



Mr Andrew Wennerbom
Lands Legal
Level 8
131 York Street
SYDNEY NSW 2000

Dear Mr Wennerbom

**Application for General Bar Licence
Dulcie's Cottage**

I am writing to you regarding an application received by the Independent Liquor and Gaming Authority on 10 June 2015.

The Application seeks the grant of a new hotel, general bar licence within the meaning of section 16 of the *Liquor Act 2007* (Act) in respect of premises located at 60 Main Street, Merimbula, NSW 2548.

The Authority considered the Application at its meeting on 28 October 2015 but the decision was postponed to allow the Applicant further time to consider conditions proposed by the Authority. The Authority considered the Application again at its meeting on 25 November 2015 and decided to *grant* the Application pursuant to section 45 of the Act. Authority staff informally notified the Authority's decision via email dated 30 November 2015.

Under section 36C of the *Gaming and Liquor Administration Act 2007*, the Authority is required to publish statements of reasons with respect to those decisions prescribed by clause 6 of the Gaming and Liquor Administration Regulation 2008. This letter attaches the Authority's statement of reasons prepared in the context of a high volume liquor jurisdiction that requires the publication of statement of reasons as soon as practicable.

A record of the licence from the OneGov database specifying all conditions to which the licence is subject has been provided to you in separate correspondence from Authority staff.

If you have any questions about this decision, please contact the case manager, Ms Santina Causa via email at satina.causa@ilga.nsw.gov.au .

Yours faithfully

Micheil Brodie
Chief Executive

20 JAN 2016

STATEMENT OF REASONS

INTRODUCTION

1. On 10 June 2015, the Independent Liquor and Gaming Authority (Authority) received an application (Application) made by Mitt and Gyps Pty Limited (Applicant).
2. The Application seeks the grant of a hotel (general bar category) licence within the meaning of section 16 of the *Liquor Act 2007* (Act) in respect premises located at 60 Main Street, Merimbula, 2548 (Premises).
3. The Application seeks licensed trading hours for the proposed new business to be conducted on the Premises between 12:00 noon and 12:00 midnight Monday to Saturday and 12:00 noon to 10:00pm Sunday.
4. The Application also seeks that the 6-hour daily closure period required by section 11A of the Act be fixed at between 12:00 midnight and 6:00am. However, noting that the standard closure period for licensed premises is between 4:00am and 10:00am the Application has been amended to seek that closure period.
5. The Applicant previously made an application for a general bar licensed in respect of the Premises on 7 May 2014. That application was refused by the Authority at its meeting on 4 March 2015.
6. Authority staff informally notified the Authority's decision to grant this Application via email dated 30 November 2015. This letter serves to provide a formal record of the decision.
7. Under section 36C of the *Gaming and Liquor Administration Act 2007*, the Authority is required to publish statements of reasons with respect to those decisions prescribed by clause 6 of the Gaming and Liquor Administration Regulation 2008. 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

8. Application Form, Community Impact Statement (CIS) and Statement of Impact (SOI) dated 2 June 2015. The Application seeks to exercise licensed trading hours between 12:00 noon and 12:00 midnight Monday to Saturday and 12:00 noon to 10:00pm Sunday.
9. The initial Application also seeks that the 6-hour daily closure period required by section 11A of the Act be fixed at between 12:00 midnight and 6:00am (this was later amended to the standard closure period prescribed by section 11 as between 4:00am and 10:00am).
10. The contentions and submissions made by the Applicant in the CIS document and the annexed SOI, as to the overall social impact of granting the Application are discussed herein.
11. Plan of the Premises. The Applicant has provided a diagram indicating the boundaries of the proposed licenced area on the Premises.
12. "Director's history schedule" document for Mitt and Gyps Pty Limited prepared by the Applicant. This document indicates that the directors of Mitt and Gyps Pty Limited are

Kirsty Pongratz and Mitchell Nadin and includes a brief history of employment for each director.

13. Australian Securities and Investments Commission (ASIC) record of registration for business name for Dulcie's Cottage, dated 27 January 2015. This document identifies the business holder as Mitt and Gyps Pty Limited.
14. Notice of Appointment of Approved Manager dated 8 June 2015. This document identifies Ms Kirsty Pongratz as the appointed manager of Dulcie's Cottage. This is accompanied by a number of documents relating to Miss Pongratz including a photocopy of her NSW competency card, Australian passport, and National Police Certificate which records "no "disclosable court outcomes" or "outstanding matters".
15. Plan of Management (POM) for Dulcie's Cottage prepared by the Applicant, dated October 2015. This internal business document sets out "performance criteria and guidelines for the operational management of Dulcie's Cottage". The POM states the following:
 - a) **Use of the Plan.** The POM notes that all staff "shall be made familiar with this Plan of Management" and that the "licence must be operated in accordance with the plane of management".
 - b) **Hours of Operation and Patron Capacity/Control.** The POM notes that the maximum capacity of Dulcie's Cottage is **160** people, the hours of operation will be limited to between 11:00am and 12:00 midnight Monday to Saturday and Sunday 11:00am to 10:00pm; the sale of liquor will not commence until 12:00noon daily and patrons will not be permitted on the Premises for more than 15 minutes after closing time. [The Authority notes that the previous version of the POM listed the sale of liquor commencing at 11:00am daily, and the capacity of the venue at 200 people].
 - c) **Signage.** The POM states that signage required by the Act will be erected in the Premises including signage indicating the licensee name, licence number, maximum capacity of the Premises, and the use of CCTV cameras. Further signage will request patrons to leave the Premises in a quit and orderly manner.
 - d) **Amenity of Neighbourhood.** The POM states that the licensee will "take all reasonable measures to ensure the conduct of the business does not impact adversely on the surrounding area".
 - e) **Noise.** The POM states that the "LA10" measurement of noise emissions from the Premises will not exceed the background noise level at the boundary of any affected premises by more than 5dB between 7:00am and 12:00 midnight and will not exceed the background noise level at the boundary of any affected premises between 12:00 midnight and 7:00am. Furthermore, the LA10 measurement of noise emissions shall not exceed the background noise level by more than 3dB when assessed indoors at any commercial premises whilst that premises is in operation and the use of the Premises shall be controlled so as not to create "offensive noise" as defined in the *Protection of the Environment Operations Act 1997*.
 - f) **Behaviour of Patrons and Harm Minimisation.** The POM states that the licensee will "take all reasonable steps" to control the behaviour of patrons and ensure that there is "no loitering" outside the Premises. Furthermore, the following policies will be implemented by the business:
 - i. All employees that sell alcohol will have completed a Responsible Service of Alcohol course.
 - ii. The licensee shall not engage in any promotions that promote irresponsible service of liquor.
 - iii. The licensee shall not serve any person, nor permit entry to any person, who appears intoxicated.
 - iv. Early intervention, with respect to intoxication, will form part of staff training.

