



Mr David Rippingill  
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Dear Mr Rippingill

**Application for Hotel Licence and Minors Area Authorisation  
'Moko – Heather's Kitchen' – Eastwood**

I am writing to you about the application made on 10 December 2014 by BBDHM Pty Limited to the Independent Liquor and Gaming Authority (Authority) seeking the grant of a hotel licence for premises located at 75 Rowe Street, Eastwood that are proposed to trade as "Moko – Heather's Kitchen".

The Authority considered the Application at its meeting of 2 October 2015 and determined to *grant* the hotel licence pursuant to section 45 and the minors area authorisation pursuant to section 121 of the *Liquor Act 2007*.

Authority staff informally notified the Authority's decision by email dated 25 October 2015. This letter serves to provide a formal record of the decision.

Under section 36C of the *Gaming and Liquor Administration Act 2007*, the Authority is required to publish statements of reasons with respect to those types of decisions prescribed by clause 6 of the *Gaming and Liquor Administration Regulation 2008*.

The enclosed document provides a statement of reasons for the Authority's decision to grant the Application. It has been prepared in the context of a high volume liquor jurisdiction that requires the publication of statements of reasons as soon as practicable.

The actual conditions to which the licence is granted are set out in the OneGov record of the liquor licence, which was provided to the Applicant on 15 October 2015.

Please contact case manager, Ms Santina Causa via [e] [santina.causa@ilga.nsw.gov.au](mailto:santina.causa@ilga.nsw.gov.au) if you have any enquires.

Yours faithfully

Micheil Brodie  
Chief Executive

10 FEB 2016

## STATEMENT OF REASONS

### INTRODUCTION

1. On 6 January 2015 the Independent Liquor and Gaming Authority (Authority) received an application (Application) regarding premises located at 75 Rowe Street, Eastwood to trade as "Moko – Heather's Kitchen" (Premises).
2. The Application is made by Mr David Rippingill on behalf of the Applicant, BBDHM Pty Limited (Applicant) and seeks the grant of a full hotel licence within the meaning of section 14 of the *Liquor Act 2007* (Act).
3. The Application is accompanied by a further application seeking the grant of a minors area authorisation (Minors Application) within the meaning of section 121 of the Act.
4. The Application contends that the licensed business to operate on the Premises will operate as a family friendly Korean style dining and drinking experience (designed to operate as a "gastropub" with a genuine focus on food).
5. The Applicant proposes that cooking classes will be offered in the commercial kitchen of the hotel by Ms Heather Jeong, who the Applicant contends is Australia's leading Korean cooking instructor, author and television host. The Applicant proposes that in addition to offering cooking classes, Chef Jeong will provide two on-going chef apprenticeships to local youths on the Premises.
6. The Minors Application is sought to enable a minors area authorisation to operate in all areas of the Premises excluding the proposed gaming area and another area proposed to operate as the "Private Dining Room".
7. The proposed licensed trading hours of the hotel business to be conducted on the Premises are from 10:00am to 12:00 midnight, Monday through Saturday and 10:00am to 10:00pm on Sunday.
8. The Authority considered the Application on 2 October 2015 and decided to grant the Application pursuant to section 45 of the Act.
9. Staff assisting the Authority informally notified the Authority's decision by email on 15 October 2015. This letter provides a statement of reasons for the Authority's decision to grant the Application. It has been prepared in the context of a high volume liquor jurisdiction that requires the publication of statements of reasons as soon as practicable.
10. The actual conditions to which the licence is granted are set out in the OneGov record of the liquor licence, which was provided to the Applicant on 15 October 2015.
11. Under section 36C of the *Gaming and Liquor Administration Act 2007*, the Authority is required to publish statements of reasons with respect to those types of decisions prescribed by clause 6 of the *Gaming and Liquor Administration Regulation 2008*.
12. This statement of reasons has been prepared in the context of a high volume liquor jurisdiction that requires the publication of statements of reasons as soon as practicable.

## MATERIAL BEFORE THE AUTHORITY

Before the Authority was the Application, the accompanying community impact statement (CIS) further submissions and other relevant material as follows:

13. **Liquor Licence Application Form dated 10 December 2014** and received by the Authority on 6 January 2015.
14. **Minors Area Authorisation Application Form dated 10 December 2014** and received by the Authority on 6 January 2015.
15. **Category B CIS Form and supporting material dated 10 December 2014.**
16. **Floor Plans for the Premises** accompanying the Application which provide a diagram outlining proposed licensed area and proposed minors area authorisation.
17. **Notice of intention to apply for a liquor licence dated 10 December 2014.**
18. **ASIC Current Company Extract for the Applicant, BBDHM Investments Pty Limited, dated 16 December 2014** and listing Msrs Peter Laurence Beaumont, James Jeong and Paul Francis Patrick Whelan as the Directors of the Applicant company.
19. **Copies of stakeholder notices** notifying the Application.
20. **Environment Noise Impact Assessment with respect to the proposed use of the Premises prepared by Day Design Pty Limited dated 18 August 2014.**
21. **Plan of Management for the Premises dated December 2014.** This Plan addresses, *inter alia*, liaison with the Police and the community; operating hours and use of the hotel; patron capacity of 140 persons; responsible service of alcohol procedures; provisions regarding local amenity; provisions for the handling of complaints and an incident register; technical noise limitation criteria; use of signage; waste management and deliveries; use of security staff outlining that between Thursday and Saturday from 8:00pm, until 30min after the close of the Premises, there will be one employed security guard on the Premises to perform security duties; CCTV coverage; procedures for the risk of drugs and drink spiking on the Premises; measures for fire safety and essential services and provisions for future amendment to this Plan.
22. **Development Application (DA) Form and supporting material submitted to City of Ryde (Council) 18 August 2014.** During the DA process whereby the Applicant sought development consent from Council for the proposed use of the Premises for planning purposes, a number of submissions were received from local residents and stakeholders objecting to the grant of the DA. The Authority notes that some of these submissions took the form of pro forma documents. A submission made on behalf of the Eastwood Chinese Elders Group was prepared by consultants Judith Stubbs & Associates. The reasons for objection stated in these submissions include, *inter alia*, submissions that:
  - a) there are "enough" liquor outlets in the suburb of Eastwood
  - b) a contended shortage of public car parking
  - c) contentions that the maximum patron capacity of 140 persons is too large
  - d) contentions that there is a prevailing high level of gaming machines in Eastwood
  - e) contentions as to the social impact of granting this Application including a contended increase in alcohol and gambling related harm in the community
  - f) contentions that the proposed trading hours are too late
  - g) the location of three schools within 800m of the Premises and the potential for an increase in crime associated with the operation of the hotel.

