



Our Ref: DOC17/005037

Your Ref:

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31 July 2017

Dear Sir

**Review of Decision by Delegate of Independent Liquor and Gaming Authority On-Premises
(Restaurant) Licence – Gallagher’s Bar and Grill, Double Bay**

On 23 December 2016 the Independent Liquor and Gaming Authority (Authority) received an application (Review Application) under section 36A of the *Gaming and Liquor Administration Act 2007* (GALA Act) seeking review of a decision dated 16 December 2016 (Reviewable Decision) made by a delegate of the Authority (Delegate).

In the Reviewable Decision, the Delegate decided, pursuant to section 45 of the *Liquor Act 2007* (Liquor Act) to grant a new on-premises licence (restaurant) number LIQO660033291 for premises proposing to trade under the licensed business name *Gallagher’s Bar and Grill*, located at Ground Floor, 3/33 Cross Street, Double Bay (Premises). The Delegate also decided to endorse the licence with an authorisation, pursuant to section 24(3) of the Liquor Act (Primary Service Authorisation) permitting the sale or supply of liquor for consumption on the Premises to individual patrons with or without the primary service of the business (that is, with or without a meal).

The licence was granted subject to a number of conditions, including a condition requiring the cessation of the sale and/or supply of liquor 30 minutes before closing time (the Liquor Cessation Condition) and a condition prohibiting of the service of shots, shooters or slammers (the No Shots Condition).

The Review Application was made by Mr Darren Price, the former licensee, and seeks revocation of these two conditions. The Authority has considered the Review Application and all submissions received in relation to it and has decided, pursuant to section 36A(4) of the GALA Act, to **vary** the Reviewable Decision.

Under section 36C of the GALA Act, the Authority is required to publish statements of reasons with respect to those types of decisions prescribed by the *Gaming and Liquor Administration Regulation 2016*. The statement of reasons has been prepared in the context of a high-volume liquor jurisdiction that requires the publication of statements of reasons as soon as practicable.

Please contact the Authority Secretariat via email to ilga.secretariat@justice.nsw.gov.au if you have any advice or enquiries about this letter.

Yours faithfully

Philip Crawford
Chairperson

For and on behalf of the **Independent Liquor & Gaming Authority**

STATEMENT OF REASONS

INTRODUCTION

1. On 23 December 2016 the Independent Liquor and Gaming Authority (Authority) received an application for review (Review Application) lodged by Mr Grant Cusack of Hatzis Cusack Lawyers on behalf of the review applicant Mr Darren Price (the Review Applicant), the then licensee of “Gallagher’s Bar and Grill”, a licensed premises located within the Intercontinental Hotel complex at Ground Floor, 3/33 Cross Street, Double Bay (Premises).
2. The Review Application is made under section 36A of the *Gaming and Liquor Administration Act 2007* (GALA Act) in respect of a decision dated 16 December 2016 (Reviewable Decision) that was made by a delegate of the Authority (Delegate).
3. On 20 May 2016, the Review Applicant had lodged an application (Licence Application) for a new on-premises (restaurant subcategory) liquor licence on the Premises. The Review Applicant also sought an authorisation pursuant to section 24(3) of the *Liquor Act 2007* (Liquor Act), that would enable the licensed business to sell or supply liquor for consumption on the Premises with or without the primary service offered by this business – that is, with or without a meal (Primary Service Authorisation).
4. In the Reviewable Decision, the Delegate decided, pursuant to section 45 of the Liquor Act, to grant the new on-premises (restaurant) licence number LIQO660033291. The Delegate also decided, under section 24(3) of that Act, to grant the Primary Service Authorisation.
5. The Reviewable Decision letter specifies that the licence was granted subject to 14 conditions. They included a condition numbered “3090” on the *OneGov* licence record (the Liquor Cessation Condition) and a condition numbered “3110” on the licence record (the No Shots Condition), which state, respectively:

Condition 3090

The sale and/or supply of liquor must cease thirty minutes prior to the cessation of the respective liquor trading hours of operation of the premises.

Condition 3110

The licensee must ensure that no shots, shooters or slammers are served to any patron at any time.

6. In the Review Application as it was initially filed, the Review Applicant sought that the Liquor Cessation Condition be revoked and that the No Shots Condition be varied so that it only applies after 10:00pm.
7. However, in a letter dated 7 March 2017, the Review Applicant amended the Review Application to instead seek that *both* conditions be revoked.

LEGISLATION

8. The power to grant an application for a new liquor licence is provided by section 45 of the Liquor Act. Pursuant to section 13 of the GALA Act, the Authority has the power to delegate to an authorised person the exercise of any of its functions other than the power to delegate.
9. A decision to grant a new on-premises liquor licence relating to a restaurant that also includes an application for a Primary Service Authorisation under section 24(3) of the Liquor Act is a type of decision that has been delegated to certain public-sector employees working within the licensing section of Liquor and Gaming NSW (LGNSW), an agency of the Department of Industry.