- v. Persons involved in incidents of "indecent, violent, or quarrelsome" conduct will be refused service and asked to leave the Premises.
 - vi. No person under the age of 18 will be allowed entry to the Premises.
 - vii. Photographic identification will be required "where age is an issue". The only acceptable forms of which will be a driver's licence, RTA photo ID card or current passport.
 - viii. Low alcohol and "one standard drink" versions of cocktails will be available at a lower price.
 - ix. Low alcohol beer and non-alcoholic beverages will be available.
 - x. "Varied and good quality food" will be available during operating hours.
 - xi. Staff will be knowledgeable in the public transport options available.
 - xii. Management will retain a register of RSA certificates and a log of all refusal of service incidents.
- g) **Security.** Security guards will be engaged to patrol the Premises and intervene to prevent intoxication, violence and other anti-social behaviour on the Premises. Security will report any incidents requiring their intervention to the licensee or manager. Security will be provided Friday and Saturday night from 8:00pm until the venue is closed or the last patron leaves (whichever is later). [The Authority notes that the POM does not indicate the ratio of security guards to customers].
- h) **CCTV.** CCTV will be installed on the Premises and will be monitored by staff. CCTV cameras will provide surveillance of parking facilities, the interior of the Premises, the entry/exit points to the Premises and the vicinity of the Premises to a minimum of 10 metres from the entrance. Monitoring screens will be installed where staff can easily observe them. Recordings will be kept for 14 days and will incorporate any recommendations by Bega Valley Shire LAC. The Applicant has provided a plan of the Premises including the locations of the 10 CCTV cameras and their field of vision.
- i) **Delivery and Waste Disposal.** The Plan states that "all reasonable efforts" will be taken to minimise the general amount of waste and any noise associated with its collection". No waste shall be removed from the Premises between 9:00am and 7:00pm and all waste will be collected by a licenced contractor between 7:00pm and 11:00pm. Deliveries will be once weekly by small delivery vans.
- j) **Maintenance.** The Premises will be kept in a clean and tidy condition "to the satisfaction of the council".
- k) **Removal of Liquor from the Premises.** The licensee shall prevent patrons leaving the Premises with liquor in opened containers and will not sell packaged liquor. After 5:00pm and on weekends staff will monitor the entrance of the Premises.
- l) **Fire Safety and Safety Measures.** All managers and permanent staff shall be made aware of fire safety requirements and procedures. Lists of emergency service phone numbers shall be kept near the phones.
- m) **Complaint Handling.** All complaints are to be recorded in the incident register and responded to by management within 48 hours.
- n) **Amendment to this plan.** Where modifications to this plan are necessary a copy of the plan shall be provided to the Bega Valley Shire Council and the Licensing Unit of the NSW Police Service South Coast Local Area Command.
- o) **Neighbourhood Committee.** The licensee shall participate and facilitate a neighbourhood committee that will address any issue associated with the amenity of the area around the bar.
- p) **Local Liquor Accord.** The directors will continue to be members of the Bega Valley LGA Licensing Accord.
- q) **Organisation Structure.** The Premises will be operated by Mitt and Gyps Pty Limited and its directors, who will employ 6-8 mostly casual staff.
16. Dulcie's Cottage Responsible Service of Alcohol (RSA) House Policy. This document details the RSA strategies proposed to be employed at the Premises, including:

- a) All employees will have completed an RSA course.
 - b) Management will maintain a register of RSA certificates and a log of all incidents of refusal of service.
 - c) Non-alcoholic and low alcohol options will be available to patrons.
 - d) Staff will be trained in early intervention procedures to prevent intoxication.
 - e) No person under 18 will be admitted to the venue.
 - f) All staff will be knowledgeable about public transport options in the area.
17. Bega Valley Shire Council (Council) Development Application (DA) (No. 2014.320) dated 27 November 2014. The DA records the grant of consent for the "establishment of a pub". The DA notes that the hours of operation are limited (for planning purposes) to between the hours of 7:00am to 12:00 midnight Monday to Saturday and 7:00am to 10:00pm on Sunday. The DA also addresses, *inter alia*, the regulation of construction, fire safety, maintenance, and amenity.
18. Email from Council to the Applicant dated 5 June 2015. This email notes that DA No. 2014.320 gave approval for the establishment of a pub and that "approved use as a pub related to the entire allotment that is known as 60 Main Street".
19. Email from Authority staff to the Applicant's solicitors dated 18 August 2015. This email request additional information including, *inter alia*, a description of the "burger shack" to provide food on the Premises, a menu for the proposed business, and confirmation of trade hours.
20. The email also seeks consent from the Applicant for the imposition of the following conditions upon the licence:
- a) The 6-hour closure period, under section 11A of the Act, shall be between 4:00am and 10:00am daily.
 - b) The proposed business must not operate "with a greater overall level of social impact on the well-being of the local and broader community than what could be reasonably expected from the information contained in the Community Impact Statement".
 - c) The licensee must join and participate in the local liquor accord.
 - d) The business on the Premises are to be operated in accordance with the Plan of Management.
 - e) Liquor may only be sold or supplied if food of a nature consistent with the responsible sale, supply and service of alcohol is made available whenever liquor is sold.
 - f) The patron capacity of the Premises is not to exceed the capacity approved in the DA.
21. Email from the Applicant's solicitors dated 9 October 2015. This email refers to the email from Authority staff sent on 18 August 2015 and notes that the Applicant accepts the conditions proposed by the Authority. This email also details a number of other issues which are discussed below.
22. Email from Authority staff to the Applicant's solicitors dated 30 November 2015. This email requests that the following conditions be attached to the licence:
- a) Only staff can attend the van (that is, a food van that is proposed to operate on the site) to place an order for food.
 - b) Liquor can only be sold, supplied and consumed within the building and on the attached veranda.
 - c) Premises capacity is limited to 160.
 - d) "Food van to be open and food available at all times the premises are open".

23. Email from the Applicant's solicitors dated 30 November 2015. This email refers to the email from Authority staff dated 30 November 2015 and advises that "we are instructed to consent to the conditions".
24. Document entitled 'The Van at Dulcie's Cottage'. This document describes the van as a refurbished caravan that will be permanently located on the site of the Premises which will **strictly** conduct food service for the hotel, as an extension of the Dulcie's Cottage business. The hours of operation for the van are stated to be 10:00am to 12:00 midnight Monday to Saturday and 10:00am to 10:00pm Sunday.
25. Menu for 'The Van'. This is a menu for the proposed business.
26. Submission from the Office of Liquor, Gaming and Racing (OLGR) dated 11 August 2015. This submission objects to the Application contending that the proposed business model (a general bar) is "high risk", and that the suburb of Merimbula has a moderate radial density of incumbent licensed premises and that "alcohol-related crime and anti-social behaviour more than double the state average". OLGR further contend that the Applicant has not adequately addressed the provision of food consistent with the responsible service of alcohol in the Application.
27. OLGR refer to data from the NSW Bureau of Crime Statistics and Research (BOCSAR) from April 2013 to March 2014 indicating that the rate of *alcohol related assaults* (both domestic and non-domestic) that occurred in the state suburb of Merimbula was 814 per 100,000 persons compared to 301 per 100,000 persons for NSW as a whole, and the rate of alcohol related disorderly conduct offences in Merimbula was 698 per 100,000 persons compared to 95 per 100,000 persons for NSW as a whole.
28. Submission from NSW Police Far South Coast Local Area Command (LAC) emailed to the Authority on 10 July 2015. This submission advises that Police do not object to the Application but raises a number of issues that Police wish to be addressed including the following:
 - a) The CIS and other documentation record the maximum capacity as both 200 people and 160 people. "This needs to be clearly delineated on any documentation".
 - b) There is nothing to support the comment on page 10 of the CIS that proprietors of nearby venues are "at ease with the proposed venue".
 - c) The licence should be subject to a condition that the licensee must engage a person who holds a class 2A security license to prepare a POM for the licensed premises. This POM must be maintained at the licensed premises and be available for inspection by Police and OLGR.
 - d) The licence should also be subject to a condition that from 8:00pm on Fridays and Saturdays until closing a minimum of one licensed and uniformed security guard must be operating at the Premises.
 - e) The licence be subject to a condition requiring the licensee to maintain a CCTV system on the Premises.
 - f) The licence should be subject to a condition that in the event of an act of violence causing injury the scene of the incident must be kept intact and direct contact must be made with the LAC to advise of the incident.
29. Submission from Merimbula RSL Club dated 15 June 2015. This submission objects to the Application and makes the following contentions:
 - a) The Premises has a maximum of 160 patrons. Many of these patrons will need to park in the area and "it is impossible to see how this will occur without significant utilisation of other commercial trading venues".
 - b) Merimbula is in an area that is "already well serviced by two large Clubs" and "a number of major liquor outlets". "In light of recent amendment to the NSW Liquor

