection on 19 December 2015 relates to the events described in COPS Report number E60685141.]
128. **Annexure 31** – Police Statement by Constable Jamie Thompson of Ashfield LAC dated 11 January 2016 recording his account of observations made of the Premises and

immediate surrounds on 19 December 2015 with regard to prohibited drug use on the Premises, alcohol and/or drug intoxicated patrons on the Premises, and evidence of patrons and/or staff smoking cigarettes inside the Premises. [The Authority notes that this inspection on 19 December 2015 relates to the events described in COPS Report number E60685141.]

129. This Statement by Constable Thompson also records his account of observations made of the Premises and immediate surrounds on 27 December 2015 with regard to the presence of minors on the Premises contrary to a licence condition and the service of alcohol outside of authorised trading hours. [The Authority notes that this inspection on 27 December 2015 relates to the events described in COPS Report number E60472651.]
130. **Annexure 32** – Police Statement by Constable Alexei Baskakov of Ashfield LAC dated 31 December 2015 recording his account of observations made of the Premises and immediate surrounds on 19 December 2015 with regard to prohibited drug use on the Premises and alcohol and/or drug intoxicated patrons on the Premises. [The Authority notes that this inspection on 19 December 2015 relates to the events described in COPS Report number E60685141.]
131. **Annexure 33** – Police Statement by Constable Brett Ackling of Ashfield LAC dated 9 January 2016 recording his account of observations made of the Premises and immediate surrounds on 19 December 2015 with regard to prohibited drug use on the Premises and alcohol and/or drug intoxicated patrons on the Premises. [The Authority notes that this inspection on 19 December 2015 relates to the events described in COPS Report number E60685141.]
132. **Annexure 34** – Incident Register for the Premises containing details of incidents from 10 August 2012 to 19 December 2015.
133. **Annexure 35** – Police Statement by Constable Bi Liu of Ashfield LAC dated 12 January 2016 recording his account of an attempt to download CCTV footage from a surveillance console in operation at the Premises for the period from 8:30pm on 18 December 2015 to 3:30am on 19 December 2015. Constable Liu noticed that the data from certain channels of the CCTV footage were corrupted and/or unable to be backed up.
134. **Annexure 36** – CCTV Log completed by Senior Constable Melia on 13 January 2016 briefly summarising the events that occurred on the Premises from 8:18pm on 18 December 2015 to 3:05am on 19 December 2015, as evident from the CCTV footage extracted by Constable Liu on 12 January 2016.
135. **Annexure 37** – Still photographs taken by Senior Constable Lisa Latu of Ashfield Police, captured from CCTV footage of the Premises for 18 to 19 December 2015 [the Authority notes that this inspection on 19 December 2015 relates to the events described in COPS Report number E60685141]. These photographs depict numerous contraventions of licensing legislation at the Premises including a staff member placing unopened bottles of beer in unattended private rooms; a shirtless patron drinking from spirit bottles whilst serving other patrons with no intervention from staff; a patron leaving the Premises with a glass containing alcohol; patrons smoking inside a karaoke room; patrons snorting cocaine in the “VIP” room in full view of a staff member; staff members consuming shots with no intervention from nearby security staff; the shirtless patron mixing drinks with a suspected prohibited drug (GHB) and serving other patrons with the mixed GHB drinks; the shirtless patron suffering from a suspected overdose and vomiting in the foyer; another patron passing out on the lounge in the “VIP” room and being unable to stand up

straight unassisted; and two male persons entering the Premises via the rear fire stairwell.

- 136. Annexure 38** – Notice to Produce pursuant to section 21 of the *Gaming and Liquor Administration Act 2007* issued to the Licensee by Constable Timothy Stirton on 24 December 2015, requesting copies of the following:
- CCTV footage from 7:00pm on 18 December 2015 to 3:05am on 19 December 2015;
 - The Incident Register for the Premises;
 - Staff Roster Sheet for the Premises for 18 to 19 December 2015;
 - Liquor sales/transactions for 18 to 19 December 2015;
 - Food sales and other transactions/payments made on 18 to 19 December 2015;
 - Private function booking records for 18 to 19 December 2015.
- 137.** Police requested the Licensee to provide the above information and/or records by 15 January 2016.
- 138. Annexure 39** – Police Statement by Constable Andrew Couch of Ashfield LAC dated 9 January 2016 recording his account of observations made of the Premises and immediate surrounds during a business inspection on 27 December 2015 [the Authority notes that this inspection on 27 December 2015 relates to the events described in COPS Report number E60472651].
- 139.** On that occasion, Constable Couch observed four persons outside the Premises, who stated that they had been inside the venue. However, the lights in the stairway of the Premises were off and the front entrance door was locked. Constable Couch then observed the Business Manager, Dania Xiao, who was standing at the entrance to the Premises, run inside. Constable Couch followed her into the Premises, whereupon he observed patrons leaving the private rooms through the rear fire escape exit.
- 140.** Constable Couch then conducted a walkthrough of the Premises and the private karaoke rooms, where he observed opened and unopened bottles of *Hennessy* cognac; empty beer bottles; a yellow crystal substance in a clear resealable plastic bag; white powder residue suspected of being cocaine; cigarette ash on the ground; and vomit on the floor. Constable Couch also interviewed two young patrons who stated that they were underage and that security staff had not checked their identification.
- 141.** Attached to this Statement by Constable Couch are copies of pages 32 and 33 of his Official Police Notebook number F602707 recording his observations of the Premises at the time of this inspection and 27 photographs of the items located within the Premises taken by Constable Couch.
- 142. Annexure 40** – Police Statement by Constable Troy Delany of Ashfield LAC dated 10 January 2016 recording his account of observations made of the Premises and immediate surrounds on 27 December 2015 with regard to the presence of minors on the Premises contrary to a licence condition, breaches of licence conditions requiring security staff to check patron identification, the detection of prohibited drugs on the Premises and the service of alcohol outside of authorised trading hours. [The Authority notes that this inspection on 27 December 2015 relates to the events described in COPS Report number E60472651.]
- 143. Annexure 41** – Police Statement by Senior Constable Erin Cunningham of Ashfield LAC dated 10 January 2016 recording her account of observations made of the Premises and immediate surrounds on 27 December 2015 with regard to the presence of minors on the

Premises contrary to a licence condition, breaches of licence conditions requiring security staff to check patron identification, patrons smoking on the Premises, and the service of alcohol outside of authorised trading hours. [The Authority notes that this inspection on 27 December 2015 relates to the events described in COPS Report number E60472651.]

144. **Annexure 42** – Police Statement by Sergeant Michael Anthony Tory dated 11 January 2016 recording his account of observations made of the Premises and immediate surrounds on 28 December 2015 [the Authority notes that this inspection on 28 December 2015 relates to the events described in COPS Report number E61810987].
145. Sergeant Tory attended the Premises for an inspection, whereupon he observed that a sign containing the name and prescribed details of the licensed premises was not affixed to the front of the licensed premises as required under section 95(1) of the Act. The sign containing the prescribed details of the licensed premises was instead located on an internal door on level 1 of the building in which the Premises is located. Sergeant Tory also observed that the Business Manager, Dania Xiao, and two other employees working on that night were not wearing a name tag or uniform which identified them as staff members, contrary to a condition on the licence [Condition “3080”].
146. Attached to this Statement by Sergeant Tory are a copy of the *OneGov* licence record for the Premises as at 11 January 2016; a copy of pages 39 to 46 of Sergeant Tory’s Official Police Notebook number F600590 recording an interview between Sergeant Tory and the Business Manager, Dania Xiao, conducted at 10:30pm on 28 December 2015; and four photographs taken by Sergeant Tory depicting the signage on display at the Premises.
147. **Annexure 43** – Police Statement by Constable Ho Lee of Ashfield LAC dated 13 January 2016 recording his account of observations made of the Premises and immediate surrounds during a business inspection on 2 January 2016 [the Authority notes that this inspection on 2 January 2016 relates to the events described in COPS Report number E59004030].
148. On that occasion, Constable Lee observed a young Asian female suspected to be under the influence of a prohibited drug asleep on the seats in private karaoke room number “666”. Constable Lee asked the female to leave the licensed premises. The female complied with this request. However she did not pay for staying and using the facilities at the venue, nor did the Business Manager, Dania Xiao, ask for payment.
149. Constable Lee then observed a number of women sitting in private karaoke room “777” who claimed to be friends but did not know each other’s names. In room “999”, Constable Lee observed a cigarette lighter on the table, cigarette ash on the floor and an “unknown solid piece of white powder” suspected of being a prohibited drug. Constable Lee also observed that the three smoke detectors on the ceiling of that room were covered by clear plastic wrap.
150. Constable Lee then had a conversation with the Business Manager, who denied any knowledge of the suspected prohibited drug, cigarette lighter and cigarette ash located in that room. The Business Manager also stated that she did not know who had covered the smoke detectors with clear plastic wrap. Constable Lee directed the Business Manager to remove the clear wrap from the smoke detectors. As the clear wrap was being removed by a male staff member, Constable Lee observed that the smoke detector had been covered with multiple layers of clear plastic wrap.

- 151. Annexure 44** – Police Statement by Constable Anthony Cincotta of Ashfield LAC dated 9 January 2016 recording his account of observations made of the Premises and immediate surrounds during a business inspection on 2 January 2016 with regard to the presence on the Premises of a woman suspected of being under the influence of a prohibited drug, the detection on the Premises of a cigarette lighter, cigarette ash and an unknown solid white powder suspected of being a prohibited drug, and the covering of some of the smoke detectors in the Premises with clear plastic wrap. [The Authority notes that this inspection on 2 January 2016 relates to the events described in COPS Report number E59004030.]
- 152.** Attached to this Statement by Constable Cincotta are a hand drawn diagram of the layout of the Premises; a copy of pages 8 to 10 of Constable Cincotta’s Official Police Notebook number F597720; and 10 photographs taken by Constable Cincotta of the Premises and the items located within the Premises.
- 153. Annexure 45** – Police Statement by Sergeant Katie Gittoes of Ashfield LAC dated 11 January 2016 recording her account of observations made of the Premises and immediate surrounds during a business inspection on 2 January 2016 with regard to the presence on the Premises of a woman suspected of being under the influence of a prohibited drug, the detection on the Premises of a cigarette lighter, cigarette ash and “small white rocks” suspected of being a prohibited drug, and the covering of some of the smoke detectors in the Premises with clear plastic wrap. [The Authority notes that this inspection on 2 January 2016 relates to the events described in COPS Report number E59004030.]
- 154. Annexure 46** – Police Statement by Constable Ho Lee of Ashfield LAC dated 13 January 2016 recording his account of observations made of the Premises and immediate surrounds during a business inspection on 10 January 2016 [the Authority notes that this inspection on 10 January 2016 relates to the events described in COPS Report number E59782411].
- 155.** On that occasion, Constable Lee observed an Asian male who appeared to be heavily intoxicated vomiting on the footpath in front of the Premises. The footpath immediately outside the Premises was littered with about 100 cigarette butts left by patrons of Queen KTV. Inside the Premises, Constable Lee observed an Asian male who appeared to be heavily intoxicated sleeping in the middle of the sofa in the “VIP” room.
- 156.** Constable Lee observed the same four females whom he had seen sitting about a metre apart in room “777” of the Premises during a business inspection on 2 January 2016 [COPS Report number E59004030], walking down the stairs and exiting the Premises. In room “999” of the Premises, Police located a cigarette lighter and a small *Dettol* hand sanitiser bottle containing an unknown clear liquid substance suspected of being the prohibited drug GHB. Police also located a small clear resealable plastic bag containing white powder in the “VIP Lounge”. These items were seized as Police exhibits. Constable Lee conducted an interview with the Business Manager, Dania Xiao.
- 157. Annexure 47** – Police Statement by Constable Nickala Edge of Ashfield LAC dated 11 January 2016 recording her account of observations made of the Premises and immediate surrounds during a business inspection on 10 January 2016 with regard to the presence of intoxicated persons on the Premises, and the detection on the Premises of used cigarettes and suspected prohibited drugs. [The Authority notes that this inspection on 10 January 2016 relates to the events described in COPS Report number E59782411.]

158. Attached to this Statement by Constable Edye are six photographs of the Premises and items located within the Premises and a copy of pages 38 to 48 of Constable Edye's Official Police Notebook number F597718.
159. **Annexure 48** – Copy of pages 74 through 77 of Senior Constable Lisa Latu's Official Police Notebook number F59841, recording the details of a telephone conversation between Senior Constable Latu and the Licensee, Kathy Sun that took place on 14 January 2016. During this conversation, Ms Sun advised Senior Constable Latu that she would not be able to attend a pre-arranged meeting with Ashfield Police scheduled to take place at Burwood Police Station at 10:00am on 14 January 2016.
160. **Annexure 49** – Application for Short Term Closure Order under section 82 of the *Liquor Act 2007* in relation to the Premises made by Acting Superintendent Jennifer Scholz, dated 15 January 2016. The Short Term Closure Application seeks that the Premises be closed for a period of 72 hours from 8:00pm on Friday 15 January 2016 to 8:00pm on Monday 18 January 2016.
161. **Annexure 50** – Notice of Urgent Short Term Closure Order issued by Deputy Registrar Rory Evans of Parramatta Local Court under section 82 of the *Liquor Act 2007* ordering the Premises to close for a period of 72 hours from 9:55pm on Friday 15 January 2016 to 9:55pm on Monday 18 January 2016. The Deputy Registrar was satisfied that a serious breach of the *Liquor Act 2007* had occurred, or was likely to occur, on the Premises, being a breach of sections 9(1), 73 and/or 74 of the Act and that the closure of the Premises was necessary to prevent or reduce a significant threat or risk to the public interest.
162. **Annexure 51** – Document prepared by Senior Constable Melia entitled "Infringement Notice Table – Queen KTV", outlining the licensing breaches identified at the Premises since 28 November 2015. The Table also contains details of any Penalty Notices issued by NSW Police in respect of those breaches.
163. **Annexure 52** – NSW Police COPS Report number E261685494, which contains details of a record of interview conducted between Ashfield Police, the Licensee (Kathy Sun) and the Business Manager (Dania Xiao) at 10:00am on 19 January 2016.
164. **Annexure 53** – Document entitled "Queen KTV – Management Plan" provided by the Licensee at the above meeting held at Ashfield Police Station on 19 January 2016. Briefly, this document contains provisions in relation to, *inter alia*, licensed trading hours; staff guidelines with respect to the responsible service of alcohol; alcohol service and promotion; guidelines in relation to drug consumption and drug intoxication; and security.
165. **Annexure 54** – ASIC company records for the corporate Business Owner, MY FANTASY Pty Ltd (ACN 167 340 347).
166. **Annexure 55** – NSW Police *iAsk* checks of the immigration status and international movements of Kathy Sun from 5 December 2014 to 5 January 2016.
167. **Annexure 56** – Police Statement by Chief Inspector Jennifer Scholz of Ashfield LAC dated 22 December 2015 recording her account of observations made of the Premises and immediate surrounds during a business inspection on 19 December 2015 with regard to prohibited drug use on the Premises, alcohol and/or drug intoxicated patrons on the Premises, breaches of licence conditions requiring security staff to check patron identification, and patrons smoking cigarettes inside the Premises. [The Authority notes that this inspection on 19 December 2015 relates to the events described in COPS Report number E60685141.]

