



Mr Wayne Mutton  
1 North Parade  
WAGGA WAGGA NSW 2650

[wayne@romanoshotel.com.au](mailto:wayne@romanoshotel.com.au)

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Dear Mr Mutton

- **Application to Vary Extended Trading Authorisation**
- **Application to Vary Boundary of Licensed Area**
- **Application for Minors Area Authorisation**

**ROMANO'S HOTEL – Wagga Wagga**

**INTRODUCTION**

1. The Independent Liquor and Gaming Authority (Authority) has received three applications (Applications) regarding the licensed premises located at 1 Sturt Street, Wagga Wagga, 2650 trading as Romano's Hotel (Premises).
2. The Applicant, Mr Wayne Mutton is the licensee of the Premises, which has a "full" hotel licence within the meaning of section 14 of the Act, number (LIQH400121164).
3. Like all hotel licensed premises, the primary purpose of the business or activity conducted on the Premises is the supply of liquor by retail. A full hotel licence, as distinct from a hotel licence granted in respect of a general bar, may not only sell liquor for consumption on the premises but also off the premises.
4. One of the Applications seeks to vary an Extended Trading Authorisation (ETA) pursuant to section 51(9)(b) of the *Liquor Act 2007* (Act) in respect of the Premises (ETA Application). The ETA Application was received by the Authority on 10 April 2014.
5. The licence presently has the benefit of an ETA that permits the licensed business to sell or supply liquor for consumption on the Premises from 5:00am to 3:00am Monday through Saturday. The hotel only has standard licensed hours on Sunday, from 10:00am to 10:00pm.
6. The second Application (Boundary Application) is made under section 94 of the Act seeks to extend the current licensed area of the Premises to incorporate an additional 3 metre by 3 metre (a 3m x 3m area) fenced off area that previously formed part of the

parking lot (New Area). The Boundary Application was received by the Authority on 29 November 2013.

7. The ETA Application seeks to vary the ETA in a spatial sense, to incorporate this New Area.
8. The third Application is made under section 51(9)(b) of the Act. It seeks to extend the existing minors area authorisation to the entire Premises (including the New Area) except for the gaming area (Minors Area Application). The Minors Area Application was received by the Authority on 29 November 2013.
9. The Authority considered the Applications at its meeting on 27 May 2015 and after careful consideration of the Application material and submissions made in relation to the Application has decided to refuse the ETA Application pursuant to section 51(9)(b) of the Act.
10. The Authority has granted the Boundary Application pursuant to section 94 of the Act, meaning that the licenced area of the hotel will now incorporate the New Area, but that part of the licensed area may not be used for licensed trading during extended trading hours.
11. The Authority has also granted the Minors Area Application, meaning that the minors authorisation now extends to the entire amended licensed area of the Premises, including the New Area, but not the gaming area.
12. Staff assisting the Authority informally notified the Authority's decision by email on 9 June 2015. This letter serves to provide a formal record of the decision to refuse the Application.
13. As none of the Applications are of a kind that require the publication of reasons under section 36C of the *Gaming and Liquor Administration Act 2007*, the Authority does not propose to provide a statement of reasons. This letter provides a brief summary only of the rationale for refusing the ETA Application.

#### **MATERIAL BEFORE THE AUTHORITY**

14. Application for changes to licence boundaries of the Premises, received by the Authority 21 November 2013. The Application includes a map of the Premises detailing the existing boundaries and proposed boundaries.
15. Application for changes to the minors area authorisation of the Premises, received by the Authority 28 November 2013.
16. Application for changes to the ETA, received by the Authority 10 April 2014.
17. OneGov record of the existing liquor licence for the Premises as of 9 June 2015.
18. Community Impact Statement (CIS) submitted by the Applicant: The Authority notes that the Applications are not of a type that require the provision of a CIS under section 48(2) of the Act. Nevertheless the CIS provides relevant information about the Premises and the environment in which the hotel is located and has been considered by the Authority when assessing whether the grant of the Applications is in the public interest.
19. Submission from the delegate of the (then) Secretary of NSW Trade and Investment (now Department of Justice) by an officer within the Office of Liquor, Gaming and Racing

(OLGR), dated 10 July 2014 (OLGR Report): OLGR object to the proposed variation of the ETA.

20. Police submission from Wagga Wagga Local Area Command (LAC), dated 30 May 2013. Police do not object to the Applications but make observations on regulatory issues pertaining to the Premises.
21. House Policy – this is a business policy document provided by the Applicant with regard the responsible service of alcohol in respect of the licensed business operating on the Premises. It is not dated.
22. Venue Management Plan for the Premises provided by the Applicant with regard to the operation of the licensed business. It is not dated. This submission is discussed below.
23. Response from the Applicant to the OLGR Report and submission from NSW Police sent via email on 11 February 2015.
24. City of Wagga Wagga (Council) Notice of Determination of Development Application, dated 27 June 2013 approving development and use of the New Outdoor Gaming Area, Deck and Bar for planning purposes, subject to certain conditions.

