



Superintendent Gregory Martin Commander, Richmond Local Area Command 5 Zadoc Street LISMORE NSW 2480	Mr Graham Wear Approved Manager, Hotel Henry Rous c/o Mr Kim Stapleton JDK Legal Level 5, 1 Castlereagh Street SYDNEY NSW 2000
The Directors Alex Wear Pty Ltd Licensee, Hotel Henry Rous 29 Burns Point Ferry Road WEST BALLINA NSW 2478	The Directors Ballina Holdings Pty Ltd Premises Owner, Hotel Henry Rous 23 Rosslyn Street BELLEVUE HILL NSW 2023

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*Via Email and/or Express Post*

10 February 2017

Dear Sir/Madam

**Notice of Final Decision with Reasons on Complaint  
under Part 9 of the *Liquor Act 2007* in relation to  
Hotel Henry Rous, Ballina and Mr Graham Wear, Approved Manager**

The Independent Liquor and Gaming Authority has now finalised a complaint made by a delegate of the New South Wales Commissioner of Police dated 24 May 2016 (**Complaint**).

The Complaint is made under Part 9 of the *Liquor Act 2007* in relation to the hotel licensed premises known as "Hotel Henry Rous" located at 177 River Street, Ballina NSW 2478 and its approved manager, Mr Graham Kenneth Wear. The Complaint alleges that during his tenure as approved manager of the hotel, Mr Wear has been involved in the commission of several liquor offences and is not a fit and proper person to hold a liquor licence.

The Authority has decided to take the following disciplinary action in relation to this Complaint, with effect from 5 pm on the day after the date of this decision letter:

- (a) Pursuant to section 141(2)(h) of the Act, the Authority **disqualifies** the approved manager, Mr Graham Wear, from being the manager of licensed premises, or from holding a licence or being the close associate of a licensee, for a period of six (6) months commencing the day after the date of this decision letter.

- (b) Pursuant to section 141(2)(e) of the Act, the Authority **imposes** the following conditions on the liquor licence number LIQH400108516 for premises currently trading as "Hotel Henry Rous" located at 177 River Street, Ballina NSW 2478:

**1. Plan of Management**

- (1) *The licensee must engage a person who holds a current class 2A security licence to prepare a new Plan of Management for the licensed premises.*
- (2) *The Plan of Management, or any amendment of that Plan, must be prepared after consultation with the Local Area Commander of New South Wales Police.*
- (3) *The Plan should be systems based and adopt a continuing approach to address:*
  - (a) *Compliance with licence conditions and liquor laws;*
  - (b) *Information on the venue's authorised trading hours and pre-closure procedures;*
  - (c) *Effective management of liquor sales and restricting access to minors;*
  - (d) *Procedures for bar staff and security to verify the identity of all persons appearing to be less than 25 years of age and attempting to gain entry to, or purchasing alcohol at, the licensed premises;*
  - (e) *The responsible service of alcohol;*
  - (f) *Minimising disturbances to the neighbourhood particularly addressing effective management of patrons:*
    - (i) *who are intoxicated, violent, quarrelsome or disorderly;*
    - (ii) *within and departing the premises.*
  - (g) *Effective management and deployment of venue staff particularly addressing:*
    - (i) *Maintaining an incident register;*
    - (ii) *Security and patron safety;*
    - (iii) *Crime scene management procedures; and*
    - (iv) *Induction and training;*
    - (v) *Staff training on the requirements and defences outlined in section 117 of the Liquor Act 2007;*
    - (vi) *Prohibited Drugs.*
  - (h) *Appropriate responses to concerns as they arise from the Local Area Command or residents affected by the operation of the licensed premises.*
- (4) *The Plan should be updated from time to time as required but only:*
  - (a) *With the agreement of the Local Area Commander; or*
  - (b) *On the advice of a person who holds a current 2A security licence.*
  - (c) *All variations to this plan must be approved by the Local Area Commander.*
- (5) *A copy of the Plan must be served on the Local Area Commander and the Director Compliance of Liquor and Gaming NSW:*
  - (a) *Within six weeks of the imposition of this condition; and*
  - (b) *Within 14 days of any variation to the Plan.*
- (6) *All staff must be provided with a copy of the Plan of Management.*
- (7) *A copy or extract of the Plan of Management relating to trading hours must be placed within the serving area/s of the venue so that it is visible to staff.*
- (8) *A copy of the current Plan must be maintained at the licensed premises and made available for immediate inspection by members of the NSW Police Force or Inspectors from Liquor and Gaming NSW.*
- (9) *The venue must operate in accordance with the Plan of Management at all times when selling or supplying liquor.*
- (10) *All variations to this plan must be approved by the Local Area Commander.*

**2. Incident Register**

- (1) *The licensee must maintain an incident register in the form and manner required under section 56 of the Liquor Act 2007 at all times the venue is open and operating for the sale or supply of liquor.*
- (2) *The licensee must record in the register the details of any of the following incidents and any action taken in response to any such incident:*
  - (a) *Any incident involving violence or anti-social behaviour occurring on the premises;*

- (b) *Any incident of which the licensee is aware that involves violence or anti-social behaviour occurring in the immediate vicinity of the premises and that involves a person who has recently left, or been refused admission to, the premises;*
- (c) *Any incident that results in a person being turned out of the licensed premises under section 77 of the Liquor Act 2007;*
- (d) *Any incident that results in a patron of the premises requiring medical assistance;*
- (e) *any incident involving a substance suspected of being a prohibited drug or plant; and*
- (f) *Notwithstanding the above, any incident of a person being refused service.*
- (3) *The licensee must ensure that the information recorded in the incident register is retained for at least 3 years from when the record was made.*

### **3. Security**

- (1) *From 9:00pm until close on a Friday and Saturday night a minimum of two licensed uniformed security guards must be employed to patrol the interior of the licensed premises.*
- (2) *Whenever the licensed premises operates on Friday and Saturday night a uniformed security guard is to patrol the vicinity of the licensed premises at least every 30 minutes to ensure that patrons do not loiter or linger in the area or cause nuisance or annoyance to the neighbourhood. Such patrols are to continue until the last patron has left the licensed premises and vicinity of the licensed premises.*
- (3) *In addition to the detection and removal of intoxicated patrons, the functions of the security officers within these licensed premises will be to maintain order within the premises and vicinity of the premises and to prevent the sale and consumption of prohibited drugs within the premises and within the vicinity of the premises.*
- (4) *In this condition:  
"vicinity" is defined as a minimum of fifty (50) metres from the licensed premises along River Street, Moon Street and Winton Lane.*

### **4. CCTV**

- (1) *The licensee must maintain a closed-circuit television system on the premises in accordance with the following requirements:*
  - (a) *the system must record continuously from opening time until one hour after the premises are required to close (or, in the case of premises that are not required to cease trading, continuously at all times);*
  - (b) *recordings must be in digital format and at a minimum of 15 frames per second;*
  - (c) *the system must ensure low light conditions does not adversely affect quality of recording;*
  - (d) *any recorded image must specify the time and date of the recorded image;*
  - (e) *the system's cameras must cover the following areas:*
    - (i) *all entry and exit points on the premises;*
    - (ii) *the footpath immediately adjacent to the premises;*
    - (iii) *all publicly accessible areas (other than toilets) on the premises.*
- (2) *The licensee must also:*
  - (a) *keep all recordings made by the CCTV system for at least 30 days; and*
  - (b) *ensure that at least one member of staff is on the premises at all times the system is operating who is able to access and fully operate the system, including downloading and producing recordings of CCTV footage; and*
  - (c) *provide any recordings made by the system to a police officer or inspector within 24 hours of any request by a police officer or inspector to provide such recordings.*

### **5. Crime Scene Preservation**

- (1) *The licensee must ensure that immediately after the licensee or a staff member becomes aware of any incident involving an act of violence causing an injury to a person on the premises, the following are adhered to:*

- (a) *The licensee and/or staff take all practical steps to preserve and keep intact the area where the act of violence occurred, retain all material and implements associated with the act of violence in accordance with the Crime Scene Preservation Guidelines issued by the NSW Police;*
- (b) *The licensee and/or staff make direct and personal contact with the Local Area Commander or his/her delegate and advise the Commander or delegate of the incident; and*
- (c) *The licensee and/or staff comply with any directions given by the Commander or delegate to preserve or keep intact the area where the violence occurred.*
- (2) *In this condition:*  
*"staff" , in relation to subject premises, means any person employed by or acting on behalf of the licensee of the premises, and includes any person who is employed to carry on activities as a crowd controller on or about the premises.*

## **6. Liquor Accord**

- (1) *The licensee is to become an active and financial member of any local Liquor Accord for the Ballina Shire area or any like arrangement in place from time to time. The licensee or their representative must attend all general meetings as announced by the local Liquor Accord.*
- (2) *The licensee is to comply with the Ballina Shire Liquor Accord Terms as adopted by the Ballina Shire Liquor Accord membership at all times.*

## **7. Dress Code**

- (1) *The licensee must not permit any person to enter the premises, or to remain on the premises, if the person is wearing or carrying any clothing, jewellery or accessory displaying:*
  - (a) *the name of any of the following motorcycle-related and similar organisations: Bandidos, Black Uhlands, Coffin Cheaters, Comanchero, Finks, Fourth Reich, Gladiators, Gypsy Jokers, Hells Angels, Highway 61, Iron Horsemen, Life & Death, Lone Wolf, Mobshitters, Mongols, Nomads, Notorious, Odin's Warriors, Outcasts, Outlaws, Phoenix, Rebels, Red Devils, Renegades, Scorpions, Muslim Brotherhood Movement; or any "declared organisation" within the meaning of the Crimes (Criminal Organisation Control) Act 2009;*
  - (b) *the colours, club patch, insignia or logo of any such organisation; or*
  - (c) *the "1%" or "1%er" symbol; or*
  - (d) *any image, symbol, abbreviation, acronym or other form of writing that indicates membership of, or an association with, any of the organisations specified in point 1(a).*
- (2) *Any incident where a person is refused entry or removed from the premises in relation to this condition must be recorded in the incident register.*

Enclosed is a statement of reasons for the Authority's decision, including rights to review of this decision by the New South Wales Civil and Administrative Tribunal. If you have any enquiries about this letter, contact the Authority via [ilga.secretariat@justice.nsw.gov.au](mailto:ilga.secretariat@justice.nsw.gov.au).