10. Decisions made by Authority delegates to determine applications for on-premises licences are a category of “reviewable decisions” subject to review by the Authority pursuant to section 36A(1)(d) of the GALA Act.
11. When determining an application for review under section 36A of the GALA Act, the Authority has the power to confirm, vary or revoke a reviewable decision under section 36A(4) of the GALA Act.
12. When considering whether or not a licence condition should be confirmed, varied or revoked upon review, the Authority must consider what the correct and preferable decision should be on the evidence and material before it. This involves an assessment of whether the condition is in the public interest in respect of the Liquor Act, informed by the statutory objects and considerations in section 3 of that Act, 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 the harm associated with the 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.*

MATERIAL BEFORE THE DELEGATE

13. The Delegate has provided the Authority with a bundle of all material that was before the Delegate at the time that the Reviewable Decision was made. In summary, that material comprises the following documents.
14. There are several application forms, including an Application for On-Premises Licence, Application for a Primary Service Authorisation and a Category “A” Community Impact Statement (CIS), all of which were signed by the Review Applicant and dated 20 May 2016. These documents were accompanied by the following supporting material:
 - Notice of determination approving development application No. 479/2014 (DA) issued by Woollahra Municipal Council (Council) dated 9 February 2015. This instrument permits the use of the Premises, for the purposes of planning legislation, as a restaurant with a capacity of **250** patrons to operate between 10:00am and 2:00am on Monday to Sunday. The DA specifies a number of conditions, including (relevantly) condition 1.9(c) which states:

The sale and/or supply of liquor must cease 30 minutes prior to the cessation of the respective hours of operation for the specified indoor and outdoor seating areas.

- Australian Securities and Investments Commission (ASIC) Current Organisation Extract for the licensed business owner, GALLAGHER'S BAR & GRILL DOUBLE BAY PTY LIMITED as at 19 February 2016 and the Premises owner, ROYAL HOTELS AUSTRALIA PTY LTD as at 30 March 2016.
 - Submission from Mr Donald Fish, local resident of William Street, Double Bay dated 31 May 2016. Mr Fish states that he chose to live in Double Bay by reason that its "ambience" is similar to cultural centres in Paris, London and New York. In this four-paragraph submission, Mr Fish objects to the Licence Application and contends that the local area is a "highly sophisticated enclave" and home to many "mature adults" who do not wish to see "yet another bar available" to the "young and immature" whose "behaviour is often called into question". Mr Fish contends that violence is "commonplace" in Australia and questions the need to encourage it. Mr Fish submits that there is "nothing wrong with having a drink" but there is no need to "tempt people who can't handle it". Mr Fish submits that there should be "more coffee houses" but "no more bars" in this local area.
 - National Police Certificate No. NCHRC-2016-38795 for the Review Applicant dated 21 April 2016.
 - Identification documents provided for the Review Applicant, including a responsible service of alcohol (RSA) competency card, VISA card, Medicare card and Irish passport.
 - Consultation Notices provided by the Review Applicant including a notice on the site of the Premises and notices sent to New South Wales Police and Council signed by the Review Applicant and dated 20 May 2016.
 - The Review Applicant's diagram/plan indicating the boundary of the proposed licensed area.
 - The Review Applicant's list of seven conditions to which the Review Applicant consents to being imposed upon the licence, should the Licence Application be granted.
- 15.** Submission from Constable Philip Street, Licensing Section, Rose Bay Local Area Command (LAC) of New South Wales Police Force (Police) dated 27 July 2016. In this two-page submission, Police advise that they have performed relevant probity checks, considered relevant local government development approvals for the Premises and considered correspondence from the Review Applicant's legal representative. Police describe the proposed licensed business and submit that the licensed trading hours and patron capacity sought by the Review Applicant are within the scope of the DA. Police advise that in a meeting with the Review Applicant's solicitor, Police advised that should a Primary Service Authorisation be sought, a number of licence conditions would be proposed by Police to mitigate the increased risk of alcohol related violence and anti-social behaviour arising from the ability to serve alcohol without the provision of food. Police specify six conditions that Police state were agreed by the Review Applicant. Briefly, these conditions would require that the new business not operate with a greater overall level of social impact than that disclosed in the CIS, Licence Application and other material submitted in the process of obtaining the Primary Service Authorisation; that the licensee or representative join and be an active participant in the local liquor accord; that the Premises operate in accordance with the Plan of Management dated October 2015 as may be varied from time to time after consultation with the Local Area Commander of NSW Police; that the Premises be operated as a restaurant and not as a nightclub; that meals must be available at all times the Premises is trading and that staff of the venue comply with NSW Police *Crime Scene Preservation Guidelines*. Police advise that probity checks did not reveal anything to suggest that the Review Applicant is not a fit and proper person to hold a licence.

16. Email from licensing staff to the Review Applicant’s lawyers Hatzis Cusack Lawyers, dated 12 November 2016, which provides copies of submissions from Police and local resident Mr Fish. In this four-page email, licensing staff request the Review Applicant to supply additional details about the Premises; provide the plan/diagram of the Premises and confirm whether the Premises is complete and ready to trade. Staff ask the Review Applicant to confirm that there will be no outdoor dining, and to sign and date the *Plan of Management* provided in support of the Licence Application.
17. Licensing staff invite the Review Applicant to respond to 12 proposed conditions that may be imposed should the licence be granted. They concern the fixing of a daily six hour liquor closure period required by section 11A of the Liquor Act during the standard period of between 4:00am and 10:00am; a requirement that the overall social impact of the new business not exceed that disclosed in the Licence Application and CIS; a requirement that the Premises not be operated as a nightclub; a requirement that the kitchen always be open with substantive meals available during licensed trading hours; a requirement for participation in the local liquor accord; a requirement to observe NSW Police *Crime Scene Preservation Guidelines* in the event of the occurrence of an act of violence on the Premises; a requirement that the business be operated in accordance with the Review Applicant’s *Plan of Management*; a requirement to ensure that patrons entering or leaving the Premises do not disturb the amenity of the neighbourhood; a requirement to use a complaints register; a requirement that all registers/development consents/*Plans of Management* be available on the Premises for inspection; a requirement that liquor supply cease 30 minutes prior to the cessation of the trading hours (the Liquor Cessation Condition), and a condition requiring the maintenance of a CCTV system in accordance with several specified requirements.
18. In an email from the Review Applicant’s lawyers to licensing staff dated 24 November 2016, Mr Brett Tobin provides a four-page submission including a list of conditions consented to by the Review Applicant [which, the Authority notes, *includes* the Liquor Cessation Condition]. The Review Applicant responds to submissions from Police and Mr Fish, confirms that evidence of the fit-out and completion of the Premises will be provided to the Authority in due course and confirms that there will be no outdoor dining area. The Review Applicant attaches the following documents:
 - Two-page amended diagram/plan of the Premises highlighting the proposed total licensed area in pink and the boundary of the area that will be subject to the Primary Service Authorisation (which is contiguous with the total licensed area). The second page of the diagram/plan also depicts the layout of the restaurant.
 - The last page of the *Plan of Management* for the proposed licensed business dated October 2015 and signed by the Review Applicant on 23 November 2016.
19. A further email from Mr Tobin to licensing staff dated 24 November 2016 attaches a three-page submission letter of that date, noting that the DA permits use of the Premises from 10:00am to 2:00am, seven days a week. The Review Applicant argues that it is “perfectly understandable” that Council would require liquor service to cease 30 minutes prior to closing *if* trading extends beyond midnight, but since the business only seeks to trade until midnight from Monday through Saturday and to 10:00pm on Sundays and noting that Police do not seek the cessation of liquor service at 11:30pm, a condition to that effect should not be imposed.
20. The Review Applicant submits that the *Plan of Management* was “specifically negotiated” with Police and this *Plan* would be enforceable through the operation of a licence condition. This *Plan* does not require cessation of liquor service half an hour before (midnight) closing time.
21. The Review Applicant submits that the proposed Liquor Cessation Condition is “not necessary” and more apt to apply to a venue that trades during the more sensitive post-

