



Detective A/Superintendent Kelly Kortlepel Drug and Alcohol Coordination Commander Level 8, Tower A, Police Headquarters 1 Charles Street PARRAMATTA NSW 2150	Mr Ka Lun (Alan) Woo Licensee, K1 Karaoke Lounge c/o Mr Tony Hatzis Hatzis Cusack Lawyers Level 9, 68 Pitt Street SYDNEY NSW 2000	Megabox Holding Pty Ltd Business Owner, K1 Karaoke Lounge c/o Mr Tony Hatzis Hatzis Cusack Lawyers Level 9, 68 Pitt Street SYDNEY NSW 2000
Mr Minh Hai Ta and Ms Chi Thuyen Ta Premises Owners, K1 Karaoke Lounge 44 Princes Street BRIGHTON-LE-SANDS NSW 2216	Mr Sean Goodchild Director, Compliance and Enforcement Liquor and Gaming NSW Level 6 323 Castlereagh Street HAYMARKET NSW 2000	

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8 June 2016

Dear Sir/Madam

**Reasons for Decision on Application for Long Term Closure Order
under section 84 of the *Liquor Act 2007*
K1 Karaoke Lounge, Haymarket (liquor licence number LIQO624015081)**

SUMMARY OF DECISION

1. The Authority has determined, under section 84 of the *Liquor Act 2007* (**Act**) *not* to issue a long term closure order against the K1 Karaoke Lounge, Haymarket licence number LIQO624015081 located at Suite 4, 31-37 Dixon Street, Haymarket NSW 2000 (**Premises**).
2. This decision was made on the proviso that the Premises will be subject to six new licence conditions that have been imposed by the Authority pursuant to section 53(2)(b) of the Act as specified at the conclusion of this letter.
3. The Authority's decision was communicated in an email from the Authority's General Counsel on 16 May 2016. This letter serves to provide a statement of reasons for the Authority's decision, for the purposes of section 36C of the *Gaming and Liquor Administration Act 2007*.

INTRODUCTION

4. On 13 April 2016, the Independent Liquor and Gaming Authority (**Authority**) received an application (**Application**) from Detective A/Superintendent Kelly Kortlepel (**Applicant**), Drug and Alcohol Coordination Commander in her capacity as a delegate of the New South Wales Commissioner of Police.
5. The Application is made under section 84 of the Act and seeks the issue of a Long Term Closure Order in relation to the Premises in Haymarket, Sydney currently trading as “K1 Karaoke Lounge”.
6. The licensed business on the Premises operates pursuant to an on-premises liquor licence, number LIQO624015081. The designated primary purpose of the licensed business is recorded on the *OneGov* record of the licence as “karaoke venue”.
7. The Authority notes that a licence record current as of 8 April 2016 indicates that the licensed business is authorised to sell or supply liquor for consumption on the Premises during the following hours:

Monday	10:00am to 2:00am
Tuesday	10:00am to 2:00am
Wednesday	10:00am to 2:00am
Thursday	10:00am to 2:00am
Friday	10:00am to 2:00am
Saturday	10:00am to 2:00am
Sunday	10:00am to 2:00am.

8. That is, the licence has the benefit of an extended trading authorisation within the meaning of section 49 of the Act.
9. The Applicant advises that the New South Wales Alcohol and Licensing Enforcement Command (**ALEC**) is currently conducting an investigation against the licensee of the Premises, Mr Ka Lun (Alan) Woo (**Licensee**) in relation to criminal offences and multiple offences against the *Liquor Act*. The Applicant advises that it is the intention of NSW Police to make a separate disciplinary complaint under Part 9 of the Act in relation to the current Licensee and close associates of the licensed business.
10. Briefly, the Applicant submits that the long term closure of the Premises is necessary as there is an “extreme and continuing risk” that the following serious breaches of the *Liquor Act* will occur on the Premises, including:
 - The sale or supply of liquor on or in relation to the Premises outside of authorised trading hours, contrary to section 9(1)(b) of the Act;
 - The permission by the Licensee for the Premises to be used for the sale of prohibited drugs, contrary to section 74(1)(b) of the Act;
 - The permission by employees or agents of the Licensee of the possession or use of prohibited drugs on the Premises, contrary to section 74(4) of the Act.

11. In summary, the Application is primarily made on the basis of CCTV video evidence of the use of prohibited drugs (cocaine) on the Premises by patrons and employees of the licensed business.
12. The Application is also made on the basis of the allegation that liquor was being sold or supplied for consumption on the Premises outside of licensed trading hours.
13. The Applicant further alleges that CCTV footage and sales transaction records were lost, deliberately destroyed by staff of the business, or not made available for production to Police.
14. The Applicant also alleges that the “secondary business model” of the K1 Karaoke business involved the provision of “comfort girls” for premium customers and that certain areas of the Premises were being used for the purposes of prostitution.
15. In an apparent reference to the requirements of section 84(2)(c) of the Act, the Applicant submits, on the basis of the evidence and other material provided with the Application, that a number of serious breaches of the Act have occurred in relation to the Premises and that there is a threat to public health or safety and a risk of serious offences (having a maximum penalty of not less than 2 years’ imprisonment) being committed on the Premises and that a Long Term Closure Order is necessary to prevent or reduce the risk of significant threat to the public interest.
16. The Applicant submits that in order to address the “immediate and continuing harm” of ongoing drug supply occurring on the Premises, the Applicant submits that the Authority should exercise its power under section 84 of the Act to order the Licensee to close the licensed premises for such period that the Authority thinks fit (noting that the maximum period prescribed by clause 28 of the *Liquor Regulation 2008* is 6 months), or until such time (not exceeding 6 months) that the following events occur:
 1. The investigation into the current Licensee under section 139 of the Act has been finalised and any complaint pursuant to Part 9 of the Act has been determined by the Authority,

or, in the alternative, that the following events occur:

1. A new licensee is unconditionally approved by the Authority; and
2. The licence is restricted to standard trading hours; and
3. The following conditions are imposed on the licence:

1. CCTV Condition

- (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) *any recorded image must specify the time and date of the recorded image,*
 - (d) *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.*
- (e) *the cameras must have a fixed field of view and not able to be moved or re-directed by patrons or staff.*
- (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.*

2. Lockout Condition

- (1) *The licensee must not permit patrons to enter the premises after 10pm.*
- (2) *For the avoidance of doubt, patrons already present in the premises immediately before the start of the lockout period may:*
 - (a) *leave the premises at any time, or*
 - (b) *remain on the premises while the premises are authorised to trade,*

but are not permitted to re-enter the premises during the lockout period.

3. Identification Scanner Condition

- (1) *Patron photo IDs to be scanned at all times when this venue is trading:*
 - (a) *A person must not be permitted to enter the venue as a patron unless:*
 - (i) *the person produces to a staff member a form of identification containing a photograph of the person and the person's identification details (photo ID), and*
 - (ii) *the photo ID is scanned by a staff member using a patron ID scanner.*
 - (b) *A person must be refused admission to the venue as a patron if the person:*
 - (i) *chooses not to produce his or her photo ID to a staff member, or*
 - (ii) *is subject to a temporary or long-term banning order.*

SHORT TERM CLOSURE ORDER

- 17.** Although not the subject of this letter, the Authority notes that on Wednesday 13 April 2016, the Applicant also made a separate application under section 82 of the Act seeking the short term closure of the Premises for a period of 72 hours from 12:00 midday on 15 April 2016 for that coming weekend (**Short Term Closure Application**).
- 18.** The Licensee did not contest the Short Term Closure Application but advised that it intended to voluntarily close the Premises for a period of one week while seeking advice on the issues raised by the Long Term Closure Application before the Authority.