Yours faithfully

David Armati  
**Deputy Chairperson**

# STATEMENT OF REASONS

## INTRODUCTION

1. On 17 June 2016, the Independent Liquor and Gaming Authority (**Authority**) received a complaint dated 24 May 2016 (**Complaint**) made by Superintendent Gregory Martin (**Complainant**) of the Richmond Local Area Command (**LAC**) of the New South Wales Police Force (**Police**) in his 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**) in relation to the hotel licensed premises known as the “Hotel Henry Rous”, located at 177 River Street, Ballina NSW 2478 (**Premises**), its licensee company Alex Wear Pty Ltd (**Licensee**) and its approved manager Mr Graham Kenneth Wear (**Approved Manager**).
3. On 17 June 2016 the Authority simultaneously received a related application by the Complainant dated 11 May 2016 (**Application**). The Application is made under clause 39AA of the Regulation in relation to Mr Wear only and seeks to suspend Mr Wear’s Responsible Service of Alcohol (**RSA**) Competency Card for an unspecified period of time. The Authority has considered the Application simultaneously with the Complaint and the Authority’s decision on that matter will be dealt with in separate correspondence.
4. This letter provides reasons for the Authority’s decision on the Complaint only.

## Complaint Material

5. The Complaint comprises a cover letter from Detective Superintendent Murray Reynolds, the Commander of the Drug and Alcohol Command dated 16 June 2016 and a 22-page complaint submission letter dated 24 May 2016 (together the **Complaint Letter**).
6. Attached to the Complaint Letter are some **80** Exhibits comprising over **400** pages of material (**Complaint Material**) including copies of the liquor licence for the Premises at various times; transcripts of interviews between NSW Police officers and persons associated with the hotel; Police statements in relation to licensing operations carried out at the hotel, including photographs; witness statements from patrons and members of staff of the hotel; copies of Penalty Notices issued in relation to licensing matters detected on the Premises and records of Court outcomes for prosecutions mounted against Mr Wear; internal business planning documents for the Premises including the hotel’s *Venue Plan of Management* and *Alcohol Management Operations Manual*; Fact Sheets and Guidelines sourced from the (then) Office of Liquor, Gaming and Racing, now Liquor and Gaming NSW (**LGNSW**) website and other miscellaneous documents gathered during the course of the investigation which preceded the making of the Complaint.
7. The Complaint Material also includes **10** video files for four separate interviews conducted between NSW Police and Mr Wear that occurred on 7 February 2015, 13 February 2015, 6 March 2015 and 12 March 2015. Another video file of an interview conducted on 7 February 2015 between NSW Police and a patron of the hotel who was allegedly intoxicated on the Premises was also provided by the Complainant.

8. A *OneGov* record of liquor licence number LIQH400108516 for the Premises current as at 19 September 2016, provided with the Complaint Material, indicates that the hotel is licensed to sell or supply liquor during the following extended trading hours:

Whole of the licensed premises excluding the outdoor deck areas

- 5:00am to 3:00am on Monday through Saturday
- 5:00am to 12:00 midnight on Sunday

Other areas within the licensed premises

- 5:00am to 12:00 midnight on Monday through Sunday

Takeaway consumption

- 5:00am to 12:00 midnight on Monday through Sunday.

9. The hotel enjoys the benefit of a minors area authorisation within the meaning of section 121 of the Act and an extended trading authorisation within the meaning of section 49(2) of the Act.
10. The hotel has a gaming machine threshold under section 34 of the *Gaming Machines Act 2001* of 15, with 15 gaming machine entitlements held in relation to the venue. The gaming machine shutdown period to which the venue is subject operates from 2:00am to 8:00am on Monday through Friday, 5:00am to 8:00am on Saturday and public holidays, and from 6:00am to 9:00am on Sundays.
11. The *OneGov* record as at 19 September 2016 also indicates that the Licensee as of 30 September 2011 is a company, Alex Wear Pty Ltd and the Approved Manager as of that date was Mr Graham Kenneth Wear. The owner of the hotel business is also Alex Wear Pty Ltd (**Business Owner**) and the owner of the freehold in the building in which the hotel is located is a company, Ballina Holdings Pty Ltd (**Premises Owner**).
12. In the Complaint Letter, the Complainant refers to a floor plan of the hotel provided with the Complaint Material. The Complainant describes the hotel layout as comprising a “single large room divided into two main sections” including an open dining area to the south and TAB/pool table area to the north. These two areas are divided by a standalone island bar with service areas on the southern, eastern and northern side of the bar. A bistro service area is situated on the western side of the hotel near the bar. A verandah is situated on the eastern side of the hotel. A separate gaming room is situated in the north-eastern corner of the hotel, which is accessed via the TAB/pool table area.

## SUMMARY OF THE COMPLAINT

13. The Complainant specifies six Grounds, all of which are available under section 139(3) of the Act and are set out in the findings section of this letter below. Briefly, the central allegations relied upon by the Complainant include that Mr Wear, during his tenure as Approved Manager of the hotel:
- was convicted of two serious liquor offences against section 73(1)(a) of the *Liquor Act 2007* respectively;
  - received a bond under section 10 of the *Crimes (Sentencing Procedure) Act 1999* for another serious liquor offence against section 11(2) of the Act;

- was responsible for the Premises when the hotel incurred a strike on the liquor licence for the Premises for the prescribed offence of supplying a minor with liquor and selling liquor outside of authorised trading hours;
- was issued with two Court Attendance Notices for offences against the gaming and liquor legislation;
- was issued with seven (7) infringement notices for offences against sections 9, 11(2), 73, 117, 124 and 149 of the Act; and
- was issued with three Compliance Notices for offences against section 11(2) and 73 of the Act.

14. The Complainant further contends that intoxicated persons have frequently been on the Premises or have frequently been seen to leave the Premises and that the misuse and abuse of alcohol attributed to the operation of the Hotel Henry Rous has caused harm (including harm arising from violence and other anti-social behaviour) in the community.

## DISCIPLINARY ACTION SOUGHT BY THE COMPLAINANT

15. The Complainant recommends that the Authority make the following orders under section 141(2) of the Act should the Grounds be established:

- impose a monetary penalty upon the Licensee and Approved Manager;
- cancel the extended trading authorisation attaching to the liquor licence;
- impose a number of conditions on the licence requiring that the Licensee prepare an updated *Plan of Management*, that the Licensee maintain an incident register under section 56 of the Act, that a minimum of 2 licensed uniformed security guards patrol the Premises on Friday and Saturday nights from 9:00pm until close, that the Licensee maintain a CCTV system on the Premises, that the Licensee comply with the NSW Police Crime Scene Preservation Guidelines, that the Licensee become an active and financial member of any local Liquor Accord for the Ballina Shire, and that the Licensee implement a dress code prohibiting any person wearing “colours” associated with outlaw motorcycle gangs from entering or remaining on the Premises;
- disqualify the Licensee from holding a liquor licence;
- withdraw the Approved Manager’s approval to manage licensed premises;
- disqualify the Approved Manager from being the manager of licensed premises, or from holding a licence or being the close associate of a licence.

## CONSULTATION

### Show Cause Notices

16. On 7 October 2016, pursuant to the consultation requirements in section 140 of the Act, the Authority sent letters via *Express Post* to the Approved Manager (Mr Wear), the Licensee/Business Owner (Alex Wear Pty Ltd) and the Premises Owner (Ballina Holdings Pty Ltd) (collectively, the **Respondents**).

17. The Authority notes that some parts of the Complaint Material relating to Ground “7” of the Complaint were redacted, by reason that they contained what were described by Police as confidential records not to be released to third parties. Prior to issuing Show Cause Notices the Authority decided *not* to consider this confidential undisclosed material when determining the Complaint or the Application, given the public interest in proceeding without undue delay with respect to the balance of those matters.

18. The Authority invited the Respondents to show cause, by way of written submissions, as to why disciplinary action should not be taken against them on the basis of the allegations raised in Grounds 1 through 6 of the Complaint and to also make submissions on the related Application to suspend Mr Wear's RSA Competency Card.

### **Summary of Mr Wear's Response to the Complaint**

19. On 27 October 2016, Mr Wear provided a submission addressing both the Complaint and the Application together. This comprised an 8-page sworn statutory declaration dated 27 October 2016 with 10 annexures, discussed in more detail below.
20. Briefly, Mr Wear contends that he has been the Approved Manager of the hotel since September 2011. He contends that the allegations raised in the Complaint and the Application have had "adverse effects" on him personally, as well as his "business partner", the hotel staff and his family.
21. Mr Wear contends that in the early evening of 17 July 2011, he was on duty as the approved manager when a male patron was stabbed on the verandah of the Premises. Mr Wear attended to this injured patron, who later died of his injuries. Mr Wear contends that this incident has contributed to Mr Wear's understanding of the importance of taking measures to ensure harm minimisation.
22. Mr Wear accepts that as Approved Manager he is responsible for incidents that occur on the Premises, regardless of whether or not he is present at the time. Mr Wear further accepts that he is responsible for actions carried out on his behalf by delegated managers and staff. He contends that he continually instructs his staff in the execution of their duties to ensure safety and the minimisation of harm within the Premises.
23. Mr Wear further contends that he has implemented a number of procedures and practices to comply with licensing regulations on the Premises, including:
- Engaging a "competent" security company;
  - Using a patron identification and scanning device;
  - Extra patrols of the amenities and the rear gaming area;
  - Educating patrons as to acceptable behaviour within the Premises;
  - Patrols after closing time and advising patrons to leave the Premises quietly;
  - Extra patrols of the rear car park to ensure that persons are not consuming alcohol in a public place;
  - Briefing and training staff to address any concerns or improve best practice within the hotel;
  - Use of televisions within the hotel to advertise the manner in which patrons are required to leave the licensed premises;
  - Random identification checks throughout the evening to discourage underage persons attempting to gain entry;
  - New procedures for storing alcohol behind the bar to ensure it is inaccessible to the public;
  - The preparation of an *Alcohol Operations Manual* for the hotel.
24. Moreover, Mr Wear contends that the following particular measures were implemented to promote liquor harm minimisation:
- No sale of ready-to-drink beverages with greater than 5% alcohol by volume after 12:00 midnight;