midnight period. The Review Applicant submits that mandating liquor cessation at 11:30pm would defeat the “legitimate expectations” of diners who may wish to stay on at the venue and enjoy the atmosphere and ambience of the restaurant whilst enjoying a late dinner or post-dinner aperitifs. The Review Applicant submits that balancing the objects of the Liquor Act militates against imposing this condition and that the requirement imposed by clause 1.9(c) of the DA (requiring liquor cessation 30 minutes before closing) “ought only apply” when the Premises trades during the post-midnight period.

22. The Review Applicant states that it will discuss with Council whether clause 1.9 of the DA will be “literally” enforced by Council should the Premises only trade until midnight or whether an application to modify the DA is necessary. [The Authority notes that it has no information from the Review Applicant on the outcome of any such further discussions].
23. The Review Applicant submits that licensed trading until midnight will meet patron expectations in circumstances where there are no “particular risk factors” that would necessitate the imposition of the Liquor Cessation Condition.
24. An email from licensing staff to the Review Applicant dated 6 December 2016 requests that the Review Applicant amend the *Plan of Management* so that it is dated October 2016 and advises that conditions may be imposed, should the Licence Application be granted, requiring that no shots/shooters/slammers be served at any time (the No Shots Condition); requiring the kitchen to be open with substantive meals available while the Premises is trading and requiring a designated seat to be available for all patrons.
25. In a three-page submission letter in reply from Mr Tony Hatzis of Hatzis Cusack dated 7 December 2016 the Review Applicant confirms that the correct date for the *Plan of Management* is October 2015. The Review Applicant submits that the proposed No Shots Condition is “unnecessary and unduly restrictive”; that the primary purpose of this licensed business is a restaurant and that the primary purpose must be maintained at all times. The Review Applicant states that it wishes to offer “all types of liquor” to meet patron “demands and expectations” and that there will be an overriding obligation upon the licensee to ensure that all liquor is sold and supplied reasonably.
26. The Review Applicant states that the business is part of Gallagher Group which, it is contended, has an “exemplary” record in relation to RSA; that the fit-out of the Premises will cost in excess of \$2 million; and that the Premises is located within a 5-star international accommodation hotel and that it would be “absurd” and “embarrassing” if overseas guests could not be served with shots of liquor. The Review Applicant submits that significant controls, including the *Plan of Management* (negotiated with Police) will apply to the Premises and there is “no need” to limit the types of liquor that may be served.
27. The Review Applicant agrees to a version of the proposed condition requiring that the kitchen be open during licensed trading, omitting the requirement proposed by licensing staff that the licensee make available “substantial meals” during licensed trading, contending that this requirement is “unnecessary” and makes this condition “inherently uncertain”. The Review Applicant does not agree to a proposed condition requiring that a designated seat be available to all patrons on the Premises as this would reduce the patron capacity, deprive the licensee of the very flexibility that a Primary Service Authorisation is designed to provide and reintroduce rigidities that the Liquor Act was designed to eliminate.
28. A New Application checklist and an Assessment Report, summarising the material before the Delegate was prepared by licensing staff for the Delegate dated 14 December 2016.
29. A *OneGov* licence record for liquor licence number LIQO660033291 for Gallagher’s Bar and Grill dated 19 December 2016 also forms part of the material before the Delegate.

REVIEW APPLICATION MATERIAL

30. The Review Application was made by Mr Grant Cusack of Hatzis Cusack Lawyers on 23 December 2016 on behalf of the Review Applicant and then licensee, Mr Price. The Authority notes that as of 5 July 2017 the licensee of the Premises is Mrs Angela Gallagher.
31. Attached to the official Review Application Form is a one-page document answering Part 4 of the Form and providing further information. The Review Application also includes an extract of Conditions 3090 and 3110 from the *OneGov* licence record.
32. In the Review Application, the Review Applicant contends that during consultation with licensing staff, the Review Applicant had made submissions on why those conditions should not be endorsed on the licence, referring to the abovementioned submissions dated 24 November 2016 (in relation to Condition 3090) and 7 December 2016 (in relation to Condition 3110).
33. The Review Applicant attaches a copy of the Reviewable Decision and submits that it was “incorrect” for the Delegate to state, in that decision, that the Review Applicant had consented to the conditions now listed on the licence record.
34. In the Review Application as initially filed with the Authority, the Review Applicant seeks that the Authority revoke Condition 3090 (the Liquor Cessation Condition) and vary Condition 3110 (the No Shots Condition) to instead read:

The licensee must ensure that no shots, shooters or slammers are served to any patrons after 10:00pm.

