



Mr Tony Brenton
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Dear Mr Brenton

**Application for an Extended Trading Authorisation
Vicinity Dining, Alexandria**

I am writing to you about an application (Application) made by your client, Prospero Group Bourke Road Pty Limited to the Independent Liquor and Gaming Authority on 24 February 2015, seeking an extended trading authorisation for premises known as "Vicinity Dining", located at 90-96 Bourke Road, Alexandria (Premises).

The Authority considered the Application at its meeting on 27 July 2015 and has decided, pursuant to section 49(2) of the Act, to *approve* the Application but *only* with respect to the grant of extended trading hours on Sunday to 12:00 midnight (with such extended hours to also apply to the existing Primary Service Authorisation but with respect to the indoor areas of the Premises only).

An Authority staff member provided informal advice of the outcome of the Application in an email dated 4 August 2015. This letter provides the formal decision and reasons.

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*. This letter attaches the statement of reasons for the Authority's decision to grant the Application. 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.

The detailed conditions subject to which the extended trading authorisation is granted will be set out in the *OneGov* record of the liquor licence, to be provided separately by staff assisting the Authority.

If you have any enquiries about this letter, please contact the case manager, Ms Trudy Tafea via email at trudy.tafea@ilga.nsw.gov.au.

Yours faithfully

Micheil Brodie
Chief Executive

23 NOV 2015

STATEMENT OF REASONS

INTRODUCTION

1. On 24 February 2015, the Independent Liquor and Gaming Authority (Authority) received an application (Application) lodged by liquor consultant Mr Tony Brenton on behalf of Prospero Group Bourke Rd Pty Limited (Applicant), the business owner of the licensed business known as "Vicinity Dining" which operates on premises located at 90-96 Bourke Road, Alexandria (Premises).
2. The Application seeks the approval of an extended trading authorisation (ETA), within the meaning of section 49(2) of the *Liquor Act* 2007 (Act), for the Premises.
3. The Premises is currently licensed with an on-premises licence, the designated primary purpose of which is a "restaurant". The Premises is currently licensed to sell or supply liquor for consumption *on* the Premises in both the indoor and outdoor areas of the Premises between 10:00am and 12:00 midnight Monday through Saturday and between 10:00am and 10:00pm on Sunday.
4. The Premises also has the benefit of an authorisation previously granted to it under section 24(3) of the Act (Primary Service Authorisation) which currently applies during the current trading hours with respect to both its indoor and outdoor areas between the hours of 10:00am and 12:00 midnight Monday through Saturday and between 10:00am and 10:00pm on Sunday.
5. The Application, in its amended form, proposes that the Premises be licensed to sell or supply liquor for consumption *on* the Premises during the extended trading hours. Were the Application to be granted, the Applicant seeks that the Premises be licensed during the following hours:

Monday to Saturday	10:00am – 2:00am
Sunday	10:00am – 12:00 midnight.
6. The Applicant had initially sought that the Primary Service Authorisation also be extended to operate during the entirety of the extended trading hours sought.
7. However, during the course of the Application, the Applicant consented to a Police proposal that after the hours of 12:00 midnight Monday through Saturday and after 10:00pm on Sunday, the Primary Service Authorisation only apply to the *indoor* areas of the Premises. Police also proposed that the Application, if granted, only apply for a 2-year trial period.
8. The Application also seeks that the 6-hour daily closure period required by section 11A of the Act be fixed at between 4:00am and 10:00am daily.

MATERIAL BEFORE THE AUTHORITY

9. Application Form for ETA and Community Impact Statement (CIS) filed with the Authority on 24 February 2015. In the Application Form, the Applicant seeks to extend the trading hours of the Premises to 2:00am on the morning following Monday through Saturday evening trade and to 12:00 midnight on Sundays, with the 6-hour daily closure period fixed at between 4:00am and 10:00am. The Applicant also proposes that the extended trading hours sought would also apply to the Primary Service Authorisation that is currently in effect on the Premises.

10. The Applicant contends that all staff of the licensed business have completed the relevant Responsible Service of Alcohol (RSA) course, are "fully aware of their responsibilities" under the Act and will ensure liquor is served responsibly to prevent intoxication and incidents of anti-social behaviour.
11. The Applicant contends that the licensed business has operated "for the past two years and never had an incident involving intoxication or anti-social behaviour"; that the policy of making an announcement prior to closing time "advising patrons to leave the Premises quickly and quietly and not disturb the quiet and good order of the neighbourhood" will continue to be implemented; that the licensed business displays a sign at the "entry and exit doors advising patrons to leave the Premises quickly and quietly and respect the neighbours"; and that staff of the business will "also advise patrons to leave the Premises in a quiet and orderly manner".
12. The Applicant submits that Development Approval (DA) number D/2011/930/B for the Premises, which was granted by City of Sydney Council on 7 February 2014, allows for extended trading hours.
13. The Applicant contends that entertainment will be provided at the Premises during the extended trading hours in the form of "light background music" with the "occasional duo performing the entertainment from time to time". The Applicant contends that all entertainment during the extended trading hours will be "in the indoor area only".
14. The various contentions and submissions made by the Applicant in the CIS document regarding the overall social impact of granting the Application are discussed in further detail below.
15. Copies of stakeholder notices notifying various stakeholders of the Application as required by the liquor legislation, including Police and Council; as well as the site notice placed on the Premises.
16. Plan of the Premises. This one page document provides a detailed image of the fit-out of the Premises, including the boundaries of the licensed area and the Primary Service Authorisation.
17. Plan of Management for the operation of Vicinity Bar and Dining dated 21 November 2014. The Applicant states in this eight-page document that its purpose is to "establish performance criteria" for the operation of the Premises. The Plan of Management also discusses, *inter alia*, the hours of operation; signage; amenity of the neighbourhood; noise management; behaviour of patrons and responsible service of alcohol; "venue management/senior staff; deliveries and waste removal; maintenance; removal of liquor in open containers; the "house policy" and amendments to this document.
18. In the Plan of Management the Applicant contends, *inter alia*, that the hours of operation are 10:00am to 2:00am Monday through Saturday and 10:00am to 12:00 midnight Sunday; that staff will "take all reasonable measures to ensure that impacts adverse to the surrounding area do not occur"; that staff will "physically monitor the surrounding environs of the Premises" to ensure the entrance and exit of patrons "does not affect the amenity of the neighbourhood"; that the use of the Premises shall not "result in the LA10 noise level being emitted"; that staff will ensure that "there is no loitering in the vicinity of the Premises"; that incidents will be recorded in the Management Log Book; that CCTV cameras are installed; and that patrons will be prevented from "leaving the Premises with liquor in opened containers" and glasses.