23. **Submission from local resident, Mrs R Nannelli, who resides on Rutledge Street, Eastwood (located approximately 1.4km from the Premises) dated 21 December 2014.** First, the writer submits that there are "already too many pubs/hotels/clubs within close proximity of each other" and lists the Landmark Hotel, Eastwood Club and Eastwood Hotel as examples of nearby licensed premises.
24. Second, the writer submits that there are "already more than enough gambling premises in Eastwood". The writer also expresses general concern regarding the negative impacts of gambling in the local community.
25. Third, the writer submits that there are "already adequate liquor outlets in Eastwood" and it is contended that the Premises are located "next to a public carpark, and patrons affected by alcohol may be a danger to others, especially children".
26. Fourth, the writer contends that the exit from the Premises and the carpark both face into a "narrow lane" and this is contended to increase the likelihood of accidents.
27. Fifth, the writer submits that Rowe Street (the location of the Premises) "is a very busy street" and is "already a well-known accident area". The writer expresses concerns regarding drink driving.
28. Sixth, the writer submits that Rowe Street is "very close to residential apartment blocks" and that patrons of the Premises are "likely to be noisy, and be a nuisance in other ways to nearby residents".
29. **Submission from City of Ryde (Council) dated 5 January 2015 and received by the Authority on 9 January 2015.** Council notes that development consent for the proposed use of the Premises has been lodged but not yet been determined.
30. **Submission from NSW Police, Ryde Local Area Command (LAC) (Police) dated 5 January 2014.** The submission is provided by Superintendent Duncan Commander of the Ryde LAC and notes that the Application has been reviewed by Ryde Licensing Police and has been subject to investigation. Police state that a meeting was held with one of the directors of the Applicant company, Mr Peter Beaumont and representatives from Design Collaborative Pty Limited (the Applicant's representative).
31. Police state that during this meeting, the DA before Council and the Application were discussed "at length" and that Police "highlighted concerns with the application and the potential implications of an increase in alcohol related crime and anti-social behaviour". Police add, (that) "of great concern for Police are gaming related harms that will increase should the proposed ten gaming machines be approved".
32. Police state that during this meeting they discussed the draft Plan of Management and Police proposed a number of conditions "in order to minimise the effect of the hotel on the community from a policing perspective".
33. Police state that the Applicant was "responsive to these conditions and accepted the proposed conditions". Police proposed licence conditions which impose requirements regarding *inter alia*, maximum patron capacity of 140 persons; prohibition on the use of live entertainment; restrictions on the sale of alcohol products designed for rapid consumption at any time (eg, 'shots' or drinks containing more than 50 per cent spirits or liquor); and conditions requiring the use of CCTV systems maintained throughout the Premises including camera coverage to specifically record images of all public accessible areas with recordings being retained for a period of 30 days.

34. Police submit that in addition to the conditions accepted by the Applicant, they recommend the imposition of further conditions should the licence be granted requiring active participation in the local liquor accord; mandating operation of the Premises in accordance with the Plan of Management; the maintenance of an incident register and a requirement that any amendments to the Plan of Management be made in consultation with Police.
35. Police advise that the Applicant has provided a revised Plan of Management and that Police "find it to contain the appropriate controls within the venue to minimise the impact the premises may have on the community with regard to alcohol and anti-social behaviour".
36. Police note that during the DA process that preceded the Application, there were a number of submissions made from local organisations and residents that expressed concerns in relation to increasing gaming machines in the area and the high density of licensed premises within the area. Police note the submission from Judith Stubbs & Associates on behalf of the Eastwood Chinese Senior Citizens, who express concerns regarding the possible introduction of more gaming machines into the suburb of Eastwood and submits that the "immediate locality currently has 85 per cent more gaming machines per adult than the NSW average".
37. Police express concern in respect of this statistic and the "increased risk of gaming related harm". Police submit that:

*...it is not in the public interest for another licensed premise with gaming machines in the suburb of Eastwood. However, should the Authority grant the hotel liquor licence, Police would recommend that a condition be added to the licence, which restricts all gaming within the proposed premises. Should the Authority deem this condition unsuitable, then Police would recommend a condition limiting the maximum number of gaming machines at ten (10)".*

38. **Submission from General Manager of the Redcape Hotel Group Pty Limited (owner of the Eastwood Hotel & Landmark Hotel, Eastwood) Mr Mark Crick, dated 3 February 2015.** Mr Crick provided the following submissions:

*The Application is supported by a social impact assessment/community impact statement prepared by Design Collaborative Pty Limited (DC) and an Environmental Noise Impact Assessment (ENIA). At page 4 of that document the hotel proposed is described as being designed to operate as a 'gastropub' with a genuine focus on food. This is demonstrated through the proposed commercial kitchen, in that meals will be available at all times and a modest patron capacity (maximum capacity of 140 persons). In addition, strict operating procedures are proposed to support the restaurant, including no drinks designed for rapid consumption such as 'shots' or 'bombs' will be sold, no doubles or drinks with more than 50% spirits or liquor will be serviced, no entertainment such as live music or DJs will operate and the hotel will not have a take-away bottleshop or sell packaged liquor for consumption away from the hotel. The unique feature of the proposed hotel will be the training kitchen, provided by Australia's leading Korean cooking instructor, author and television host, Heather Jeong.*

*The Application does not seek an extended trading authorisation. There is no provision as there is for an extended trading authorisation (clause 10A of regulations) that requires consideration of gambling activities. The lack of an expressed requirement, where one such as the above is provided, (for extended trading authorisation in relation to an [sic] hotel licence), should be interpreted as being intentional and there is therefore no requirement to assess gambling activities where no extended trading authorisation is sought.*

*The assessment under the Liquor Act therefore does not include gambling activities (DC page 10). A minors area authorisation will be sought to apply over the majority of the hotel. The hotel seeks to offer high amenity, family-friendly Korean style dining and drinking experience within a modest hotel (DC page 15). Relevantly, the hotel also seeks to eliminate and remove many of the aspects of the operation of an hotel [sic] not necessary to its core offering (i.e. no take-away bottleshop sales or entertainment (DC page 15)).*

*Among its likely positive impacts there is reference to:- (DC page 45)*

- *Raise the bar of Rowe Street as an 'eat street' with introduction of Moko providing modern Korean cuisine.*
- *Create diversity in Eastwood and Ryde LGA through the establishment of a unique modern hotel with a focus on quality food and a teaching kitchen.*
- *Demonstrate that hotels can be run without an overt focus on the sale and supply of liquor.*
- *Expand the focus of hotels in the area to include food, away from solely gaming and liquor.*
- *The hotel will provide quality food. It is fair to say that the surrounding restaurants, hotels and clubs provide food of an average quality. The provision of modern Korean influenced and western meals would add diversity to the existing range of choice (DC page 46).*

### **Submission**

*The application relies heavily on the high quality of food to be prepared. Little else is offered other than the presence of a gaming room, indicating the location of some ten machines. At 5.1 of the ENIA, it is assumed there will be 20 patrons of that room. The report is somewhat dismissive of the presence of those gaming machines. The premises are within a band one pursuant to the Gaming Machines Act and Regulations, and there is potential to expand the number of gaming machines within the hotel. Adjacent to the gaming room is what is described as a private dining room (smoking) but in the future it could easily be adapted to contain further machines, as both it and the gaming room are described as "smoking with open roof over". There is no attempt to address the presence of gaming machines and their effect on the community or the environment of the hotel, or the "family friendly" atmosphere. The very substance of the applicant's proposition would be undermined if the area dedicated to gaming was to expand. This would require the minor authorisation to be reduced eliminating the family orientation focus of the application. Furthermore, the prevalence of gaming would significantly change the type of hotel operation and appeal of the operation to families if more floor space was allocated to gaming. Smoking areas are not conducive to dining or to family friendly environments or to children. Nevertheless, the location of the smoking "dining room" adjacent to the gaming room indicates that this may well be used in the future for further machines as outlined above. The design of the premises suggests that the applicant may intend to move away from its family friendly atmosphere in the future, without the requirement to revisit any council approvals for its operation. Simply by removing the minors area authorisation for that area adjacent to the gaming room, the applicant becomes entitled to place additional poker machines into that space, creating an outdoor gaming area and smoking environment. In the event the applicant is genuine about its food offering then it is more likely to have not segregated the dining area facility with no kitchen amenities, requiring waiter service away from the main kitchen dining area. If the applicant is of the view that this submission has substance then it should adopt the conditions proposed.*

### **Plan of Management & Police Conditions**

*Emphasis is placed on the management practices to be put in place in accordance with the plan of management. For instance, many of the crime prevention through environmental design principles discussed within the CIS relate to effective implementation of the plan of management. For example, it is considered that the space/activity management strategy, which are an important way to develop and maintain natural community control, are addressed in the plan of management. The CIS is missing this plan of management so it is difficult to determine that there will be no significant impact on the community in relation to the effective management of the venue to ensure, for instance, internal spaces will not be abused. In particular, there is no description provided as to how the private dining room is planned to be used and monitored, including the permitted maximum number of patrons in the area. A copy of the plan of management and Police conditions, apparently agreed to, has been sought from the applicant but to date not received.*

