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Dear Ms McClellan

**Application for an Extended Trading Authorisation  
Marrickville Ritz Hotel, Marrickville**

I am writing to you about an application (Application) made by your client, Mr John Anthony Denny (Applicant), that was received by the Independent Liquor and Gaming Authority (Authority) on 10 December 2014.

The Application seeks an Extended Trading Authorisation for the licensed premises known as Marrickville Ritz Hotel, located at 252-254 Illawarra Road, Marrickville (Premises).

Processing of the Application was delayed by reason that the Applicant did not provide the Certification of Advertising Application form, copies of all submissions received by the Applicant during the consultation stage of the Application, and evidence of approval for the proposed trading hours for the Premises until 2 June 2015.

The Application was considered by the Authority at its meeting on 29 July 2015. After careful consideration of the information provided as part of the Application, including all additional information and submissions received during the assessment of the Application, the Authority decided, pursuant to section 49(2) of the *Liquor Act 2007*, to *refuse* the Application.

Authority staff informally notified you of the outcome of the Application via email shortly after the meeting.

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

If you have any queries, please contact the case manager, Ms Trudy Tafea, via email at [trudy.tafea@ilga.nsw.gov.au](mailto:trudy.tafea@ilga.nsw.gov.au).

Yours faithfully

Micheil Brodie  
Chief Executive

**18 SEP 2015**

## STATEMENT OF REASONS

### INTRODUCTION

1. On 10 December 2014, the Independent Liquor and Gaming Authority (Authority) received an application (Application) made by Mr John Anthony Denny (Applicant) regarding the premises located at 252-254 Illawarra Road, Marrickville NSW 2204, known as "Marrickville Ritz Hotel" (Premises).
2. The Application seeks approval of an extended trading authorisation (ETA) in respect of hotel liquor licence number LIQH400102968 to permit the Premises to sell or supply liquor for consumption on the whole of the ground floor of the hotel *only*, between 10:00am to 2:00am on Monday through Saturday.
3. The Authority notes that the *OneGov* record for the liquor licence indicates that the Premises currently has a full hotel licence with trading hours permitting the sale or supply of liquor within the standard trading hours prescribed by section 12 of the *Liquor Act 2007 (Act)* as follows:

#### *First Floor*

Monday to Saturday	5:00pm to 12:00 midnight
Sunday	5:00pm to 10:00pm

#### *First Floor Balcony*

Monday to Sunday	5:00pm to 10:00pm
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#### *Whole of Ground Floor*

Monday to Saturday	10:00am to 12:00 midnight
Sunday	10:00am to 10:00pm

#### *Takeaway sales*

Monday to Sunday	10:00am to 10:00pm.
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4. The Application notes that the 6-hour closure period required by section 11A of the Act is fixed at between 4:00am and 10:00am. No change is proposed in this regard.

### MATERIAL BEFORE THE AUTHORITY

5. Application Form for ETA filed with the Authority on 10 December 2014. In the Application Form, the Applicant discloses that the proposed extended licensed trading hours sought concern the entire ground floor of the Premises. If the Application is granted, the Premises will be licensed to sell or supply liquor for consumption on this part of the Premises between 10:00am and 2:00am on the mornings following Monday through Saturday evening trade. No extended trading is sought in respect of Sunday evening.
6. The Application notes that the current 6-hour closure period fixed for the purposes of section 11A of the Act is between 4:00am and 10:00am.
7. The Application submits that the comprehensive Plan of Management prepared in respect of the Premises for planning purposes has been updated to reflect the extended hours. The Applicant contends that this Plan of Management was "...endorsed by the Marrickville Local Area Command and Marrickville Council" and that the Plan of Management has been confirmed to be effective and pro-active with

regard to its application of security standards and management procedures. The Applicant contends that these procedures will "...continue to achieve a safe environment as well as minimising the likelihood of any unacceptable amenity impacts".

8. The Applicant contends that if the Application is granted, the "...hotel will continue to function as a neighbourhood hotel", meeting the needs of the local community. With regard to protecting amenity in the surrounding neighbourhood, the Applicant contends that these issues are addressed through the conditions that have been imposed by the NSW Land and Environment Court specifying patron capacity applicable to both inside and outside areas of the Premises and the 24 hour telephone number that will be available for residents and/or property owners to register noise complaints or concerns in respect of the operation of the hotel. The Applicant further contends that any noise and litter problems "...can be investigated by hotel management and residents will be kept informed of the progress of any complaint".
9. Community Impact Statement (CIS) filed with the Authority on 10 December 2014. The CIS material comprises:
  - (a) the CIS documentation itself dated December 2014
  - (b) a Social Impact Assessment performed by the Applicant's consultant, Social Impact Strategies, dated October 2014
  - (c) demographic data for the Marrickville local government area (LGA)
  - (d) data from the NSW Bureau of Crime Statistics and Research (BOCSAR) for the Marrickville LGA
  - (e) a security compliance report by Compliance Wise, another consultant engaged by the Applicant dated 13 January 2014
  - (f) a Social Impact Assessment that accompanied the development application to Marrickville Council (Council) seeking late trading hours dated October 2010
  - (g) the Land and Environment Court decision dated April 2014
  - (h) a consolidated list of development conditions imposed upon the Premises for planning purposes
  - (i) the Authority decision dated 11 January 2013 which permitted the removal of the liquor licence from its previous location at 91 Illawarra Road, Marrickville to the current Premises and several other documents which are discussed in further detail below.
10. Community Impact Statement (CIS) dated December 2014 prepared by BBC Consulting Planners (Consultant) on behalf of the Applicant. This 13 page document addresses what the Applicant submits will be the overall social impact of granting the ETA. The document outlines the Applicant's proposal for extended trading and submits that the principal reason for seeking the ETA is to offer the local resident and business community of Marrickville "...sophisticated and modern late night dining".
11. This document discusses, by way of background, that the Premises currently has approval for use of the Premises as a hotel. The Consultant notes the previous application to remove the hotel licence from the premises formerly known as "Henson Park Hotel" to the current site of the Premises and the conditions imposed by the NSW Land and Environment Court (LEC) in April 2014 when the Court approved (for planning purposes) use of the hotel during the proposed extended trading hours.
12. This document also includes the Applicant's contentions with regard to the overall social impact test for the purposes of section 48(5) of the Act; the strategic objectives of the licensed business, the issues of liquor outlet density and alcohol related crime, consultation and community feedback on the Application and the positive public

benefits that the Applicant contends will flow to the community as a consequence of the granting of the Application.

