



NCAT
NSW Civil &
Administrative Tribunal
Administrative & Equal Opportunity Division

Quote the number below for all enquiries
Case number 2016/00378526
Previous case number 1610774

Independent Liquor & Gaming Authority
c/- Crown Solicitor's Office
Attn: Christopher Frommer
christopher.frommer@cso.nsw.gov.au

ORDER

Case title Murat Kilic v Independent Liquor & Gaming Authority
Application under Liquor Act 2007

On 3 May 2017 the following orders (and/or directions) were made:

- 1 The Tribunal notes that the parties have reached an agreed settlement, the terms of which are in writing and have been signed by or on behalf of the parties and lodged with the Tribunal. The Tribunal is satisfied that it would have the power to make the following orders which are in the terms of the agreed settlement or in terms that are consistent with the terms of the agreed settlement.
- 2 Pursuant to s.59 (1) of the Civil and Administrative Tribunal Act 2013 and s.63(3)(c) of the Administrative Decisions Review Act 1997, that:
 - a) the application is allowed; and
 - b) the decision made by the Independent and Gaming Authority on 12 October 2016 in relation to Mr Murat Kilic is set aside.

P Durack SC, Senior Member

Issued: 4 May 2017



Section 62 (2) of the Civil and Administrative Tribunal Act 2013 provides the following: Any party may, within 28 days of being given notice of a decision, request the Tribunal provide a written statement of reasons for

John Maddison Tower Level 10 86 - 90 Goulburn Street SYDNEY NSW 2000
Post Office Box K1026 HAYMARKET NSW 1240
DX 11539 Sydney Downtown
Telephone: 1300 006 228 TTY Phone: 13 36 77

its decision where reasons were not provided with the published decision. The request should be in writing, addressed to the Registrar.



Mr Sean Goodchild Director, Compliance Liquor and Gaming NSW Level 6 323 Castlereagh Street SYDNEY NSW 2000 sean.goodchild@olgr.nsw.gov.au	Mr Murat Kilic c/o Ms Anastasia Stomo Levitt Robinson Solicitors PO Box A555 SYDNEY SOUTH NSW 1235 astomo@levittrobinson.com
The Directors IM Operating Pty Ltd c/o Mr Kim Stapleton JDK Legal Level 5 1 Castlereagh Street SYDNEY NSW 2000 k.stapleton@jdklegal.com.au	The Directors IM Freehold Pty Ltd c/o Mr Kim Stapleton JDK Legal Level 5 1 Castlereagh Street SYDNEY NSW 2000 k.stapleton@jdklegal.com.au

The Following orders were made by the Civil and Administrative Tribunal of NSW by consent following entry by the parties into a Deed of Settlement and Release:

"Pursuant to s.59(1) of the *Civil and Administrative Tribunal Act 2013* and s.63(3)(c) of the *Administrative Decisions Review Act 1997*, that:

- a) the application is allowed; and
- b) the decision made by the Independent Liquor and Gaming Authority on 12 October 2016 in relation to Mr Murat Kilic is set aside."

27 October 2016

Dear Sir/Madam

Notice of Final Decision with Reasons on Complaint under Part 9 of the *Liquor Act 2007* in relation to Mr Murat Kilic, Former Licensee of Imperial Hotel, Erskineville

At its meeting of 12 October 2016 the Independent Liquor and Gaming Authority finalised a disciplinary complaint made on 18 December 2015 under Part 9 of the *Liquor Act 2007* (Act) by a delegate of the Secretary of the Department of Justice.

The complaint concerned Mr Murat Kilic in his role as the former licensee of the licensed premises known as "The Imperial Hotel", trading at 35-39 Erskineville Road, Erskineville 2043.

The Authority has decided, pursuant to section 141(2)(f) of the Act, to disqualify Mr Kilic from holding a licence, being the approved manager of licensed premises or being the close associate of a licensee, with respect to any licensed premises in New South Wales, for a period of three (3) years from the date of this decision.

The Authority has further ordered, pursuant to section 141(2)(l)(i) of the Act, that Mr Kilic pay 50% of the Secretary's costs in carrying out the relevant investigation under section 138 of the Act, being the sum of **\$5,233.41**, payable within 28 days from the date of this letter.

Enclosed is a statement of reasons for the Authority's decision. Rights to seek review of this decision by the New South Wales Civil and Administrative Tribunal are detailed at the end of that document.

Yours Faithfully

**Philip Crawford
Chairperson**

STATEMENT OF REASONS

BACKGROUND

1. Through Atesh Pty Ltd (**Atesh**), a unit trust in respect of which Mr Murat Kilic is the sole director, Mr Kilic owned the hotel business of the Imperial Hotel, Erskineville from on or about 17 April 2015 until on or about 26 July 2015 where he occupied the hotel premises located at 35-39 Erskineville Road, Erskineville NSW 2043 (**Premises**) pursuant to a commercial lease granted to him by the then corporate premises owner, Wonarla Pty Ltd (**Wonarla**), directed by Mr Shadd Danesi.
2. The *OneGov* licence record in evidence before the Authority dated 9 December 2015 indicates that the hotel is licensed to trade from 5:00am to 5:00am Monday to Saturday and from 5:00am until 12:00 midnight on Sundays, with a gaming machine threshold of 10 with 10 gaming machine entitlements.
3. Mr Kilic is a former equities trader and works from time to time as a professional disc jockey in Australia and abroad. He previously held the licence for the former on-premises licensed premises (a nightclub) known as *Spice Cellar* at 53 Martin Place, Sydney from 12 September 2011 until the closure of that venue on 13 April 2015.
4. Mr Kilic held the hotel licence for the Premises the subject of this Complaint from 26 April 2015 until 9 July 2015, when the licence was provisionally transferred to his nominee, Ms Michelle Mancini, who held the licence from 10 July 2015 to 7 December 2015. Ms Mancini was a duty manager employed by Atesh on the Premises prior to her appointment as licensee.
5. Following two Short Term Closure Orders issued by the Authority under section 82 of the *Liquor Act 2007* in June 2015 and July 2015 and the filing of a Long Term Closure Application by the Office of Liquor, Gaming and Racing (now Liquor and Gaming New South Wales, **LGNSW**) under section 84 of the Act on 17 July 2015, the hotel suspended trading. The then Premises owner, Wonarla, evicted Atesh and Mr Kilic from the Premises on or about **26 July 2015**.
6. On or about **9 December 2015**, the hotel business and the freehold in the building in which the Premises is located were sold to unrelated companies IM Operating Pty Ltd and IM Freehold Pty Ltd respectively.
7. The hotel has since recommenced trading in December 2015. The current licensee on the record since **8 December 2015** is Mr William Patrick McMaugh. There is no indication that IM Operating Pty Ltd and IM Freehold Pty Ltd are associated with Atesh or Wonarla.
8. In light of the transfer of this change in ownership and control of the hotel business and property, LGNSW did not proceed with the Long Term Closure Application.

THE COMPLAINT IN SUMMARY

9. In the letter of Complaint dated 18 December 2015 (**Complaint Letter**) under Part 9 of the *Liquor Act 2007* (**Act**), the LGNSW Director of Compliance (**Complainant**) alleges one ground (**Ground**) that is available under section 139(3)(i) of the Act – that as licensee, Mr Kilic demonstrated that he is not a fit and proper person to hold a licence.

COMPLAINT MATERIAL

10. Attached to the Complaint Letter are 118 Exhibits which comprise over 800 pages of Complaint Material, including: 95 reports sourced from the NSW Police Computerised

Operational Policing System (**COPS Reports**), being contemporaneous reports prepared by Police officers of events attended by Police occurring on or linked to the operation of the hotel on the Premises between 17 April 2015 and 21 July 2015, 7 witness statements dating between 3 and 30 June 2015 from local residents complaining of disturbance from the hotel, 2 Police statements dated 8 and 9 July 2015 in relation to an incident where Mr Kilic was allegedly intoxicated whilst on duty on 28 June 2015 and other miscellaneous documents pertaining to the Short Term Closure Orders, the application for a Long Term Closure Order and the sale of the hotel.

