

Ms Alicen Lewis
Manager
[REDACTED]

21 February 2023

Dear Ms Lewis

Application No.	1-8443307810
Applicant	Jordan Benjamin Mizrahi
Application for	Variation of an existing extended trading authorisation
Licence name	Basement On Market Street
Proposed trading hours	<u>Consumption on premises – Indoor area</u> Monday to Saturday 10:00 AM – 2:00 AM Sunday 10:00 AM – 10:00 PM <u>Consumption on premises – Outdoor area</u> Monday to Sunday 12:00 PM – 9:00 PM
Current trading hours	<u>Consumption on premises – Indoor area</u> Monday to Saturday 12:00 PM – 2:00 AM Sunday 12:00 PM – 10:00 PM <u>Consumption on premises – Outdoor area</u> Monday to Sunday 12:00 PM – 9:00 PM
Premises	L 1 2 Market St, Newcastle NSW 2300
Legislation	Sections 3, 11A, 12, 20, 40, 44, 45, 48, 49 and 51 of the <i>Liquor Act 2007</i>

Decision of the Independent Liquor & Gaming Authority
Application for a variation to extended trading authorisation – Basement On Market Street

The Independent Liquor & Gaming Authority considered the application above, and decided on 18 January 2023 to **approve** the application under section 45 of the *Liquor Act 2007*, subject to imposing conditions as set out in Schedule 1.

Concise statement of reasons

A concise statement of reasons for this decision is attached at the end of this letter.

In the interest of efficient finalisation of determined matters in a high-volume liquor and gaming jurisdiction, the Authority will only produce a detailed statement of reasons for applications which are refused, partially approved or the subject of agency or substantial stakeholder objections.

A concise statement of reasons is produced for non-contested applications that have been approved by the Authority, in cases where a statement of reasons is required to be published for the application under section 36C of the *Gaming and Liquor Administration Act 2007*.

The concise statement of reasons briefly sets out the material considered by the Authority, the legislative requirements, and the Authority's key findings.

If you have any questions, please contact the case manager, Glenn Barry, at glenn.barry@liquorandgaming.nsw.gov.au.

Yours faithfully



Murray Smith

Deputy Chairperson

For and on behalf of the **Independent Liquor & Gaming Authority**

Important Information:

In accordance with section 13A of the *Gaming and Liquor Administration Act 2007* a relevant person (the Applicant or a person who was required to be notified of the prescribed Application and who made a submission to the Authority or the Secretary in respect of the prescribed Application) who is aggrieved by this decision may apply to NCAT for an administrative review under the *Administrative Decisions Review Act 1997*.

An application to NCAT must be made within 28 days of notice of this decision being published on the [Liquor & Gaming NSW website](#) and be accompanied by the fee prescribed by the regulations.

For more information please contact the NCAT Registry at Level 10 John Maddison Tower, 86-90 Goulburn Street Sydney. The [NCAT website](#).

Concise statement of reasons

Key facts

Application No.	1-8443307810
Applicant	Jordan Benjamin Mizrahi
Application for	Variation of an existing extended trading authorisation
Licence name	Basement On Market Street
Premises	L 1 2 Market St, Newcastle NSW 2300
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Application date	21 October 2022
Decision	Approved under section 45 of the <i>Liquor Act 2007</i>
Decision date	18 January 2023

Material considered by the Authority

The Authority has considered the following material in determining the application:

- Application material, including evidence of notification to specified stakeholders and the community about the application.
- Premises plan setting out the proposed boundaries of the licensed premises and any applicable authorisations.
- Plan of management for the licensed business at the premises.
- Development consent for the premises.
- Statistics sourced from Liquor & Gaming NSW, Bureau of Crime Statistics and Research, NSW Health and Australian Bureau of Statistics in respect of the socio-economic status, liquor licence density, alcohol-related crimes rates, and health issues in the relevant local and broader communities.
- Stakeholder submissions in relation to the application, and the applicant's response to those submissions.

Legislative requirements

The Authority has considered the application in the context of the following sections of the *Liquor Act 2007*, and the associated clauses of the Liquor Regulation 2018:

- Section 3: Statutory objects of the Act and relevant considerations.
- Sections 11A and 12: Standard trading period for liquor licences and a mandatory 6-hour period during which liquor cannot be sold.
- Section 20: Licence authorisation and business model.
- Section 40: Minimum procedural requirements for a liquor licence application to be validly made.
- Section 44: Submissions to Authority in relation to licence applications.
- Section 45: Criteria for granting a liquor licence.

- Section 48: Requirements in respect of a CIS, including a requirement that the Authority must not approve the application unless it is satisfied, having regard to the CIS and other available information, that the overall social impact of doing so will not be detrimental to the well-being of the local or broader community.
- Section 49: General provisions in respect of ETAs.
- Section 51: General provisions relating to licence-related authorisations.

The Authority has also had regard to its Guideline 6 in considering the overall social impact of approving the application pursuant to section 48 of the Act.

Key findings

In accordance with its Guideline 6, the Authority finds that the relevant local community for the purposes of this decision is the suburb of Newcastle, and the broader community is the Local Government Area (LGA) of Newcastle.

Positive social impacts

The Authority is satisfied on the material before it that the proposal set out in the application, if approved, would likely benefit the local and broader communities through the provision of increased convenience and choice.

The Authority considers the application to extend trading by an additional two hours to be relatively low risk. The increase will align with the development consent approved by council and will benefit patrons who wish to frequent the premises during these hours.

