



Ms Teresa Calarco
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Dear Ms Calarco

**Applications for an
Extended Trading Authorisation and a Primary Service Authorisation
LOT 1, SYDNEY**

I am writing to you about the three applications made on 15 May 2014 by And Then Pty Limited (Applicant), the proposed new licensed business owner to the Independent Liquor and Gaming Authority (Authority). The applications are in respect of the premises to be known as "Lot 1" located at the Ground and Basement levels at 18-20 York Street, Sydney. The first is an application under section 40 of the *Liquor Act 2007* (Act) for the grant of an on-premises licence within the meaning of section 22 of the Act; the second is an application for the approval of an authorisation under section 24(3) of the Act, referred to in industry parlance as a primary service authorisation; and the third is an application for the approval of an extended trading authorisation under section 49(2) of the Act.

The Authority considered all three of the Applications at its meeting on 29 January 2015 and decided to grant the On-Premises Application, while not approving the PSA Application or the ETA Application. The Authority informed you of this outcome by email on 6 February 2015 and advised that decisions in relation to the PSA Application and the ETA Application would be deferred until the Authority was provided with a submission from the City Central Police in relation to those Applications, due to the location of the Premises within the Sydney CBD Entertainment Freeze Precinct. The Authority considered the PSA and ETA Applications at its meeting on 30 April 2015. The Authority has decided to refuse the PSA Application and the ETA Application. The Authority informally advised these further decisions by email dated 6 May 2015.

Under section 36C of the *Gaming and Liquor Administration Act 2007*, the Authority is required to produce and publish statements of reasons with respect to those types of decisions prescribed by clause 6 of the *Gaming and Liquor Administration Regulation 2008*. The purpose of this letter is to notify the Authority's reasons for refusing the PSA and ETA Applications, in the context of a high volume liquor jurisdiction where the notification and publication of reasons is required as soon as practicable.

Yours faithfully

Micheil Brodie
Chief Executive

1 JUL 2015

STATEMENT OF REASONS

INTRODUCTION

1. On 15 May 2014, The Independent Liquor and Gaming Authority (Authority) received three applications (Applications) by And Then Pty Limited (Applicant), the proposed new licensed business.
2. The Applicant has made an application under section 40 of the *Liquor Act 2007* (Act) for the grant of an on-premises licence within the meaning of section 22 of the Act (Licence Application) in respect of the premises to be known as "Lot 1" located at the Ground and Basement levels at 18-20 York Street, Sydney (Premises).
3. The following associated Applications are also made in respect of the Premises:
 - (a) an application for the approval of an authorisation under section 24(3) of the Act, referred to in industry parlance as a primary service authorisation (PSA Application)
 - (b) an application for the approval of an extended trading authorisation under section 49(2) of the Act (ETA Application) in respect of the Premises.
4. The trading hours proposed in the Applications in respect of the Premises are as follows:

Ground Floor Café:
Monday to Sunday: 10:00am – 3:00pm

Ground Floor Restaurant and Basement Level Restaurant:
Monday to Wednesday: 12:00 noon – 12:00 midnight
Thursday to Saturday: 2:00pm – 1:00am
Sunday: 12:00 noon – 10:00pm
5. The ETA Application seeks extended trading hours from 12:00 midnight to 2:00am Monday to Saturday. These extended trading hours are sought to apply to the entire licensed premises except for the Basement level staff area and bathrooms.
6. The Applicant seeks that the primary service authorisation apply to all areas of the licensed premises except the Basement level store room, staff area and bathrooms and except the Ground level kitchen and store room, during all approved trading hours.

MATERIAL BEFORE THE AUTHORITY

7. On-Premises Licence Application Form filed with the Authority on 15 May 2014: This form states that the focus of the licensed business will be upon the service of meals and coffee and that meals will continue to be available during all trading hours to ensure that the sale or supply of liquor is not the primary purpose of the business.
8. The proposed patron capacity of the licensed area is 400. The 6-hour closure period required under section 11A of the Act is proposed to be fixed between 4:00am and 10:00am daily.
9. The Applicant contends that this Application, if granted, will not increase the number of people who enter the Sydney CBD Freeze Precinct principally to consume alcohol, on the basis that the Premises is located in an area that is already popular with social venues.