- No hats in the hotel after 9:30pm on Friday and Saturday nights for the purpose of camera identification of persons who may be behaving inappropriately;
  - No shots served;
  - The bar ceases to trade half an hour before closing time;
  - The availability of a free water station;
  - The availability of hot food at all times.
25. The Authority notes that Mr Wear does not specify *when* these various measures were introduced.
26. Mr Wear contends that if the relationship between himself and Police and/or Licensing Police was “stronger in communication” then further progress would have been made in his endeavours as Approved Manager of the hotel.
27. Mr Wear alleges that there were seven separate incidents between January 2014 and February 2016 whereby Licensing Police were either not proactive in following up incidents occurring on or in connection with the Premises, or did not meet Mr Wear or his wife when they requested meetings to discuss the operation of the hotel, or delayed in taking statements and dealing with matters arising from the operation of the hotel.
28. Mr Wear contends that due to his personal financial circumstances and the legal fees already incurred, he is unable to address a number of the matters raised in this Complaint. He submits, however, that he has paid the fines imposed upon him and has “accepted the consequences” of those matters, which include the imposition of more stringent conditions upon the licence for the hotel.
29. Mr Wear advises that he has placed the hotel lease on the market. He contends that Licensing Police informed him on 26 October 2016 that a prospective buyer had contacted Police to enquire about the operation of the hotel.
30. Attached to Mr Wear’s submission letter are the following documents:
31. **Attachment A** – Incident No. 824531 from the hotel’s incident register reporting an incident on 17 July 2011 whereby a male was stabbed on the verandah of the hotel at a time when Mr Wear was the approved manager on duty. The male subsequently died from his injuries.
32. **Attachment B** – Incident No. 1401011 from the hotel’s incident register reporting an incident on 26 January 2014 whereby an identified male threw a bottle at the hotel from across the road at a time when Mr Wear was on duty. Staff notified Police of the incident at the time, however there was no follow up by Police.
33. **Attachment C** – Incident No. 1673651 from the hotel’s incident register reporting an incident on 11 October 2014 whereby a male patron was refused entry to the Premises due to his level of intoxication. Staff notified Police of the incident at the time, however no action was taken by Police until 10 June 2015.
34. **Attachment D** – Incident No. 1673652 from the hotel’s incident register reporting an incident on 11 October 2014 whereby a male patron was refused entry to the Premises due to his level of intoxication and became violent. Staff notified Police of the incident at the time, however no action was taken by Police until 10 June 2015.

35. **Attachment E** – Incident No. 1933656 from the hotel’s incident register reporting an incident on 13 February 2016 whereby Mr Wear and his wife each had a tyre on their respective vehicles slashed by a disgruntled patron who had been asked to leave the Premises due to his aggressive behaviour.
36. **Attachment F** – Incident No. 1673762 from the hotel’s incident register reporting an incident on 28 September 2014 whereby Mr Wear admitted entry of two persons to the Premises despite a security guard having previously denying them entry on that same date as they did not have valid identification.
37. **Attachment G** – Unsworn statement dated 24 October 2016 by Mr Ben Simmons, who was working as a security officer at the hotel on the night of 28 September 2014, stating that Mr Wear did not act in a belligerent manner toward Police on that occasion.
38. **Attachment H** – Screenshots of the *Gilchrist Business Brokers* website, advertising the prospective sale of the hotel leasehold as at 19 October 2016.
39. Also attached to Mr Wear’s submission letter are two signed letters in support of Mr Wear and the business practices maintained by the hotel from two regular patrons, Mr George Henderson and Mr Alf Boston, dated 22 and 28 October 2016 respectively.

#### **No Further Submission from Complainant**

40. NSW Police did not provide any further submissions on the Complaint or in reply to Mr Wear’s submissions.

#### **FINDINGS ON GROUNDS OF COMPLAINT**

41. A disciplinary complaint under Part 9 of the Act is an administrative matter, and findings are made to the civil standard of proof.
42. 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.

#### **Findings on Ground 1**

43. Ground 1 of the Complaint is based upon section 139(3)(a) of the Act, which provides:

*that the licensee or manager has, while holding a licence or managing licensed premises, been convicted of an offence under this Act or the regulations (or under the former Act) or of an offence prescribed by the regulations.*

44. The Complainant alleges that Mr Wear permitted intoxication on the Premises contrary to section 73(1)(a) of the Act and that he failed to comply with conditions of the licence, contrary to section 11(2) of the Act, on 7 February 2015.
45. The Authority is satisfied, as alleged by the Complainant, that on 18 September 2014, a condition imposed upon the licence under section 144E(1) of the Act as a consequence of a first strike being incurred against the licence became active. This condition required the hotel to prepare a *Plan of Management* and to operate in

accordance with the *Plan of Management* at all times when selling or supplying liquor, including a 12:00am curfew and restrictions on the stockpiling of liquor.

**46.** The Authority makes these findings on the basis of the following evidence or material:

- *OneGov* record of key liquor licence details for the hotel as at 19 September 2016;
- *OneGov* record of key liquor licence details for the hotel as at 9 September 2014;
- Section 144E(1) decision dated 18 August 2014 by the (then) Office of Liquor, Gaming and Racing to impose remedial conditions on the licence for the Hotel;
- Statement of Police by Senior Constable Simon Thorpe dated 5 August 2015 regarding the imposition of remedial conditions on the licence on 18 August 2014;
- *Venue Management Plan* for the Hotel (undated);
- Transcript of record of interview between Police and Mr Wear dated 20 September 2014 regarding the imposition of remedial conditions on the licence on 18 August 2014;
- Transcript of record of interview between Police and Mr Wear dated 13 February 2015 regarding the imposition of remedial conditions on the licence on 18 August 2014; and
- Statement of Police by Sergeant Wayne Crotty dated 5 November 2015 regarding the imposition of remedial conditions on the licence on 18 August 2014.

**47.** In Ground 1 the Complainant further alleges that on the evening of Friday 6 February 2015 and the early morning of Saturday 7 February 2015 the following events occurred on the Premises:

- Two patrons were permitted entry at approximately 12:10am on 7 February 2015, after the 12:00am curfew.
- At 12:28am on 7 February 2015, covert Police identified an intoxicated male patron, Mr Robert Gomes, inside the hotel. This male was observed by Police in the toilets, where he skulled directly from a bottle of liqueur, fell over and rolled into the urinal.
- At about 1:04am on 7 February 2015, undercover Police were able to stockpile a total of eight (8) unconsumed drinks on a table, in contravention of a section of the hotel's *Plan of Management* which stated, "The Licensee shall ensure, by adequate supervision methods throughout the licensed premises, that no patron is stockpiling drinks".
- At 1:47am on 7 February 2015, Mr Gomes was interviewed by Police and Police assessed him to be well affected by alcohol.

**48.** The Complainant further alleges that on 6 March 2015 Mr Gomes participated in a further digitally recorded interview with Police during which Mr Gomes assessed his own level of intoxication as being "8 out of 10" when he was admitted to the hotel on that occasion and as being "10" when he was later removed from the hotel by Police.

**49.** The Authority is satisfied that on 6-7 February 2015, two patrons were permitted entry to the Hotel after the 12:00am curfew; that an intoxicated male was located on the Premises; and that undercover Police officers were able to stockpile drinks in contravention of a licence condition. The Authority makes these findings on the basis of the following evidence or material:

- Statement of Police by Senior Constable Simon Thorpe dated 1 August 2015 regarding the events of 6-7 February 2015;
- Transcript of record of interview between Police and Mr Graham Wear dated 7 February 2015;
- Transcript of record of interview between Police and Mr Graham Wear dated 12 March 2015 regarding the events of 6-7 February 2015;
- Statement of Police by Senior Constable Ryan Sirol dated 18 February 2015 regarding the events of 6-7 February 2015;
- Statement of Police by Senior Constable Lauren Ramage dated 22 April 2015 regarding the events of 6-7 February 2015;
- Statement of Police by Senior Sergeant Paul Tapley dated 9 February 2015 regarding the events of 6-7 February 2015;
- Transcript of record of interview between Police and Mr Robert Morris, a security guard at the hotel, dated 7 February 2015;
- Statement of Police by Sergeant Bradley Stewart dated 24 August 2015 regarding the events of 6-7 February 2015;
- Statement of a Witness by Mr Robert Morris dated 7 April 2015 regarding the events of 6-7 February 2015;
- Statement of a Witness by Ms Natalie Kelly dated 15 October 2015 regarding the events of 6-7 February 2015;
- Transcript of a conversation between Police and Mr Robert Gomes dated 7 February 2015; and
- Transcript of a conversation between Police and Mr Robert Gomes dated 6 March 2015.

**50.** The Authority is satisfied, as alleged by the Complainant, that at Ballina Local Court on 9 March 2016 the Approved Manager, Mr Wear pleaded guilty to the offence of *Licensee permit intoxication on licensed premises* contrary to section 73(1)(a) of the Act, for which he received a 12 month bond pursuant to section 9 of the *Crimes (Sentencing Procedure) Act 1999*. Mr Wear also pleaded guilty to one count of *Licensee fail to comply with conditions of licence (stockpiling)* contrary to section 11(2) of the Act, for which he received a \$500 fine.

**51.** The Authority makes these findings on the basis of the following evidence or material:

- NSW Police Force Penalty Notice No. 4923377360 issued against Mr Wear in the amount of \$1,100 for *Licensee fail to comply with conditions of licence (Plan of Management not provided to staff)*;
- Criminal History Bail Report (Police Record) for Mr Wear as at 2 April 2016;
- Affidavit of Senior Constable Simon Thorpe dated 26 April 2016 confirming the Criminal History Bail Report for Mr Wear; and
- *JusticeLink* record of Court outcomes for prosecutions against Mr Wear.

**52.** Noting that Mr Wear has not provided a specific case in rebuttal of the allegations specified in this Ground, the Authority is satisfied, on the basis of the above findings, that Mr Wear was convicted of two offences against sections 11(2) and 73(1)(a) of the Act respectively while acting as Approved Manager of the Premises.