*Attention is drawn to the Smoke Free Environment Act 2000, which from July 2015 will make a number of public outdoor dining areas smoke free. The plan shows the private dining room as being an outdoor dining area with smoking availability. From July 2015 this will not be permitted. This puts into question the use of this space and the changes that come into effect this year. If in response to this legislative change the gaming room is expanded, this questions the strength of the CIS in assessing the longer term impact of the proposal, if the focus of the venue is likely to alter. Given the possible expansion of the gaming area, this poses a doubt as to the conclusion of the CIS that the hotel can operate without a focus on gaming and liquor.*

*The Police conditions, agreed to by the application, are at the moment unknown, but it is submitted that in accordance with good hotel management in the area that provisions should be made for:*

- *The provision of security commensurate with the capacity of the premises to patrol the hotel, and also the vicinity of the hotel from 11pm until patrons disburse quickly and quietly from the premises and the vicinity.*
- *The provision of appropriate CCTV.*

- *The provision of signage at exit points requesting patrons to leave the hotel quickly and quietly so as not to disturb neighbours.*
- *The provision of a service to assist with the departure of patrons by way of a courtesy bus or the organisation of taxis.*

#### **Notification of Stakeholders and Assessment of Social Indicators**

*The premises are located within the Ryde LGA, however they are located within close proximity of the Hornsby and Parramatta LGAs. In fact, it is submitted that the premises lie within 500 metres of both those LGAs as demonstrated on attached plan, showing the location of the proposed premises and boundaries of Hornsby and Parramatta LGAs, and the notice of application does not appear to have been served on them. [Regulation 11(3)(b)] Furthermore, there is no assessment of those areas, within the Hornsby and Parramatta LGAs from which trade for the premises would undoubtedly come and the areas would form part of the local and/or broader communities. The proposal should provide comment as to the risk posed to neighbouring LGAs in relation to any potential indicators of harm.*

#### **Primary Purpose Test**

*The hotel primary purpose test in section 15 of the Liquor Act requires, subject to section 15A that the primary purpose of the business carried out on the licensed premises must at all times be the sale of liquor by retail. Furthermore the keeping or operation of gaming machines on the licensed premises must not detract unduly from the character of the hotel or from the enjoyment of persons using the hotel otherwise than for the purpose of gambling. Given the emphasis on the high standard of food to be provided, the absence of entertainment and sale of liquor for the consumption off the premises and the presence of the gaming room, it is submitted that the premises would not meet the hotel primary purpose test.*

#### **Alternative Licence**

*Other than for the desired presence of gaming machines, the premises could operate under an on-premises restaurant licence with a primary service authorisation much more fitting for a "family friendly" experience, which is submitted as the appropriate licence for the proposed operation.*

#### **Possible Conditions on the Licence**

*If however, the Authority takes a different view, and is prepared to grant an [sic] hotel licence and the applicant is genuine about its submissions to the Authority then the applicant should agree to the following conditions:-*

- *The maximum capacity of the premises should be 140 persons*
- *There will not be a takeaway bottleshop or sale of packaged liquor for consumption away from the premises.*
- *There should be no entertainment such as live music or DJs and only background music should be provided.*
- *The number of gaming machines to be kept, used and operated on the premises shall not exceed 10.*
- *The gaming area will not be expanded beyond the area highlighted on the plan.*
- *The minors area authorisation will not be contracted beyond the area specified in the application.*
- *The standard of food offer referred to in the application, and social impact assessment and community impact assessment be retained at all times.*
- *The noise control recommendations of the Day Design report be implemented at all times.*

39. **Email from Mr Rippingill to staff assisting the Authority dated 25 February 2015.**  
Mr Rippingill provided a copy of the certificate of advertising signed by Mr Peter Beaumont on behalf of the Applicant.
40. **Further email from Mr Rippingill to staff assisting the Authority dated 25 February 2015.** Mr Rippingill provided an appointment of manager form.
41. **Email from Mr Rippingill to staff assisting the Authority dated 17 June 2015.**  
Mr Rippingill attached the development consent for the proposed use of the Premises in the form of an order of the NSW Land and Environment Court.
42. **Order by the NSW Land and Environment Court dated 1 June 2015 approving DA LDA2014/0365 for the Premises** and the subsequent change of use of an existing building for the purpose of a Pub at 75 Rowe Street, Eastwood, subject to the 144 annexed conditions.

43. Without purporting to summarise all the development consent conditions, of note is Condition 103 which states that: "Consent is not granted nor implied as to the use of the premises for the purpose of a Food and Beverage school including a cooking school or associated training facility. In this regard, the prior approval of the Council is to be obtained for the premises to be utilised for any such uses".
44. In addition, Condition 108 limits the hours of use of the Premises for the purposes of planning legislation to 10:00am to midnight, Monday to Friday and 10:00am to 10:00pm on Sundays.
45. Condition 109 requires the Premises to operate according to the Plan of Management, which reflects the conditions recommended by Police (noted above). That is, the Plan of Management includes a prohibition on the sale of packaged liquor at the Premises; presence of the licensee at the Premises during all trading hours unless an approved manager is on duty; prohibition on patrons removing glasses or other containers of liquor from the Premises; active participation in the Eastwood Gladesville Liquor Accord; and the prohibition of intoxicated persons onto the Premises.
46. **Submission from a delegate of the Secretary of the (then) NSW Trade and Investment, now Department of Justice dated 15 April 2015**, by an officer within the Compliance Section of the Office of Liquor Gaming and Racing (OLGR).
47. OLGR note that the primary purpose of the type of licensed business that is proposed to operate on the Premises is the sale and supply of liquor for consumption on the licensed premises, catering for up to 140 persons. OLGR further note that a minors area authorisation is proposed to apply to all areas of the Premises excluding the gaming area and an area marked as the "Private Dining Room". OLGR note that the Applicant has stated that take away sales of packaged liquor will not be permitted by the business.
48. OLGR submit that the radial density of licensed premises within the town of Eastwood is "well above" the State average.
49. OLGR submit that NSW Bureau of Crime Statistics and Research (BOCSAR) data indicates that from October 2013 to September 2014, the rate of *alcohol related assaults* (domestic and non-domestic) that occurred within the suburb of Eastwood was 63 (per 100,000 population) compared to a rate of 321 (per 100,000 population) for New South Wales as a whole.
50. OLGR submit that the rate of *alcohol related disorderly offences* that occurred in Eastwood was recorded during this period at 46 (per 100,000 population) compared to 105 (per 100,000 population) for New South Wales as a whole.
51. OLGR submit on the basis of this data that Eastwood "does not appear to have a significant concentration of alcohol-related anti-social behaviour".
52. OLGR note the submission from Police and the recommendation of an additional condition limiting the maximum of Approved Gaming Machines (AGMs) at ten. OLGR further note that Council have provided notification to the Authority of the Application but observe that "it is not known if Council support or object to the granting of the application". OLGR add that the documents submitted to Council for consideration of development consent state that the proposal is to operate ten AGMs on the Premises. OLGR also note the submission received from Mr Crick.
53. OLGR submit that a review of its Compliance and Enforcement Division records did not disclose any adverse information in respect of the Applicant, BBDHM Pty Limited.