13. Social Impact Assessment and Evaluation of First Year of Trade dated October 2014 prepared by Social Impact Strategies Pty Limited (Social Impact Strategies) on behalf of the Applicant. This 51 page document, prepared by a consultant engaged by the Applicant, provides this consultant's opinion on the overall social impact of granting the Application.
14. Social Impact Strategies outline the social impact assessment performed of the operation of the Premises to date and conclude that "...no unacceptable impacts are likely to arise as a consequence of approval of the extended trading hours sought by the ETA Application".
15. In conducting this assessment, Social Impact Strategies refers to BOCSAR crime data and what this consultant describes as the "...changing demographic profile" of Marrickville.
16. Social Impact Strategies discuss such matters as the site of the Premises; the Security Plan of Management for the Premises and the geographies used in this report.
17. This document also includes an evaluation of operation of the Ritz which sets out what, if any, changes have occurred since the hotel business commenced trade on the current site of the Premises.
18. Social Impact Strategies submit that the Premises is "...the right venue situated in an appropriate low crime location which is ideally suited to being able to offer extended trading hours of trade to the local community".
19. In reaching this conclusion, Social Impact Strategies discuss, *inter alia*:
  - (a) a summary of 2010 SIA (the social impact assessment performed for planning purposes in 2010)
  - (b) development in the Marrickville Town Centre
  - (c) the hotel's constructed design
  - (d) the incumbent late trading hotels and other licensed premises in the Marrickville town centre
  - (e) the demographics of the community of Marrickville
  - (f) an analysis of BOCSAR crime statistics
  - (g) an overview of submissions to the CIS process and what the Applicant identifies as the "...community need for the Marrickville Ritz".
20. Social Impact Strategies submits that the Premises has been "...proven to function in the local community interest and without any material impacts on the surrounding neighbourhood".
21. Selected Demographic Data dated 2011 providing Australian Bureau of Statistics (ABS) statistics for the suburb of Marrickville, the Marrickville LGA and the state of NSW as a whole.
22. Bureau of Crime Statistics and Research (BOCSAR) Recorded Crime Data providing crime hotspot maps for the period between July 2013 and June 2014; and a comparison of the rates of alcohol related *non-domestic assault, domestic assault, malicious damage to property, offensive conduct/offensive language and harassment, threatening behaviour and private nuisance* between 2006 and 2014.

23. Security Plan of Management Compliance Report dated 13 January 2014 prepared by Compliance Wise. This 14 page document provides the findings of the covert compliance audit of the operation of the Premises conducted on 20, 21 and 22 December 2013 by a security consultant commissioned by the Applicant (Compliance Wise).
24. Compliance Wise conclude that the Premises "...is operating generally in accordance with the Security Plan of Management and otherwise in a professional and responsible manner". Compliance Wise outline provisions of the Plan of Management, provides an assessment of whether or not they were being complied with at the time of the covert audit and makes additional comments as to limitations on the observations or suggestions for improved compliance.
25. Compliance Wise makes general observations made from its surveillance of the Premises conducted on Friday 20 December 2013 through to Sunday 22 December 2013. Compliance Wise observes, *inter alia*, that:
  - (a) the security deployment level was sufficient
  - (b) venue staff numbers were in excess
  - (c) the security operative works seven days per week at the venue which has enhanced the relationship between the security staff with regular patrons
  - (d) the security operative was not seen to smoke or use his mobile phone during the surveillance
  - (e) a procedure may need to be implemented to regulate the numbers of patrons who exit the venue to "...partake in smoking in Illawarra Road".
26. Social Impact Assessment (SIA) accompanying the development application (DA) for fit-out and use of 252-254 Illawarra Road, Marrickville as a hotel, prepared by BBC Consulting Planners (BBC), dated October 2010. BBC submit in this document that this 102 page SIA "...outlines potential issues, identifies likely impacts on the social environment and concludes by identifying mitigating responses to address any identified issues" regarding the DA [which the Authority notes was sought at the time when the licence was removed from the previous premises known as the Henson Park Hotel to the site of the current Premises].
27. BBC discuss, *inter alia*:
  - (a) the proposed use of the hotel
  - (b) hotel patronage in the Marrickville town centre
  - (c) the social impact assessment performed with regard to issues of the potential impact on liquor licence density of granting the Application
  - (d) the extent of at-risk groups in the relevant local and broader communities
  - (e) community safety and amenity and the site and surrounds and geographies in relation to the local community
  - (f) a detailed analysis of BOCSAR crime data and Socio Economic Index for Areas (SEIFA) data for the relevant communities.
28. Case number 10016 of 2014 – approval of extended trading hours by the NSW Land and Environment Court (LEC) dated April 2014. This document notes that the Applicant and Marrickville Council attended the Court in relation to an application to modify development consent No. DA201000472 with regard to extending the core hours of operation of the Premises. The document notes that both parties reached an agreement that the DA be approved to extend trading hours from 12:00 midnight to 2:00am Monday to Saturday on the ground floor of the Premises only for a trial period of 12 months commencing 2 April 2014.

29. This development approval is subject to planning conditions that require, *inter alia*:
- (a) that all operable glass windows and doors on the ground floor facing Illawarra Road must be closed from 12:00 midnight
  - (b) that during the 12 months trial period the noise generated by the use of the Premises after 10:00pm shall be monitored by a suitably qualified acoustic consultant
  - (c) that during the trial period the operation of the hotel after 10:00pm shall be monitored by a suitably qualified security consultant on at least three occasions without the prior knowledge of the Applicant.
30. NSW Land and Environment Court (LEC) Consolidated Conditions of Consent. This 34 page document outlines the consolidated conditions imposed by the LEC upon the approval (for planning purposes) of extended trading hours on the Premises pursuant to the agreement reached by the parties. These conditions include, *inter alia*:
- (a) requirements that the provision of live entertainment shall be restricted to between the hours of 10:00am and 12:00 midnight Monday to Saturday and between the hours of 10:00am and 10:00pm Sundays and public holidays
  - (b) that a CCTV security system shall be installed and maintained
  - (c) that the Applicant must advise adjoining residents, in writing, where they can direct complaints and the name of the officer attending to any complaints received
  - (d) that the doors leading to the first floor balcony must be closed and locked from 10:00pm.
31. It is noted that Condition 27(iii)(a) in this document states:
- For a trial period of not more than 12 months from 2 April 2014 (Trial Period), the hours of operation of the ground floor level of the Premises (including the ground floor terraces) may occur between the hours of 12 midnight to 2:00am the following day Mondays to Saturdays.*
32. Authority decision on Application for Removal of Hotel Licence No LIQH400102968 from 91 Illawarra Road, Marrickville (the Henson Park Hotel) to 252-254 Illawarra Road, Marrickville dated 11 January 2013. This document provides details of the Authority decision dated 11 January 2013 to approve the removal of the hotel licence from the former premises of the Henson Park Hotel in the suburb of Marrickville to the current Premises.
33. [The Authority notes that this removal application was sought and granted to the current hotel business on the basis that the extended licensed trading hours that operated at the former Henson Park Hotel premises would be reduced from its extended hours to within standard trading hours on the current Premises. In the face of some considerable local opposition the Authority noted in its decision to approve the removal that no extended trading hours had been sought by the hotel business as part of the removal application and that this was an important factor in the Authority's decision to grant the Application.]
34. List of Nearby Community Buildings, Facilities and Places. This document lists hospitals or other health facilities, nursing homes, places of worship, schools, universities, TAFE colleges, facilities for people who are homeless and alcohol free zones that are situated within close proximity to the Premises.
35. Neighbouring premises notification map identifying the 100 metre radius from the Premises within which the Applicant has distributed notification of the Application.