19. In relation to the Short Term Closure Application the Authority was satisfied, on the material before it (particularly the CCTV video evidence of apparent cocaine use on the Premises by patrons and a former manager), that the requirements of section 82 of the Act had been satisfied and that the Premises should be closed from 72 hours from 12:30pm on Friday 15 April 2016.

NOTICE OF LONG TERM CLOSURE APPLICATION

20. The Long Term Closure Application and Application Material were delivered by the Applicant to the Licensee by around 10:00am on 14 April 2016. On 18 April 2016 the Authority notified the Licensee's solicitor that any evidence or submissions in response to the Application were due by 5:00pm on Thursday 21 April 2016, giving the Licensee effectively 7 days to address the Application Material relied upon in support of this Application.
21. The Applicant had provided the Licensee with the *redacted* version only of the Application and Application Material that had been delivered to the Authority by the Applicant (the Applicant having provided the Authority with both a *confidential* version and a *redacted* version, which deleted certain evidence or information classified by the Applicant as sensitive law enforcement material including confidential intelligence holdings which should not be released or disclosed to the Licensee and/or made publicly available).
22. When formally notifying the Licensee of its receipt of the Application, the Authority advised the Licensee that it was considering, on the basis of the (redacted) Application, the closure of the Premises for a period of six (6) months, or until such time as the conditions specified on pages 9 and 10 of the Application Letter have been satisfied.

MATERIAL BEFORE THE AUTHORITY

23. The redacted version of the Application comprises the following material:
- **Application Letter**, undated and unsigned but delivered on 13 April 2016 (partially redacted);
 - **Table of Contents** provided by the Applicant;
 - **Tab A to the Application** – Extract of *OneGov* Liquor Licence for the Premises as at 8 April 2016 indicating extended trading hours and Licensee details;
 - **Tab B to the Application** – Diagram of the Premises showing the licensed boundary;
 - **Tab C to the Application** – NSW Police Brief of Evidence (redacted);
 - **Tab D to the Application** – Statement of Particulars in relation to the Application (partially redacted);

- **Tab E to the Application** – Transaction Receipt Matrix comprising a summary of receipts recovered by Police from the Premises for transactions allegedly evidencing the sale or supply of liquor outside of licensed hours;
- **Tab F to the Application** – Copies of receipts for transactions allegedly evidencing the sale or supply of liquor outside of licensed hours on the Premises;
- **Tab G to the Application** – Police Notebook interview recording a statement made to Senior Constable Ryan Sirol on 23 March 2016 regarding access to CCTV footage;
- **Tab H to the Application** – Reference to CCTV footage for the Premises provided by the Applicant in support of the Application;
- **Tab I to the Application** – Still image from CCTV footage for the Premises captured on 22 February 2016 and Evidence Matrix summarising CCTV footage of the Premises from the perspective of Police;
- **Tab J to the Application** – NSW Police Strike Force BRAGS summary document (redacted);
- **Tab K to the Application** – Copy of LGNSW *Three Strikes Register* as at 10 March 2016

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

SUBMISSIONS IN RESPONSE TO THE NOTICE OF APPLICATION

Primary Submission from the Licensee dated 22 April 2016

24. On 22 April 2016, Mr Tony Hatzis of *Hatzis Cusack Lawyers* provided a submission in response to the Application on behalf of the Licensee and the corporate business owner, Megabox Holding Pty Ltd (**Business Owner**). The Licensee's primary submission takes the form of a 17-page submission letter prepared by *Hatzis Cusack Lawyers* dated 22 April 2016, the truth of which is verified by a brief sworn affidavit made by the Licensee, Mr Woo, also dated 22 April 2016. The submission letter includes seven attachments (discussed below).
25. In the submission letter, the Licensee refers to section 84 of the Act and submits that the Authority's power to issue a long term closure order is a "drastic power" and one that is contemplated to be used only in circumstances where the exercise of the power is "indispensable" or necessary to the circumstances of the case to uphold the public interest objects of the legislation.

The Licensee's Regulatory Record

26. The Licensee submits that the Licensee and Business Owner have conducted the K1 Karaoke business since 2010 and that they have a "good regulatory record". The Licensee contends that despite "frequent walkthroughs" by Police, OLGR and Council inspectors, only one breach has been recorded in relation to the Premises, in respect of an instance of *Licensee permit intoxication* on 2 May 2015, for which the Licensee paid a Penalty Notice that was issued to him in the sum of \$1,100. The Licensee

requests that the Authority give weight to the “long, good regulatory history” of the business in determining whether closure of the Premises is necessary.

Changes in the Business Model

27. The Licensee submits that in 2014, the business owners were introduced to Mr Tyson Seo, who had experience in conducting “Korean style” karaoke. The Licensee submits that unlike “Chinese style” karaoke (which simply involves room hire and the provision of liquor and food) “Korean style” karaoke features female “hostesses” who lead the karaoke activities, select appropriate songs and encourage patrons to actively participate.
28. The Licensee denies the Police allegations that the female hostesses have acted as prostitutes and takes issue with the Applicant’s use of the phrase “comfort girls” in the Application Letter (which the Licensee notes is an expression associated with the conduct of Japanese armed forces during World War II, whereby women in occupied territories were exploited as sex slaves). The Licensee contends that the female hostesses were not offering sexual services of any kind to patrons.
29. The Licensee contends that Mr Tyson Seo was employed by K1 Karaoke to act as a manager. Mr Seo then recruited a number of young female hostesses as the “Korean style” karaoke appeared to attract a larger number of new patrons.
30. The Licensee contends that after Mr Seo’s appointment, the Licensee, Mr Woo, lessened his active participation in the business and was present at the venue on approximately two nights per week. The Licensee contends that Mr Woo continued to review daily incident reports, financial reports and live CCTV footage on his mobile phone so as to oversee the operations of the venue remotely.
31. The Licensee contends that while the “Korean style” karaoke was being conducted, Mr Seo would generally oversee the operations of the venue. The Licensee submits that despite “numerous attendances” of ALEC officers at the venue from late January 2016 onwards, no suggestion was made to Mr Woo or to the business owners that drugs were being used or supplied on the Premises.
32. The Licensee contends that Mr Seo stopped coming to work from 22 March 2016, without giving any prior notice that he intended to cease working. The Licensee contends that Mr Seo has evaded all attempts by the Licensee and Business Owner to contact him.
33. The Licensee contends that neither Mr Woo nor Mr Eddie Lai (the manager in charge when Mr Woo was not on duty) nor any of the officers of Megabox Holding Pty Ltd had any knowledge or suspicion of drug activity until Police made applications to the Authority for closure orders in respect of the Premises during April 2016. The Licensee contends that since receiving those applications, the venue has “completely ceased” the practice of operating in the mode of a “Korean style” karaoke venue.

Sale of Liquor outside Authorised Trading Hours

34. With regard to the allegation that the Licensee, Mr Woo, permitted the sale of liquor to patrons beyond 2:00am, outside of authorised trading hours, the Licensee accepts that the receipts in Tab E and Tab F to the Application evidence a number of occasions

where transactions were recorded in the venue's till register systems after 2:00am. However, the Licensee contends that that is because many patrons settle their accounts at the end of their visit to the venue.