19. The Applicant also contends in the Plan of Management that all staff will have completed an approved RSA course; that a register will be maintained containing copies of staff RSA certificates; that the Premises will not engage in "any liquor promotion that is likely to promote irresponsible service of liquor"; that alcohol will not be served to intoxicated patrons; that the Premises will refuse entry to any person who is intoxicated; that the service of non-alcoholic beverages and food will be promoted; that staff will arrange taxis to collect patrons when requested; that "boisterous" and "disruptive behaviour" will not be tolerated; that no person under the age of 18 shall be served liquor; that identification will be required to be shown where "age is an issue"; and that "substantial food options, low alcohol beer and non-alcoholic beverages will be available at all times when full strength liquor is available".
20. Vicinity Dining House Policy for the Responsible Service of Alcohol. This 1-page document sets out the practices to be implemented by the Applicant at the Premises "to allow for the responsible service of alcohol at all times". The House Policy discusses, *inter alia*, "preventing underage drinking", "preventing intoxication", "preventing intoxicated, disruptive and anti-social behaviour" and "preventing drinking and driving".
21. The Applicant further contends in the House Policy that intoxicated patrons will be refused admission to the Premises and service of alcohol; that the Premises will "support and actively promote initiatives to minimise drink driving"; that patrons suspected of being under the age of 18 will be required to provide identification; that patrons will be requested upon leaving the Premises to do so in a "quiet and orderly manner, taking due regards to the local residents to ensure the quiet and good order of the neighbourhood is maintained"; and that staff will seek to discourage patrons from driving "if they appear to be over the limit".
22. Email from Authority staff to liquor consultant Mr Tony Brenton on behalf of the Applicant dated 6 March 2015 informing the Applicant that the plan of the Premises submitted with the Application does not match the approved plans and that it must be amended to show the correct licensed boundary.
23. Submission from Mr Brenton on behalf of the Applicant dated 10 March 2015. In this email, the Applicant provides Authority staff with the amended plan as requested in the email dated 6 March 2015.
24. Amended Plan of the Premises. This 1-page document provides a detailed image of the fit-out of the Premises, including the boundaries of the licensed area in blue.
25. Notice of intention to apply for a liquor licence or a licence authorisation dated 12 January 2015 containing details of the Application and who to contact to provide comment and/or to seek further information.
26. Notification Map identifying the 100-metre radius from the Premises in which the Applicant has distributed notification of the Application.
27. Submission from Mr Nick Pitchuev, Licensed Premises Coordinator, Health and Building, City of Sydney Council (Council) dated 11 March 2015. In this letter, Council advise that they have "no matters of concern with this Application". Council submit that DA number D/2011/930/B for the Premises was modified to impose the following conditions including, *inter alia*, that the indoor and outdoor areas of the Premises may be used between 6:00am and 2:00am for a "trial period of two years from 7 February 2014"; that a further application may be lodged to continue the trial period; that security guards must be provided at the Premises on Thursday to Saturday from 10:00pm "at a minimum ratio of 1 security staff member to 100 patrons"; that the maximum capacity of persons

permitted in the Premises is 276 patrons, which includes a maximum internal capacity of 203 patrons and a maximum external capacity of 73 patrons; and that the primary purpose of the Premises "is as a restaurant" with the kitchen being open and meals available "at all times during the approved hours of operation".

28. Email Submission from Senior Constable Phillip Tucker of the Redfern Local Area Command (LAC) of NSW Police (Police) to the Authority dated 3 June 2015. In the covering email to the attached submission from Senior Constable Tucker, Police state that they do not want the restaurant to "transform into a late night bar".
29. Submission from Senior Constable Phillip Tucker of the Redfern Local Area Command (LAC) of NSW Police (Police) to the Authority dated 13 March 2015. In this submission, Police acknowledge that the Premises currently operates "as a restaurant and bar with indoor and outdoor seating" with "existing approved trading hours of 10:00am to 12:00 midnight Monday through Saturday and 10:00am to 10:00pm Sunday". Police also acknowledge that DA number D/2011/930/B is currently in force, which permits hours of operation for the Premises until 2:00am "for a trial period of two years from 7 February 2014".
30. Police submit that there have been "no complaints about the operation of the business that Police are aware of" in the past two years and that they have spoken with the contact person of the organisation as well as visiting the Premises to conduct a walk-through.
31. Police contend that granting this Application "may lead to further applications of this type" resulting in "2:00am on-premises licence being the norm rather than the exception in this area".
32. Police acknowledge the liquor licence freeze that has applied to parts of the City of Sydney since June 2009 and contend that although the Premises does not fall within the parameters of these restrictions, "the restrictions are worthy of consideration as the licence does lie immediately to the south in what is a fast developing suburb both residentially and industrially".
33. Police contend that the current 12:00 midnight closing time "adequately serves the demand for restaurant service and any such extension would be primarily for the continued service of alcohol". Police also contend that they are unaware of any "community demand in this area for restaurant service beyond midnight" and that they do not consider that there is "any demand beyond midnight associated with the Mascot Airport" as stated in the Application.
34. Police object to the Application but request that if the Application is to be granted, the following four conditions be imposed on the licence in addition to the 18 conditions contained in DA number D/2011/930B:
 - a) that any person seen drinking or carrying an alcoholic beverage on approach to the venue "must not be permitted to enter"
 - b) that between the hours of 12:00 midnight and 2:00am "no more than 2 alcoholic drinks can be sold to the same person at a time"
 - c) that after 12:00 midnight Monday to Saturday and 10:00pm Sunday, the "PSA apply to indoor areas only"
 - d) that the granting of the Application be restricted to a 2 year trial period.
35. Report to the Authority dated 9 June 2015 from a delegate of the Secretary of NSW Trade and Investment (Secretary) via the Compliance and Enforcement Division of the Office of Liquor, Gaming and Racing (OLGR). OLGR acknowledge the current trading

