



Ms Fiona Myatt
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22 December 2016

Dear Ms Myatt

APPLICATION NO: 1-4298432765
APPLICATION FOR: Extended Trading Authorisation (ETA)
PROPOSED TRADING HOURS: Consumption on premises
Monday to Saturday 10:00AM – 01:00AM
Sunday 10:00AM – 12:00AM
Footway
Monday to Sunday 10:00AM to 10:00PM
CURRENT TRADING HOURS: Consumption on premises
Monday to Saturday 10:00AM – 12:00AM
Sunday 10:00AM – 10:00PM
Footway
Monday to Sunday 10:00Am to 10:00PM
APPLICANT: Mr Arthur Balayannis
LICENCED PREMISES NAME: Alpha Restaurant
PREMISES LOCATION: 238-240 Castlereagh Street, Sydney, NSW
2000 (Premises)
ISSUE: Whether to grant or refuse an application for
an extended trading authorisation.
LEGISLATION Sections 3, 11A, 45, 48, 49, 51 *Liquor Act*
2007

**INDEPENDENT LIQUOR AND GAMING AUTHORITY DECISION – APPLICATION FOR
EXTENDED TRADING AUTHORISATION – ALPHA RESTAURANT**

The Independent Liquor and Gaming Authority considered application number 1-4298432765 at its meeting on 14 December 2016 and, pursuant to section 49(2) of the *Liquor Act 2007* (Act), decided to **grant** the application for an extended trading authorisation subject to the following conditions:

1. Trading Hours

Consumption on premises

Monday to Saturday 10:00AM – 01:00AM
Sunday 10:00AM – 12:00AM

Footway

Monday to Sunday 10:00AM – 10:00PM

2. The business authorised by this licence must not operate with a greater overall level of social impact on the wellbeing of the local and broader community than what could be reasonably expected from the information contained in the community impact statement, application and other information submitted in the process of obtaining the extended trading authorisation.

In making this decision the Authority has also decided, pursuant to section 53(2)(b) of the Act, to vary the current condition numbered 3140 on the licence record for LIQO660031478 so that the condition shall read as follows:

“The premises are to be operated at all times in accordance with the Plan of Management dated September 2016 as may be varied from time to time after consultation with the Local Area Commander of NSW Police.”

If you have any enquiries about this letter, please contact the case manager via email to trudy.tafea@justice.nsw.gov.au

Yours faithfully



Philip Crawford
Chairperson

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

STATEMENT OF REASONS

Material before the Authority

1. The following is a summary only of the material and submissions before the Independent Liquor and Gaming Authority (Authority) for the purposes of publication of a statement of reasons, as soon as practicable, in a high-volume jurisdiction.
2. In making this decision, the Authority has considered the Application for an extended trading authorisation (ETA) filed on 11 April 2016 (Application), the accompanying community impact statement (CIS) and all submissions received in relation to the Application. As foreshadowed in Authority *Guideline 6*, the Authority has also had regard to relevant liquor licensing records and licence density data maintained by Liquor and Gaming NSW (LGNSW), Bureau of Crime Statistics and Research (BOCSAR) crime data and Australian Bureau of Statistics (ABS) socio-demographic data pertaining to the local and broader communities, sourced by licensing staff from publicly available sources. That material is listed and in some cases briefly summarised in the Schedule.

Summary of Further Submissions

3. Submission from City of Sydney Council (Council) dated 14 April 2016 advising that Council has no concerns with the Application and that development consent D/2015/531 approves the relevant use of the Premises (for planning purposes) between 7:00 am and 1:00 am daily.
4. Report to the Authority dated 13 September 2016 from Compliance Branch of LGNSW advising that the Application was assessed using the Environment and Venue Assessment Tool (EVAT). This means that LGNSW have not performed any specific assessment of the Application.
5. Submission from Constable D. Marshall and Leading Senior Constable Juan Maruri, Sydney City Local Area Command (LAC) of NSW Police (Police) to LGNSW, dated 13 September 2016. Police do not object to the Application, noting that there a number of licensed restaurants, cafes and hotels in the near vicinity of the Premises. Police note that the Premises is located within the Sydney CBD Entertainment Precinct as defined by Schedule 1A of the *Liquor Regulation 2008*. Police provide alcohol related crime maps for the Sydney Local Government Area (LGA) for April 2014 to March 2015, noting a higher rate of assaults occurring in the neighbouring suburb of The Rocks.
6. Police submit that over the past two years the rate of alcohol related assault in the State suburb of Sydney is 3110.4 incidents per 100,000 persons compared to 153.2 incidents for New South Wales as a whole. Furthermore, data from the Alcohol Related Crime Information Exchange (ARCIE) database maintained by Police for the Sydney Central LAC indicates that during the period from June 2014 to November 2014, 50% of all recorded assaults and 30% of all recorded domestic assaults in this area were recorded as alcohol related. Police also provide a summary of a 2011 BOCSAR study “The Association Between Alcohol Outlet Density and Assaults On and Around Licensed Premises” which found that assaults in the Sydney LGA were more likely to occur around licensed premises than