PARTICULARS OF COMPLAINT

11. There are 12 Particulars or allegations specified in the Complaint Letter that form the basis of the Complainant's case that Mr Kilic is not fit and proper to hold a licence. They may be briefly summarised as follows:
12. **Particular 1.1** – Mr Kilic commenced as the licensee of the Hotel on 26 April 2015. However NSW Police COPS Reports indicate that Mr Kilic has been present, and part of the operation of the business on the Premises, since 11 April 2015.
13. **Particular 1.2** – Mr Kilic was assessed by Police officers as being under the influence of drugs on his very first night of duties [26 April 2015].
14. **Particular 1.3** – The week following the short term closure order [on 28 June 2015] Mr Kilic was assessed by NSW Police to be “highly affected” by alcohol whilst on duty.
15. **Particular 1.4** – The operation of the hotel, during the period of Mr Kilic's involvement, saw an “exponential increase” in disturbance related complaints [from local residents].
16. **Particular 1.5** – Between 11 April 2015 and 19 July 2015, NSW Police attended the hotel on numerous occasions and detected intoxicated patrons, prohibited drugs and/or drug paraphernalia, issued move on directions or fail to quit infringements, noted adverse amenity impacts arising from the operation of the hotel, and/or identified that CCTV cameras on the hotel premises were not operational.
17. **Particular 1.6** – The above NSW Police inspections demonstrate that the hotel was “not being adequately controlled” with regard to the management of intoxicated patrons, the use and supply of prohibited drugs on the Premises, noise and crowd control issues, lack of communication between security guards and ineffective RSA monitoring.
18. **Particular 1.7** – On 19 June 2015 the Authority issued a Short Term Closure Order against the hotel in response to concerns regarding the possession, use and supply of prohibited drugs on the hotel premises by both patrons and staff of the business. The Complainant contended, in relation to that application, that the licensee Mr Kilic had demonstrated “reckless indifference to public safety” and failed to implement basic controls to address repeated drug detections, despite “repeated and intensive regulatory engagement” with Police and LGNSW.
19. **Particular 1.8** – The Complainant refers to paragraph 63 of the Authority's published decision issuing a Short Term Closure Order on 19 June 2015, noting that the Authority was satisfied that the use of prohibited drugs and patrons drinking to the point of intoxication posed a “substantial threat to the public interest” and that there had been an “absence of effective control” over the responsible supply of alcohol on the Premises.
20. **Particular 1.9** – On 15 July 2015 Mr Kilic was interviewed for online magazine “Bali Clubbing”. The Complainant submits that Mr Kilic's statements, particularly in relation to NSW lockout laws, show a “clear disrespect and disregard for the laws regulating the industry in which Mr Kilic was a licensee and responsible for ensuring compliance”.

21. **Particular 1.10** – On 17 July 2015 LGNSW made an application for a Long Term Closure Order under section 84 of the Act. That application submitted that LGNSW and NSW Police have a number of ongoing criminal investigations into the current and former licensee, staff and patrons of the hotel and that the management culture at the hotel creates an “extremely permissive environment which in turn fosters a patron culture of open drug use and intoxication”. That application submitted that there remain “fundamental flaws and inadequacies” in the hotel’s internal management and controls and that Police had observed Mr Kilic to be “highly affected” by alcohol while at the venue on the very next weekend of trade after the Short Term Closure Order [issued on 19 June 2015].
22. **Particular 1.11** – On 24 July 2015 the Authority issued a second Short Term Closure Order against the hotel in response to patrons demonstrating “significant levels of intoxication” and becoming aggressive towards venue security and NSW Police, and evidence that the “illicit drug culture is continuing to proliferate at the hotel”.
23. **Particular 1.12** – The Complainant contends that despite a change in business model, the Short Term Closure Order of 19 June 2015, and extensive engagement with NSW Police and LGNSW, Mr Kilic continued to rely upon a plan of management dating from 2009 and failed to implement an adequate *Plan of Management* to address the risks identified above.

SUMMARY OF MR KILIC’S RESPONSE TO THE COMPLAINT

24. Mr Kilic’s primary response to the Complaint is a 50-page submission letter dated 5 April 2016 made through Ms Anastasia Stomo of *Levitt Robinson Solicitors*. Mr Kilic’s submission also attaches 395 pages of supporting evidence or material. There are 74 attachments including 19 letters of support for Mr Kilic and the hotel submitted by patrons, local residents and business associates, 19 newspaper or journal articles concerning the broader issue of the operation of licensed premises and the New South Wales licensing regulatory scheme, 6 Facebook screenshots of past events held at the hotel, 4 internal business planning documents being a *Plan of Management* (dated 11 December 2009, amended in 2014), *Security Management Policy* (2015), *Alcohol Management Policy* (2015) and *Drug Policy* (2015) for the hotel and a number of other miscellaneous documents including, *inter alia*, minutes of meetings between hotel management, Police and LGNSW dating between June and July 2015, tax invoices, staff rosters, log books recording noise levels emitted from the hotel and photographs of the Premises.
25. Mr Kilic’s position on the 12 Particulars may be summarised as follows:
26. **Particular 1.1** – Mr Kilic “had no involvement whatsoever” in the hotel business before 17 April 2015, being the date upon which Atesh Pty Ltd became the licensee of the hotel. Matters falling outside the period that Mr Kilic was involved in the business are irrelevant.
27. **Particular 1.2** – The Police observations in the COPS Reports “lack credibility” and the “prejudicial effect outweighs its probative value”. Mr Kilic had an “unblemished record” as a liquor licensee and he “largely inherited an existing drug problem at the venue”, which he improved by introducing “new and innovative measures” while he was the licensee.
28. **Particular 1.3** – Mr Kilic was not “on duty” at 2:00am on Sunday 28 June 2015. He had appointed Mr Michael Lenehan as his “agent”, who was “on duty” on the Premises at that time.
29. **Particular 1.4** – The statements from local residents describing disturbance complaints are “opinions” and there is a “lack of evidence” in support of the residents’ allegations, which calls into question the credibility of their observations. Mr Kilic contends that a few local residents had been “coordinating a targeted campaign” against the hotel. He contends that he implemented a range of measures to assist in reducing noise pollution and improve the

amenity of the neighbourhood, and that there was open and honest communication between hotel management and residents.

30. **Particular 1.5** – Mr Kilic variously contends that these matters should be disregarded as they are “trivial” or “irrelevant” to Mr Kilic’s fitness and propriety; that Mr Kilic was not the licensee at the relevant time; or the Police observations “lack credibility”; that there is “no evidence” supporting the allegations made by the Complainant and/or that instances of security staff or agents of the licensee removing intoxicated or drug affected patrons show that staff were “cooperating” with Police. Mr Kilic submits that he had a “zero tolerance” approach to drugs on the Premises and that he implemented “effective controls” in relation to prohibited drugs on the Premises.
31. **Particular 1.6** – Mr Kilic refutes these allegations and submits that the hotel was being effectively managed at relevant times and that open, frank and regular communication existed between hotel management, the residents, Police, employees and other professionals engaged by the hotel. Mr Kilic variously repeats the position taken in response to Particular 1.5 above.
32. **Particular 1.7** – Mr Kilic refers to his submissions on Particulars 1.2, 1.5 and 1.6(a) of the Complaint and the submissions made by his former lawyers *Gwynne Thompson* dated 19 June 2015 in response to the first Short Term Closure Application filed by LGNSW in June 2015. Mr Kilic submits that he worked cooperatively with Police and introduced a number of measures to address the problems at the hotel that he had “inherited”.
33. **Particular 1.8** – Mr Kilic submits that the Authority erred when finding, in the first Short Term Closure Order of 19 June 2015, that there had been an absence of effective control over the responsible supply of alcohol on the Premises. Mr Kilic submits that *some* of the evidence in relation to prohibited drugs and intoxication on the Premises is “irrelevant” to this Complaint because Mr Kilic did not hold the licence during those times or that this Particular relates to matters that do not concern the operation of the Premises or the rights and duties of a licensee. Mr Kilic reiterates his contention that he had inherited a “problematic” venue and that the local area was known to Police for its high incidence of prohibited drug use.
34. **Particular 1.9** – The Indian restaurant to which Mr Kilic referred in his interview with *Bali Clubbing* magazine was an unlicensed venue. Mr Kilic contends that he has operated his previous licensed premises at 53 Martin Place (*The Spice Cellar*) within the law. Mr Kilic submits that Police and regulatory intervention on the first night of Mr Kilic trading at the Imperial Hotel “may have been a personal and coordinated campaign commenced on the false premise that Mr Kilic was involved in drug supply”. With regard to his comments on the lockout laws, Mr Kilic refers to his implied right of political communication under the Australian Constitution – *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520.
35. **Particular 1.10** – Mr Kilic submits that this Particular, which concerns the LGNSW Application for a Long Term Closure Order dated 17 July 2015, is “irrelevant” to this Complaint by reason that Ms Mancini, not Mr Kilic held the licence at the time of that application. Mr Kilic denies the allegations set out in this Particular and refers to his previous submissions in response to Particulars 1.4, 1.5, 1.6 and 1.7, contending that he introduced a number of measures targeted at minimising drug use on the Premises including the use of voluntary drug detection dogs.
36. **Particular 1.11** – Mr Kilic submits that this Particular, which concerns the second LGNSW Application for a Short Term Closure Order dated 21 July 2015, is “irrelevant” to this Complaint by reason that Mr Kilic was not the licensee at the time of that application. Mr Kilic otherwise refers to his submissions in response to Particular 1.5 of the Complaint.