10. The Applicant submits that the Premises will be operated as a café until 3:00pm and as a restaurant from 12:00 midday until closing time daily.
11. The Applicant submits that in order to prevent intoxication of the Premises, options of non-alcoholic and low-alcohol beverages and staff will participate in liquor consultative committees and training.
12. The Licence Application Form discloses that the Applicant has had more than six months continuous experience selling/supplying liquor at a licensed venue, but not five years or more continuous experience as a licensee or approved manager, nor has the Applicant actively participated in a local liquor accord for more than 12 months as a licensee or approved manager.
13. The Authority notes that all three Application forms are signed on behalf of the Applicant by the sole company director/secretary of And Then Pty Limited, Mr Nicolas J Di Stefano, whose date of birth is 11 September 1992.
14. PSA Application Form filed with the Authority on 15 May 2014: This form states that the PSA if granted will be utilised during all approved trading hours.
15. ETA Application Form filed with the Authority on 15 May 2014: In this form the Applicant sets out the extended trading hours sought, from 12:00 midnight to 2:00am Monday to Saturday. The Applicant submits that in order to ensure that the extended trading period, if granted, does not result in frequent undue disturbance of the quiet and good order of the neighbourhood, patrons of the Premises will be advised to remain quiet when leaving the Premises:
 - that security will be provided
 - that an Australian Standards Approved (ACA) breath testing device will be made available at the Premises
 - that local public transport information will be provided.
16. Category B Community Impact Statement (CIS) filed with the Application Forms: This document describes how consultation requirements have been met by the Applicant in respect of the Applications.
17. With respect to the social impact that the Applicant considers will arise from granting the Applications the following submissions are made:
 - "...We believe the proposed liquor licence and licence-related authorisations will have no impact on the local community
 - The area of the premises for which the proposed liquor licence is to be granted is already an area dense with social activity and active night-life
 - We are active and respond to requests and concerns from stakeholders regarding the safety and well-being of the local community
 - We will actively promote safety, such as making available breathalysers and information about public transport and drink-driving".
18. No additional information is provided with the CIS document.
19. Copies of stakeholder notices: notifying the Applications and indicating that entertainment will be provided at the Premises in the form of a "DJ and/or 2-piece band".
20. Notice of Determination of Development Application No. D/2014/322 by City of Sydney Council (Council) dated 1 August 2014 (DA): This document records the grant of consent, for planning purposes, of a "...change of use of basement and part of ground

level to licensed restaurant and café (400 patrons) and associated alterations" in respect of the Premises.

21. This consent is subject to the imposition of conditions including, *inter alia* that "...the hours of operation for the ground floor café are restricted to between 6:00am and 3:00pm Monday to Friday and between 8:00am and 3:00pm Saturday and Sunday" and that the hours of operation for the restaurant "...must be restricted to between 12:00 midday and 11:00pm Monday to Saturday and between 12:00 midday and 10:00pm Sundays".
22. Notwithstanding this restriction in relation to the restaurant, the DA provides consent for use of the Premises "...between 11:00pm and 12:00 midnight Monday to Wednesday and between 11:00pm and 1:00am Thursday to Saturday for a trial period of one year" from the date of the DA.
23. Condition 15 of the DA requires that the primary use of the premises must be that of a café/restaurant.
24. Condition 16 requires that a maximum of 205 persons are permitted in the Lower Ground Floor Restaurant (basement), a maximum of 129 in the Ground Floor Restaurant and a maximum of 66 persons in the Ground Floor Café.
25. Condition 18 requires that the use must always be operated/managed in accordance with the Plan of Management approved with this consent and dated July 2014.
26. Condition 20 requires that security is to be provided at any time and in any manner specified in the Plan of Management. Condition 21 requires that CCTV surveillance cameras shall be strategically installed, operated and maintained throughout the premises.
27. ASIC Company Extract created on 22 April 2014: for And Then Pty Limited disclosing that Mr Nicolas J Di Stefano is both director and secretary of this company, which was registered on 2 December 2003.
28. Appointment of Manager Notice Form dated 5 May 2014: in respect of the Applications, naming Mr Michael Bradley as the appointed approved manager of the Premises.
29. National Police Certificate No. NCHRC-2014-20112 dated 12 March 2014: certifying that there are no disclosable court outcomes or outstanding matters recorded against Mr Michael John Anthony Bradley within the records held by Australian Police.
30. Copies of identification for Mr Michael John Anthony Bradley: comprising a current British passport, current NSW driver licence and Medicare card.
31. Plan of the Premises filed with Application: a 2-page diagram of the Premises, being the Basement and Ground Floor, showing the area to which the PSA Application and the ETA Application are sought to apply. This includes the entirety of the licensed area of the Basement excluding the elevator, and in respect of the PSA Application excluding the office area, store room and bathrooms. On the Ground Floor, the ETA Application is sought to apply to the entire licensed area and the PSA Application is sought to apply to the entire licensed area excluding the kitchen, cool room and store room.
32. Plan of the Premises provided by the Applicant on 4 December 2014: clearly indicating a barrier separating the café from the restaurant and noted as "...made of original sandstock brick" ensuring no access through for patrons.

