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Dear Mr Manca

**Application for On-premises Licence
Lot No 50 – North Sydney**

I am writing to you regarding an application (Application) made on behalf of GP Calligeros Pty Limited (Applicant), which was received by the Independent Liquor and Gaming Authority on 13 April 2015.

The Authority considered the Application at its ordinary monthly meeting on 2 October 2015 and has decided, pursuant to section 45 of the *Liquor Act 2007*, to *refuse* the Application.

An Authority staff member provided informal advice of the outcome of the Application in an email dated 15 October 2015. There were some inaccuracies in that brief communication, but this letter provides the formal decision and reasons.

This is not a type of application with respect to which a statement of reasons is required to be published under section 36C of the *Gaming and Liquor Administration Act 2007*. Liquor applications comprise a high volume aspect of the Authority's jurisdiction, and what follows provides a concise summary only of the material before the Authority and the Authority's rationale for refusing the Application.

If you have any enquiries about this letter, please contact the manager of licensing, Ms Allison Waring via email at allison.waring@ilga.nsw.gov.au.

Yours faithfully

Micheil Brodie
Chief Executive

- 4 NOV 2015

SUMMARY OF REASONS

INTRODUCTION

1. I refer to an application for an on-premises licence filed with the Independent Liquor and Gaming Authority (Authority) via the customer service unit of the Office of Liquor, Gaming and Racing (OLGR) on 10 April 2015 (Application).
2. The Application is made by a company, GP Calligeros Pty Limited (Applicant) and seeks the grant of an on-premises licence as provided for by section 21 of the *Liquor Act 2007* (Act) in respect of premises located at 50 Berry Street, North Sydney, NSW 2060 (Premises).
3. The Applicant specifies that the designated "primary purpose" of the licensed business that is proposed to be conducted on the Premises, for the purpose of section 23 of the Act, is that of a restaurant.

MATERIAL BEFORE THE AUTHORITY

4. Application Form for a new on-premises licence filed on 10 April 2015 and forwarded by OLGR customer service to the Authority on 13 April 2015.
5. Notices of Application to third parties – including Site Notice, Notice to Police and Notice to Local Consent Authority signed on behalf of the Applicant and accompanying the Application Form.
6. Surveyor's Plan of the property at Lot 2, DP708306 indicating the proposed storage area, seating area (13.6 square metres), ground floor "coffee kiosk", further seating area (28.2 square metres) and the neighbouring "Rag & Famish" Hotel (which does not form part of the Premises).
7. Architectural diagram of the Premises indicating the proposed licensed area.
8. Notice of Appointment of Manager dated 12 May 2015 whereby the Applicant appoints Mr Patrick Meiklejohn as approved manager in relation to the proposed new licence.
9. Decision on Development Application by North Sydney Council (Council) dated 1 June 2015 approving Development Application No. D493/11 (DA) in respect of the Premises.
10. Email from Applicant's representatives dated 10 June 2015 providing a copy of an amendment to the DA for the Premises.
11. Email from Authority staff dated 11 June 2015 advising that, based on the material submitted, the Authority cannot proceed with the Application for an on-premises restaurant licence if there is no kitchen on the Premises. The email notes that Condition 114 of the DA states that "the service of food shall comprise of pre-cooked items only that have been prepared off site...a separate DA is to be lodged for any food service that would require cooking within the kiosk". The staff member notes that an application for modification of the DA has been forwarded to the Authority which addresses the previous "no alcohol" Condition 115 but there is no reference in the material as to how the food preparation issue arising from Condition 114 of the DA has been addressed, for the purposes of this Application.