37. **Particular 1.12** – Mr Kilic denies the allegation that he continued to rely upon a *Plan of Management* dating from 2009 in respect of the Premises despite his “change of business model”. Mr Kilic contends that the business model with regard to the hotel remained the same as under the previous occupant, with the same entertainment promoters operating before and after Mr Kilic was the licensee of the Premises.

PROGRESS OF THE COMPLAINT

38. On 4 February 2016 the Authority issued show cause notices and invitations to make submissions addressed to Mr Kilic and also the current business owner and premises owner, IM Operating Pty Ltd and IM Freehold Pty Ltd respectively.
39. The current owners of the hotel responded in a letter from Mr Kim Stapleton of *JDK Legal* dated 23 February 2016. They submitted that they are not related to or connected with Mr Kilic. Further, both LGNSW and Police raised no issues with the new owners’ plans for the renovation and intended business operation of the hotel, either during the process of exchanging contracts for the purchase of the hotel in August 2015 or subsequent to the hotel business reopening in December 2015.
40. On 2 March 2016 Mr Kilic sought further and better particulars and the production of further material by the Complainant.
41. On 17 March 2016 the Complainant responded to that request for particulars and providing a bundle of further evidence or material, including:
- LGNSW file notes of covert and overt inspections of the hotel on 24 May 2015, 14 June 2015 and 19 July 2015 (along with any photographs and video footage taken during those inspections);
 - Photographs of the hotel and surrounds taken during June 2015 by local residents (Ms Julie Moffat, Ms Suzanne Moir-Balboa and Ms Susan Blackburn);
 - Video footage taken during June 2015 by local residents (Ms Suzanne Moir-Balboa and Ms Susan Blackburn); and
 - Other miscellaneous documents pertaining to the operation of the hotel.
42. On 26 April 2016 the Authority requested the Complainant to provide further evidence of Court outcomes and Penalty Notices issued in relation to Mr Kilic and the matters specified in the Complaint Material.
43. On 29 April 2016 the Complainant provided further evidence, being SDRO records of two Penalty Notices issued to Mr Kilic, as follows:
- 27 May 2015: Not holding recognised RCG certification; and
 - 7 June 2015: Failing to comply with a condition on the licence requiring the maintenance of an Incident Register (arising through the operation of section 56 of the Act).
44. On 2 May 2016 the Complainant provided further evidence of Court outcomes for proceedings against Mr Kilic. This information indicates that several Court proceedings were commenced against Mr Kilic in 2007, one of which resulted in Mr Kilic’s conviction *in absentia* on 22 October 2007. However the Complainant did not provide sufficient information to clearly identify the nature and outcome of all those matters.
45. On 3 May 2016 Mr Kilic made a brief submission in reply to that further material, noting that the “evidence” provided by the Complainant (in the form of COPS Reports) had not been tested in judicial proceedings.

46. Mr Kilic submits that such evidence should be “disregarded” by the Authority. Mr Kilic submits that he has “not been prosecuted” for any matters involving patron intoxication, drug use or drug possession on the Premises; nor has he been prosecuted for any matters involving disturbance to the neighbourhood.
47. The Authority gave preliminary consideration to the Complaint on 11 May 2016 when it resolved to defer consideration until 29 June 2016 to enable the Complainant to furnish any further records of Court outcomes or Penalty Notices relevant to Mr Kilic and the matters specified in the Complaint, particularly with regard to allegations in the Complaint Material of Police detecting the use or supply of prohibited drugs on the Premises.
48. On 13 May 2016 the Complainant sent a copy of Penalty Notice No. 4033239403 issued to Mr Kilic by NSW Police on 7 June 2015 for his alleged contravention of a licence condition requiring the maintenance of an incident register (arising through the operation of section 56 of the Act).
49. On 30 May 2016 the Complainant sent the Authority a bundle of further documents (**New Material**), being a table entitled *Legal Actions Associated with Imperial Hotel COPS Events*. This table summarises the status of a number of matters that had been reported in COPS Reports before the Authority in the Complaint Material. The table also indicates whether each matter listed was dealt with by NSW Police by way of a Caution, Compliance Notice (written warning), Court Attendance Notice or Penalty Notice. The table also refers to *JusticeLink* records of the outcome if the relevant matter proceeded to Court.
50. On 20 June 2016 Mr Kilic responded to this New Material through a further submission letter from Ms Stomo. In summary, Ms Stomo submits that the New Material “exceeds” the scope of the Authority’s request for further information and that most of the New Material has already been addressed by Mr Kilic in earlier submissions. In some cases, matters raised in this New Material have “previously been agreed by the parties to be irrelevant” to the determination of the Complaint.
51. Mr Kilic further submits that *JusticeLink* records and NSW Police COPS Reports relied upon by the Complainant are “neither appropriate nor formal” records and that the Authority should “disregard” all such material provided by the Complainant in support of this Complaint.
52. Mr Kilic variously submits in response to the New Material that:
- Mr Kilic has not had any Penalty Notices or official warnings issued against him in relation to *intoxication, drug use or possession, or neighbourhood disturbances*;
 - All material relating to alleged infringements committed by persons other than Mr Kilic should be disregarded by the Authority by reason that there was “no demonstrable fault by Mr Kilic” with regard to those events;
 - Court outcomes for any events that occurred outside of the period during which Mr Kilic held the licence are “irrelevant” to the Complaint;
 - Court outcomes involving persons who were on the Premises and detected with drugs do not show fault on the part of Mr Kilic or his staff;
 - Court outcomes involving patron disturbance involve matters where Mr Kilic’s staff were lawfully ejecting or denying entry to persons and/or cooperating with Police;
 - The “majority” of the matters referred to by the Complainant did not result in any criminal convictions being recorded against the persons concerned and were dealt

with by way of a bond pursuant to section 10 of the *Crimes (Sentencing Procedure) Act 1999*, and

- Those matters that did involve staff of the licensed business being detected in possession of prohibited drugs on the Premises (*R v Wilmot* and *R v Farac*) resulted in those persons being “immediately dismissed” from their employment at the hotel.

LEGISLATION

53. In determining this Complaint, the Authority has considered the provisions contained in Part 9 of the Act, which state (relevantly):

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:*
 - ...
 - (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(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),*

141 Disciplinary powers of Authority

- (1) *The Authority may deal with and determine a complaint that is made to it under this Part.*
 - ...
- (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:*
 - ...
 - (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,*
 -
 - (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,*

....

- (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.*

54. When considering this Complaint, as when making any administrative decision under the Act, the Authority will consider the statutory objects and considerations prescribed by section 3 of the Act:

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 GROUND OF COMPLAINT

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

56. 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.

57. The single Ground of Complaint 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

58. 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.

59. 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 – *Clarahan v Register of Motor Vehicle Dealers in the ACT* (1994) 17 FLR 44.
60. 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.

61. Section 45(5A) of the Act (without limitation) requires the Authority, when assessing fitness and propriety, to consider whether a person is of good repute, having regard to character, honesty and integrity and whether that person is competent to carry on “that business or activity”, being the relevant licensed business in question.