**53.** Ground 1 is established.

## **Findings on Ground 2**

**54.** Ground 2 of the Complaint is based upon 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.*

55. In support of this Ground, the Complainant specifies four separate incidents whereby Mr Wear was allegedly issued with infringement notices for failing to comply with licence conditions.
56. The Authority is satisfied, as alleged by the Complainant, that at about 1:20am on 11 August 2012 Police conducted an audit of the RSA certification of all of the staff and security who were on duty at the hotel at the time. The RSA Certificate of one of the security guards was not able to be produced to Police and the Approved Manager, Mr Wear, was issued with NSW Police Penalty Notice No. 4026687996 in the amount of \$1,100 in respect of this offence, which was subsequently paid.
57. The Authority makes this finding on the basis of the business records provided by the State Debt Recovery Office (**SDRO**) indicating the payment status of Penalty Notices issued against Mr Graham Wear, and the entry in the Evidence Matrix for Computerised Operational Policing System (**COPS**) event reference number E49075530.
58. The Authority is satisfied, as alleged by the Complainant, that at about 12:20am on 19 August 2013 the bar manager on duty at the time sold takeaway liquor to patrons outside the authorised takeaway trading hours of the hotel contrary to section 149 of the Act. The Approved Manager, Mr Wear was issued with NSW Police Penalty Notice No. 4923377068 in the amount of \$1,100 in respect of this offence, which was subsequently paid.
59. The Authority makes this finding on the basis of the SDRO business records indicating the payment status of Penalty Notices issued against Mr Graham Wear, the entry in the Evidence Matrix for COPS event reference number E55160786 and the copy of NSW Police Force Penalty Notice No. 4923377068 issued against Mr Wear in the amount of \$1,100 for the offence of *Licensee/employee/agent sell/supply liquor contravene licence*.
60. The Authority is further satisfied, as alleged by the Complainant, that at about 12:40am on 26 January 2014 an intoxicated person was ejected from the hotel by security staff, however this was not recorded in the Security Register or the Liquor Incident Register for the Premises, contrary to a licence condition and hence contrary to section 11(2) of the Act. The Approved Manager, Mr Wear was issued with NSW Police Penalty Notice No. 4923377196 in respect of this offence.
61. The Authority makes this finding on the basis of the entry in the Evidence Matrix for COPS event reference number E54159849.
62. The Authority is also satisfied, as alleged by the Complainant, that at about 12:15am on 20 September 2014 Police attended the Premises and ascertained that both security guards on duty at the time had not been provided with a copy of the hotel's *Plan of Management*, in contravention of the remedial condition that had been imposed by the Secretary upon the licence under Part 9A of the Act on 18 September 2014.
63. The Authority is satisfied that the Approved Manager was issued with NSW Police Penalty Notice No. 4923377360 in respect of this offence, which he elected to defend in Court. At Ballina Local Court on 9 March 2016 the Approved Manager, Mr Wear

received a bond pursuant to section 10 of the *Crimes (Sentencing Procedure Act) 1999* in respect of this offence.

64. The Authority makes these findings on the basis of the copy of NSW Police Force Penalty Notice No. 4923377360 issued against Mr Wear in the amount of \$1,100 for the offence of *Licensee fail to comply with conditions of licence*, the SDRO business records indicating the payment status of Penalty Notices issued against Mr Graham Wear and the entry in the Evidence Matrix for COPS event reference number E55600505.
65. Noting that Mr Wear has not provided a specific case in rebuttal of the allegations specified in this Ground, the Authority is satisfied on the basis of the above findings that Mr Wear, while acting as Approved Manager of the Premises, failed to comply with conditions to which the licence was subject on four separate occasions.
66. Ground 2 is established.

### **Findings on Ground 3**

67. Ground 3 of the Complaint is based upon section 139(3)(c) of the Act, which provides:

*that the licensee has failed to comply with any of the conditions to which any authorisation or approval held by the licensee under this Act is subject.*

68. The Authority is satisfied, as alleged by the Complainant, that at about 7:30pm on 18 August 2013 a 17-year-old male attended the hotel wearing “colours” (clothing and/or insignia) associated with the *Rebels* outlaw motorcycle gang. The bar manager informed the minor that he was not permitted to wear the “colours” in the hotel and the minor left. The minor then removed his “colours” and returned to the hotel, where he remained in the licensed area for a number of hours and purchased and consumed liquor. The minor remained in the minors authorisation area of the Premises without being in the company of a responsible adult and also entered and remained in a bar area of the hotel, being the gaming room.
69. The Authority is further satisfied, as alleged by the Complainant, that the Approved Manager, Mr Wear was issued with three NSW Police Penalty Notices in respect of these offences, being Penalty Notice No. 4923377059 in the amount of \$1,100 for the offence of *Sell liquor to a minor*; Penalty Notice No. 4923377077 in the amount of \$1,100 for the offence of *Licensee allow minor to enter/remain in minors authorisation area*; and Penalty Notice No. 4923377086 for the offence of *Licensee allow minor to enter/remain in bar area of hotel*.
70. All three of these Penalty Notices were subsequently paid. The Authority notes that section 150 of the Act provides that if a penalty is paid in respect of a Penalty Notice served upon a person, this is deemed to be a conviction for the purposes of a complaint under Part 9 of the Act.
71. The Authority makes these findings on the basis of the entry in the Evidence Matrix for COPS event reference number E55160786, the SDRO business records indicating the payment status of Penalty Notices issued against Mr Graham Wear, and the copies of NSW Police Force Penalty Notices Nos. 4923377059, 4923377077 and 4923377086 provided as part of the Complaint Material.

72. The Authority is satisfied, on the basis of the above findings, that the Approved Manager, Mr Wear has failed to comply with the conditions of the minors area authorisation attaching to the licence for the Premises and that Mr Wear was responsible for those contraventions.

73. Ground 3 is established.

#### **Findings on Ground 4**

74. Ground 4 of the Complaint is based upon section 139(3)(g) of the Act, which provides:

*that intoxicated persons have frequently been on the licensed premises or have frequently been seen to leave those premises.*

75. In support of this Ground the Complainant has provided an Evidence Matrix which summarises a total of **223** Police reported events occurring between March 2011 and March 2016 in respect of which Police have attended the Premises.

76. The Authority has reviewed the information provided in this Evidence Matrix and is satisfied that a person or persons were actually seen on the Premises or leaving the Premises at a time when they were assessed by Police as being “well affected” by alcohol on the following thirty (30) occasions:

- 21 December 2012: COPS event reference number E50305566;
- 29 December 2012: COPS event reference number E49701170;
- 29 December 2012: COPS event reference number E50644343;
- 8 January 2013: COPS event reference number E49997436;
- 19 January 2013: COPS event reference number E51129141;
- 23 February 2013: COPS event reference number E49917120;
- 2 March 2013: COPS event reference number E50322625;
- 13 April 2013: COPS event reference number E53606983;
- 10 May 2013: COPS event reference number E215055494;
- 31 May 2013: COPS event reference number E52182542;
- 15 June 2013: COPS event reference number E51813156;
- 3 August 2013: COPS event reference number E54333889;
- 13 September 2013: COPS event reference number E776518790;
- 22 November 2013: COPS event reference number E53571077;
- 30 November 2013: COPS event reference number E53179672;
- 14 December 2013: COPS event reference number E55556189;
- 26 January 2014: COPS event reference number E54159849;
- 29 March 2014: COPS event reference number E54890851;
- 18 May 2014: COPS event reference number E57255483;
- 5 June 2014: COPS event reference number E55715643;
- 6 June 2014: COPS event reference number E55417629;
- 14 June 2014: COPS event reference number E183636798;
- 27 July 2014: COPS event reference number E55812128;
- 26 December 2014: COPS event reference number E56230237;
- 18 July 2015: COPS event reference number E59345565;
- 1 August 2015: COPS event reference number E60502187;
- 10 September 2015: COPS event reference number E61552783;
- 10 September 2015: COPS event reference number E58828313;
- 7 November 2015: COPS event reference number E60311116; and
- 5 March 2016: COPS event reference number E60969249.

77. The Authority is also satisfied that a person or persons were seen on the Premises or seen leaving the Premises while assessed by Police as being “seriously affected” by alcohol on one further occasion on 26 December 2014 (COPS event reference number E109398601).
78. The Authority considers that Police officers gain considerable exposure and experience in assessing whether persons exhibit signs consistent with intoxication from the use of liquor and that the records of the above events are sufficiently specific and supported by summaries sourced from contemporaneous records on the COPS database for the Authority to find, on the balance of probabilities, that the events actually occurred and that the persons involved were exhibiting behaviour consistent with alcohol intoxication.
79. This amounts to a total of **31** incidents of intoxicated persons who were observed by Police either on or leaving the Premises during a period extending from 21 December 2012 to 5 March 2016. The Authority is satisfied that the events in the Evidence Matrix are sufficiently “frequent” to satisfy the requirements of section 139(3)(g) of the Act with regard to the presence of intoxicated persons on the Premises or persons seen leaving the Premises while intoxicated.
80. In addition to the Evidence Matrix, the Complainant makes a number of further specific allegations in support of this Ground. The Authority makes the following findings:
81. The Authority is satisfied, on the basis of its findings on Grounds 1 to 3 above, that NSW Police have commenced proceedings against the Approved Manager (Mr Wear) on two occasions for the offence of *Licensee permit intoxication on licensed premises* contrary to section 73(1)(a) of the Act.
82. The Authority is satisfied, as alleged by the Complainant, that at about 10:15pm on 17 November 2011, Police conducting a covert audit of the hotel observed five patrons inside the hotel, one of whom was well affected by liquor. This patron approached the bar, purchased a takeaway bottle of beer from a staff member, and then left the hotel. The Approved Manager, Mr Wear was on the Premises at the time and was issued with Compliance Notice No. 111517 for *Licensee permit intoxication on licensed premises* in respect of this offence.
83. The Authority makes these findings on the basis of the entry in the Evidence Matrix in respect of COPS event reference number E46374126.
84. The Authority is satisfied, on the basis of the same evidence or material that establishes Ground 1, that on 7 February 2015 while conducting a covert audit on the Premises, Police observed an intoxicated male patron consuming alcohol on the Premises, falling down and rolling into the toilets. This male was later observed by uniformed Police to consume liquor on the Premises.
85. The Authority is satisfied, on the basis of the same evidence or material that establishes Ground 1, that the Approved Manager, Mr Wear was convicted at Ballina Local Court on 9 March 2016 for the offence of *Licensee permit intoxication on licensed premises* contrary to section 73(1)(a) of the Act, for which he received a 12 month bond pursuant to section 9 of the *Crimes (Sentencing Procedure) Act 1999*.
86. While all of the allegations made in this Ground are factually established, the Authority notes that the incidents referred to in the Evidence Matrix which the Authority is

satisfied involved intoxicated persons who were assessed as either “well” or “seriously” affected by alcohol span a period from December 2012 to March 2016.