elsewhere in that local government area. While not objecting to the Application, Police submit a list of conditions and request they be imposed upon the licence should the Application be granted.

7. Submission from the Applicant's solicitor, Ms Fiona Myatt of Lands Legal solicitors, dated 28 September 2016, in response to the LGNSW email dated 8 September 2016. In this submission the Applicant notes that clause 79(2) of the *Liquor Regulation 2008* provides that Division 1A of Part 4 of the Act does not apply to a *licensed restaurant* and hence the restriction upon increasing licensed trading hours for premises in the Sydney Entertainment Precinct that operates by force of section 47C of the Act does not apply to this Application. The Applicant attached an updated *Plan of Management* dated September 2016, confirmed the proposed trading hours sought, advised that the record of the liquor licence as at 8 September 2016 is up to date, consents to the imposition of conditions requiring that the business not operate with a greater overall level of social impact on the wellbeing of the local and broader community than what could be reasonably expected from the information contained in the community impact statement, application and other information submitted in the process of obtaining the extended trading authorisation, and that the Premises are to be operated at all times in accordance with the *Plan of Management* dated September 2016 as may be varied from time to time after consultation with the Local Area Commander.
8. The Applicant also provided comment on the EVAT report, noting that while the location risk is high the Premises is that of an on-premises licence with a primary purpose of providing food and drink where the kitchen is open at all times during the approved hours of operation. The Applicant submits that Council has approved the development application enabling use of the Premises within the proposed extended trading hours, that the Authority has previously granted a special occasion extended trading authorisation in respect of the Premises, and that if the Application is approved the Premises will operate at all times in accordance with the new *Plan of Management* dated September 2016.
9. Applicant's detailed *Plan of Management* dated September 2016, included with the submission dated 28 September 2016.
10. Email from Leading Senior Constable Juan Maruri, Sydney City LAC of NSW Police to the Applicant's solicitor, dated 10 November 2016, advising Police had no objection to removal of a proposed condition requiring patrons to be seated whilst consuming liquor.
11. Further submission from Ms Fiona Myatt dated 1 December 2016. The Applicant responds to the Police submission dated 13 September 2016, submitting that the majority of conditions proposed by Police already appear upon the licence. The Applicant objects to the proposal that patrons be seated whilst consuming liquor on the basis that it is "*a reversion to antiquity and unnecessary given all the other conditions on the licence, waiter service etc*". The Applicant noted that by email to the Applicant's solicitor dated 10 November 2016, Sydney City Police advised they did not press this proposal. The Applicant also noted that since the Applicant became the licensee for the Premises in July 2013, no breaches of licensing legislation have been recorded.

12. The Applicant also provided a copy of a letter from The Hon. John Barilaro MP, Minister for Regional Development, Minister for Skills and Minister for Small Business, dated 4 November 2015, congratulating Alpha Restaurant on its success at the 2015 Savour Australia Restaurant & Catering HOSTPLUS Awards for Excellence, noting the commitment and contribution to one of the State's most important industries and the important role the restaurant plays in growing the NSW visitor economy.