Particular 1.1

62. The 12 Particulars of this Complaint have been framed by reference to a sole ground that turns upon Mr Kilic’s status as a (former) licensee of the Premises. They have *not* been framed by reference to his status as a *close associate* of the licence, which arises through his ownership of the hotel business while Atesh occupied the Premises.
63. The Authority is satisfied, on the basis of licensing records, and it is not in dispute, that Mr Kilic only held the licence for a short period – from 26 April 2015 until 9 July 2015 (the **Licence Period**).
64. The Authority is satisfied, as specified in Particular 1.1, and on the basis of licensing records, that Mr Kilic commenced holding the licence on 26 April 2015.
65. While this Particular also alleges that Mr Kilic was present on the Premises and “part of the operation of the hotel business” from 11 April 2015, Mr Kilic contends that he did not commence occupation of the Premises as the commercial tenant/business owner until 17 April 2015.
66. The Complainant has not provided evidence to rebut this and the Authority accepts Mr Kilic’s position. The Authority notes that a COPS Report number E57324817 dated 17 April 2015 (Complainant Exhibit E050) regarding a Police inspection records Police observations that Mr Kilic became the manager of the hotel business as at “17 April 2015”.
67. Particular 1.1 is established only by reference to the licence date but not the alleged date of Mr Kilic’s commencement as business owner.

Particular 1.2

68. This Particular concerns an allegation that Mr Kilic was under the influence of drugs on his first night as licensee on 26 April 2015. The evidence provided by the Complainant in

support of this allegation is in the form of a single COPS Report number E57741750 dated 26 April 2015 (Complainant Exhibit E040) recording observations of Mr Kilic exhibiting behaviours that Police contend are consistent with the use of prohibited drugs.

69. The Authority accepts that Police have considerable experience in assessing alcohol and drug affected individuals. However, in this instance the Authority is not satisfied that this COPS report is sufficiently specific to support a finding, on the balance of probabilities, that Mr Kilic was in fact under the influence of prohibited drugs on his first night as licensee on 26 April 2015.
70. The Authority notes that the evidence provided by the Complainant in support of this allegation is limited to a single COPS report. In circumstances where the allegation is denied and having had carefully considered the content of the COPS report provided the Authority finds that this document is insufficient evidence to establish the allegation.
71. The Authority accepts that Police may well have had a reasonable suspicion that Mr Kilic was affected by drugs on the night in question, but the Authority is not satisfied that the evidence provided by the Complainant is sufficient, in this case, to ground an adverse finding on this relatively serious allegation, given his status as licensee.
72. Particular 1.2 is not established.

Particular 1.3

73. This Particular concerns an allegation that Mr Kilic was “highly affected” by liquor whilst “on duty” on 28 June 2015, during the week following the issue by the Authority of the first short term closure order against the Premises on 19 June 2015.
74. The evidence provided by the Complainant in support of this allegation is in the form of a single COPS Report number E58794877 dated 28 June 2015 (Complainant Exhibit E059) recording observations of Mr Kilic exhibiting behaviours that Police contend are consistent with being affected by intoxicating liquor.
75. The Authority accepts that Police have considerable experience in assessing alcohol and drug affected individuals. The Authority accepts that Mr Kilic was affected by liquor on the night in question. However, Mr Kilic denies that he was on duty that evening. He submits in response to this Particular that he had attended the Premises on 28 June 2015 with the intention of collecting some personal items, and that he was “not on duty” that evening. Rather, Mr Kilic had appointed Mr Michael Lenehan as his “agent” and Mr Lenehan was on duty at the Premises all night. The Authority notes that no action was taken against Mr Kilic for being intoxicated on licensed premises and in this case accepts his explanation that he was not “on duty”, as alleged by the Complainant.
76. Particular 1.3 is not established.

Particular 1.4

77. This Particular concerns an allegation that the operation of the hotel, during the Licence Period, saw an “exponential” increase in disturbance related complaints.
78. The evidence provided by the Complainant in support of this allegation takes the form of seven detailed witness statements made by local residents to Newtown Police relating what they have seen or heard and the approximate time of day and times of the year when disturbance issues arising from the operation of the hotel were observed. The evidence or material of disturbance is as follows:

- Statement of a witness in the matter of *Police v Imperial Hotel* by Mr Mark Skinner dated 3 June 2015 (Complainant Exhibit E081);
- Statement of a witness in the matter of *Police v Imperial Hotel* by Ms Barbara Stanko dated 13 June 2015 (Complainant Exhibit E082);
- Statement of a witness in the matter of *Police v Imperial Hotel* by Ms Julie Moffat dated 22 June 2015 (Complainant Exhibit E083);
- Statement of a witness in the matter of *Police v Imperial Hotel* by Mr Charles Kelly dated 23 June 2015 (Complainant Exhibit E084);
- Statement of a witness in the matter of *Police v Imperial Hotel* by Ms Suzanne Moir-Balboa dated 22 June 2015 (Complainant Exhibit E085);
- Statement of a witness in the matter of *Police v Imperial Hotel* by Ms Susan Blackburn dated 26 June 2015 (Complainant Exhibit E086); and
- Statement of a witness in the matter of *Police v Imperial Hotel* by Mr Paul Howard dated 30 June 2015 (Complainant Exhibit E087).

79. The Authority notes that on 17 March 2016, the Complainant provided a number of further exhibits in support of Particular 1.4 in its response to Mr Kilic's request for further and better particulars dated 2 March 2016. Those further exhibits are as follows:

- Three photographs taken by a resident complainant, Ms Julie Moffat in support of her statement dated 22 June 2015 (Complainant Further Exhibits E083-01, E083-02 and E083-03);
- One photograph and three videos taken by a resident complainant, Ms Suzanne Moir-Balboa in support of her statement dated 22 June 2015 (Complainant Further Exhibits E085-01, E085-02, E085-03 and E085-04); and
- One photograph and seven videos taken by a resident complainant, Ms Susan Blackburn in support of her statement dated 26 June 2015 (Complainant Further Exhibits E086-01, E086-02, E086-03, E086-04, E086-05, E086-06, E086-07 and E086-08).

80. While there is a degree of hyperbole in the Complainant's contention that there was an "exponential" increase in disturbance complaints while Mr Kilic held the licence, the Authority is satisfied, on the basis of the above evidence, that there was in fact a substantial increase in serious disturbance complaints from neighbours of the hotel pertaining to the period in which Mr Kilic held the licence.

81. The Authority has had regard to the numerous letters submitted by patrons, local residents and/or business associates provided by Mr Kilic and accepts that there was some measure of support for the manner in which the hotel was operated while Mr Kilic was the licensee. However the Authority does not accept Mr Kilic's submissions to the effect that the nature of the disturbances referred to in the witness statements by local residents are matters of "opinion".

82. While the degree of disturbance may be in dispute, the Authority is satisfied that the mode of operation that Mr Kilic elected to adopt at this large patron capacity hotel with a focus on live entertainment running to *very late* hours of the morning during the Licence Period exacerbated the hotel's scope to generate and attract patrons to what was a primarily residential location. This caused substantial adverse impact upon local amenity and

adversely affected the quiet and good order of the neighbourhood to a degree that was well outside of community expectations.