36. List of stakeholders notified. This document provides contact details and additional information of the stakeholders notified of the Application by the Applicant.
37. The Marrickville Ritz Hotel Menu listing the food options available to patrons at the hotel.
38. Plan of Management for the Marrickville Ritz Hotel dated April 2014. This 23 page document states that its purpose is to establish "...the performance criteria and operational parameters for the provision of security" through emphasising "...recommendations and procedures that are directed at establishing hotel security standards and pro-active measures to achieve a safe environment for staff and patrons, minimising alcohol related assaults, as well as ensuring the quiet and good order of the neighbourhood".
39. The Plan of Management sets out what is described as:
  - (a) *a proactive and socially acceptable responsible service of alcohol programme*
  - (b) *a stringent entry regime that will deter underage drinking and persons of undesirable character*
  - (c) *proactive and reactive external security controls*
  - (d) *harm minimisation strategies and procedures aimed at minimising alcohol related crime and anti-social behaviour.*
40. The Plan of Management states, *inter alia*, that:
  - (a) *a CCTV system will be installed that is operational 24 hours a day, seven days a week that serves as a proactive measure to heighten the level of safety and security during the trading hours of the Hotel*
  - (b) *all security personnel will be issued with a hand held 2-way radio*
  - (c) *staff will ensure patrons who have been ejected or refused from the Premises do not loiter*
  - (d) *staff will have completed an approved course in the Responsible Service of Alcohol*
  - (e) *liquor will not be sold to any person who is intoxicated and that staff will not serve liquor to patrons under the age of 18*
  - (f) *the Premises will make available low alcohol beer and non-alcoholic beverages, coffee and tea at all times when full strength liquor is available*
  - (g) *staff at all times will consider the amenity of its neighbours and that the Premises will provide timetable schedules to patrons relating to trains and bus departure times.*
41. Plan of the Premises, being a one page diagram showing the ground floor of the Premises and proposed licensed boundary in which the ETA is proposed to operate.
42. Copies of stakeholder notices notifying the Application to various stakeholders as required by the liquor legislation – including Police, Council and the site notice placed on the Premises.
43. Certification of Advertising signed and dated by the Applicant on 22 April 2014.
44. Key liquor licence details for the current liquor licence in respect of the Premises as at 21 April 2015 and 12 June 2015, maintained by the Authority on the *OneGov* database.
45. Submission from Council in response to the Application dated 29 December 2014. In this document, Town Planner Ms Katerina Lianos responded to the Notice of the Application to Council by providing a copy of the DA identified as *Land and*

*Environment Court No. 10016 of 2014.* Council notes that the trial period of the extended trading hours will lapse on 2 April 2015 and then revert to their approved core hours of 12:00 midnight and that the Premises will be operating *in breach of their consent* if they continue to trade beyond 12:00 midnight after the trial period has lapsed. Council notes that these trial extended hours are limited to the ground floor only and that the first floor of the Premises does not have consent to operate until 2:00am.

46. Submission from Constable Joel Kelly and Superintendent Julie Donohue, Commander of the Marrickville Local Area Command (LAC) of NSW Police to the Authority dated 29 December 2014. In this letter, Police advise that they have no objection to the Application by reason that the hotel has displayed a comprehensive plan of management and is operating in a responsible manner and in accordance with the framework displayed. Police submit that the Applicant has provided sufficient evidence to satisfy the Authority that the overall social impact of the licence will not be detrimental to the general well-being of the local or broader community.
47. In this letter, Police discuss issues including:
  - (a) the location of the hotel
  - (b) the degree of licensed premises saturation
  - (c) the migration of patrons among licensed premises
  - (d) local crime data
  - (e) complaints from community members and the CIS document submitted by the Applicant.
48. Police submit that the Premises is located within a "...mixture of residential and commercial tenancies" and that the degree of saturation of licensed premises in the Marrickville town centre is assessed as "low".
49. Police note that they have "...received a number of complaints regarding noise and loitering" on Illawarra Road as a result of late trading venues. They observe that at present Police consider the impact of patron migration to be minimal.
50. Police request that new conditions be imposed upon the liquor licence should the Application for the ETA be granted. The proposed conditions would require:
  - (a) that all practical steps are taken to preserve and keep intact any area where an act of violence occurs
  - (b) that direct personal contact will be made with Police advising them of the occurrence of any incidents of violence
  - (c) that all doors and windows opening onto the streets are be kept in the closed position during the extended trading hours
  - (d) that two licensed guard/crowd controllers must patrol the outside the Premises on Friday and Saturday nights from 12:00am to 30 minutes after close
  - (e) that no live entertainment, DJ's or amplified music may be provided after 10:00pm on Monday through Saturday or after 9:00pm on Sunday nights and that bar service is to cease at 1:30am Monday to Saturday and 9:45pm Sundays.
51. Report to Authority dated 23 January 2015 from a delegate of the (then) Secretary of NSW Trade and Investment via the Compliance and Enforcement Division of the Office of Liquor, Gaming and Racing (OLGR Report). The OLGR Report notes that the CIS indicates that the ETA is only sought for the ground floor, but the Application Form itself does not specify the areas of the venue to which the ETA would apply.



52. The OLGR Report acknowledges that neither Police nor Council object to the Application, but note that several submissions were received objecting to the Application. The OLGR Report advise that a review of Compliance Branch records did not disclose any adverse information in respect of the venue or the licensee.
53. The OLGR Report notes that the Premises was previously the subject of a remedial enquiry into the use of beer towers in August 2014, however it was deemed by OLGR that no further action was warranted.
54. The OLGR Report advises that the Director Compliance and Enforcement does not object, but observes that a portion of the local and broader community opposes the Application and that this may ultimately impact upon the Authority's final determination.
55. The OLGR Report submits that, should the Authority grant the Application, any conditions proposed by Police should form part of the venue's liquor licence.
56. The OLGR Report acknowledges that the primary purpose of this licensed premises (being a hotel) is the sale or supply of liquor, and notes that the Applicant has indicated that live entertainment will not be provided at the venue during the ETA period.
57. The OLGR Report notes the current hours of licensed trading for the first floor, first floor balcony, the whole of the ground floor and takeaway sales.
58. The OLGR Report submits that the radial density of liquor licensed premises in Marrickville is above the State average.
59. The OLGR Report further submits, by reference to BOCSAR crime data that the Premises is located within a "...combined low/medium/high density hotspot in terms of alcohol-related assaults"; and that the rate of *alcohol related assaults* (domestic and non-domestic) recorded in the State suburb of Marrickville between January 2014 and December 2014 was 240 per 100,000 persons of population compared to 311 per 100,000 persons of population for the State of NSW as a whole.
60. However, the OLGR Report notes that the rate of *alcohol related disorderly conduct* offences in Marrickville was 15 per 100,000 persons of population compared to 100 per 100,000 persons of population for NSW as a whole.
61. The OLGR Report submits that this data indicates that Marrickville "...does not appear to have a significant concentration of alcohol related anti-social behaviour when compared against the State average".
62. The OLGR Report notes that Police do not object to the Application, provided the conditions proposed by Police are imposed upon the licence. The OLGR Report notes the submission made by Katerina Lianos from Council, and raises concerns about the ETA "...being granted for a twelve month trial period which was due to expire on 2 April 2015".
63. The OLGR Report acknowledges the communication between the Applicant and the Authority and notes the modified determination provided by the Applicant's representative that amended condition 27(iii)(a) of the conditions attached to the NSW Land and Environment Court decision to state that the approval for extended hours would operate "...for a trial period of not more than 12 months from the date that the

extended trading authorisation application is approved for the Premises by the New South Wales liquor and gaming authority".