## LEGISLATION

25. In determining the Application, the Authority has considered the relevant provisions of the Act, including the statutory 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.*

26. The power to vary an extended trading authorisation is provided by section 51(9) of the Act, which states:

### 51 *General provisions relating to licence-related authorisations*

#### (9) *An authorisation:*

- (a) *is subject to such conditions:*
  - (i) *as are imposed by the Authority (whether at the time the authorisation is granted or at a later time), or*
  - (ii) *as are imposed by or under this Act or as are prescribed by the regulations,*  
*and*
- (b) *may be varied or revoked by the Authority on the Authority's own initiative or on application by the licensee, the Secretary or the Commissioner of Police.*

94 *Boundaries of licensed premises*

- (1) *The boundaries of licensed premises are to be specified by the Authority when the licence is granted.*
- (2) *The specified boundaries of any licensed premises may be changed by the Authority on the Authority's own initiative or on the application of:*
  - (a) *the owner of the premises, or*
  - (b) *the licensee.*
- (3) *Before changing the boundaries of any licensed premises (whether on application or otherwise), the Authority is:*
  - (a) *to give the licensee, the Secretary and the Commissioner of Police a reasonable opportunity to make submissions in relation to the proposed change, and*
  - (b) *to take any such submissions into consideration before deciding whether to make the change.*
- (4) *Any change in the specified boundaries of licensed premises under this section does not take effect until such fee as may be prescribed by the regulations has been paid.*
- (5) *The Authority must not specify or change the boundaries of any licensed premises unless the Authority is of the opinion that any primary purpose requirement under this Act in relation to the licensed premises is or will be complied with.*

121 *Minors in hotels in company of responsible adult*

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

**APPLICANT'S CASE IN BRIEF**

27. The Applicant acknowledges that there are "...some high risk elements to the trade at Romano's Hotel".
28. However, the Applicant contends that the proposed development would reduce the risk of incidents rather than increase them.
29. The Applicant contends that granting extended trading in the New Area would enhance the amenity of the Premises and provide additional space for patrons alleviating congestion and overcrowding.
30. The Applicant contends that there will be no change in the operation of the hotel, and that granting the ETA Application will simply make the area more comfortable for both patrons of the hotel and also the surrounding community by providing a more secure and soundproof area for hotel patrons.
31. The Applicant contends that, despite classification of the hotel by OLGR as a *Level 3* declared premises [The Authority notes that this is a reference to the scheme for the regulation of licensed premises under Schedule 4 to the Act that is administered by the Secretary.] it is not consistently so.
32. The Applicant submits that the venue has never been declared as a Level 1 or 2 venue pursuant to that scheme.
33. The Applicant submits that the Premises is also an active member of the Local Liquor Accord and contends that this has "...introduced many initiatives to help reduce alcohol relate crime and assaults". In particular the Applicant notes that the Accord pioneered the "...barred from one, barred from all" program maintained by the participants in the Accord.

34. The Applicant makes the general submission that the assault data indicates that assaults have been falling across the relevant (Wagga Wagga) NSW Police Local Area Command since 2008. The Applicant contends that this is, at least in part, due to the initiatives introduced by the Local Liquor Accord.
35. The Applicant notes that in principle Police have no objection to granting the Application. The Applicant further notes that the business has completed a Venue Management Plan in conjunction with Police.

## DECISION

36. The Authority has critically examined the ETA Applicant and all the material before it pertaining to that Application.
37. The Authority has decided to refuse the ETA Application pursuant to section 51 (9)(b) of the Act. The Authority is not satisfied that it would be in the public interest to further extend the physical area in which late night licensed trading may be exercised to incorporate the external New Area.
38. While the Authority is satisfied that it would be in the public interest to permit the Premises to develop its business and incorporate the New Area into the overall licensed area of the hotel, and that for the minors area authorisation to also incorporate that New Area (so that this area of the hotel may potentially be used by minors in the company of a responsible adult), the Authority is not satisfied that it is in the public interest to extend the late night licensed trading capacity of the hotel by extending the ETA into the New Area.
39. Section 51(9)(b) does not provide an express statutory test for the exercise of the Authority's power to vary an existing extended trading authorisation.
40. In these circumstances, the Authority has considered whether granting the proposed variation would be in the public interest, informed by the statutory objects of section 3(1) of the Act, the considerations provided by section 3(2) and the Application and submissions before the Authority.
41. In reaching its decision the Authority has given weight to the local knowledge of Police and weight to the regulatory concerns raised by OLGR in respect of the ETA Application.
42. The OLGR Report contends that the Premises has a history of poor compliance and is currently a Level 3 venue for the purposes of the declared premises scheme.
43. OLGR report that the licensee and the Premises "...have been subject to a significant number of complaints, investigations, and compliance breaches ranging in type and severity".
44. In particular, OLGR allege a significant number of liquor related breaches involving intoxication, responsible service of alcohol and selling/supplying alcohol outside of authorised hours or contrary to licence.
45. OLGR also submit that the NSW Bureau of Crime Statistics and Research (BOCSAR) data for the Wagga Wagga LGA from January 2013 to December 2013 is of significant concern, indicating that the Premises is located within a high density crime hotspot for *malicious damage to property*.