35. The Licensee notes that the liquor licence authorises the Licensee to sell or supply liquor for consumption on the Premises until 2:00am, however the development approval issued by City of Sydney Council permits the Premises to be operated (for planning purposes) as a public entertainment venue until 4:00am.
36. The Licensee submits that he can "lawfully continue" to conduct entertainment and have patrons remain on the Premises until 4:00am, although liquor may not be sold or supplied after 2:00am. The Licensee contends that from 12:00 midnight, all liquor is sold in compliance with the requirements of the City of Sydney CBD Entertainment Precinct conditions.
37. The Licensee submits that none of the evidence in Tab E to the Application or the CCTV footage shows liquor actually being supplied to patrons at any time after 2:00am. Mr Hatzis refers to *Pletts v Campbell* [1895] 2 QB 229 and submits that, as in this case, if a customer runs a tab and settles that tab at a later time (such as upon leaving the Premises at 3:00am or even on another day) this does not have the effect of deferring the time of "sale" for the purposes of section 25(2) of the Act.
38. The Licensee submits that there would be no obvious regulatory purpose to be served in controlling the times at which payment might be subsequently received for liquor that was supplied to customers during licensed trading hours.
39. With regard to the allegation that the Licensee has destroyed "individual records of sale" in order to prevent the discovery of evidence of after-hours sales, the Licensee briefly describes the venue's system of record keeping and contends that there has been "no deliberate destruction of transaction records to defeat a Police investigation or to conceal evidence of after-hours sales" and that the Licensee and Business Owner have been "consistently open with Police" about the way in which patron accounts are settled and records kept.
40. The Licensee submits that there is nothing "sinister" in the fact that the venue discards the printed forms of individual room "bills" after reconciliations are undertaken, as this is simply the ordinary business practice of the venue. However, the data contained in the printed "bills" are retained electronically and this practice of discarding individual room "bills" after undertaking reconciliations does not prevent Police from examining, electronically, the times at which past transactions were run through the till systems.

Instances of Drug Use and Possession

41. The Licensee submits that the CCTV footage supplied by the Applicant has been reviewed by the Licensee's compliance consultant, Mr Pat Paroz APM, who is the immediate past Commander of the NSW Police Drug and Alcohol Coordination.
42. A consultant report prepared by Mr Paroz dated 21 April 2016 (Appendix 5 to the Licensee's submission) concludes that there are some instances in the CCTV Evidence Matrix, provided at Tab I to the Application, where:
 - Patrons have been misrepresented as being "staff members";

- Some footage does not appear to show people using drugs, contrary to the written summary provided by the Applicant;
 - There is nothing in the video footage or in the CCTV Evidence Matrix to suggest that Mr Woo was “involved” in the use and sale of drugs on the Premises. Mr Woo has not been spoken to by Police about drug use or possession on the Premises and Mr Woo “vehemently denies” any knowledge of or involvement in drug use or supply at the venue.
- 43.** The Licensee and Business Owner acknowledge that there are passages in the CCTV footage which appear to show, on a number of occasions, persons apparently using prohibited drugs on the Premises.
- 44.** In summary, the Licensee submits that this drug activity:
- Has arisen only after Mr Seo commenced working at the Premises and conducted “Korean style” karaoke with employees recruited by him and involving patrons to whom he promoted that style of business;
 - Involved Mr Seo and those staff and patrons that he brought to the venue; and
 - Was limited to that part of the Premises in which that “Korean style” karaoke was being conducted. Police acknowledge at paragraph 37 of the Application Letter that “the white side of the business conducts itself as a more legitimate use of the venue’s liquor licence”.
- 45.** The Licensee submits that the Licensee and Business Owner are content to have a number of new conditions imposed upon the licence directed to addressing the risk of prohibited drugs on the Premises, including a condition that Mr Seo not attend the Premises in any capacity; that the Licensee is not to provide karaoke hosts or hostesses on the licensed premises and that all publicly accessible areas of the Premises are to be covered by CCTV cameras.

Financial Impact of a Long Term Closure Order

- 46.** The Licensee contends that a 6-month closure order will have a “significant debilitating effect” on the Licensee and Business Owner, as patrons attend other karaoke venues and become accustomed to those other venues. Further, the rental payment obligations of approximately \$24,000 per month under a lease will continue to be payable, notwithstanding that no revenue will be generated from the Premises. In addition, 20 staff members (all of whom are casuals working rotating shifts) will cease to be employed by the business.

The Alleged Destruction of CCTV Footage

- 47.** The Licensee and Business Owner reject the Police allegation that they have deliberately destroyed CCTV footage in order to conceal criminal behaviours.
- 48.** The Licensee contends that in early March 2016, the Licensee was served with a Notice to Produce under the *Gaming and Liquor Administration Act 2007*, which required the provision of approximately 4,000 video files captured from all of the

venue's CCTV cameras over a period of 30 days. [The Authority notes that a copy of this Notice to Produce is not provided by the Licensee in its primary submission of 22 April 2016, but is provided in a later submission dated 26 April 2016.]

49. The Licensee contends that the existing DVR hard drive for the CCTV system on the Premises was over five years old and would continually restart during the process of burning the CCTV files to DVD. However, staff of the business were able to provide Police with the files requested in spite of these technical problems. In order to prevent this technical problem arising again the Licensee, Mr Woo, has purchased and installed a new DVR with a larger hard drive capacity to facilitate quicker downloads and speed up the recording process. A copy of the receipt for this purchase, which was undertaken on 22 March 2016, is provided at Appendix 6 to the Licensee's submission. Mr Woo then disposed of the faulty DVR drive.
50. The Licensee submits that the Authority could not draw the inference that the disposal of the DVR hard drive by the Licensee was a deliberate act, so as to "conceal" evidence of drug supply on the Premises, by reason that:
 - There is no evidence other than Police assertions to suggest that the Licensee was involved in or knew about drug use or supply at the Premises;
 - The Licensee has a good regulatory history;
 - The Licensee provided CCTV footage to Police upon request; and
 - The Licensee acted diligently in purchasing a new hard drive to facilitate quicker production of video footage in future.

The Paroz Report

51. Attached at Appendix 5 to the Licensee's submission is a report prepared by Mr Pat Paroz APM, the Licensee's compliance consultant. The Licensee submits that Mr Paroz has reviewed the Police evidence, interviewed the Licensee and business owners and reviewed procedures at the venue and is satisfied that, provided his recommendations are adopted by the Licensee, the Authority and the wider community can be confident that the venue will be operated in a manner free of drug use and supply, as the venue appears to have operated for many years prior to the appointment of Mr Seo as manager.
52. The Licensee and Business Owner accept Mr Paroz's recommendations and are prepared to have them made enforceable as conditions on the licence. Further, the Licensee, Mr Woo, intends to be personally present at the Premises with much greater frequency in order to minimise the potential for such adverse events occurring in future.
53. Also attached at Appendix 5 to the Licensee's submission is a copy of Mr Paroz's *curriculum vitae*. The Authority notes that Mr Paroz is the immediate past Commander of the NSW Police Drug and Alcohol Coordination.

Suggested Conditions

54. The Licensee notes that the Application requests that the Licensee be ordered to close the Premises for a period of 6 months or until such time as certain conditions are satisfied.
55. The first condition proposed by the Applicant is that the Premises shall remain closed until any investigation and complaint pursuant to Part 9 of the Act has been determined by the Authority.
56. The Licensee submits that this course of action would defeat the purpose of section 84(6) of the Act in that it would “remove all possibility of the Premises being reopened to serve the public pending determination of a disciplinary complaint” and that the Authority should not impose such a condition.
57. The Licensee addresses the further conditions proposed by the Applicant as follows:

New Licensee

58. The Licensee submits that this alternate condition proposed by Police appears to be based on the “unfounded” Police assertion that the Licensee, Mr Woo, is somehow implicated in the practice of drug use and supply at the Premises. The Licensee “vehemently denies” this allegation and submits that there is no evidence that he was involved in drug use and supply activities at the Premises. The Licensee submits that the manager, Mr Seo, appears to have taken advantage of Mr Woo’s absence from the Premises.
59. The Licensee notes his intention to be present at the Premises on a more regular basis and state that he is prepared to permanently engage an RSA Marshal on busier nights to provide a “further enhanced physical presence and a further safeguard against intoxication”.