83. Particular 1.4 is established to this extent.

Particular 1.5

84. Particulars 1.5(a) through 1.5(g) allege that between 11 April 2015 and 19 July 2015, NSW Police attended the Premises on numerous occasions and variously observed intoxicated patrons, prohibited drugs and/or drug paraphernalia and adverse impacts on local amenity; issued move on directions or fail to quit infringements and identified that some CCTV cameras on the Premises were not operational.
85. The evidence provided by the Complainant in support of these allegations takes the form of numerous COPS Reports recording the contemporaneous observations made by Police when attending the Premises for the purpose of business inspections or in response to incidents occurring on the Premises.
86. The Authority notes that some of the COPS reports relate to incidents that occurred outside the Licence Period.
87. The Ground of Complaint specified is directed to Mr Kilic's fitness and propriety to be a liquor licensee and as such, the Authority has only considered those COPS reports that concern incidents falling within the Licence Period.
88. Matters occurring outside of that period may be relevant to a broader assessment of Mr Kilic's reputation and competence to run a licensed premises for the purposes of section 45(5A) of the Act, but the Authority's findings on the COPS Reports have focused on events that occurred while Mr Kilic held the licence that are reasonably attributable to the manner in which the hotel was operated.
89. With regard to Particulars 1.5(a) and 1.5(b), the Authority is satisfied that there were **12** occasions where Police detected *intoxicated patrons* either on the Premises or leaving the Premises. The Authority makes this finding on the basis of the following evidence or material:
- COPS Report number E57741750 – 8:00am on Sunday 26 April 2015 (Complainant Exhibit E040);
 - COPS Report number E57793650 – 6:20am on Sunday 3 May 2015 (Complainant Exhibit E039);
 - COPS Report number E60446983 – 8:40pm on Friday 8 May 2015 (Complainant Exhibit E038);
 - COPS Report number E57944145 – 6:00am on Sunday 31 May 2015 (Complainant Exhibit E017);
 - COPS Report number E58872808 – 12:40am on Sunday 31 May 2015 (Complainant Exhibit E018);
 - COPS Report number E56854410 – 1:20am on Saturday 6 June 2015 (Complainant Exhibit E011);
 - COPS Report number E57858424 – 5:00am on Sunday 7 June 2015 (Complainant Exhibit E006);

- COPS Report number E57964836 – 12:46am on Sunday 14 June 2015 (Complainant Exhibit E001);
- COPS Report number E58439757 – 12:55am on Saturday 4 July 2015 (Complainant Exhibit E067);
- COPS Report number E58168023 – 12:50am on Saturday 4 July 2015 (Complainant Exhibit E068);
- COPS Report number E57766726 – 8:30am on Sunday 26 April 2015 (Complainant Exhibit E041); and
- COPS Report number E58834777 – 1:15am on Saturday 4 July 2015 (Complainant Exhibit E066).

90. With regard to Particulars 1.5(c) and 1.5(d), the Authority is satisfied that there were **22** occasions where *prohibited drugs and/or drug paraphernalia* were detected either inside or immediately outside the Premises. The Authority makes this finding on the basis of the following evidence or material:

- COPS Report number E57356070 – 11:25pm on Friday 15 May 2015 (Complainant Exhibit E032);
- COPS Report number E58060946 – 11:30pm on Friday 15 May 2015 (Complainant Exhibit E033);
- COPS Report number E58781916 – 11:35pm on Friday 15 May 2015 (Complainant Exhibit E034);
- COPS Report number E57984234 – 10:50pm on Saturday 16 May 2015 (Complainant Exhibit E035);
- COPS Report number E57902050 – 11:30pm on Friday 15 May 2015 (Complainant Exhibit E036);
- COPS Report number E58187259 – 1:35am on Saturday 23 May 2015 (Complainant Exhibit E027);
- COPS Report number E199712298 – 6:00am on Saturday 30 May 2015 (Complainant Exhibit E019);
- COPS Report number E58328766 – 1:50am on Saturday 30 May 2015 (Complainant Exhibit E020);
- COPS Report number E58129557 – 12:45am on Saturday 30 May 2015 (Complainant Exhibit E022);
- COPS Report number E58129257 – 12:40am on Saturday 30 May 2015 (Complainant Exhibit E023);
- COPS Report number E57979975 – 11:15pm on Saturday 30 May 2015 (Complainant Exhibit E025);
- COPS Report number E57944145 – 6:00am on Sunday 31 May 2015 (Complainant Exhibit E017);

- COPS Report number E58987953 – 3:05am on Saturday 6 June 2015 (Complainant Exhibit E009);
- COPS Report number E58155007 – Saturday-Sunday 13-14 June 2015 (Complainant Exhibit E002);
- COPS Report number E58500759 – 11:50pm on Friday 26 June 2015 (Complainant Exhibit E053);
- COPS Report number E58100822 – 4:40am on Sunday 28 June 2015 (Complainant Exhibit E061);
- COPS Report number E61056381 – 11:55pm on Saturday 4 July 2015 (Complainant Exhibit E063);
- COPS Report number E58439757 – 12:55am on Saturday 4 July 2015 (Complainant Exhibit E067);
- COPS Report number E59948687 – 12:30am on Saturday 30 May 2015 (Complainant Exhibit E021);
- COPS Report number E60382185 – 1:35am on Saturday 4 July 2015 (Complainant Exhibit E064);
- COPS Report number E59280839 – 1:15am on Saturday 4 July 2015 (Complainant Exhibit E065); and
- COPS Report number E58764973 – 12:30am on Sunday 5 July 2015 (Complainant Exhibit E070).

91. With regard to Particular 1.5(e), the Authority is satisfied that there were **12** occasions where Police issued *move on directions or fail to quit infringements* to patrons on or near the Premises. The Authority makes this finding on the basis of the following evidence or material:

- COPS Report number E59937985 – 1:30am on Saturday 16 May 2015 (Complainant Exhibit E030);
- COPS Report number E57111905 – 2:00am on Saturday 23 May 2015 (Complainant Exhibit E026);
- COPS Report number E199712298 – 6:00am on Saturday 30 May 2015 (Complainant Exhibit E019);
- COPS Report number E57944145 – 6:00am on Sunday 31 May 2015 (Complainant Exhibit E017);
- COPS Report number E348999692 – 9:50pm on Saturday 6 June 2015 (Complainant Exhibit E008);
- COPS Report number E60368489 – 1:16am on Sunday 7 June 2015 (Complainant Exhibit E005);
- COPS Report number E885345590 – 10:10pm on Saturday 27 June 2015 (Complainant Exhibit E054);

- COPS Report number E58794877 – 2:00am on Sunday 28 June 2015 (Complainant Exhibit E059);
- COPS Report number E58834777 – 1:15am on Saturday 4 July 2015 (Complainant Exhibit E066);
- COPS Report number E58168023 – 12:50am on Saturday 4 July 2015 (Complainant Exhibit E068);
- COPS Report number E58505746 – 1:00am on Sunday 5 July 2015 (Complainant Exhibit E071); and
- COPS Report number E58013835 – 1:10am on Sunday 5 July 2015 (Complainant Exhibit E072).

92. With regard to Particular 1.5(f), the Authority is satisfied that there were **6** occasions where Police recorded *adverse impacts on local amenity* reasonably linked to the operation of the hotel business. The Authority makes this finding on the basis of the following evidence or material:

- COPS Report number E57615327 – 6:10am on Sunday 10 May 2015 (Complainant Exhibit E037);
- COPS Report number E57715932 – 12:50am on Sunday 17 May 2015 (Complainant Exhibit E029);
- COPS Report number E60737188 – 2:30pm on Sunday 31 May 2015 (Complainant Exhibit E014);
- COPS Report number E58988563 – 12:20am on Saturday 27 June 2015 (Complainant Exhibit E055);
- COPS Report number E58171204 – 12:04am on Saturday 27 June 2015 (Complainant Exhibit E056); and
- COPS Report number E58112723 – 10:15pm on Saturday 27 June 2015 (Complainant Exhibit E057).

93. With regard to Particular 1.5(g), the Authority is satisfied there were **15** occasions where Police detected a significant number of cameras forming part of the hotel CCTV system that were *non-operational* at the time of inspection. While noting the Licensee's evidence of invoices for servicing the CCTV system from *Pauls Electronics* dated 28 April to 2 July 2015 and accepting that Mr Kilic installed a new CCTV system on 25 June 2015, the Authority is nevertheless satisfied that non-operational cameras were detected on the basis of the following evidence or material:

- COPS Report number E57793650 – 6:20am on Sunday 3 May 2015 (Complainant Exhibit E039);
- COPS Report number E60446983 – 8:40pm on Friday 8 May 2015 (Complainant Exhibit E038);
- COPS Report number E59937985 – 1:30am on Saturday 16 May 2015 (Complainant Exhibit E030);

- COPS Report number E58842039 – 6:30am on Sunday 17 May 2015 (Complainant Exhibit E028);
- COPS Report number E58187259 – 1:35am on Saturday 23 May 2015 (Complainant Exhibit E027);
- COPS Report number E57979975 – 11:15pm on Saturday 30 May 2015 (Complainant Exhibit E025);
- COPS Report number E58622043 – 2:00am on Sunday 31 May 2015 (Complainant Exhibit E015);
- COPS Report number E57944145 – 6:00am on Sunday 31 May 2015 (Complainant Exhibit E017);
- COPS Report number E57691425 – 12:55am on Friday 5 June 2015 (Complainant Exhibit E012);
- COPS Report number E348999692 – 9:50pm on Saturday 6 June 2015 (Complainant Exhibit E008);
- COPS Report number E56932860 – 8:30pm on Sunday 7 June 2015 (Complainant Exhibit E004);
- COPS Report number E58684151 – 12:30am on Sunday 7 June 2015 (Complainant Exhibit E007);
- COPS Report number E57964836 – 12:46am on Sunday 14 June 2015 (Complainant Exhibit E001);
- COPS Report number E58988563 – 12:20am on Saturday 27 June 2015 (Complainant Exhibit E055); and
- COPS Report number E58393257 – 5:00pm on Sunday 28 June 2015 (Complainant Exhibit E060).