46. Furthermore, OLGR submit that the BOCSAR data shows that the alcohol related assaults (domestic and non-domestic) in Wagga Wagga were 1,750 (per 100,000 people) compared to 344 (per 100,000 people) for the whole of NSW. The rates of alcohol related disorderly conduct offences in Wagga Wagga was 1,316 (per 100,000 people) compared to 117 (per 100,000 people) for the whole of NSW. On this basis OLGR submits that Wagga Wagga has an extreme concentration of alcohol related anti-social behaviour.
47. The Authority notes that while Police do not formally object to any of the Applications, they have nevertheless identified a number of regulatory concerns regarding risks associated with the Premises itself and the prevalence of crime and anti-social conduct in the precinct of which the Premises forms a part.
48. Police contend that the Premises is a popular late night location that targets 18-30 year olds. Police observe that this demographic is a *high risk group* in terms of involvement in alcohol related violence and anti-social behaviour.
49. The Police submission contends that should the Application be approved there will be an increase of up to 150 patrons at the Premises after 12:00 midnight. Police observe that this increase in patronage is highly likely to increase incidents of alcohol related violence and anti-social behaviour. While the Authority notes that this would be a considerable number of people to accommodate within a 3m x 3m area, the Authority accepts that granting the ETA is more likely than not to enable the hotel to accommodate more people in this part of the hotel during late trading hours.
50. The Police submission notes that the Premises has a recent history of non-compliance with its current consent conditions relating to the operation of the beer garden area of the Premises, both before and after 12:00 midnight. The Police submission notes that these consent conditions are in place for safety and to restrict noise. While no great degree of specificity has been provided, the Authority accepts that such instances of non-compliance have occurred.
51. Police note that the Fitzmaurice Street Entertainment Precinct (FSEP) (of which the Premises is a part) is a *very high risk area* in terms alcohol related violence and anti-social behaviour. Police attribute a significant portion of these issues to patrons from the Premises.
52. Giving weight to the local knowledge of Police and the regulatory concerns raised by OLGR with regard to the Premises and local alcohol related crime and disturbance in Wagga Wagga, the Authority considers that further extended the late trading capacity of the hotel by incorporating the New Area into its late trading operations presents a further risk to the public interest in respect of the management of alcohol related violence or disturbance caused by patrons of this Premises and the contribution that patrons of this Premises will make to the prevailing problems of anti- social conduct that are apparent in the FSEP.
53. The ETA Application, if approved, would likely increase the late trading capacity of the Premises in this exterior part of the hotel and increase the scope for patrons of the Premises to contribute to alcohol related disturbance on the Premises or off the Premises in the FSEP.
54. The Premises is currently classified by OLGR as Level 3 premises under the Declared Premises Scheme, which means that the venue has recently recorded sufficient numbers of acts of violence on Premises in the relevant reporting period (between 8 and 12) to be

approaching Level 2 status, whereby the imposition of remedial licence conditions would occur.

55. The Authority does not consider it in the public interest to further expose staff and patrons of the Premises to the risk of expanding its operations during higher risk late trading times of the week.
56. In considering this decision the Authority has given consideration to the fact that the licensee has developed a Venue Management Plan in consultation with the Wagga Wagga Local Area Command and that the Premises.
57. The Authority accepts that the work of the Local Liquor Accord may contribute towards curbing alcohol related anti-social behaviour, including participation in the "*barred from one, barred from all*" program maintained by licensees in the FSEP.
58. Nevertheless, the Authority is not persuaded that the moderate increase in patron amenity provided by granting the Application will offset the risk to the public interest of further exposing the late trading activity of this hotel, which already has a moderate profile for violence on the premises, to further expanded late night operations.
59. The Authority accepts that expanding the licensed area, and the minors authorisation area, during lower risk earlier times of the day and earlier in the evening may modestly serve to increase patron convenience on the Premises and the balanced development of the local industry, being an object of section 3(1)(b) of the Act. However, the Authority is satisfied that the public interest is best served by confining the scope of late trading operations to the currently defined areas of the Premises.
60. The Level 3 classification of the venue and the information (albeit provided without any great deal of specificity) as to compliance problems identified by Police diminish the degree of confidence the Authority may otherwise have that the business is capable of assuming further risk during late trading hours.
61. In making this decision the Authority has had regard to all of the statutory objects and considerations provided by section 3(1) and (2) of the Act respectively, but has given weight to section 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 section 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.

If you have any question, 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

- 7 AUG 2015