33. Report to the Authority from a delegate of the Secretary of NSW Trade and Investment (Secretary) via the Compliance Division of the Office of Liquor Gaming and Racing (OLGR) dated 6 August 2014: OLGR object to the Applications, citing "several significant concerns" with the Applicant's proposal. In particular, OLGR submits that, as a result of the *Liquor Amendment Act 2014* the granting of new PSAs and ETAs are prohibited within the CBD Entertainment Precinct. OLGR submit that this legislation was extremely well publicised and submit that the fact that the applicant has proceeded to apply for these authorisations despite the freeze is very concerning.
34. OLGR contend that "...it would appear the applicant is seeking to operate the proposed venue more as a bar rather than a restaurant" on the basis of the PSA Application, the ETA Application, the proposal to employ security guards and the proposal to provide entertainment in the form of a DJ or band.
35. OLGR submit that "...it does not appear as though the applicant or the proposed approved manager has the experience" required to operate and manage a large scale licensed premises in an extreme risk precinct. OLGR note that the Applicant has not had five or more years continuous experience as a licensee or approved manager at more than one venue.
36. OLGR submit that a review of OLGR Compliance Division records did not disclose any adverse information in respect of the Applicant or the proposed approved manager, Mr Michael Bradley. However, OLGR state that there is no record of Bradley having any association with any other liquor licence in NSW and submit that Bradley's experience and compliance history in respect to the sale and supply of liquor at a licensed venue could not be determined.
37. OLGR note that the radial density of Sydney is well above the State average and they assess the Location Risk of Sydney as *extreme*. OLGR note that NSW Bureau of Crime Statistics and Research (BOCSAR) data shows that from January 2013 to December 2013, the rate of alcohol related assaults that occurred in Sydney was 4342 per 100,000 persons of population, compared to 344 per 100,000 persons for the whole of NSW. OLGR further note that the rate of alcohol related disorderly conduct offences in Sydney was 2825 per 100,000 persons, compared with 117 per 100,000 persons for the whole of NSW. OLGR submit that the level of alcohol related harm within the Sydney CBD was so prolific that it was one of the primary reasons the Liquor Amendment Act 2014 was created.
38. Environment and Venue Assessment Tool (EVAT) Assessment undertaken by OLGR in respect of the Applications: This assessment assesses the *Location Risk* associated with the Premises as *extreme*. This assessment takes into account, *inter alia*, the rate of alcohol related assaults, the rate of alcohol related offensive behaviour, the presence of late night transport, the risk assessments of Police and Council, the radial density of licensed premises, and the proportion of licensed premises that are high risk and/or late trading, in relation to the location of the Premises.
39. This EVAT assessment rates the *Venue Risk* of the Premises as *high*. This takes into account the proposed type of liquor licence, the maximum number of patrons permitted in the venue, the proposed extended trading hours, Liquor Accord membership and other agreed risk mitigation strategies as condition of licence.
40. Letter from Council to DC Balog & Associates on behalf of the Applicant dated 22 August 2014: Council state that "...the City has no matters of concern with this application" and advise that "...consent has been granted for the change of use of the Premises" subject to the hours of operation outlined at paragraph 27-28 above.

41. Letter from Roads & Maritime Services (RMS) to Mr D. Balog dated 1 April 2014: RMS states that its focus is the relationship between alcohol consumption by all road users, including pedestrians, and road injuries and fatalities. RMS states that within the City of Sydney Local Government Area (LGA) during 2012, there were 29 alcohol-related crashes, resulting in 13 casualties, including two fatalities.
42. RMS request that if the Application is granted, "...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 this be manifested in any approval". They recommend that access must be provided to local public transport information and taxi services, and an ACA breath testing device must be provided at the venue.
43. Google Maps image showing that the Premises is located within the Sydney CBD Entertainment Precinct.
44. Letter from DC Balog & Associates on behalf of the Applicant to the Authority dated 4 December 2014: This letter responds to the Authority's email of 25 September 2014 requiring additional information in relation to the Applications. Attached is a completed Certificate of Advertising, a map and list setting out who was notified during the community consultation stage, a plan of the Ground Floor at the Premises showing barriers separating the café area from the licensed restaurant area, a copy of the Plan of Management for the proposed Premises, and completed part 2 for the Applicant's Category B CIS document.
45. The letter states that the Applicant "...confirms there is no outdoor dining" at the Premises, confirms that the business has development consent to the trading hours specified in the DA and agrees to the standard licence conditions noted by Authority staff in the event that the Applications are granted.
46. The letter states that the Applicant requests that the 6-hour closure period be fixed for the purposes of section 11A of the Act from 1:00am to 7:00am each day.
47. Lot 1 *Plan of Management*: This substantial document addresses various aspects of the proposed operations at the Premises and states that "...our aim is to become one of Sydney's premier venues by uniquely offering three different themed areas to choose from and catering to the varying local needs of the surrounding businesses and city occupants".
48. It is proposed that the café will provide options of an express lunch or an extensive restaurant menu while the restaurant will offer a modern take on Italian and Australian cuisine with an emphasis on quality local New South Wales and Australian produce and a style of service not commonly identified with this type of cuisine in Sydney. An international wine and beverage menu will be compiled by two internationally acclaimed sommeliers which will provide a unique point of difference. The lower level will provide a space for patrons that cannot dine in the ground floor restaurant due to capacity and will have a communal dining feel.
49. The Plan states that "...York Street does not have a multi-use venue such as Lot 1 that can cater for demanding customer needs" and that according to market research, there is a need within the target market of professionals aged between 32-58 yrs who have a disposal income of \$83,500 or more. It is proposed that the Premises will charge 15-20 per cent higher than other venues in the vicinity with a focus on achieving higher margins of profit rather than quantity of sales. The Applicant does not cite the market research in question, nor state whether the higher price points will be in relation to food, alcohol or both.