CONSULTATION ON REVIEW

35. On 21 February 2017, the Authority Secretariat sent an email to Rose Bay Police enclosing a copy of the Review Application and all material before the Delegate, inviting any further written submissions or evidence in response to the Review Application. The Secretariat also sent a copy of the same via Express Post to the local resident submitter, Mr Fish, inviting his submissions on the review.
36. On 21 February 2017, the Secretariat also provided the Review Applicant with a bundle of all material before the Delegate and invited any further written submissions or evidence on the review.

Submission from the Review Applicant dated 7 March 2017

37. On 7 March 2017 the Review Applicant’s solicitor, Mr Tony Hatzis of Hatzis Cusack Lawyers, provided the Authority with a two-page submission. The Review Applicant seeks to amend the Review Application and now seeks the *revocation* of both the Liquor Cessation Condition and the No Shots Condition.
38. The Review Applicant submits that both conditions are “unnecessary” to minimise harm associated with the misuse and abuse of liquor, particularly as they were not required by Police; and that removal of the “impugned conditions” will contribute to the amenity of community life by enabling the venue to meet patron expectations and provide a full range of food/liquor services at all times the Premises remains open and trading. Revoking both conditions, it is submitted, will also enable the business to better contribute to the development of the related tourism and hospitality industries.
39. The Review Applicant repeats its submissions that the Premises will operate as a restaurant, that a high standard fit-out has been achieved, that the Premises will not trade beyond midnight and that the restaurant will present a “low risk” for generating alcohol related

assaults or anti-social behaviour. The Review Applicant reiterates that balancing the statutory objects and considerations of the Liquor Act “strongly favours” *revoking* the two conditions.

40. Attached to this submission is a five-page sworn statutory declaration by Mr Patrick John Gallagher, the sole director of Gallagher’s Bar and Grill Double Bay Pty Limited (the corporate business owner) dated 6 March 2017; 21 photographs of the internal setup and fit-out of the Premises; and a menu and drinks list for the Premises.
41. In this sworn statement (which is part statement of evidence and part submission), Mr Gallagher discusses the nature of the proposed licensed business and repeats many of the contentions made by the Review Applicant during the Licence Application process, including that: the Premises is located within the Intercontinental Hotel; the fit-out “exceeds \$3 million”; the restaurant proposes to attract “high-end clientele”; it is anticipated that the Premises will be patronised by a “significant proportion of tourists” as well as local customers; that a bar type licence has not been sought by reason that the Premises will be marketed and operated as a restaurant; that a “bespoke” menu has been designed by a “renowned chef of international standing”; that there is a “need in the market place” for a “high-end steak” restaurant similar to those commonly found in international hotels in major cities of the United States; that the Gallagher Group operates other venues which are renowned for their food operations, attracting tourists and high-end business clientele; that Police were consulted on the *Plan of Management*; that Police do not object to the Licence Application; and that a development approval was granted to a predecessor tenant approving trade until 2:00am with a condition that liquor service cease half an hour before close, meaning 1:30am. Mr Gallagher contends that Police are supportive of a licensed premises that does not trade during the post-midnight period and Mr Gallagher is content to abide by that requirement.
42. Mr Gallagher contends that it is “unnecessary and oppressive” to require the licensed business to cease the service of alcohol half an hour before closing when the business will not trade beyond midnight. Mr Gallagher contends that the kitchen will be operating and serving “meals” right up until midnight; that customers will be entitled to expect that they may consume alcohol with their meals; and that some patrons may wish to stay after a meal to have a post-dinner drink or two, which is “legitimate and quite usual”.
43. Mr Gallagher contends that it would be “embarrassing” to tell tourists and others who are served meals between 11:30pm and midnight that they cannot be provided with alcoholic drinks for those who want to stay on and enjoy the surroundings with a post-dinner drink after 11:30pm. Mr Gallagher contends that within the same hotel building is the *Sake Restaurant*, which is *not* required to cease service of alcohol half an hour before close.
44. Mr Gallagher states that it is “understood” that a restaurant trading until 2:00am would require a “wind down period” but the Liquor Cessation Condition becomes “unduly onerous” when the restaurant is closing at midnight.
45. On the No Shots Condition, Mr Gallagher contends that patrons “expect” to be able to be served small quantities of spirits in shot glasses, which is a “usual and expected” method of liquor service. Mr Gallagher states that provided that rigorous responsible service of alcohol controls are exercised, there is “nothing inherently wrong with the practice”.
46. Mr Gallagher states that shots carry a potential for more rapid intoxication to be achieved and pose higher risks if served for long periods of time and this is why Parliament has banned the service of shots after midnight in the Sydney CBD and Kings Cross areas.
47. However, Mr Gallagher contends that the Premises will operate as a restaurant at all times; that patrons “demand and expect” to be served small servings of spirits in shot glasses; and

that it is “unduly onerous and anomalous” to have a condition banning the service of liquor in shot glasses.

48. Mr Gallagher contends that Police (who have an understanding and appreciation of the risks arising in Double Bay) did not seek a ban on the service of liquor in shot glasses and this is “probably because they consider it unnecessary, onerous and/or unreasonable”.