87. The Authority is satisfied that Police have been consistently called to deal with intoxicated persons who are on the Premises and Police have dealt with other persons who were on the Premises but later found nearby the Premises. Police were also called to address incidents requiring the issue of move-on directions, assaults, traffic offences and stealing offences, with most of the persons recorded as having been intoxicated, although Police have taken no further regulatory action at the time.
88. The Authority notes that there is only one *prosecution* evident from the Complaint Material regarding the offence of *Licensee permit intoxication on licensed premises* arising from those events which resulted in an order against Mr Wear under section 9 of the *Crimes (Sentencing Procedure Act) 1999*.
89. Nevertheless, on the balance of probabilities, the Authority is satisfied that the material relied upon by the Complainant in support of this Ground establishes a sufficiently “frequent” pattern of incidents of intoxicated persons on or seen leaving the Premises for the purposes of section 139(3)(g) of the Act. The Authority further notes the advanced level of patron intoxication recorded in many of these events, underscoring the relative seriousness of the matters.
90. Ground 4 is established.

### **Findings on Ground 5**

91. Ground 5 of the Complaint is based upon 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).*

### **Fitness and Propriety at General Law**

92. 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.
93. 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 – *Clearihan v Registrar of Motor Vehicle Dealers in the ACT* (1994) 117 FLR 455.
94. 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.*

95. Section 45(5A) of the Act, to which section 139(3)(i) refers, prescribes non-exhaustive statutory considerations to which the Authority must have regard when determining the fitness and propriety of a licensee, including whether that person:
- (a) is of good repute, having regard to character, honesty and integrity; and
  - (b) is competent to carry on that business or activity.

#### Approved Manager's Criminal/Licensing History

96. The Authority is satisfied, on the basis of the Criminal History Bail Report (Police Record) for Mr Graham Wear as at 2 April 2016, the SDRO business records indicating the payment status of Penalty Notices issued against Mr Graham Wear, and the Authority's findings on Grounds 1 to 4 above, that the Approved Manager has been issued with two (2) Court Attendance Notices, seven (7) infringement notices for liquor and gaming offences and three (3) compliance notices for liquor offences while he has been the approved manager of the Premises.
97. The Authority is not satisfied, on the evidence or material before it, that on 2 December 1992 the Approved Manager was convicted before Port Kembla Local Court for the offence of *Cultivate prohibited drug*, in respect of which he received a \$1,000 fine. The Complainant has provided no evidence of this conviction.
98. In a matter pertaining to Mr Wear's personal character, the Authority is satisfied, as alleged by the Complainant, that on 13 November 2011 Mr Wear was stopped by Police for a roadside breath test which returned a positive result. Mr Wear was arrested and charged with the offence of *Drive with low range prescribed concentration of alcohol* contrary to section 110(3) of the *Road Transport Act 2013*. On 1 December 2011 he was convicted before Ballina Local Court and received a \$600 fine, 3 months disqualification of his driver's licence and ordered to pay \$81 in Court costs.
99. The Authority makes this finding on the basis of the *Criminal History Bail Report* (Police Record) for Mr Wear as at 2 April 2016, which records the Court outcome for this matter.
100. The Authority is further satisfied, as alleged by the Complainant, that at about 10:15pm on 17 November 2011, Police conducting a covert audit of the Premises observed five patrons inside the hotel, one of whom was well affected by liquor. This patron approached the bar, purchased a takeaway bottle of beer from a staff member, and then left the hotel. The Approved Manager, Mr Wear was on the Premises at the time and was issued with Compliance Notice No. 111517 for *Licensee permit intoxication on licensed premises* in respect of this offence. The Authority notes that this offence was detected just two months after Mr Wear commenced as Approved Manager of the hotel.
101. The Authority makes these findings on the basis of the entry in the Evidence Matrix in respect of COPS event reference number E46374126.

102. The Authority is satisfied, as alleged by the Complainant, that at about 1:20am on 11 August 2012, Police conducting an audit/inspection of the Premises determined that the RSA Certificate of one of the security guards at the hotel was not located on the Premises. The Approved Manager was issued with a NSW Police Force Penalty Notice for the offence of *Licensee not comply with licence conditions* contrary to section 11(2) of the Act.
103. The Authority makes these findings on the basis of the same evidence or material used to establish this incident in respect of Ground 2 of the Complaint.
104. The Authority is satisfied, as alleged by the Complainant, that Licensing Police were present at the hotel at about 11:35pm on 14 September 2012, when they observed that the clock on the wall of the gaming room and the majority of the gaming machines all displayed times which were incorrect by 30 to 90 minutes. The Approved Manager was issued with NSW Police Force Penalty Notice No. 4028648957 in the amount of \$550 for the offence of *Licensee fail to ensure readily viewable working clock/correct time* contrary to clause 28 of the *Gaming Machines Regulation 2010*.
105. The Authority makes these findings on the basis of the entry in the Evidence Matrix for COPS event reference number E49491150 and the SDRO business records provided by the Complainant.
106. The Authority is satisfied, as alleged by the Complainant, that at about 7:30pm on 18 August 2013 the Approved Manager, Mr Wear permitted a minor to enter and remain in the bar area of the hotel, where he purchased and consumed liquor. Mr Wear was issued with three (3) NSW Police Penalty Notices in respect of these offences, being Penalty Notice No. 4923377059 in the amount of \$1,100 for the offence of *Sell liquor to a minor* contrary to section 117 of the Act; Penalty Notice No. 4923377077 in the amount of \$1,100 for the offence of *Licensee allow minor to enter/remain in minors authorisation area* contrary to section 124(1) of the Act; and Penalty Notice No. 4923377086 for the offence of *Licensee allow minor to enter/remain in bar area of hotel* contrary to section 124(2) of the Act.
107. The Authority makes these findings on the basis of the same evidence or material that establishes the events of 18 August 2013 with regard to Ground 3 of the Complaint.
108. The Authority is satisfied, as alleged by the Complainant, that at about 12:20am on 19 August 2013 the bar manager on duty sold takeaway liquor to patrons outside the authorised takeaway trading hours of the hotel. The Approved Manager responsible for the Premises, Mr Wear was issued with NSW Police Penalty Notice No. 4923377068 in the amount of \$1,100 for the offence of *Licensee/employee/agent sell/supply liquor contravene licence* contrary to section 9(1) of the Act, which was subsequently paid.
109. The Authority makes these findings on the basis of the same evidence or material establishing the events of 19 August 2013 with regard to Ground 2 of the Complaint.
110. The Authority is also satisfied, as alleged by the Complainant, that on 11 January 2014 two patrons were excluded from the hotel by security staff for their levels of intoxication. These exclusions were recorded in the hotel's Security Incident Register but not the Liquor Incident Register. The Approved Manager was issued with two compliance notices for the offence of *Licensee fail to comply with conditions of licence* contrary to section 11(2) of the Act with regard to the removal of patron that was recorded in Security Register but not the Liquor Register.

111. The Authority makes these findings on the basis of the entry in the Evidence Matrix for COPS event reference number E53995656.
112. The Authority is further satisfied, as alleged by the Complainant, that on 26 January 2014 an intoxicated patron was removed from the hotel by security staff. This exclusion was not recorded in the hotel's Security Incident Register or the Liquor Incident Register. The Approved Manager was issued with NSW Police Penalty Notice No. 4923377205 for the offence of *Licensee fail to comply with conditions of licence* contrary to section 11(2) of the Act – with regard to the removal of a patron that was not recorded in either the Security Register or the Liquor Incident Register.
113. The Authority makes these findings on the basis of the entry in the Evidence Matrix for COPS event reference number E53995656, the SDRO business records indicating the payment status of Penalty Notices issued against Mr Graham Wear and the copy of NSW Police Force Penalty Notice No. 4923377205 provided as part of the Complaint Material.
114. The Authority is satisfied, as alleged by the Complainant, that at about 12:15am on 20 September 2014 Police attended the Premises and ascertained that both security guards on duty at the time had not been provided with a copy of the hotel's *Plan of Management*, in contravention of the remedial condition imposed by the Secretary of the now Department of Justice on the licence on 18 September 2014 as a consequence of the first strike that had been incurred against the licence.
115. The Authority is satisfied that the Approved Manager, Mr Wear was issued with NSW Police Penalty Notice No. 4923377360 in respect of this offence against section 11(2) of the Act, which he elected to defend in Court. At Ballina Local Court on 9 March 2016 the offence was proven but with no conviction recorded – Mr Wear instead receiving a bond pursuant to section 10 of the *Crimes (Sentencing Procedure Act) 1999* in respect of this offence.
116. The Authority makes these findings on the basis of the same evidence or material with regard to this Penalty Notice that establishes these events with regard to Ground 2 of the Complaint.
117. The Authority is satisfied, as alleged by the Complainant, that at about 12:40am on 28 September 2014 the Approved Manager, Mr Wear, who had been on duty earlier that night but was by this time off duty, was consuming liquor on the Premises. Police formed the opinion that Mr Wear was “noticeably affected” by alcohol and that he was behaving in a “belligerent, quarrelsome and argumentative” manner with Police and security staff. Police subsequently excluded Mr Wear from the hotel and issued him with a move on direction pursuant to section 198 of the *Law Enforcement (Powers and Responsibilities) Act 2002*.
118. The Authority makes these findings on the basis of the entry in the Evidence Matrix for COPS event reference number E55020120.
119. The Authority is satisfied, as alleged by the Complainant, that on the evening and early morning of 6-7 February 2015, the Approved Manager permitted intoxication on the Premises under section 73(1)(a) of the Act and that the Approved Manager failed to comply with conditions of the licence, contrary to section 11(2) of the Act.

