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Dear Mr Sammut

**Application for General Bar Hotel Licence – G & P Holdings  
Application for Minors Area Authorisation – G & P Holdings**

I am writing to you regarding two applications made by Mr Sammut of LAS Lawyers & Consultants, on behalf of G & P Holdings Pty Limited, which were received by the Independent Liquor and Gaming Authority on 22 December 2014.

The Applications seek the grant of a general bar hotel licence within the meaning of section 16 of the *Liquor Act 2007* (Act), and authorisation for a minors area within the meaning of section 121 of the Act. Both Applications are in respect of premises located at 419 Pacific Highway, Crows Nest, 2065.

The Authority considered the Applications on 26 August 2015 and after careful consideration of the Application material and submissions made in relation to the Application, decided to refuse the Application for a general bar hotel licence. By reason that the Application for a minors area authorisation is contingent upon the grant of the general bar licence this Application is also refused.

Under section 36C of the *Gaming and Liquor Administration Act 2007*, the Authority is required to publish statements of reasons with respect to those decisions prescribed by clause 6 of the *Gaming and Liquor Administration Regulation 2008*.

Attached is the Authority's statement of reasons. It 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 questions about this decision, 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

23 NOV 2015

## STATEMENT OF REASONS

### INTRODUCTION

1. On 22 December 2014 the Independent Liquor and Gaming Authority (Authority) received two applications (Applications) made on behalf of G & P Holding Pty Limited and its director Mr Simon Quinn (Applicant). The Applications are made by an agent, Mr Justin Sammut of LAS Lawyers and Consultants (Agent).
2. The Applications seek the grant of a general bar hotel licence (Hotel Licence Application) within the meaning of section 16 of the *Liquor Act 2007* (Act), and authorisation for a minors area (Minors Area Application) within the meaning of section 121 of the Act. Both Applications are in respect of premises located at 419 Pacific Highway, Crows Nest, 2065 (Premises).
3. The proposed licensed trading hours of the application will be:  

Monday to Saturday:	10:00am to 12:00 midnight
Sunday:	10:00am to 10:00pm
4. The Applicant proposes that the Premises will operate as an unlicensed restaurant between the hours of 7:00am and 10:00am Monday to Saturday.
5. The Application seeks that the 6-hour closure period required by section 11A of the Act be fixed from 4:00am to 10:00am Monday to Sunday.
6. The Authority notes that the Applicant lodged an Application for an on-premises liquor licence on 20 March 2015 (number 1-3058080656), within the meaning of section 25 of the Act, for the Premises and that this has been granted by the Authority.
7. The Authority notes that the Applicant intends to operate on the basis of the on-premises licence if this Application is refused.

### MATERIAL BEFORE THE AUTHORITY

8. Application Form and Community Impact Statement (CIS) dated 12 December 2014. The CIS document notes that the Premises will operate between 7:00am and 12:00 midnight Monday to Saturday and 10:00am to 10:00pm Sunday but will only operate as a licenced Premises between 10:00am and 12:00 midnight Monday to Saturday and 10:00am to 10:00pm Sunday. It also notes the proposed 6-hour closure period will be between 4:00am and 10:00am.
9. In the CIS statement that Applicant contends that the Premises will be "a general bar with a focus on food service".
10. The Applicant states in the CIS statement that the Premises is situated near a bus stop and that the licensed business will arrange for taxi services at the request of customers.
11. The Applicant notes that at the time of writing there had been three submissions made regarding the Application, from Roads and Maritime Services (RMS), Family and Community Services (FACS) and North Sydney Council (Council).