168. Attached to this Statement by Chief Inspector Scholz are 8 photographs of the function room in the Premises and the suspected prohibited drugs and drug paraphernalia located within that area of the Premises.

CONSULTATION ON THE COMPLAINT

169. On Friday 26 February 2016, the Authority sent via *Express Post* to the address of the licensed business a copy of a Show Cause Notice in relation to the Complaint. The Show Cause Notice enclosed a copy of the Complaint and a *redacted* version of the supporting material provided to the Authority by the Complainant (redacting those documents that the Complainant has provided to the Authority on a confidential basis, by reason that they are classified as sensitive law enforcement material including confidential intelligence holdings which should not be released or disclosed to the Licensee or Close Associate and/or made publicly available).

170. The Licensee and Close Associate were invited to show cause as to why disciplinary action should not be taken against them on the basis of the allegations in the Complaint by no later than 4:00pm on Friday 25 March 2016.

171. The Authority also issued invitations to make submissions in relation to the Complaint to the current corporate business owner, MY FANTASY Pty Ltd, ACN 167 340 347 (**Business Owner**) and the current owner of the freehold in the building in which the Premises is located, Bade Pty Ltd, ACN 001 226 464 (**Premises Owner**) out of an abundance of caution.

172. The Business Owner and Premises Owner were advised that they could, if they so wished, make written submissions to the Authority in response to the Complaint by no later than 4:00pm on Friday 25 March 2016.

No Submission from the Premises Owner

173. The Premises Owner had not made any submission to the Authority addressing the substance of the Complaint by 4:00pm on 11 March 2016, being the deadline for submissions prescribed in the Invitation to Make Submissions in relation to the Complaint dated 26 February 2016.

Letter from the Business Owner to the Authority dated 16 March 2016

174. However, on the afternoon of 16 March 2016, Mr Kim Stapleton of the law firm *JDK Legal*, who acts for the Business Manager (Dania Xiao) and corporate Business Owner (MY FANTASY Pty Ltd), advised the Authority that the first time his clients became aware of the Complaint and the related Long Term Closure Application was on 13 March 2016, upon receiving an email from the Premises Owner's real estate agent.

175. Mr Stapleton requested that the Authority provide the Business Manager and Business Owner with copies of the Complaint Material and Long Term Closure Application Material and a short opportunity of three business days following receipt and consideration of that material within which to provide a response addressing what period of time is required by the Business Owner to make submissions on the Complaint and the separate Long Term Closure Application and whether any further particulars will be sought in relation to the Complaint.

176. *Express Post* tracking records confirm that Australia Post attempted to deliver the Show Cause Notices and Invitations to Make Submissions addressed to the Licensee, Close

Associate and the Business Owner to the Premises on 27 February 2016, but were unable to access the Premises. Australia Post confirms that delivery of the Invitation to Make Submissions addressed to the Premises Owner occurred as scheduled on 27 February 2016.

Letter from the Authority to the Business Owner dated 17 March 2016

- 177.** On 17 March 2016, the Authority's General Counsel emailed Mr Stapleton, copying in the Complainant, requesting that the Licensee and Business Manager provide statutory declarations confirming that they and no staff member or contractor of the Queen KTV licensed business received any notice of any attempt by Australia Post to deliver mail to the Premises on or after 29 February 2016 and explaining how and when they became aware of the Authority's communications in relation to the business (the Show Cause Notice with regard to the Complaint and the Notice of the separate Long Term Closure Application). The Business Owner and Licensee were also requested to explain whether, and if not, why the Premises is configured in a manner whereby mail may not be readily delivered to the Premises by Australia Post during business hours.
- 178.** General Counsel advised that, *on the proviso that the Licensee and Business Manager are able to provide these statutory declarations with their response to the Long Term Closure Application*, the timetables specified in the Show Cause Notices in respect of both the Complaint and the Notice of the Long Term Closure Application are extended in respect of the Licensee, Business Manager and Business Owner as if the relevant dates run from **17 March 2016**, rather than from the date of those letters (26 February 2016). The timetables remain unchanged with respect to the Premises Owner by reason that the Premises Owner received the Authority's Express Post correspondence on time.
- 179.** The Authority provided electronic copies of the entire (redacted) Complaint Material and Long Term Closure Application Material to the Business Owner's solicitors on the afternoon of 17 March 2016 and noted that although JDK Legal act for the Business Owner, this material is also directed to the Licensee and the Business Owner should ensure that the Licensee is also provided with this material.

Submission from the Business Owner to the Authority dated 1 April 2016

- 180.** On 1 April 2016, Mr Stapleton provided only a brief one-page letter on behalf of the Business Manager (Dania Xiao) and corporate Business Owner (MY FANTASY Pty Ltd) in response to the Long Term Closure Application and the separate but related Part 9 Complaint. Mr Stapleton advised that the Business Owner had reached agreement for the sale of the business to an "arm's length purchaser" and that contracts would be exchanged by Tuesday 5 April 2016, with settlement due 14 days thereafter. Mr Stapleton requested that the Authority defer making a determination on the Long Term Closure Application until after the licence transfer application is assessed by the Authority.

Submission from the Business Owner to the Authority dated 13 April 2016

- 181.** At 8:46am on 13 April 2016, Mr Stapleton provided a brief one-page letter to the Authority on behalf of the corporate business owner (MY FANTASY Pty Ltd) in relation to the previously foreshadowed sale of the Queen KTV licensed business. Mr Stapleton advised that contracts for the sale of the business had not yet been exchanged, but that an exchange would be completed within "the next 5 business days".
- 182.** Attached to the letter from Mr Stapleton is a draft and unsigned agreement for the sale of the Queen KTV licensed business from MY FANTASY Pty Ltd, ACN 167 340 347

(**Vendor**) to Redkuan Pty Ltd, ACN 610 951 936 (**Purchaser**), with Mr Albert Bi acting as a guarantor (**Guarantor**).

183. The “completion date” is specified to be 42 days after the date of the agreement. The “date of completion” is the date the agreement is completed. “Completion” is specified to be the completion of the sale and purchase in accordance with the agreement. The “sunset date” is 84 days after the date of the agreement.

Submissions from the Business Manager dated 25 and 26 April 2016

184. The Business Manager, Ms Xiao, then made a number of brief informal email submissions to the Authority's General Counsel dated 25 and 26 April 2016, enquiring whether there are conditions that may be satisfied to reopen the Premises within the 6-month period of the Long Term Closure Order. On 2 May 2016, Ms Xiao made enquiries as to whether the prosecutions against the Premises are likely to give rise to three “strikes” against the licence within the meaning of the “Three Strikes” disciplinary scheme contained in Part 9A of the Act. Ms Xiao was recommended by the Authority's General Counsel to rely on independent legal advice.
185. No further substantive submissions were received from any of the parties addressing the merits of the Complaint.

Letter Notifying Findings on Grounds of Complaint dated 30 June 2016

186. The Authority gave further consideration to the Complaint at its meeting of 27 May 2016 and a letter notifying the Authority's findings on the Grounds of Complaint was sent to the Complainant, the Licensee, the Close Associate, the Business Owner and the Premises Owner on 30 June 2016 inviting final submissions confined to the question of what, if any, disciplinary action should be taken in light of those findings.

No Further Submissions

187. Neither the Complainant nor any of the Respondents (Licensee, Close Associate, Business Owner or Premises Owner) made any final submissions on disciplinary action in relation to the Complaint.

LEGISLATION

188. In determining the Complaint, the Authority has considered the provisions contained in Part 9 of the Act. Relevantly, section 139 states:

139 Grounds for making complaint

- (1) *A complaint in relation to a licensee, manager or close associate of a licensee may be made to the Authority by any of the following (referred to in this Part as “**the complainant**”):*
- (a) *the Secretary,*
 - (b) *the Commissioner of Police,*
 - (c) *a person authorised by the regulations to make a complaint under this Part.*
- (2) *A complaint must be in writing and specify the grounds on which it is made.*
- (3) *The grounds on which a complaint in relation to a licensee, manager or close associate may be made are as follows:*
- (a) ...

- (b) *that the licensee or manager has failed to comply with any of the conditions to which the licence is subject,*
...
 - (f) *that the licensee or manager has engaged in conduct or activities that are likely to encourage misuse or abuse of liquor (such as binge drinking or excessive consumption),*
...
 - (i) *that the licensee is not a fit and proper person to be the holder of a licence (whether for the same reason as that set out in section 45(5A) or otherwise) or the manager is not a fit and proper person to be the manager of the licensed premises (whether for the same reason as that set out in section 68(4A) or otherwise),*
 - (j) *that the close associate is not a fit and proper person to be a close associate of a licensee,*
...
 - (s) *that the licence has not been exercised in the public interest,*
 - (t) *that the continuation of the licence is not in the public interest.*
- (4) *In subsection (3),*
“former Act” *means the Liquor Act 1982 or the regulations made under that Act and includes, in the case of a licensee that is a registered club, the Registered Clubs Act 1976 as in force immediately before the repeal of section 9 of that Act by Schedule 2 to the Miscellaneous Acts (Casino, Liquor and Gaming) Amendment Act 2007.*

189. Relevantly, section 141 of the Act confers the following disciplinary powers upon the Authority:

141 Disciplinary powers of Authority

- ...
- (2) *If the Authority is satisfied that any of the grounds (other than a criminal organisation associate ground) on which the complaint was made apply in relation to the licensee, manager or close associate, the Authority may decide not to take any action or may do any one or more of the following:*
- (a) *cancel the licence,*
 - (b) *suspend the licence for such period not exceeding 12 months (or, if circumstances of aggravation exist in relation to the complaint, not exceeding 24 months) as the Authority thinks fit,*
 - (c) *order the licensee or manager to pay, within such time as is specified in the order:*
 - (i) *a monetary penalty not exceeding 500 penalty units (in the case of a corporation) or 200 penalty units (in the case of an individual), or*
 - (ii) *if circumstances of aggravation exist in relation to the complaint—a monetary penalty not exceeding 1,000 penalty units (in the case of a corporation) or 400 penalty units (in the case of an individual),*
 - (d) *suspend or cancel any authorisation or other approval (other than the licence itself) held by the licensee under this Act,*
 - (e) *impose a condition to which the licence, or any authorisation or approval held by the licensee under this Act, is to be subject or revoke or vary a condition to which the licence or any such authorisation or approval is subject,*
 - (f) *disqualify the licensee from holding a licence, or from being the manager of licensed premises or the close associate of a licensee, for such period as the Authority thinks fit,*
 - (g) *withdraw the manager’s approval to manage licensed premises,*
 - (h) *disqualify the manager from being the manager of licensed premises, or from holding a licence or being the close associate of a licensee, for such period as the Authority thinks fit,*
 - (i) *in the case of a limited licence held on behalf of a non-proprietary association—order that a limited licence is not, for a period of not more than 3 years from the date on which the decision takes effect, to be granted to any person on behalf of the non-proprietary association,*

- (j) *disqualify the close associate from being a close associate of a licensee or the manager of licensed premises for such period as the Authority thinks fit,*
 - (k) *disqualify the close associate from holding a licence for such period as the Authority thinks fit,*
 - (l) *order the licensee, manager or close associate to pay the amount of any costs incurred by:*
 - (i) *the Secretary in carrying out any investigation or inquiry under section 138 in relation to the licensee, manager or close associate, or*
 - (ii) *the Authority in connection with the taking of disciplinary action against the licensee, manager or close associate under this section,*
 - (m) *reprimand the licensee, manager or close associate.*
- (3) *If the Authority orders a licensee or manager to pay a monetary penalty under this section and the penalty is not paid within the time specified in the order, the Authority may:*
- (a) *cancel the licence, or*
 - (b) *suspend the licence until such time as the penalty is paid (or for such other period as the Authority thinks fit).*
- (4) *While a person is disqualified by the Authority from being a close associate of a licensee, the person is conclusively presumed for the purposes of this Act to be a person who is not a fit and proper person to be a close associate of a licensee.*
- (5) **Action against other interested persons**
In deciding whether to take disciplinary action under this section against a licensee in relation to a complaint, the Authority may take disciplinary action against a person who is interested in the business, or in the conduct or profits of the business, carried on under the licence (regardless of whether the Authority takes any disciplinary action under this section against the licensee concerned).
- (6) *If the Authority decides to take disciplinary action against any such interested person, the Authority may do any one or more of the following:*
- (a) *disqualify the person, for a period commencing on a specified day, from being a person interested in the business, or in the conduct or profits of the business, carried on under a licence,*
 - (b) *reprimand the person.*
- (7) ...
- (8) ...