50. The Plan states that the venue will provide a benefit for the local community by offering a "...great venue and product and securing many jobs for Sydney residents". The Plan states that the design for the Premises will be completed by ENTER Projects with a brief to "...restore 18-20 York Street to its former glory". Photographs are included of equipment that is proposed to be installed, including Slayer espresso machines, a sensory lab of different coffee-brewing mechanisms and decorative hessian sacks of green beans from around the world.
51. The Plan states that it is anticipated that the new restaurant will cover 300-350 patrons per day; high calibre staff will be employed and a top of the range point of sale and reservations systems will be installed. In relation to the lower level of the Premises, the Plan states that "...the fundamentals of our core business involve using this space as an exclusive area for an attracted clientele (*sic*)".
52. The Plan states that a music selection "...focusing on the early era of the 70's, 80's and 90's" will be played at a volume soft enough to have a conversation. Staff working in this area will be trained in-house and must pass knowledge and procedure tests at a rate of 90 per cent to work without supervision.
53. The Plan states that the café will operate from 6:30am until 3:00pm, however the restaurant will aim to capture the lucrative 'business lunch' market within Sydney. The Applicant aims to market the restaurant to businesses such as Westpac, Amex, Commbank and Channel 7, which have high spending potential.
54. It is proposed that the Premises will have around 30-40 employees, each of whom will undertake a thorough training and induction programme and be instructed in customer service, OH&S and selling techniques.
55. The Plan also sets out management controls that will be used to control costs, ensure quality of product and provide friendly customer service. These controls comprise: POS system, reservation system, a time and attendance system, a scheduling system, operations checklists, video surveillance, security and responsible service of alcohol (RSA) measures.
56. In relation to RSA measures, the Plan states that all the NSW guidelines will be implemented with additional "Lot 1 standards" and that key indicators of intoxication will be identified and acted on. Staff will be trained in communicating with an individual who is intoxicated, a breathalyser will be readily available behind the service area for patron use, and signage will be erected.
57. Submission in reply to the OLGR report and the EVAT Assessment from the Applicant dated 4 December 2014: In this letter the Applicant states that "...the venue proposed is an upmarket restaurant with an ancillary upmarket café" and Mr Michael Bradley (proposed operations manager) and Mr Michael Tama (proposed general manager) have a solid background in hospitality.
58. The Applicant submits that the Premises will be enhanced by the promotion of a new dedicated luxury roasted coffee brand to be introduced mid next year, building on the Applicant's background as a leading coffee roaster and distributor. The Applicant submits that the Premises is intended to be the flagship restaurant which will play a crucial role in marketing and exposure for the company.
59. The Applicant submits that market research shows that coffee alone is not enough for consumers and the proposed Premises will meet the demand.

60. The Applicant states that the completion of building works at the Premises [is] anticipated to be in approximately six weeks (ie mid-January 2015) and that a final Occupation Certificate will then be obtained from Council.
61. The Applicant contends that the OLGR report in relation to the Premises is fundamentally flawed in that the temporary freeze on licences and other authorisations does not apply to licensed restaurants which is the current application. The Applicant contends that this submission taints the whole application and that the Premises is in fact proposed to be a luxury dining establishment.
62. Attached to this submission is a copy of the menu for Lot 1 and a 1-page document summarising the proposed business plan for the Premises and outlining the Applicant's background. It is stated that "...recently the Di Stefano brand has opened up franchises in the lucrative China market to critical acclaim" and that "...the brand was further showcased" through "...a licensed restaurant situated in Homebush and other smaller espresso bars in the suburbs of Sydney".
63. Curriculum Vitae of Michael Tama: disclosing that Mr Tama's recent work experience includes General Manager at Lot 1 from June 2014 to the present; General Manager at Dipres Pty Limited (described as a 'division from the Coffee Warehouse') from 2013 to the present; General Manager at CWCD Licensed Venue from 2011 to 2014; Director/Proprietor at Qui Ristorante Café from 2007 to 2011; and Bars Manager at Sofitel Wentworth Sydney in 2006.
64. Curriculum Vitae of Michael Bradley: disclosing that Mr Bradley's recent work experience includes Operations Manager at Lot 1 from April 2014 to present; Manager at CWCD Licensed Venue from March 2012 to April 2014; Licensee and General Manager at The Olive Press Restaurant and Bar (in Cheshire, UK) from March 2009 to December 2010; and Manager at Gusto Restaurant (in Manchester, UK) from September 2004 to March 2009.
65. Submission from NSW Police Sydney City Local Area Command (Police) dated 2 July 2014: This submission was received by the Authority on 18 February 2015 following a request by the Authority on 11 February 2015 for Police's response to the PSA Application and ETA Application. Police informed the Authority that a submission had been prepared in July 2014 but had *not* been sent to the Authority in error.
66. Police note that the Premises is located within an Alcohol Free Zone (AFZ) and near an Alcohol Prohibited Zone (Wynyard Park) in the Sydney CBD Entertainment Precinct. Police submit that these zones have been "...implemented in an attempt to control alcohol-related crime, street offences, anti-social behaviour and public drinking". A map showing licensed premises within the Sydney CBD Entertainment Precinct is attached, with a list of 15 venues which comprise some of the ever increasing number of establishments which sell or supply alcohol within a short distance of each other.
67. Police provide BOCSAR crime maps indicating that the Premises is located within high density hotspots for the concentration of non-domestic assault and assault police incidents which occurred during the period from October 2013 to September 2014.
68. Police also highlight data provided by the NSW Police *Alcohol Related Crime Information Exchange* database (ARCIE) for the period between 1 February 2014 and 31 January 2015. This discloses that within the Sydney City Local Area Police Command (LAC), 51 per cent of all assaults during this period were recorded as alcohol related (ie, a total of 893 alcohol related assaults) and 34 per cent of all domestic violence incidents were recorded as alcohol related (ie, a total of 309 alcohol related domestic violence incidents).