Standard Trading Hours

60. The Licensee submits that this proposed condition would act as a “punitive measure” that will have a significant impact on the finances of the business and will “restrict, if not destroy, the capacity of the business to meet the demands and expectations of large numbers of patrons to legitimately enjoy the facilities of the Premises”.
61. The Licensee submits that such a measure should only be considered by the Authority if an application is made under section 51(9)(b) of the Act to vary the venue’s existing extended trading authorisation and an opportunity is given to the Licensee and Business Owner to “fully and properly address all of the public interest considerations that inform such a decision”.
62. Further, the Authority should consider the whole of the trading history at the Premises over a number of years, rather than focusing only upon the events of the last few months when there have been “special circumstances at play”.

CCTV Condition

63. The Licensee and Business Owner accept the imposition of the proposed CCTV condition as a permanent condition on the licence and state that they are obtaining

advice on how to remove all “blind spots” from within the private karaoke rooms in order to achieve full compliance with that CCTV condition.

10:00pm Lockout Condition

64. The Licensee notes that karaoke is an activity that is typically engaged in by patron groups in the later hours and that many other karaoke venues in the City of Sydney are authorised to sell liquor well into the early hours of the morning. At present, a standard lockout time of 1:30am applies to all karaoke venues, hotels and nightclubs located in the City of Sydney.
65. The Licensee submits that imposing a lockout time of 10:00pm at this venue would effectively “destroy” the business and deny its capacity to satisfy the legitimate demands and expectation of the “tens of thousands of law abiding patrons who enjoy its facilities each year”. Further, imposing such a condition would be a “disproportionate and highly punitive response” to the matters raised in the Application.

Identification Scanner

66. The Licensee submits that in circumstances where other competing karaoke venues do not currently require patrons to be ID scanned, this measure would provide a “significant disincentive” for patrons to attend this venue, which will in turn have a “significant financial impact” on the conduct of the licensed business.
67. However, the Licensee and Business Owner accept that photo ID scanning is likely to provide a significant deterrent to persons involved in drug use and possession from entering the Premises. The Licensee notes that Mr Paroz has also recommended the adoption of ID scanners as a safeguard against drug use and supply on the Premises.
68. As a result, the Licensee and Business Owner consent to the imposition of a licence condition requiring that ID scanners be used and applied by the venue from 9:00pm each night over the course of the next 6 months.
69. **Appendix 1 to the Licensee’s submission** – ASIC Company Extract for the Business Owner, Megabox Holding Pty Ltd (ACN 146 065 429) as at 21 April 2016.
70. **Appendix 2 to the Licensee’s submission** – Extract of the Venue Incident Register for the Premises from September 2015 to February 2016.
71. **Appendix 3 to the Licensee’s submission** – Photographs of the karaoke rooms on the Premises, which underwent extensive renovations during 2015, at a stated cost of approximately \$280,000.
72. **Appendix 4 to the Licensee’s submission** – Development Approval D/20023/597/G issued by City of Sydney Council in respect of the Premises dated 7 February 2012.
73. **Appendix 5 to the Licensee’s submission** – Report prepared by the Licensee’s compliance consultant, Mr Pat Paroz APM dated 21 April 2016 including his review of the CCTV footage provided by the Applicant, providing his recommendations in relation to improving compliance and attaching Mr Paroz’s *curriculum vitae*.

74. Appendix 6 to the Licensee’s submission – Receipt from *Jaycar Electronics* dated 22 March 2016 in relation to the purchase by the Licensee of a new DVR hard drive at a cost of \$1,798.00.

75. Appendix 7 to the Licensee’s submission – List of conditions proposed by the Licensee for imposition upon the licence as an alternative to closure of the Premises. The full text of these conditions is as follows:

1. *Tyson Seo is not permitted to attend the premises in any capacity.*
2. *The premises is not to employ, retain or engage (in any capacity) any persons to act as a “host” or “hostess” in the karaoke rooms.*
3. *RSA Marshal*
 - (a) *On Friday and Saturday nights an RSA Marshal must be engaged at the venue from 11:00pm until close. The RSA Marshal must be exclusively tasked with actively:*
 - (i) *Monitoring responsible service of alcohol practices by venue staff.*
 - (ii) *Assisting in encouraging responsible attitudes and practices towards the promotion, sale, supply, service and consumption of alcohol.*
 - (iii) *Monitoring patron alcohol consumption and behaviour for signs of irresponsible, rapid or excessive consumption.*
 - (iv) *Monitoring patrons for signs of intoxication.*
 - (b) *The RSA Marshal must:*
 - (i) *At all times while on duty, wear a uniform which includes the words “RSA MARSHAL” clearly displayed on the back of the uniform in bold capital lettering at least 75mm in height.*
 - (ii) *Hold a current approved RSA competency card.*
4. *The licensee must submit to the Independent Liquor and Gaming Authority, by no later than 11 May 2016, a new Plan of Management for the licensed premises prepared by Mr Pat Paroz APM, addressing the matters recommended by Mr Paroz in his report of 21 April 2016 submitted to the Authority.*
5. *CCTV*
 - (1) *On or before 10 May 2016, the licensee must install, and must at all times thereafter 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) *Any recorded image must specify the time and date of the recorded image.*
 - (d) *The system’s cameras must cover the following areas:*

- (i) *All entry and exit points on the premises;*
 - (ii) *Any footpath immediately adjacent to the premises;*
 - (iii) *All publicly accessible areas (other than toilets) on the premises;*
 - (e) *The cameras must have a fixed field of view and not be able to be moved or redirected by patrons or staff.*
 - (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 a reasonable time of the making of any request by a Police Officer or Inspector to provide such recordings.*
6. *Identification scanner*
- (a) *On and from 10 May 2016 until 9 November 2016, no person aged 18 years or over is to be permitted to enter the venue as a patron after 9:00pm on any night unless:*
 - (i) *The person produces to a staff member a form of identification containing a photograph of the person and the person's identification details (photo ID); and*
 - (ii) *The photo ID is scanned by a staff member using a patron ID scanner.*
 - (b) *During that time period, a person aged 18 years or over must be refused admission to the venue as a patron if the person chooses not to produce his or her photo ID to a staff member or if the person is subject to a temporary or long term banning order notified to the licensee.*

Submission from the Applicant dated 26 April 2016

76. On 26 April 2016, the Applicant provided a brief further submission to the Authority. The Applicant states that it is satisfied that the evidence contained in the Application meets the legislative requirements and contains sufficient grounds to warrant the “necessary” long term closure of K1 Karaoke Lounge.

77. The Applicant makes the following submissions in reply to the Licensee’s primary submission dated 22 April 2016:

- Page 4 of the Licensee’s primary submission uses the term “Korean style” karaoke to describe a change in the business model. The Applicant maintains that the criminal behaviours are not limited to the staff members associated with the “Korean style” karaoke but *implicate* “all management and floor staff”.
- Pages 7 and 8 of the Licensee’s primary submission detail the system of record keeping as instructed by the Licensee. The Applicant submits that on 1 March 2016 a Notice to Produce was served on the Licensee for the production of “all receipts and sales transaction records”. The Applicant submits that no receipts or transaction records relating to individual sales were produced.

- The Applicant submits that Police were informed by Mr Eddie Lai, a venue manager, that receipts and sales transactions are “routinely destroyed”. Police enquired as to the ability to reprint receipts and were informed by Mr Lai that staff “cannot access the POS system and were unsure if any electronic records exist”. The Applicant submits that the content of the Licensee’s primary submission dated 22 April 2016 is “directly contrary” to the actions of the Licensee and his staff and the Applicant reiterates that no receipts or “bills” have been produced or made available to Police.