54. OLGR submit that although the proposed location has been assessed as "low risk", OLGR note the "significant amount of concern and/or objections" that were raised during the DA process. OLGR submit that these concerns "were of a reasonable nature and it would not be prudent to disregard them".
55. OLGR submit that whilst the Director of Compliance and enforcement "does not object to the granting of this application based upon the proposed business model and location factors, it would appear that the local and broader community strongly oppose this application which may ultimately impact upon the Authority's determination".
56. OLGR submit (albeit without elaboration) that "it is likely that the granting of this application may result in a increase in alcohol-related and gaming related harm" and for this reason OLGR "objects to the granting of the Application unless the conditions proposed by NSW Police are included on the liquor licence including the recommendation that a condition be imposed to restrict the proposed hotel to a maximum of ten (10) AGM's".
57. **Email from staff assisting the Authority to Mr Rippingill dated 10 August 2015.** Mr Rippingill was requested to provide details of the Premises owners in respect of the proposed hotel and to address how the proposal will observe section 15(1) of the Act which states that the primary purpose of the business carried out on a hotel licensed premises must at all times be the sale of liquor by retail. Mr Rippingill was provided with the submissions received from OLGR, Police, Council and Mr Crick and was invited to comment.
58. Mr Rippingill was informed that should the Authority be minded to grant the Application, certain standard conditions imposed upon hotel licences may be imposed upon this licence, including:
  - a) a requirement fixing the daily 6-hour closure period for the purposes of section 11A of the Act as between 4:00am and 10:00am
  - b) a requirement that the licence not operate with a greater overall social impact on the wellbeing of the community that disclosed in the Application and CIS
  - c) a condition mandating (for the purposes of the Liquor Act) compliance with Plan of Management dated December 2014
  - d) a condition requiring active participation in the local liquor accord
  - e) a proviso that evidence be provided to the Authority that the Premises are complete and ready to trade before the licence may be exercised
  - f) a requirement that the licence cannot be exercised until the Authority has approved an application to transfer the licence to an individual licensee or the Authority is notified of the appointment of an approved manager in respect of the licence.
59. In addition to these standard conditions, Mr Rippingill was invited to make submissions in relation to the following proposed conditions:
  - a) a condition providing for no live music or entertainment
  - b) a condition providing that TAB facilities or KENO facilities will not be provided
  - c) a condition preventing the sale of packed liquor
  - d) a requirement that the minors area authorisation apply to the whole of the licensed premises except for the Gaming Area and Private Dining Room.
60. **Email submission from Parramatta City Council to the Applicant dated 20 August 2015.** Parramatta City Council submitted that it "raises no objections to your client's application to the Authority on the basis that the proposed subject premises is not located within the Council's Local Government Area".

61. **Email submission from Hornsby Shire Council to the Applicant dated 20 August 2015.** Hornsby Shire Council submitted that "Council's [sic] has no objections to the proposal".
62. **Submission from Mr Rippingill to staff assisting the Authority dated 27 August 2015.** Mr Rippingill provided detailed submissions in response to the Authority's email dated 10 August 2015.
63. First, Mr Rippingill advises that the owners of the Premises are Hong Euy Park, Kyong Ja Park, Dong Ki Kang, and Mi Hwa Kang. Second, Mr Rippingill provided consent on behalf of the Applicant to all of the conditions proposed by the Authority. Mr Rippingill noted that the Applicant has also consented to the conditions proposed by Police and that these now form part of the Plan of Management.
64. With regard to the requirement in section 15(1) of the Act that the primary purpose of a hotel licensed business is the sale of liquor by retail, Mr Rippingill makes the following submission:

*The primary purpose of the proposed Hotel, will at all times, be the sale of liquor by retail. As shown in the plans submitted, the central feature of the Hotel is an island bar, which will be accessible from all areas of the Hotel.*

*The sale and supply of liquor will be available at all times the Hotel is open. The fact the Hotel proposes to include high quality food and dining facilities concurrently is not considered to detract from this primary purpose and has not to our knowledge, previously been considered to usurp the primary purpose of any hotel. If anything, this component of the Application is a positive social outcome as it seeks to integrate itself with the Korean food scene in Eastwood and is consistent with recent trends in hotel offerings which emphasise the quality of its food produce.*

*In addition, we note it is a requirement of the Liquor Act to, at all times have food available, consistent with the responsible service and supply of alcohol. We note that this requirement does not stipulate the quality of food to be made available and we suggest that the availability of high quality food would better meet the Objects of the Liquor Act to reduce the adverse impacts associated with the consumption of liquor than could be considered for lower standard of food offering.*

*As a policy consideration, it would be detrimental to furthering the Objects of the Liquor Act if it is was considered the provision of high quality food was somehow inconsistent with s15(1) given it would encourage future applications to restrict the availability of food offering.*

*The provision of cooking classes was considered to provide tangible community benefit through the Application, having regard to the high regard that the co-owner of the business, Heather Jeong, has in Australia for cooking modern Korean food. The provision of such a service is not considered to detract from the primary purpose, but rather to compliment and promote the high quality food offering which is considered to be a positive aspect of the proposed Hotel in meeting the Objects of the Liquor Act.*

*With respect to the proposed restriction on the sale of liquor for consumption off-premises the decision to offer that restriction was made in anticipation of concern in the local community and Police of the impacts associated with takeaway alcohol sales. Takeaway sales from small hotels such as that proposed are sold at a premium above other retailers such as ALDI and Dan Murphy's (Woolworths). The proposed Hotel could not compete on price with these premises which are within the local community and walking distance of the Hotel.*

*Having regard to the limited availability of retail floor space within the Eastwood shopping strip, it was considered that the provision of a dedicated bottleshop area would be wasteful and that space would be better served providing bar and dining areas to attract patronage to the Hotel for on-premises consumption where higher profit margins exist.*

*The fact that the Hotel has offered to eliminate off-premises sales is not considered to detract from the primary purpose which must at all times be the sale of liquor by retail. The primary purpose will remain the sale of liquor by retail, for consumption in the Hotel.*

65. In response to the submission from OLGR, Mr Rippingill disputes OLGR's contention that there has been strong opposition to the Application from the local and broader communities.

66. Mr Ripplingill submits that the Applicant went to "significant length" to obtain the views of these communities including the holding of a community consultation meeting which was attended by only three members of the local community.
67. Mr Ripplingill adds that the Application only received one public submission in opposition to the Application and one submission from a commercial interest objecting to the Application.
68. On this basis, Mr Ripplingill submits that the "above responses could not be considered a strong community objection". Mr Ripplingill submit that the objections received during the DA stage were addressed in the social impact assessment provided with the CIS.
69. Mr Ripplingill submits in response to the OLGR submission regarding high licence density in Eastwood that the relevant community does not appear to have a significant concentration of alcohol-related anti-social behaviour. Mr Ripplingill submits that "the apparent higher radial density of licensed premises is immaterial and therefore irrelevant to the assessment". Mr Ripplingill adds that the social impact assessment concluded that there was "no predisposition to irresponsible or harmful consumption of liquor".
70. Mr Ripplingill submits that potential parking impacts have been "assessed and considered acceptable by Council" and that the gambling related impacts are "only relevant in so far as an extended trading authorisation application has been submitted, as per cl. 10A of the Liquor Regulation 2008". Since this Application does not involve an extended trading authorisation, "there is no power for gaming related impacts to be considered".
71. In response to the Police submission, Mr Ripplingill notes that the Applicant has consented to all 16 of the conditions proposed by NSW Police on 16 September 2014 in their letter to Council and that Police "are satisfied that adequate controls are in place to prevent unacceptable levels of adverse impacts arising from the availability of liquor".
72. Mr Ripplingill notes that in addition to these 16 Police proposed conditions, Police have recommended an additional four conditions in their submission dated 5 January 2015. In this regard, Mr Ripplingill submits that these further conditions reflect conditions that have previously been accepted by the Applicant with the exception of the proposed condition requiring the maintenance of an incident register, which already forms part of the Plan of Management.
73. In response to the Police recommendation that a licence condition be imposed limiting the number of gaming machines to ten, Mr Ripplingill submits that the Application concerns a hotel licence made pursuant to the Act.
74. Mr Ripplingill submits that gaming related impacts are only relevant to a hotel licence application in so far as an extended trading authorisation (ETA) is sought.
75. Mr Ripplingill submits that "whilst clause 10A does not prohibit consideration of gaming related impacts outside of an ETA application, the fact that it only requires consideration of gaming related impacts under express circumstances should be interpreted as meaning that gaming impacts outside of an ETA are not relevant considerations under the Liquor Act".
76. Mr Ripplingill submits that the power to limit the keeping of gaming machines ion a licensed premises is "limited" to decisions made under section 32 of the *Gaming Machines Act 2001* with respect to applications made under that Act.