hours of the Premises and note that the Application seeks to allow the Premises to trade until 2:00am Monday to Saturday and 12:00 midnight Sunday and to have the existing Primary Service Authorisation extended to correlate with the new ETA if granted.

36. OLGR also acknowledge that Council do not object to the ETA Application but Police object and request that further conditions be imposed should the Application be granted. OLGR also acknowledge that the primary purpose of the Premises "is the sale or supply of food with liquor being an ancillary provision".
37. OLGR contend that the State suburb of Alexandria has a "mild concentration of alcohol-related antisocial behaviour when compared against the State average" and that the Premises is located within very close proximity to "two separate yet significant and highly problematic" alcohol-related hotspots, being the Sydney CBD Entertainment Precinct and Newtown.
38. OLGR submit that the Authority must remain vigilant in granting applications and contend that such application can "become particularly problematic where there is a change in business model/operation, management or owners". OLGR contend that the venue does not have "a genuine need for an ETA until 2:00am Monday to Saturday and 12:00 midnight Sunday" or a need to "extend the existing PSA so that it correlates with the ETA".
39. OLGR object to the Application being granted on the ground that it "cannot be satisfied that the overall social impact of the ETA will not be detrimental to the local and broader community".
40. OLGR note that the "radial density of licensed venues in Alexandria is above the State average". OLGR refer to data published by the NSW Bureau of Crime Statistics and Research (BOCSAR) and contend that even though the data indicates that the suburb of Alexandria appears to have a "mild concentration of alcohol-related anti-social behaviour when compared against the State Average", the data shows that the Premises is located "within very close proximity to two separate yet significant and highly problematic hotspots" for alcohol-related assaults.
41. OLGR advise that a review of Compliance and Enforcement Division records "did not disclose any adverse information in respect of the venue, the licensee or the approved manager, Ms Madeline Rees.
42. OneGov licence record for the Premises as at 16 March 2015.
43. Letter from Mr Graham Jahn, Director of City Planning, Development and Transport at City of Sydney Council to the Applicant dated 7 February 2015 advising the Applicant that its application to allow continuation of trial hours has been approved.
44. DA number D/2011/930/B issued by Council dated 7 February 2014. This document records that the DA approves the "fitout and use of ground floor tenancy" as "a restaurant and bar with indoor and outdoor seating", subject to thirty-six (36) conditions.
45. These conditions include, *inter alia*, that:
 - a) the hours of operation for the indoor and outdoor areas of the Premises are "between 6:00am and 2:00am" for a "trial period of two years" starting from 7 February 2014
 - b) the Premises must "always be operated and managed in accordance with the Plan of Management"
 - c) music is not to be played in any outdoor areas

- d) patrons "must be prevented from removing glasses, opened cans, bottles or alcohol from the Premises"
 - e) a further application may be lodged to continue the trial period
 - f) security guards must be provided at the Premises on "Thursday to Saturday from 10:00pm, at a minimum ratio of one security staff member to 100 patrons"
 - g) the maximum capacity of persons permitted in the Premises is 276 patrons, which includes a maximum internal capacity of 203 patrons and a maximum external capacity of 73 patrons
 - h) the primary purpose of the Premises "is as a restaurant" with the kitchen being open and meals available "at all times during the approved hours of operation"
 - i) "CCTV surveillance cameras shall be strategically installed, operated and maintained throughout the Premises".
46. Email from Authority staff to Mr Brenton dated 4 June 2015 informing the Applicant that in order for the Application to proceed, the Applicant must provide:
- a) a signed copy of the Certificate of Advertising
 - b) a plan of the Premises that confirms the proposed licensed area for extended trading hours
 - c) confirmation that the proposed trading hours for both the indoor and outdoor areas of the Premises are from 10:00am to 2:00am Monday through Saturday and 10:00am to 12:00 midnight on Sunday.
47. This email furnishes the Applicant with the submissions received from NSW Police and Council and invites the Applicant to make submissions in reply.
48. In this email, Authority staff also request that the Applicant provide its consent to the following standard conditions:
- a) that the Premises "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 CIS, Application and other submitted information
 - b) that the licensee will "conduct the licence in accordance with its Plan of Management"
 - c) that the Applicant "join and be an active participant in the local liquor accord"
 - d) that the "licence is authorised for the trading hours fixed by the Authority or such lesser hours as may be approved by the consent authority from time to time".
49. Email from Authority staff to Mr Brenton dated 9 June 2015 informing the Applicant of the submission received from OLGR and inviting the Applicant to make submissions in reply.
50. Email from Mr Brenton on behalf of the Applicant to the Authority dated 29 June 2015 confirming that the proposed trading hours for both indoor and outdoor areas is from 10:00am to 2:00am on Monday through Saturday and from 10:00am to 12:00 midnight on Sunday.
51. In this email, the Applicant notes that Council did not object to the Application and that Council also acknowledged the trial period for extending the trading hours for the Premises. The Applicant confirms that the four following conditions contained in the DA pertaining to "security and queuing"; "maximum capacity of persons"; "licensed Premises – primary purpose"; and "cessation of service" will be complied with.
52. Specifically, these conditions state, *inter alia*, that security guards must be provided at the Premises on "Thursday to Saturday from 10:00pm, at a minimum ratio of one security staff member to 100 patrons"; that the maximum capacity of persons permitted on the Premises is 276 patrons, which includes a maximum internal capacity of 203 patrons and