12. Email from Applicant's representative to the Authority dated 22 June 2015 advising that the proposed kiosk "operates in accordance with the DA" and is "primarily focussed on the sale of various foods and beverages". With respect to compliance with DA Condition 114, the Applicant submits that "any food which requires cooking is prepared in the adjoining bistro kitchen of the Rag & Famish Hotel, not Lot 50" and that "we note that Rag & Famish Hotel and Lot 50 are both operated by the same Hotel Group". The Applicant submits that Division 4 of the Act "does not require the [proposed licensed] premises to operate a kitchen, but rather ensure that the primary purpose of the premises is not the sale of liquor". The Applicant provides a copy of the menu with respect to which the supply of liquor is intended to be ancillary.
13. Email from Authority staff to Applicant dated 23 June 2015 referring the Applicant to the definition of "restaurant" in the Act and raising concern that the proposed licensed business will not satisfy that definition.
14. Email from Applicant's representative to Authority staff dated 23 June 2015 replying to the email from Authority staff of earlier that day and briefly stating that:

With respect to your correspondence below, we instruct that the kind of business or activity carried out on the premises is to be changed from a restaurant to other (Café/Kiosk).

15. Email from OLGR Compliance Section to Authority licensing staff dated 24 June 2015 providing data from the OLGR Environmental and Venue Assessment Tool (EVAT) in relation to the Application and advising that OLGR does not intend to carry out any further assessment of the Application at this time. Should a further report be required, the matter should be raised with the OLGR Director of Compliance.
16. Email from Applicant's representative dated 29 June 2015. This email, which provides responses to an email from Authority staff dated 24 June 2015:
 - a) Confirms the address of the Premises
 - b) Submits that the proposed "trading hours" of the Premises will be 7:00am to 10:00pm Monday through Sunday, but the proposed *licensed* trading hours when liquor will be sold are from 10:00am to 10:00pm Monday through Sunday
 - c) Confirms that the Applicant agrees to a six hour closure period for the purposes of section 11A of the Act to be fixed at between 4:00am and 10:00am daily
 - d) Provides a further plan of the proposed Premises
 - e) Submits that the licensed area of the Lot 50 business will be physically defined through the use of "differential floor tiles, planter boxes and pillars" (Photographs are attached. The area occupied by Lot 50 will be for the exclusive and sole use by the Applicant. The Applicant submits that this area is not for "communal" dining)
 - f) Submits that the dining area of the Premises is privately owned and not subject to a footway licensing agreement with Council
 - g) Submits a further Plan of Management dealing with management of responsible service of alcohol (RSA); staff monitoring of patron intoxication; minors; how the Premises satisfies the definition of "restaurant" in the Act and how the Applicant will ensure that patrons enter and exit the Premises in an orderly fashion and do not cause disturbance to the neighbourhood
 - h) Advises that the Premises is already trading, with photographs provided of its current use
 - i) Provides a Certificate of Registration for the Applicant's business name "Lot No 50"
 - j) Consents to the three Police proposed conditions.
17. Email from Authority staff to OLGR Compliance Section dated 2 July 2015 inviting a report from the Secretary, noting the absence of a kitchen and the proposal that food be prepared on a neighbouring hotel premises. This email also notes the Applicant's

position that the Act does not require the proposed licensed premises to operate a kitchen.