Negative social impacts

The Authority accepts that the proposal may, over time, contribute to an increase in alcohol-related harm in the local and broader communities, including alcohol-fuelled violence, health problems and/or social and amenity issues, having regard to the following:

- one objection from the public in respect of noise disturbances and previous breaches of licence conditions as additionally noted in the Liquor & Gaming NSW Compliance submission.
- premises is located in a high-density crime hotspot for incidents of non-domestic assault, alcohol-related assault and malicious damage to property; and a low-density crime hotspot for incidents of domestic assault.
- crime statistics considered by the Authority are higher in the Newcastle suburb compared to NSW and higher in the Newcastle LGA compared to NSW, other than alcohol-related Disorderly Conduct (Offensive conduct).
- high saturation for all licence types within the Newcastle suburb.
- higher alcohol-attributable deaths in the Newcastle LGA compared to NSW
- higher proportion of vulnerable persons, including a higher proportion of Indigenous persons in Newcastle LGA compared to NSW.

The Authority is nevertheless satisfied that these risk factors are sufficiently mitigated by the following:

- crime statistics and licence densities may be skewed due to the suburb's low population and location in the CBD area where visitation from other suburbs within the Newcastle LGA and beyond occurs.
- 5-year crime data shows a downward trend for alcohol-related offensive conduct and malicious damage to property (down 6.6% per year).
- there will be no additional post-midnight trading hours or increase in licence density.
- the Newcastle suburb and Newcastle LGA are above average for socio-economic advantage and disadvantage
- lower alcohol-attributable hospitalisations in the Newcastle LGA compared to NSW.
- relatively small size of the premises with a limited patron capacity of 60 patrons.

- the additional hours between 10.00am and 12.00 midday are deemed low risk by Compliance.
- the complaints register condition being imposed on the licence.
- harm minimisation measures set out in the plan of management and licence conditions as set out in Schedule 1.

Overall social impacts and conclusion

Having considered the positive and negative social impacts that are likely to flow from the applicant's proposal, the Authority is satisfied that the overall social impact of approving the application will not be detrimental to the well-being of the local or broader community.

The Authority is also satisfied that the other legislative requirements for the approval of the application have been met.

The Authority finds, having regard to the above, that approving the application is consistent with the statutory objects and considerations of the Act to regulate the liquor industry in line with the community's expectations, needs and aspirations, and facilitate the balanced and responsible development of the liquor industry and related industries.

Accordingly, the Authority approves the application under section 45 of the Act.

Yours faithfully



Murray Smith

Deputy Chairperson

For and on behalf of the **Independent Liquor & Gaming Authority**

Schedule 1 – Licence conditions to be imposed Basement On Market Street

1. Extended trading

Extended Trading Authorisation: Area: Whole of the indoor area.

2. Incident register

- 1) The licensee must maintain a register, in which the licensee is to record 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 premises under section 77 of the *Liquor Act 2007*,
 - (d) any incident that results in a patron of the premises requiring medical assistance.
- 2) The licensee must, if requested to do so by a police officer or Liquor & Gaming NSW inspector:
 - (a) make any such incident register immediately available for inspection by a police officer or Liquor & Gaming NSW inspector, and
 - (b) allow a police officer or Liquor & Gaming NSW inspector to take copies of the register or to remove the register from the premises.
- 3) The licensee must ensure that the information recorded in the incident register under this condition is retained for at least 3 years from when the record was made.

3. Crime scene preservation

Immediately after the person in charge of the licensed premises or a staff member becomes aware of any incident involving an act of violence causing injury to a person on the premises, the person in charge of the licensed premises and/or staff member must:

- 1) take all practical steps to preserve and keep intact the area where the act of violence occurred,
- 2) retain all material and implements associated with the act of violence in accordance with the crime scene preservation guidelines issued by NSW Police, as published from time to time on the Liquor and Gaming NSW website,
- 3) make direct and personal contact with NSW Police to advise it of the incident, and
- 4) comply with any directions given by NSW Police to preserve or keep intact the area where the violence occurred.
- 5) In this condition, 'staff member' 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 security activities (eg. crowd controller or bouncer) on or about the premises.

4. CCTV

- 1) The licensee must 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 is required to close (or, in the case of a premises that is not required to cease trading, continuously at all times),
 - (b) recordings must be in digital format and at a minimum of ten (10) 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, and
 - (iii) all publicly accessible areas (other than toilets) within the premises.
- 2) The licensee must also:
 - (a) keep all recordings made by the CCTV system for at least 30 days,

- (b) ensure that the CCTV system is accessible at all times the system is required to operate pursuant to clause 1(a), by at least one person 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 Liquor and Gaming NSW inspector within 24 hours of any request by the police officer or Liquor and Gaming NSW inspector to provide such recordings.

5. Plan of management

The premises is to be operated at all times in accordance with the Plan of Management dated 18 October 2022 as may be varied from time to time after consultation with NSW Police. A copy of the Plan of Management is to be kept on the premises, and made available for inspection on the request of a police officer, council officer, Liquor and Gaming NSW inspector, or any other person authorised by the Independent Liquor and Gaming Authority.

6. No stockpiling

The licensee shall ensure, by adequate supervision methods throughout the premises, that no patron is stockpiling drinks. For this purpose stockpiling shall mean that any one patron has more than 2 unconsumed drinks at any one time (a patron may purchase up to 4 drinks at the one time).

7. Complaints register

- 1) A complaints register is to be maintained at the premises at all times which records the following:
 - (a) name and number of the complainant
 - (b) the time and date on which the complaint was received
 - (c) the nature of the complaint, and
 - (d) the measures taken to resolve the complaint
- 2) Details of complaints received, either in person or over the phone, must be:
 - (a) recorded in the complaints register; and
 - (b) reported to the duty manager.
- 3) A mobile or dedicated contact number for the duty manager is to be published on the hotel's website, and on a sign to be posted at the premises entrance. If requested, the duty manager's contact details must be provided to complainants. A messaging service must be in place if the dedicated contact number is unattended.