a maximum external capacity of 73 patrons; that the primary purpose of the business operating on the Premises is "the sale of quality food" with the kitchen being open and meals available "at all times during the proposed extended hours of operation"; and that the Applicant will cease providing food and drink 30 minutes before the required closing time.

53. The notes the submission from Police that over the last two years, there have been no recorded incidents involving intoxication or anti-social behaviour and there have been no complaints about the operation of the business. In response to the submission made by NSW Police, the Applicant contends that Council originally approved the extension of trading hours for the Premises on 1 September 2011 and during that time "there has never been a complaint from Police, Council or residents".
54. In response to the conditions proposed by Police, the Applicant opposes the first condition (that any person seen drinking or carrying an alcoholic beverage on approach to the venue must not be permitted to enter). The Applicant contends that its staff are "fully aware of their responsibilities" under the Act and "no patrons will be allowed to enter the premises drinking or carrying open alcohol on approach to the restaurant".
55. The Applicant also opposes the second proposed condition (that between the hours of 12:00 midnight and 2:00am, no more than two alcoholic drinks can be sold to the same person at a time) and submits that it would instead be willing to "agree to the condition that no more than four (4) alcoholic drinks can be sold or supplied to the same person at a time".
56. The Applicant does not object to the third and fourth conditions proposed by Police that after 12:00 midnight Monday through Saturday and 10:00pm on Sunday, the Primary Service Authorisation will apply to the indoor areas only and that the granting of the Application be restricted to a 2-year trial period.
57. The Applicant provides its consent to the standard conditions set out in the email sent from Authority staff dated 4 June 2015.
58. The Applicant contends that there has been "no local objection to the granting of the Application".
59. The Applicant acknowledges the submission from OLGR and contends that the Premises is located in an "industrial area of Alexandria and is in excess of eight kilometres from both Newtown and the Sydney CBD with the nearest residential premises located approximately two kilometres away". The Applicant contends that the Premises has "built up a strong clientele" and receives "numerous requests" from patrons (both "locals" and "tourists") to "extend their hours of operation".
60. The Applicant contends that there is "a genuine need and demand" from patrons for the Application to be approved and that granting the Application "will not be detrimental to the wellbeing of the local or broader community".
61. Certification of Advertising signed by Mr George Manetakis on behalf of the Applicant dated 28 June 2015.
62. Second Amended Plan of the Premises showing the Primary Service Authorisation in blue and the licensed area in red.
63. OneGov licence record for the Premises as at 15 July 2015.

64. BOCSAR crime maps based upon data from April 2014 to March 2015 detailing hotspots of offences for the location of the Premises. This data obtained from published BOCSAR sources shows that the immediate location surrounding the Premises at 90-96 Bourke Road, Alexandria does not fall within any hotspots for the occurrence of incidents of *domestic assault, non-domestic assault or malicious damage to property*.
65. Authority licensing records indicating the addresses of other liquor licensed premises in Alexandria and the nearby suburbs of Zetland, Erskineville, Rosebery, Glebe and Beaconsfield.
66. Authority liquor licence density data which indicates that the City of Sydney local government area (LGA) has a rate of 6.49 *on-premises licences* per 100,000 persons, which is significantly less than the State average of 121.31 per 100,000 persons. The 2015 postcode (which includes the State suburbs of Alexandria, Beaconsfield and Eveleigh) has a rate of 308.39 *on-premises licences* per 100,000 persons, which is significantly higher than the State average.
67. This data also indicates that the 2015 postcode (which includes the State suburbs of Alexandria, Beaconsfield and Eveleigh) has higher rates of *club licences, full hotel licences, packaged liquor licences and producer wholesaler licences* per 100,000 persons compared to the State average. However, the City of Sydney LGA has significantly lower rates of *club licences, full hotel licences, liquor-limited licences, packaged liquor licences and producer wholesaler licences* per 100,000 persons compared to the State average.
68. BOCSAR data on Crime by LGA and Alcohol Related Status for calendar year 2013 detailing rates of alcohol related offences for the City of Sydney LGA compared to NSW as a whole. This data indicates that:
 - a) The rate of recorded *domestic violence related assault* incidents in which alcohol was flagged by reporting Police as a contributing factor across the City of Sydney LGA was 236 per 100,000 persons, which is significantly higher than the NSW state average of 137.3 per 100,000 persons
 - b) The rate of *non-domestic violence related assault* incidents flagged by reporting Police as alcohol related in the City of Sydney LGA for 2013 was 1,019.8, which is substantially higher than the rate for NSW of 181
 - c) The rate of *assault Police* incidents flagged by reporting Police as alcohol related in this LGA was 112.4, well above the NSW rate of 22.6
 - d) These statistics also outline that the rate of *alcohol related offensive behaviour* in the Sydney LGA is 881.3, which is substantially higher than the NSW rate of 116.
69. Socio Economic Index for Areas (SEIFA) data published by the Australian Bureau of Statistics (ABS) for 2011. This data indicates that the suburb of Alexandria ranked in the Tenth decile, while the Sydney LGA as a whole ranked in the Ninth decile across the State of NSW on the Index of Relative Socio-Economic Advantage and Disadvantage (with a decile ranking of 10 being the most advantaged).