190. When considering the fitness and propriety of a licensee, section 139(3)(i) requires the decision maker to have regard to section 45(5A) of the Act, which states, relevantly:

45 Decision of Authority in relation to licence applications

- (5A) *Without limiting subsection (3)(a), in determining whether an applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates, the Authority is to consider whether the applicant:*
- (a) *is of good repute, having regard to character, honesty and integrity, and*
 - (b) *is competent to carry on that business or activity.*

191. When considering the fitness and propriety of an approved manager, section 139(3)(i) requires the decision maker to have regard to section 68(4C) of the Act, which states, relevantly:

68 Approval of persons to manage licensed premises

- (4C) *Without limiting subsection (4) (a), in determining whether a person is a fit and proper person to manage licensed premises the Authority is to consider whether the person:*
- (a) *is of good repute, having regard to character, honesty and integrity, and*
 - (b) *is competent to manage licensed premises.*

Meaning of “close associate”

192. Relevantly to Ground 4 of this Complaint, a “close associate” within the meaning of section 5(1) of the *Gaming and Liquor Administration Act 2007 (GALA Act)* is defined as follows:

*For the purposes of the gaming and liquor legislation, a person is a **close associate** of an applicant for, or the holder of, a gaming or liquor licence if the person:*

- (a) *holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in his or her own right or on behalf of any other person), in the business of the applicant or licensee that is or will be carried on under the authority of the licence, and by virtue of that interest or power is or will be able (in the opinion of the Authority) to exercise a significant influence over or with respect to the management or operation of that business, or*
- (b) *holds or will hold any relevant position, whether in his or her own right or on behalf of any other person, in the business of the applicant or licensee that is or will be carried on under the authority of the licence.*

193. Section 4 of the GALA Act provides that the “gaming and liquor legislation” includes the *Liquor Act 2007*.

194. “Relevant financial interest” is defined in section 5(2) of the GALA Act as follows:

relevant financial interest, in relation to a business, means:

- (a) *any share in the capital of the business, or*
- (b) *any entitlement to receive any income derived from the business, or to receive any other financial benefit or financial advantage from the carrying on of the business, whether the entitlement arises at law or in equity or otherwise, or*
- (c) *any entitlement to receive any rent, profit or other income in connection with the use or occupation of premises on which the business of the club is or is to be carried on (such as, for example, an entitlement of the owner of the premises of a registered club to receive rent as lessor of the premises).*

195. “Relevant position” is defined in section 5(2) of the GALA Act as follows:

relevant position means:

- (a) *the position of director, manager or secretary, or*
- (b) *any other position, however designated, if it is an executive position.*

196. “Relevant power” is defined in section 5(2) of the GALA Act as follows:

relevant power means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others:

- (a) *to participate in any directorial, managerial or executive decision, or*
- (b) *to elect or appoint any person to any relevant position.*

197. In determining the Complaint, the Authority has also considered the objects and considerations of the Act, which further inform the public interest in respect of the Act, prescribed by section 3 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 harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),*
- (b) *the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,*
- (c) *the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.*

FINDINGS ON GROUNDS OF COMPLAINT

198. A disciplinary complaint under Part 9 of the Act is an administrative matter, and findings are made to the civil standard of proof.

199. However, in accordance with the principle enunciated by the High Court of Australia in *Briginshaw v Briginshaw* (1938) 60 CLR 336, the seriousness of the allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are matters that are relevant to deciding whether an allegation has been proved on the balance of probabilities.

200. The Authority notes that this Complaint is not particularly well structured or particularised. The Authority notes that the allegations made by the Complainant have not been contested with any evidence or even submissions from any of the respondents addressing the substance of those allegations.

201. While this is a separate matter, the Authority notes that much of the evidence or material provided in support of the Complaint mirrors the evidence provided in support of the separate Long Term Closure Application, which formed the basis of the Authority's decision to order the Premises to close for a period of 6 months from 15 April 2016.

Findings on Ground 1

202. This Ground is based upon section 139(3)(b) of the Act, which states as follows:

...that the licensee or manager has failed to comply with any of the conditions to which the licence is subject.

Four Breaches of Condition "3020"

- 203.** This condition, as recorded on the *OneGov* database record of the liquor licence for the Premises dated 22 February 2016, states:

The premises are to be operated in accordance with the Plan of Management filed with the application or any modified Plan of Management subsequently approved by Ashfield City Council and the Police.

- 204.** The Authority notes that paragraph 1.1 of the *Plan of Management* for the Premises in relation to “Type and number of patrons” states:

The development consent permits a maximum number of 100 patrons at any time.

- (a) *It is anticipated that patrons attending will include those who have pre-booked as well as walk up patrons.*
- (b) *Further, tickets will be issued at the door or otherwise, numbers recorded in each room to ensure that the number of patrons at the premises will not exceed 100.*

- 205.** The Authority notes that paragraph 6.1 of the *Plan of Management* for the Premises in relation to “Security Personnel and Staff” states:

The proposed security measures to comprise of the following:

- *Uniformed licensed security personnel will be employed at the premises in accordance with the conditions of the Council consent.*
- *On those nights that two (2) security officers are required, one of those staff is to be positioned at the entrance to the premises during the hours of operation and until the premises close.*
- *Security personnel will undertake various duties including ensuring that patrons behave in an orderly manner whilst at and when leaving the immediate vicinity of the premises, that conditions of the licence are complied with, that intoxicated persons do not gain access to the premises, that ID is requested when required, that patrons enter and leave only via Liverpool Road, etc.*
- *When security personnel are provided, arrangements will be as follows:*
 - (a) *Any security officer must be in the possession of a current security licence;*
 - (b) *The security officer will be uniformed so as to be clearly identifiable;*
 - (c) *The security officer will be required to conduct himself/herself in accordance with the Industry Code of Practice;*
 - (d) *The security officer will be required to note details of any incidents occurring within the premises or immediately outside the premises;*
 - (e) *The security officer will assist to monitor the occupancy levels and patrol the crowd in a responsible manner;*
 - (f) *The responsible service of alcohol guidelines will be a criteria for admitting, refusing to admit customers and the removal of customers who are intoxicated;*
 - (g) *The security officer will refuse entry to the premises to any person who they detect is intoxicated;*
 - (h) *The security officer will remove any patron who exhibits unacceptable and/or anti-social behaviour;*
 - (i) *Whilst final patrons are being conducted the security officer will collect any rubbish on the footpath immediately outside the premises which may be associated with the premises;*
 - (j) *The security officer and management will be required to cooperate with the Police and Council at all times.*

- 206.** The Authority notes that paragraph 7.3(b)(ii) of the *Plan of Management* for the Premises in relation to “Responsible Service of Alcohol” states:

The premises will implement a “House Policy” regarding the responsible service of liquor at the premises, a copy of which will be provided to all staff on commencing employment at the premises.

207. The Authority notes that paragraph 7.4 of the *Plan of Management* for the Premises in relation to “Prevention of Sale and Supply of Liquor to Minors” states:

All staff will be under strict instructions to ensure that liquor is not sold and supplied to persons under the age of 18 years and that minors do not gain access to liquor by way of secondary sale or by being supplied with it by a person 18 years or over.

208. The Authority notes that paragraph 7.7 of the *Plan of Management* for the Premises in relation to “Prevention of Sale and Supply of Liquor to Minors” states:

Staff will be vigilant in ensuring that alcohol is not supplied to minors and any person suspected of being under the age of 18 years is to be asked to provide proof of age before being supplied with liquor. Accepted forms of identification are:

- (i) Current driver’s licence;*
- (ii) Proof of Age Card; or*
- (iii) Passport.*

209. The Authority is satisfied that the Licensee, Ms Kathy Sun, failed to comply with the condition on the licence for the Premises numbered “3020” on **29 November 2015**, in contravention of section 11(2) of the Act, when the maximum patron capacity for the Premises was exceeded (contrary to paragraph 1.1 of the *Plan of Management*) and when the business did not engage two (2) licensed uniformed security guards at all times the Premises is trading (contrary to paragraph 6.1 of the *Plan of Management*).

210. The Authority makes these findings on the basis of the Complaint Letter dated 5 February 2016 and the following evidence or material provided by the Complainant:

- NSW Police COPS Report number E60205843, which describes observations of the Premises made by Ashfield Police on Sunday 29 November 2015 (comprising part of Annexure 25 to the Complaint Letter); and
- Document entitled “Infringement Notice Table – Queen KTV” prepared by Senior Constable Thomas Melia from Ashfield Police (Annexure 51 to the Complaint Letter).

211. The Authority is satisfied that the Licensee, Ms Kathy Sun, failed to comply with Condition “3020” on the licence in contravention of section 11(2) of the Act, as detected by NSW Police in relation to the Premises on **19 December 2015** with respect to the following:

- The maximum patron capacity for the Premises was exceeded (contrary to paragraph 1.1 of the *Plan of Management*);
- Security personnel did not ensure that patrons behave in an orderly manner whilst at and when leaving the immediate vicinity of the premises (contrary to paragraph 6.1 of the *Plan of Management*);
- Security personnel did not remove any patron who exhibits unacceptable and/or anti-social behaviour (contrary to paragraph 6.1(h) of the *Plan of Management*); and

- Security personnel did not ask persons suspected of being minors for proof of age before being supplied with liquor (contrary to paragraph 7.7 of the *Plan of Management*).

212. The Authority makes these findings on the basis of the Complaint Letter dated 5 February 2016 and the following evidence or material provided by the Complainant:

- NSW Police COPS Report number E60685141, which describes observations of the Premises made by Ashfield Police on Saturday 19 December 2015 (comprising part of Annexure 25 to the Complaint Letter);
- NSW Police Statement by Constable Joseph Haklany from Ashfield Police dated 12 January 2016 (Annexure 26 to the Complaint Letter);
- NSW Police Statement by Constable Keelin Woulfe from Ashfield Police dated 21 January 2016 (Annexure 27 to the Complaint Letter);
- NSW Police Statement by Sergeant Melanie Leaity from Ashfield Police dated 2 January 2016 (Annexure 28 to the Complaint Letter);
- NSW Police Statement by Constable Andrew Couch from Ashfield Police dated 12 January 2016 (Annexure 29 to the Complaint Letter);
- NSW Police Statement by Senior Constable Bao Tran from Ashfield Police dated 10 January 2016 (Annexure 30 to the Complaint Letter);
- NSW Police Statement by Constable Jamie Thompson from Ashfield Police dated 11 January 2016 (Annexure 31 to the Complaint Letter);
- NSW Police Statement by Constable Alexei Baskakov from Ashfield Police dated 31 December 2015 (Annexure 32 to the Complaint Letter);
- NSW Police Statement by Constable Brett Ackling from Ashfield Police dated 9 January 2016 (Annexure 33 to the Complaint Letter);
- CCTV Log completed by Senior Constable Melia on 13 January 2016 briefly summarising the events that occurred on the Premises from 8:18pm on 18 December 2015 to 3:05am on 19 December 2015 (Annexure 36 to the Complaint Letter);
- Still photographs taken by Senior Constable Lisa Latu from Ashfield Police, captured from CCTV footage of the Premises for 18 to 19 December 2015 (Annexure 37 to the Complaint Letter);
- Document entitled "Infringement Notice Table – Queen KTV" prepared by Senior Constable Thomas Melia from Ashfield Police (Annexure 51 to the Complaint Letter); and
- NSW Police Statement by Chief Inspector Jennifer Scholz from Ashfield Police dated 22 December 2015 (Annexure 56 to the Complaint Letter).

213. The Authority is satisfied that the Licensee, Ms Kathy Sun, failed to comply with Condition "3020" on the licence in contravention of section 11(2) of the Act, as detected by NSW Police in relation to the Premises on **27 December 2015** when security personnel did not ensure that liquor is not sold and supplied to persons under the age of

18 years and that minors do not gain access to liquor by way of secondary sale or by being supplied with it by a person 18 years or over (contrary to paragraph 7.4 of the *Plan of Management*) and when security personnel did not ask persons suspected of being minors for proof of age before being supplied with liquor (contrary to paragraph 7.7 of the *Plan of Management*).

214. The Authority makes these findings on the basis of the Complaint Letter dated 5 February 2016 and the following evidence or material provided by the Complainant:

- NSW Police COPS Report number E60472651, which describes observations of the Premises made by Ashfield Police on Sunday 27 December 2015 (comprising part of Annexure 25 to the Complaint Letter);
- NSW Police Statement by Sergeant Melanie Leaity from Ashfield Police dated 2 January 2016 (Annexure 28 to the Complaint Letter);
- NSW Police Statement by Constable Jamie Thompson from Ashfield Police dated 11 January 2016 (Annexure 31 to the Complaint Letter);
- NSW Police Statement by Constable Andrew Couch from Ashfield Police dated 9 January 2016 (Annexure 39 to the Complaint Letter);
- NSW Police Statement by Constable Troy Delany from Ashfield Police dated 10 January 2016 (Annexure 40 to the Complaint Letter);
- NSW Police Statement by Senior Constable Erin Cunningham from Ashfield Police dated 10 January 2016 (Annexure 41 to the Complaint Letter); and
- Document entitled “Infringement Notice Table – Queen KTV” prepared by Senior Constable Thomas Melia from Ashfield Police (Annexure 51 to the Complaint Letter).

215. The Authority is satisfied that the Licensee, Ms Kathy Sun, failed to comply with Condition “3020” on the licence contrary to section 11(2) of the Act, as detected by NSW Police in relation to the Premises on **8 January 2016** when the Licensee admitted that she did not know what a “House Policy” was (in contravention of paragraph 7.3(b)(ii) of the *Plan of Management*).

216. The Authority makes this finding on the basis of the Complaint Letter dated 5 February 2016 and the following evidence or material provided by the Complainant:

- NSW Police COPS Report number E59303909, which describes observations of the Premises made by Ashfield Police on Friday 8 January 2016 (comprising part of Annexure 25 to the Complaint Letter); and
- Document entitled “Infringement Notice Table – Queen KTV” prepared by Senior Constable Thomas Melia from Ashfield Police (Annexure 51 to the Complaint Letter).

One Breach of Condition “3030”

217. This condition, as recorded on the *OneGov* database record of the liquor licence for the Premises dated 22 February 2016, states:

CCTV System

- (i) *CCTV surveillance cameras (with video recording facilities) shall be installed and maintained in the premises with coverage of the foyer, entrances/exits and the karaoke rooms.*
- (ii) *All video equipment and cameras are to be of a high quality so as to facilitate identification and adjudication of patrons and incidents occurring within the premises.*
- (iii) *CCTV recording discs or hard drive recording shall be retained for 30 days before being reused, destroyed or deleted. The time and date shall be auto recorded on the disc or hard drive. The CCTV recording equipment shall be capable of reproducing a CD copy of recorded footage. Copies of discs must be handed to Police Officers or Special Inspectors on request or within a reasonable time.*
- (iv) *There shall be adequate monitoring of the system by the licensee and his/her staff when the premises are trading to ensure as far as practicable that patrons do not:*
 - (a) *move the cameras so as not to give adequate coverage of the room or*
 - (b) *cover or obstruct the cameras so as to prevent surveillance of the room.*

218. The Authority is satisfied that the Licensee, Ms Kathy Sun, failed to comply with the condition on the licence for the Premises numbered “3030” in relation to the CCTV system for the Queen KTV business, contrary to section 11(2) of the Act, as detected by NSW Police on **8 November 2014**.