- Legislation following public response to anti-social behaviour in NSW, it is hard to understand the need for a further outlet in Merimbula".
- c) Although the Applicants stated intentions are to have a more upmarket food and beverage experience, it is believed that if that fails, they would go back to a "general bar experience which would not be in the spirit of what the application promotes".
 - d) There are concerns as to the security of the Merimbula RSL Club which, as an adjoining property, "will have to deal with problems associated with the new general bar such as the noise coming from this premises and patrons coming out of this premises". The Club contends that "if this new licence is approved I feel that the Club will get caught up in issues which are not related to us and the good name of the Club will be tarnished".
30. Submission from the Merimbula Lakeview Hotel Motel dated 16 June 2015. This submission objects to the Application and makes the following contentions:
- a) The Premises "is incapable of accommodating the revised estimated 160 patrons and associated parking without utilising the public parking facilities of commercial trading venues in and around the immediate area".
 - b) The township of Merimbula with a population of around 3,300 (2011 census) "is already well serviced by two large clubs...and a number of licenced restaurants and cafes". In addition, the Pambula Golf Club is located within minutes of Merimbula, along with two hotels located in the township of Pambula again only several kilometres from Merimbula.
 - c) Merimbula is "already serviced by major liquor outlets associated with Woolworths and Coles in addition to the recently opened "Cellarbrations" retail outlet".
 - d) The public response to anti-social behaviour in NSW has resulted in drastic amendments to NSW liquor legislation...an additional outlet in the small township of Merimbula is "against the spirit of the new legislation and increases the risk of potential offenders leaving the proposed new venue only to attempt to attend the premises of other existing establishments".
 - e) The existing licensed establishments in Merimbula "already provide substantial employment opportunities for many permanent and casual staff and all venues source much of their fresh produce from local businesses and utilise the services of local trades people".
31. Submission from Main Street Medical Centre dated 8 May 2015. This submission objects to the Application contending that there is already insufficient parking in the area and that the proposed new business would exacerbate this situation, the consequence of which is that "unwell patients need to park away from our facility having to walk a distance to see one of our doctors".
32. Submission from a member of the public dated 9 May 2015. This submission objects to the Application and contends that the proposed business cause "parking problems" and "create noise from people leaving at 12 pm" (the Authority assumes that the writer intended to state 12:00 midnight). The writer also contends that businesses in the area "are already struggling in the low season which is between the months of April to December" and has six empty shops due to lack of people visiting the area. The writer notes that there are already "two clubs less than 100 metres from the proposed site" and that another licensed premises would "certainly impact the lively hood of the current operators and staff". [The Authority notes that the writer has not indicated whether or not she is a resident of Merimbula or the Bega Valley LGA].
33. Submission from NSW Family and Community Services (FACS) dated 01 May 2015. This submission states that FACS "is not able to determine that this particular proposal would adversely affect the local community".

34. Submission from NSW Roads and Maritime Services (RMS) dated 6 January 2015. This submission states that RMS does not object to the Application but recommends that the Applicant join the local Liquor Accord.
35. Submission from Wild Rye's Baking Company (undated). This submission is made in support of the Application. The Author contends that Wild Rye's Baking Company "relies heavily on our wholesale customers" and that he has discussed with the Applicant the use of their products on the Premises.
36. Publically available BOCSAR crime mapping data for July 2014 to June 2015. These crimes maps indicate that the Premises is located:
 - a) Near a *low density hotspot* for the concentration of *non-domestic assault*.
 - b) In a *medium density hotspot* and *near a low density hotspot* for the concentration of *malicious damage to property*.
 - c) Near a *low density hotspot* for incidents of *domestic assault*.
37. Crime data sourced from BOCSAR for calendar year 2013 detailing rates of offences for Bega Valley Local Government Area (LGA) compared to NSW as a whole. This data details rates of *alcohol-related incidents*. It indicates that for the calendar year of 2013:
 - a) the rate of *alcohol-related assault police* was **19** per 100,000 persons compared to NSW as a whole which had **24** per 100,000 persons
 - b) the rate of *domestic-violence assault* was **156** per 100,000 persons compared to NSW as a whole which had **145** per 100,000 persons
 - c) the rate of *malicious damage to property* was **207** per 100,000 person compared to NSW as a whole which had **122** per 100,000 persons
 - d) the rate of *alcohol related non-domestic violence assault* was **329** per 100,000 persons compared to NSW as a whole which had **191** per 100,000 persons.
38. Authority licensing records. These records, which are updated regularly and available for purchase from the Office of Liquor Gaming and Racing indicate that there are currently:
 - a) two club licenced premises.
 - b) one full hotel licenced premise.
 - c) no general bar licenced premises.
 - d) 22 on premises licenced premises in the suburb of Merimbula.
39. Authority license density data. This data records the liquor licence density in respect of the Bega Valley LGA compared to the State of NSW as a whole. It indicates that within the Bega Valley LGA there are:
 - a) **15.65** club licences per 100,000 persons compared to **20.48** per 100,000 persons for New South Wales as a whole
 - b) **31.3** full hotel licenses per 100,000 persons compared to **30.36** per 100,000 persons for New South Wales as a whole
 - c) **0** general bar licenses compared to 1.35 per 100,000 persons for New South Wales as a whole
 - d) **34.43** on premises licenses per 100,000 persons compared to **121.31** for New South Wales as a whole.
40. Socio Economic Index for Areas (SEIFA) data published by the Australian Bureau of Statistics (ABS) in 2011, indicating that the state suburb of Merimbula falls within the fourth decile on the Index of Relative Socio-economic Advantage and Disadvantage (IRSAD) for all suburbs in NSW. Bega Valley LGA falls within the fifth decile on the IRSAD for all LGAs in NSW (with a ranking of 10 being the most advantaged).

LEGISLATION

41. The power to grant a new liquor licence is provided by section 45 of the Act, which 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) ...
- (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.*

42. 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.