69. Police also refer to a 2011 BOCSAR report entitled '*The Association Between Alcohol Outlet Density and Assaults on and Around Licensed Premises*' which provides details of a study conducted during 2011. Police quote the report, which states that within the Sydney City LAC, "...assaults were found to be highly concentrated around licensed premises" and that "...more than half of the assaults recorded by Police in the Sydney CBD occur within 50 metres of a liquor outlet". Police submit that the report states that this study found that "...each additional alcohol outlet per hectare in the Sydney LGA will result, on average, in 4.5 additional assaults per annum".
70. Police submit that they do not object to the grant of the On-Premises Application, however they do object to the PSA Application and the ETA Application. Police state that they have in recent times observed a number of premises in the Sydney City LAC operating under an On-Premises Licence with a PSA which turn their business model and primary purpose of a restaurant/café into a bar/nightclub.
71. Police submit that in light of the current freeze on Hotel and bar licences within the Sydney CBD this option has become an attractive alternative approach and is a great concern for Police.
72. Police state that their objection is also based on a high concentration of late trading licensed premises within the immediate vicinity of the Premises and the level of violence being experienced around those late trading venues. They contend that granting the ETA Application may contribute to this high level of violence.
73. Police note the absence of a Security Management Plan for the Premises despite the Applicant seeking trading hours during the high risk period and submit that Police have not been provided with details of the Applicant's approach to tackling or reducing incidents of violence within the Premises or the vicinity of the Premises.
74. Police contend that during a meeting with the Applicant on 17 June 2014, the Applicant stated to Police that he wishes to sell shots on the premises. Police argue that this contradicts the restaurant theme/ambience and reflects more of a general bar – particularly given the large patron capacity of 400 and the proposal to engage a DJ at the Premises.
75. Police submit that in light of this intention, the Premises may contribute to incidents of violence currently being experienced within the local community and therefore may have a significant impact on public safety.
76. Police request that if the ETA Application and/or the PSA Application is granted, that conditions be imposed upon the licence for the Premises requiring that, *inter alia*:
 - a CCTV surveillance system be installed at the Premises
 - the licensee join and be an active participant in the local liquor accord
 - crime scene preservation practices be observed
 - the licensee at all times operate/manage the Premises in accordance with the Plan of Management
 - the Premises not be "themed or operated" as a nightclub
 - no shots or similar drinks be sold or supplied
 - that no alcoholic drinks be sold or supplied to any patron within half an hour of closing time
 - an adequate queuing system be implemented at the main entrance to the Premises.

77. Response from the Applicant to the submission from Police dated 23 April 2015: The Applicant submits that given the submission from Police is dated 2 July 2014 little weight should be given to it arguing that this delay significantly detracts from the veracity of the submission.
78. The Applicant submits that the Police submission pays no regard to the material supplied by the Applicant in relation to the Applicant's background, experience and the details of the proposed management of the Premises. The Applicant submits that the Police response is based on a general assessment of establishments serving alcohol and is not correlated in any manner to the type of restaurant business being operated by the Applicant.
79. The Applicant contends that the Police submission invites the decision maker to assume a worst case scenario and worst performance scenario for the applicant. The Applicant submits that the ETA Application "...is only for Thursday, Friday and Saturday until 1:00am" and should not be subject to a trial period.
80. The Applicant contends that its submission in reply dated 4 December 2014 dealt with all the matters raised against the Applicant and that these matters have not been addressed or responded to in the LAC Response.
81. The Applicant refers to section 79(2) of the Liquor Regulations 2008 which provides that "...Division 1A of Part 4 of the Act does not apply to or in respect of CBD subject premises that are tourist accommodation establishments (other than a club) or a licensed restaurant". The Applicant submits that the mere fact that it seeks either or both a PSA and/or ETA does not reflect that what is being sought is a bar.
82. The Applicant contends that the Police submission appears to invite the decision maker to make a presumption against the Applicant's ability to serve alcohol responsibly or in relation to the number and location of other establishments which bear no comparison to the Applicant's proposal.
83. The Applicant submits that the Police submission fails to recognise that Sydney is a world class destination and diners at the Premises will have international experience or work for international corporations and therefore to "...survive in the market place, the Applicant must be vigilant with regard to the implementation of the Plan of Management.
84. The Applicant contends that the suggestion that an extra hour of trade on three nights of the week would somehow incite adverse alcohol related consequences has no basis in fact and shows bias against the Applicant.
85. The Applicant submits that the benefit of a PSA will result in a more relaxed service for patrons of the Premises, allowing them to feel as though they need not rush to finish their drinks and beverages. The Applicant argues that this will in fact control any alcohol related problems and create a safer environment.
86. The Applicant proposes a 12-month good behaviour period in which the PSA would be granted subject to compliance.
87. The Applicant explains and describes its proposal for the ambience and design of the restaurant in similar terms to its submission dated 4 December 2014, and further submits that the Premises will use 24 CCTV cameras, four plain clothed and visible security guards plus more on busy days and a state of the art zoned alarm system.
88. Authority licensing records indicating the addresses of other hotel, on-premises and other nearby licensed businesses within the City of Sydney LGA. This data indicates that

there are a total of 1607 on-premises licences within this LGA, as well as 35 registered club licences, 303 full hotel licences, 51 general hotel licences, 153 packaged liquor licences and 129 producer wholesale licences (a total of 2278 liquor licences). More than 400 of these licences are recorded as being located within one kilometre of the Premises, many of which have extended trading authorisations.