Submission from Council dated 16 March 2017

49. On 14 March 2017 the Secretariat sent a copy of the Review Application and the Review Applicant’s further submissions dated 7 March 2017 to Council seeking comment on the Review Applicant’s submissions that clause I.9(c) of the DA was not intended to require the cessation of liquor service if the venue was closing by midnight.
50. On 16 March 2017 Mr David Waghorn of Council provided the following comments in relation to the Review Application:

In relation to Condition 3090, Council Staff note that a Plan of Management dated October 2015 has been referred to in the Police Comment. Council staff have not seen a copy of this Plan of Management and are reliant upon the Plan of Management submitted by the previous applicants under DA479/2014 dated November 2014. This Plan of Management which is relevant to the consent at Point 2 of Page 6 states as follows:

- *Last drinks orders will be called 30 minutes before closing time where applicable.*

This reference in the Plan of Management was taken up in Condition I.9 of DA479/2014. It should be noted that Condition I.9 is a standard condition imposed on all licensed premises in Woollahra, albeit with the last drinks requirement only being 15 minutes prior to closing (but modified depending on what is stated by the applicant in the SEE or Plan of Management). Therefore, whilst it is noted that the hours of operation are less than originally approved (closing at 12 midnight), which is commended, we are of the opinion that this condition is maintained.

In relation of Condition 3010, this is really outside the scope of a planning comment and goes more towards responsible service of alcohol and social responsibilities. As such, Council staff make no comment in relation to this condition. It is noted that the applicant suggests that it applies only after 10pm and this may be a reasonable compromise which will be left to the Department.

51. Mr Waghorn also advised that he had not had sufficient time to thoroughly go through the information provided in relation to the Review Application and that he may wish to provide additional submissions at a later date. However, on 23 March 2017 Mr Waghorn confirmed that Council did not wish to make any further submissions on the Review Application.

Submission from Police dated 16 March 2017

52. On 16 March 2017, in response to consultation by the Authority on the bundle of material before the Delegate, Acting Licensing Sergeant Jamie Zahra of Rose Bay LAC provided the Authority with a 2-page submission. Briefly, Police make the following submissions on the Review Application:

- Condition “3090” (the Liquor Cessation Condition) is an “important harm minimisation strategy” which the venue can implement to reduce the levels of intoxication of patrons of the Premises.
- In response to point 20 of Mr Gallagher’s submission, Police find it difficult to see how ceasing the service of alcohol 30 minutes prior to closing the venue is “unduly onerous”

when alcohol harm minimisation strategies should be of the “up most[*sic*] importance to the operation of the venue”.

- Police submit that it would be “difficult” for the Authority to remove Condition “3090” from the licence on the basis that complying with such a condition would be “unduly onerous” and “frankly embarrassing” for the business owner.
- However, Police agree to amend the wording of Condition “3090” so that it reads as follows: “The sale and/or supply of liquor must cease **15 minutes** prior to the cessation of the respective trading hours of the operation for the premises.” Police submit that by making this amendment, the venue will effectively be able to trade closer to midnight and still allow for a “wind down period”.
- In relation to Condition “3110” (the No Shots Condition), Police submit that the imposition of such a requirement would further the venue’s adoption of harm minimisation strategies and that the removal of this condition will effectively have a greater overall level of social impact on the wellbeing of the local and broader community. Police submit that this condition should *remain* on the licence.

No Submission from local resident Mr Fish

53. No submission on the Review Application was made by local resident, Mr Fish.

Submission from the Review Applicant

54. On 31 March 2017, in response to all further submissions, the Review Applicant’s representative, Mr Hatzis provided the Authority with a final submission comprising 11 pages.

Review Applicant Response to Police Submission

- 55. With regard to the No Shots Condition, the Review Applicant contends that the Gallagher Group operates a number of licensed venues across Sydney and “has a good track record” with respect to responsible service of alcohol and monitoring patron intoxication.
- 56. The Review Applicant contends that some patrons will “expect” to be served spirits in shot glasses and submits that there is nothing in the material provided by Police to suggest that the risk profile of the Premises or this area generally is such that it warrants the imposition of the No Shots Condition on the licence. Further, the restaurant will cease the service of liquor at midnight; no shots will be sold or supplied in the relatively higher risk post-midnight trading period.
- 57. With regard to the Liquor Cessation Condition, the Review Applicant contends that patron expectations will be that they are able to be served liquor in the restaurant until midnight. The Review Applicant submits that the absence of any requirement to cease liquor service prior to closing time in the Liquor Act or *Liquor Regulation 2008*, together with the fact that the Premises will not actually trade later than midnight, strongly suggests that this licensed restaurant Premises is “relatively low risk for alcohol related harm”.

Review Applicant Response to Council Submission

- 58. The Review Applicant submits that Council “does not make any comment” in respect of the No Shots Condition.
- 59. With regard to the Liquor Cessation Condition, the Review Applicant submits that the reference to “last drinks orders will be called 30 minutes before closing time where applicable” in the Council approved *Plan of Management* that was submitted to Council by a

former tenant refers to the “closing time” specified in the *former* tenant’s *Plan of Management* and is not a reference to the *current* tenant’s trading hours.

60. The Review Applicant submits that given that the new licensee has “chosen” to “restrict” its licensed trading hours to midnight on Monday through Saturday and to 10:00pm on Sunday, the requirements in the Council approved *Plan of Management* are “otiose”.
61. The Review Applicant submits that Council imposed a requirement to call “last drinks” 30 minutes prior to closing, which would have allowed for a “wind down” period. This is a requirement that is “not nearly as prescriptive or restrictive” as the Liquor Cessation Condition imposed by the Delegate, which prevents all service or supply of liquor during the last half hour of trade.