120. The Authority is satisfied, as alleged by the Complainant, that at Ballina Local Court on 9 March 2016 the Approved Manager pleaded guilty to *Licensee permit intoxication on licensed premises* contrary to section 73(1)(a) of the Act, for which he received a 12 month bond pursuant to section 9 of the *Crimes (Sentencing Procedure) Act 1999*. The Approved Manager also pleaded guilty to one count of *Licensee fail to comply with conditions of licence (stockpiling)* contrary to section 11(2) of the Act, for which he received a \$500 fine.
121. The Authority makes these findings on the basis of the same evidence or material that establishes these events with regard to Ground 1 of the Complaint.
122. The Authority is satisfied, on the basis of the above findings, that the Approved Manager Mr Wear has contravened the liquor and gaming legislation on several occasions. These are matters that are plainly adverse to an assessment of Mr Wear's competence as an hotelier and the drink driving conviction is adverse to Mr Wear's personal integrity.

#### Local Licensing Agreement

123. The Authority is satisfied that on 31 December 2013 the Approved Manager entered into a Local Licensing Agreement (**LLA**) with NSW Police, which came into effect on 1 January 2014. The undertakings in the LLA pertained, *inter alia*, to the use of a Barring Book; observance of NSW Police Crime Scene Preservation Guidelines; use of Security staff; regulation of Alcohol Consumption and the use of a Curfew. The Complainant has provided a copy of the LLA with the Complaint Material.
124. The Authority is satisfied that on 7 February 2014 Police attended the Premises and seized two of the hotel's Liquor Incident Registers and a Security Incident Register. The Authority accepts, as alleged by the Complainant, that at about 1:36am on 5 January 2014 a male patron was found knocked out on the dancefloor of the hotel and at about 2:20am on 11 January 2014 a patron punched another patron. The Authority is satisfied that neither of these incidents was notified to the officer in charge of Ballina Police Station, in contravention of the terms of the LLA.
125. The Authority makes these findings on the basis of the LLA document and the entry in the Evidence Matrix for COPS event reference number E53995656.
126. The Authority is satisfied, as alleged by the Complainant, that at about 9:20pm on 25 April 2014 Police entered the gaming room and observed that there was no security guard on duty in the gaming area of the Premises per the undertakings given by the Approved Manager in the LLA.
127. The Authority makes this finding on the basis of the copy of the LLA document and the entry in the Evidence Matrix for COPS event reference number E54499312.
128. The Authority is satisfied, as alleged by the Complainant, that at about 1:15am on 6 June 2014 two patrons inside the hotel Premises became involved in a physical altercation with one another and that one of the patrons later reported the incident to Police. The Approved Manager was aware of the fight when it occurred, but failed to make contact with the officer in charge of Ballina Police Station and report the assault as per the undertakings made in the LLA.
129. The Authority makes this finding on the basis of the LLA document and the entry in the Evidence Matrix for COPS event reference number E55417629.

- 130.** The Authority is satisfied, as alleged by the Complainant, that at about 12:17am on 15 October 2014 a male patron was inside the hotel when he was punched by another patron. The Approved Manager failed to contact the officer in charge of Ballina Police Station or exclude the offender from the hotel.
- 131.** The Authority makes this finding on the basis of the copy of the LLA document and the entry in the Evidence Matrix for COPS event reference number E56525064.
- 132.** The Authority is also satisfied, as alleged by the Complainant, that at about 1:15am on 19 December 2014 a patron of the hotel was punched several times by another patron. The victim later attended Ballina Police Station to report the incident. Information supplied to Police indicates that the Approved Manager was aware of the assault, but neither he nor his staff made contact with the officer in charge of Ballina Police Station to report the assault as per the undertakings made in the LLA.
- 133.** The Authority makes this finding on the basis of the copy of the LLA document and the entry in the Evidence Matrix for COPS event reference number E57316374.
- 134.** The Authority is satisfied, on the basis of the above findings, that the Approved Manager Mr Wear contravened the terms of the LLA on five occasions between January 2014 and December 2014. These are matters that are adverse to an assessment of Mr Wear's competence as an hotelier and his ability to deal with law enforcement pursuant to the undertakings he has given. The failure to report significant acts of violence to Police is a serious matter.
- 135.** While taking into account the fact that most of the acts or omissions that gave rise to Court Attendance Notices, Penalty Notices or Compliance Notices occurred during 2013 and 2014, the frequent detection of persons in an advanced state of intoxication on or leaving the Premises established in Ground 4 occurred from December 2012 to March 2016, a substantial portion of Mr Wear's tenure as Approved Manager. Those events indicate a lack of ability to maintain RSA practices that are commensurate with the relative level of risk posed by operating a hotel operating with late trading hours and a patronage that is demonstrably disposed to the abuse of liquor on licensed premises.
- 136.** The Authority has concluded, on a cumulative assessment of its findings with regard to Ground 5 of the Complaint, that Mr Wear is not a fit and proper person to hold a liquor licence. The found adverse events and the nature and frequency of infringements established on the evidence indicate a lack of either knowledge or ability to operate this type of licensed establishment in compliance with the licensing legislation.
- 137.** The Authority notes that Mr Wear has not provided specific submissions or evidence in rebuttal to the allegations made in this Ground, but relies upon his personal character and the measures that he implemented on the Premises during the relevant period. While the Authority accepts that Mr Wear implemented the various measures that he has noted in his submissions, those measures were insufficient to address the continuing incidents of patron intoxication and anti-social conduct occurring on the Premises. The two letters in support of Mr Wear's management practices provided by two patrons of the hotel have been taken into account, but this is insufficient to displace the substantial record of patron intoxication and alcohol related anti-social conduct between 2012 and 2016.
- 138.** Ground 5 is established.

## Findings on Ground 6

139. Ground 6 of the Complaint is based upon section 139(3)(s) of the Act, which provides:

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

140. The Complainant alleges that the licence has not been exercised in the public interest and that the operation of the Premises has contributed to alcohol related harm in the local community. This allegation is based on three areas of regulatory concern – the incurring of a “strike” within the meaning of Part 9A of the Act for the prescribed offence of the sale of liquor to a minor, the listing of the Premises as a “declared premises” for the purposes of Schedule 4 to the Act in December 2014 and Mr Wear's failure to declare serious offences occurring on the Premises to Police.
141. The Authority is satisfied that on 17 December 2013 a first “strike” within the meaning of Part 9A of the Act was incurred on the licence for the hotel for offences of *Sell liquor to minor* and *Contravene liquor licence condition* detected on 18 and 19 August 2013 respectively. The Authority is also satisfied that on 8 December 2014 the hotel became a “declared premises” within the meaning of Schedule 4 of the Act and remained a declared premises for a 12 month period.
142. The Authority is satisfied, on the basis of its findings on Grounds 1 to 5 above, that on 6 and 7 February 2015, while the hotel was a declared premises with one strike on the licence, that two serious licensing offences were detected on the Premises including *Licensee permit intoxication on licensed premises*, contrary to section 73(1)(a) of the Act and *Licensee fail to comply with conditions on the licence*, contrary to section 11(2) of the Act.
143. The Authority is satisfied, as alleged by the Complainant, that over the previous six (6) years the rate of alcohol related assaults occurring during weekends at night in the suburb of Ballina has varied from between 195% and 396% higher than the rate for New South Wales as a whole. The Authority makes this finding on the basis of data sourced from the NSW Bureau of Crime Statistics and Research (**BOCSAR**) for the period from October 2009 to September 2015 extracted in the Complaint Letter.
144. The Authority is satisfied, as alleged by the Complainant, that 42.9% of alcohol related assault events occurring during weekends at night within the suburb of Ballina occurred on licensed premises. The Authority makes this finding on the basis of further BOCSAR data for the period from October 2014 to September 2015 extracted in the Complaint Letter.
145. The Authority is satisfied, as alleged by the Complainant, and on the basis of statistics sourced from the NSW Police COPS database and the Alcohol Related Crime Information Exchange (**ARCIE**) database for the period between 1 March 2014 and 29 February 2016 extracted in the Complaint Letter, that the following Police recorded events occurred and are reasonably attributable to the operation of the hotel and/or the conduct of its patrons:
- 77 move on directions;
  - 38 assaults;
  - 36 breaches of licensing legislation;
  - 23 traffic offences;
  - 8 stealing offences; and

- 8 street offences.

146. The Authority is further satisfied, as alleged by the Complainant, that the majority of incidents occurring at the hotel between March 2014 and February 2016 occurred between 12:00 midnight and 3:00am, and that generally Friday night trade at the Premises posed the highest risk to public health and safety. The Authority makes these findings on the basis of the ARCIE data extracted in the Complaint Letter.
147. Examining the number of incidents over the relevant 5 year period from 2011 to 2016, the Authority is satisfied that the *Alcohol Management Plan* and other business measures referred to by Mr Wear in his submissions as having been implemented by him during his tenure as Approved Manager have proven insufficient in the circumstances of this venue to address the frequent issues of intoxication and patron misconduct that have been demonstrated by the evidence.
148. Mr Wear's actions as an approved manager have not been sufficient to address the numerous ongoing regulatory shortcomings and alcohol related risks at this late trading hotel that have been manifest from the Police evidence.
149. The Authority accepts that there were several occasions whereby Mr Wear has contacted Police and attempted to engage with them about the operation of the hotel but Police have not followed up or involved a delayed response.
150. While that is unfortunate, it does not provide an excuse for the instances of regulatory non-compliance and patron alcohol related misconduct detected by Police when they have occurred. The Authority is satisfied, on the basis of its findings on this Complaint, that the Approved Manager has not implemented harm minimisation measures during his tenure that are adequate to address the sustained levels of alcohol abuse and alcohol related violence by patrons of the Premises.
151. The Authority is satisfied, on the basis of the information contained in the Evidence Matrix, the data extracted in the Complaint Letter, and the Authority's findings on Grounds 1 to 5 above, that the operation of the Premises has had a substantial adverse impact on public health and safety and contributed to alcohol related harm in the local community of Ballina. Police have frequently been called upon to respond to incidents of assaults, intoxication and other alcohol related misconduct by patrons, including one homicide on the Premises.
152. Considered cumulatively, and having regard to all of the statutory objects and considerations in section 3 of the Act, while giving weight to subsections 3(2)(a) and 3(2)(c), the Authority is satisfied that the licence has not been exercised in the public interest during Mr Wear's tenure.
153. Ground 6 is established.