89. Authority licensing data indicating that liquor licence density per 100,000 persons of population within the Sydney postcode 2000 is 114.23 for on-premises licenses, slightly below the NSW rate of 121.31. The density of hotel licences within the postcode 2000 is 35.15 per 100,000 persons, slightly higher than the NSW rate of 30.36. The density of club licences within postcode 2000 is also slightly lower than the NSW rate, at 13.18 compared with 20.48 per 100,000 persons. The density of packaged liquor licences in postcode 2000 is 17.57 per 100,000 persons, also lower than the NSW rate of 32.85.
90. BOCSAR crime mapping data for October 2013 to September 2014: revealing that the Premises is located within a large high density hotspot for the concentration of *domestic assault* incidents, *non-domestic assault* incidents, *alcohol-related assault* incidents and *malicious damage to property* incidents.
91. BOCSAR crime data for calendar year 2013 detailing rates and incidences of offences for the Sydney LGA compared to NSW as a whole. This data indicates that in the suburb of Sydney during 2013, the proportion of recorded incidents of *non-domestic assault* was significantly higher during the period from 12:00 midnight to 6:00am on Sunday than other times of the week. The next most concentrated time period for the occurrence of these offences was the period from 12:00 midnight to 6:00am on Saturday, followed by the period between 6:00pm and 12:00 midnight on Saturday evenings.
92. This report discloses that the occurrence of *offensive conduct* incidents in the suburb of Sydney is similarly heightened during late trading hours, with the greatest proportion of these events over the course of the week occurring between 12:00 midnight and 6:00am on Sunday. An elevated proportion of these incidents were also recorded between 12:00 midnight and 6:00am on Saturday, after which the concentration of these incidents falls away in other time periods.
93. The recorded occurrence of *exceed PCA*, *assault police*, *domestic violence assault* and *malicious damage to property offences* during 2013 were all most prevalent during the time period between 12:00 midnight and 6:00am on Saturday or Sunday.
94. BOCSAR Report on *Crime by LGA and Alcohol Related Status* for calendar year 2013. This report records *rates* of alcohol related offences which occurred in each LGA and on average across NSW. It indicates that during calendar year 2013, the rate per 100,000 persons of *alcohol related domestic assault* incidents in the Sydney LGA was 236.0 - much higher than the NSW rate of 137.3 per 100,000 persons. The rate of *alcohol related non-domestic assault* incidents in the LGA was 1019.8 per 100,000 persons, much higher than the rate of 181.0 per 100,000 persons across NSW as a whole. The rate of *alcohol related assault police* incidents in this LGA was 112.4, compared with 22.6 per 100,000 persons across NSW as a whole. The rate of *offensive behaviour* incidents in this LGA was 881.3 per 100,000 persons, much higher than the rate for NSW as a whole which was 116.0.
95. BOCSAR *Report on Crime for the Sydney LGA* for calendar year 2013.
96. BOCSAR *Report on Crime for New South Wales* for calendar year 2013.
97. Socio Economic Index for Areas (SEIFA) data published by the Australian Bureau of Statistics (ABS) indicating that the suburb of City of Sydney LGA ranked in the Ninth

decile within the State on the Index of Relative Socio-Economic Advantage and Disadvantage (with a decile ranking of 10 being the most advantaged). The suburb of Sydney and the postcode 2000 area both ranked in the Seventh decile.

STATUTORY OBJECTS AND CONSIDERATIONS

98. The power to grant a primary service authorisation is provided by section 24(3) of the Act, which states, relevantly to the PSA Application:

24 *On-premises licence – sale or supply of liquor must be with or ancillary to other product or service*

(3) **Authorisation to sell or supply liquor without other product or service**

Despite subsection (1), the Authority may, on application by the holder of an on-premises licence, endorse the licence with an authorisation that allows liquor to be sold or supplied for consumption on the licensed premises otherwise than with, or ancillary to, the other product or service referred to in that subsection.

Note. Section 51 applies to any such authorisation.

- (3A) *However, the other product or service must be available on the licensed premises at all times while the authorisation operates to allow liquor to be sold or supplied otherwise than with, or ancillary to, the product or service.*

99. The power to grant an extended trading authorisation to a licensed premises is provided by section 49(2) of the Act, which states, relevantly to the ETA Application:

49 *Extended trading authorisation – general provisions*

(1) **Application of section**

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

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

(2) **Extended trading authorisation for consumption on premises**

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

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

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

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

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

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

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

- (a) *the extended trading hours during which the licensee is authorised to sell or supply liquor, and*
- (b) *the part or parts of the licensed premises to which the authorisation applies.*

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

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

- (a) *practices are in place, and will remain in place, at the licensed premises that ensure as far as reasonably practicable that liquor is sold, supplied or served responsibly on the premises and that all reasonable steps are taken to prevent intoxication on the premises, and*
- (b) *the extended trading period will not result in the frequent undue disturbance of the quiet and good order of the neighbourhood of the licensed premises.*

100. 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.

101. Section 48 of the Act states:

48 *Community impact*

...

(2) *In this section:*

relevant application means any of the following:

- (b) *an application under section 59 for approval to remove a hotel licence, club licence, small bar licence or packaged liquor licence to other premises.*

(3) *A relevant application must be accompanied by a community impact statement.*

...

(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.

102. In determining the Application, the Authority 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.*

REASONS

103. While the Authority has granted the Licence Application pursuant to section 45 of the Act, on the material before it, the Authority is *not* satisfied for the purpose of section 48(5) of the Act, that the overall social impact of endorsing the licence with a primary service authorisation or an extended trading authorisation would not be detrimental to the local and broader community.