18. Email from the Applicant's representative dated 3 July 2015. In response to an enquiry from Authority staff dated 2 July 2015 as to whether there is a public right of way between the two seating areas located towards the stairs behind the proposed kiosk (and if a public thoroughfare, this cannot be within the proposed licensed area of the new business), the Applicant's representative advises that the "entire proposed boundaries" indicated by the Applicant "form part of the areas leased by the business owners related to the Applicant". The Applicant submits that the business owner/Applicant "retains full control and responsibility" of all areas proposed to fall within the licensed boundaries of the Premises. The staircase is for the use of "the occupants of No. 50 Berry Street" and the lessee must "merely maintain a path of travel enabling occupants of that premises to access the staircase". The Applicant submits that this "is not regarded as a public right of way".
19. In response to concerns from Authority staff as to the means by which the physical definition of the licensed area of the Premises has been established from the floor plan, the Applicant attaches a revised floor plan which "shows the proposed licensed boundaries extending to the pillars" (referred to by Authority staff) along with proposed planter boxes to define the licensed area of the Premises to Berry Street.
20. OLGR Report on Application dated 6 July 2015. In this report, OLGR note the patron capacity of 23 persons on the Premises, and the proposed licensed trading hours from 7:00am to 10:00pm. The Director of Compliance does not object to the Application, provided that a condition is imposed requiring the licensee to comply with the Plan of Management. OLGR then identify several "issues" with the Application including that the Plan submitted by the Applicant does not detail any kitchen facilities on the Premises. OLGR note the Applicant's proposal that the food to be made available on the Premises in order to satisfy the primary purpose of the proposed licensed premises will be supplied by the neighbouring "Rag & Famish" Hotel, which is also owned by the Applicant.
21. OLGR note that there is a comparatively low density of liquor licences within a 1 kilometre radius of the Premises, but that crime data sourced from the NSW Bureau of Crime Statistics and Research (BOCSAR) for the suburb of North Sydney indicates, *inter alia*, that the rate of *alcohol related assault* (domestic and non-domestic) occurring within the suburb of North Sydney during the 2014 calendar year was at a rate of **366** per 100,000 persons of population compared to a rate of **311** for New South Wales as a whole. The rate of *alcohol related disorderly conduct* offences occurring in the suburb of North Sydney during the same period was **407** per 100,000 persons of population compared to **100** for New South Wales as a whole. OLGR submit that "North Sydney appears to have a concentration of alcohol related anti-social behaviour". As for the Applicant's record, OLGR report that its compliance records do not disclose any adverse information regarding the Applicant company.
22. Email from Authority staff to Applicant's representatives dated 8 July 2015 putting to the Applicant the OLGR EVAT report for the Premises and inviting comment as to why granting this Application will not add to the levels of alcohol related crime within this location. The email raises concern as to the adequacy of the floor plan by reason that more is required to delineate the licensed area than differently coloured floor tiles and a few planter boxes. The email also raises concerns with the Applicant that the requirement for a path of travel be maintained to enable occupants of 50 Berry Street to access the stairs shown on the plan indicates that this path should not form part of the proposed licensed area of the proposed new business. The Applicant is invited to provide an amended floor plan.

23. Email from Applicant's representatives dated 23 July 2015 submitting a further floor plan of the Premises.
24. Email from Applicant's representatives dated 17 August 2015. This email submits, in response to an enquiry from Authority staff as to why the Rag & Famish Hotel does not simply apply to extend the boundary of its licence, that the Hotel and Lot 50 are two separate businesses, regardless of the fact that they share the same business owner. The Applicant submits that both businesses are "individually identified and marketed". The Applicant submits that the DA for the Premises "only provided for the use of a Café Kiosk", not a hotel, therefore extension of the Hotel boundary to the Premises would not conform to the conditions of the DA. The Applicant submits that the premises owners of 50 Berry Street wanted to ensure that "pub like" activities were not conducted within their property and for this reason, the Applicant proposes that conditions be imposed upon the licence that:
 - a) Alcohol may only be purchased if food has also been purchased
 - b) No more than 23 patrons at any time may be consuming alcohol in the associated seating area
 - c) Patrons must be seated in the associated seating area and must not be standing at any time.
25. Submission from the Harbourside Local Area Command (LAC) of New South Wales Police dated 2 September 2015. Police advise that they have no information raising doubts as to the "integrity" of the Applicant or persons associated with the licence. Police advise that they do not object to the Application, but request the imposition of three conditions on the licence to "reduce the impact upon the community" of the proposed licensed business: first, that the licensed premises be required by a licence condition to operate in accordance with the Plan of Management; second, that toilets must be open and available at 50 Berry Street, North Sydney for Lot No. 50 customers at all times when alcohol is available for sale; third, that patrons in the outdoor dining area of the Premises are only permitted to consume alcohol while seated at a table in that area.
26. Plan of Management for "Lot No 50 – Updated 2015" (a 7-page document). This deals with a number of business planning matters. Relevantly, the Plan makes brief provision for the "mode and style" of the business, stating that:

...the business is best characterised as a Café Kiosk, which attracts patrons predominantly from corporate business visitors to general passers-by from the area.
27. The Plan of Management notes that the business will operate as an unlicensed café from 7:00am to 10:00am and be licensed from 10:00am to 10:00pm. The Plan makes brief provision for the responsibilities of the approved manager; dealing with minors; alcohol management; noise management and control; patron management; and waste management, cleaning and maintenance.
28. ASIC Organisation Extract dated 28 October 2014 in respect of the Applicant company, GP Calligeros Pty Limited.

LEGISLATION

29. Section 45 of the Act makes provision for the grant or refusal of an application for a new liquor licence, including (relevantly to this Application):
 - 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.

30. When determining an application under section 45 of the Act, the Authority will be guided by the statutory objects provided by section 3(1) of the Act and must consider the statutory considerations prescribed by 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.*

31. Division 4 of Part 3 of the Act contains certain provisions in relation to on-premises licences. Relevantly to this Application, section 21 of the Act provides that certain kinds of premises are not to be licensed:

21 *Certain kinds of premises not to be licensed*

- (1) *An on-premises licence must not be granted in respect of any premises if the premises:*
 - (a) *are used primarily for the purposes of carrying out a business or activity, or*
 - (b) *are of a kind of premises,**prescribed by the regulations for the purposes of this section.*
- (2) *The authorisation conferred by an on-premises licence does not apply if the licensed premises:*
 - (a) *are used primarily for the purposes of carrying out any such business or activity prescribed by the regulations, or*
 - (b) *are premises of any such kind prescribed by the regulations.*

32. Section 22 of the Act concerns the primary purpose test that an applicant for an on-premises licensed premises must satisfy:

22 *Primary purpose test*

- (1) *An on-premises licence must not be granted in respect of any premises if the primary purpose of the business or activity carried out on the premises is the sale or supply of liquor.*
- (2) *The authorisation conferred by an on-premises licence does not apply if the primary purpose of the business or activity carried out on the licensed premises at any time is the sale or supply of liquor.*
- (3) *Subsections (1) and (2) do not apply if the premises to which the licence or proposed licence relates:*
 - (a) *are part of an airport, or*
 - (b) *are located on land occupied by a tertiary institution and cater for students of that institution.*
- (4) *Subsections (1) and (2) are also subject to such exceptions as may be prescribed by the regulations.*

33. Section 23 of the Act requires that an on-premises licensed business specify the kind of business or activity that is its primary purpose:

23 *On-premises licence must specify business/activity or kind of licensed premises*

- (1) *An on-premises licence must specify the kind of business or activity carried out on the licensed premises or the kind of licensed premises to which the licence relates.*
- (2) *Without limiting the kinds of businesses or activities (or the kinds of premises) in respect of which on-premises licences may be granted, an on-premises licence may be granted in respect of a public entertainment venue.*
- (3) *More than one kind of business or activity or kind of premises may be specified in an on-premises licence. However, a separate on-premises licence is, except in the circumstances referred to in section 25(6), required for each set of premises.*
- (4) *The licensed premises to which an on-premises licence relates may be described by reference to the kind of business or activity carried out on the premises or the kind of premises concerned.*

NOTE: For example, the terms "licensed restaurant" and "licensed public entertainment venue" are used in this Act to refer to premises in respect of which an on-premises licence relating to a restaurant or public entertainment venue, respectively, is granted.

- (5) *The business or activity, or the kind of premises, specified in an on-premises licence may, on application by the licensee, be varied by the Authority. Any such variation may include the addition of a specified business or activity, or a specified kind of premises, in respect of the licence.*
- (6) *The authorisation conferred by an on-premises licence does not apply if:*
 - (a) *the business or activity carried out on the licensed premises is not the business or activity specified for the time being in the licence, or*
 - (b) *the licensed premises at any time do not comprise premises of the kind specified for the time being in the licence.*

34. Section 24 requires that the sale or supply of liquor be ancillary to the sale or supply of another product or service to people on the licensed premises.