Further Submission from the Licensee dated 26 April 2016

78. On 26 April 2016, Mr Hatzis provided a brief submission on behalf of the Licensee and Business Owner in response to the Applicant’s submission of 26 April 2016. This further submission takes the form of a submission letter prepared by *Hatzis Cusack Lawyers* dated 26 April 2016, verified by a brief sworn affidavit made by a manager of the licensed business, Mr Eddie Lai, also dated 26 April 2016.
79. The Licensee attaches a copy of the Notice to Produce that was served by Police upon the Licensee in “early March 2016” and reiterates Mr Hatzis’ previous submission that the “mere settlement of a customer’s tab at the end of a night does not give rise to a “sale” of liquor outside licensed trading hours”.
80. The Licensee submits that it is “telling” that there is no CCTV evidence of any liquor being supplied to customers after 2:00am.
81. The Licensee denies that the business intentionally destroys records and contends that electronic records are available from K1 Karaoke’s point of sale system, but access to that data is restricted to the directors of the corporate Business Owner, Megabox Holding Pty Ltd.
82. The Licensee submits that despite this being explained to Police by the manager, Mr Lai, at no time has any Police officer asked any director of Megabox Holding to attend the venue and provide Police with the room “bill” for any requested period.
83. The Licensee also contends that, pursuant to the undertaking previously given to the Authority, the Premises remained closed until Friday 22 April 2016. The Premises traded “without incident” on Friday, Saturday and Sunday nights [the Authority understands this to be an apparent reference to Friday 22 April, Saturday 23 April and Sunday 24 April 2016] and there were “no overt Police walkthroughs” undertaken on any of these nights.
84. The Licensee submits that if covert surveillance were undertaken on any of those occasions, the Applicant would have referred to any adverse findings in its reply of 26 April 2016. The Applicant has not done so, which the Licensee submits affirms his position that the business “can and will trade lawfully”.

Submission from the Premises Owners dated 27 April 2016

85. Notwithstanding that section 84 of the Act does not require the Authority to consult with the premises owner in respect of an application of this kind, on 26 April 2016, a copy of the redacted Application Material and the Licensee’s primary submission dated

22 April 2016 were notified to the premises owners, Mr and Mrs Minh Hai Ta and Ms Thuyen Ta (**Premises Owners**). The Premises Owners own the strata property from which the business is conducted pursuant to a lease.

86. On 27 April 2016, Ms Susan Ta provided a brief submission to the Authority on behalf of the Premises Owners, which expresses their “shock and surprise” at the allegations and describes the Business Owner as “excellent and obedient tenants” over the past 6 years. Ms Ta also states that she would hope the tenants could continue to operate based on their “good behaviour and record”.
87. This brief email submission was forwarded to the other parties for their information on 28 April 2016.

CONSULTATION WITH APPLICANT AND LICENSEE

88. The Authority gave preliminary consideration to the *redacted* version of the Application Material and submissions in response from the parties at its Board meeting on 27 April 2016. Without finalising the matter, the Authority resolved that it was minded to accept the Licensee’s explanation of the allegations as to trading beyond licensed hours, noting the affidavit from the Licensee verifying the submission from *Hatzis Cusack Lawyers* dated 22 April 2016 and the limited submission in reply from the Applicant.
89. The Authority was also minded to impose a range of conditions upon the licence as an alternative means of reducing or preventing the identified risk to the public interest identified in the *redacted* Application Material, rather than closing the Premises for a period of 6 months in light of the change of circumstances that had been evidenced in the Licensee’s submissions.

Communication from the Authority to the parties dated 28 April 2016

90. On 28 April 2016, the Authority’s General Counsel advised the parties of the Authority’s disposition not to issue a Long Term Closure Order in respect of the Premises on the basis of the material currently before it, on the proviso that the following six new conditions are imposed upon the licence under section 53 of the Act:
 1. *Mr Tyson Seo is not permitted to attend the premises in any capacity.*
 2. *No licensed business operating on the premises will employ, retain or engage (in any capacity) or otherwise permit persons to act as a “host” or “hostess” in the karaoke rooms or any other areas of the premises.*
 3. *RSA Marshal*
 - (a) *On Friday and Saturday nights an RSA Marshal must be engaged at the venue from 11:00pm until close. The RSA Marshal must be exclusively tasked with actively:*
 - (i) *Monitoring responsible service of alcohol practices by venue staff.*
 - (ii) *Assisting in encouraging responsible service of alcohol practices towards the promotion, sale, supply, service and consumption of alcohol.*
 - (iii) *Monitoring patron alcohol consumption and behaviour for signs of irresponsible, rapid or excessive consumption.*
 - (iv) *Monitoring patrons for signs of intoxication.*

- (b) *The RSA Marshal must:*

 - (i) *At all times while on duty, wear a uniform which includes the words "RSA MARSHAL" clearly displayed on the back of the uniform in bold capital letters at least 75mm in height.*
 - (ii) *Hold a current approved RSA Competency Card.*

- 4. *The licensee must submit to the Independent Liquor and Gaming Authority, by no later than 11 May 2016, a new Plan of Management for the premises prepared by Mr Pat Paroz APM, addressing the matters recommended by Mr Paroz in his report of 21 April 2016 submitted to the Authority.*

- 5. *CCTV*

 - (1) *On or before 10 May 2016, the licensee must install, and must at all times thereafter maintain a closed circuit television (CCTV) 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) *Any recorded image must specify the time and date of the recorded image.*
 - (d) *The cameras of the CCTV system must cover the following areas:*

 - (i) *All entry and exit points on the premises;*
 - (ii) *Any footpath immediately adjacent to the premises;*
 - (iii) *All publicly accessible areas (other than toilets) on the premises;*
 - (e) *The cameras must have a fixed field of view and not be able to be moved or redirected by patrons or staff.*
 - (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 a reasonable time of the making of any request by a Police Officer or Inspector to provide such recordings.*

- 6. *Identification scanner*

 - (a) *On and from 10 May 2016 until 9 November 2016, no person aged 18 years or over is permitted to enter the venue as a patron after 9:00pm on any night unless:*

- (i) *The person produces to a staff member a form of identification containing a photograph of the person and the person's identification details (photo ID); and*
 - (ii) *The photo ID is scanned by a staff member using a patron ID scanner.*
- (b) *During that time period a person aged 18 years or over must be refused admission to the venue as a patron if the person chooses not to produce his or her photo ID to a staff member or if the person is subject to a temporary or long term banning order notified to the licensee.*

91. The Authority noted that it had only considered the *redacted* version of the Application. It invited the Applicant to provide further legal submissions on whether the conditions proposed by the Authority (based substantially on the Licensee's proposals) sufficiently address the threat or risk to the public interest identified by the Applicant and explaining how, by reference to legislation and case law, the Authority may proceed to issue a Long Term Closure Order on the basis of undisclosed information or evidence if Police wish the Authority to consider the confidential version of the Application Material.

Further Submission from the Licensee dated 1 May 2016

92. On 1 May 2016, the Licensee's solicitor, Mr Hatzis provided a brief response to the Authority's email of 28 April 2016, noting that the Licensee and Business Owner had previously anticipated a final decision on the Application on 27 or 28 April 2016, leaving them 2 weeks to implement the Authority's proposed Conditions 4, 5 and 6 (in relation to a new Plan of Management, enhanced CCTV systems and patron ID scanners respectively) by 10 May 2016.
93. Mr Hatzis noted that the Licensee and Business Owner would now have a shorter period of time in which to implement these measures and may not be able to do so before 10 May 2016. The Licensee and Business Owner request that, if the Authority proceeds to refuse the Application but impose the conditions under section 53 of the Act, they be given 2 weeks from the decision date to implement the Authority proposed Conditions 4, 5 and 6.