219. The Authority makes this finding on the basis of the Complaint Letter dated 5 February 2016 and the following evidence or material provided by the Complainant:

- NSW Police COPS Report number E56778268, which describes observations of the Premises made by Ashfield Police on Saturday 8 November 2014 (comprising part of Annexure 8 to the Complaint Letter);
- NSW Police COPS Report number E199423797, which describes observations of the Premises made by Ashfield Police on Sunday 9 November 2014 (comprising part of Annexure 8 to the Complaint Letter);
- NSW Police Statement by Senior Constable Matthew Spooner from Ashfield Police dated 21 January 2016 (Annexure 11 to the Complaint Letter);
- Photographs taken by Senior Constable Spooner during an investigation into the Premises conducted on 9 November 2014 (Annexure 16 to the Complaint Letter);
- Penalty Notice number 4924047022 issued to the Licensee by NSW Police in respect of a breach of licence Condition “3030” detected on 9 November 2014 (comprising part of Annexure 20 to the Complaint Letter); and
- Notice to Produce pursuant to section 21 of the *Gaming and Liquor Administration Act 2007* issued to the Licensee by Senior Constable Spooner on 9 November 2014, requesting CCTV footage for the period from the time the Premises opened for trade on Saturday 8 November 2014 until 1:00am on Sunday 9 November 2014 (Annexure 23 to the Complaint Letter). [The Authority notes that this CCTV footage was not provided by the Licensee.]

Three Breaches of Condition “3050”

- 220.** This condition, as recorded on the *OneGov* database record of the liquor licence for the Premises dated 22 February 2016, states:

No liquor shall be sold, supplied or consumed in any karaoke room in which a minor is present, unless the minor is accompanied and in the presence of a responsible adult as defined under the Liquor Act 2007. For the purpose of implementing this condition, the Licensee shall adopt reasonable processes to monitor the admission of minors into the licensed premises, and to ascertain if they are accompanied by a responsible adult. Those processes should include, but not to be limited to requiring production of evidence of age sufficient to comply with the Liquor Regulation, in appropriate circumstances.

- 221.** The Authority is satisfied that the Licensee, Ms Kathy Sun, failed to comply with the condition on the licence for the Premises numbered “3050” in relation to the presence of unaccompanied minors in a karaoke room where liquor is sold, supplied or consumed, contrary to section 11(2) of the Act, as detected by NSW Police on **28 March 2015**.
- 222.** The Authority makes this finding on the basis of the Complaint Letter dated 5 February 2016 and NSW Police COPS Report number E59909084, which describes observations of the Premises made by Ashfield Police on Saturday 28 March 2015 (comprising part of Annexure 8 to the Complaint Letter).
- 223.** The Authority is satisfied that the Licensee, Ms Kathy Sun, failed to comply with licence Condition “3050”, contrary to section 11(2) of the Act, as detected by NSW Police on **19 December 2015**.
- 224.** The Authority makes this finding on the basis of the Complaint Letter dated 5 February 2016 and the following evidence or material provided by the Complainant:
- NSW Police COPS Report number E60685141, which describes observations of the Premises made by Ashfield Police on Saturday 19 December 2015 (comprising part of Annexure 25 to the Complaint Letter);
 - NSW Police Statement by Constable Joseph Haklany from Ashfield Police dated 12 January 2016 (Annexure 26 to the Complaint Letter);
 - NSW Police Statement by Constable Keelin Woulfe from Ashfield Police dated 21 January 2016 (Annexure 27 to the Complaint Letter);
 - NSW Police Statement by Sergeant Melanie Leaity from Ashfield Police dated 2 January 2016 (Annexure 28 to the Complaint Letter);
 - NSW Police Statement by Constable Andrew Couch from Ashfield Police dated 12 January 2016 (Annexure 29 to the Complaint Letter);
 - NSW Police Statement by Senior Constable Bao Tran from Ashfield Police dated 10 January 2016 (Annexure 30 to the Complaint Letter);
 - NSW Police Statement by Constable Jamie Thompson from Ashfield Police dated 11 January 2016 (Annexure 31 to the Complaint Letter);
 - NSW Police Statement by Constable Alexei Baskakov from Ashfield Police dated 31 December 2015 (Annexure 32 to the Complaint Letter);
 - NSW Police Statement by Constable Brett Ackling from Ashfield Police dated 9 January 2016 (Annexure 33 to the Complaint Letter);

- CCTV Log completed by Senior Constable Melia on 13 January 2016 briefly summarising the events that occurred on the Premises from 8:18pm on 18 December 2015 to 3:05am on 19 December 2015 (Annexure 36 to the Complaint Letter);
- Still photographs taken by Senior Constable Lisa Latu from Ashfield Police, captured from CCTV footage of the Premises for 18 to 19 December 2015 (Annexure 37 to the Complaint Letter);
- Document entitled “Infringement Notice Table – Queen KTV” prepared by Senior Constable Thomas Melia from Ashfield Police (Annexure 51 to the Complaint Letter); and
- NSW Police Statement by Chief Inspector Jennifer Scholz from Ashfield Police dated 22 December 2015 (Annexure 56 to the Complaint Letter).

225. The Authority is satisfied that the Licensee, Ms Kathy Sun, failed to comply with licence Condition “3050”, contrary to section 11(2) of the Act, as detected by NSW Police on **27 December 2015**.

226. The Authority makes this finding on the basis of the Complaint Letter dated 5 February 2016 and the following evidence or material provided by the Complainant:

- NSW Police COPS Report number E60472651, which describes observations of the Premises made by Ashfield Police on Sunday 27 December 2015 (comprising part of Annexure 25 to the Complaint Letter);
- NSW Police Statement by Sergeant Melanie Leaity from Ashfield Police dated 2 January 2016 (Annexure 28 to the Complaint Letter);
- NSW Police Statement by Constable Jamie Thompson from Ashfield Police dated 11 January 2016 (Annexure 31 to the Complaint Letter);
- NSW Police Statement by Constable Andrew Couch from Ashfield Police dated 9 January 2016 (Annexure 39 to the Complaint Letter);
- NSW Police Statement by Constable Troy Delany from Ashfield Police dated 10 January 2016 (Annexure 40 to the Complaint Letter);
- NSW Police Statement by Senior Constable Erin Cunningham from Ashfield Police dated 10 January 2016 (Annexure 41 to the Complaint Letter); and
- Document entitled “Infringement Notice Table – Queen KTV” prepared by Senior Constable Thomas Melia from Ashfield Police (Annexure 51 to the Complaint Letter).

Eight Breaches of Condition “3080”

227. This condition, as recorded on the *OneGov* database record of the liquor licence for the Premises dated 22 February 2016, states:

All staff working at the premises shall wear name tags and/or uniforms identifying themselves to patrons and authorities that they are working at the premises.

- 228.** The Authority is satisfied that the Licensee, Ms Kathy Sun, failed to comply with the condition on the licence for the Premises numbered “3080” requiring that all staff working at the Premises must wear name tags and/or uniforms identifying themselves to patrons and authorities that they are working at the Premises, as detected by NSW Police on Sunday **27 July 2014**, contrary to section 11(2) of the Act.
- 229.** The Authority makes this finding on the basis of the Complaint Letter dated 5 February 2016 and NSW Police COPS Report number E57230587, which describes observations of the Premises made by Ashfield Police on Sunday 27 July 2014 (comprising part of Annexure 8 to the Complaint Letter).
- 230.** The Authority is satisfied that the Licensee, Ms Kathy Sun, failed to comply with licence Condition “3080”, contrary to section 11(2) of the Act, as detected by NSW Police on Tuesday **29 July 2014**.
- 231.** The Authority makes this finding on the basis of the Complaint Letter dated 5 February 2016 and NSW Police COPS Report number E55105814, which describes observations of the Premises made by Ashfield Police on Tuesday 29 July 2014 (comprising part of Annexure 8 to the Complaint Letter).
- 232.** The Authority is satisfied that the Licensee, Ms Kathy Sun, failed to comply with licence Condition “3080”, contrary to section 11(2) of the Act, as detected by NSW Police on Saturday **8 November 2014**.
- 233.** The Authority makes this finding on the basis of the Complaint Letter dated 5 February 2016 and NSW Police COPS Report number E56778268, which describes observations of the Premises made by Ashfield Police on Saturday 8 November 2014 (comprising part of Annexure 8 to the Complaint Letter).
- 234.** The Authority is satisfied that the Licensee, Ms Kathy Sun, failed to comply with licence Condition “3080”, contrary to section 11(2) of the Act, as detected by NSW Police on Sunday **9 November 2014**.
- 235.** The Authority makes this finding on the basis of the Complaint Letter dated 5 February 2016 and the following evidence or material provided by the Complainant:
- NSW Police COPS Report number E199423797, which describes observations of the Premises made by Ashfield Police on Sunday 9 November 2014 (comprising part of Annexure 8 to the Complaint Letter);
 - NSW Police Statement by Senior Constable Matthew Spooner from Ashfield Police dated 21 January 2016 (Annexure 11 to the Complaint Letter);
 - Photographs taken by Senior Constable Spooner during an investigation into the Premises conducted on 9 November 2014 (Annexure 16 to the Complaint Letter); and
 - Penalty Notice number 4924047031 issued to the Licensee by NSW Police in respect of a breach of licence Condition “3080” detected on 9 November 2014 (comprising part of Annexure 20 to the Complaint Letter).
- 236.** The Authority is satisfied that the Licensee, Ms Kathy Sun, failed to comply with licence Condition “3080”, contrary to section 11(2) of the Act, as detected by NSW Police on Saturday **19 December 2015**.

237. The Authority makes this finding on the basis of the Complaint Letter dated 5 February 2016 and the following evidence or material provided by the Complainant:

- NSW Police COPS Report number E60685141, which describes observations of the Premises made by Ashfield Police on Saturday 19 December 2015 (comprising part of Annexure 25 to the Complaint Letter);
- NSW Police Statement by Constable Joseph Haklany from Ashfield Police dated 12 January 2016 (Annexure 26 to the Complaint Letter);
- NSW Police Statement by Constable Keelin Woulfe from Ashfield Police dated 21 January 2016 (Annexure 27 to the Complaint Letter);
- NSW Police Statement by Sergeant Melanie Leaity from Ashfield Police dated 2 January 2016 (Annexure 28 to the Complaint Letter);
- NSW Police Statement by Constable Andrew Couch from Ashfield Police dated 12 January 2016 (Annexure 29 to the Complaint Letter);
- NSW Police Statement by Senior Constable Bao Tran from Ashfield Police dated 10 January 2016 (Annexure 30 to the Complaint Letter);
- NSW Police Statement by Constable Jamie Thompson from Ashfield Police dated 11 January 2016 (Annexure 31 to the Complaint Letter);
- NSW Police Statement by Constable Alexei Baskakov from Ashfield Police dated 31 December 2015 (Annexure 32 to the Complaint Letter);
- NSW Police Statement by Constable Brett Ackling from Ashfield Police dated 9 January 2016 (Annexure 33 to the Complaint Letter);
- CCTV Log completed by Senior Constable Melia on 13 January 2016 briefly summarising the events that occurred on the Premises from 8:18pm on 18 December 2015 to 3:05am on 19 December 2015 (Annexure 36 to the Complaint Letter);
- Still photographs taken by Senior Constable Lisa Latu from Ashfield Police, captured from CCTV footage of the Premises for 18 to 19 December 2015 (Annexure 37 to the Complaint Letter);
- Document entitled “Infringement Notice Table – Queen KTV” prepared by Senior Constable Thomas Melia from Ashfield Police (Annexure 51 to the Complaint Letter); and
- NSW Police Statement by Chief Inspector Jennifer Scholz from Ashfield Police dated 22 December 2015 (Annexure 56 to the Complaint Letter).

238. The Authority is satisfied that the Licensee, Ms Kathy Sun, failed to comply with licence Condition “3080”, contrary to section 11(2) of the Act, as detected by NSW Police on Monday **28 December 2015**.

239. The Authority makes this finding on the basis of the Complaint Letter dated 5 February 2016 and the following evidence or material provided by the Complainant:

- NSW Police COPS Report number E61810987, which describes observations of the Premises made by Ashfield Police on Monday 28 December 2015 (comprising part of Annexure 25 to the Complaint Letter);
- NSW Police Statement by Sergeant Michael Anthony Tory from Ashfield Police dated 11 January 2016 (Annexure 42 to the Complaint Letter); and
- Document entitled “Infringement Notice Table – Queen KTV” prepared by Senior Constable Thomas Melia from Ashfield Police (Annexure 51 to the Complaint Letter).

240. The Authority is satisfied that the Licensee, Ms Kathy Sun, failed to comply with licence Condition “3080”, contrary to section 11(2) of the Act, as detected by NSW Police on Friday **8 January 2016**.

241. The Authority makes this finding on the basis of the Complaint Letter dated 5 February 2016 and NSW Police COPS Report number E59303909, which describes observations of the Premises made by Ashfield Police on Friday 8 January 2016 (comprising part of Annexure 25 to the Complaint Letter).

242. The Authority is satisfied that the Licensee, Ms Kathy Sun, failed to comply with licence Condition “3080”, contrary to section 11(2) of the Act, as detected by NSW Police on Sunday **10 January 2016**.

243. The Authority makes this finding on the basis of the Complaint Letter dated 5 February 2016 and the following evidence or material provided by the Complainant:

- NSW Police COPS Report number E59782411, which describes observations of the Premises made by Ashfield Police on Sunday 10 January 2016 (comprising part of Annexure 25 to the Complaint Letter);
- NSW Police Statement by Constable Ho Lee from Ashfield Police dated 13 January 2016 (Annexure 46 to the Complaint Letter);
- NSW Police Statement by Constable Nickala Edey from Ashfield Police dated 11 January 2016 (Annexure 47 to the Complaint Letter); and
- Document entitled “Infringement Notice Table – Queen KTV” prepared by Senior Constable Thomas Melia from Ashfield Police (Annexure 51 to the Complaint Letter).

Three Breaches of Condition “3090”

244. This condition, as recorded on the *OneGov* database record of the liquor licence for the Premises dated 22 February 2016, states:

Patrons are only permitted to enter/exit the premises via the main entrance from Liverpool Road other than in the case of emergency.

245. The Authority is satisfied that the Licensee, Ms Kathy Sun, failed to comply with the condition on the licence for the Premises numbered “3090” providing that patrons are only permitted to enter or exit the Premises via the main entrance from Liverpool Road other than in the case of emergency, as detected by NSW Police on **29 July 2014**, contrary to section 11(2) of the Act.