Comparison with Sake Restaurant

62. The Review Applicant notes that in previous submissions it has referred to the *Sake* licensed restaurant premises located next door, within the same complex, which has a restaurant licence with a primary service authorisation. The Review Applicant submits that it would be “ridiculous” to require cessation of liquor service on the Premises at 11:30pm when patrons could simply walk next door to the *Sake* restaurant and consume liquor between the hours of 11:30pm and midnight.
63. Attached to the Review Applicant’s submission is a statement by Mr Douglas Laming (a former licensee of the Premises) dated 31 March 2017 regarding the service of liquor until closing time at the adjacent *Sake* restaurant. Attached to this statement are two photographs of the entrance to *Sake* restaurant, illustrating the proximity between *Sake* and the Premises; and a receipt for an alcoholic drink purchased by Mr Laming without a meal. The Review Applicant submits that it would be “absurd and anomalous” to impose these restrictions upon the Premises when it is not required for *Sake*, an on-premises licensed venue with a primary service authorisation, and “embarrassing” to have to explain these restrictions to patrons of the Premises.

Final Submission from Review Applicant

64. On 19 June 2017 the Authority Secretariat sent an email to Hatzis Cusack, solicitors for the Review Applicant, advising that the Authority had given preliminary consideration to the matter and was minded, subject to final submissions from the Review Applicant, to confirm the Liquor Cessation Condition and to vary the No Shots Condition (in the form that is now imposed by the Authority, below). The Authority advised that its intention in varying the No Shots Condition was not to prevent the service of neat spirits, liqueurs or aperitifs, but to make clear that it is designed at preventing the service of drinks known as shots, shooters, slammers or bombs that are served short and *designed* to be consumed rapidly.
65. The Authority referred the Review Applicant to BOCSAR crime data for the State Suburb of Double Bay recording that, during the period from April 2016 to March 2017 the rate of alcohol related assault was 950.3 per 100,000 persons of the population, compared to a New South Wales wide rate of 253.5.
66. The Authority also put to the Review Applicant BOCSAR hotspot crime mapping data indicating a high concentration of alcohol related assault on and around the location of the Premises in Double Bay. The Authority further put to the Review Applicant an article published online at *The AU Review* dated 5 March 2017 and another article published online from the AHA Hotel News from April 2017. These articles indicated that the business was already serving whiskey shots as part of its “pickleback” drink promotion and indicated that the venue was trading under the name “Mr Gs”, not the licensed business name of Gallagher’s Bar and Grill.

67. The Review Applicant responded with a 2 page submission from Hatzis Cusack dated 4 July 2017. Briefly, the Review Applicant instructs Hatzis Cusack that the pickleback does not involve the service of whiskey in a shot glass, but served in a larger glass already mixed with brine. The Review Applicant contends that the journalist writing the article misunderstood how this drink is served.
68. The Review Applicant advises that it is using the name “Mr Gs” in relation to the Premises, but submits that this does not constitute an offence against section 95 of the Act, which the Review Applicant argues requires that the licensed business name be placed on signage above the entry to the licensed Premises. Section 95 does not prohibit the use of other names in relation to licensed premises, only prohibited names. Nevertheless, the licensee has instructed Hatzis Cusack to prepare an application to change the business name to “Mr G’s”.
69. In response to the proposed banning of shots, the Review Applicant submits that the rate of alcohol related offences in Double Bay is half that of Potts Point (1913 per 100,000 persons), that the Premises is “food based”, that there is substantial seating and the venue is located in an international hotel. These factors, it is submitted, make the venue a low risk Premises. The Review Applicant contends that when the business met with Police to discuss a Plan of Management, no restriction on the service of shots was discussed.
70. The Review Applicant submits that a more appropriate balancing of considerations under the Act would be to allow the service of shots until 10:00pm. The Review Applicant provides two photographs, with one featuring how the pickleback drink is served and a photograph of the sign on the Premises indicating the current licenced premises name.

DECISION ON REVIEW AND REASONS

71. The Authority has considered the Review Application and all of the submissions, evidence or other material before it pertaining to the Review Application.

Condition 3090 (the Liquor Cessation Condition)

72. The Authority must be satisfied, pursuant to section 45(3)(c) of the Liquor Act, that if development consent is required to conduct that business or activity to which the proposed licence relates, that such consent is in force.
73. While the development consent permits use of the Premises as a licensed restaurant with a Primary Service Authorisation, from 10:00am until 2:00am on Monday through Sunday, it is also clear, on the advice of Woollahra Council, that clause I.9(c) of the current DA for the Premises requires the cessation of liquor 30 minutes before closing time.
74. The Authority has a longstanding practice, when granting licences and determining licence conditions, of not contradicting the express requirements of a development consent, when consent is required for the licensed business that is the subject of a licence application.
75. The Authority considers that fixing licensed hours and other conditions pertaining to the service of liquor in a manner that does not conflict with clause I.9 of the DA will better promote the balanced development of the liquor industry, an object of section 3(1)(b) of the Liquor Act, to license the sale or supply of liquor on licensed premises.
76. The Authority has considered the Review Applicant’s submission that Council would not have intended the condition on the DA requiring the cessation of liquor 30 minutes before close to apply if the Premises is not trading beyond midnight.