104. For this reason, the PSA Application is refused pursuant to section 24(3) of the Act and the ETA Application is refused pursuant to section 49(2) of the Act.

Local and Broader Community

105. As noted in *Authority Guideline 6: Consideration of Social Impact*, the Authority will identify the relevant local community by reference to the locality in which the proposed licensed premises is situated, while the broader community will usually be the local government area in which the proposed licensed premises is situated.
106. For the purposes of this decision, the Authority is satisfied that the relevant local community is the community within the state suburb of Sydney, while the relevant broader community comprises the City of Sydney LGA.
107. The Authority is aware that BOCSAR have very recently, during April 2015, published crime reports based upon data for the 2014 calendar year. These Applications have been determined on the basis of the annual reports published for 2013, to which the Authority had access when considering the Applications at its meeting on 30 April 2015 and to which the Applicant and submitters had access during the course of the Application.

Overall Social Impact

108. Determining the overall social impact upon a local and broader community of granting the Applications before the Authority requires a degree of speculation about what is likely to occur should the Application be granted - the likely benefits and the likely negative impacts - albeit speculation that is informed by what is known about the Applicant's proposal, the material before it and relevant information concerning the local and broader communities in question.

Positive Benefits

109. The Applicant's primary contention is that granting the Applications will allow the Premises to operate as a multi-use venue which "...York Street does not [currently] have". The Applicant submits that the PSA Application will allow the Applicant to provide a more relaxed service, as diners will need not rush to other bars or hotels for a post-dinner drink, and that this will have the benefit of allowing the Applicant to control alcohol related problems associated with this behaviour and create a safer environment. The Applicant contends that granting all three Applications will enable the Premises to become a luxury dining establishment. The Applicant submits that its proposed new licensed premises will have the designated primary purpose of a restaurant and that in making the ETA and PSA Applications this should not be assumed to signify that the Applicant intends to operate the Premises in the mode of a bar or nightclub.
110. The Applicant further contends that the Premises will offer the benefits of a high calibre of staff who will be employed at the Premises, an international wine menu compiled by two internationally acclaimed sommeliers providing a unique point of difference, and a modern take on Australian and Italian cuisine with a style of service not commonly identified with this type of cuisine in Sydney.
111. The Applicant's Business Plan of Management and subsequent reply to submissions contain substantial detail regarding the management operations of the Premises, the intended aesthetics and ambience of the Premises, the target market of "...professionals aged between 32-58 years who have a disposal income of \$83,500 or more", and the Applicant's method for capturing that market by focusing on achieving higher margins of profit rather than quantity of sales.

112. However, despite this detail, the Applicant has provided little by way of evidence that there is in fact an unmet *need*, as it claims, for a venue providing the kind of food, beverages, atmosphere and service proposed at this location, during extended trading hours or that a primary service authorisation is required to deliver the kind of restaurant that it intends to provide on the Premises.
113. The Applicant suggests that demand for its proposed business model is indicated by market research, but does not specify the source of this research or substantiate these assertions and demonstrate how granting the PSA Application and ETA Application will advance the needs, aspirations and expectations of the local or broader community in a way that granting the Licence alone will not.
114. The Applicant contends that the PSA Application will complement the atmosphere provided by the Premises, characterised by carefully selected music and décor, by giving patrons the flexibility to remain at the Premises post and pre-dinner.
115. However, the Applicant provides little further explanation or analysis of how specifically the PSA Application or the ETA Application will enable the Applicant to better meet the asserted need for a licensed restaurant of the kind proposed.
116. In particular, in circumstances where the Premises is located within an extremely well-serviced area in terms of both expensive and inexpensive licensed restaurants, and licensed premises including hotels, general bars and registered clubs, the Applicant has offered little by way of explanation as to *how* the Premises will be different to those other licensed premises in this regard.
117. The Applicant has not substantiated its claim that its style of service is not commonly identified with the modern cuisine offered by the Premises. It has not been explained how, once the restaurant has been licensed (as it now has been) the style of restaurant (a café by day and restaurant by night) requires the premises to be licensed to sell or supply liquor beyond standard trading hours, or sell or supply liquor to patrons whether or not they consume a meal. With the grant of the Licence, this proposed high end restaurant will be able to sell or supply liquor during the day to café customers consuming a meal, or to restaurant customers consuming a meal.
118. Given the lack of explanation or evidence substantiating the case for the grant of the PSA and ETA Applications, particularly in light of the great many licensed premises within one kilometre of the Premises that may sell or supply liquor without a meal, it is difficult to give much weight to the Applicant's submission that the style of restaurant proposed requires approval of the PSA Application or the ETA Application in order to advance the unmet expectations, needs and aspirations of the local or broader communities.
119. The Authority is satisfied that granting the Applications would provide some additional convenience for the kind of clientele targeted by the Applicant, who often patronise luxury dining establishments in the Sydney CBD area and who often desire to remain on premises for pre- or post-dinner drinks.
120. However, the extent of increased convenience to the community in respect of granting the PSA Application is constrained by the great many other venues in the local and broader community that patrons just looking for a drink may patronise in close proximity to the Premises.
121. The extent of increased convenience to the community in respect of granting the ETA Application is similarly constrained by the great many other licensed restaurants and

other venues in the local and broader community that patrons may attend during extended trading hours.