- 246.** The Authority makes this finding on the basis of the Complaint Letter dated 5 February 2016 and NSW Police COPS Report number E55105814, which describes observations of the Premises made by Ashfield Police on Tuesday 29 July 2014 (comprising part of Annexure 8 to the Complaint Letter).
- 247.** The Authority is satisfied that the Licensee, Ms Kathy Sun, failed to comply with licence Condition “3090”, contrary to section 11(2) of the Act, as detected by NSW Police on **19 December 2015**.
- 248.** The Authority makes this finding on the basis of the Complaint Letter dated 5 February 2016 and the following evidence or material provided by the Complainant:
- NSW Police COPS Report number E60685141, which describes observations of the Premises made by Ashfield Police on Saturday 19 December 2015 (comprising part of Annexure 25 to the Complaint Letter);
 - NSW Police Statement by Constable Joseph Haklany from Ashfield Police dated 12 January 2016 (Annexure 26 to the Complaint Letter);
 - NSW Police Statement by Constable Keelin Woulfe from Ashfield Police dated 21 January 2016 (Annexure 27 to the Complaint Letter);
 - NSW Police Statement by Sergeant Melanie Leaity from Ashfield Police dated 2 January 2016 (Annexure 28 to the Complaint Letter);
 - NSW Police Statement by Constable Andrew Couch from Ashfield Police dated 12 January 2016 (Annexure 29 to the Complaint Letter);
 - NSW Police Statement by Senior Constable Bao Tran from Ashfield Police dated 10 January 2016 (Annexure 30 to the Complaint Letter);
 - NSW Police Statement by Constable Jamie Thompson from Ashfield Police dated 11 January 2016 (Annexure 31 to the Complaint Letter);
 - NSW Police Statement by Constable Alexei Baskakov from Ashfield Police dated 31 December 2015 (Annexure 32 to the Complaint Letter);
 - NSW Police Statement by Constable Brett Ackling from Ashfield Police dated 9 January 2016 (Annexure 33 to the Complaint Letter);
 - CCTV Log completed by Senior Constable Melia on 13 January 2016 briefly summarising the events that occurred on the Premises from 8:18pm on 18 December 2015 to 3:05am on 19 December 2015 (Annexure 36 to the Complaint Letter);
 - Still photographs taken by Senior Constable Lisa Latu from Ashfield Police, captured from CCTV footage of the Premises for 18 to 19 December 2015 (Annexure 37 to the Complaint Letter);
 - Document entitled “Infringement Notice Table – Queen KTV” prepared by Senior Constable Thomas Melia from Ashfield Police (Annexure 51 to the Complaint Letter); and
 - NSW Police Statement by Chief Inspector Jennifer Scholz from Ashfield Police dated 22 December 2015 (Annexure 56 to the Complaint Letter).

249. The Authority is satisfied that the Licensee, Ms Kathy Sun, failed to comply with licence Condition “3090”, contrary to section 11(2) of the Act, as detected by NSW Police on **27 December 2015**.

250. The Authority makes this finding on the basis of the Complaint Letter dated 5 February 2016 and the following evidence or material provided by the Complainant:

- NSW Police COPS Report number E60472651, which describes observations of the Premises made by Ashfield Police on Sunday 27 December 2015 (comprising part of Annexure 25 to the Complaint Letter);
- NSW Police Statement by Sergeant Melanie Leaity from Ashfield Police dated 2 January 2016 (Annexure 28 to the Complaint Letter);
- NSW Police Statement by Constable Jamie Thompson from Ashfield Police dated 11 January 2016 (Annexure 31 to the Complaint Letter);
- NSW Police Statement by Constable Andrew Couch from Ashfield Police dated 9 January 2016 (Annexure 39 to the Complaint Letter);
- NSW Police Statement by Constable Troy Delany from Ashfield Police dated 10 January 2016 (Annexure 40 to the Complaint Letter);
- NSW Police Statement by Senior Constable Erin Cunningham from Ashfield Police dated 10 January 2016 (Annexure 41 to the Complaint Letter); and
- Document entitled “Infringement Notice Table – Queen KTV” prepared by Senior Constable Thomas Melia from Ashfield Police (Annexure 51 to the Complaint Letter).

Two Breaches of Condition “4000”

251. This condition, as recorded on the *OneGov* database record of the liquor licence for the Premises dated 22 February 2016, states:

Signage is to be displayed at every entrance/exit to the premises so as to be clearly visible to patrons, advising patrons that they are to leave the area quickly and quietly and not to cause any disturbance to the neighbours.

252. The Authority is satisfied that the Licensee, Ms Kathy Sun, failed to comply with the condition on the licence for the Premises numbered “4000” providing that signage is to be displayed at every entrance or exit to the Premises so as to be clearly visible to patrons, advising patrons that they are to leave the area quickly and quietly and not to cause any disturbance to the neighbours, as detected by NSW Police on **29 July 2014**, contrary to section 11(2) of the Act.

253. The Authority makes this finding on the basis of the Complaint Letter dated 5 February 2016 and NSW Police COPS Report number E55105814, which describes observations of the Premises made by Ashfield Police on Tuesday 29 July 2014 (comprising part of Annexure 8 to the Complaint Letter).

254. The Authority is satisfied that the Licensee, Ms Kathy Sun, failed to comply with licence Condition “4000”, contrary to section 11(2) of the Act, as detected by NSW Police on **8 November 2014**.

255. The Authority makes this finding on the basis of the Complaint Letter dated 5 February 2016 and NSW Police COPS Report number E56778268, which describes observations of the Premises made by Ashfield Police on Saturday 8 November 2014 (comprising part of Annexure 8 to the Complaint Letter).

Two Breaches of Condition “4010”

256. This condition, as recorded on the *OneGov* database record of the liquor licence for the Premises dated 22 February 2016, states:

All liquor shall be opened by staff and no liquor shall be sold or supplied under the licence in unopened cans or bottles.

257. The Authority is satisfied that the Licensee, Ms Kathy Sun, failed to comply with the condition on the licence for the Premises numbered “4010” providing that all liquor shall be opened by staff and no liquor shall be sold or supplied under the licence in unopened cans or bottles, as detected by NSW Police on **19 December 2015**, contrary to section 11(2) of the Act.

258. The Authority makes this finding on the basis of the Complaint Letter dated 5 February 2016 and the following evidence or material provided by the Complainant:

- NSW Police COPS Report number E60685141, which describes observations of the Premises made by Ashfield Police on Saturday 19 December 2015 (comprising part of Annexure 25 to the Complaint Letter);
- NSW Police Statement by Constable Joseph Haklany from Ashfield Police dated 12 January 2016 (Annexure 26 to the Complaint Letter);
- NSW Police Statement by Constable Keelin Woulfe from Ashfield Police dated 21 January 2016 (Annexure 27 to the Complaint Letter);
- NSW Police Statement by Sergeant Melanie Leaity from Ashfield Police dated 2 January 2016 (Annexure 28 to the Complaint Letter);
- NSW Police Statement by Constable Andrew Couch from Ashfield Police dated 12 January 2016 (Annexure 29 to the Complaint Letter);
- NSW Police Statement by Senior Constable Bao Tran from Ashfield Police dated 10 January 2016 (Annexure 30 to the Complaint Letter);
- NSW Police Statement by Constable Jamie Thompson from Ashfield Police dated 11 January 2016 (Annexure 31 to the Complaint Letter);
- NSW Police Statement by Constable Alexei Baskakov from Ashfield Police dated 31 December 2015 (Annexure 32 to the Complaint Letter);
- NSW Police Statement by Constable Brett Ackling from Ashfield Police dated 9 January 2016 (Annexure 33 to the Complaint Letter);
- CCTV Log completed by Senior Constable Melia on 13 January 2016 briefly summarising the events that occurred on the Premises from 8:18pm on 18 December 2015 to 3:05am on 19 December 2015 (Annexure 36 to the Complaint Letter);

- Still photographs taken by Senior Constable Lisa Latu from Ashfield Police, captured from CCTV footage of the Premises for 18 to 19 December 2015 (Annexure 37 to the Complaint Letter);
- Document entitled “Infringement Notice Table – Queen KTV” prepared by Senior Constable Thomas Melia from Ashfield Police (Annexure 51 to the Complaint Letter); and
- NSW Police Statement by Chief Inspector Jennifer Scholz from Ashfield Police dated 22 December 2015 (Annexure 56 to the Complaint Letter).

259. The Authority is satisfied that the Licensee, Ms Kathy Sun, failed to comply with licence Condition “4010”, contrary to section 11(2) of the Act, as detected by NSW Police on **27 December 2015**.

260. The Authority makes this finding on the basis of the Complaint Letter dated 5 February 2016 and the following evidence or material provided by the Complainant:

- NSW Police COPS Report number E60472651, which describes observations of the Premises made by Ashfield Police on Sunday 27 December 2015 (comprising part of Annexure 25 to the Complaint Letter);
- NSW Police Statement by Sergeant Melanie Leaity from Ashfield Police dated 2 January 2016 (Annexure 28 to the Complaint Letter);
- NSW Police Statement by Constable Jamie Thompson from Ashfield Police dated 11 January 2016 (Annexure 31 to the Complaint Letter);
- NSW Police Statement by Constable Andrew Couch from Ashfield Police dated 9 January 2016 (Annexure 39 to the Complaint Letter);
- NSW Police Statement by Constable Troy Delany from Ashfield Police dated 10 January 2016 (Annexure 40 to the Complaint Letter);
- NSW Police Statement by Senior Constable Erin Cunningham from Ashfield Police dated 10 January 2016 (Annexure 41 to the Complaint Letter); and
- Document entitled “Infringement Notice Table – Queen KTV” prepared by Senior Constable Thomas Melia from Ashfield Police (Annexure 51 to the Complaint Letter).

One Breach of Condition “13300”

261. This condition, as recorded on the *OneGov* database record of the liquor licence for the Premises dated 22 February 2016, states:

The licensee must ensure that staff involved in the sale, supply or service of alcohol on the licensed premises do not consume alcohol whilst on duty.

262. The Authority is satisfied that the Licensee, Ms Kathy Sun, failed to comply with the condition on the licence for the Premises numbered “13300” providing that the Licensee must ensure that staff involved in the sale, supply or service of alcohol on the licensed premises do not consume alcohol whilst on duty, as detected by NSW Police on **19 December 2015**, contrary to section 11(2) of the Act.

263. The Authority makes this finding on the basis of the Complaint Letter dated 5 February 2016 and the following evidence or material provided by the Complainant:

- NSW Police COPS Report number E60685141, which describes observations of the Premises made by Ashfield Police on Saturday 19 December 2015 (comprising part of Annexure 25 to the Complaint Letter);
- NSW Police Statement by Constable Joseph Haklany from Ashfield Police dated 12 January 2016 (Annexure 26 to the Complaint Letter);
- NSW Police Statement by Constable Keelin Woulfe from Ashfield Police dated 21 January 2016 (Annexure 27 to the Complaint Letter);
- NSW Police Statement by Sergeant Melanie Leaity from Ashfield Police dated 2 January 2016 (Annexure 28 to the Complaint Letter);
- NSW Police Statement by Constable Andrew Couch from Ashfield Police dated 12 January 2016 (Annexure 29 to the Complaint Letter);
- NSW Police Statement by Senior Constable Bao Tran from Ashfield Police dated 10 January 2016 (Annexure 30 to the Complaint Letter);
- NSW Police Statement by Constable Jamie Thompson from Ashfield Police dated 11 January 2016 (Annexure 31 to the Complaint Letter);
- NSW Police Statement by Constable Alexei Baskakov from Ashfield Police dated 31 December 2015 (Annexure 32 to the Complaint Letter);
- NSW Police Statement by Constable Brett Ackling from Ashfield Police dated 9 January 2016 (Annexure 33 to the Complaint Letter);
- CCTV Log completed by Senior Constable Melia on 13 January 2016 briefly summarising the events that occurred on the Premises from 8:18pm on 18 December 2015 to 3:05am on 19 December 2015 (Annexure 36 to the Complaint Letter);
- Still photographs taken by Senior Constable Lisa Latu from Ashfield Police, captured from CCTV footage of the Premises for 18 to 19 December 2015 (Annexure 37 to the Complaint Letter);
- Document entitled “Infringement Notice Table – Queen KTV” prepared by Senior Constable Thomas Melia from Ashfield Police (Annexure 51 to the Complaint Letter); and
- NSW Police Statement by Chief Inspector Jennifer Scholz from Ashfield Police dated 22 December 2015 (Annexure 56 to the Complaint Letter).

264. The Authority is satisfied, on the basis of the above findings, that the Licensee, Ms Kathy Sun has failed to comply with conditions on the licence for the Premises. Ground 1 is established.

Findings on Ground 2

265. This Ground is based upon section 139(3)(f) of the Act, which states as follows:

...that the licensee or manager has engaged in conduct or activities that are likely to encourage misuse or abuse of liquor (such as binge drinking or excessive consumption).

266. The Authority notes that this Ground of the Complaint has not been particularised. However, it is apparent that the Complainant has made a number of allegations in respect of this Ground. Following is a summary of these allegations and the Complaint Material that establishes these allegations.

Use of “promotion” girls who encourage patrons to drink more liquor on the Premises

267. The Authority is satisfied, as alleged by the Complainant, that the Queen KTV licensed business either employed or engaged several Asian female workers as “promotion” girls or “hostesses”. The Authority is satisfied that these workers are either employees or agents of the Licensee.

268. The Authority is satisfied that the business published online advertisements for this position on the websites backpackers.com.tv on 13 October 2014 and gumtree.com on 30 December 2015 with the stated responsibilities of the role including “ensuring the customers are having a good time by keeping the party atmosphere alive, keeping rooms clean and tidy and promoting food and drinks” and “drinking alcohol, play games and singing with customers” (Annexure 9 to the Complaint Letter).

269. The Authority is further satisfied, as alleged by the Complainant, that these “promotion” girls did not have RSA certification and were “encouraging patrons to drink more alcohol” while on the Premises.