77. However, the submission from Council dated 16 March 2017 does not support this submission. The Authority defers to Council's advice as the relevant consent authority on how this DA will apply to the Premises.
78. The Authority has also considered the Review Applicant's submissions to the effect that the imposition of the Liquor Cessation Condition would be "unduly onerous" and "anomalous", particularly so given that the *Sake* licensed restaurant located adjacent to the Premises is authorised to sell or supply liquor to patrons with or without a meal until closing time.
79. The Authority must consider each licensed premises on its merits. On-premises licensed premises throughout New South Wales enjoy a broad range of licensed trading hours within and outside of the standard trading period.
80. While the Authority accepts that the Liquor Cessation Condition will mean some reduction in convenience to patrons on the Premises, the Review Applicant's submissions do not overcome Council's confirmation that the DA mandates the cessation of liquor service 30 minutes prior to closing.
81. The Authority notes Council's advice that its usual policy would be to require the cessation of liquor service only 15 minutes before closing, but in this case a 30-minute requirement was imposed and still applies. It follows that were the Review Applicant to obtain a modification of the DA to require the cessation of liquor service only 15 minutes before closing, the Authority would be amenable to varying the Liquor Cessation Condition to align with Council's requirement. It would do so of its own initiative, pursuant to section 53(2)(b) of the Liquor Act, provided that evidence of Council's determination was provided to licensing staff.
82. As things stand, the Authority considers that the public interest in respect of the Liquor Act favours the imposition of the Liquor Cessation Condition. While accepting that Council inserted the liquor cessation requirement into the DA on the basis of a previous tenant, aligning the liquor licence with what the DA actually provides will avoid the real possibility of any confusion, over time, on the part of staff or members of the public, as to when liquor may be sold or supplied for consumption on this substantial new licensed Premises that will have the capacity to sell or supply liquor without a meal.
83. The Authority **confirms** the Liquor Cessation Condition under section 36A(4) of the *Gaming and Liquor Administration Act 2007*.

Condition 3110 (the No Shots Condition)

84. While there is no general definition of a "shot" provided in the Liquor Act, there are references to a "shot" in section 116(2)(b) of that Act (which applies to prescribed precincts) as involving "liquor that is intended to be consumed rapidly". Clause 5(1)(a) to Schedule 4 of the Liquor Act (which concerns special conditions regulating declared premises) describes a "shot" as a "drink that contains no more than 30ml of spirits or liqueur and that is designed to be consumed rapidly".
85. Those definitions represent what the Authority considers to be the industry understanding of a "shot" or "shooter". The Authority understands that "bombs" are also drinks that are served in a short glass and intended to be consumed rapidly.
86. The Review Applicant has emphasised in the CIS the upmarket nature of the restaurant/steakhouse and the location of the restaurant in an international hotel. The Review Applicant contends in the CIS that this type of restaurant will cater for a "mature clientele". The Authority accepts these propositions on the basis of the information and images provided about the style of restaurant, its fit-out and its location within an international hotel.

87. The condition is designed to prevent the service of drinks that are traditionally served very short and consumed rapidly with the intention of increasing intoxication levels quickly.
88. The No Shots Condition will not restrict the sale of liquor that is not served in a manner that is *designed* for rapid consumption - such as straight whisky, cognac or another single, unmixed liquor that is served in a container larger than a shot glass. The No Shots Condition will not prevent the licensee from serving many premium spirits, liqueurs or aperitifs.
89. For the sake of clarity and to emphasise that this condition will *only* constrain the service of drinks that are *designed* for rapid consumption, the Authority has decided to vary the wording of this condition to include the following additional words in bold:

Condition 3110

*Drinks commonly known as shots, shooters, slammers, bombs, **or any other drinks that are served short and designed to be consumed rapidly**, must not be sold or supplied at the premises.*

90. The designated primary purpose of this proposed licensed business is a restaurant. The Review Applicant has not sought a hotel, general bar or small bar licence – all of which are licence types with the *primary purpose* of the sale of liquor for consumption on the premises.
91. Section 22 of the Liquor Act requires that the sale or supply of liquor pursuant to an on-premises licence must be ancillary to the supply of the primary purpose that is designated on the licence in question. In this case the designated primary purpose is the conduct of a restaurant.
92. The Authority has considered the Review Applicant’s submissions - particularly the statutory declaration by Mr Gallagher dated 6 March 2017, which contends that patrons “expect” to be able to be served small quantities of spirits in shot glasses and that provided that rigorous responsible service of alcohol controls are exercised, there is “nothing inherently wrong with [that] practice”.
93. The Authority has considered the Review Applicant’s submissions that the Premises will operate as a restaurant at all times, and that it is “unduly onerous and anomalous” to have a condition banning the service of liquor in shot glasses. The Review Applicant submits that Police did not seek this condition and claim that this is because Police consider it to be unreasonable.
94. The Authority is satisfied, on the basis of the Police submissions, that while Police did not seek this condition, they support the No Shots Condition as a means of reducing alcohol related harm and reducing the social impact of the operation of the new licence.
95. In the context of an upmarket *restaurant*, where liquor is supposed to be *ancillary* to dining, the Authority finds that a condition that *only* restricts drinks that are designed for *rapid consumption* is more and not less consistent with the quality, mature dining experience that the Review Applicant has proposed in the Licence Application and CIS, pursuant to which the Delegate has seen fit to grant the licence with a Primary Service Authorisation, after applying the overall social impact test under section 48(5) of the Liquor Act.
96. The Authority is mindful that licensees, business management and business models may change over time. The No Shots Condition will positively reinforce and maintain the profile of the Premises as a quality licensed restaurant and will continue to do so regardless of whether management practices or business models change over time.
97. The No Shots Condition structures liquor service with regard to only one higher risk aspect of liquor service. The Authority is satisfied that in the context of *this* licensed business, the condition will ensure that the sale of liquor will be ancillary to the operation of an “upmarket”

restaurant that is primarily directed to a “mature” clientele. In this respect, the No Shots Condition promotes the statutory object in section 3(1)(b) of the Liquor Act of the *balanced* development of the liquor industry, providing a quality licensed dining environment and not simply another bar.