43. 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.*

44. An application for a packaged liquor licence is a type of licence prescribed by section 48(2) requiring a CIS and satisfaction of the overall social impact test.

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

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.*

APPLICANT CASE ON OVERALL SOCIAL IMPACT

46. In the Applicant's CIS statement dated 2 June 2015, the Applicant addressed the potential for the potential positive and negative impacts from granting the Application in respect of the proposed new general bar business.
47. In the CIS document the Applicant notes that "face-to-face" meetings were held with the proprietors of establishments who raised objections to the Application during the consultation process.
48. The Applicant contends "a viable parking solution" was part of the development application process with Council and that the proposed business would bring in more people to the local area, benefiting the whole town. The Applicant concludes that following the meeting "both proprietors were at ease with our current application".
49. The Applicant contends in the CIS document that the proposed new business will be a "bar and eatery, specialising in local boutique coffee and teas, local craft beers and organic wines".
50. In support of this the Applicant notes that it has been in consultation with a local start up brewery (Longstocking Brewery Pambula) and winery (Pambula River Winery) and that the business owners intend to source products from local producers. The Applicant also contends that the new business will be locally owned and will employ local staff as well as "feature local arts and crafts, which will be displayed and available for purchase".
51. In the Applicant's Statement of Impact (SOI) document the Applicant addresses the "the likely social impact of the grant of a Hotel (General Bar) licence at 60 Main Street, Merimbula". The Applicant contends that the "local community" should be considered to be the trade area of the proposed new business and that the broader community should be considered the localities of Pambula, Tura Beach, Eden, Bega, and Tathra.
52. In relation to the venue itself the Applicant contends that the proposed new business is of "a boutique nature". The Applicant submits that "smaller venues" have been associated with lower alcohol related crime than "large-scale" venues. [The Authority notes that the Applicant has not supported this contention with any research or data].
53. With regard to prevailing liquor outlet density the Applicant contends that "the Application has no potential for impact by increasing outlet density". The Applicant has supplied data from OLGR's social profile report of Bega Valley. This data indicates that the number of liquor licences in Bega Valley per 100,000 persons is 354 compared to NSW as a whole which has 220. [The Authority notes that the OLGR Social Profile was published in February 2009 sourcing data preceding that year and is now well out of date and only of use for the purposes of historical analysis].
54. In relation to the large number of licenced premises in the Bega Valley LGA the Applicant contends that the state suburb of Merimbula is "not the same geographical area" as the Bega Valley LGA and that the proposed business will be "the only one of its kind in the area".

55. The Applicant contends that the proposed business will "deliver convenience, choice, range and value" and that concentration of licenced premises in any shopping CBD environment is "neither unusual nor inappropriate".
56. The Applicant contends that in Adelaide the recent approval of dozens of small bars in the CBD has been "hailed an economic and tourist success with no adverse social impacts, according to authorities". [The Authority notes that the Applicant has not supported this contention with any research or data].
57. Furthermore, the Applicant contends that the population growth rate according to NSW Department of Planning data (2005 Estimated Population 2006-2031, based on the 2001 census) is greater for the Bega Valley LGA than for NSW as a whole and that both Bega Valley and Merimbula are tourist destinations and consequently the density data for these areas does not accurately reflect the number of potential consumers but rather only permanent residents.
58. The Applicant contends that there is "a corresponding requirement within that community to have greater or improved access to a variety of goods" based on the increase in population from growth and tourism.
59. In relation to the location of any sensitive facilities near the Premises the Applicant contends that, in addition to an Alcohol Free Zone (AFZ) there are two potentially sensitive facilities near the Premises, including the Main Street Medical Centre and the Anglican Church of Australia. The Applicant contends that the proposed new business will have "no negative impact" on the Anglican Church by reason that no activity at the Premises "would cause disturbance issues for church patrons".
60. The Applicant notes that parking arrangements for the proposed new business were raised as an issue during community consultation. The Applicant contends in respect to this that "a compliant resolution has been reached regarding car parking" with Bega Valley Shire Council. Furthermore, the Applicant contends that consultation took place with neighbouring premises and "minor concerns regarding inadequate parking were resolved". [The Authority notes that the Applicant does not detail the specifics of this 'resolution' in the SOI document].
61. With respect to the prospect of noise generated by the business on the Premises the Applicant contends that soundproofing technicians "Acoustica" have been engaged to mitigate noise escaping from within the Premises.
62. With respect to the location of local parks the Applicant contends that the nearest park is approximately 700 metres away and that "there are no existing concerns within this location with public drinking" and that staff and management will ensure that no alcohol is taken off the Premises.
63. With respect to the community consultation process the Applicant submits that "community response has been overwhelmingly positive" and that complaints made by "commercial competitors" are "of an economic nature and therefore hold little weight".
64. Furthermore, the Applicant submits that resolutions were reached with commercial competition during meetings with the proprietors and outlining the differences between the respective business models and the benefits of brining more people to the area.
65. The Applicant has prepared a Table summarising the Applicant's responses to objections received to the Application in the following terms:
 - a) **No need for another licence in the area.** The Applicant contends that the proposed venue is "very different to what is currently on offer" and is consistent