64. The OLGR Report notes the public objections to the Application which report that Police have been contacted no fewer than 36 times about the significant noise being generated by the Premises that has caused disturbance to local residents, the potential for additional noise and late night rowdiness.
65. Submission from NSW Roads and Maritime Services (RMS) dated 12 May 2014. This letter presents statistics for the Marrickville LGA indicating that during 2012, there were "...ten alcohol related crashes, resulting in ten casualties". RMS suggests that during the approval process, measures preventing the "...likelihood of alcohol involvement in road crashes in the Marrickville area should be discussed". RMS suggest installing physical barriers such as pedestrian fencing to separate patrons from the roadways, improving the lighting and eliminating any potential trip points.
66. RMS recommend that should the Application be approved, the Applicant maintain awareness of local alcohol-related issues; that the Applicant attend the local liquor accord; that access to public transport information and taxi services be provided on the Premises; that an Australian Standards Approved breath testing device be installed and that public education material, focusing on drink driving and pedestrian-alcohol issues, be displayed at the Premises.
67. Email Submission from D Friend, resident dated 28 May 2014. Mr Friend, a resident of Marrickville Road, Marrickville, submits that he is particularly against the extension of the trading hours on the basis that he believes granting the Application will bring additional noise and late night rowdiness into the area.
68. Submission from the NSW Department of Family and Community Services (FACS) dated 10 June 2014. This letter simply notes that this agency does "...not have a response in relation to the Application and will not be providing input into the submission".
69. Nine submissions signed by residents of Silver Street, Marrickville dated 16 June 2014. These submissions, made in a common format, contend that the statement provided by the Applicant to the effect that the Premises does not materially impact the surrounding neighbourhood is not correct. The nine writers, all residents of Silver Street in Marrickville, contend that NSW Police are aware of and have been contacted "no fewer than 36 times" about the significant noise being generated by these Premises which usually involves loud music that continues throughout the evening causing disturbance to the local residents. These residents object to having noise imposed upon them until 2:00am every day.
70. These nine residents disagree with the contention that the Premises is operating in accordance with Council conditions of consent on the basis that the "...conditions of consent do not permit additional noise being generated which is clearly not the case".
71. The residents discuss the change to the "...regulation restricting the use of musical instruments and electrically amplified sound equipment" and contend that this suggests that "...councils and the community support a reduction in the times music can be played at a commercial premises rather than an increase".
72. The residents request that the Application be re-considered due to what they contend are the "...current noise disturbances being generated" by the Premises.

73. Submission from Marrickville Council dated 25 March 2015. This letter advises that Council resolved that the Application be approved and a modified determination be issued with condition 27(iii)(a) being modified. Condition 27(iii)(a) is modified to read as follows:
- For a trial period of not more than 12 months from the date that the extended trading authorisation application is approved for the premises by the New South Wales liquor and gaming authority (Trial Period), the hours of operation of the ground floor level of the Premises (including the ground floor terraces) may occur between the hours of 12:00 midnight to 2:00am the following day Mondays to Saturdays. A copy of the extended trading authorisation approval is to be forwarded to Council.*
74. Council notes that the modified consent is now the consent in force and the Construction Certificate relating to the development must be in accordance with the terms and conditions of the determination.
75. Email from Authority staff dated 21 April 2015. In this communication, an Authority staff member notified the Applicant that in order for the Application to proceed, the Authority must be provided with a signed copy of the Certification of Advertising and copies of all submissions that are mentioned in the CIS document.
76. Authority staff also requested the Applicant to provide approval for the proposed trading hours for the Premises, noting condition 27(iii)(a) of the approval issued by the NSW Land and Environment Court stated that the trial period will expire 12 months from 2 April 2014. Authority staff invited the Applicant to confirm that the proposed trading hours sought are from 10:00am to 2:00am Monday through Saturday and from 10:00am to 10:00pm Sunday, and that the extended hours sought will apply to the whole ground floor.
77. Authority staff also notified the Applicant of the submissions received from NSW Police and Town Planner, Katerina Lianos and the Applicant was invited to comment. Authority staff notified the Applicant that in the event the Application is granted, certain standard conditions would be imposed upon the licence requiring that the business must not operate with a greater overall level of social impact on the wellbeing of the community than what could reasonably be expected from the CIS, Application and other information submitted in the Application process and that the licensed business shall be conducted "...in accordance with its Plan of Management dated April 2014".
78. Email from Ms Joanna McClellan of BBC Consulting Planners on behalf of the Applicant to Authority staff, dated 2 June 2015. In this email, the Applicant provides the Authority with the Certification of Advertising, copies of submissions received during the Application process and the modified condition 27(iii)(a) from Council. The Applicant confirms that the trading hours sought by the Application are between "...10:00am to 2:00am Monday to Saturday" for the "...whole Ground Floor of the Hotel" and that "...no ETA is being sought for Sunday".
79. Email from Authority staff dated 3 June 2015 informing the Applicant of the submission from a delegate of the Secretary of NSW Trade and Investment in relation to the Application and inviting comment.
80. Submission from Mr Dan Brindle of BBC Consulting Planners on behalf of the Applicant to Authority staff, dated 9 June 2015. The stated purpose of this letter is to respond to the submissions from NSW Police, Council and OLGR. The Applicant notes that these submissions do not object to the grant of the ETA sought in the Application.

81. The Applicant contends that these submissions are consistent with the Application documentation which concludes that the hotel has been confirmed to have had no detrimental impact on the local or broader community since its opening in January 2013.
82. The Applicant readily accepts all conditions proposed by NSW Police in paragraph 7 of the NSW Police submission. The Applicant contends that these additional conditions will address the concerns raised by local residents to allow the Authority to be confident that the overall social impact of the extended hours will not be detrimental to the social well-being and amenity of the local community as concluded by NSW Police.
83. The Applicant notes that the Application was lodged approximately three months prior to the Environmental Venue and Assessment Tool (EVAT) used by OLGR to conduct an assessment of the radial density of licensed premises in Marrickville.
84. The Applicant contends, *inter alia*, that "...there is limited availability of data and the methodology available to applicants in relation to the analysis of density figures" and that up until recently there "...has been an absence of any threshold to identify at what point significant harm may arise as a result of increased density of licensed premises". The Applicant submits that the "...overall rate of hotel licences within the Marrickville LGA is 0.52 per 1,000 persons of population, which is significantly lower than the identified risk level of 2.0 per 1,000 persons of population".
85. The Applicant contends that the concerns raised in the submissions from the local residents have now been reduced through the robust Plan of Management that has been updated and approved by Council, Marrickville LAC Police and the LEC. The Applicant contends that the updates to the Plan of Management "...will address the concerns raised by local residents" and ensure that the extended hours "...will not be detrimental to the social well-being and amenity of the local community".
86. The Applicant addresses the 36 complaints to Police that are referred to in the OLGR Report by contending that no complaints have been received by the hotel management, and no concerns have been raised by the local Police or Marrickville Council since the opening of the hotel in January 2013.
87. The Applicant contends that the Authority can be satisfied that approving the Application "...will result in an overall positive impact for the Marrickville LGA residents and business community". This submission is based upon what the Applicant submits is the endorsement provided by the NSW Police submission that the Premises have had no detrimental impact; the BOCSAR crime data that the Applicant submits shows the very low number of alcohol related assaults recorded; the confidence that may be drawn from the approval of extended trading hours by the LEC and the fact that the Premises will offer a "...significant positive public benefit to the local community".
88. The Applicant also outlines a number of positive benefits of granting the Application including:
  - (a) extended finer dining options
  - (b) increase night-time activities with the aim of supporting the growth and revitalisation objectives of the town centre
  - (c) improvement of the Marrickville Town Centre night-time economy
  - (d) positive contribution to the local and broader Sydney economies" and the "activation of the local street frontage after dark.