270. The Authority is satisfied that “promotion” girls were present and working on the Premises on six (6) occasions, on the basis of the Complaint Letter dated 5 February 2016 and the following evidence or material provided by the Complainant:

- NSW Police COPS Report number E271296893, which describes observations of the Premises made by Ashfield Police on Friday 22 August 2014 (comprising part of Annexure 8 to the Complaint Letter);
- NSW Police COPS Report number E187633498, which describes observations of the Premises made by Ashfield Police on Friday 29 August 2014 (comprising part of Annexure 8 to the Complaint Letter);
- NSW Police COPS Report number E57544582, which describes observations of the Premises made by Ashfield Police on Monday 8 September 2014 (comprising part of Annexure 8 to the Complaint Letter);
- NSW Police COPS Report number E55837376, which describes observations of the Premises made by Ashfield Police on Monday 15 September 2014 (comprising part of Annexure 8 to the Complaint Letter);
- NSW Police COPS Report number E56124564, which describes observations of the Premises made by Ashfield Police on Tuesday 30 September 2014 (comprising part of Annexure 8 to the Complaint Letter); and
- NSW Police COPS Report number E199423797, which describes observations of the Premises made by Ashfield Police on Sunday 9 November 2014 (comprising part of Annexure 8 to the Complaint Letter).

Intoxicated persons have been permitted by the Licensee, or employees or agents of the Licensee, to remain on the Premises

271. The Authority is satisfied that intoxicated persons have been permitted by the Licensee, or employees or agents of the Licensee, to remain on the Premises on seven (7) occasions, on the basis of the Complaint Letter dated 5 February 2016 and the following evidence or material provided by the Complainant:

- NSW Police COPS Report number E57544582, which describes observations of the Premises made by Ashfield Police on Monday 8 September 2014 (comprising part of Annexure 8 to the Complaint Letter);
- NSW Police COPS Report number E58060519, which describes observations of the Premises made by Ashfield Police on Saturday 9 May 2015 (comprising part of Annexure 8 to the Complaint Letter);
- NSW Police COPS Report number E59375239, which describes observations of the Premises made by Ashfield Police on Thursday 16 July 2015 (comprising part of Annexure 8 to the Complaint Letter); and
- NSW Police COPS Report number E60205843, which describes observations of the Premises made by Ashfield Police on Sunday 29 November 2015 (comprising part of Annexure 25 to the Complaint Letter).

272. The Authority is further satisfied that intoxicated persons were permitted by the Licensee, or employees or agents of the Licensee, to remain on the Premises on **19 December 2015**, on the basis of the Complaint Letter dated 5 February 2016 and the following evidence or material provided by the Complainant:

- NSW Police COPS Report number E60685141, which describes observations of the Premises made by Ashfield Police on Saturday 19 December 2015 (comprising part of Annexure 25 to the Complaint Letter);
- NSW Police Statement by Constable Joseph Haklany from Ashfield Police dated 12 January 2016 (Annexure 26 to the Complaint Letter);
- NSW Police Statement by Constable Keelin Woulfe from Ashfield Police dated 21 January 2016 (Annexure 27 to the Complaint Letter);
- NSW Police Statement by Sergeant Melanie Leaity from Ashfield Police dated 2 January 2016 (Annexure 28 to the Complaint Letter);
- NSW Police Statement by Constable Andrew Couch from Ashfield Police dated 12 January 2016 (Annexure 29 to the Complaint Letter);
- NSW Police Statement by Senior Constable Bao Tran from Ashfield Police dated 10 January 2016 (Annexure 30 to the Complaint Letter);
- NSW Police Statement by Constable Jamie Thompson from Ashfield Police dated 11 January 2016 (Annexure 31 to the Complaint Letter);
- NSW Police Statement by Constable Alexei Baskakov from Ashfield Police dated 31 December 2015 (Annexure 32 to the Complaint Letter);

- NSW Police Statement by Constable Brett Ackling from Ashfield Police dated 9 January 2016 (Annexure 33 to the Complaint Letter);
- CCTV Log completed by Senior Constable Melia on 13 January 2016 briefly summarising the events that occurred on the Premises from 8:18pm on 18 December 2015 to 3:05am on 19 December 2015 (Annexure 36 to the Complaint Letter);
- Still photographs taken by Senior Constable Lisa Latu from Ashfield Police, captured from CCTV footage of the Premises for 18 to 19 December 2015 (Annexure 37 to the Complaint Letter);
- Document entitled “Infringement Notice Table – Queen KTV” prepared by Senior Constable Thomas Melia from Ashfield Police (Annexure 51 to the Complaint Letter); and
- NSW Police Statement by Chief Inspector Jennifer Scholz from Ashfield Police dated 22 December 2015 (Annexure 56 to the Complaint Letter).

273. The Authority is satisfied that intoxicated persons were permitted by the Licensee, or employees or agents of the Licensee, to remain on the Premises on **27 December 2015**, on the basis of the Complaint Letter dated 5 February 2016 and the following evidence or material provided by the Complainant:

- NSW Police COPS Report number E60472651, which describes observations of the Premises made by Ashfield Police on Sunday 27 December 2015 (comprising part of Annexure 25 to the Complaint Letter);
- NSW Police Statement by Sergeant Melanie Leaity from Ashfield Police dated 2 January 2016 (Annexure 28 to the Complaint Letter);
- NSW Police Statement by Constable Jamie Thompson from Ashfield Police dated 11 January 2016 (Annexure 31 to the Complaint Letter);
- NSW Police Statement by Constable Andrew Couch from Ashfield Police dated 9 January 2016 (Annexure 39 to the Complaint Letter);
- NSW Police Statement by Constable Troy Delany from Ashfield Police dated 10 January 2016 (Annexure 40 to the Complaint Letter); and
- NSW Police Statement by Senior Constable Erin Cunningham from Ashfield Police dated 10 January 2016 (Annexure 41 to the Complaint Letter).

274. The Authority is satisfied that intoxicated persons were permitted by the Licensee, or employees or agents of the Licensee, to remain on the Premises on **10 January 2016**, on the basis of the Complaint Letter dated 5 February 2016 and the following evidence or material provided by the Complainant:

- NSW Police COPS Report number E59782411, which describes observations of the Premises made by Ashfield Police on Sunday 10 January 2016 (comprising part of Annexure 25 to the Complaint Letter);
- NSW Police Statement by Constable Ho Lee from Ashfield Police dated 13 January 2016 (Annexure 46 to the Complaint Letter); and

- NSW Police Statement by Constable Nickala Edge from Ashfield Police dated 11 January 2016 (Annexure 47 to the Complaint Letter).

275. The Authority notes that neither the Licensee nor the Close Associate made any substantive submissions on the merits of the Complaint or provided any evidence that would establish the defence to permitting intoxication on licensed premises pursuant to section 73(5) of the Act.

The bar has been detected by Police to be unattended, with patrons serving themselves liquor from behind the bar or from unopened bottles of alcohol served to them

276. The Authority is satisfied that the main bar area of the Premises was unattended, allowing patrons to serve themselves liquor from behind the bar on eight (8) occasions, on the basis of the Complaint Letter dated 5 February 2016 and the following evidence or material provided by the Complainant:

- NSW Police COPS Report number E57230587, which describes observations of the Premises made by Ashfield Police on Sunday **27 July 2014** (comprising part of Annexure 8 to the Complaint Letter);
- NSW Police COPS Report number E271296893, which describes observations of the Premises made by Ashfield Police on Friday **22 August 2014** (comprising part of Annexure 8 to the Complaint Letter);
- NSW Police COPS Report number E187633498, which describes observations of the Premises made by Ashfield Police on Friday **29 August 2014** (comprising part of Annexure 8 to the Complaint Letter);
- NSW Police COPS Report number E57544582, which describes observations of the Premises made by Ashfield Police on Monday **8 September 2014** (comprising part of Annexure 8 to the Complaint Letter);
- NSW Police COPS Report number E56124564, which describes observations of the Premises made by Ashfield Police on Tuesday **30 September 2014** (comprising part of Annexure 8 to the Complaint Letter);
- NSW Police COPS Report number E199423797, which describes observations of the Premises made by Ashfield Police on Sunday **9 November 2014** (comprising part of Annexure 8 to the Complaint Letter) and when the Business Manager, Ms Dania Xiao stated that “customers pour their own drinks”; and
- NSW Police COPS Report number E60205843, which describes observations of the Premises made by Ashfield Police on Sunday **29 November 2015** (comprising part of Annexure 25 to the Complaint Letter).

277. The Authority is satisfied that the main bar area of the Premises was unattended, allowing patrons to serve themselves liquor from behind the bar on **19 December 2015**. CCTV footage for the Premises also showed service of unopened bottles of *Corona* beer in the karaoke rooms. The Authority makes these findings on the basis of the Complaint Letter dated 5 February 2016 and the following evidence or material provided by the Complainant:

- NSW Police COPS Report number E60685141, which describes observations of the Premises made by Ashfield Police on Saturday 19 December 2015 (comprising part of Annexure 25 to the Complaint Letter);

- NSW Police Statement by Constable Joseph Haklany from Ashfield Police dated 12 January 2016 (Annexure 26 to the Complaint Letter);
- NSW Police Statement by Constable Keelin Woulfe from Ashfield Police dated 21 January 2016 (Annexure 27 to the Complaint Letter);
- NSW Police Statement by Sergeant Melanie Leaity from Ashfield Police dated 2 January 2016 (Annexure 28 to the Complaint Letter);
- NSW Police Statement by Constable Andrew Couch from Ashfield Police dated 12 January 2016 (Annexure 29 to the Complaint Letter);
- NSW Police Statement by Senior Constable Bao Tran from Ashfield Police dated 10 January 2016 (Annexure 30 to the Complaint Letter);
- NSW Police Statement by Constable Jamie Thompson from Ashfield Police dated 11 January 2016 (Annexure 31 to the Complaint Letter);
- NSW Police Statement by Constable Alexei Baskakov from Ashfield Police dated 31 December 2015 (Annexure 32 to the Complaint Letter);
- NSW Police Statement by Constable Brett Ackling from Ashfield Police dated 9 January 2016 (Annexure 33 to the Complaint Letter);
- CCTV Log completed by Senior Constable Melia on 13 January 2016 briefly summarising the events that occurred on the Premises from 8:18pm on 18 December 2015 to 3:05am on 19 December 2015 (Annexure 36 to the Complaint Letter);
- Still photographs taken by Senior Constable Lisa Latu from Ashfield Police, captured from CCTV footage of the Premises for 18 to 19 December 2015 (Annexure 37 to the Complaint Letter);
- Document entitled “Infringement Notice Table – Queen KTV” prepared by Senior Constable Thomas Melia from Ashfield Police (Annexure 51 to the Complaint Letter); and
- NSW Police Statement by Chief Inspector Jennifer Scholz from Ashfield Police dated 22 December 2015 (Annexure 56 to the Complaint Letter).

278. The use by the licensed business of “promotion” girls, who do not have RSA certification, to encourage patrons to consume more liquor on the Premises on at least six (6) occasions satisfies the Authority that the Licensee, Ms Kathy Sun, has engaged in conduct or activities that are likely to encourage misuse or abuse of alcohol (such as binge drinking or excessive consumption).

279. The Authority is satisfied that intoxicated persons have been permitted by the Licensee, or employees or agents of the Licensee, to remain on the Premises on at least seven (7) occasions. This satisfies the Authority that the Licensee, Ms Kathy Sun, has engaged in conduct or activities that are likely to encourage misuse or abuse of alcohol (such as binge drinking or excessive consumption).

280. The Authority is further satisfied that the Licensee, Ms Kathy Sun, has engaged in conduct or activities that are likely to encourage misuse or abuse of alcohol (such as

binge drinking or excessive consumption) by reason that the bar has been detected by Police to be unattended, with patrons serving liquor to themselves from behind the bar or from unopened bottles of alcohol made available to them by the Licensee or employees or agents of the Licensee on at least eight (8) occasions.

- 281.** The Authority is satisfied, on the basis of the above findings, that Ground 2 of the Complaint is established.

Findings on Ground 3

- 282.** This Ground is based upon section 139(3)(i) of the Act, which states as follows:

...that the licensee is not a fit and proper person to be the holder of a licence (whether for the same reason as that set out in section 45(5) or otherwise) or the manager is not a fit and proper person to be the manager of the licensed premises (whether for the same reason as that set out in section 68(4A) or otherwise).

Fitness and Propriety at General Law

- 283.** It is well established at common law for the purposes of licensing that to be “fit and proper” a person must have a requisite knowledge of the Act (or Acts) under which he or she is to be licensed and the obligations and duties imposed thereby: *Ex parte Meagher* (1919) 36 WN 175 and *Sakellis v Police* (1968) 88 WN (Pt 1) (NSW) 541. Being fit and proper normally comprises the three characteristics of “honesty, knowledge and ability”: *Hughes & Vale Pty Ltd v NSW* (No 2) (1955) 93 CLR 127.

- 284.** Where a person has been convicted of offences, the decision maker must consider the circumstances of those convictions and the general reputation of the person apart from the convictions and the likelihood of repetition – *Claraham v Register of Motor Vehicle Dealers in the ACT* (1994) 17 FLR 44.

- 285.** In *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321, the High Court of Australia has held that:

The expression ‘fit and proper person’ standing alone, carries no precise meaning. It takes its meaning from its context, from the activities in which the person is or will be engaged and the ends to be served by those activities. The concept of ‘fit and proper’ cannot be entirely divorced from the conduct of the person who is or will be engaging in those activities. However, depending on the nature of those activities, the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed that it will not occur, or whether the general community will have confidence that it will not occur. The list is not exhaustive but it does indicate that, in certain contexts, character (because it provides an indication of likely future conduct) or reputation (because it provides an indication of public perception as to likely future conduct) may be sufficient to ground a finding that a person is not fit and proper to undertake the activities in question.

- 286.** The Authority notes that Ground 1 of the Complaint has been established and that the Licensee, Ms Kathy Sun, failed to comply with a number of conditions on the licence regulating, *inter alia*, the maximum patron capacity of the Premises; the service of alcohol to patrons in unopened containers; the prohibition on staff of the licensed business consuming alcohol whilst on duty; the prohibition of minors on the Premises; the conduct of security guards on the Premises and the operation of the CCTV system; and the requirement that all staff of the business display name tags whilst on duty.

- 287.** The Authority further notes that Ground 2 of the Complaint has been established and that the Licensee, Ms Kathy Sun, engaged in conduct or activities that are likely to

encourage the misuse or abuse of alcohol, including the use of “promotion” girls who encourage patrons to drink more liquor on the Premises; the permission of intoxicated persons on the Premises; and the lack of supervision over the bar, allowing patrons to serve themselves liquor from behind the bar or from unopened bottles of alcohol served to them by staff of the licensed business.