AMENDED REDACTED APPLICATION

94. On 4 May 2016, the Applicant provided the Licensee's solicitor with an *amended* version of the redacted Application (**Amended Redacted Application**) providing some additional material to the redacted Application that had been filed on 13 April 2016, but not the full confidential version of the Application. The Applicant clarified that the additional material provided concerns paragraphs 2, 19, 21 to 24 and 27 of the new document.
95. In the Amended Redacted Application, the Applicant states that it maintains the confidentiality of paragraphs 8, 9, 17 and 33 of the Application and the relevant Annexures, which have not been provided to the Licensee.
96. The Applicant briefly identifies its concerns with respect to some of the confidential information that had been provided in relation to the Application in the nature of public interest immunity, referring to section 130 of the *Evidence Act 1995* and the operation of sections 40 and 42 of the *Surveillance Devices Act 2007* and submits that releasing

this information to the Licensee may reveal:

- The identity of a Police Informant or Registered Source;
- Confidential Police methodology and investigative techniques;
- Documents (paragraphs) that may prejudice an ongoing investigation.

97. The Authority provided the Licensee with a short opportunity to make final submissions on the Amended Redacted Application by 9 May 2016.

LICENSEE RESPONSE TO AMENDED REDACTED APPLICATION

98. On 5 May 2016, the Licensee provided a further submission in response to the Amended Redacted Application by way of a letter from Mr Hatzis. Briefly, the Licensee submits that the Applicant has not addressed a key question posed by the Authority in its email of 28 April 2016 – namely, whether the relevant threat or risk to the public interest identified by the Application is sufficiently addressed by the Licensee’s proposed conditions (**Proposed Conditions**).

99. The Licensee notes that the business recommenced trading on Friday 22 April 2016 (having closed for seven days in accordance with the undertaking given to the Authority on 14 April 2016) and contends that Police have only attended the Premises once during that time, being at 2:05am on Monday 2 May 2016. The Licensee submits that there has not been an “increased and intensive Police presence” at the venue after it recommenced trading, as one might expect, if Police were of the opinion that any remaining threat to the public interest was still significant.

100. The Licensee submits that any residual or remaining threat to the public interest is now “more than adequately” dealt with by the imposition of the Proposed Conditions and the Applicant has not suggested otherwise in its reply.

Legal Arguments for Considering Confidential Application Material

101. The Licensee submits that the legal bases suggested by Police for enabling the Authority to issue a Long Term Closure Order partly on the basis of confidential material that is not disclosed to the Licensee are “misconceived”.

102. The Licensee notes that the Applicant has referred to section 130 of the *Evidence Act 1995*, which provides an exclusionary rule that prevents certain information or documents, relating to matters of State, from being admitted into evidence in Court proceedings. The Licensee submits that to the extent that section 130 might afford an analogy to this situation, it would suggest that such material should not be put before a decision maker at all.

103. The Licensee notes that the Applicant has also referred to section 40 of the *Surveillance Devices Act 2007*, which prohibits the communication or publication of “protected information”. The Licensee submits that the Licensee and Business Owner do not know whether Police have obtained any information or records pursuant to a surveillance warrant and that if Police have obtained such information, section 40 “does not justify the use of that information by an administrative tribunal in breach of the rules of procedural fairness”.

104. Rather, the Licensee submits that the *Surveillance Devices Act 2007* protects against

the further dissemination of that information by parties to whom it is divulged and section 40 of that Act provides a “positive reason” to disclose information to an affected party, rather than withhold it.

Additional Substantive Information

- 105.** The Licensee submits that paragraphs 21, 22 and 23 of the Amended Redacted Application refer to information obtained by Police in relation to drug activity associated with persons from the licensed business.
- 106.** The Licensee and Business Owner do not deny that such activity appears to have taken place during Mr Seo’s employment at the business conducted on the Premises, however they were “shocked to learn of that activity” and have taken action to prevent it from recurring.
- 107.** The Licensee observes that paragraph 23 of the Amended Redacted Application implies that the business has CCTV cameras in the external perimeter of the Premises to “monitor approaching Police”. The Licensee responds that this requirement for external CCTV cameras is a requirement imposed by the Development Approval for use of the Premises. The Licensee provides a copy of Condition 7(a) of the Development Approval and submits that the Licensee and Business Owner have always had such cameras installed whilst operating the K1 Karaoke Lounge business.
- 108.** The Licensee notes that paragraph 23 of the Amended Redacted Application refers to drugs being kept “locked in a room which is used by staff as a toilet. The room is locked by a numbered keypad”. The Licensee responds with the contention that no toilets at the K1 Karaoke Lounge have numbered keypads, nor has this been the case at any relevant time. The Licensee notes that there are two numbered keypad toilets on the ground floor which service another premises located on the ground floor of the building (K1 Karaoke is on the second floor).
- 109.** The Licensee submits that paragraph 24 of the Amended Redacted Application appears to imply or infer that the drug activity continued after Mr Seo’s departure. It refers to “data” which is said to have been “retrieved” on 5 April 2016 in relation to an incident occurring on 31 March 2016. The Licensee submits that in that incident, a male was found on Factory Street, Haymarket and charged with supplying a prohibited drug. The Licensee observes that the only reference to K1 Karaoke in that report is that the business is said to be “in the immediate vicinity of” Factory Street. No further details are provided. The Licensee submits that in the absence of any further evidence, it “cannot be rationally concluded” that the person referred to in that report had supplied prohibited drugs at K1 Karaoke Lounge.
- 110.** The Licensee submits that more detailed information is provided regarding the activities of Mr Seo at paragraph 27 of the Amended Redacted Application. The Licensee, Mr Woo, is named as being “involved” but unlike Mr Seo, the Applicant gives no details of Mr Woo’s alleged activities in relation to prohibited drugs.
- 111.** The Licensee submits that the approach taken by the Applicant in this paragraph is to “attempt to implicate or smear Mr Woo” merely by reference to the fact that he was the licensee of the Premises at the time of Mr Seo’s activities. The Licensee reiterates his earlier submissions as to Mr Woo’s good regulatory record and his vehement denial of any prior knowledge of, or involvement in, drug supply activity by Mr Seo or others at

K1 Karaoke Lounge.

Appropriate Order

112. In conclusion, the Licensee submits that the Authority should proceed in the manner foreshadowed in the Authority's email of 28 April 2016, by not issuing a Long Term Closure Order in respect of the Premises and imposing the six (6) new conditions referred to in that email.
113. The Licensee requests a period of 2 weeks from the date of the Authority's determination for Proposed Conditions 4, 5 and 6 to be implemented. The Licensee submits that the Proposed Conditions are more than adequate to protect the public interest in the circumstances of this case.
114. Attached to this submission are printouts of section 130 of the *Evidence Act 1995*, and sections 39 and 40 of the *Surveillance Devices Act 2007*. Also attached is a copy of Condition 7(a) of the Development Approval for the Premises concerning the requirement for the business to install external CCTV cameras.

FURTHER SUBMISSIONS

Email from the Applicant to the Authority dated 6 May 2016

115. At 10:34am on 6 May 2016, Senior Sergeant Alicia O'Keefe provided a brief further submission to the Authority on behalf of the Applicant and copying the Licensee's solicitor, submitting that the six conditions proposed by the Licensee would not address concerns in relation to the threat to public health or safety or the risk of serious offending and as such, there is "no confidence that anything will change". The Applicant submits that the Licensee identifies in its proposed conditions regarding the management of alcohol, but the "drug" aspects of the Application have not been included or acknowledged.
116. The Applicant attaches a copy of sample conditions for the Authority to consider imposing upon the licence in relation to crime scene preservation, maintenance of an incident register, a plan of management and a drug policy.