94. While the Authority accepts Mr Kilic's submission that this did not amount to a breach of licence condition or the Act, it is nevertheless a relevant factual matter that demonstrates a lack diligence on Mr Kilic's part, particularly in light of the scale of the venue, the focus on live entertainment in the basement nightclub and the desirability of a fully functioning CCTV system to deter drug or alcohol related misconduct on the Premises by patrons, staff or contractors or that enables such conduct to be detected and investigated if it occurs.

95. The Authority is satisfied that even if the Police attendances on the Premises occurring outside of the Licence Period are disregarded, the following adverse events occurred during the short 10-week period during which Mr Kilic held the licence:

- **12** occasions where Police detected intoxicated patrons on or near the Premises;
- **22** occasions where drugs or drug paraphernalia were detected on or immediately outside the Premises;
- **12** occasions where move on directions or fail to quit infringements were issued by Police; and
- **6** occasions where adverse impacts on local amenity linked to the venue were recorded by Police.

96. Notwithstanding Mr Kilic's submissions that the COPS Reports also record that venue security were already responding on a number of these occasions when Police attended (which the Authority accepts) the Authority finds that these events, considered cumulatively, indicate insufficient control by the Licensee of the Premises with respect to patron intoxication levels, prohibited drug use, and disturbance to local amenity.
97. The Authority has had regard to the nature and timing of the measures that Mr Kilic and his staff undertook (through internal business planning and the engagement of contractors to manage various operational risks) and the conduct of staff of the business. These matters are listed in submissions from Mr Kilic's solicitor and supported in correspondence from his commercial contractors.
98. The Authority accepts, as contended in Mr Kilic's submission dated 5 April 2016 (with supporting evidence) that Mr Kilic or his staff conducted regular weekly meetings with Police from 30 June 2015 and introduced a new Alcohol Policy restricting certain types of liquor sales after midnight (while the commencement of this new Policy is unclear it was noted as a "recent" development in submissions dated 19 June 2015 from Mr Kilic's then lawyers Gwynne Thompson in response to the first short term closure application).
99. The Authority accepts that Mr Kilic voluntarily introduced RSA Marshalls on Friday and Saturday nights and had previously engaged the contractor *Sculpture Hospitality* to train his staff. He then conducted further training through the *Three Cheers* contractor in early July 2016. The Authority accepts that Mr Kilic maintained a "zero tolerance" drug policy and from 26 June 2015 engaged the *Alpha K9* drug dog contractor, while replacing the CCTV system on 25 June 2015. The Authority is further satisfied that Mr Kilic engaged a security audit from *A and M Consulting* from early July 2016. The Authority also accepts that Mr Kilic implemented "earlier" closing times (in that the hotel would close at 6 am).
100. However, the timing and adequacy of these measures must be assessed in light of the mode of licensed business and the extent of licensed hours that Mr Kilic elected to maintain while he held the licence.
101. The Authority is satisfied on the basis of these COPS reports and having considered Mr Kilic's submissions in reply that he *elected* to operate this large capacity, hotel licensed premises, with a strong emphasis on live entertainment (including ticketed events) to very late hours of the morning.
102. This choice of business model objectively increased the scope for the venue to generate and attract patron migration, during very late hours of the morning and increased the risk of patron intoxication levels, while not taking strong measures to ameliorate that risk until after the first closure application was made, towards the end of Mr Kilic's tenure as licensee.
103. Particular 1.5 is established.

Particular 1.6

104. The Authority has considered the Complainant's contention in Particular 1.6 that the COPS Reports of Police inspections demonstrate that Mr Kilic failed to exercise adequate "control" over the Premises.
105. The Authority notes that only some of the adverse events relied upon by the Complainant fall within the Licence Period.
106. Plainly enough from the COPS Reports, the venue was a very popular and successful entertainment venue, attracting large numbers of patrons during the Licence Period.

107. Nevertheless, as previously noted, the measures in place to control the likely amenity impacts arising from that higher impact mode of licensed trading were not commensurate to the very late trading live entertainment focussed business model pursued by Mr Kilic in respect of a large capacity hotel located in this residential area. The Authority repeats its findings on Particular 1.5 in this regard.
108. The Authority accepts that the Licensee adopted a range of measures to respond to the increased scope for adverse amenity impact, but strong measures from the licensee became most apparent *in response to* escalating regulatory action – notably in response to the application for the first Short Term Closure Order dated 19 June 2015. Mr Kilic’s conduct was reactive, rather than proactive.
109. Particular 1.6 is established.

Particular 1.7

110. Particular 1.7 refers to the fact that on 19 June 2015 the Authority issued a Short Term Closure Order against the hotel in response to concerns regarding the possession, use and supply of prohibited drugs on the hotel premises by both patrons and staff of the business.
111. The Authority is satisfied that this first Short Term Closure Order was issued while Mr Kilic held the licence. The order was not subject to appeal and Mr Kilic has not substantiated his claim that this order was made in error. He has not provided new sworn evidence rebutting the evidence relied upon by the Authority at that time.
112. The issue of the order is a matter that reflects adversely upon Mr Kilic’s diligence as a licensee in that the operation of the Premises gave rise to a sufficient threat or risk to the public interest to warrant its closure for 72 hours.
113. Particular 1.7 is established.

Particular 1.8

114. This Particular also refers to the making of the Short Term Closure Order against the Premises on 19 June 2015. The Authority repeats its observations on Particular 1.7.
115. Without elaborating, Mr Kilic submits that the Authority erred in issuing the first Short Term Closure Order on 19 June 2015 while he held the licence. Nevertheless, the Authority notes that this Order was issued and was not subject to any appeal. Mr Kilic has not provided new evidence rebutting the evidence relied upon at that time.
116. The Authority notes that the June 2015 *Drug Policy* and the engagement of a drug dog contractor (*Alpha K9*), which are measures now relied upon as part of Mr Kilic’s response to this Complaint, formed part of Atesh Pty Ltd’s response to the notice of application in relation to the first Short Term Closure Order.
117. Similarly, the revamped *Drug Policy* was not in place as a proactive measure before the hotel commenced operations in this relatively high risk format from the commencement of Mr Kilic’s term as licensee.
118. While Mr Kilic gets some credit for *responding* to issues identified by law enforcement, these measures did not form part of the forward planning implemented by Atesh when Mr Kilic first assumed responsibility for the licence in April 2015.
119. Particular 1.8 is established.

Particular 1.9

120. This Particular concerns Mr Kilic's interview with the online *Bali Clubbing* magazine on 15 July 2015. It is apparently directed to Mr Kilic's quoted opinion on the Sydney "lockout" legislation. The Authority accepts Mr Kilic's submission that this is a matter of political opinion to which Mr Kilic is entitled.
121. The Complainant further submits (without much by way of supporting evidence) that the article indicates that Mr Kilic was involved with running an "illegal after hours establishment" – an unlicensed nightclub at a restaurant premises. Mr Kilic explains and the Authority accepts that this involved an unlicensed restaurant where Mr Kilic would get together with friends and dance music enthusiasts after hours.
122. No adverse finding is made on the basis of Particular 1.9.