STATUTORY OBJECTS AND CONSIDERATIONS

70. In determining the Applications, the Authority has considered relevant provisions of the Act, including the objects and considerations that are prescribed by section 3 –

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.*

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

49 *Extended trading authorisation – generous 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.*

72. The power to implement the closure period is provided by section 11A of the Act, which states:

11A Special licence condition – 6-hour closure period for licensed Premises

- (1) *This section applies in relation to:*
 - (a) *any licence granted on or after 30 October 2008, and*
 - (b) *any licence in force before that date, but only if an extended trading authorisation granted on or after that date is in force in relation to the licensed Premises concerned.*
- (2) *A licence to which this section applies is subject to the condition that liquor must not be sold by retail on the licensed Premises for a continuous period of 6 hours (as determined in accordance with this section) during each consecutive period of 24 hours (**the 6-hour closure period**).*
- (3) *Except as provided by subsection (4), the 6-hour closure period for any particular licensed Premises is the period that is approved for the time being by the Authority.*
- (4) *In the case of a licence:*
 - (a) *granted on or after 30 October 2008 but before the date on which this section (as inserted by the Liquor Legislation Amendment Act 2008) commenced, or*
 - (b) *granted by the Local Court (as provided by clause 25 of Schedule 1) at any time after the date on which this section commenced,**the 6-hour closure period for the licensed Premises is, subject to subsection (5), the period from 4 am to 10 am.*
- (5) *The Authority may at any time, on Application by the licensee or by the Secretary or the Commissioner of Police, or on its own initiative, approve of licensed Premises having a different 6-hour closure period than:*
 - (a) *the period as last approved by the Authority, or*
 - (b) *the period specified in subsection (4).*

APPLICANT CASE ON SOCIAL IMPACT

73. The Applicant submits that all stakeholders within 100 metres of the Premises were notified of the Application, along with Police, Council, the Department of Health, the Department of Community Services, La Perouse Local Aboriginal Land Council and Alexandria Medical Centre. The Applicant contends that there has been "no local objection to the granting of the Application".
74. The Applicant contends that the Premises has operated for the past two and a half years and has "never had a complaint from any stakeholder". The Applicant proposes to "continually speak with all stakeholders that regularly visit" the Premises and informs them that if any issues or concerns arise regarding the Premises, then they should make immediate contact with the Applicant so that their issues will be addressed and "finalised to their satisfaction".
75. The Applicant submits that Council approved the extended trading hours, the same as those sought in this Application, on 7 February 2014 in DA 2011/930/B. The Applicant notes that Council originally approved an application such that both the indoor and outdoor areas of the Premises could be used until 2:00am Monday through Sunday on 1 September 2011 and contends that during that time "there has never been a complaint from Police, Council or residents".
76. The Applicant submits that on 22 July 2014, the Authority granted an application to extend the trading hours of the outdoor dining area to midnight on Monday through Saturday and contends that since this was granted, there have been no complaints from Police, Council or residents.
77. The Applicant contends that the restaurant is located within a "light industrial/commercial" area of Alexandria that is at least 2 kilometres from the nearest residential premises and in excess of 8 kilometres from both Newtown and the Sydney CBD. The Applicant contends that there are "very few licensed premises that operate within three

kilometres" from the Premises and the nearest is the "Grounds of Alexandria Restaurant".

78. The Applicant contends that the Premises has "built up a strong clientele" and receives "numerous requests" from patrons, which comprise both "locals and tourists", to "extend their hours of operation". The Applicant contends that there is "a genuine need and demand" from patrons for the Application to be approved and that granting the Application "will not be detrimental to the wellbeing of the local or broader community".
79. The Applicant contends that granting the Application will "have no adverse impact on the quiet and good order of the neighbourhood being disturbed and will not be detrimental to the well-being of the local/broader community".
80. The Applicant contends that the Application will "provide a genuine need and demand to the local community and the many tourists that visit the Eastern Suburbs of Sydney". The Applicant contends that granting the Application will ensure that the Premises can "provide quality food and beverages" to patrons until 2:00am on the mornings following Monday through Saturday evening trade and 12:00 midnight on Sunday.
81. The Applicant contends that the primary purpose of the Premises at all times is the "sale of quality food and not the sale of liquor"; that the kitchen will "will be operating at all times whilst the Premises are open for trading"; that all staff have completed relevant RSA courses and are "fully aware of their responsibilities"; and that staff will ensure that "liquor sold and supplied is served responsibly to prevent intoxication and any incidents of anti-social behaviour".
82. The Applicant contends, *inter alia*, that:
 - a) staff will inform patrons who are leaving the Premises "to do so quickly and quietly and not disturb the neighbourhood"
 - b) signs will be at the exit doors advising patrons to leave quickly and quietly
 - c) there will be "no alcohol related hospitalisations and health problems associated with the sale of liquor from the restaurant"
 - d) pedestrian and motor vehicle traffic numbers will not be increased
 - e) staff will advise patrons not to drink and drive
 - f) staff will advise patrons of the dangers associated with drink walking
 - g) intoxication has "never been an issue" at the Premises and will have no impact on domestic violence due to patron alcohol consumption.
83. The Applicant further contends that a number of benefits will result from granting the Application including, *inter alia*:
 - a) that stakeholders will be able to enjoy "a first class restaurant" that is able to provide them with a "substantial meal after midnight"
 - b) that patrons coming from the Domestic and International Airport located nearby at Mascot will benefit
 - c) that the extended trading hours will "increase employment and economic activity in the Alexandria precinct".