Legislative Framework

13. The legal requirements for the making of a valid application for an extended trading authorisation are provided by section 51 of the *Liquor Act 2007* and the *Liquor Regulation 2008* (Liquor Regulation). The power to grant an application for an extended trading authorisation is provided by section 49(2) of the Act.
14. Any person exercising functions under the Act must also have regard to the objects and considerations set out in section 3 of the Act which states:
- (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.*
15. Section 48(5) of the Act requires the Authority, in certain circumstances, to consider a CIS (as well as any other matter the Authority is made aware of during the application process) in order to ensure that the overall impact of the licence, authorisation or approval being considered will not be detrimental to the local or broader community.
16. An application for an extended trading authorisation in respect of an on-premises licence is a "relevant application" within the meaning of section 48(2) of the Act for which a Category B CIS is required.
17. Section 48(5) of the Act requires that the Authority must not grant an application unless satisfied 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".
18. For the purposes of this decision and consistent with its longstanding practice and its position in Guideline 6, the Authority is satisfied that the relevant "local community" is the community within the State suburb of Sydney while the "broader

community” comprises the responsible local government area (LGA), the City of Sydney LGA.

Analysis of Relevant Facts

19. The Authority is satisfied, based on the Application and CIS material before it, that for the purposes of Section 51(2) of the Act, the Application has been validly made and minimum procedural requirements with regard to the Application, CIS and community consultation have been satisfied.
20. The Authority notes section 51(3) of the Act, which provides that when determining an application for a licence related authorisation, the Authority has the same powers in relation to the Application as the Authority has in relation to an application for a licence.
21. The Authority is satisfied, for the purposes of section 45(3)(a) of the Act, that the Applicant is a fit and proper person to carry on the business of a licenced venue of the kind proposed in the Application. The Authority notes that no probity issues were raised regarding the Applicant following consultation with law enforcement agencies, including Police and LGNSW.
22. The Authority is satisfied, for the purposes of section 49(8) of the Act, that responsible service of alcohol practices are in place and will remain in place and that the extended trading period will not result in the frequent undue disturbance of the quiet and good order of the neighbourhood of the Premises. This finding is made on the basis of the *Plan of Management* dated September 2016 provided by the Applicant.
23. The Authority is also satisfied, for the purposes of section 45(3)(c) of the Act, that the proposed extended trading hours fall within the scope of the development consent that is in force with respect to the Premises. This finding is made on the basis of the development approval number D/2015/531 that was determined by Council on 11 August 2015, which restricts the hours of use between 7.00 am and 1.00 am, Monday to Sunday.

Social Impact – Positive Benefits

24. The Authority accepts the Applicant’s contention that it distributed the consultation notice to stakeholders and neighbouring premises and did not receive any adverse comments or complaints. On this basis, the Authority is satisfied that granting this Application is consistent with the “expectations, needs and aspirations of the community” in respect of the local community of Sydney, being an object of section 3(1)(a) of the Act.
25. The Authority is satisfied, based on the CIS and additional submissions from the Applicant, that the Applicant has demonstrated that granting the extended trading authorisation will provide some additional benefit, by way of convenience to members of the local and broader community who wish to enjoy the licensed facilities of the restaurant beyond the current closing time of midnight.

26. The Authority notes the recognition afforded to the Premises in the 2015 Savour Australia Restaurant & Catering HOSTPLUS Awards for Excellence and accepts that the venue is an accomplished, quality restaurant.
27. The Authority is satisfied, based on LGNSW licence density data, that while there are 751 on-premises licences trading within the suburb of Sydney that granting the ETA will, to a moderate extent, diversify the range of *late* trading licensed entertainment options available within the local community, noting that there are other on-licensed premises and hotels in the broader community.
28. On this basis, the Authority is satisfied that granting the Application will reasonably develop, in the public interest, the liquor industry in respect of the local and broader community in furtherance of the statutory object in section 3(1)(b) of the Act. It will also advance the responsible development of related industries of tourism and hospitality in the local and broader community for the purposes of section 3(1)(c) of the Act.