Reply from the Licensee dated 6 May 2016

117. At 12:54pm on 6 May 2016, Mr Hatzis provided a brief reply to the Applicant and the Authority, submitting that the Applicant's statement that the conditions proposed by the Licensee do not address the "drug" aspects of the Application is "plainly wrong".
118. The Licensee submits that the Proposed Conditions include the implementation of a comprehensive Plan of Management and a Drug Detection Policy. Further, the Proposed Conditions, which include the use of patron ID scanners, "go much further" than the sample conditions that were provided by the Applicant and are "likely to deter that conduct arising in the first place".
119. The Licensee submits that the Applicant has not addressed the question of *why* the relevant threat or risk to the public interest identified in the Application has not been sufficiently addressed by the Licensee's Proposed Conditions. The Licensee submits that in those circumstances, there is no reason for the Authority to depart from taking

the action that it foreshadowed taking in its email of 28 April 2016.

LEGISLATION

120. The power pursuant to which the Authority may issue an order for the long term closure of a licensed premises is provided by section 84 of the Act, which states as follows:

84 Order by Authority for long-term closure of licensed premises

- (1) *The Authority may, on the application of the Secretary or the Commissioner of Police, order a licensee to close the licensed premises from a time specified in the order until a later specified time.*
- (2) *The Authority may not make an order under this section unless:*
 - (a) *the licensee or manager of the licensed premises is the subject of an investigation by the Secretary under section 138 or an investigation by the NSW Police Force, or the licensed premises are the subject of a complaint under Division 3, or disciplinary action under Part 9 has been (or is proposed to be) taken by the Authority against the licensee or manager or a close associate of the licensee, and*
 - (b) *the licensee has been given notice of the application for closure of the licensed premises and has been given a reasonable opportunity to make submissions to the Authority in relation to the application, and*
 - (c) *the Authority is satisfied that a serious breach of this Act has occurred, or is likely to occur, on the licensed premises and that the closure of the premises is necessary to prevent or reduce a significant threat or risk to the public interest.*
- (3) *Without limiting the generality of subsection (2), circumstances in which there may be a significant threat or risk to the public interest include circumstances in which there is:*
 - (a) *a threat to public health or safety, or*
 - (b) *a risk of substantial damage to property, or*
 - (c) *a significant threat to the environment, or*
 - (d) *a risk of serious offences (having a maximum penalty of not less than 2 years imprisonment) being committed on the premises.*
- (4) *An order ceases to have effect at the time specified or when a complaint concerning the licensee or manager of the premises is determined under this Act, whichever is the earlier.*
- (5) *An order may not require the closure of premises for a period longer than the period prescribed by the regulations.*
- (6) *An order may require the closure of premises until specified conditions are met but must not require closure for a period longer than that permitted under subsection (5).*
- (7) *A licensee must comply with an order made under this section.*

Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.
- (8) *The regulations may make provision for or with respect to an application for an order under this section, including the procedure to be followed at or in connection with the hearing and determination of any such application.*

121. Relevantly to this Application, section 74 of the Act, which sets out provisions in relation to the possession, use or sale of prohibited drugs on licensed premises, states as follows:

74 Sale of stolen goods and possession, use or sale of drugs on licensed premises

(1) *A licensee must not permit the licensed premises to be used for the sale of:*

- (a) *any goods that the licensee suspects of being stolen, or*
- (b) *any substance that the licensee suspects of being a prohibited plant or a prohibited drug.*

Maximum penalty: 50 penalty units.

(2) *A licensee must not permit the possession or use on the licensed premises of any substance that the licensee suspects of being a prohibited plant or a prohibited drug.*

Maximum penalty: 50 penalty units.

(3) *An employee or agent of a licensee or a person (other than the licensee) in charge of licensed premises must not permit the licensed premises to be used for the sale of:*

- (a) *any goods that the employee, agent or person suspects of being stolen, or*
- (b) *any substance that the employee, agent or person suspects of being a prohibited plant or a prohibited drug.*

Maximum penalty: 50 penalty units.

(4) *An employee or agent of a licensee or a person (other than the licensee) in charge of licensed premises must not permit the possession or use on the licensed premises of any substance that the employee, agent or person suspects of being a prohibited plant or a prohibited drug.*

Maximum penalty: 50 penalty units.

(5) *It is a defence to a prosecution for an offence under this section if it is proved that the goods concerned were not stolen or that the substance concerned was not a prohibited plant or a prohibited drug.*

122. Relevantly to this Application, section 9 of the Act, which sets out the principal offence relating to the sale or supply of liquor contrary to a licence, states as follows:

9 Sale or supply of liquor contrary to licence

(1) *A licensee or an employee or agent of a licensee must not sell or supply liquor, or cause or permit liquor to be sold or supplied:*

- (a) *in contravention of the conditions to which the licence is subject, or*
- (b) *otherwise than in accordance with the authority conferred on the licensee by or under this Act.*

(2) *Without limiting subsection (1), a licensee must not:*

- (a) *keep licensed premises open for the sale or supply of liquor, or*
- (b) *sell or supply liquor,*

at a time when the licensee is not authorised under this Act to sell or supply liquor.

- (3) *A licensee must not sell, or employ or permit another person to sell, liquor on premises other than premises on which the licensee is authorised by the licence or this Act to sell the liquor.*

Maximum penalty: 100 penalty units or imprisonment for 12 months, or both.

123. In determining the Application, the Authority has also considered relevant provisions of the Act, including the objects and considerations that are prescribed by section 3, which states as follows:

3 Objects of Act

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

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

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

- (a) *the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),*
- (b) *the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,*
- (c) *the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.*

DECISION

124. The Authority gave further consideration to this Application at its Board meeting on 11 May 2016, with the benefit of the Amended Redacted Application provided by the Applicant on 4 May 2016 and the further round of submissions received in relation to the Amended Redacted Application.

125. On the evening of Wednesday 11 May 2016, the Authority communicated its intention to take regulatory action by way of imposing new conditions upon the licence pursuant to section 53(2)(b) of the Act as an alternative to issuing a Long Term Closure Order under section 84 of the Act.

126. The Authority noted that if the Applicant sought certain wording to be specified within the proposed Plan of Management or Drug Policy conditions, they should provide that wording by 12:00 midday on Friday 13 May 2016.

127. The Authority received no further submissions from the Applicant since that email and only a brief query from the Licensee on 12 May 2016 regarding the Authority's proposal that the condition requiring implementation of an ID scanner be imposed upon an ongoing basis and not limited in time to a period of 6 months as had been initially proposed by the Licensee.