DECISION AND REASONS

84. The Authority is satisfied that the Application has been validly made and that minimum procedural requirements with regard to the Application and CIS have been satisfied.
85. The Authority is satisfied, for the purposes of section 49(8)(a) of the Act, that practices are in place at the 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. The Authority is satisfied as to these

matters on the basis of the *Plan of Management* and *House Policy* provided by the Applicant. In addition, the Authority notes that Police and OLGR do not make any adverse submission with regard to this aspect of the Application.

86. The Authority is satisfied, for the purposes of section 49(8)(b) of the Act, that granting extended trading hours to allow liquor to be sold *on-premises* until 12:00 midnight on Sundays *only* will not result in the frequent undue disturbance of the quiet and good order of the neighbourhood of the Premises.
87. The Authority is satisfied, on the basis of the procedures regarding noise management and amenity of neighbourhood discussed in the Plan of Management; the conditions imposed on the venue by the DA including CCTV surveillance and the implementation of security guards; and the proposed Police conditions to which the Applicant consents, that after 12:00 midnight on Monday through Saturday and 10:00pm on Sunday, the Primary Service Authorisation will apply to the indoor areas of the Premises *only*.
88. Given that the extended trading hours proposed by the Applicant for Sundays would only permit the Premises to open for an additional two hours in the evening on one day of the week, the Authority is satisfied that extended trading may be granted with respect to those additional hours and this extension would not result in undue disturbance of the quiet and good order of the neighbourhood of the Premises.
89. The Authority does not need to consider whether section 49(8)(b) of the Act is satisfied with respect to the balance of the extended trading hours sought by the Applicant, by reason that the Authority is *not* satisfied that such further extension of trading hours would satisfy the requirements of section 48(5) of the Act, as discussed below.

Overall Social Impact Test

90. The Authority is *not* satisfied, for the purposes of section 48(5) of the Act, that the overall social impact of granting the Application to the extent proposed by the Applicant will *not* be detrimental to the wellbeing of the local or broader community. However, the Authority is able to reach that state of satisfaction with respect to the proposed extension of trading hours to midnight on Sunday *only*, and is satisfied that this part of the Application should be approved.
91. Applying the social impact test requires a degree of speculation, albeit speculation informed by the particular proposal and the prevailing circumstances in the relevant local or broader communities.
92. For the purposes of the overall social impact test prescribed by section 48(5) of the Act, the Authority is satisfied that the local community comprises the State suburb of Alexandria, while the relevant broader community comprises the City of Sydney LGA.

Positive benefits

93. The Applicant has contended that a number of positive benefits will flow to the community from granting the Application, including such things as stakeholders will be able to enjoy "a first class restaurant" that is able to provide them with a "substantial meal after midnight"; that patrons coming from the Domestic and International Airport terminals located nearby at Mascot will benefit; and that the extended trading hours will "increase employment and economic activity in the Alexandria precinct".
94. The Authority accepts that should the Application be granted, there will be some very limited cumulative measure of convenience to those patrons who wish to engage in late

night licensed dining at this venue after 12:00 midnight, which the Authority notes is well beyond peak dining hours. The Authority acknowledges that there would be some very limited cumulative increase in consumer choice for those in the local or broader community who wish to consume liquor with a meal at this type of venue during late hours.

95. Further, while it may be generally credible to assert that the extending the hours of the business will provide employment benefits to the community, the Applicant has not provided details, let alone a clear commitment in the Application as to the number of additional staff that will be employed should the Application be granted and whether those staff will be sourced from the local or broader community. The Applicant could have, but did not, substantiate this contended positive community benefit in this regard and little weight is given to it on the basis of the material before the Authority.
96. The Applicant has provided independent evidence or analysis that substantiates how granting the proposed extended trading hours to 2:00am Monday through Saturday would promote the "expectations, needs and aspirations" of the local or broader community and thus promote a statutory object of section 3(1)(a) of the Act. The Applicant has recounted in only very general terms that some patrons have expressed a desire for later opening hours - but little is provided by way of supporting evidence, or even specification as to the likely extent of the demand for *post- midnight dining* and in those circumstances little weight is given to this contention. On the material before it the Authority is satisfied that the benefits to the *community* of extending the licenced hours of this *restaurant* are limited.
97. However, the Authority is satisfied that granting the Application to allow liquor to be sold *on-premises* between the hours of 10.00pm until 12:00 midnight on Sundays *only* will deliver some more likely positive benefits to members of the local and broader community who seek this style of hospitality service on a Sunday after 10:00pm and will be consistent with the "expectations, needs and aspirations of the community" in respect of the local community of Alexandria, being an object of section 3(1)(a) of the Act.
98. This is by reason that those earlier hours would *prima facie* be more proximate to peak dining hours and more likely to provide an ancillary benefit of liquor service ancillary to dining, rather than a licensed business that is substantially operating more in the mode of a late night bar – serving liquor only to patrons who want to make use of the Premises as just another place to drink. On the basis of Authority licensing records the Authority is satisfied that there are many late night drinking options taking the form of hotels, general bars, small bars and licensed clubs in the local and broader community whose licences do not have dining as their designated primary purpose and who may deliver late night licensed entertainment.
99. The Authority is satisfied that the Applicant distributed notices to the surrounding community, including various stakeholders and special interest groups, without receiving any adverse comments or complaints from Council or local stakeholders. The Authority accepts that the Applicant has received planning consent to engage in the proposed late trading hours for the purposes of environmental planning legislation, but the Authority must nevertheless consider the overall impact of granting the licensed trading hours sought having regard to the overall social impact test prescribed by section 48(5) and the public interest with respect to the liquor legislation, informed by the statutory objects and considerations provided by section 3 of the Act.
100. The Authority emphasises that the designated primary purpose of this on-premises licensed business is a **restaurant**. The sale or supply of liquor at an on-premises licensed business is required to be *ancillary* to the provision of that primary purpose. The

Authority is satisfied that the community benefits of the ancillary supply of liquor at a restaurant licensed premises are already substantially delivered through the current licensed trading hours - which enable liquor to be supplied with meals and (by virtue of the existing primary service authorisation granted under section 24(3) of the Act) liquor to be sold or supplied to individual customers with or without a meal.