89. The Applicant concludes that the Application "...will not be detrimental to the social well-being and amenity of the local community".
90. Email from Authority staff dated 15 June 2015 requesting the Applicant to confirm that the 6-hour closure period for the purposes of section 11A of the Act would, if the Application is granted, be fixed at between 4:00am and 10:00am.
91. Email from Joanna McClellan of BBC Consulting Planners on behalf of the Applicant, dated 16 June 2015 informing Authority staff that the Applicant has agreed to the 6-hour closure period referred to in the email dated 15 June 2015.
92. BOCSAR Crime Maps based upon data from January 2014 to December 2014 detailing hotspots of offences for the location of the Premises. This data, obtained by the Authority from published BOCSAR sources, indicates that the immediate location surrounding the Premises at 252-254 Illawarra Road, Marrickville, is located in a high density area for reported incidents of *malicious damage to property, non-domestic assault* and *domestic assault*.
93. Authority licensing records indicating the addresses of other liquor licensed premises in the state suburb of Marrickville.
94. Authority liquor licensing data maintained by the Authority which indicates that:
  - (a) The rate of full hotel licences is **13.08** per 100,000 persons of population within the Marrickville LGA
  - (b) The rate of full hotel licences within postcode 2204 (Marrickville, Marrickville Metro and Marrickville South) was **32.54** per 100,000 persons of population.
  - (c) The rate of full hotel licences for NSW as a whole is **30.36** per 100,000 persons of population.
95. Authority licensing statistics indicate that both postcode 2204 and the Marrickville LGA have lower rates of *club licences, on premises licences, packaged liquor licences and wholesaler licences* per 100,000 people compared to the rates for NSW as a whole.
96. 2014 BOCSAR Report on *Crime by LGA and Alcohol Related Status* for calendar year 2013. This document indicates that:
  - (a) the rate of recorded *domestic assault* incidents in which alcohol was flagged by reporting Police as a contributing factor across the Marrickville LGA, was **161** per 100,000 persons of population, which is higher than the NSW state average of **145** per 100,000 persons of population
  - (b) the rate of *non-domestic assault* incidents flagged by reporting Police as alcohol related in the Marrickville LGA for 2013 was **195** per 100,000 persons of population, close to the rate for NSW of **191** per 100,000 persons of population
  - (c) the rate of *offensive conduct* offences flagged by reporting Police as alcohol related in this LGA was **61** per 100,000 persons of population, which is lower than the NSW rate of **83** per 100,000 persons of population
  - (d) however, the rate of *assault Police* incidents flagged by reporting Police as alcohol related in this LGA was **37** per 100,000 persons of population, which is substantially higher the NSW rate of **24** per 100,000 persons of population.
97. SEIFA data published by the ABS which indicates that the suburb of Marrickville ranked in the fifth decile compared to other suburbs in the State, while the Marrickville LGA ranked in the ninth decile in the State compared to other local government areas in the State on the Index of Relative Socio-Economic Advantage and Disadvantage (with a decile ranking of 10 being the most advantaged).

## STATUTORY OBJECTS AND CONSIDERATIONS

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

### 3 Object 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.*

99. The power to grant an extended trading authorisation to a licensed premises is provided by section 49 of the Act, which states, relevantly to the Application:

### 49 Extended trading authorisation – general provisions

#### (1) **Application of section**

*This section applies in relation to the following types of licences (referred to in this section as a **relevant licence**):*

- (a) *a hotel licence,*
- (b) *a club licence,*
- (c) *an on-Premises licence (other than an on-Premises licence that relates to a vessel),*
- (d) *a packaged liquor licence,*
- (e) *a producer/wholesaler licence.*

#### (2) **Extended trading authorisation for consumption on Premises**

*In the case of a relevant licence (other than a packaged liquor licence) that authorises the sale or supply of liquor for consumption on the licensed Premises, the Authority may, on Application by the licensee, authorise the licensee to sell or supply liquor, for consumption on the licensed Premises only, during any of the following periods:*

- (a) *in the case of a hotel licence – a specified period between midnight (other than midnight on a Sunday) and 5 am on any day of the week (other than a Monday),*
- (b) *in the case of a relevant licence other than a hotel licence – a specified period between midnight and 5 am on any day of the week,*
- (c) *in any case – a specified period between 5 am and 10 am on a Sunday,*
- (d) *in any case – a specified period between 10 pm and midnight on a Sunday.*

...

...

#### (5) **Nature of extended trading authorisation**

*An extended trading authorisation operates to authorise the sale or supply of liquor on the licensed Premises:*

- (a) *on a regular basis (until such time as the authorisation is varied or revoked by the Authority), or*
- (b) *if the authorisation so provides – on a special occasion that takes place on a specified date.*

...

#### (6) **Extended trading period to be specified**

*In granting an extended trading authorisation, the Authority is to specify:*

- (a) *the extended trading hours during which the licensee is authorised to sell or supply liquor, and*

(b) *the part or parts of the licensed Premises to which the authorisation applies.*

...

(8) **Restrictions on granting extended trading authorisation**

*The Authority must not grant an extended trading authorisation in respect of licensed Premises unless the Authority is satisfied that:*

- (a) *practices are in place, and will remain in place, at the licensed Premises 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*
- (b) *the extended trading period will not result in the frequent undue disturbance of the quiet and good order of the neighbourhood of the licensed Premises.*

## **APPLICANT CASE ON SOCIAL IMPACT**

100. The Applicant contends that the principal reason for seeking the ETA Approval is to:

*...offer a sophisticated and modern late night dining offer to the local resident and business community of Marrickville...*

101. The Applicant further contends that a detailed inspection of the later night food offerings was conducted in November 2014 and has confirmed that "...there are currently no contemporary late night dining opportunities available to the local residents and business community".

102. The Applicant contends that notifications were delivered to each premises on land that falls partly or fully within 100 metres of the site; that the notification, as well as a letter requesting that the notice be placed in each strata building foyer or other common space, was delivered to the owner's corporation of each strata title building falling partly or fully within 100 metres of the site; and that notifications were placed in individual letterboxes for strata buildings in Tuohy Lane and Illawarra Road.

103. The Applicant notes that of all the premises notified of the Application, only four responses were received which included the RMS, NSW Department of Family and Community Services, a resident of Marrickville Road and a letter/petition from nine nearby residents of Silver Street in Marrickville.