12. The CIS statement notes that neither the submission from RMS nor the submission from FACS object to the Application. The Applicant states that it has forwarded a letter to RMS "confirming the measures that had been implemented" to decrease alcohol involvement in road crashes at the Premises.
13. The CIS state notes that North Sydney Council (Council) has "raised an issue surrounding the type of liquor licence applied for". In relation to this, the Applicant contends that: "it appears that Council misunderstood the general bar hotel licence for a full hotel licence" and that the Council has yet to reply to attempts at clarification by the Applicant.
14. With regard to the question of the overall social impact of granting the Application, the Applicant makes the following contentions in the CIS document:
  - (a) The proposed operators of the new licensed business "have previous experience within the hospitality industry and will implement the same business model in order to operate a successful and appealing licensed premises"
  - (b) The Premises "will provide increased employment"
  - (c) The operators "propose to trade within standard trading hours...limiting potential impacts on the local community"
  - (d) There will be "no live or loud music at the venue"
  - (e) The Applicant notes that a report produced by Acoustic Noise & Vibrant Solutions regarding the Premises states that: "the predicted level of noise emission from the proposed 120 patrons inside is not in excess of the acceptable noise criterion established"
  - (f) The licensed business will "contribute to the local community by establishing an eatery that will support an increase in diverse dining facilities available to the local community"
  - (g) With regard to crime in the area the Applicant contends that "given the relatively low incidents [*sic*] of assaults and alcohol related assaults with in Crows Nest and North Sydney LGA, it is unlikely that the proposed premises, a licenced premises will contribute to increase risk of assault or impact the local amenity negatively"
  - (h) The "demographic profile of Crows Nest and North Sydney LGA does not indicate any special risk or vulnerability".
15. The contentions made by the Applicant in the CIS regarding social impact need not be examined in further detail for the purposes of this decision, by reason that the Authority has denied this Application by reason that it is not satisfied that the requirements of section 45(3)(c) of the Act have been met. In those circumstances the Authority does not need to make findings on the merits Applicant's case on overall social impact for the purposes of section 48(5) of the Act.
16. Notice of Appointment of Approved Manager dated 25 November 2014. This form notifies the Authority of the appointment of a manager to the Premises pending the approval of the Application. The proposed manager is Ms Kathryn Rainey (Manager).
17. Plan of the Premises. This is a diagram showing the Premises and the boundaries of the proposed licensed area and the proposed minors' area.
18. Key liquor licence details as at 17 July 2015. This is a liquor licence record provided by the Applicant recording that G & P Holdings holds an on-premises liquor licence for the Premises which was granted by the Authority on 3 July 2015. This document specifies the primary purpose of the business conducted pursuant to that licence as a "restaurant" and the approved manager is Ms Kathryn Rainey. The licensed trading hours are listed as 10:00am to 12:00 midnight Monday to Saturday and 10:00am to 10:00pm Sunday.

19. Email from Mr Justin Sammut regarding the on-premises liquor licence application. Mr Sammut contents in this email that the Applicant lodged "an additional on-premises licence application, as a preventative measure to ensure that the premises was licensed by the time construction was completed".
20. This email also states that the Applicant intends to "proceed with the original general bar application, however if this is not approved, or subject to further delays which result in the on-premises application being assessed and/or approved before the general bar application the applicant will accept the grant of an on-premises licence so as to enable it to trade as soon as possible".
21. Australian Securities and Investment Commission (ASIC) database extract regarding G & P Holdings Pty Limited, dated 25 September 2014. This document gives details relating to G & P Holdings Pty Limited and records its director and secretary as Mr Simon Quinn.
22. Submission from the Office of Liquor, Gaming and Racing (OLGR), dated 16 April 2015. The OLGR submission objects to the Application "until DA Consent, suitable to the proposed business model is provided by Council". It notes that the Council "have objected to the granting of the Application, due to the Application providing information that the primary purpose of the business was as a restaurant with ancillary bar services, not for a hotel".
23. The OLGR submission states that its "view is that it is unlikely that the granting of this Application will result in a significant increase in alcohol-related harm" but that the Applicant's business model is "high risk".
24. Submission from NSW Police, Harbourside Local Area Command (LAC), dated 15 February 2015. This submission does not object to the Application but requests the following amendment:
  - (a) That the minors area authorisation be limited to between 10:00am and 10:00pm
  - (b) Upon expiry of the permitted hours all service must immediately cease, no person shall be permitted entry and all customers on the premises must be required to leave within the following half hour
  - (c) The licensee will ensure that music/noise from within the premises is not heard at the boundary of the closest residential premises
  - (d) The licensee, or person nominated by the licensee must maintain membership and attend all general meeting of the Harbourside Liquor Accord
  - (e) That crime scenes relating to violent crimes on the Premises are kept intact and direct and personal contact with the Local Area Commander is made in the event of such an incident
  - (f) The licensee must prepare a Plan of Management.
25. Submission from North Sydney Council, dated 22 December 2014. Council object to the Application. Council notes that it objects on the basis that "the business in question received development consent (DA 269/14) for a "restaurant and bar" in November 2014...the secondary nature of the bar has been recognised in Council's assessment of the matter and reflected in the conditions of the consent (that is, that the operational plan of management be adopted and followed during the operation of the business)". Council submit that the "the appropriate licence type is an on-premises licence with primary service of alcohol endorsement".
26. Letter from Director of Community and Library Services, North Sydney Council to the Applicant, dated 1 September 2014. This letter advises that "support will only be given to a "hotel licence" where development consent has been granted for a "hotel". The