101. The Authority is satisfied that some modest extension of licensed trading hours, until midnight on a Sunday evening only, in a manner that is proximate to the likely peak hours of demand for *meals* will promote the statutory object of regulating the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community, per section 3(1)(a) of the Act. Extending the licensed hours to this extent may also be said to facilitate, in the public interest, the *balanced* development of the liquor industry per section 3(1)(b) of the Act.

Negative impacts

102. The Authority is satisfied that the proposed grant of extended hours between midnight and 2:00am Monday through Saturday poses a likely greater impact upon the local and broader community for the purposes of assessing satisfies the requirements of section 48(5) of the Act.
103. The premises is of a substantial scale (a maximum patron capacity of 276 persons). The Authority is satisfied that the further the licensed restaurant trades into the evening, the greater the likelihood that the Premises will primarily or substantially in the mode of a bar, as distinct from a restaurant.
104. As for the location of the Premises, the Authority is satisfied that the business is located in a commercial precinct and residential premises are not in the immediate vicinity. In that respect noise from the site itself or patrons near the site itself are unlikely to disturb local amenity.
105. However, the Authority is required to consider the overall social impact of granting the Application against the local and broader community as a whole. In the context of a local community that is rapidly developing in terms of its residential character (according to Police) and a broader community managing prevailing BOCSAR reported high rates of alcohol related crime and disturbance, the Authority is not satisfied that the overall social impact of licensing this Premises until 2:00am, six nights per week, will not be detrimental to the local or broader communities.
106. The Authority notes the submissions made by OLGR and that the BOCSAR crime data from April 2014 to March 2015 indicates that the Premises is not located within any prevailing hotspots for incidents of *non-domestic assault*, *domestic assault* and *malicious damage to property*.
107. Notwithstanding the relatively favourable crime data for the site of the Premises and the fact that the immediate vicinity of the Premises is a commercial precinct, the Authority is satisfied, on the basis of the location of the Premises and the maps provided, that there is a considerable increase in high-density residential apartment living underway in the suburb of Alexandria (the local community) within walking distance of the Premises. Further, and in the alternative, there are well-established problems with the late night consumption of liquor in the relevant broader community (the City of Sydney LGA) of which Alexandria is a part.
108. The Authority accepts the Applicant's submission that its licensed trading to date has not given rise to regulatory concerns or complaints. The Authority notes that to date the

Premises has only been licensed to trade within standard trading hours and not during objectively higher risk late trading periods of the week. The Authority is satisfied that the current standard hours operate to constrain the exposure of this business and its staff to problematic patron behaviour and drinking for relatively prolonged periods.

109. However, the Authority is satisfied that extending the trading hours of this substantial licensed business that has a Primary Service Authorisation to 2:00am six nights per week is more likely than not to change the character of the Premises during later hours, from one that is more focussed on dining to one that substantially trades in the mode of a late night bar.
110. The Authority is satisfied that were 2:00am trading granted the Premises is more likely than not to accommodate persons who have been drinking on the Premises, or at other venues before attending the Premises, for a prolonged period. The licensed business will more likely than not attract patrons who wish to utilise the licence for the purpose of drinking and not dining later trading hours, encouraging late night migration to or from the Premises and other licensed premises in the local and broader community.
111. The *BOCSAR Report on Crime for the Sydney LGA for 2010-2014* discloses that during 2014, despite some decline in the 60 months trend in the rate of non-domestic assault (with trend for domestic assault increasing), the occurrence of *alcohol related assault* peaked on Sunday morning between midnight and 6 am and was greatly elevated between midnight and 6 am on Saturday morning. Yet the Applicant seeks to extend its licenced trading during this most sensitive time of the week.
112. In deciding the Application the Authority is mindful of the need to ensure that late night liquor supply does not create new adverse impacts upon local amenity in the local community or enable patrons of the premises to contribute, over time to the already elevated rates of late night alcohol related misconduct to which the broader community is exposed – much of which occurs during later hours.
113. The *BOCSAR Report on Crime by LGA and Alcohol Related Status* for calendar year 2013 satisfies the Authority that the City of Sydney LGA is already exposed to very high rates of alcohol related crime compared to the State of NSW as a whole.
114. The data indicates that the rate of recorded *domestic violence related assault* incidents in which alcohol was flagged by reporting Police as a contributing factor across the Sydney LGA was 236 per 100,000 persons, which is significantly higher than the NSW state average of 137.3 per 100,000 persons. The rate of *non-domestic violence related assault* incidents flagged by reporting Police as alcohol related in the City of Sydney LGA for 2013 was 1,019.8, which is exceedingly higher than the rate for NSW of 181. The rate of *assault Police* incidents flagged by reporting Police as alcohol related in this LGA was 112.4, well above the NSW rate of 22.6. The statistics outline that the rate of alcohol related *offensive behaviour* in the City of Sydney LGA was 881.3, which is significantly higher than the NSW rate of 116.
115. The Authority acknowledges the SEIFA data from ABS that the State suburb of Alexandria is one of the most advantaged in the State, with a ranking within the Tenth decile; while the City of Sydney LGA is ranked close behind in the Ninth decile. This satisfies the Authority that the local and broader communities do not demonstrate socio-demographic indicia that are typically associated in the literature (including the research noted in *Authority Guideline 6: Consideration of social impact under section 48(5) of the Liquor Act 2007*) with adverse alcohol related social impacts.