104. The Applicant notes that certain recommendations made by RMS have been implemented as part of the Application as framed. The Applicant notes that the hotel already has  
"...a breath testing machine and drink drive/pedestrian-alcohol educational materials on the Premises".

105. The Applicant submits that the potential for residents to be affected by anti-social behaviour has been considered and combated through the conditions that attach to the grant by the Land and Environment Court of development consent to operate during the extended trading hours, and through the updated Plan of Management.

106. The Applicant contends that the detailed and bespoke conditions agreed on the development consent that are agreed as part of the process of obtaining LEC approval have been "...designed to ensure no unacceptable amenity impacts arise as a consequence of the operation of the extended trading hours".

107. These measures include requirements that:

- (a) louvres in the north-eastern elevation adjoining the pedestrian footway and all operable glass windows and doors on the ground floor facing Illawarra Road must be closed from 12:00 midnight

- (b) noise generated after 10:00pm is to be monitored by a suitably qualified acoustic consultant employed to conduct the monitoring on three occasions without prior knowledge
  - (c) a security consultant must be employed to assess compliance with the Plan of Management
  - (d) a 24-hour telephone number be placed at each exit of the Hotel and notified to residents within a 50 metre radius of the Premises for registering any complaints.
108. The Applicant contends that these conditions provide a robust and comprehensive management regime which will continue to ensure that no unacceptable impacts arise during the extended trading hours now sought by the Application.
109. The Applicant acknowledges the objections raised by nearby residents through their submissions but contends that "...no complaints have been made to local Police regarding noise generated by the Premises, no complaints have been received by the Hotel management and no concerns have been raised by NSW Police in relation to noise and operation of the Premises".
110. The Applicant also submits that that any concerns in relation to noise resulting from granting the ETA Application have been dealt with by the updated Plan of Management that establishes what the Applicant describes as effective and pro-active security standards and management procedures which will achieve a safe environment for staff, patrons and the community, as well as minimising the risks to ongoing good order of the neighbourhood.
111. The Applicant further contends that the extended trading hours sought have been supported by Council and Marrickville LAC Police, who were satisfied that no unacceptable amenity impacts would arise as a consequence of extended trading hours.
112. The Applicant notes that it has confirmed its continued commitment to work effectively with the local liquor accord.
113. The Applicant contends that the current menu provided by the restaurant at the hotel has been well received and that the hotel will provide "...a significant positive public benefit to the local community" by offering a late night dining offer with meals being able to be ordered up until 1:15am Monday to Saturday".
114. The Applicant contends that the new, attractive, well appointed, family friendly and modern Premises has been well received by local residents and the business community.
115. The Applicant further contends that the Premises has had no detrimental impact on the community [during its current hours of operation] and this is evidenced by no substantial complaints having been received.
116. The Applicant notes the BOCSAR crime data and submits that the Premises has had no measurable influence on the rate of assault at the Marrickville LGA or suburb level and that the crime statistics confirm that the number of assaults occurring in Marrickville Town Centre is very low, particularly between 12:00 midnight and 3:00am.
117. The Applicant submits that the issue of late trading premises and associated alcohol related crime is not so considerable as to be of such significant concern to warrant the refusal of the Application.



118. The Applicant contends that the extended licensed trading hours will "...allow the Hotel to continue to operate as a neighbourhood, family friendly hotel, providing a high quality, contemporary designed premises, with quality food and alfresco dining, in line with a comprehensive management regime to ensure the ongoing good order of the surrounding neighbourhood".
119. The Applicant contends that Sydney work and life patterns have changed, resulting in "workers socialising later into the night". The Applicant submits that after conducting an inspection during November 2014, "...there are very limited late dining options currently available in the Marrickville Town Centre".
120. The Applicant submits that the late night dining options proposed to be offered on the Premises are unlike those offered by other late night premises within the community.
121. The Applicant submits that the Marrickville LGA is one of the most densely populated areas of Sydney, and as a result the provision of extended quality late night premises is "vitaly needed" to improve the night time economy, retaining both workers and residents within the town centre.
122. The Applicant contends that "...51 per cent of the Marrickville LGA community is made up of professionals" who work longer hours and that this has resulted in an increasing demand for access to later trading hotels with quality dining options.
123. The Applicant concludes that the Application will result in an overall positive social impact for the Marrickville Town Centre and LGA resident and business community.
124. Regarding the social impact considerations under section 48(5) of the Act, the Applicant contends, *inter alia*, that the Premises does not incite violence in that the "...design of the hotel premises, in conjunction with the focus on the provision of high quality food service, will ensure the sale, supply and consumption of liquor during the proposed extended trading hours, positively contributes to, and does not detract from, the amenity of community life".
125. The Applicant contends that there is little likelihood of patrons migrating to or from the two other hotels that are located within close proximity [the Authority notes that this is an apparent reference to the *Royal Exchange Hotel* located at Marrickville and Garners Roads, Marrickville and the *Marrickville Tavern* located at Marrickville and Illawarra Roads, Marrickville which both have extended licensed hours to trade until 3:00am on Monday to Saturdays] and that BOCSAR data confirms that the hotel has "...had no measurable influence on the rate of assault at the LGA or suburb level".
126. The Applicant acknowledges that late night licensed trading hours are "...considered to be relatively sensitive to alcohol related assaults", however the Marrickville LGA and town centre do not exhibit any such sensitivity.
127. The Applicant further contends that the sophisticated late night dining option that will be enabled by granting the Application will "...provide a significant public benefit as well as assist in reducing any potential risk of alcohol related harms associated with later trading premises".
128. The Applicant submits that that the "...strongest predictor of violence in licensed premises is the characteristics of the venue itself". The Applicant submits that the purpose behind the Application and the hotel design does not predict violence by reason that the hotel has small bar design and atmosphere that is directed toward encouraging patrons to eat and drink in a casual, leisurely manner.

129. The Applicant refers to the Marrickville Council *Action Plans* and contends that these plans identify the Illawarra Road precinct as "...an area marked for increased night time economic and civic activities". The Applicant contends that the Application "...has an important contribution to make to the future role of the area".
130. The Applicant contends that the hotel was established as a "...direct response to the changing demographic of the Marrickville LGA" which was experiencing a process of gentrification and urban renewal which resulted in "...a clearly identified increased demand for alternate night time activities".
131. The Applicant contends that the hotel "...encourages a safe and modern drinking environment" and provides, *inter alia*, the following positive public benefits:
- (a) This different dining option will make a significant positive contribution to the amenity of the community
  - (b) Granting the Application is in alignment with the NSW planning priorities to increase night-time activities within the community
  - (c) Granting the Application will improve the Marrickville Town Centre night-time economy
  - (d) The hotel will offer a late night venue that provides spaces to talk, drink and eat in comfortable, safe, well-designed settings
  - (e) Late night trading at the hotel will encourage positive socialisation
  - (f) Granting the Application will increase the diverse range of demographics utilising the area later in the evenings, and as a result, this will improve public perception of safety in the LGA.
132. The Applicant also notes that a comprehensive Security Plan of Management has been prepared which establishes effective and pro-active security standards and management procedures which achieve a safe environment for staff, patrons and the community as well as ensuring the ongoing good order of the neighbourhood.
133. The Applicant contends that granting the Application will not "...alter the management, style of operation or patron capacity" of the Premises, but the Applicant is nevertheless prepared to "...further strengthen its mitigation measures".