Director notes that the current development application being sought for the Premises is in respect of a "restaurant and bar".

27. Submission from FACS - Housing Services dated 11 September 2014. This submission states that FACS "has no objection" to this Application. It does not request any amendments to the Application.
28. Submission from the NSW Roads and Maritime Services (RMS), dated 29 August 2014. This submission advises that within the North Sydney Local Government Area (LGA) during 2012 there were eight alcohol-related crashes resulting in three casualties. RMS recommends that "measures to prevent and decrease the likelihood of alcohol involvement in road crashes in the Crows Nest area should be addressed in the approval process". RMS request that if the licence is approved "the licensee must maintain awareness of any specific local alcohol-related issues to impact the community by attending the LGA's Liquor Accord" and that the following "initiatives" be implemented, requiring the business to:
  - (a) Provide access to local public transport information and taxi services
  - (b) Display public education material focused on drink drive and pedestrian-alcohol issues (from either Council or the Roads and Maritime Services)"
  - (c) Install an Australian Standards Approved (ASA) breath testing device, enabling patrons to check their BAC level.
29. Letter from LAS Lawyers and Consultants addressed to RMS, dated 15 September 2014. This letter is in reply to the RMS letter dated 29 August 2014 (above). The Applicant states through its solicitors that "measures have been proposed" in order to "prevent and decrease the likelihood of alcohol involvement in road crashes in the Crows Nest area". The letter includes a picture of a barrier to "separate patrons and the roadway" but the Applicant notes that this barrier does not run across the entire Premises as there is a bus stop in front of the Premises.
30. The letter also advises that if the Application is granted the licensee will join the local liquor accord and will provide information to patrons regarding public transport and taxi services as well as educational material relating to drink driving and pedestrian alcohol-related issues. The Authority notes that the Applicant makes no comment on the RMS Recommendation that an ASA compliant breath testing device be installed on the Premises.
31. National Police Certificate (NPC) issued on 16 April 2015. This certificate records that there are three "disclosable court outcomes" recorded against the Applicant. The first court outcome from 16 June 2008 is a conviction for the offence of *exceed speed limit*, a fine of \$594 is recorded. The second court outcome is a conviction for *drive with middle range PCA – 1<sup>st</sup> offence*, a fine of \$1,320 and 6 months disqualification commencing on 21 October 2014 and concluding 20 April 2015 are recorded. The third court outcome is an appeal of the second court outcome; varying the original order (the nature of the variation is not recorded).
32. Development Consent D269/14 (DA) from North Sydney Council, dated 25 November 2014. This DA approves the use of the Premises as a "restaurant/bar". The approved hours of operation for the Premises (for the purposes of planning legislation) are Monday to Saturday from 7:00am to 12:00 midnight and on Sunday from 7:00am to 10:00pm. The DA specifies that musical or other forms of entertainment are not approved. The DA also deals with, *inter alia*, the regulation of construction, fire safety, maintenance, and amenities.