- with new liquor laws the "encourage the culture of smaller, intimate bars". Furthermore, the Applicant contends that the proposed business will provide local employment, will sell locally sourced goods, and will benefit the tourism industry.
- b) **New NSW Liquor Legislation.** The Applicant contends that the proposed business will be part of a cultural shift away from "drinking to get drunk".
 - c) **The current (residential) structure of the Premises is not built for a licenced premises.** The Applicant contends that renovations are taking place that will ensure that access and noise issues are addressed.
 - d) **Insufficient car parking.** The Applicant contends that car parking issues have been resolved with Bega Valley Shire Council.
 - e) **Lack of experience.** The Applicants contend that the directors of Mitt and Gyps Pty Limited have "more than a decade of hospitality experience" and furthermore, they will employ a manager to be the Approved Manager of the "restaurant" [The Authority assumes that the reference to the restaurant refers to the proposed hotel].
 - f) **Prevailing alcohol related assault and disorderly conduct in Merimbula.** The Applicant contends that due to the number of tourists that visit Merimbula, which according to the Bega Valley Shire Council website, experiences at least a three-fold boost during holiday periods, the crime rate relative to the resident population is an "inaccurate" measure. The Applicant contends that during the off-season months the BOCSAR crime rates are almost one third the rate of peak periods.
66. With respect to the presence of "at-risk" demographic groups within the community of the Bega Valley LGA the Applicant makes no comment but has submitted a table detailing the following data [The Authority notes that the source of the data is not indicated, and is not consistent with Australian Bureau of Statistics QuickStats based on the 2011 census]:
- a) *Indigenous persons.* 2.6% representation within Bega Valley LGA compared with 2.1% representation in NSW as a whole.
 - b) *Young persons.* 4.2% representation within Bega Valley LGA compared with 4.1% representation in NSW as a whole.
 - c) *Unemployed.* 7.0% representation within Bega Valley LGA compared with 5.9% representation in NSW as a whole.
 - d) *Labourers.* 14.6% representation within Bega Valley LGA compared with 16.1% representation in NSW as a whole.
 - e) *One parent families.* 14.5% representation within Bega Valley LGA compared with 16.1% representation within NSW as a whole.
67. With respect to SEIFA data for the communities the Applicant contends that of the four SEIFA indexes (index of relative socioeconomic advantage and disadvantage, index of relative socioeconomic disadvantage, index of economic resources and index of education and occupation) the residents of Bega Valley LGA can be considered "advantaged" on three of them.
68. With respect to prevailing crime data for the communities the Applicant contends that although BOCSAR data from 2013 indicates that the rate of *alcohol related assault* in the State suburb of Merimbula (727 per 100,000 persons) is higher than NSW as a whole (335 per 100,000 persons) the population is much higher during tourist season when the population can increase from 3,300 people to more than 15,000 people. The Applicant contends that if this extra population were taken into account "data for alcohol-related crime would be close to the state average".
69. With respect to noise from the Premises the Applicant contends that renovations have been carried out to address noise issues, including the sound-proofing of the walls, floors and roof. The Applicant contends that the music to be played in the proposed new general bar will not be "of a nightclub nature" in either the style of music or the volume.

70. Furthermore, the Applicant submits that the proposed licensed closing hours will not be late; finishing at midnight "as opposed to 1:00-2:00am for other pubs and clubs in the town".
71. In an email dated 9 October 2015 the Applicant's solicitor, Mr Andrew Wennerbom, responded to submissions objecting to the Application and other issues that arose in the previous application.
72. Mr Wennerbom notes that the primary purpose of the proposed new hotel business will be the sale of alcohol but it will include food service from the 'Burger Shack' or 'The Van' which will operate as a commercial kitchen and will be fixed within the Premises. Mr Wennerbom contends that food orders will not be placed by patrons at The Van but at the bar and The Van will be located within the licenced area and there will not be an issue of patrons "wandering from the licensed area to the food van".
73. In relation to the concerns about parking raised in submissions from the public, Mr Wennerbom contends that these submissions were mostly made by other licensed venues and "their status as commercial competitor raises questions about the motives behind their objections".
74. On the issue of impact on parking Mr Wennerbom submits that the Applicant has agreed to pay a Section 94 contribution fees for three car spaces, which totals \$99,714. [The Authority assumes that this refers to section 94 of the *Environmental Planning and Assessment Act 1979*].
75. In response to the NSW Police submission Mr Wennerbom notes that the Applicant has consented to the conditions proposed by Police and has amended the POM to address the concerns raised by Police.
76. In response to the submission by the Merimbula RSL Club Mr Wennerbom contends that the Applicant has met with the Secretary Manager of the Merimbula RSL and "discussed constant communication in relation to patrol and regular meetings to address any concerns that may arise".
77. In response to the submission by the Main Street Medical Centre Mr Wennerbom contends that the Applicant has met with a representative of the businesses located in the complex and were advised that the representative "supported the Application".
78. In response to the Merimbula Lakeview Hotel Motel submission, in which it is claimed that Merimbula is already serviced by licensed premises both of which source produce from local businesses, Mr Wennerbom contends that the Applicant will be sourcing "much of their produce" from local businesses including Wild Ryes Baking Company, Longstocking Brewery, and Rocky Hall Winery, all of which are located in Pambula. Mr Wennerbom submits that the Applicant intends to "diversify the local hospitality industry by introducing a new style of licensed premises".
79. In response to the resident submission Mr Wennerbom contends that the Applicant made numerous attempts to contact this resident but was unable to do so. Mr Wennerbom contends upon advice from the Applicant that this resident is a part owner of The Ritzy's Wine Bar in Merimbula. Mr Wennerbom contends that because this information was not disclosed and because the resident is a commercial competitor the motive of the submission is "questionable".
80. In response to the OLGR submission Mr Wennerbom contends that although the OLGR report that radial density of incumbent licensed premises for the proposed site is

medium, this does not take into account the number of tourists that visit Merimbula and Bega Valley LGA.