Particular 1.10

123. This Particular concerns the making of a Long Term Closure Application which the Authority notes was withdrawn by LGNSW following the change in ownership and control of the hotel to new owners and operators in December 2015.
124. The Authority notes that only some of the allegations pertaining to that application fall within the Licence Period and to the extent that they arose while Mr Kilic held the licence, the Authority has dealt with that subject matter in Particulars above.
125. The making of this application by LGNSW *per se* adds little to an assessment of Mr Kilic's fitness, noting that the application occurred after he had transferred the licence to Ms Mancini and to the extent that it was based on earlier events the application did not proceed.
126. No adverse finding is made on the basis of Particular 1.10.

Particular 1.11

127. The Authority notes that this Particular concerns the second Short Term Closure Application ordered against the hotel. This matter occurred outside the Licence Period. The Authority has not had regard to these matters for the purposes of assessing Mr Kilic's fitness to hold a licence, noting the scope of the Ground specified in the Complaint.
128. No adverse finding is made on the basis of Particular 1.11.

Particular 1.12

129. This Particular alleges that Mr Kilic continued to rely upon a *Plan of Management* that had been prepared in 2009 which was inadequate to address the risks identified in this Complaint.
130. Mr Kilic submits that the business model remained unchanged from 2009 and that neither Police nor LGNSW, when engaging with Mr Kilic, requested that the *Plan of Management* be updated.
131. The Authority notes, on the basis of documentation accompanying Mr Kilic's submissions that this 2009 *Plan of Management* was apparently updated in December 2014 by John Boers Consulting following consultation with the City of Sydney in November 2014. This occurred before Mr Kilic assumed responsibility for the Premises.

132. The Authority considers that the issue is not the currency of the *Plan of Management per se*, but the strength and timing of managerial measures implemented by Mr Kilic to address the likely impact of the particular mode of business that Mr Kilic elected to operate while he held the licence.
133. As found by the Authority in Particular 1.8 above, the measures implemented by Mr Kilic were insufficient to prevent substantial disturbance to local amenity. The implementation by Mr Kilic of strong additional measures to ameliorate the impact of the business was a response to regulatory action by Police, including the first Short Term Closure Order against the Premises.

Conclusion on Mr Kilic's Fitness and Propriety

134. Notwithstanding that the focus of the Ground of Complaint is Mr Kilic's conduct as licensee, events occurring outside of the Licence Period may yet be considered when assessing Mr Kilic's reputation and competence for the purposes of section 45(5A) of the Act. Mr Kilic has provided a good deal of personal and professional references and other material going to these matters.
135. The evidence and material before the Authority does not disclose an extensive adverse history of convictions or Penalty Notices issued against Mr Kilic for contravention of licensing legislation while a licensee or the personal commission of other types of offences.
136. It is evident from the numbers of patrons reported in the COPS Reports and letters in support of Mr Kilic from musicians (and disc jockeys) that during his short tenure as licensee Mr Kilic ran a popular venue that served the statutory purpose of developing the music industry.
137. Mr Kilic's character and professionalism as a hospitality business owner has received positive support through several references provided by several local people and persons in the industry.
138. However, there is evidence before the Authority that Mr Kilic did not observe important and obvious regulatory requirements from the outset of assuming responsibility as licensee for the Premises. The Authority is satisfied that Mr Kilic was unprepared for or did not pay sufficient regard to the *regulatory* side of running a large scale, very late trading full hotel licensed business with gaming machines and a focus on live entertainment.
139. The table provided by the Complainant entitled *Legal Actions Associated with the Imperial Hotel* and the Penalty and Compliance Notice records provided by the Complainant in the New Material on 30 May 2016 satisfy the Authority that Mr Kilic:
- Received Compliance Notices from OLGR on 15 May 2015 for:
 - o Failing to display gambling contact cards as prescribed;
 - o Failing to ensure a readily viewable working clock displayed the correct time; and
 - o Failing to comply with a condition of the licence
 - Was issued with a Penalty Notice for *Hotelier not hold recognised RCG certification*, contrary to clause 59 of the *Gaming Machines Regulation 2010*, detected on 27 May 2015.
 - Was issued a Penalty Notice for failure to maintain an Incident Register, contrary to section 56 of the Act, detected on 7 June 2015.

140. These are matters that support an adverse finding as to the knowledge and ability demonstrated by Mr Kilic (being elements of fitness and propriety at common law). They also support an adverse finding on the statutory consideration provided by section 45(5A) as to “competence to carry on that business or activity”.
141. Having considered cumulatively the Authority’s findings on the Particulars of this Complaint the Authority is satisfied that Mr Kilic is not a fit and proper person to be the holder of a liquor licence in New South Wales.

FINAL SUBMISSIONS ON DISCIPLINARY ACTION

142. On 24 August 2016 the Authority sent a detailed letter notifying its findings on the Ground of Complaint to the parties, inviting them to provide any final submissions or evidence confined to the question of what, if any, disciplinary action should be taken in light of those findings.
143. On 1 September 2016 LGNSW made a final submission to the Authority, attaching a breakdown of costs on the investigation. This submission was copied to the parties. The Complainant notes that Particulars 1.2, 1.3, 1.9, 1.10 and 1.11 of the Complaint are not established and consequently no longer presses for Mr Kilic to be disqualified “indefinitely” from holding a regulated position in the liquor industry. The Complainant submits that the Authority should take the following disciplinary action:
- Pursuant to section 141(2)(c) of the Act, order Mr Kilic to pay a monetary penalty proportionate with the level of harm and that provides a general and specific deterrent;
 - Pursuant to section 141(2)(f) of the Act, disqualify Mr Kilic from holding a licence for a period of not less than 5 years;
 - Pursuant to section 141(2)(f) of the Act, disqualify Mr Kilic from being the manager of a licensed premises for a period of not less than 5 years;
 - Pursuant to section 141(2)(f) of the Act, disqualify Mr Kilic from being the close associate of a licensee for a period of not less than 5 years;
 - Pursuant to section 141(2)(l) of the Act, order Mr Kilic to pay the costs of carrying out the investigation under section 138 of the Act (specified at **\$10,466.82**).
144. On 8 September 2016, Mr Kilic’s solicitor, Ms Stomo made a final submission to the Authority, copying the Complainant. Ms Stomo submits that the Authority should exercise its discretion under section 141(1) of the Act to take no disciplinary action against Mr Kilic in respect of this Complaint. Very briefly, this submission is made on the following bases:
- Particulars 1.1, 1.2, 1.3, 1.9, 1.10 and 1.11 were not established, and Particulars 1.4 and 1.12 were only established to a certain extent. Only Particulars 1.5, 1.6, 1.7, 1.8 were established on the basis of a “lack of diligence” on the part of Mr Kilic.
 - Mr Kilic “does not have an extensive adverse history” of convictions or penalty notices and his “character and professionalism” has the support of a number of local people and persons in the industry. Mr Kilic “understands and agrees” that it is important to be diligent and proactive, including in relation to regulatory matters.
 - Mr Kilic is not currently the holder of a liquor licence, and has no intention of applying to become the holder of a liquor licence in future.

- The 12 Particulars of the Complaint were solely framed by reference to Mr Kilic's status as a licensee, and not by reference to his status as an approved manager or close associate. With no consideration having been given as to Mr Kilic's fitness or propriety to be an approved manager or close associate of licensed premises, it "would not be reasonable or consistent with natural justice" for the Authority to take disciplinary action that would disqualify Mr Kilic from holding those positions.
- In the future Mr Kilic will have no ability to attain the position of licensee, approved manager or close associate of a liquor licensee without first satisfying the Authority that he is a fit and proper person to hold that position. In such circumstances, any disqualification period imposed by the Authority "serves no real purpose".
- The Authority did not make a finding that Mr Kilic breached the Act or the conditions on the licence, or engaged in other illegal activity.
- Atesh Pty Ltd is no longer trading nor generating any income. The regulatory action already taken against Mr Kilic and Atesh Pty Ltd has resulted in "significant financial hardship and penalty" to Mr Kilic personally, and to his business. The imposition of any further financial penalty would be "unnecessarily punitive".
- Only 4 of the 12 Particulars initially pleaded by the Complainant were made out completely. In circumstances where each party was partly successful, each party should pay their own costs, with no order as to costs made by the Authority.

145. No final submissions on disciplinary action were made by any other parties.

DECISION ON DISCIPLINARY ACTION

146. The Authority's disciplinary jurisdiction provided by Part 6A of the Act is protective, rather than punitive in nature. As held by the New South Wales Supreme Court in *Seagulls Rugby League Football Club Ltd v Superintendent of Licences* (1992) 29 NSWLR 357 (at paragraph 373):

The over-riding purpose of the jurisdiction is the protection of the public, and of members of clubs by the maintenance of standards as laid down in the Act.