## **REASONS FOR REFUSAL**

### **Local and Broader Community**

134. As noted in *Authority Guideline 6: Consideration of Social Impact*, the Authority will identify the relevant local community by reference to the locality in which the proposed licensed premises is situated, while the broader community will usually be the local government area in which the proposed licensed premises is situated.
135. For the purposes of this decision, the Authority is satisfied that the relevant local community is the community within the suburb of Marrickville, while the relevant broader community comprises the community within the City of Marrickville LGA.

### **Overall Social Impact Test**

136. Determining the overall social impact upon a local and broader community of granting an application requires a degree of speculation about what is likely to occur should the application be granted – the likely benefits and likely negative impacts – albeit speculation that is informed by what is known about the applicant's proposal, the material before the decision maker and relevant information concerning the local and broader communities in question.

137. *Authority Guideline 6*, which is published on the Authority website, identifies the decision making factors and the sources of information that the Authority will usually consider when assessing the overall social impact of granting an application that is subject to the requirements of section 48(5) of the Act.
138. It is apparent from this Application that the Applicant and its consultants have turned their mind to the factors and sources of evidence that are identified in *Authority Guideline 6*, making detailed submissions in response to the submissions from local residents, public agencies (particularly from Council, Police and OLGR), BOCSAR crime data for the Marrickville LGA, Authority licensing data for the Marrickville LGA and demographic data pertaining to the local and broader community from the Australian Bureau of Statistics and other sources.

### **Positive Benefits**

139. The Authority has considered the Applicant's contention that a number of positive benefits will flow to the local and broader community from granting the Application. The Applicant contends that the "...principal reason for seeking the ETA Approval is to offer a sophisticated and modern late night dining offer to the local resident and business community of Marrickville".
140. The Applicant contends that the extended trading hours will "...allow the Hotel to continue to operate as a neighbourhood, family friendly hotel, providing a high quality, contemporary designed premises, with quality food and alfresco dining, in line with a comprehensive management regime to ensure the ongoing good order of the surrounding neighbourhood".
141. The Authority accepts that, should the Application be granted, there will be some modest cumulative measure of convenience to those patrons who are on the Premises and wish to remain on the Premises during late trading hours on Monday through Saturday.
142. However, noting the considerable emphasis that the Applicant has placed upon the community benefits of *late night dining* [the Authority notes that what is proposed in this Application is the extension of licensed trading *after midnight, until 2:00am, six nights per week*].
143. That is, the hours that are the subject of this Application are *prima facie* well beyond peak dining hours.
144. The Authority accepts that there are likely to be a great many professional persons in the broader community who may wish to patronise the hotel for the purposes of obtaining a meal later into the evening - but the Applicant has not explained, let alone estimated or substantiated, the extent to which there is actual demand for a full licensed dining service between the hours of 12:00 midnight and 2:00am.
145. Accepting the Applicant's submissions that the demographic data from ABS indicates that a substantial proportion of the local population are professionals who work longer hours, the Authority considers that such professionals will more likely than not go to work relatively early in the morning. The contention that such persons will be clamouring for a full meal service past midnight on a weeknight is difficult to accept in the absence of further evidence substantiating that contention as to positive community benefit.

146. In the absence of a better explanation (let alone independent evidence) identifying the extent to which the hotel's late licensed hours will actually be utilised to deliver late night licensed dining services and thus advance the expectations, needs and aspirations of the community within the meaning of section 3(1)(a) of the Act, this purported community benefit from granting extended licensing hours is given little weight.
147. The Authority has less difficulty accepting the proposition that the hours proposed, if granted, will enable the hotel to provide mainstream liquor and gambling services to the local and broader community. That is, it will provide another place, within the suburb of Marrickville, in which members of the local and broader community may socialise, drink and gamble during late night hours.
148. However the extent of that additional benefit to the community is diminished by the fact that, according to Authority licensing data, there are already six club licensed premises within the suburb of Marrickville alone, five of which have unrestricted on-premises licensed trading hours (being granted prior to the commencement of the current Act) and one of which has an extended trading authorisation. Within the suburb of Marrickville, there are also three hotel licensed premises, two of which have extended trading hours, while the other hotel is the Premises now under consideration. Within the suburb of Marrickville alone there are also 24 on-premises licensed premises, most of which are restaurants and eight of which have extended trading authorisations.
149. This does not include the extensive number and range of other licensed premises, including late licensed premises, in neighbouring areas to the state suburb of Marrickville within the broader community of the Marrickville LGA.
150. The Authority has no difficulty accepting that extending the licensed hours will provide benefits to *this* individual licensed business, but the local or broader community wide benefits of having another hotel licensed premises providing similar liquor and gaming services to other later trading hotels and clubs in the local and broader communities are less apparent, on the material before the Authority.
151. The Applicant has sought to distinguish its licensed business by reference to late night dining, but the extent of this community benefit has not been substantiated to any great extent, particularly with regard to the degree of local demand for post-midnight dining.
152. In conclusion, the Authority accepts that there will be a modest benefit, by way of convenience and choice, to those members of the local community who wish to patronise this venue after midnight. The Authority accepts that the venue will contribute, albeit to a modest extent, to the development of the night time economy and the expectations, needs and aspirations of the local community, principally with regard to the supply of liquor and gaming services, which is an object of section 3(1)(a) of the Act.

### **Negative Impacts**

153. *Authority Guideline 6* places applicants on notice that the Authority will have regard to the location, scale, hours sought and any specific measures proposed by the Applicant (over and above the minimum requirements of the Act) when considering the overall social impact test for the purposes of section 48(5) of the Act.

154. The Applicant has made extensive submissions on the crime data for the Marrickville LGA and the suburb of Marrickville.
155. With respect to the location of the Premises, the Authority is satisfied, on the basis of the BOCSAR crime mapping data pertaining to the LGA for the period from January 2014 to December 2014, that the Premises is situated in a location that falls within a high density hotspot for the concentration of *malicious damage to property*, *non-domestic assault* and *domestic assault* events as they have been recorded across the broader community of the Marrickville LGA.
156. A substantial proportion of these events have been recorded as alcohol related – albeit (as noted by BOCSAR) that the proportion of alcohol related malicious damage events is lower due to the difficulty in Police assessing the role of alcohol in property crimes where no perpetrator is identified.
157. The Authority is satisfied, on the basis of the published 2014 BOCSAR Report on *Crime by LGA and Alcohol Related Status* (based on data for 2013), that the rates for the broader community of the Marrickville LGA for the offence categories of *alcohol related domestic violence assault*, *alcohol related non-domestic violence assault* and *alcohol related assault* Police exceeded the comparative rates for NSW as a whole.
158. The Authority further notes, on the basis of the 2015 BOCSAR report on Crime for the Marrickville LGA (based on data for the 2014 calendar year), that the proportion of *alcohol related assault* peaks in this broader community between midnight and 6:00am on a Sunday and is elevated between 12:00 midnight and 6:00am on a Saturday.
159. In the event that the Applicant did not have an opportunity to consider this latest published data prior to the Application being determined, the Authority notes that the previous annual report for the Marrickville LGA (based on data for the 2013 calendar year) indicates that the proportion of *alcohol related assault* peaks in this broader community between midnight and 6:00am on a Sunday and is elevated between midnight and 6:00am on a Saturday.
160. The Authority is satisfied, on the basis of the data referred to above, that the Applicant is proposing to extend the licensed trading of this hotel during times of the week that are already relatively sensitive in terms of the exposure of the broader community to alcohol related violence.
161. While the Authority does not have sufficient data or analysis to find whether extending the hours of this hotel will lead to an overall increase, decrease or no change to the amount of liquor consumed across the local or broader community, or whether the total number of incidents recorded across the local or broader community will increase – the Authority is satisfied that granting this Application will more likely than not increase the scope for patrons of *this* hotel to contribute, along with the other incumbent licensees, to the prevailing problems of alcohol related crime and disturbance to which the broader community of the Marrickville LGA is exposed, during times of the day and week that are exposed to higher rates of alcohol related violence in *this* broader community.
162. This is a negative incident of the Application, in that the hotel will become one more licensed premises that is authorised to trade during demonstratively higher risk licensed trading times in this broader community.