- 288.** The Authority notes that pursuant to section 91 of the Act, a licensee of a licensed premises remains responsible at all times for the personal supervision and management of the conduct of the business of the licensed premises under the licence.
- 289.** The Authority further notes the requirement of section 92(1)(a) of the Act, that a licensee must not allow any person to have the personal supervision and management of the conduct of the business under the licence for a longer continuous period than 6 weeks except with the approval of the Authority.
- 290.** The Authority is satisfied, on the basis of the COPS Reports provided as part of the Complaint Material, that the Licensee, Ms Kathy Sun, was present on the Premises during only one of the business inspections referred to by the Complainant, being on 8 January 2016 (COPS Report number E59303909, which comprises part of Annexure 25 to the Complaint Letter).
- 291.** The Authority is further satisfied, as alleged by the Complainant, that as at 27 July 2014 the Licensee “had not visited the Premises for the past 2 months” (COPS Report number E57230587, which comprises part of Annexure 8 to the Complaint Letter).
- 292.** The Authority is satisfied, on the basis of the NSW Police *iAsk* checks of the immigration status and international movements of Ms Kathy Sun from 5 December 2014 to 5 January 2016 (Annexure 55 to the Complaint Letter), that the Licensee has travelled overseas for a longer continuous period than 6 weeks whilst holding the licence of the Premises. The Licensee departed from Sydney on 5 December 2014 and returned on 21 January 2015. The Authority is satisfied that the Licensee did not obtain approval from the Authority to allow another person, such as the Close Associate, to have personal supervision and management of the conduct of the business under the licence for a longer continuous period than 6 weeks.
- 293.** The Authority is further satisfied, on the basis of the Licensee’s prolonged absence from and lack of apparent personal supervision or control of the Premises, that the Licensee has had little meaningful involvement in or control over the licensed business. This factor, considered cumulatively with the Authority’s findings on Ground 1 and Ground 2 of the Complaint, satisfies the Authority that the Licensee, Ms Kathy Sun, is not a fit and proper person to be the holder of a licence. The Authority’s findings on Ground 1 or Ground 2 alone would be sufficient to support this finding.
- 294.** The Authority notes that there are no positive submissions before the Authority going to the common law factors of honesty, knowledge or ability, nor has the Licensee provided submissions or evidence addressing the non-exhaustive statutory considerations in section 45(5A) going to her reputation and competence.
- 295.** Ground 3 of the Complaint is established.

Findings on Ground 4

- 296.** This Ground is based upon section 139(3)(j) of the Act, which states as follows:

...that the close associate is not a fit and proper person to be a close associate of a licensee.

- 297.** The Authority is satisfied, as alleged by the Complainant, that Ms Dania Xiao is a close associate of the Licensee within the meaning of section 5(1) of the GALA Act, that is incorporated into the *Liquor Act* by section 4 of that Act.
- 298.** The Authority is satisfied that Ms Xiao is a director and the nominated secretary of the corporate Business Owner, MY FANTASY Pty Ltd. The Authority makes this finding on the basis of the information provided in the Complaint Letter dated 5 February 2016 and the printouts of a Police check through ASIC records for MY FANTASY Pty Ltd also dated 19 January 2016 (Annexure 54 to the Complaint Letter).
- 299.** The Complainant has made a number of allegations in respect of this Ground that are supported by evidence or other material. The following is a summary of these allegations and the evidence or material establishing these allegations.

Permission of the possession and/or use of prohibited drugs on the Premises

- 300.** The Authority is satisfied that the Close Associate and Business Manager, Ms Dania Xiao, in her capacity as an employee or agent of a licensee or a person (other than the licensee) who was in charge of licensed premises, permitted the possession or use on the licensed premises of a substance or substances suspected of being a prohibited drug, contrary to section 74(4) of the Act, on six (6) occasions – being 8 November 2014, 29 November 2015, 19 December 2015, 27 December 2015, 2 January 2016 and 10 January 2016.
- 301.** While the Act does not define what “permission” by a licensee or agent of a licensee entails for the purposes of section 74 of the Act, the following guidance may be obtained from the common law:

*A person cannot permit a thing to be done unless it is done with his or her knowledge (**Somerset v Wade** [1894] 1 QB 574; [1891-4] All ER Rep 1228) but knowledge includes the state of mind of an individual who shuts their eyes to the obvious and allows their servant to do something in the circumstances where a contravention is likely, not caring whether a contravention takes place or not (**Goldsmith v Deakin** (1933) 150 LT 157; [1933] All ER Rep 102; **Prosser v Richings** [1936] 2 All ER 1627; **Churchill v Norris** (1938) 158 LT 255).*

*If the person delegates authority to a servant or agent, then they are liable if the person in charge knows, connives at or wilfully shuts their eyes to the illegal act, or but for gross negligence ought to have known of the illegal act: **Bosley v Davies** (1875) QB 84; **Redgate v Haynes** (1876) 1 QB 89; **Emary v Nolloth** [1903] 2 KB 264; [1900-3] All ER Rep 606. In **Allen v Whitehead** [1930] 1 KB 211; [1929] All ER Rep 13, it was held that inasmuch as the knowledge of the manager must be imputed to the employer.*

*In **Adelaide City Corp v Australasian Performing Right Assoc Ltd** (1928) 40 CLR 481; 34 ALR 127; 2 ALJR 35, Knox CJ said at 487:*

Indifference or omission is “permission” within the plain meaning of that word where the party charged (1) knows or has reason to anticipate or suspect that the particular act is to be or is likely to be done, (2) has the power to prevent, (3) makes the fault in some duty of control or interference arising out of the circumstances of the case, and (4) thereby failed to prevent it. Knowledge of something likely to be done in the future may suffice, at least if that knowledge rises to the level of “shutting one’s eyes to the obvious”.

In Chappel v A Ross & Sons Pty Ltd [1969] VR 376, Winneke CJ and Smith J said at 382:

[Permitting] is not only a right or capacity on the part of the permittor to prevent the contravention, but also a state of mind amounting to consent to, or acquiescence in, the contravention. And consent or acquiescence must include an element of knowledge or foresight. Actual knowledge of the contravention is being or will be committed would plainly be sufficient. Likewise, we think a belief that a contravention is highly likely or probable would suffice. The weight of judicial authority, in our opinion, supports this view. For these reasons, “permission”, in our opinion, cannot be equated with a careless or negligent failure to prevent a contravention.

302. A question of statutory interpretation arises as to whether the words “employee” and “agent” as they appear in subsections 74(3)(b) and 74(4) of the Act simply mean an employee or an agent or whether they should be taken to mean “employee in charge of the licensed premises” or “agent in charge of the licensed premises”.
303. While the issue is not without doubt, it is the Authority’s previously stated view that an employee or agent does not also have to be in charge of the licensed premises for the offence to be committed.
304. In the Authority’s view, the purpose of this provision is to capture the conduct of persons who are not in charge of licensed premises and permit the relevant conduct to occur. The use of “agent” addresses the prospect of an independent contractor, such as a security guard, engaging in the proscribed conduct while not actually in charge of the licensed premises.
305. The Authority is satisfied, on the balance of probabilities, that the Business Manager and Close Associate, Ms Dania Xiao, has more likely than not *permitted* (in the relevant sense) the possession and/or use of substances suspected of being a prohibited drug, being cocaine, methylamphetamine, and/or GHB on the Premises contrary to section 74(4) of the Act.
306. The Authority is satisfied that permission took the form of the Close Associate likely turning a blind eye to the prevalence of the possession or use of substances suspected to be prohibited drugs on the Premises and/or taking no meaningful measures to control this, notwithstanding the repeated detection of suspected prohibited drugs and suspected prohibited drug affected patrons by Police.
307. The Authority is satisfied that the Licensee was not recorded as present on the Premises on any of these occasions. A persistent feature of the evidence or material provided by the Complainant is that the Licensee was absent from the Premises, which of itself raises serious concerns as to whether the Licensee has managed the risks associated with the operation of a late trading licensed business whose primary purpose is the provision of live entertainment.
308. The Authority notes that the evidence or material before the Authority as to prohibited drugs on the Premises in some cases foreshadows that testing of the substances suspected by Police of being prohibited drugs that were found on the Premises would be conducted, but the outcome of such testing has not been provided in the Complaint Material.
309. However, giving some weight to the experience of Police in identifying the appearance of substances reasonably *suspected* to be cocaine, methylamphetamine and GHB and their experience in dealing with persons exhibiting symptoms and behaviours associated with

use of those drugs, the Authority is satisfied that the *uncontested* allegations of the detection by the Complainant of substances suspected to be those prohibited drugs and patrons exhibiting symptoms of prohibited drug use (as the case may be) on or near the Premises have been established.

310. The Authority notes that neither the Licensee nor the Close Associate made any substantive submissions on the merits of the Complaint or provided any evidence that would establish a defence to the permission of the possession and/or use of prohibited drugs on licensed premises pursuant to section 74(5) of the Act.
311. The Authority is satisfied that on **8 November 2014**, Police detected evidence of possession, on the Premises, of substances suspected to be cocaine and methylamphetamine. The Authority notes that, when questioned, the Business Manager, two employees of the licensed business and an alleged customer who were on the Premises at the time of this incident denied any knowledge of drug possession or use on the Premises.
312. The Authority is satisfied that cocaine was detected at a rear entrance to the Premises but methylamphetamine was found *inside a desk at reception* – the latter strongly supporting an inference of the permission by the Close Associate of prohibited drugs being kept on the Premises.
313. The Authority makes this finding on the basis of the Complaint Letter dated 5 February 2016 and NSW Police COPS Report number E56778268, which describes observations of the Premises made by Ashfield Police on Saturday 8 November 2014 (comprising part of Annexure 8 to the Complaint Letter).
314. The Authority is satisfied that on **29 November 2015**, a patron had consumed GHB on the Premises and was detected in the throes of a suspected GHB overdose just outside the Premises.
315. The Authority makes this finding on the basis of the Complaint Letter dated 5 February 2016 and NSW Police COPS Report number E60205843, which describes observations of the Premises made by Ashfield Police on Sunday 29 November 2015 (comprising part of Annexure 25 to the Complaint Letter). The Authority notes that there is no evidence before the Authority as to whether the Business Manager or staff or agents of the Licensee were questioned in relation to this suspected drug overdose, or whether the Business Manager or staff or agents of the Licensee had been present in the same areas as the drug affected patron at the time of this incident.
316. The Authority is satisfied that on **19 December 2015**, Police detected evidence of the possession and/or use, in various areas of the Premises, of substances suspected to be cocaine, GHB and methylamphetamine.
317. The Authority notes that the Business Manager and security guards, being employees or agents of the Licensee, again denied any knowledge of drug possession or use inside the licensed premises in relation to this incident.
318. However, the Authority is satisfied that in the bar area of the Premises, a male patron supplied a suspected prohibited drug (shots laced with GHB) to other patrons in front of security personnel and staff, and this male patron also supplied a staff member with a suspected prohibited drug (a shot laced with GHB) which the staff member consumed in front of security personnel.

- 319.** The Authority is satisfied that in a separate room on the Premises, on that same date, another patron was detected as consuming substances suspected to be cocaine in front of persons who were likely to be either employees or agents of the Licensee.
- 320.** The Authority is further satisfied that evidence of substances suspected to be cocaine, GHB and methylamphetamine and various paraphernalia associated with the use of those substances were detected in the function room area of the Premises.
- 321.** The Authority makes these findings on the basis of the Complaint Letter dated 5 February 2016 and the following evidence or material provided by the Complainant:
- NSW Police COPS Report number E60685141, which describes observations of the Premises made by Ashfield Police on Saturday 19 December 2015 (comprising part of Annexure 25 to the Complaint Letter);
 - NSW Police Statement by Constable Joseph Haklany from Ashfield Police dated 12 January 2016 (Annexure 26 to the Complaint Letter);
 - NSW Police Statement by Constable Keelin Woulfe from Ashfield Police dated 21 January 2016 (Annexure 27 to the Complaint Letter);
 - NSW Police Statement by Sergeant Melanie Leaity from Ashfield Police dated 2 January 2016 (Annexure 28 to the Complaint Letter);
 - NSW Police Statement by Constable Andrew Couch from Ashfield Police dated 12 January 2016 (Annexure 29 to the Complaint Letter);
 - NSW Police Statement by Senior Constable Bao Tran from Ashfield Police dated 10 January 2016 (Annexure 30 to the Complaint Letter);
 - NSW Police Statement by Constable Jamie Thompson from Ashfield Police dated 11 January 2016 (Annexure 31 to the Complaint Letter);
 - NSW Police Statement by Constable Alexei Baskakov from Ashfield Police dated 31 December 2015 (Annexure 32 to the Complaint Letter);
 - NSW Police Statement by Constable Brett Ackling from Ashfield Police dated 9 January 2016 (Annexure 33 to the Complaint Letter);
 - CCTV Log completed by Senior Constable Melia on 13 January 2016 briefly summarising the events that occurred on the Premises from 8:18pm on 18 December 2015 to 3:05am on 19 December 2015 (Annexure 36 to the Complaint Letter);
 - Still photographs taken by Senior Constable Lisa Latu from Ashfield Police, captured from CCTV footage of the Premises for 18 to 19 December 2015 (Annexure 37 to the Complaint Letter); and
 - NSW Police Statement by Chief Inspector Jennifer Scholz from Ashfield Police dated 22 December 2015 (Annexure 56 to the Complaint Letter).
- 322.** The Authority is satisfied that on **27 December 2015**, Police detected evidence of the possession and/or use of substances suspected to be cocaine and methylamphetamine in karaoke rooms on the Premises.

323. The Authority makes this finding on the basis of the Complaint Letter dated 5 February 2016 and the following evidence or material provided by the Complainant:

- NSW Police COPS Report number E60472651, which describes observations of the Premises made by Ashfield Police on Sunday 27 December 2015 (comprising part of Annexure 25 to the Complaint Letter);
- NSW Police Statement by Sergeant Melanie Leaity from Ashfield Police dated 2 January 2016 (Annexure 28 to the Complaint Letter);
- NSW Police Statement by Constable Jamie Thompson from Ashfield Police dated 11 January 2016 (Annexure 31 to the Complaint Letter);
- NSW Police Statement by Constable Andrew Couch from Ashfield Police dated 9 January 2016 (Annexure 39 to the Complaint Letter);
- NSW Police Statement by Constable Troy Delany from Ashfield Police dated 10 January 2016 (Annexure 40 to the Complaint Letter); and
- NSW Police Statement by Senior Constable Erin Cunningham from Ashfield Police dated 10 January 2016 (Annexure 41 to the Complaint Letter).