81. In relation to the previous application refused by the Authority Mr Wennerbom notes that concerns were raised by the Authority in relation to how patrons will be monitored and managed to prevent them from leaving the licensed area of the hotel with alcoholic drinks in their hands (the Authority notes that general bars, as distinct from full hotels, are only licensed for on premises consumption).
82. In response to this Mr Wennerbom contends that that the boundaries of the Premises will now be "clearly defined by fences" and that there will be only one entrance/exit to the Premises.
83. Mr Wennerbom further contends that The Van will now be located within the hotel licensed area, which would address the Authority's concern that patrons would be moving back and forth from The Van, and in so doing leaving the licensed area with alcohol purchased from the general bar.
84. Mr Wennerbom contends that the Applicant has now amended the proposed menu for the general bar which "should provide the Authority with confidence that food of a nature consistent with the responsible sale, supply and service of alcohol" will be available to satisfy section 17(4) of the Act.
85. In relation to the POM for the proposed business, Mr Wennerbom contends that the POM has been reviewed and is approved by Sapphire Security Pty Limited, and now includes CCTV surveillance.

REASONS

86. The Authority is satisfied, for the purposes of section 40 of the Act, that the Application and CIS material establishes that the Application has been validly made and relevant consultation and advertising requirements of the legislation were observed.
87. The Authority is satisfied, for the purposes of section 45(3)(a), that the Applicant company is a fit and proper corporate person from a probity perspective and that no probity concerns have been raised in submissions from the other stakeholders, particularly NSW Police or OLGR, in this regard.
88. The Authority is satisfied that that the Applicant has provided a Management Plan that will be in place at the Premises that will also govern the sale of liquor from the Premises. There is no adverse information before the Authority as to the Applicant Company's fitness or the fitness of its proposed Approved Manager in response to consultation on this Application with relevant law enforcement agencies including Police and OLGR.
89. 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 Management Plan provided by the Applicant and noting an absence of adverse submission from OLGR or from Police with regard to the Applicant in this regard.
90. The Authority is satisfied, for the purposes of section 45(3)(c) of the Act, that the required development consent is in place for conduct of a hotel, general bar on the Premises, on the basis of the DA number 2014.320 dated 27 November 2014 issued by Council.

Local and Broader Community

91. For the purposes of assessing the overall social impact test prescribed by section 48(5) of the Act, the Authority is satisfied that the relevant local community comprises the State suburb of Merimbula, while the broader community comprises the Bega Valley LGA.
92. The Authority notes that the Applicant has posited in its submissions that the local community comprises the expected "trade area" of the proposed new packaged liquor business to operate on the Premises.
93. The Act does not define what "local community" means. Consistent with the Authority's *Guideline 6* and its long established practice in published decisions, the Authority is satisfied that the local community comprises the State suburb or town (as the case may be) in which the proposed licensed premises is to be located.
94. While the Authority accepts that the Applicant has identified its expected catchment area for patronage of the new business, the Authority nevertheless takes the view that to define a local community in such a manner as proposed by the Applicant (incorporating numerous suburbs) would tend to lose any "local" focus for the purposes of assessing overall social impact.
95. For the sake of administrative consistency and regulatory certainty, the Authority prefers to identify the community of the state suburb of Merimbula as the relevant local community, while the broader community comprises the community of the Bega Valley LGA.

Overall Social Impact

96. Determining the overall social impact of granting a liquor application in respect of a proposed new licensed business 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 what is known about the proposed business and the prevailing circumstances in the relevant local and broader communities.

Positive Benefits

97. The Authority accepts the Applicant's contention that granting the Application will provide some significant measure of choice and diversity for the residents of the local and broader communities, by providing a venue that provides a mode of licensed entertainment that differs aesthetically and in terms of the service provided, from the other licensed venues in the local community.
98. There are no general bars in the local or broader community and this underlines the extent to which the Applicant's more intimate and contemporary style of business will provide a point of difference to the mainstream hotels and clubs in those communities.
99. The Authority accepts that the local and broader community are tourist destinations and that the diversity provided by the proposed business may also benefit the local community economically by attracting tourist and other residents to the area.
100. The Authority accepts the Applicant's contention that there will be some economic benefits for the local and broader community given that the proposed business will source products from local producers. This is supported by the identification of the producers that the Applicant has communicated with for the purposes of supplying the proposed business but is limited by the lack of any formal arrangement.

101. Notwithstanding that there has been some opposition to the Applicant by incumbent local licensed businesses [which the Authority accepts are likely to be prompted, at least in part by anti-competitive motives and are given less weight for that reason], the low level of opposition expressed to the Application by residents or other businesses satisfied that the proposed business will employ staff from the local community which is consistent with promoting the "expectation, needs and aspirations" of the local and broader community within the meaning of section 3(1)(a) of the Act.
102. The Authority accepts the Applicant's contention that the proposed general bar will provide a style of licensed premises that is not currently represented in the local or broader community business. This is consistent with balanced development in the public interest of the liquor industry which is an object of section 3(1)(b) of the Act.