77. In this regard, Mr Rippingill submits that "if gaming related impacts are outside the scope of the assessment of the Application, there can be no power to impose conditions relating to gaming".
78. Mr Rippingill submits that "in recent years ILGA has approved gaming threshold increases in Band 2 LGAs, which have higher density of gaming machines and lower SEIFA rankings than Band 1 LGAs" and that since this hotel is to be located within Band 1 LGA, "to restrict gaming machines of a hotel in a Band 1 LGA more harshly than a venue in a Band 2 LGA is at odds with the application of the Gaming Machines Act".
79. Mr Rippingill further adds that "creating such a precedent, where considerations regarding gaming machines have been brought within the purview of the Liquor Act, would cause significant uncertainty in the NSW hotel and club industries and threaten industry employment".
80. In response to the submission from Mrs Nannelli, Mr Rippingill provides a number of submissions. Mr Rippingill submits that the "needs" based test was removed from the Act on the basis that it was anti-competitive; that he has addressed the issue of gambling on the Premises; that traffic and parking considerations are a "town planning matter" that have been "considered and determined to be acceptable by Council" and that noise concerns have been assessed in an acoustic report submitted with the Application that predicted no adverse acoustic impact.
81. In response to the submission from a local commercial competitor, Mr Crick, Mr Rippingill provided a number of further submissions. Mr Rippingill submits that the notification requirements of clause 11(3)(b) have been met and enclosed email submissions from Parramatta and Hornsby Council; that any concerns regarding section 15(1) are addressed in his submissions. Mr Rippingill rejects the opinion of Mr Crick that an on-premises restaurant licence would be more appropriate for the Premises, by reason that the Applicant is seeking to invest over \$3 million in the renovation of the Premises and that a hotel licence is the "most appropriate way to underpin the premises financially and operatively".
82. On the lack of a submission from Council, Mr Rippingill submits that this is by reason that the Application was made prior to granting development consent. Mr Rippingill adds that development consent has now "been granted to the use of the premises as a **pub** by the Land and Environment Court with the agreement of Ryde Council through pre-hearing alternative dispute resolution".
83. **Liquor licensing information sourced from Authority licensing records** noting the licence type and address for all registered club, hotel and packaged liquor licenced premises for the suburb of Eastwood and the neighbouring suburb of Marsfield.
84. **NSW BOCSAR crime data and crime mapping data for the City of Ryde LGA** regarding incidents of liquor offences, malicious damage to property, assault (domestic assault) and assault (non-domestic assault) offences for the calendar year 2014.

## LEGISLATION

85. Section 15 of the Act states:

**15 Hotel licence-general provisions**

(1) *The following provisions apply in relation to a hotel licence ( "the hotel primary purpose test" ):*

- (a) *except as provided by section 15A, the primary purpose of the business carried out on the licensed premises must at all times be the sale of liquor by retail,*

- (b) *the keeping or operation of gaming machines (as authorised under the Gaming Machines Act 2001 ) on the licensed premises must not detract unduly from the character of the hotel or from the enjoyment of persons using the hotel otherwise than for the purposes of gambling.*
- (2) *The authorisation conferred by a hotel licence does not apply unless the hotel primary purpose test is complied with in relation to the licensed premises.*
- (3) *Any premises (other than the actual hotel) that are authorised by the Authority for the sale of liquor under a hotel licence are, for the purposes of this Act, taken to be part of the licensed premises to which the licence relates.*

86. Section 121 of the Act states:

**121 Minors in hotels in company of responsible adult**

- (1) *The Authority may, on the application by a hotelier, grant an authorisation ( "**a minors area authorisation**" ) to enable the use by a minor of a specified part of the hotel while in the company of a responsible adult. **Note:** Section 51 applies to a minors area authorisation.*
- (2) *The specified part of the hotel to which a minors area authorisation applies may, if the authorisation so provides, comprise the whole of the hotel.*

87. The Authority has considered the Application guided by the statutory objects of section 3(1) and turning its mind to the statutory considerations under section 3(2) of the Act:

**3 Objects of Act**

- (1) *The objects of this Act are as follows:*
  - (a) *to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community.*
  - (b) *to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality,*
  - (c) *to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.*
- (2) *In order to secure the objects of this Act, each person who exercises functions under this Act (including a licensee) is required to have due regard to the following:*
  - (a) *the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),*
  - (b) *the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,*
  - (c) *the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.*

88. Section 45 of the Act provides the power pursuant to which the Authority may grant or refuse to grant, an application for a new liquor licence. Relevantly this section states:

**45 Decision of Authority in relation to licence applications**

- (1) *The Authority may, after considering an application for a licence and any submissions received by the Authority in relation to the application, grant the licence or refuse to grant the licence. The Authority may determine the application whether or not the Secretary has provided a report in relation to the application.*
- (2) *The Authority may, in such circumstances as the Authority considers appropriate treat an application for a licence as having been withdrawn.*
- (3) *The Authority must not grant a licence unless the Authority is satisfied that:*
  - (a) *the applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates, and*
  - (b) *practices will be in place at the licensed premises as soon as the licence is granted that ensure, as far as reasonably practicable, that liquor is sold, supplied or served responsibly on the premises and that all reasonable steps are taken to prevent intoxication on the premises, and that those practices will remain in place, and*
  - (c) *if development consent is required under the Environmental Planning and Assessment Act 1979 (or approval under Part 3A or Part 5.1 of that Act is required) to use the premises for the purposes of the business or activity to which the proposed licence relates-that development consent or approval is in force.*

*Note : Section 48 also requires the Authority to be satisfied of certain other matters before granting a hotel, club or packaged liquor licence.*

## **SOCIAL IMPACT TEST**

89. Under section 48(5) of the Act, the Authority *must not* grant a licence, authorisation or approval of a kind prescribed by section 48(2) of the Act unless the Authority is satisfied, having regard to the CIS and any other matter the Authority is made aware of during the Application process, that the overall social impact of the licence, authorisation or approval in question being granted *will not be detrimental* to the local or broader community.

90. Section 48(5) of the Act states:

### **48 Community impact**

(5) *The Authority must not grant a licence, authorisation or approval to which a relevant application relates unless the Authority is satisfied, after having regard to:*  
(a) *the community impact statement provided with the application, and*  
(b) *any other matter the Authority is made aware of during the application process (such as by way of reports or submissions),*  
*that the overall social impact of the licence, authorisation or approval being granted will not be detrimental to the well-being of the local or broader community.*

91. The CIS usually provides the Authority with information about the views of relevant stakeholders and other aspects of the local community in which the proposed licensed premises is to be located. This includes, for example, the proximity of the licensed premises to hospitals or health facilities, nursing homes, schools and places of worship.

92. Under section 45(3)(a) of the Act, the Authority must not grant a licence unless the Authority is satisfied that the applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates.

93. Under section 45(3)(b) of the Act, the Authority must not grant a licence unless the Authority is satisfied that practices will be in place at the licensed premises, as soon as the licence is granted that ensure, as far as reasonably practicable, that liquor is sold, supplied or served responsibly on the premises and that all reasonable steps are taken to prevent intoxication on the premises, and that those practices will remain in place.