- 128.** The Authority invited submissions from the Licensee explaining the rationale for limiting the ID scanner condition for six months, but no such submissions were forthcoming. In those circumstances, the Authority is satisfied that the version of Condition 6 specified by the Authority below, requiring use of an ID scanner, should apply on an ongoing basis. This will better serve the public interest in monitoring and controlling persons entering the Premises, given the Authority's satisfaction that patrons and staff or contractors of the business have engaged in misconduct in relation to the use of prohibited drugs on the Premises.
- 129.** While Police have not specified wording for the Plan of Management to be prepared by Mr Pat Paroz pursuant to Condition 4, the Authority recommended when communicating this decision on 16 May 2016 that Mr Paroz consider the sample conditions provided by the Applicant on 6 May 2016 with regard to "Plan of Management" and "Drug Policy" to the extent that he considers them relevant – particularly with regard to managing and monitoring the risk of prohibited drugs on the Premises.
- 130.** Given the experience of the Applicant's compliance consultant, the Authority anticipates that the *Plan of Management* and *Drug Policy* will provide a detailed and rigorous regime for monitoring and managing the risk of prohibited drugs on the Premises.
- 131.** On balance, the Authority accepts the explanation provided by the Licensee, verified by statutory declaration, as to why certain records may have suggested after-hours sale or supply of liquor when what was actually occurring is that patrons remained on the Premises at a time when liquor sale or service was required to cease but the provision of entertainment was not, and they settled up outside of licensing trading hours. On balance, the Authority accepts the Licensee's explanation that records have not been destroyed. The Applicant has not provided sufficient evidence to rebut the Licensee's explanation of those matters, verified by a statutory declaration.
- 132.** The Authority has concerns about the apparent absence of the Licensee from the Premises while Mr Seo was running the business, observing that it is not sufficient for the licensee of any late trading licensed premises to be on the premises for only two nights per week and leave the business in the hands of a third party, but the Applicant has not provided a sufficient case to warrant closure of the Premises for six months on that basis. The Authority notes that Mr Seo is now prevented from entering the Premises by an enforceable licence condition and that the Licensee has undertaken to assume a greater presence on the Premises as a consequence of what has occurred.
- 133.** The Authority is not satisfied, on the material before it, that the business was engaging in prostitution. Clearly there is a sexual element of engaging young female hostesses in nightclub attire to fraternise with patrons and encourage them to drink or engage in the entertainment services provided by the business, but the Authority is not satisfied that there is evidence of the supply of sexual services and is satisfied, on the legal submissions verified by statutory declarations from the Licensee and another manager of the business, Mr Eddie Lai, that this "Korean style" business model ceased with the sudden departure of the former business manager, Mr Seo in March 2016.
- 134.** Notwithstanding that Police may have had a reasonable basis to seek this order at the time of filing the Application the Authority has decided, on the basis of the Amended Redacted Application and the evidence and material now before it, not to issue a Long

Term Closure Order under section 84 of the Act, by reason that it is satisfied that the identified threat or risk to the public interest will be satisfactorily addressed by the imposition of the following conditions upon the licence, on the Authority's initiative, pursuant to section 53(2)(b) of the *Liquor Act 2007*.

135. The Applicant has implied that the permission of prohibited drug use and supply on the Premises is a matter that extends beyond the former manager, Mr Seo, but in this case there is insufficient evidence before the Authority in the Amended Redacted Application to warrant drawing an inference that the Licensee or other management must have known or turned a blind eye to the misconduct in question.
136. The Authority notes that the Applicant was invited, but has not provided, legal submissions explaining how the Authority may lawfully act upon the basis of the nature and extent of confidential material (in this case) that has not been disclosed to the Licensee.
137. Notwithstanding the secrecy provision in section 17 of the *Gaming and Liquor Administration Act 2007*, section 84 of the *Liquor Act 2007* includes no equivalent provision to that available in subsection 45(6) or subsection 68(4B) which expressly empowers the Authority to refuse to grant a licence or approve an approved manager on the basis of criminal intelligence that need not be disclosed when providing reasons for a decision.
138. Issuing an order on a basis of the confidential version of the Application may expose the Authority to judicial review which would be counter-productive to the public interest, in circumstances where the Authority is satisfied that the conditions proposed by the Authority and accepted by the Licensee will, on the information before it, and noting the change in circumstances on the Premises, satisfactorily address the threat or risk to the public interest that warranted the issue of a Short Term Closure Order on 15 April 2016.
139. The Authority notes and accepts the Licensee's explanation of the venue's business practices with regard to physical and electronic record keeping and the storage of CCTV footage. On balance, and noting the limited evidence and submissions in reply provided by the Applicant, the Authority is not satisfied that the Police allegations that the business sold or supplied liquor outside of authorised trading hours, intentionally discarded individual room bills and deliberately destroyed CCTV footage to conceal illegal activities taking place on the Premises are established.
140. The Authority further notes and accepts the recent measures and changes to personnel of the business that have been advised by the Licensee and notes that there has been no further adverse regulatory action taken by Police or any other agency with regard to the business since the Application was made.
141. The Authority expects timely compliance by the Licensee with the below specified conditions, noting that a summary of this decision was communicated to the parties at 12:14pm on Monday 16 May 2016.

Conditions Imposed under Section 53 of the *Liquor Act 2007*

142. The Authority is satisfied that it is in the public interest to impose, on its own initiative pursuant to section 53(2)(b) of the Act, the following new conditions upon the licence.

The Authority notes that these conditions were informally notified at around midday on 16 May 2016 and commenced effect from **5:00pm on 16 May 2016**, save for those substantive obligations that specify a later date: .

1. *Mr Tyson Seo is not permitted to attend the premises in any capacity.*
2. *No licensed business operating on the premises will employ, retain or engage (in any capacity) or otherwise permit persons to act on the premises as a “host” or “hostess” in the karaoke rooms or any other areas of the premises.*
3. *RSA Marshal*
 - (a) *On Friday and Saturday nights an RSA Marshal must be engaged at the venue from 11:00pm until close. The RSA Marshal must be exclusively tasked with actively:*
 - (i) *Monitoring responsible service of alcohol practices by venue staff.*
 - (ii) *Assisting in encouraging responsible service of alcohol practices towards the promotion, sale, supply, service and consumption of alcohol.*
 - (iii) *Monitoring patron alcohol consumption and behaviour for signs of irresponsible, rapid or excessive consumption.*
 - (iv) *Monitoring patrons for signs of intoxication.*
 - (b) *The RSA Marshal must:*
 - (i) *At all times while on duty, wear a uniform which includes the words “RSA MARSHAL” clearly displayed on the back of the uniform in bold capital letters at least 75mm in height.*
 - (ii) *Hold a current approved RSA Competency Card.*
4. *The licensee must submit to the Independent Liquor and Gaming Authority, by no later than **25 May 2016**, a new Plan of Management for the premises prepared by Mr Pat Paroz APM, addressing the matters recommended by Mr Paroz in his report of 21 April 2016 submitted to the Authority.*
5. *CCTV*
 - (1) *On or before **25 May 2016**, the licensee must install, and must at all times thereafter maintain a closed circuit television (CCTV) 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) *Any recorded image must specify the time and date of the recorded image.*
 - (d) *The cameras of the CCTV system must cover the following areas:*
 - (i) *All entry and exit points on the premises;*
 - (ii) *Any footpath immediately adjacent to the premises;*
 - (iii) *All publicly accessible areas (other than toilets) on the premises;*

- (e) *The cameras must have a fixed field of view and not be able to be moved or redirected by patrons or staff.*
- (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 a reasonable time of the making of any request by a Police Officer or Inspector to provide such recordings.*

6. *Identification scanner*

- (a) *On and from **25 May 2016**, no person aged 18 years or over is permitted to enter the venue as a patron after 9:00pm on any night unless:*
 - (i) *The person produces to a staff member a form of identification containing a photograph of the person and the person's identification details (photo ID); and*
 - (ii) *The photo ID is scanned by a staff member using a patron ID scanner.*
- (b) *During that time period a person aged 18 years or over must be refused admission to the venue as a patron if the person chooses not to produce his or her photo ID to a staff member or if the person is subject to a temporary or long term banning order notified to the licensee.*

143. Please contact the Authority's General Counsel, Mr Bryce Wilson, via email to bryce.wilson@ilga.nsw.gov.au if you have any enquiries about this letter.

Yours faithfully



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