Negative Impacts

103. The Authority accepts that over time there will likely some contribution from the liquor sold at the Premises to alcohol related crime, disturbance or impact on amenity from a minority of customers who abuse liquor purchased at this Premises. The nature of the licensed business is a hotel and its primary purpose is the sale of liquor by retail for consumption on the Premises.
104. The Authority notes that there is cause for concern arising from the prevailing rates of crime within in the local and broader community. BOCSAR crime data for Bega Valley LGA recorded in the calendar year of 2013 indicates that the rate of *alcohol-related non-domestic assault* in the Bega Valley LGA (**329** per 100,000 persons) was higher than NSW as a whole (**191** per 100,000 persons).
105. The rate of *alcohol related domestic violence assault* for the Bega Valley LGA (**156** per 100,000 persons) is less problematic, only slightly higher than for NSW as a whole (**145** per 100,000 persons).
106. The rate of *alcohol related assault police* (a type of offence that is commonly associated with on premises venues when Police intervention is required) is relatively low in the broader community, with a rate of **19** per 100,000 persons compared to NSW as a whole with a rate of **24** per 100,000 persons.
107. Another cause for concern arises from the submission by OLGR that from April 2013 to March 2014 BOCSAR data indicates that the rate of alcohol related assaults that occurred in Merimbula was **814** per 100,000 persons was substantially higher than NSW as a whole which had **301** per 100,000 persons. However, OLGR have not disaggregated non-domestic assault (which tends to have a higher association with licensed premises and public places) and domestic assault (which overwhelmingly occurs in private residences). The Authority accepts that the rate of alcohol related assault in this local community is problematic. While the Authority accepts that the influx of visitors to the community may well drive these events during holiday periods, the Authority must take a community as it finds it and the local community does have a problem with alcohol related violence.
108. However, the Authority notes that while Bega Valley LGA and the suburb of Merimbula appear to have elevated rates of *alcohol-related non-domestic and domestic violence assault* this is ameliorated somewhat by the fact that BOCSAR crime mapping data indicates that the Premises is not located within a hotspot for the concentration of either of these types of crime; there are hotspots for the concentration of these types of crime nearby, but these hotspots have been identified by BOCSAR as being *low density*.

109. Furthermore, the Authority is satisfied that the following aspects of the proposal and the relevant communities concerned may operate to constrain the extent of contribution that this new business is likely to make to the prevailing alcohol related social problems in the local and broader communities.
110. The moderate scale of the Premises provides an objective mitigating factor, in that the Applicant has accepted a condition in the licence that limits the number of patrons in the Premises to 160 at any time. The Authority has imposed a condition on the licence limiting patrons to the interior areas and the veranda of the Premises, which is essentially a modified residential cottage facing onto a residential street near the Merimbula CBD.
111. The Applicant has proposed licensed trading hours that are fewer than the those potentially available during standard trading hours under section 12 of the Act. The Premises will sell or supply liquor between the hours of 12:00 midnight and 12:00 noon Monday to Saturday and 12:00 midnight to 10:00pm on Sunday. This serves to reduce to some modest extent the scope for any contribution to alcohol related crime or alternatively, conduct that falls short of criminality but nevertheless adversely affects local amenity and causes disturbance to local residents.
112. The Applicant has accepted a number of conditions to the liquor licence and has proved a comprehensive Management Plan both of which outline security measures for the Premises as well as providing strategies for the management of patrons and responsible service of alcohol. Additionally, the Applicant has consented to the limitation of the service of alcohol to the main building and the veranda, which is another aspect that will limit the scope for disturbance to the amenity of the area surrounding the Premises.
113. The Authority notes that a number of adverse submissions were received from local businesses. The weight given to the opinions expressed in those submissions were reduced by reason that the Authority is satisfied that those submissions were motivated by commercial competition, but information as to prevailing social impact has been considered.
114. As for the concerns about the impact upon parking made by commercial competitors and other local submitters, the Authority accepts, on the basis of the information provided by the Applicant has made an arrangement with Council and accepts that Council has provided development consent for the proposed use of the Premises as a general bar.
115. While the nearby Club has raised concerns that the conduct of patrons of this new business may be attributed to the Club, the Authority is satisfied that the conditions it has imposed, restricting patrons in the outdoor areas of the property will serve to reduce impact on neighbourhood amenity. In the event that patrons of the new business have any adverse impact upon the Club, the Club will be well placed to take action to remedy such impacts, including making a complaint to the Secretary of the Department of Justice under section 79 of the Act.
116. The Authority has considered the Applicant's submissions seeking greater use of the outdoor areas of the Premises, but has decided, in light of the location of the Premises, that the preferable decision at first instance (having particular regard to section 3(2)(c) of the Act, is to confine patrons to the interior of the Premises and the veranda only.
117. This will enable local residents, businesses, Council and law enforcement to assess the extent of any adverse social impact arising from the conduct of patrons of the business over a reasonable period of time before this as yet untested new hotel business seeks to expand its operations in a manner that may potentially have a greater impact upon amenity.

CONCLUSION

118. Considering together the demonstrated positive benefits and the factors which objectively constrain or reduce the extent of likely negative impacts arising from liquor sold from this proposed business, the Authority is satisfied that the overall social impact of granting this Application for a packaged liquor licence will not be detrimental to the well-being of the local or broader community.
119. In making this decision the Authority has had regard to all of the statutory objects of section 3(1) and has taken into account all of the considerations prescribed by section 3(2).
120. In making this decision, the Authority has determined the 6-hour closure period under section 11A(3) of the Act as the standard period from 4:00am to 10:00am.



Micheil Brodie
Chief Executive

DATED: 20 JAN 2016