33. G N P Holdings Pty Ltd Plan of Management (POM), dated June 2015. The POM addresses the management of the Premises. It is signed by the Applicant and specifies the following for the proposed licensed business:
- (a) Noise: The POM lists strategies for managing noise levels caused by the operation of the Premises, including the training of staff, the number of staff, management of patron and that there will be no entertainment on the Premises
  - (b) Waste Management: The POM lists waste disposal procedures including the disposal of recyclables and cooking oil
  - (c) Staff: The POM notes that there will be "approximately seven staff employed, including floor staff, back of house and management on duty during trading hours"
  - (d) Security: The POM notes that management will be responsible for "ensuring that the objectives of this plan are maintained". The POM lists strategies for maintaining security on the Premises including cooperation with law enforcement, maintaining an Incident Book, managing patrons, and appropriate signage
  - (e) Patron Behaviour: The POM notes "the primary purpose being serving of alcohol". It lists commitments to ensuring that the neighbourhood amenity is not disturbed by the operation of the Premises
  - (f) Crowds and Queues: The POM lists strategies to manage crowds and prevent the disturbance of neighbourhood amenity
  - (g) Responsible Service of Alcohol: The POM lists strategies for ensuring responsible service of alcohol including staff training and accreditation, checking identification of patrons, refusing service to intoxicated patrons and patrons causing a disturbance
  - (h) Operating Hours: The POM states that the proposed operating hours of the Premises as 7:00am to 12:00 midnight Monday to Saturday and Sundays 10:00am to 10:00pm and the liquor licence as operating between 10:00am and 12:00 midnight Monday to Saturday and 10:00am to 10:00pm Sunday
  - (i) Public Transport Awareness: The POM notes that staff will arrange for taxis for patrons when requested but given "the availability of public transport on Pacific Highway (bus and taxi stations) and within Crows Nest area (rail, bus etc.) no additional measures should be required within the site"
  - (j) Cleaning: The POM notes that the premises will be kept clean
  - (k) Amendment to the Plan: The POM notes that amendments to the POM shall be made where necessary.
34. Email from Mr Justin Sammut regarding the NPC sent 4 May 2015. This email from the Applicant's legal representative addresses the NPC regarding the Applicant. The submission notes that the Applicant "does not intend to hold the licence in his own name, and that an approved manager application has been submitted". The submission further notes that "Police have indicated that there is no objection to the applicant for approved manager".
35. The submission continues that there is "no evidence that any of the grounds set out in s139(3) apply to Mr Quinn". The email further contends that as the offences recorded on the NPC are both traffic offences and are "not indicative of a high degree of criminality". It is submitted that these matters "do not reflect upon Mr Quinn's ability to manage a company which carries on the business of a general bar".
36. Email from Mr Justin Sammut regarding the North Sydney Council Submission, sent 1 May 2015. This email from the Applicant's legal representative contends that "the development consent expressly approves the use of the premises not only as a restaurant but as a bar". The Applicant submits that Council's distinction between use of the Premises as a bar as either a primary or secondary function of the business to be conducted on the Premises is "not relevant" by reason that there is "express consent for that use".

37. The Applicant contends that "while the primary focus of the venue will be on the provision of food and meals, it is intended that there will be times when patrons will not necessarily be consuming meals, and in order to ensure that there is no doubt as to the extent of the authorisation under the licence to cater for such circumstances, the applicant seeks the flexibility of a general bar licence". The Applicant contends that "many general bars and small bars that have been approved by ILGA have as a key aspect of their business a substantial food operation" and that the proposed business the subject of this Application "is no different".
38. Authority licencing records, records, which are updated regularly and available for purchase from the Office of Liquor Gaming and Racing indicate that as of July 2015 there were three full hotel licences, 88 on-premises licences, and one club licence within Postcode 2065 (which not only covers Crows Nest but also includes the suburbs of Gore Hill, Greenwich, Naremburn, St Leonards and Wollstonecraft).
39. Authority licenced density data, recording the liquor licence density for the population within the postcode 2065, for the North Sydney LGA and the State of New South Wales. This data indicates that the density of full hotel licences in the postcode 2065 (29.45 per 100,000 persons) and North Sydney LGA (16.05 per 100,000 persons) is lower than NSW as a whole (30.36 per 100,000 persons). The density of club licences in the postcode 2065 (11.04 per 100,000 persons) and the North Sydney LGA (8.03 per 100,000 persons) is lower than NSW as a whole (20.48 per 100,000 persons). The density of on premises licences in the postcode 2065 (95.71 per 100,000 persons) and the North Sydney LGA (17.66 per 100,000persons) is lower than NSW as a whole (121.31).
40. Publically available BOCSAR crime mapping data before the Authority for April 2014 to March 2015. These maps indicate that the Premises are located in high density hotspots for the concentration of *Domestic and Non-Domestic Assault*, and *Malicious Damage to Property*.