## **APPLICANT SUBMISSIONS ON OVERALL SOCIAL IMPACT**

94. In the social impact assessment prepared by Design Collaborative Pty Limited on behalf of the Applicant and accompanying the Application, the following submissions were made as to the positive social impacts that the Applicant contends will flow to the community:

*It is expected that the approval of the Application would have the following positive impacts with respect to the considerations under the EP&A Act in that it would:*

- *Raise the bar of Rowe Street as an 'eat street' with the introduction of Moko – Heather's Kitchen providing modern Korean cuisine. Competition with existing restaurants and hotels would assist in encouraging further revitalisation of the street by competitors*
- *Improve the public domain and character of Rowe Street as a shopping street through significant financial investment in the revitalisation of a rundown building*
- *Improve the recreational and social life of residents through the construction of a newly fit-out restaurant and bar*
- *Provide local employment and training opportunities for apprentices, hospitality staff and trainees;*

- *Allow people of all backgrounds to be taught the art of Korean cooking by renowned Chef, Heather Jeong*
- *Improve safety and security on Rowe Street through increased passive surveillance and CCTV*
- *Improve safety and security on Rowe Lane through improved public lighting, passive surveillance and CCTV.*

*It is expected that approval of the Application would have the following positive impacts with respect to the considerations under the Liquor Act:*

- *Create diversity in Eastwood and the Ryde LGA through the establishment of a unique modern hotel, with a focus on quality food and a teaching kitchen*
- *Demonstrate that hotels can be run without an overt focus on the sale and supply of liquor*
- *Expand the focus of hotels in the area to include food, away from solely gaming and liquor*
- *It is understood that the Hotel training kitchen will be a first for NSW in that not only will the Hotel have a significant focus on the provision of quality food; but also doubles as a teaching and training kitchen for the community but also provides on-going support and training for apprentice chefs*
- *Through the use of best-practice intoxication aversion tactics, encourage the responsible consumption of liquor by patrons*
- *Through multi-lingual signage, encourage the responsible consumption of liquor by migrant residents*
- *Encourage and focus on the responsible consumption of liquor, through adherence to provisions of the PoM [Plan of Management] which requires each member of staff to take on the responsibilities of an RSA Marshal*
- *Comply with all legislated RSA requirements to reduce the likelihood of intoxication.*

*The style of the Hotel can be attributed to also provide a number of positive social contributions to the local community arising out of the above considerations. The Hotel will provide an attractive place for informal socialising which is open to all adults, regardless of age, gender, income, political persuasion or the like, provided they meet its dress standards, behave appropriately and are not intoxicated. While there are existing hotels nearby, none of them provide a similar ambiance and, as a result, they tend to attract different clienteles.*

*The Hotel will be a high-amenity establishment. It will differ from existing hotels nearby, most of which provide low-quality facilities and, accordingly, attract clienteles which are more prone to cause problems. The Hotel will provide an additional, and currently unavailable, high-amenity facility for the community. The Hotel will provide quality food. It is fair to say that the surrounding restaurants, hotels and clubs provide food of an average quality. The provision of high-quality modern Korean influence and Western meals would add diversity to the existing range of choice.*

*Hotels form social and recreational focal points for society. Milestone events such as birthdays, retirements or going away parties are often celebrated at hotels. The Hotel would provide a high quality location for such events with the exception of 18th birthday parties. Eighteenth birthday parties have been prohibited due to the propensity for high numbers of inexperienced drinks to simultaneously result in acute intoxication and impact on the surrounding area. The Hotel will be beneficial to the shopping street, making it more attractive to shoppers through the provision of good food and a quiet place where they can rest during shopping expeditions. In summary, the Hotel would provide an additional type of social and recreational facility for the community to enjoy.*

95. With regard to the nature and extent negative impacts expected to flow to the community from granting the Application, the Applicant makes the following submissions:

*Approval of the Hotel has the potential for the following direct negative impacts: adverse acoustic impact, traffic and parking and to result in an unsafe environment inside and surrounding the Hotel. These matters have been addressed in the Statement of Environment Effects, submitted under separate cover to the development application.*

*On a social impact basis, it is often contented [sic] that the amount of alcohol consumed by a community is affected by the number of places where it can be obtained in that community. It is also contended that increased number of liquor outlets increase numbers of intoxicated persons in the surrounding areas which results in increased [sic] in assaults, malicious damage and disorderly behaviour. Thus it might be argued, that the presence of an additional hotel may lead to local residents consuming more liquor than is now the case. However, there is no actual evidence that additional outlets result in greater consumption. To the contrary, per capita consumption of liquor in Australia has fallen since the 1990s despite its greatly-increased availability as a result of deregulation. Australian Alcohol Indicators 1990-2001, Chikritzhs et al, (National Drug Institute 2003) reported a decline in per-capita consumption of alcohol of around 10-15% between 1990 and 2000.*

*ABS data between 2008-2013 shows a continuing decline in the level of consumption of liquor, with per capita consumption levels dropping from 10.75L to 9.88L (or 9.10%).*

*Rather than increase the alcohol consumed, the presence of the proposed Hotel would alter the pattern of existing consumption of liquor, i.e. the sales made in the Hotel would be made at the expense of sales presently made in other hotels and licensed restaurants. Despite the fact that there are now fewer hotels and clubs in the Ryde LGA than 7 years ago, it has been raised in submissions that there is an existing "high density" of licensed premises and that increasing that density further would likely to result in increases in violence and impacts in the surrounding area.*

*As a starting point, it is noted that the above Assessment demonstrates an absence of adverse social impact in the area, of the kind normally associated with licensed premises. The assessment shows that all levels of relevant crime are well below NSW averages. Thus, if there was an increase in adverse social impacts as a result of the Application any such increase means the levels would continue to remain well below NSW averages. A 2008 study from Melbourne suggests that the provision of one additional general licence could result in up to 0.90 additional assaults per year, depending on the characteristics of the premises and socio-economic demographics of the community (Livingston, "A longitudinal analysis of alcohol outlet density and assault" [Alcoholism: Clinical and Experimental Research Volume 30, No. 6, June 2008]. Such an increase would appear readily absorbed against the statistics for Eastwood-Denistone and the Ryde LGA.*

*As discussed earlier in the Assessment, the characteristics of the venue itself are of a more reliable indicator of the propensity for violence. In this regard the hotel will be modest in size and capacity, with a family friendly atmosphere and a focus on quality food. It will be run by experienced operators adhering to strict service of alcohol licence conditions. In addition, the Hotel will not provide entertainment or allow take-away sales.*

## **REASONS FOR GRANT**

96. The Authority has critically examined the Application and all the material before it pertaining to that Application. The Authority has decided to grant the Application pursuant to section 45 of the Act.
97. The Authority is satisfied, on the basis of the Application, CIS material and the Applicant's submissions, that the Application has been validly made for the purposes of section 40 of the Act and that the minimum procedural requirements including advertising, CIS and consultation requirements have been satisfied.
98. The Authority is satisfied, for the purposes of section 15 of the Act, that the primary purpose of the proposed business to be conducted on the Premises will be the supply of liquor by retail for consumption on the Premises.
99. The Authority makes this finding on the basis of the Application, CIS and submissions provided by the Applicant.
100. The Authority has considered the submissions made by a commercial competitor, Redcape, questioning whether the proposed business is a genuine hotel and whether the Applicant should apply for a restaurant licence instead.
101. The Authority notes that this proposed hotel business does not propose to sell liquor for consumption off the premises, and the nature and extent of the Korean restaurant planned for this hotel will feature prominently in the business plan. The Authority accepts that this is the case and the Application has been granted on the basis of the representations made to the Authority by the Applicant.
102. It does not follow from the prominent role of the restaurant, the decision by the business owner not to maintain a packaged liquor business nor the provision of other gambling services like TAB wagering and Keno, that this licensed business will not also satisfy the requirement in section 15 (1)(a) of the Act. The Applicant contends that it will operate a hotel licensed business and the Authority accepts that contention having considered the

Application, the CIS and its Plan of Management, which makes extensive provision for the supply of liquor.