## **SUBMISSIONS ON DISCIPLINARY ACTION**

154. On 14 December 2016 the Authority issued a detailed letter to the parties notifying its findings on the Grounds of Complaint and giving the Complainant 7 days and the Respondents until 9 January 2017 to make any final submissions addressing the question of what, if any, disciplinary action should be taken by the Authority in light of those findings.

## **No Submission from the Complainant**

**155.** The Complainant did not make any further submissions on the question of disciplinary action.

## **Submission from Mr Wear dated 18 January 2017**

**156.** On 18 January 2017, Mr Kim Stapleton, a solicitor from the law firm *JDK Legal*, advised that he now acts for Mr Wear and the corporate Licensee Alex Wear Pty Ltd. Those respondents provided a written submission to the Authority addressing the question of disciplinary action in relation to the Complaint and the separate but related Application.

**157.** Briefly, Mr Wear submits that over the past two years, he has implemented a number of (unspecified) practices and procedures with the result that the hotel is no longer a “Level 1” or “Level 2” declared premises in respect of the level of violence on the Premises for the purposes of Schedule 4 to the Act. Mr Wear submits that there have been no further prosecutions against him or the hotel in respect of an alleged breach of the *Liquor Act* for a period of almost 2 years.

**158.** Mr Wear submits that “there is no warrant” for the Authority to take the “punitive” action sought by the Complainant because of the “demonstrable and significant improvement” in the hotel’s operation over the last two years.

**159.** Mr Wear then makes certain specific submissions with respect to each of the six Grounds of Complaint, as summarised below.

### Ground 1

**160.** Mr Wear submits that:

- The two patrons who were permitted entry to the Premises at 12:10am (after curfew) were in fact employees of other licensed premises in Ballina, and the Court Attendance Notice initially issued by Police in relation to this incident was later withdrawn on the day of the hearing. Mr Wear contends that there was an agreement between himself and Licensing Police in the form of an “unwritten exception, with the imprimatur of the Licensing Police”, that employees of other licensed premises which had closed earlier than the Premises would be permitted entry to the Premises after 12:00 midnight.
- The 8 unconsumed drinks that the Licensee allowed to be stockpiled on this occasion were purchased by undercover Police at 1:04am, while the Premises was scheduled to close at 3:00am. Mr Wear submits that the allegation that these drinks were “stockpiled” is “a somewhat contrived and unrealistic situation”.
- With regard to Mr Robert Gomes being found intoxicated on the Premises, Mr Wear submits that the liquor consumed by Mr Gomes was stolen from behind the hotel’s counter by an associate of Mr Gomes. While Mr Wear accepts that there should have been better supervision of the bar area, the liquor had been obtained by theft and was consumed by Mr Gomes in the toilet away from security staff. Mr Wear submits that the Police failure to address the issue of the theft and allow Mr Gomes to “skol” a bottle of spirits is “surprising”.

## Ground 2

**161.** Mr Wear submits that:

- The security officer who was not able to produce an RSA Certificate on request subsequently produced a current RSA Certificate to Police.
- At the time when the bar manager sold takeaway liquor to patrons outside authorised hours and the sale of liquor to a minor occurred Mr Wear was absent, on holiday, from the hotel.
- While this does not excuse Mr Wear from culpability, Mr Wear submits that in relation to disciplinary action, the Authority should note that there has been no repetition of either of these breaches.
- The ejection of an intoxicated person from the hotel, which was not recorded in the hotel's security register or incident register was a "failing by security" and an "oversight of management". However there has been no repetition of such incident.
- Mr Wear contends that although the security officers had not been provided with a copy of the hotel's *Plan of Management*, they had actually read this document. Mr Wear accepts that there were "teething problems" in the implementation of a revised *Plan of Management*. All staff members have since been issued with a copy of the *Plan* and there has not been a repetition of this breach.

## Ground 3

**162.** Mr Wear submits in relation to Ground 3 that he was on holiday and not present at the hotel at the time that a 17 year old man attended the Premises dressed in the "colours" of an outlaw motorcycle gang. Mr Wear submits that it "simply did not occur to the bar manager that the person presenting as a member of an outlaw motorcycle gang might be a minor". Mr Wear submits that this was a "very serious" offence and notes that three Penalty Notices were issued as a consequence of this matter.

## Ground 4

**163.** Mr Wear submits in relation to Ground 4 that the "elephant in the room" which is not emphasised in either the Complaint or the Application is that there is a "significant problem" with alcohol and Indigenous persons in Ballina, whose conduct may from time to time be described as "anti-social".

**164.** Mr Wear contends that given the proximity of the taxi rank to the hotel, a significant number of incidents occurring in and around the Premises which are purported to be linked to the hotel might be more fairly attributed to persons who are unrelated to the hotel. Mr Wear requests that the Authority take this factor into account when making its determination on disciplinary action.

## Ground 5

**165.** Mr Wear submits that:

- Mr Wear was convicted of a low range prescribed concentration of alcohol offence while driving a motor vehicle and this is his only conviction of this kind on his record.
- Regarding the offence of *Licensee fail to ensure readily viewable working clock/correct time* contrary to clause 28 of the *Gaming Machines Regulation 2010*, Mr Wear submits that this was “not a heinous crime, by any stretch of the imagination” and requests that the Authority not place great weight on it when determining disciplinary action.
- Mr Wear accepts that there was an incident whereby a security guard did not patrol the relevant area in compliance with an undertaking contained in the liquor licence agreement. However Mr Wear submits that this was subsequently addressed and that there has been no repetition of this breach.

### Ground 6

- 166.** In relation to Ground 6, Mr Wear questions the accuracy of the statistical data relied upon by Police. [The Authority notes that Mr Wear has not provided any competing evidence or analysis of the BOCSAR crime data.] He contends that the situation at the hotel has “improved significantly” over the past two years. There has been no breach of licensing legislation detected on the Premises since February 2015 and the hotel is no longer listed as a “declared premises” in Schedule 4 to the Act.
- 167.** Mr Wear submits that based on the “consistent and significant improvement” of the operation of the hotel over the last 24 months, there is now “no evidence” pointing to the licensed premises being exercised contrary to the public interest.

### Specific Submissions on Disciplinary Action

- 168.** Mr Wear makes the following specific submissions in response to the Complainant’s recommendations on disciplinary action:
- Mr Wear and the corporate Business Owner, Alex Wear Pty Ltd are presently experiencing financial pressure and the imposition of any monetary penalty would “visit extreme financial hardship” upon them.
  - There appears to be “little warrant” to cancel the extended trading authorisation attaching to the licence. Mr Wear submits that there is a “drinking problem” in the town of Ballina but that it occurs “on most occasions off licensed premises”. It would be “unfair in the circumstances” to attribute the significant number of problems that the Ballina CBD experiences to this venue.
  - Mr Wear consents to the imposition of licence conditions proposed by Police and notes that “all” of these measures are currently being observed by way of voluntary undertakings.
  - Mr Wear submits that it is “unwarranted” to disqualify him or the corporate Licensee or to withdraw his approval to manage licensed premises, as sought by the Complainant, in light of the hotel’s “vastly improved operation over the past 24 months under Mr Wear’s stewardship”.
- 169.** Mr Wear concludes with the submission that the Hotel Henry Rous was his “first tilt” at being an approved manager of a hotel. He concedes that “mistakes and errors of

judgment” were made in the first three to four years of running this hotel but he has now learnt from his errors, as evidenced by his and the hotel’s “blemish free record” over the past two years.

170. Mr Wear submits that there is now “no need” for any further disciplinary action besides the imposition of the Police proposed conditions on the hotel licence. However, if the Authority is minded to impose a period of disqualification, Mr Wear requests that any period of disqualification be “for an absolute minimum period”.
171. Mr Wear also advises that he proposes to transfer the licence for the Premises “immediately to a suitably qualified person to hold the licence”.

## DECISION AND REASONS

172. The Authority’s disciplinary jurisdiction provided by Part 9 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.*

173. 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.
174. 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.*

175. 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.*

176. 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).
177. The Authority has considered the Complaint and all of the material before it, including the detailed final submission on disciplinary action made on behalf of Mr Wear.

- 178.** The Authority is satisfied that all six Grounds of Complaint were established and that Mr Wear is not a fit and proper person to hold a liquor licence by reason of his involvement in the commission of numerous serious offences against the *Liquor Act 2007* during his tenure as Approved Manager of the hotel, including the permission of intoxication on licensed premises, the sale or supply of liquor to minors and selling liquor outside of authorised trading hours.
- 179.** However, the Authority accepts, on the basis of Mr Wear's final submission dated 18 January 2017, that the hotel operating on the Premises has not been the subject of any regulatory action over the last two years and that there have been significant changes and improvements to the hotel's business practices over this period. Notably, the incidence of violence occurring on the Premises has reduced to the point whereby the Premises is no longer a "declared premises" under Schedule 4 to the Act. On the other hand, incidents where intoxicated patrons were observed leaving the Premises continued until March 2016, on the material before the Authority.
- 180.** Having taken all of these matters into account the Authority is satisfied, 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, that an appropriate response in this case is to disqualify Mr Wear from being the manager of licensed premises, or from holding a licence or being the close associate of a licensee, for a period of six (6) months.
- 181.** Mr Wear's conduct demonstrated a considerable lack of diligence with regard to his obligations and responsibilities as a liquor licensee. This period of disqualification reflects the entire period of Mr Wear's involvement as Approved Manager, including the recent improvement in the regulatory performance of the hotel. While the Complainant has established that the licence was exercised contrary to the public interest during a large portion of Mr Wear's tenure, and this would usually invite strong action against the licence itself, the circumstances of the hotel have substantially changed. The Authority notes Mr Wear's intention to transfer the hotel licence "immediately" and accepts that the sale of the hotel leasehold was advertised online in October 2016.
- 182.** The Authority notes that the Complainant also sought that the Authority impose a monetary penalty upon the Licensee and Approved Manager. However, in the circumstance the Authority is of the view that such disciplinary action would be unduly punitive, given that the majority of the Penalty Notices issued for previous offences against the Liquor Act have already been paid.
- 183.** The Authority further notes that the Complainant also recommends that the Authority cancel the extended trading authorisation currently attaching to the liquor licence for the Premises. Ordinarily, a finding that a licence has not been exercised in the public interest would invite action being taken against the licence.
- 184.** The Complainant had provided a good case for the revocation of the extended trading authorisation, but the Authority has refrained from taking this action only by reason of the recent improvement in the performance of the Premises, as identified in Mr Wear's final submissions, with respect to which the Complainant has not made submissions in reply.
- 185.** Noting that the hotel has previously acted contrary to voluntary undertakings provided in the LLA, the Authority is of the view that the imposition of seven enforceable licence

conditions proposed by Police (set out below) will sufficiently address any issues arising from the current operation of the extended trading authorisation.