Social Impact – Negative Impacts

29. The Authority notes, based on LGNSW liquor licensing records, that the suburb of Sydney currently has 751 on-premises liquor licences, 25 registered club licences and 158 full hotel licences. Although granting this Application will not increase licence density within the local or broader community, it will increase the number of licensed premises that trade past midnight.
30. The Authority acknowledges that there is a risk that any on-premises licensed premises when operating during extended trading hours may cause adverse social impacts upon the community over time, including amenity impacts upon the neighbourhood and local community.
31. The Authority notes that while the proposed extended trading hours are not very extensive there is cause for concern arising from the BOCSAR Crime Maps for July 2015 to June 2016, which indicate high concentrations of offences within the local community of Sydney.
32. There is also cause for concern with respect to the broader community arising from the BOCSAR crime data for 2014-2015 which indicates that the Sydney LGA has significantly higher rates per 100,000 persons than NSW as a whole for incidents of *domestic violence related assault, non-domestic violence related assault, offensive behaviour and assault police*. This is a function of the great many licensed premises servicing many residents, visitors and City workers alike, but the high prevailing rates of alcohol related crime mean that any proposed extended trading authorisation warrants careful scrutiny as to the social impact of extending liquor supply during later, higher risk times of the day and week.
33. On the information before it, the Authority derives substantial reassurance from licence type and nature of the licensed premises. This licensed restaurant is a substantially lower risk licence type and there is no evidence or information on compliance issues arising from the operation of the Premises since 2013.
34. The Authority notes also that there was no objection to the proposal from the community and that Council, Police and LGNSW did not object to the Application.

35. The Authority has had regard to the reasonably detailed harm minimisation measures set out in the *Plan of Management* dated September 2016, and the licence conditions to which the Applicant has consented.
36. The Authority notes, on the basis of the ABS Socio-Economic Indexes For Areas (SEIFA) data, that the suburb of Sydney ranked in the 7th decile on the Index of Relative Socio-Economic Advantage and Disadvantage while the City of Sydney LGA ranked in the 9th decile (with a decile ranking of 10 being the most advantaged).
37. The evidence and material before the Authority satisfies it that the Premises is the site of a quality, established licenced restaurant. There is no submission against the proposal from Police, LGNSW or Council and the Authority is satisfied that the venue is of a type whereby the supply of liquor will remain ancillary to the primary purpose of dining. The Authority is satisfied that granting patrons the additional convenience purchasing liquor for an additional hour will increase convenience and advance the primary purpose of this restaurant, with limited negative risks in this case.

Conclusion

38. The Authority is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding the decision whether or not to grant the Application, as all of those required to be notified of the Application were provided with the opportunity to make written submissions and all submissions received were considered and helped inform this decision. The interested parties include NSW Police, the Applicant, Council, Roads and Maritime Services (RMS), neighbouring occupiers, NSW Health and Department of Community Services and all other parties required to be consulted under the legislation.
39. Having considered together the positive benefits and negative impacts that the Authority is satisfied are likely to flow from granting the Application, the Authority is satisfied for the purposes of section 48(5) of the Act that the overall social impact of granting this authorisation would not be detrimental to the well-being of these local and broader communities.
40. The Application is granted pursuant to section 49(2) of the Act. For the purposes of section 49(6) the extended licensed hours granted pursuant to this decision extend from midnight to 1:00 am Monday through Saturday and 10:00PM to 12:00AM Sunday. These extended trading hours apply to the restaurant areas on the ground floor and first floor only.
41. In making this decision the Authority has had regard to all of the statutory objects prescribed by section 3(1) of the Act and all of the considerations to which it must have regard under section 3(2) – including (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; and (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.

Decision Date: 14 December 2016



Philip Crawford
Chairperson

Important Information:

In accordance with section 13A of the *Gaming and Liquor Administration Act 2007* a relevant person (the Applicant or a person who was required to be notified of the prescribed Application and who made a submission to the Authority or the Secretary in respect of the prescribed Application) who is aggrieved by this decision may apply to NCAT for an administrative review under the *Administrative Decisions Review Act 1997*.

An application to NCAT must be made within 28 days of notice of this decision being published on the liquor and gaming website <https://www.liquorandgaming.justice.nsw.gov.au/Pages/ilga/decisions-of-interest/decisions-of-interest.aspx> and be accompanied by the fee prescribed by the regulations.