103. Maintaining a specialist Korean restaurant and limiting the hotel's offering of gambling services is, if anything, a means by which this business can positively contribute to the diversification and development of the liquor industry in the local and broader community - being an object of section 3(1)(b) of the Act - rather than maintaining the same style of mainstream hotel businesses offered by many other hotels in Sydney.
104. The Authority is satisfied, on the basis of the material provided by the Applicant that it is more likely than not that liquor sales, rather than food service, will dominate the operation of this business at those times of the day outside of peak dining times.
105. The fact that the Applicant has also made a commitment to not sell liquor for consumption off the premises, not operate TAB and KENO facilities does not mean that the business is not also one that requires a hotel licence.
106. A restaurant with an on premises licence is a business the primary purpose of which is the sale or supply of bona fide meals for consumption on the premises - with the sale or supply of liquor being ancillary to the consumption of a meal.
107. This Application does not posit a business that will operate in that mode. The licensed business proposed by this Application is one in which liquor may be sold or supplied for consumption on the Premises from 10:00am to 12:00 midnight six days per week and from 10:00am to 10:00pm on Sundays whether or not any person attending the business consumes a meal.
108. The Authority is satisfied, for the purposes of section 45(3)(a) of the Act, that the Applicant company is a fit and proper corporate person from a probity perspective. There is no adverse information before the Authority regarding the probity of the Applicant company or its directors, notwithstanding that the Application has been scrutinised by OLGR Compliance officers and NSW Police.
109. The Authority is satisfied, for the purposes of section 45(3)(b), that responsible service practices will be in place with the commencement of licensed trading, on the basis of the Plan of Management dated December 2014 and submissions provided by the Applicant and noting an absence of adverse submission from OLGR or from Police with regard to the Applicant in this regard.
110. The Authority is satisfied, for the purposes of section 45(3)(c) of the Act, that the required development consent is in place for use of a packaged liquor licence at the proposed retail Premises, on the basis of the order of the NSW Land and Environment Court dated 1 June 2015 provided by the Applicant.

### **Local and Broader Community**

111. As noted in Authority *Guideline 6: Consideration of Social Impact*, the Authority will identify the relevant "local" community by reference to the locality in which the licensed premises is situated, while the "broader" community will usually be the local government area in which the licensed premises is situated.
112. For the purposes of this Application, the Authority is satisfied that the relevant "local community" comprises the community located within the State suburb of Eastwood while the "broader community" comprises the Ryde LGA.

113. The Applicant has posited a local community as Eastwood-Denistone, (categorised by the Australian Bureau of Statistics (ABS) as "Eastwood Denistone Statistical Area 2") due to the location of the Premises bordering on both suburbs. The Authority notes that the Applicant provided demographic information for both the Eastwood-Denistone region and solely Eastwood.
114. While local community is not defined by the Act, consistent with all of its published decisions involving consideration of the overall social impact test, the Authority is satisfied that the preferable formulation of the relevant local community (for the sake of regulatory consistency and maintaining a genuinely local focus) is the community comprising the State suburb or town within which the proposed business is located – in this case the suburb of Eastwood.
115. The neighbouring areas that are posited by the Applicant as also falling within the local community (Eastwood /Denistone Statistical Area) fall within the broader community of the Ryde LGA and have been considered in that respect.

### **Overall Social Impact**

116. The Authority is satisfied on the material before it that for the purposes of section 48(5) of the Act, that the overall social impact of granting the Application will not be detrimental to the wellbeing of the local or broader community.
117. Determining the overall social impact of granting the Application requires a degree of speculation about what is likely to occur in the event that the Application is granted – albeit speculation that is informed by the prevailing circumstances in the relevant local and broader communities.
118. As noted above, with regard to the overall social impact test prescribed by section 48(5) of the Act, the Authority is satisfied that the local community comprises the suburb of Eastwood and the broader community comprises the Ryde LGA.

### **Positive Benefits**

119. The Applicant provided a good deal of submissions and explanation in support of the positive benefits that it contends will flow to the local or broader community from the granting of the Application.
120. First, the Applicant submits that the Premises will enhance the local community through the establishment of a unique hotel business with a focus on modern Korean food.
121. The Authority is satisfied that a modern alternative to the mainstream hotels that have traditionally dominated the licensed premises industry in NSW will diversity the range of options for members of the local and broader community who desire to attend licensed premises.
122. In light of the local Korean population in Eastwood noted in the Applicant's consultant submissions and the limited extent to which objections have been made from the community, the Authority is satisfied that granting the Application is consistent with the expectations, needs and aspirations of the community for the purposes of section 3(1)(a) of the Act.
123. The Authority is also satisfied that a modern hotel offering a family friendly Korean style dining and drinking experience (designed to operate as a "gastropub" with a genuine focus on food) is a type of hotel licensed business that will develop, in the public interest,

the liquor industry that serves the local and broader community for the purposes of section 3(1)(b) of the Act.

124. Second, the Applicant submits that the Premises will provide cooking classes to members of the local and broader communities. The Applicant adds that these classes will be taught in the commercial kitchen by Australia's leading Korean cooking instructor, author and television host, Ms Heather Jeong. The Authority accepts that this is another unique aspect of the Application which is also in line with section 3(1)(b) of the Act. The Authority notes however that as per condition 103 of the DA, prior approval of Council is required to be obtained in order to use the Premises for the purpose of a "Food and Beverage school including a cooking school or associated training facility".
125. The Authority is satisfied that the contemporary style of hotel and its focus on Korean cuisine will also contribute to the development of the related hospitality industry which is an object of section 3(1)(c) of the Act.
126. The Applicant contends that granting the Application will provide local employment and training opportunities for apprentices, hospitality staff and trainees. The Applicant has made a commitment to "provide local employment and training opportunities for apprentices, hospitality staff and trainees". Specifically, the Applicant contends that the granting of the Application will "provide on-going apprenticeships for two persons for the life of the Hotel".
127. However, the Applicant does not specify when or how many staff will be recruited from within the local or broader community as distinct from other parts of Sydney. Greater clarity and certainty is required with respect to commitments of this kind and only limited weight is given to this purported positive community benefit on the material before the Authority.

### **Negative Impacts**

128. The Authority accepts that over time there will more likely than not be some contribution from the liquor from this hotel licensed premises, the primary purpose of which is the sale of liquor, to alcohol related crime, disturbance or adverse impact on amenity from a minority of customers in the local or broader community.
129. The Authority notes that the Applicant has consented to a number of enforceable licence conditions that will serve to reduce or minimise the negative alcohol related impacts arising from the operation of the hotel business.
130. The Applicant has proposed a condition prohibiting the sale of packaged liquor from the Premises. A full hotel licensed premises is authorised to sell liquor for consumption on or off the licensed premises.
131. The Authority is satisfied that this condition objectively reduces the scope for this hotel business to contribute to potential negative social impacts in the local or broader community that may otherwise be associated with the abuse of packaged liquor sold by the hotel and consumed off the Premises – such as public drinking, "pre-fuelling" before attending licensed premises or contribution to alcohol related litter.
132. In terms of the relative vulnerability of the local and broader community to adverse alcohol related social impacts, the 2014 BOCSAR *Report on Crime by Local Government Area and Alcohol Related Status* for 2014 (based on data from January to December 2013) satisfies the Authority that the rate of exposure of the broader community to alcohol related incidents is well below state wide rates.