- 186.** Should regulatory problems and alcohol related disturbance of the kind demonstrated by the Complainant resume during late hours, it would be open to the Complainant to provide fresh evidence to the Authority seeking revocation or variation of the extended trading authorisation under section 51(9) of the Act.
- 187.** In light of the imposition of these new licence conditions, the Authority has decided to take no further action against the hotel licence itself or the corporate Licensee, Alex Wear Pty Ltd.

## ORDER

**188.** The Authority makes the following orders:

- (a) Pursuant to section 141(2)(h) of the Act, the Authority **disqualifies** the approved manager, Mr Graham Wear, from being the manager of licensed premises, or from holding a licence or being the close associate of a licensee, for a period of six (6) months commencing the day after the date of this decision letter.
- (b) Pursuant to section 141(2)(e) of the Act, the Authority **imposes** the following conditions on the liquor licence number LIQH400108516 for premises currently trading as “Hotel Henry Rous” located at 177 River Street, Ballina NSW 2478, to commence effect at 5pm on day after the date of this decision letter:

### 1. Plan of Management

- (1) *The licensee must engage a person who holds a current class 2A security licence to prepare a Plan of Management for the licensed premises.*
- (2) *The Plan of Management must be approved by the Local Area Commander.*
- (3) *The Plan should be systems based and adopt a continuing approach to address:*
  - (a) *Compliance with licence conditions and liquor laws;*
  - (b) *Information on the venue's authorised trading hours and pre-closure procedures;*
  - (c) *Effective management of liquor sales and restricting access to minors;*
  - (d) *Procedures for bar staff and security to verify the identity of all persons appearing to be less than 25 years of age and attempting to gain entry to, or purchasing alcohol at, the licensed premises;*
  - (e) *The responsible service of alcohol;*
  - (f) *Minimising disturbances to the neighbourhood particularly addressing effective management of patrons:*
    - (i) *who are intoxicated, violent, quarrelsome or disorderly;*
    - (ii) *within and departing the premises.*
  - (g) *Effective management and deployment of venue staff particularly addressing:*
    - (i) *Maintaining an incident register;*
    - (ii) *Security and patron safety;*
    - (iii) *Crime scene management procedures; and*
    - (iv) *Induction and training;*
    - (v) *Staff training on the requirements and defences outlined in section 117 of the Liquor Act 2007;*
    - (vi) *Prohibited Drugs.*
  - (h) *Appropriate responses to concerns as they arise from the Local Area Command or residents affected by the operation of the licensed premises.*
- (4) *The Plan should be updated from time to time as required but only:*
  - (a) *With the agreement of the Local Area Commander; or*

- (b) *On the advice of a person who holds a current 2A security licence.*
- (c) *All variations to this plan must be approved by the Local Area Commander.*
- (5) *A copy of the Plan must be served on the Local Area Commander and the Director Compliance of Liquor and Gaming NSW:*
  - (a) *Within six weeks of the imposition of this condition; and*
  - (b) *Within 14 days of any variation to the Plan.*
- (6) *All staff must be provided with a copy of the Plan of Management.*
- (7) *A copy or extract of the Plan of Management relating to trading hours must be placed within the serving area/s of the venue so that it is visible to staff.*
- (8) *A copy of the current Plan must be maintained at the licensed premises and made available for immediate inspection by members of the NSW Police Force or Inspectors from Liquor and Gaming NSW.*
- (9) *The venue must operate in accordance with the Plan of Management at all times when selling or supplying liquor.*
- (10) *All variations to this plan must be approved by the Local Area Commander.*

## **2. Incident Register**

- (1) *The licensee must maintain an incident register in the form and manner required under section 56 of the Liquor Act 2007 at all times the venue is open and operating for the sale or supply of liquor.*
- (2) *The licensee must record in the register the details of any of the following incidents and any action taken in response to any such incident:*
  - (a) *Any incident involving violence or anti-social behaviour occurring on the premises;*
  - (b) *Any incident of which the licensee is aware that involves violence or anti-social behaviour occurring in the immediate vicinity of the premises and that involves a person who has recently left, or been refused admission to, the premises;*
  - (c) *Any incident that results in a person being turned out of the licensed premises under section 77 of the Liquor Act 2007;*
  - (d) *Any incident that results in a patron of the premises requiring medical assistance;*
  - (e) *any incident involving a substance suspected of being a prohibited drug or plant; and*
  - (f) *Notwithstanding the above, any incident of a person being refused service.*
- (3) *The licensee must ensure that the information recorded in the incident register is retained for at least 3 years from when the record was made.*

## **3. Security**

- (1) *From 9:00pm until close on a Friday and Saturday night a minimum of two licensed uniformed security guards must be employed to patrol the interior of the licensed premises.*
- (2) *Whenever the licensed premises operates on Friday and Saturday night a uniformed security guard is to patrol the vicinity of the licensed premises at least every 30 minutes to ensure that patrons do not loiter or linger in the area or cause nuisance or annoyance to the neighbourhood. Such patrols are to continue until the last patron has left the licensed premises and vicinity of the licensed premises.*
- (3) *In addition to the detection and removal of intoxicated patrons, the functions of the security officers within these licensed premises will be to maintain order within the premises and vicinity of the premises and to prevent the sale and consumption of prohibited drugs within the premises and within the vicinity of the premises.*
- (4) *In this condition:*  
*"vicinity" is defined as a minimum of fifty (50) metres from the licensed premises along River Street, Moon Street and Winton Lane.*

#### **4. CCTV**

- (1) *The licensee must maintain a closed-circuit television system on the premises in accordance with the following requirements:*
  - (a) *the system must record continuously from opening time until one hour after the premises are required to close (or, in the case of premises that are not required to cease trading, continuously at all times);*
  - (b) *recordings must be in digital format and at a minimum of 15 frames per second;*
  - (c) *the system must ensure low light conditions does not adversely affect quality of recording;*
  - (d) *any recorded image must specify the time and date of the recorded image;*
  - (e) *the system's cameras must cover the following areas:*
    - (i) *all entry and exit points on the premises;*
    - (ii) *the footpath immediately adjacent to the premises;*
    - (iii) *all publicly accessible areas (other than toilets) on the premises.*
- (2) *The licensee must also:*
  - (a) *keep all recordings made by the CCTV system for at least 30 days; and*
  - (b) *ensure that at least one member of staff is on the premises at all times the system is operating who is able to access and fully operate the system, including downloading and producing recordings of CCTV footage; and*
  - (c) *provide any recordings made by the system to a police officer or inspector within 24 hours of any request by a police officer or inspector to provide such recordings.*

#### **5. Crime Scene Preservation**

- (1) *The licensee must ensure that immediately after the licensee or a staff member becomes aware of any incident involving an act of violence causing an injury to a person on the premises, the following are adhered to:*
  - (a) *The licensee and/or staff take all practical steps to preserve and keep intact the area where the act of violence occurred, retain all material and implements associated with the act of violence in accordance with the Crime Scene Preservation Guidelines issued by the NSW Police;*
  - (b) *The licensee and/or staff make direct and personal contact with the Local Area Commander or his/her delegate and advise the Commander or delegate of the incident; and*
  - (c) *The licensee and/or staff comply with any directions given by the Commander or delegate to preserve or keep intact the area where the violence occurred.*
- (2) *In this condition:*  
*"staff" , in relation to subject premises, means any person employed by or acting on behalf of the licensee of the premises, and includes any person who is employed to carry on activities as a crowd controller on or about the premises.*

#### **6. Liquor Accord**

- (1) *The licensee is to become an active and financial member of any local Liquor Accord for the Ballina Shire area or any like arrangement in place from time to time. The licensee or their representative must attend all general meetings as announced by the local Liquor Accord.*
- (2) *The licensee is to comply with the Ballina Shire Liquor Accord Terms as adopted by the Ballina Shire Liquor Accord membership at all times.*

#### **7. Dress Code**

- (1) *The licensee must not permit any person to enter the premises, or to remain on the premises, if the person is wearing or carrying any clothing, jewellery or accessory displaying:*
  - (a) *the name of any of the following motorcycle-related and similar organisations: Bandidos, Black Uhlans, Coffin Cheaters, Comanchero,*

*Finks, Fourth Reich, Gladiators, Gypsy Jokers, Hells Angels, Highway 61, Iron Horsemen, Life & Death, Lone Wolf, Mobshitters, Mongols, Nomads, Notorious, Odin's Warriors, Outcasts, Outlaws, Phoenix, Rebels, Red Devils, Renegades, Scorpions, Muslim Brotherhood Movement; or any "declared organisation" within the meaning of the Crimes (Criminal Organisation Control) Act 2009;*

- (b) the colours, club patch, insignia or logo of any such organisation; or*
  - (c) the "1%" or "1%er" symbol; or*
  - (d) any image, symbol, abbreviation, acronym or other form of writing that indicates membership of, or an association with, any of the organisations specified in point 1(a).*
- (2) Any incident where a person is refused entry or removed from the premises in relation to this condition must be recorded in the incident register.*

## REVIEW RIGHTS

- 189.** 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.
- 190.** For more information, please visit the NCAT website at [www.ncat.nsw.gov.au](http://www.ncat.nsw.gov.au) or contact the NCAT Registry at Level 9, John Maddison Tower, 86-90 Goulburn Street, Sydney.

Yours faithfully



David Armati  
**Deputy Chairperson**  
for and on behalf of the **Independent Liquor & Gaming Authority**