324. There is no direct evidence before the Authority as to whether the Business Manager or staff or agents of the Licensee were questioned in relation to the detection of prohibited drugs on this particular occasion, or whether the Business Manager or staff or agents of the Licensee had been present in the same areas of the Premises as where the drugs located on the Premises had been used on those occasions.

325. The Authority is satisfied that on **2 January 2016**, Police detected an unknown white solid powder substance suspected of being a prohibited drug in a karaoke room on the Premises [the Authority notes that Police do not specify what drug they suspect the white solid powder substance of being]. The Authority notes that the Business Manager denied any knowledge of drug possession or use inside the Premises in relation to this incident.

326. The Authority makes these findings on the basis of the Complaint Letter dated 5 February 2016 and the following evidence or material provided by the Complainant:

- NSW Police COPS Report number E59004030, which describes observations of the Premises made by Ashfield Police on Saturday 2 January 2016 (comprising part of Annexure 25 to the Complaint Letter);
- NSW Police Statement by Constable Ho Lee from Ashfield Police dated 13 January 2016 (Annexure 43 to the Complaint Letter);
- NSW Police Statement by Constable Anthony Cincotta from Ashfield Police dated 9 January 2016 (Annexure 44 to the Complaint Letter); and
- NSW Police Statement by Sergeant Katie Gittoes from Ashfield Police dated 11 January 2016 (Annexure 44 to the Complaint Letter).

327. There is no direct evidence before the Authority as to whether the Business Manager or staff or agents of the Licensee had been present in the same areas of the Premises where the drugs were located on the Premises on this particular occasion.

- 328.** The Authority is satisfied that on **10 January 2016**, Police detected evidence of possession and/or use of substances suspected to be cocaine and GHB in the VIP Lounge area and karaoke room “999” on the Premises. The Authority notes that the Business Manager denied any knowledge of drug possession or use inside the Premises in relation to this incident.
- 329.** The Authority makes these findings on the basis of the Complaint Letter dated 5 February 2016 and the following evidence or material provided by the Complainant:
- NSW Police COPS Report number E59782411, which describes observations of the Premises made by Ashfield Police on Sunday 10 January 2016 (comprising part of Annexure 25 to the Complaint Letter);
 - NSW Police Statement by Constable Ho Lee from Ashfield Police dated 13 January 2016 (Annexure 46 to the Complaint Letter); and
 - NSW Police Statement by Constable Nickala Edye from Ashfield Police dated 11 January 2016 (Annexure 47 to the Complaint Letter).
- 330.** There is no direct evidence that the Business Manager or staff or agents of the Licensee had been present in the same areas of the Premises as where the drugs located on the Premises were used on this particular occasion.

Front entrance to the Premises locked and lights off while the Premises was trading and customers were inside

- 331.** The Authority is satisfied, as alleged by the Complainant, that the front entrance to the Premises was locked and the lights were off while the Premises was trading and customers were inside. The Authority is satisfied that this occurred on six (6) occasions when the Close Associate was responsible for the licensed business in an apparent attempt to deceive Police into thinking that the Premises was closed to avoid a Police presence, especially on Friday and Saturday nights.
- 332.** The Authority makes these findings on the basis of the Complaint Letter dated 5 February 2016 and the following evidence or material provided by the Complainant:
- NSW Police COPS Report number E55105814, which describes observations of the Premises made by Ashfield Police at 3:00am on Tuesday 29 July 2014 (comprising part of Annexure 8 to the Complaint Letter);
 - NSW Police COPS Report number E56266470, which describes observations of the Premises made by Ashfield Police at 11:30pm on Saturday 10 January 2015 (comprising part of Annexure 8 to the Complaint Letter);
 - NSW Police COPS Report number E59909084, which describes observations of the Premises made by Ashfield Police at 12:20am on Saturday 28 March 2015 (comprising part of Annexure 8 to the Complaint Letter);
 - NSW Police COPS Report number E58060519, which describes observations of the Premises made by Ashfield Police at 2:55am on Saturday 9 May 2015 (comprising part of Annexure 8 to the Complaint Letter); and
 - NSW Police COPS Report number E60238889, which describes observations of the Premises made by Ashfield Police at 2:17am on Saturday 23 May 2015 (comprising part of Annexure 8 to the Complaint Letter).

333. The Authority is further satisfied that the front entrance to the Premises was locked and the lights were off while the Premises was trading and customers were inside on **27 December 2015**, when the Close Associate was responsible for the licensed business. The Authority makes this finding on the basis of the Complaint Letter dated 5 February 2016 and the following evidence or material provided by the Complainant:

- NSW Police COPS Report number E60472651, which describes observations of the Premises made by Ashfield Police on Sunday 27 December 2015 (comprising part of Annexure 25 to the Complaint Letter);
- NSW Police Statement by Sergeant Melanie Leaity from Ashfield Police dated 2 January 2016 (Annexure 28 to the Complaint Letter);
- NSW Police Statement by Constable Jamie Thompson from Ashfield Police dated 11 January 2016 (Annexure 31 to the Complaint Letter);
- NSW Police Statement by Constable Andrew Couch from Ashfield Police dated 9 January 2016 (Annexure 39 to the Complaint Letter);
- NSW Police Statement by Constable Troy Delany from Ashfield Police dated 10 January 2016 (Annexure 40 to the Complaint Letter); and
- NSW Police Statement by Senior Constable Erin Cunningham from Ashfield Police dated 10 January 2016 (Annexure 41 to the Complaint Letter).

334. The Authority notes with concern that on four of the above occasions (COPS Report numbers E55105814, E58060519, E60238889 and E60472651) the Premises was trading outside of its authorised licensed trading hours, in contravention of section 9(2) of the Act, while the Close Associate was responsible for the licensed business.

Unwillingness of the Close Associate to engage with Police

335. The Authority is satisfied, as alleged by the Complainant, that there is some evidence that the Close Associate, while she was responsible for the licensed business, has demonstrated an unwillingness to engage with Police and this was apparent by her vague responses to Police enquiries and her attempts to warn patrons of Police presence.

336. The Authority makes these findings on the basis of the Complaint Letter dated 5 February 2016 and the following evidence or material provided by the Complainant:

- NSW Police COPS Report number E271296893, which describes observations of the Premises made by Ashfield Police on Friday 22 August 2014 (comprising part of Annexure 8 to the Complaint Letter);
- NSW Police COPS Report number E55837376, which describes observations of the Premises made by Ashfield Police on Monday 15 September 2014 (comprising part of Annexure 8 to the Complaint Letter); and
- NSW Police COPS Report number E60472651, which describes observations of the Premises made by Ashfield Police on Sunday 27 December 2015 (comprising part of Annexure 25 to the Complaint Letter).

- 337.** The Authority is satisfied that the front entrance to the Premises was locked and the lights were off while the Premises was trading and customers were inside on six (6) occasions while the Close Associate was responsible for the licensed business. These findings are adverse to an assessment of whether Ms Xiao has demonstrated the degree of honesty and diligence that the Authority would expect of a close associate of a liquor licensee.
- 338.** The Authority is further satisfied that the Close Associate has demonstrated an unwillingness to engage with Police and has on several occasions warned patrons of Police presence in an apparent attempt to conceal illegal activity on the Premises, while she was responsible for the licensed business. These findings are adverse to an assessment of whether Ms Xiao has demonstrated the degree of honesty and ability that the Authority would expect of a close associate of a liquor licensee.
- 339.** The Authority's finding that Ms Dania Xiao permitted the possession and/or use of prohibited drugs on the Premises on six (6) occasions while she was responsible for the licensed business further satisfies the Authority that the Close Associate is not a fit and proper person to be the close associate of a liquor licensee.
- 340.** The Authority also notes that the Close Associate has not provided any positive submissions or evidence to the Authority addressing the common law factors of honesty, knowledge or ability as a close associate of a licensed business.
- 341.** While Grounds 1 and 2 of the Complaint are directed to the Licensee only, the Authority is satisfied that the evidence of Police detecting patrons who had been intoxicated on the Premises and the many instances of Police detecting the licensed business operating in contravention of conditions of the licence, are matters that also reflect adversely upon the ability of the Close Associate in that they occurred while she was responsible for the Premises in an operational sense.
- 342.** The Authority is satisfied, on the basis of the above findings, that the Close Associate is not a fit and proper person to be the close associate of a liquor licensee. Ground 4 of the Complaint is established.

Findings on Ground 5

- 343.** This Ground is based upon section 139(3)(s) of the Act, which states as follows:

...that the licence has not been exercised in the public interest.

- 344.** While this Ground of the Complaint was not particularly well structured or particularised the Complainant refers to a number of allegations which, it is said, demonstrate that the licence was exercised contrary to the public interest. They include a lack of a management plan with regard to responsible service of alcohol procedures at the Premises; the use of prohibited drugs on the Premises; suspected overdoses by patrons from using prohibited drugs on the Premises and also, it is submitted, numerous detected contraventions of the *Smoke-free Environment Act 2000*.
- 345.** The Authority considers that the *relevant* "public interest" in respect of the *Liquor Act* is informed by the statutory objects and considerations provided by section 3 of the Act. Other provisions of the Act, including but not limited to offence provisions concerning the permission of intoxication and prohibited drugs on licensed premises, are also relevant to discerning conduct that is contrary to the public interest.

- 346.** The Authority is satisfied, as alleged by the Complainant, that the contravention of licence conditions directed to the responsible service of alcohol on numerous occasions and the evidence of intoxicated persons permitted to remain on the Premises are matters that also go to the public interest in the maintenance of the regulatory scheme provided by the Act.
- 347.** The Authority is satisfied, on the basis of its findings on the numerous breaches of licence conditions and conduct or activities likely to encourage misuse or abuse of liquor set out in relation to Ground 1 and Ground 2, along with an apparent substantial failure of business planning to adequately manage the responsible service of alcohol on the Premises, that the licence has not been exercised in the public interest.
- 348.** Ground 5 of the Complaint is established.

Findings on Ground 6

- 349.** This Ground is based upon section 139(3)(t) of the Act, which states as follows:

...that the continuation of the licence is not in the public interest.

- 350.** The Authority is satisfied, on the basis of its findings on Grounds 1 to 5 above, that the continuation of the licence is not in the public interest. Ground 6 of the Complaint is established.

DECISION ON DISCIPLINARY ACTION

- 351.** The purpose of disciplinary action is protective rather than punitive and when considering disciplinary action, the Authority is concerned with the prevention of the occurrence of these offences against the Act by reducing the risk posed by the individual in question, for the protection of the public.
- 352.** The Authority has considered the Complaint and all of the material before it, including the submissions from the Business Owner foreshadowing the sale of the business to an arm's length purchaser.
- 353.** The Authority is satisfied, on the basis of the material before it and its findings on Grounds 5 and 6 of the Complaint, that the operation of this licensed business has been contrary to the public interest and that the licence for the Premises should be cancelled. Notwithstanding that the Premises is currently the subject of a long term closure order for a period of 6 months from 15 April 2016 the number of adverse incidents including intoxication on premises, prohibited drug use and trading outside of licensed hours that have been established, the culture and behaviour of patrons attracted to this licensed karaoke venue and the considerable Police resources expended in monitoring and responding to incidents on the Premises satisfies the Authority that it is not in the public interest for the Premises to continue to be licensed.
- 354.** The submissions from the Business Owner alluding to a proposed sale of business have not been confirmed and there is insufficient evidence for the Authority to have any confidence that any new licensed business occupying the Premises and operating it as a karaoke venue would not encounter similar problems to those raised in this Complaint, given the culture of patrons attracted to the Premises over a prolonged period of time.
- 355.** The Authority is satisfied, on the basis of the material before it and its findings on Grounds 1 to 3 of the Complaint, that the Licensee, Ms Kathy Sun, is not a fit and proper person to be the holder of a licence and that, pursuant to section 141(2)(f) of the Act, she

should be disqualified from holding a licence, being an approved manager of a licensed premises or the close associate of a licensed business, for life.

- 356.** The Authority has taken this disciplinary action, having assessed the multiple instances of non-compliance with licence conditions, the Licensee's apparent prolonged absence from the Premises, and her lack of knowledge with regard to important requirements of the gaming and liquor legislation, the inability of Police on occasions to access the Premises and the inability of the Authority to even deliver notices to the licensed business through Australia Post. The Authority notes that Ms Sun failed to address the merits of the Complaint and did not provide any submissions on disciplinary action in response to the Authority's findings on the Grounds of Complaint.
- 357.** The Authority is satisfied, on the basis of the material before it and its findings on Ground 4 of the Complaint, that the Close Associate, Ms Dania Xiao, is not a fit and proper person to be the close associate of a licence and that, pursuant to section 141(2)(h) of the Act, she should be disqualified from being the manager of a licensed business, or from holding a licence or being the close associate of a licensed business, for a period of 10 years.
- 358.** The Authority has taken this disciplinary action, having assessed the multiple instances of regulatory non-compliance that have been found to have occurred while she was acting as business manager of the Premises, and the inability of Police on occasions to access the Premises and the inability of the Authority to even deliver notices to the licensed business through Australia Post. The Authority notes that Ms Xiao failed to provide any substantive submissions on the merits of the Complaint and did not provide any submissions on disciplinary action in response to the Authority's findings on the Grounds of Complaint.

ORDER

- 359.** The Authority makes the following orders:
- (i) Pursuant to section 141(2)(a) of the Act, the Authority cancels liquor licence number LIQO660011559 in respect of the business formerly trading as "Queen KTV – Ashfield", located at Level 1, 283-285 Liverpool Road, Ashfield NSW 2131 with effect from the date of this decision.
 - (ii) Pursuant to section 141(2)(f) of the Act, the Authority orders that the Licensee, Ms Kathy Sun, be disqualified from holding a licence or from being the manager of licensed premises or the close associate of a licensee, for life.
 - (iii) Pursuant to section 141(2)(h) of the Act, the Authority orders that the Business Manager, Ms Dania Xiao, be disqualified from being the manager of licensed premises or from holding a licence or being the close associate of a licensee, for a period of 10 years from the date of this decision.

REVIEW RIGHTS

360. Pursuant to section 144 of the Act, an application for review of this decision may be made to the New South Wales Civil and Administrative Tribunal (**NCAT**) by the Complainant or any person against whom any disciplinary action is taken, no later than 28 days after those parties receive notification of this decision.

361. For more information, please visit the NCAT website at www.ncat.nsw.gov.au or contact the NCAT Registry at Level 9, John Maddison Tower, 86-90 Goulburn Street, Sydney.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Philip Crawford', written in a cursive style.

Philip Crawford
Chairperson

DATED 18 August 2016