133. The BOCSAR report indicates that in the broader community of the Ryde LGA, the of *alcohol related assault police* incidents was **12.7** rate per 100,000 population compared to **22.6** per 100,000 persons for NSW as a whole. The rate of *alcohol related domestic violence offences* was **36.2** per 100,000 persons compared to **137.2**. for NSW as a whole. The rate of *alcohol related non-domestic violence related offences* was **51.6** per 100,000 persons compared to **181.0** per 100,000 persons for NSW as a whole.
134. In relation to the local community within the suburb of Eastwood, BOCSAR crime mapping data for the period from July 2014 to June 2015, reveal that the Premises is located in a relatively sensitive location in terms of concentration of prevailing crime impacts, in that within the Ryde LGA, the Premises is situated within a high concentration "hotspot" for the occurrence of reported non-domestic assault and malicious damage offences (noting that such matters may or may not be recorded as alcohol related). In addition, the Premises is situated within a low concentration hotspot for the occurrence of *domestic assault*.
135. The concentration of crime in the local community provide some moderate cause for concern. However, that concentration of crime hotspots is derived from data at the level of the relevant LGA. That is, there is some concentration of crime, but that concentration is relative to crime rates for the Ryde LGA that are well below rates for the State as a whole.
136. Authority is satisfied that the following aspects of the proposal and the relevant communities concerned will operate to constrain the extent of contribution that this outlet may otherwise make to the prevailing alcohol related social problems in the local and broader communities associated with the abuse of liquor.
137. With regard to the proposed licensed trading hours the Authority notes that the Premises will not trade beyond 12:00 midnight any night of the week and will close at 10:00pm on Sunday evenings. This means that the hotel will not trade into higher risk times of the late evening, early morning whereby patrons will be on the Premises for a prolonged period or may migrate to the Premises after drinking elsewhere.
138. Scale of the Premises: the licensed area of the Premises will constitute a moderate scale hotel, at a size of 410.4 metres but the maximum patron capacity, regulated by conditions of the DA and the liquor licence will be 140, which is relatively modest compared to other full hotel licensed venues in Sydney.
139. Harm minimisation measures: the Authority is satisfied on the basis of the Application and material provided by the Applicant that there are well-developed business, CCTV and security practices and plans for the new business.
140. The comprehensive harm minimisation measures outlined in the Plan of Management provided by the Applicant as part of the Application also satisfy the Authority that steps will be taken by the Applicant and its staff to ensure that the extent of adverse impact arising from the abuse of liquor consumed at the Premises is constrained. These measures include the employment of a security guard between Thursday and Saturday from 8:00pm, until 30min after the close of the Premises, there will be one employed security guard on the Premises to perform security duties.
141. Licence conditions consented to by the Applicant: The Applicant has consented to a number of Police proposed conditions that will be enforceable under the Act and serve to operate to reduce or constrain the social impact that hotel may otherwise have. They include conditions requiring:

- a) a prohibition on live entertainment, reducing the scope for physical interaction of alcohol affected patrons through live performance, dancing and the like
  - b) restrictions on the sale of alcohol (the Premises must not sell or supply the following drinks at any time: any drink (commonly referred to as a "shot") that contains no more than 30ml of spirits or liqueur and that is designed to be consumed rapidly; any drink containing more than 50% spirits or liqueur; any ready to drink beverage with an alcohol by volume content of more than 5%; and any drink prepared on the Premises that contains more than 30ml nip of spirits or liqueur)
  - c) Conditions requiring CCTV systems including the maintenance of CCTV throughout the Premises with camera coverage specifically recording images of all public areas and the retention of recordings for a period of thirty days
  - d) The Applicant has consented to other licence conditions, which will reduce adverse social impacts that may otherwise be associated with the operation of a full hotel licensed premises.
142. Relevantly to the broader social impact of the proposed hotel business, the Applicant has also committed to *not* providing a totalisator or any betting activity under the *Totalisator Act 1997* or a public lottery, such as KENO, which clause 17 of the Liquor Regulation 2008 otherwise contemplates may be offered by a "full" hotel licensed premises as distinct from a general bar or small bar.
143. While there is some dispute among the submissions as to the extent to which the conduct of gambling services is or is not relevant to an assessment of the overall social impact of granting a hotel licence purposes of the Liquor Act (given that this Application does not involve an extended trading authorisation) those commitments made by the Applicant with respect to the extent of gambling to be conducted on the Premises are noted for the record as forming part of the representations made by this Applicant going to the "family friendly" nature of the hotel business that is proposed to be conducted on the Premises should the licence be granted.
144. The Authority notes there has been some community objection made to the proposal while the Applicant was seeking development consent from Council. Detailed submissions were provided by both 15 local residents (with additional signatures accompanying four of these submissions) and seven community organisations.
145. Though the Authority does not purport to deal with the planning issues raised by the community, such as parking issues and traffic congestion, there were some concerns raised in relation to alcohol and gaming related issues.
146. The Authority notes that the submission prepared by Judith Stubbs & Associates on behalf of the Eastwood Chinese Seniors Association took issue with the extent to which gaming machine related impacts had been addressed in the Application and CIS.
147. The Authority notes that if this Application concerned an *extended trading authorisation* in relation to a hotel licence, clause 10A of the Liquor Regulation 2008 would require the CIS to address matters relating to "gambling activities" to be conducted on the Premises during the extended trading period sought. As this Application does not involve any extended trading authorisation, the Applicant was not expressly required to address, as a minimum requirement of the legislation, the extent of proposed gambling activities in the CIS.
148. The Authority notes that the Applicant has nevertheless made submissions on the nature and extent of gambling activities that are proposed to be conducted on the Premises

should the licence be granted. The Applicant states in its submission to the Authority dated 25 August 2015 that it does not propose to provide TAB or KENO services.

149. Nevertheless, to the extent that the grant of a full hotel licence brings with it the implicit capacity to operate gaming machines (an option not available to licensed premises in NSW other than registered clubs or casinos) and the Applicant makes no secret of its intention to operate machines and noting that community concerns have been raised as to the impact of gaming machines on the Premises, the Authority notes that each LGA in NSW has been classified into Band 1, Band 2, or Band 3 depending on gaming machine density, gaming machine expenditure and the Social Economic Index for Areas (SEIFA) disadvantage score published by the ABS. A Band 1 LGA usually has a low gaming machine density, low gaming machine expenditure and high SEIFA score.
150. The Authority notes that Ryde is a Band 1 LGA and thus the community is, broadly speaking, in relative terms, better placed to accommodate gaming machines from a social impact perspective. However the Authority notes that upon grant of the hotel licence, the gaming machine threshold associated with this venue will automatically be set to zero. An actual assessment of any application to raise the gaming machine threshold from zero will be made if and when a further and separate application is made to increase the gaming machine threshold.
151. In respect of alcohol related social impacts, while the Authority accepts that some of these concerns expressed by Eastwood Chinese Seniors Citizens Club and Mrs Nannelli are genuine, for the reasons outlined above, the Authority is satisfied that the extent of contribution that *this* proposed business may make to prevailing alcohol related social problems is constrained by those aspects of the proposal (including a bona fide and substantial focus on food; the proposed family-friendly environment facilitated by limited gambling activities; the comprehensive harm minimisation measures; the location and scale of the Premises; and the licence conditions consented to by the Applicant) that the extent of those impacts will be objectively reduced from the potential social impact that may otherwise arise from the exercise of a full hotel licence without those measures.

## CONCLUSION

152. Having considered together the reasonably well substantiated positive benefits and the factors noted above that objectively reduce the scope for negative impacts, the Authority is satisfied that the overall social impact of granting the Application will not be detrimental to the local and broader community for the purposes of section 48(5) of the Act.
153. In making this decision, the Authority has determined that the 6-hour daily closure period for the purposes of section 11A(3) of the Act shall be fixed at the usual period of between 4:00am and 10:00am.
154. In making this decision the Authority has considered all of the statutory objects and considerations prescribed by section 3(2) of the Act. The Authority has had regard to the need to minimise harm associated with the misuse and abuse of liquor within the meaning of section 3(2)(a) and the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from the amenity of community life within the meaning of section 3(2)(c).



Micheil Brodie  
Chief Executive

DATED 10 FEB 2016