163. The Authority is satisfied that should the Application be granted, patrons of this hotel will be able to consume liquor on the Premises for longer hours and during higher risk times of the day than would otherwise be the case - either in terms of liquor consumed on the Premises, or having consumed liquor at other venues before migrating to this later trading business.
164. What the Applicant is proposing to do is expose the staff and patrons of this venue to licensed trading during higher risk times of the week, in a broader community that, on the whole, is already exposed to relatively higher rates of alcohol related crime than the State as a whole.
165. Furthermore, the Applicant is proposing to extend licensed trading in a location that is already, within that broader community, a hotspot for the concentration of *malicious damage to property*, *non-domestic assault* and *domestic assault* incidents.
166. The Authority has taken into account the Police submissions that patron migration (that is, migration between licensed venues) in the Marrickville Town Centre is minimal. However, the Authority must assess the impact of granting *this* Application, including the impact of patrons migrating to or from this substantial hotel licensed premises through neighbouring streets up to and after 2:00am, six nights per week.
167. Whether or not any patrons of this hotel engage in conduct rising to the level of criminality, the Authority considers it more likely than not that, over time, such patrons will adversely impact local amenity during these late hours. This is particularly the case given the predominantly residential nature of the areas surrounding the location of the Premises.
168. The local resident submissions have opposed the Application on two bases - first, by reason of what they contend has been noise from amplified music emissions from the Premises. Second, by reason of what one resident submitter describes as the prospect of "late night rowdiness" in the area.
169. The Authority is satisfied that the noise emission controls in the DA, the requirements to have a security guard on the Premises during later hours and the additional conditions sought by Police and agreed by the Applicant will operate to constrain noise emissions from the Premises itself.
170. However, those measures will not operate to prevent or reduce adverse amenity impacts from patrons leaving the Premises in the early hours of the morning at a time of night when most other licensed and non-licensed businesses are closing and the suburb is becoming relatively quiet.
171. The Authority is satisfied that if the Application is granted, patrons from this venue will more likely than not be moving through neighbouring streets at various levels of intoxication at significantly later and more sensitive times of the evening from a social impact perspective than is presently the case with the venue's standard trading hours.
172. The Authority considers that such likely amenity impacts are likely to include groups of migrating patrons talking loudly amongst themselves, laughing, yelling, arguing, screaming, and getting into private transport or taxis when leaving the locality.
173. The Authority is satisfied that granting the Application will likely result in the Premises hosting a minority of patrons who are either tired or have consumed alcohol over a longer period of time, either as a result from consuming liquor on the Premises or at other licensed venues prior to migrating to the Premises.

174. Accepting the Police advice that patron migration issues are currently minimal in the Marrickville CBD, adding another late trading venue in a location that is in reasonably close proximity to other licensed premises, will further encourage patron migration between licensed premises, or in the alternative, mean that more patrons of this venue will be moving through the locality from this venue until and after 2:00am on six nights of the week.
175. Those concerns as to social impact become elevated in light of the type of licensed business type (a "full" hotel whose primary purposes is the sale of liquor) with a patron capacity during the proposed late hours of 144 persons, operating in close proximity to residential areas.
176. The Authority has considered the conditions of the development consent set out by the NSW Land and Environment Court and the measures provided by the Applicant's Plan of Management. The Authority acknowledges that such controls and plans provide objective harm minimisation measures for conduct occurring on the Premises and a source of guidance to staff. The use of security guards will be of particular use to discourage disturbance when it occurs on or immediately outside the Premises and the requirements for control of noise emissions will serve to control noise from within the Premises itself.
177. However, the Authority is not satisfied that these measures will adequately combat the negative amenity impacts that the Authority considers likely to occur as a result of patrons moving away through residential areas from this substantial hotel licensed business at these relatively late hours, including weeknights after 12:00 midnight when the local "professional" population may be attempting to sleep.
178. The Authority notes that while only the ground floor of the hotel will be operating during the proposed late hours, the patron capacity of this area alone will be 144 persons. It will be a medium scale late trading licensed business whose primary purpose is the sale of liquor for consumption on or off the premises (although off premises sales will have ceased by 10:00pm).
179. The Authority notes that the Premises has only been trading for a relatively short period, with the Application to remove the liquor licence to the current Premises being granted in 2013 on the basis that the licence would be exercised *during standard trading hours*.
180. Furthermore, as detailed in the Authority's 2013 decision letter on the removal application, removal of the licence to its current location was the subject of significant local opposition. It was expressly stated in the Authority's decision that an "important factor in the Authority's decision to grant" that application for removal of the licence was that the application was made on the basis that it was not seeking an extended trading authorisation.
181. The Authority concluded in the 2013 removal decision that "this significant reduction in licensed trading hours during higher risk times of the day and week for alcohol related disturbance provides a sound basis for the Authority to find that the adverse liquor or gaming impacts" posed by the operation of the Premises to the community "...will most likely than not be reduced if the licence is removed to the proposed new premises and operates in accordance with standard trading hours".
182. The Authority is satisfied that granting *this* Application would be contrary to the regulatory intent of granting the removal in 2013. While it is open to the Applicant to make this Application and for the Application to be determined on its merits, the Authority does not consider it to be in the interests of the balanced development of the

liquor industry (an object of section 3(1)(b) of the Act) for an hotelier to remove a licence on the explicit basis of seeking to exercise standard trading hours, only to seek extended trading hours a relatively short time thereafter.

## CONCLUSION

183. Having considered together the Authority's findings on positive benefits and negative impacts, the Authority is *not* satisfied, for the purposes of section 48(5) of the Act, that the overall social impact of granting *this* Application would not be detrimental to the wellbeing of the local community.
184. In making this decision, the Authority has considered all of the statutory objects and considerations prescribed by section 3 of the Act, but has given weight to subsection 3(2)(a) – the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour) and subsection 3(2)(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.



Micheil Brodie  
**Chief Executive**

for and on behalf of the **Independent Liquor and Gaming Authority**

DATED 18 / 9 / 2015