24 *On-premises licence – sale or supply of liquor must be with or ancillary to other product or service*

- (1) *An on-premises licence authorises the sale or supply of liquor only if the liquor is sold or supplied for consumption on the licensed premises with, or ancillary to, another product or service that is sold, supplied or provided to people on the licensed premises.*
- (2) **Regulations may limit products or services provided on licensed premises**
A product or service is not to be considered a product or service for the purposes of subsection (1) if it is, or is of a class, specified by the regulations for the purposes of this subsection.
- (3) **Authorisation to sell or supply liquor without other product or service**
Despite subsection (1), the Authority may, on application by the holder of an on-premises licence, endorse the licence with an authorisation that allows liquor to be sold or supplied for consumption on the licensed premises otherwise than with, or ancillary to, the other product or service referred to in that subsection.

NOTE: Section 51 applies to any such authorisation.

(3A) *However, the other product or service must be available on the licensed premises at all times while the authorisation operates to allow liquor to be sold or supplied otherwise than with, or ancillary to, the product or service.*

(4) *Subsection (1) does not apply if the premises to which the licence relates:*

(a) *are part of an airport, or*

(b) *are located on land occupied by a tertiary institution and cater for students of that institution, or*

(c) *are exempt from the primary purpose test referred to in section 22.*

35. Section 25 prescribes the authorisation conferred by an on-premises licence, including (relevantly):

25 *Authorisation conferred by on-premises licence (generally)*

(1) *An on-premises licence authorises the licensee to sell liquor by retail on the licensed premises for consumption on the premises only.*

36. Section 27 requires that food must be provided on licensed premises:

27 *Requirement to provide food on licensed premises*

(1) *Liquor may only be sold or supplied on the licensed premises to which an on-premises licence relates if food of a nature and quantity consistent with the responsible sale, supply and service of alcohol is made available whenever liquor is sold or supplied under the authorisation of the licence.*

(2) *If any requirements are prescribed by the regulations in relation to the nature of any such food, those requirements must be complied with.*

(3) *Subsection (1) is subject to such exceptions as may be approved by the Authority in relation to any particular licensed premises.*

DECISION

37. The Authority is satisfied, on the Application and supporting material provided by the Applicant, that the Application has been validly made and satisfies the content and procedural requirements prescribed by the Act, as required by section 40 of the Act.

38. The Authority is satisfied, on the basis of the Application material, the Applicant's supporting documentation and the submissions made by OLGR and Police in response to the Application, that no probity concerns arise from the Applicant company, its nominated approved manager, or persons associated with the proposed new licensed business. The Authority is satisfied, on the material before it, that the Applicant is a fit and proper person to carry on the proposed business or activity to which the Application relates, for the purpose of section 45(3)(a) of the Act.

39. The Authority is satisfied, on the basis of the Application material, particularly the Plan of Management and noting advice from OLGR that it holds no adverse compliance information regarding the Applicant company, 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.

40. While such plans and practices will be in place, the Authority nevertheless maintains substantial concerns arising from the mode of business (in the style of a kiosk) that is proposed by the Applicant, in light of the section 3 considerations that the Authority is required to consider, and these are discussed below.

41. The Authority is satisfied, for the purpose of section 45(3)(c) of the Act, that development consent for the operation of a "café/kiosk" is in force with respect to the Premises. This

finding is made on the basis of a decision by Council dated 1 June 2015 to modify DA number D4923/11, a copy of which is before the Authority.

42. The Authority notes that Condition 114 remains in place on the amended DA, requiring that:

...the provision of food shall comprise pre-cooked items only that have been prepared off-site, such as pastries, cold and toasted sandwiches and the like. A separate DA is to be lodged for any food service that would require cooking within the kiosk, including details of grease trap and mechanical ventilation.