116. Authority licence records for the local community establish that licence density rates are already higher than State averages in the local and broader community. The likelihood of patron migration is facilitated by the numerous choices of standard and late trading venues already available in the local and broader community.
117. The Authority gives weight to the local knowledge and experience of Police and accepts the Police contention that the local community is a "fast developing" suburb both residentially and industrially. Police submit that if the Application is granted, this would be the first licensed restaurant within the Police command to have licensed hours beyond midnight and likely to attract people to the precinct "to drink alcohol".
118. Police also contend that granting the Application is likely to prompt a competitive response from other similarly licensed premises seeking 2:00am trading. While the Authority has determined this Application on its individual merits, the Police submission as to the scope for other licensees in the Police command holding a similar licence type expecting regulatory parity is a credible contention to make. This is a broader submission that is relevant in that it goes to the *balanced* development, in the public interest, of the liquor industry, which is a statutory object under section 3(1)(b) of the Act.
119. With regard to granting the Application for extended trading hours on Sunday to 12:00 midnight *only*, the Authority considers that the positive benefits are relatively greater during this period by reason that liquor service is more likely to be ancillary to the provision of meals and that the risk and scope for disturbance to the community and patron migration is less acute during that pre-midnight time period on a Sunday evening. The harm mitigation measures and conditions agreed by the Applicant will also assist in this regard to constrain negative impacts.
120. The Authority has considered all of the additional harm minimisation measures to which the Applicant has consented should the Application be granted. The Applicant has agreed to the imposition of licence conditions that the business 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 CIS, Application and other submitted information; that the licence be exercised in compliance with the Plan of Management; that the Applicant "join and be an active participant in the local liquor accord"; that the "licence is authorised for the trading hours fixed by the Authority or such lesser hours as may be approved by the consent authority from time to time"; that after 12:00 midnight on Monday through Saturday and after 10:00pm on Sunday, the Primary Service Authorisation will apply to indoor areas of the Premises only; and that the granting of the Application be restricted to a 2-year trial period.
121. Notably, the Applicant opposes a Police proposed condition specifically directed to redressing the prospect of patron migration and pre-fuelling (the practice associated with young adults drinking takeaway liquor before entering a licensed premises) which would require denial of access to any person seen drinking liquor on approach to the venue. The Applicant opposes limiting sales to two drinks per person after midnight, but proposes a four drink per person sale limit after midnight.
122. The steps outlined in Plan of Management document satisfy the Authority that the Applicant and all its staff members will be adequately trained in procedures designed to minimise the adverse impact of late trading. The Authority does not consider it likely that staff of this restaurant would intentionally engage in irresponsible conduct, but is satisfied that riskier patron behaviour, particularly conduct occurring late at night such as patron migration occurring away from the site in neighbouring streets is unlikely to come to the attention of the business who will not be able to monitor or respond to it. Furthermore, regardless of their managerial ability staff and other patrons of this restaurant will be

more likely exposed to misconduct by patrons who have been drinking for a prolonged period were licensed hours to be extended to 2:00am.

123. However, in light of the scale of the Premises, the likelihood of the business operating substantially in the mode of a bar after 12:00 midnight (notwithstanding that the kitchen will be open) and licencing data that underscores the number and variety of standard and late licensed premises enabling patron migration to and from this venue and others in the relevant communities, the Authority considers that there is significant scope for the patrons of this business to have, over time, an adverse alcohol related impact upon amenity in the local community and also contribute to alcohol related crime or anti-social conduct in an (already over exposed) broader community, should 2:00am trading be granted for six nights per week.
124. While noise emanating from the site of the business itself is not considered problematic given its location, the Authority is nevertheless satisfied that should the entire hours sought by the Applicant be granted, groups of patrons affected by alcohol to various degrees and having consumed alcohol for prolonged periods of time will migrate to and from the venue during late hours - utilising private transport, public transport (taxis, uber services etc) or on foot, given the location of fast developing residential areas in the local community away from this particular commercial site but nevertheless within walking distance.

CONCLUSION

125. Considering together the found positive benefits and taking into account the factors which are likely to objectively constrain or minimise the extent of negative impacts arising from the operation of *this* business in *this* community, the Authority is satisfied that the overall social impact of granting the Application for an extended trading authorisation in respect of Sunday trading hours *only* will not be detrimental to the wellbeing of the relevant local or broader communities.
126. In conclusion, the Authority has determined to grant the Application for and extended trading authorisation pursuant to section 49(2) of the Act, but only in respect to the extended trading hours sought with respect to a Sunday evening from 10:00pm to 12:00 midnight.
127. The Authority has determined, pursuant to section 51(9)(a) of the Act and as proposed by the Applicant, to impose a condition upon the Primary Service Authorisation requiring that, between the hours of 10pm and midnight on Sunday evening, the Primary Service Authorisation may only be exercised in the indoor areas of the Premises.
128. In making this decision, the Authority has had regard to all of the statutory objects of section 3(1) of the Liquor Act 2007 and has taken into account all of the statutory considerations prescribed by section 3(2) of the Act. It has given weight to section 3(2)(a) – the need to minimise harm associated with the misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour) and section 3(1)(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.



Micheil Brodie
Chief Executive

DATE 23/ 11 / 2015