Crime data sourced from BOCSAR or calendar year 2013 detailing rates of offences for the North Sydney LGA compared to NSW as a whole. This data details that the rate of *alcohol-related domestic assault* incidents across the North Sydney LGA as a whole was 91 per 100,000 persons, below the rate for NSW as a whole which was 145 per 100,000 persons. The rate of *alcohol-related non-domestic assault* incidents in this LGA was 135 per 100,000 persons, below the rate of 191 for the State as a whole. The rate of *alcohol-related assault police* incidents in this LGA was 22 per 100,000 persons, below the rate for NSW as a whole of 24 per 100,000 persons. The rate of alcohol-related malicious damage to property incidents across this LGA was 80 per 100,000 persons, which is below the NSW rate of 122 per 100,000 persons.

## LEGISLATION

41. The power to grant an hotel licence is provided by section 45 of the Act, which states:
- 45 *Decision of Authority in relation to licence applications*
- (1) *The Authority may, after considering an application for a licence and any submissions received by the Authority in relation to the application, grant the licence or refuse to grant the licence. The Authority may determine the application whether or not the Secretary has provided a report in relation to the application.*
  - (2) *...*
  - (3) *The Authority must not grant a licence unless the Authority is satisfied that:*
    - (a) *the applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates, and*

- (b) *practices will be in place at the licensed premises as soon as the licence is granted that ensure, as far as reasonably practicable, that liquor is sold, supplied or served responsibly on the premises and that all reasonable steps are taken to prevent intoxication on the premises, and that those practices will remain in place, and*
  - (c) *if development consent is required under the Environmental Planning and Assessment Act 1979 (or approval under Part 3A or Part 5.1 of that Act is required) to use the premises for the purposes of the business or activity to which the proposed licence relates – that development consent or approval is in force.*
42. Under section 48(5) of the Act, the Authority *must not* grant a licence, authorisation or approval of a kind prescribed by section 48(2) of the Act unless the Authority is satisfied, having regard to the CIS and any other matter the Authority is made aware of during the Application process, that the overall social impact of the licence, authorisation or approval in question being granted *will not be detrimental* to the local or broader community.
43. Section 48(5) of the Act states:
- 48 Community impact**
- (5) *The Authority must not grant a licence, authorisation or approval to which a relevant application relates unless the Authority is satisfied, after having regard to:*
- (a) *the community impact statement provided with the application, and*
  - (b) *any other matter the Authority is made aware of during the application process (such as by way of reports or submissions), that the overall social impact of the licence, authorisation or approval being granted will not be detrimental to the well-being of the local or broader community.*
44. An application for a packaged liquor licence is a type of licence prescribed by section 48(2) requiring a CIS and satisfaction of the overall social impact test.
45. In determining the Application, the Delegate also considered relevant provisions of the Act, including the objects and considerations that are prescribed by section 3, which states:
- 3 Objects of Act**
- (1) *The objects of this Act are as follows:*
- (a) *to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community.*
  - (b) *to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality,*
  - (c) *to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.*
- (2) *In order to secure the objects of this Act, each person who exercises functions under this Act (including a licensee) is required to have due regard to the following:*
- (a) *the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),*
  - (b) *the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,*
  - (c) *the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.*

The Authority is satisfied that the relevant local community is the community within the state suburb of Crows Nest while the broader community comprises the North Sydney LGA.