For more information please contact the NCAT Registry at Level 10 John Maddison Tower, 86-90 Goulburn Street Sydney. The NCAT website is at <http://www.ncat.nsw.gov.au/>

SCHEDULE

Material before the Authority

1. Application Form lodged on 11 April 2016.
2. CIS lodged 11 April 2016. The Applicant provides additional material in the CIS in support of the Application, including that Council approved Development Application (DA) D/2015/531 on 11 August 2015 for the trading hours sought, that the primary purpose of the licence will be as a licensed restaurant, that meals will be available from the Premises at all times and that practices will be in place at the Premises and management will ensure as far as reasonably practicable that liquor will be sold, supplied and served responsibly on the Premises and that all steps are taken to prevent intoxication on the Premises. The Applicant advises that RMS responded by letter dated 1 March 2016 expressing general concern about the part played by alcohol in pedestrian and car fatalities. The Applicant also advises that no response was received from the local Aboriginal community, that no issues, concerns or objections were raised during consultation, and that this Application will not have any negative impact on the local community. A plan or diagram of the licensed area of the Premises was also provided.
3. Submission from Mr Simon Anton, Council, dated 14 April 2016, advising that Council has no concerns and that development consent D/2015/531 approved hours of use between 7:00 am and 1:00 am.
4. Report to the Authority dated 13 September 2016 from Compliance Branch of the LGNSW advising that the Application was assessed using the EVAT.
5. Submission from Constable D. Marshall and Leading Senior Constable Juan Maruri, Sydney City Local Area Command (LAC) of NSW Police (Police) to LGNSW, dated 13 September 2016.
6. Submission from the Applicant's solicitor, Fiona Myatt of Lands Legal, dated 28 September 2016, in response to the LGNSW email dated 8 September 2016.
7. The Applicant's detailed *Plan of Management*, dated September 2016.
8. Email from Leading Senior Constable Juan Maruri, Sydney City LAC of NSW Police to the Applicant's solicitor, dated 10 November 2016.
9. Submission from the Applicant's solicitor, Fiona Myatt of Lands Legal, dated 1 December 2016 attaching a copy of a letter from The Hon. John Barilaro MP, Minister for Regional Development, Minister for Skills and Minister for Small Business, dated 4 November 2015.
10. Copy of LGNSW extract of key liquor licence details recorded as at 2 December 2016 for Licence number LIQO660031478 in the trading name of Alpha Restaurant.
11. BOCSAR Crime Maps based upon data from July 2015 to June 2016 detailing hotspots for the concentration of offences near the location indicating that the Premises:

- (a) is located within a *high-density hotspot* for incidents of *domestic assault*
 - (b) is located within a *high-density hotspot* for incidents of *non-domestic assault*
 - (c) Is located within a *high-density hotspot* for incidents of *malicious damage to property*.
12. Liquor licensing records from LGNSW indicating that the suburb of Sydney has 751 on-premises licences, 25 registered club licences, and 158 full hotel licences.
13. Liquor licence density data from LGNSW indicating that the Sydney LGA recorded:
- (a) A rate of **114.23** *on-premises liquor licences* per 100,000 persons, which is below the NSW state wide rate of **121.31**.
 - (b) A rate of **13.18** *registered club licences* per 100,000 persons, which is below the NSW state wide rate of **20.48**.
 - (c) A rate of **35.15** *full hotel licences* per 100,000 persons, which is higher than the NSW state wide rate of **30.36**.
14. Report on *NSW Recorded Crime Statistics July 2010 – June 2015* obtained from published BOCSAR sources, for July 2014 – June 2015. This data indicates that:
- (a) the rate of alcohol related *assault Police* incidents recorded by NSW Police across the Sydney LGA was **85.2** per 100,000 persons, well above the State-wide rate of **18.2** per 100,000 persons.
 - (b) the rate of alcohol related *non-domestic violence related assault* incidents recorded by NSW Police across the Sydney LGA was **796.6** per 100,000 persons, substantially above the State-wide rate of **144** per 100,000 persons;
 - (c) the rate of alcohol related *domestic violence related assault* incidents recorded by NSW Police across the Sydney LGA was **213.3** per 100,000 persons, well above the New South Wales rate of **122.6** per 100,000 persons;
 - (d) the rate of alcohol related *offensive behaviour* offences recorded by NSW Police across the Sydney LGA was **525.4** per 100,000 persons, substantially above the State-wide rate of **88.2** per 100,000 persons.
15. ABS SEIFA data based on the 2011 Census indicating that the State suburb of Sydney ranked in the 7th decile and the City of Sydney LGA ranked in the 9th decile compared to other local government areas and state suburbs in NSW on the Index of Relative Socio-Economic Advantage and Disadvantage (with a decile ranking of 10 being the most advantaged).