98. Furthermore, the No Shots Condition provides a harm minimisation measure with respect to a higher risk aspect of liquor service, in the context of a substantial new on-premises licensed business with a Primary Service Authorisation and a maximum patron capacity of 250.
99. The general risk profile of licensed restaurants that have primary service authorisations was a matter of concern raised by Police during the CIS consultation process. The Authority has taken into account the number of harm minimisation conditions that have been proposed by Police and accepted by the Review Applicant but is satisfied, on the information before it, that this substantial new business will likely be attractive to significant numbers of persons who are simply seeking another place to drink in Double Bay. This is particularly the case during times of the day that fall outside of peak dining hours.
100. The Authority notes and accepts the assessment made by local Police in their submission dated 27 July 2016 that the Primary Service Authorisation provides the ability to sell alcohol without the service of food and in doing so may “increase the risk of alcohol related violence and anti-social behaviour”.
101. Giving weight to the local knowledge and experience of local licensing Police, the Authority considers that the No Shots Condition will provide a practical means of reducing patron intoxication levels and the risk of anti-social conduct that may arise from the consumption of these higher risk liquor products, whether or not such conduct rises to the level of criminality.
102. That is, the No Shots Condition will *better* serve the statutory considerations in section 3(2)(a) of the Liquor Act - the need to minimise the harm associated with the misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour); section 3(2)(b) - the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor 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.
103. The Authority accepts that Mr Gallagher is experienced in the liquor industry and is satisfied, as contended by the Review Applicant, that there is no adverse evidence before the Authority as to the regulatory record of those involved with the Premises. The Authority further accepts that the Review Applicant/licensee desires to maximise the range of liquor products that may be sold or supplied to patrons. The Authority accepts that there may be some indeterminate number of locals or tourists frequenting the Intercontinental Hotel or Double Bay who may seek to drink “shots” of liquor.
104. The Review Applicant has not, however, provided a persuasive case as to how many and often the clientele of this proposed new upmarket restaurant will seek *shots, shooters, slammers or bombs* and the role those types of drinks may play in the Review Applicant’s business model, as identified in the Licence Application and CIS.
105. Notably, the evidence of a detailed drinks menu that was provided by the Review Applicant specifies a range of champagne, wine, fortified wine beer and other drinks. The Review Applicant has not satisfied the Authority how removing this condition would better serve the “expectations, needs and aspirations of the community” and thereby advance the statutory object in section 3(1)(a) of the Liquor Act.
106. The Authority is satisfied that the No Shots Condition will not prevent the licensee from selling or supplying most types of alcoholic drinks for consumption on the Premises. The


licensee and patrons of this restaurant will substantially enjoy the flexibility and convenience of the Primary Service Authorisation.

107. The Authority does not accept the Review Applicant's characterisation of the No Shots Condition as "onerous" or "anomalous" in the circumstances of this case. The Authority accepts the Review Applicant's contention that the nearby *Sake* restaurant has a similar licence and is not subject to this condition. There are a range of licensed premises in Double Bay with varying business plans, patron capacities and licence types that will be subject to varying licence conditions, determined on a case by case basis.
108. The No Shots Condition has been imposed upon a range of licensed premises across New South Wales as a harm minimisation measure, designed to reduce the potential for increased intoxication levels and to reduce the scope for adverse amenity impacts from those patrons who abuse liquor.
109. The fact that the Premises is situated outside of the more closely regulated Kings Cross and Sydney Entertainment precincts is a relevant but not decisive factor. It remains open to the Authority or a delegate to impose this type of condition on a case by case basis.
110. The Review Applicant has submitted that Police have not provided any material to suggest that the risk profile of the Premises or this area generally is such that it warrants the imposition of the No Shots Condition.
111. However, recent published BOCSAR data for the period from March April 2016 to March 2017 indicates that much of the suburb of Double Bay, including the neighbourhood of the Premises, is exposed to a *high-density concentration of alcohol related assault* events. This data provides further, albeit general, evidentiary support for the imposition of the No Shots Condition at this time, in light of the location and scale of the Premises.
112. The Authority accepts the Review Applicant's submission that this new venue will be situated on the property of a 5-star hotel but that does not preclude the capacity for a new street facing venue with a substantial patron capacity to generate or attract patrons who may contribute to alcohol related crime and disturbance in a neighbourhood that is already over exposed to it.
113. In principle, the Authority accepts the Review Applicant's submission, provided in the statement from Mr Gallagher, that there is nothing "inherently wrong" with the service of shots of liquor. The question is whether the imposition of the No Shots Condition is the correct and preferable action to take in the context of *this* new licensed Premises, having regard to all of the statutory objects and considerations in section 3 of the Liquor Act and the material before the Authority.
114. The Authority is satisfied, on the material before it, that imposing the No Shots Condition is preferable to not imposing the condition in this case. The Authority has considered a late change in the Review Applicant's position proposing that the condition operate from 10pm, but finds that the more prudent approach, in light of the prevailing problematic crime data and the various concerns raised by local Police, is to impose this condition at all times.
115. While the Authority accepts that the Premises will operate as a restaurant, the recent media articles put to the Review Applicant and the Review Applicant's acknowledgement that it will now be changing the licenced premises name from "Gallagher's Bar and Grill" to "Mr G's" indicates a stronger emphasis upon the cocktail/bar aspect of the enterprise than was apparent in material before the Delegate when the licence was granted. This illustrates the scope, identified in the Police submissions, for *any* licensed restaurant *with a primary service authorisation* to operate in a higher risk mode – that is, more in the style of a bar - depending upon the business model favoured by the business owner at any given time.

116. The No Shots Condition is **varied** under section 36A(4) of the *Gaming and Liquor Administration Act 2007*.

117. If you have any enquiries about this decision please contact the case manager via email to ilga.secretariat@justice.nsw.gov.au.

Date of Decision: 31 July 2017

A handwritten signature in blue ink, appearing to read 'Philip Crawford', written in a cursive style.

Philip Crawford
Chairperson