## REASONS

46. The Authority is satisfied, on the material before it, that for the purposes of section 40 of the Act, that the Application and CIS material establishes that the Application has been validly made and relevant consultation and advertising requirements of the legislation were observed.
47. With regard to the overall social impact test prescribed by section 48(5) of the Act, the Authority has not given consideration to this matter by reason that the Application has been refused on other grounds.
48. Similarly, by reason that the Application has been refused on another basis, the Authority has not needed to make findings on whether or not the proposed licensee can be considered a fit and proper person for the purpose of section 45(3)(a) of the Act or whether plans are in place to ensure, as far as reasonably practicable, that liquor is sold, supplied or served responsibly on the Premises and that all reasonable steps will be taken to prevent intoxication on the premises, and that those practices will remain in place.
49. The Authority is not satisfied, for the purposes of section 45(3)(c) of the Act, that the required development consent under the *Environmental Planning and Assessment Act 1979* to use the Premises for conduct of a business to which a general bar hotel licence relates, is in force.
50. The Authority accepts that the Applicant has received development consent for the use of the Premises as a restaurant and bar based on the Council Development Application D269/14, dated 25 November 2014. However, the Authority does not accept the Applicant's contention that this consent permits the activities to which a general bar licence relates.
51. The Authority notes that it is Council's view that:

*...the consent was based on the applicant's stated intent (described in the operational management plan) that the primary purpose of the business is a restaurant and that the bar component is ancillary to the primary, restaurant, activity. The secondary nature of the bar has been recognised in Council's assessment of the matter and has been reflected in the conditions of consent.*
52. The Authority further notes that it is the Council's view that planning permission for the premises does not cover the business activity to which the licence the subject of this Application relates. Council submits:

*...it is considered that the appropriate licence type is an on-premises licence...the general bar licence would permit uses that are inconsistent with the requirements of the development consent (that is, that the primary use of the premises is a restaurant). This approach is consistent with that of many other restaurants in North Sydney. Varying this approach in this instance would set an undesirable precedent for similar businesses.*
53. The Applicant's solicitor has made submissions to the effect that the Applicant does have planning permission to conduct the type of licenced business (a hotel) to which this Application relates.
54. The Authority has considered the Applicant's submissions, but the Applicant has not provided any independent expert planning evidence to rebut Council's opinion that the existing DA for the premises was not issued on the basis of the now proposed use of the

Premises for the operation of a hotel and that the DA does not provide consent for the proposed use of the Premises as a hotel.

55. The Applicant has sought to distinguish between a "full" hotel licensed premises within the meaning of section 14 of the Act and a general bar within the meaning of section 16 of the Act but the Authority notes that both types of licensed premises are *hotel licensed premises* whose primary purpose is the sale or supply of liquor.
56. The centrality of liquor sales to a hotel licensed business qualitatively distinguishes such business from, for example, an on-premises licensed business whose primary purpose is *not* the sale or supply of liquor (such as a licensed restaurant for which the sale supply of liquor is ancillary to the sale or supply of meals). This is the case even though it may be possible for an on-premises licensed business (if it has an authorisation under section 24(3) of the Act) to operate to some extent in the mode of a bar by being authorised to sell or supply liquor to individual customers with or without a meal.
57. The Authority gives weight to the expertise of Council in relation to planning matters and on the material before it the Authority is *not satisfied* that the planning permission required to conduct the type of business or activity that is the subject of this Application (that is, a hotel licensed premises) is in force.
58. In conclusion, the Authority is not satisfied on the material before it that the Applicant has fulfilled the requirement of section 45(3)(c) of the Act. For this reason the Application must be refused pursuant to section 45 of the Act.
59. By reason that the Application for the hotel licence is refused, the Application for an authorisation pursuant to section 121 of the Act is also refused as it is contingent upon the hotel licence Application being granted.
60. In making these decisions the Authority has had regard to all of the statutory objects of section 3(1) of the Act and all of the considerations prescribed by section 3(2), none of which provide a basis for not making an adverse finding in respect of section 45(3)(c) of the Act.



Micheil Brodie  
Chief Executive

DATED: 23 NOV 2015