147. Nevertheless, as observed by Basten JA of the New South Wales Court of Appeal in *Director General, Department of Ageing, Disability and Home Care v Lambert* (2009) 74 NSWLR 523 (**Lambert**), while disciplinary proceedings are protective, that is not to deny that orders made by disciplinary bodies may nonetheless have a *punitive effect*. His Honour observed that a Court (and hence a regulatory decision maker such as the Authority) should be mindful that a protective order is reasonably necessary to provide the required level of public protection.

148. At paragraph 83 of the judgment in *Lambert*, Basten JA states that the "punitive effects" may be relevant to the need for protection in that:

...in a particular case, there may be a factual finding that the harrowing experience of disciplinary proceedings, together with the real threat of loss of livelihood may have opened the eyes of the individual concerned to the seriousness of his or her conduct, so as to diminish significantly the likelihood of repetition. Often such a finding will be accompanied by a high level of insight into his own character or misconduct, which did not previously exist.

149. At paragraph 85 of the judgment, Basten JA observes that:

...the specific message of the disciplinary cases explaining that the jurisdiction is entirely protective is to make clear that the scope of the protective order must be defined by the reasonable needs of protection, as assessed in the circumstances of the case.

150. The Authority further notes that when determining the nature of the appropriate disciplinary action, the conduct of the respondent to a complaint *up until its final determination* is relevant and should be taken into account: *Sydney Aussie Rules Social Club Ltd v Superintendent of Licences* (SC (NSW) Grove J, No. 16845 of 1990, unreported BC9101830).
151. Mr Kilic, through his solicitor, has provided detailed submissions addressing the merits of the Complaint. The Authority notes that Mr Kilic previously held the licence for the former on-premises licensed premises (a nightclub) known as *Spice Cellar* in Martin Place, Sydney from September 2011 until the closure of that venue in April 2015 and accepts that Mr Kilic operated that licensed venue without any regulatory action being taken.
152. The Authority has also considered the character references provided by Mr Kilic in his primary submissions and accepts that Mr Kilic is a DJ and dance music producer who works in Australia and occasionally overseas who is well regarded within the music industry, particularly those with whom Mr Kilic had dealings while he was the licensee and business owner of the hotel.
153. However the evidence and material before it in relation to this Complaint satisfies the Authority that Mr Kilic did not demonstrate the required degree of knowledge and ability – being two of the three elements of the common law indicia of fitness and propriety – to operate a hotel licensed premises of this scale. The Authority does not make any adverse findings as to Mr Kilic’s honesty.
154. The Authority has had regard to Mr Kilic’s short period of tenure as licensee of the Imperial Hotel, and the considerable disturbance caused to the community during that period from the manner in which he operated the Premises.
155. The Authority notes with concern the limited but significant adverse licensing history (including two Penalty Notices, three compliance notices and the issue of a short term closure order in June 2015) that arose while Mr Kilic held the licence for the Imperial Hotel, in addition to the substantial disturbance to residential amenity which the Authority is satisfied arose by reason of the commercial decisions made by Mr Kilic to run the hotel during very late hours with an emphasis on live entertainment extending very late into the morning.
156. The Authority notes with concern its findings that Mr Kilic did not implement more substantial risk management measures until prompted to do so by the first short term closure order in June 2015 made on the basis that the hotel posed a significant threat to the public interest. These adverse findings are balanced against an absence of any prior adverse licensing record and Mr Kilic’s generally good character, noting also the absence of other (non-licensing) offences.
157. Having taken all of these matters into account the Authority is satisfied that an appropriate period of disqualification from the industry, for the protection of the community and to signal to others in the industry that this degree of non-compliance will have significant regulatory consequences, is to disqualify Mr Kilic from holding a licence, being an approved manager of licensed premises or a close associate of a licensee for a period of 3 years. Mr Kilic’s conduct demonstrated a considerable lack of judgement given the location of the hotel and, as found above, he proved wanting with respect to knowledge, ability and competence as a licensee.

- 158.** The Authority does not accept Mr Kilic's argument that, by reason that the *Ground of Complaint* specified was framed only in relation to his role as licensee, it would be unreasonable or a denial of procedural fairness to take action preventing him from being an *approved manager or close associate* of a licence in the future.
- 159.** The provisions of section 141 of the Act satisfy the Authority that once a ground is established, the Authority has open to it all of the disciplinary powers prescribed by that section, or to take no action if it thinks fit. Any disciplinary action taken should be reasonable on the evidence or material before it and the protection of the public interest in respect of the Act.
- 160.** Mr Kilic has had a reasonable opportunity to make submissions on the prospect of disciplinary action, including disqualification as a licensee, approved manager and close associate. He submits that no such action should be taken.
- 161.** The adverse findings made against Mr Kilic essentially arose from him prioritising the commercial and entertainment aspects of the hotel (running the business until very late, with large scale, ticketed events) in a manner that was well out of balance with his regulatory obligations as a licensee. His failure to attend to even basic regulatory requirements, such as holding a current RCG certificate or maintaining an incident register) demonstrates a lack of diligence and inclination to attend to regulatory matters that gained greater importance given the scale and popularity of the hotel and its location in a residential area.
- 162.** The Authority accepts that Mr Kilic is not currently participating in the liquor industry and has no present plans to do so, but he is a young man with a repeated involvement in the industry and he retains the capacity to re-enter the industry absent any orders to the contrary. Mr Kilic has not provided positive evidence of any further industry specific education or training.
- 163.** Looking forward, the Authority considers that the findings made in this matter not only reduce the confidence the Authority currently has should Mr Kilic seek another licence, but those concerns are equally applicable should he seek appointment as an approved manager, whose responsibilities are similar to a personal licensee in the case of a corporate licence holder.
- 164.** While a close associate occupies a less direct position of regulatory responsibility in a licensed business, the Authority infers, on the basis of its findings, that were Mr Kilic to act in a position of influence or control over a licensed business, he would similarly prioritise the commercial and entertainment focus of that business at the expense of ensuring regulatory compliance.
- 165.** The Authority has considered all of the submissions made by the Complainant and Mr Kilic as to the costs sought by the Secretary. The Authority notes that only 6 of the 12 Particulars specified in the *Ground of Complaint* were established and considers it appropriate in those circumstances that Mr Kilic be ordered to pay, within 28 days, 50% of the Secretary's specified costs on the investigation that gave rise to the Complaint, amounting to \$5,233.41.
- 166.** The Authority has also considered the submissions made by Mr Kilic in response to the Complainant's request that Mr Kilic be ordered to pay an additional monetary penalty. The Authority accepts that Mr Kilic has suffered financial hardship as a result of the regulatory action already taken against Mr Kilic and Atesh Pty Ltd and his eviction from the hotel by the former premises owner.
- 167.** The Authority does not consider that the imposition of an additional monetary penalty would serve any significant additional protective purpose in light of the Authority's decision to

disqualify Mr Kilic from holding a regulated position within the industry for 3 years and to pay part of the Secretary's costs on the investigation.

ORDERS

168. The Authority takes the following disciplinary action, effective from the date of this letter:

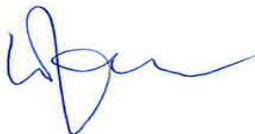
- (i) Pursuant to section 141(2)(f) of the Act, Mr Murat Kilic is disqualified from holding a licence, from being the approved manager of licensed premises or close associate of a licensee in New South Wales, for a period of three (3) years.
- (ii) Pursuant to section 141(2)(l)(i) of the Act, Mr Murat Kilic is ordered to pay, within 28 days, the sum of **\$5,233.41** to the New South Wales Department of Justice, for the Secretary's costs on carrying out the relevant investigation or inquiry under section 138 of the Act.

REVIEW RIGHTS

169. 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 disciplinary action is taken by the Authority under Part 9 of Act. An application for review should be made within 28 days of the date of notification of this decision.

170. 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 for further information.

Date of Decision: 12 October 2016



Philip Crawford

Chairperson

for and on behalf of the **Independent Liquor and Gaming Authority**