43. On the material before it, the Authority is *not* satisfied that granting the licence sought by the Applicant would be in the public interest, having regard to the business model now proposed by the Applicant (noting that the Applicant initially proposed that the business would be a restaurant and now proposes a café/kiosk). The relevant public interest is informed by the objects of the Act and the considerations to which the Authority must have regard when determining an application of this kind.
44. The proposed business takes the form of a kiosk facing into an area with tables and chairs facing onto Berry Street, North Sydney. Patrons of the business may purchase food and (if the licence is granted) liquor. They may consume the liquor at the tables in what is primarily a street facing *al fresco* area, located immediately next door to a substantial "full" hotel licensed premises known as the Rag & Famish Hotel (Hotel).
45. The Authority is satisfied, on the basis of the Applicant's material, that the Lot 50 business will be a licensed premises that is separate, but immediately adjacent to, the licensed premises of the Hotel. It will constitute a separate business to the Hotel but one with common ownership.
46. The Authority is satisfied, on the basis of the Application and submissions from the Applicant that the food sold from the Lot 50 kiosk will be prepared at the Hotel next door.
47. There is no kitchen evident on the plan of the Lot 50 Premises and Condition 114 of the DA for the Premises would prevent the preparation of food on the Premises.
48. Notwithstanding the late amendment of the Application to specify the change of proposed primary purpose of the licensed business from "restaurant" to "café/kiosk", for the avoidance of doubt the Authority is not satisfied that the proposed business would constitute a *bona fide* "restaurant". The definition of a restaurant provided by the Act is:
- ...restaurant means premises (however described) in respect of which the primary purpose is the business of **preparing** and serving meals to the public.*
49. The Authority is satisfied, on the basis of the plans for the Premises, that there is no kitchen provided for on the proposed Premises, which is a *prima facie* indication that the proposed licensed business will not constitute a restaurant for the purposes of the Act.
50. The Authority is not satisfied, on the basis of the information provided for by the Applicant, that there will be any significant preparation of food on the Premises. That is, while the proposed licensed business will sell and supply meals to its patrons, the Authority is not satisfied that the primary purpose of the business involves the preparation of such meals. The Applicant has indicated and the Authority accepts that meals will be prepared at the neighbouring hotel bistro that is also owned by the Applicant.

51. As for the proposed alternative designation of the primary purpose of the business as a "café/kiosk", a café connotes a food business that involves some extent of preparation of food on the premises for consumption on premises and/or takeaway. In this case, the Applicant will not prepare any food on the Premises and is prevented by the DA from doing so.
52. What is essentially proposed is a kiosk that will sell food which, to the extent that it requires preparation, will be prepared at the neighbouring hotel. The kiosk will be situated in an open plan area located immediately next to a hotel and adjacent to Berry Street, within the North Sydney central business district (CBD). Patrons will purchase and collect food and liquor from the kiosk.
53. The Applicant has not provided evidence or material to substantiate, to the Authority's satisfaction, how licensing this food kiosk, which is already in operation, would be consistent with the expectations, needs and aspirations of the community (and thus serve the object of section 3(1)(a) of the Act). It is not apparent from the evidence or material before the Authority what expectations, needs and aspirations, held at the level of the relevant community likely to patronise this business (which the Authority is satisfied would most likely be the community in the State suburb of North Sydney and most directly the North Sydney CBD) would be served by licensing a kiosk in this location, along the lines proposed – noting that it is located immediately next to a "full" hotel licensed premises.
54. Similarly, the Applicant has not substantiated or explained, to the satisfaction of the Authority, how or to what extent licensing this kiosk would facilitate the balanced development of the liquor industry (and thus advance the object of section 3(1)(b) of the Act) given that a full hotel is located immediately next door and given the availability and range of other licensed premises in the North Sydney CBD of which the Authority is aware from its licensing records (and which are publicly available to the Applicant).
55. Moreover, the Authority is not satisfied that the Applicant has established how licensing this kiosk in this location would contribute to the responsible development of related industries such as live music, entertainment, tourism and hospitality and thus advance the statutory object of section 3(1)(c) of the Act.
56. Turning to the section 3(2) considerations, the Authority does not have information before it that would give rise to concerns, for the purposes of section 3(2)(b), as to the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor. The Authority notes the alcohol management provisions of the Applicant's Plan, including no service of "shots" of liquor and that the business will not apply "extreme discounts" as part of any promotion.
57. The Authority is satisfied, on the basis of the Plan of Management provided by the Applicant, supplemented by advice from OLGR and Police raising no concerns with the regulatory record of the Applicant that the business would not engage in irresponsible practices towards the promotion, sale, supply, service and consumption of liquor.
58. However, real concerns arise with regard to the proposed business model when assessed against the considerations provided by subsections 3(2)(a) and 3(2)(c) of the Act. Notwithstanding the Applicant's consent to the Plan of Management being imposed as a condition of the liquor licence (which includes provisions that liquor is only to be consumed at tables with numbers limited to 23 patrons on the Premises), the informal provision of liquor to patrons by way of collection from a kiosk, situated in an open plan street facing area within the North Sydney CBD next to a substantial hotel, gives rise to real concerns as to the likely impact upon local amenity.