122. While the Authority is satisfied that granting the Applications may likely result in significant benefits for *this* licensed business, in that its profits would likely be increased from additional sales of products charged at "15-20 per cent higher" than in other venues, the Authority is not satisfied on the basis of the material and explanations provided by the Applicant that it has substantiated how the expectations, needs or desires in respect of venue choice are not being met by the incumbent licensed premises in the local or broader community and how those objects of the Act will be advanced by approving the PSA and ETA for this particular licensed premises.

Negative Impacts

123. The Authority notes that Police object to the Application, primarily on the basis of the ever increasing number of establishments which sell or supply alcohol within a short distance of each other in the Sydney CBD Entertainment Precinct. Police contend that granting the Applications may have a significant impact on public safety due to the proven association between liquor outlet density and incidents of assault.
124. The Authority notes that OLGR also object to the Applications, primarily due to the substantial scale of the Premises, with a patron capacity of 400, and the prevailing level of alcohol related harm within the Sydney CBD.
125. The Authority notes that Council do not object to the Applications and that development consent is in place for the operation of the Premises in the manner sought by the Applications. That is, the venue may operate, for planning purposes, as a licensed restaurant and café during the hours specified in the DA.
126. *Authority Guideline 6* places licence applicants on notice that the Authority will closely consider the location of a licensed business, in addition to the licence type, trading hours, scale of the business and any countermeasures proposed that go over and above the minimum requirements of legislation.
127. The Authority is satisfied that the Premises is a medium scale venue, spanning two floors and accommodating 400 patrons. The Authority is satisfied, on the basis of material provided with the Applications that the Applicant has given substantial consideration to the management operations of the Premises, however the Authority is concerned that the same level of consideration has not been given to risk mitigation strategies as has been given to customer service or the style and décor of the Premises.
128. The Authority notes that in its most recent submission the Applicant describes security measures as including "...24 CCTV cameras, four plain clothed and visible security guards plus more on busy days and a state of the art zoned alarm system".
129. However, the Authority considers that the Applicant's Business Plan of Management focuses more on matters pertaining to customer service and brand promotion than on the risk of alcohol related harm arising as a result of the Applications being granted.
130. In light of the substantial scale of the Premises and its location in an area that is still experiencing relatively high rates of alcohol related crime, the Authority is not satisfied that sufficient measures will be in place at the Premises to ensure that this venue does not detract from the amenity of community life should the ETA Application and PSA Application be granted to operate throughout the hours proposed by the Applicant.

131. The Authority accepts the Applicant's submission that it cannot be assumed that applications for a primary service authorisation and an extended trading authorisation indicate an intention to operate a licensed restaurant as a bar or nightclub.
132. The Applicant is correct to submit that premises licensed as restaurants or accommodation venues are exempt from the Sydney CBD Entertainment Precinct requirements of the Act which would otherwise prevent the grant of an extended trading authorisation or primary service authorisation.
133. However, the Authority accepts as credible the submission from Police that the potential use of such authorisations to enable licensed venues in the Sydney CBD Freeze Precinct to sell or supply liquor late in the evening and/or very early in the morning is "...a great concern for Police". That concern as to social impact is objectively supported by crime data indicating that the occurrence of assaults and other alcohol related offences is elevated during the late hours in which the Applicant proposes these authorisations will be in operation.
134. The Authority is concerned that if the PSA and ETA Applications are granted, a minority of patrons of the Premises, whether of the target higher socio-economic demographic or not, will be likely to utilise the Premises as a bar rather than a restaurant. This is especially likely to be the case outside of peak dining hours. Patron migration in this area is facilitated by the range and number of other licensed premises in the Sydney CBD.
135. Whether or not it is the subjective intention of the Applicant to be able to operate in the mode of a bar during late hours (and the provision of DJ entertainment and the absence of any restriction on the sale of liquor types during late hours provides some indication of this) the Authority is satisfied that this will more likely than not be the outcome of granting both these authorisations during the higher risk later trading hours sought by the Applicant.
136. The Authority is satisfied that granting the PSA and ETA Applicant will greatly expand the scope for this new licensed business to operate beyond its stated core business as a café and restaurant and to operate, in some substantial respects, in the mode of a bar – particularly during late hours.
137. This will substantially increase the scope for patrons migrating to or from the Premises during late hours to contribute to the prevailing high rates of alcohol related crime and misconduct experienced in the local and broader community and to which recent legislative reforms have been addressed, or to engage in alcohol related acts of disturbance in the local community whether or not it rises to the level of criminality. Patrons utilising the primary service authorisation may consume liquor without a meal, and the extended trading authorisation will enable this to occur into higher risk times of the week, posing an increased risk to patrons and staff alike.
138. In these circumstances and noting that the benefits of the proposed restaurant will be substantially delivered by granting the Licence Application, the Authority is not satisfied that also granting the ETA and the PSA for the hours and licensed area sought would not ultimately be detrimental to the local and broader community.

CONCLUSION

139. Having considered together the Authority's findings on positive benefits and negative impacts, the Authority is *not* satisfied, for the purposes of section 48(5) of the Act, that the overall social impact of granting the PSA and ETA Applications in respect of this licensed business would not be detrimental to the well-being of the local community.

140. In making this decision, the Authority has considered all of the statutory objects and considerations prescribed by section 3 of the Act, but has given weight to subsection 3(2)(a) – the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour) and subsection 3(2)(c) – the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.

DATED: 30 June 2015