59. Noting, on the basis of the Application, that the kiosk will be licensed to sell liquor from 10:00am to 10:00pm seven days per week, the Authority is satisfied that the proposed new business (which the Plan states is designed to attract passers-by) will, over time, attract a range of passers-by, including city workers and the like.
60. The Authority considers it more likely than not that a minority of patrons of this kiosk will not comply with the requirement in the Plan to only consume liquor while seated at the tables. There is a likelihood that some will mill around the area of the Premises, standing up within the defined boundary of the Premises and also on the adjacent footpath.
61. The Authority is also satisfied, given the unstructured nature of the site, the informal business model of patrons collecting liquor from a kiosk and the fact that the Premises proposes to trade into busier, night time evening hours, that it is more likely than not that some patrons may take liquor away from the kiosk and off the boundary of the Premises. Having considered the Plan provided by the Applicant, the Authority is nevertheless satisfied, on the material before it, that it will be difficult for staff of the kiosk to prevent these kinds of adverse amenity impacts over time, particularly during busier periods in the evening.
62. The Authority is satisfied, on the basis of the BOCSAR data specified in the submission from OLGR, that the suburb of North Sydney is already exposed to substantially higher than State average rates of alcohol related crime and anti-social behaviour.
63. This is a consequence of the high concentration of city workers and others patronising the considerable number and variety of licensed premises in North Sydney, but the data nevertheless underlines the fact that the community most likely to be serviced by this new business is already exposed to some moderately elevated levels of crime and other harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour) which the Authority must consider pursuant to section 3(2)(a) of the Act. In the alternative, that community is already exposed to adverse alcohol related impacts upon local amenity (which the Authority must consider pursuant to section 3(2)(c) of the Act) and the Authority is not satisfied that the grant of this Application would not have the potential to exacerbate that.
64. Notwithstanding that the Applicant's proposal is of a relatively small scale, the considerations to which the Authority must turn its mind under subsections 3(2)(a) and 3(2)(c) militate against licensing this proposed "kiosk" business model in this inner city location.
65. The Authority has taken into account that the Applicant has planning consent to conduct a kiosk based business on the Premises and that neither Police nor OLGR objects to the Application. Notwithstanding this, the Authority must consider the Application in light of the public interest in respect of the liquor legislation.
66. For the avoidance of doubt, this is not a type of application with respect to which the Authority is required to apply the overall social impact test prescribed by section 48(5) of the Act. Nevertheless, on the basis of the material before it, the Authority is *not* satisfied that it should grant the Application, having regard to all of the objects and considerations prescribed by section 3 of the Act.



Micheil Brodie
Chief Executive