



Mr Adam Smith, Director  
The Serious Business Group Pty Ltd  
61 The Avenue  
MOUNT SAINT THOMAS 2500  
adam@yoursandowls.com.au

23 February 2017

Dear Mr Smith,

**APPLICATION NO:** 1-4130413001

**APPLICATION FOR:** On-premises licence – catering class with a sale on other premises authorisation

**PROPOSED TRADING HOURS:** Monday to Saturday 11:00AM – 12:00AM  
Sunday 11:00AM – 10:00PM

**APPLICANT:** The Serious Business Group Pty Ltd

**PROPOSED LICENSED PREMISES NAME:** Yours and Owls

**PREMISES LOCATION:** 61 The Avenue, MOUNT SAINT THOMAS NSW 2500 (Premises)

**ISSUE:** Whether to grant or refuse an application for an on-premises liquor licence

**LEGISLATION:** Sections 3, 11A, 21-28, 40, 45 of the *Liquor Act 2007*

**INDEPENDENT LIQUOR AND GAMING AUTHORITY DECISION – APPLICATION FOR ON-PREMISES LIQUOR LICENCE – YOURS AND OWLS, MOUNT SAINT THOMAS**

The Independent Liquor and Gaming Authority considered application number 1-4130413001 seeking an on premises licence for a catering service (Application) and, pursuant to section 45 of the *Liquor Act 2007* (Act), decided to **grant** the Application subject to the following conditions:

Conditions imposed:

**1. Trading Hours**

|                    |                   |
|--------------------|-------------------|
| Monday to Saturday | 11:00AM – 12:00AM |
| Sunday             | 11:00AM – 10:00PM |

## 2. Restricted trading & NYE (std)

Consumption on premises – Catering

|               |  |
|---------------|--|
| Good Friday   | Normal trading   |
| Christmas Day | Normal trading   |
| December 31st | Normal opening time until normal closing time or 2:00AM on New Year's Day, whichever is later. |

3. Section 11A of the *Liquor Act 2007* applies to this licence. Liquor must not be sold by retail on the licensed premises for a continuous period of 6-hours between 4:00AM and 10:00AM during each consecutive period of 24-hours. The licensee must comply with this 6-hour closure period along with any other limits specified in the trading hours for this licence.
4. The business authorised by this licence must not operate with a greater overall level of social impact on the wellbeing of the local and broader community than what could be reasonably expected for the information contained in the application, plans of management or any other information submitted in the process of obtaining this licence.
5. The sale on other premises authorisation can only be utilised for functions, occasions or events, which are by invitation only or pre-arranged public functions.
6. The business of providing the Catering Service must be for fee, gain or reward. Functions held pursuant to the Catering Service must be pre-booked. A Catering Service booking register must be maintained.
7. Immediately after the person in charge of the licensed premises becomes aware of an incident involving an act of violence causing an injury to a person on the premises, the person must;
  - a) Take all practical steps to preserve and keep intact the area where the act of violence occurred, and retain all material and implements associated with the act of violence in accordance with the Crime Scene Preservation Guideline, issued by NSW Police.
  - b) Make direct and personal contact with the Local Area Commander or his/her delegate, and advise the Commander or delegate of the incident.
  - c) Comply with any directions given by the Commander or delegate to preserve and keep intact the area where the act of violence occurred.
8. The licensee or its representative must join and be an active member of the Local Liquor Accord.
9. The following drinks must not be sold or supplied at any time:
  - a) Any drink (commonly referred to as shots, shooters, slammers and/or bombs) that is designed to be consumed rapidly.
  - b) Doubles.
  - c) Ready to drink (RTD) packaged beverages exceeding 5% Alcohol by Volume.
10. Alcohol is not to be provided unless food of a nature and quantity consistent with the responsible sale, supply and service of alcohol is made available whenever liquor is sold and supplied.
11. For any event, function or occasion where the patron capacity exceeds 100, but does not exceed 300, the licensee must employ fully licensed security guard(s) at the rate of two licensed security guards for the first 100 patrons and one additional security guard for every 100 patrons after.

12. All security guards employed during functions are to have their security licence clearly displayed at all times. In addition, each guard is to wear a number clearly visible at least 10cm x 10cm so they can be easily identified. All numbers allocated must be recorded within a security sign in book and provided to Police upon request.
13. No person wearing any form of clothing, jewellery or other accessory, displaying or indicating by for or wording, colours, logo, symbol or otherwise that they are members of or are in any way associated with; (Bandidos, Black Uhlans, Coffin Cheaters, Comanchero, Finks, Fourth Reich, Gladiators, Gypsy Jokers, Highway 61, Life & Death, Lone Wolf, Mobshitters, Nomads, Odins Warriors, Outcasts, Outlaws, Phoenix, Rebels, Hells Angels, Scorpions, Notorious) shall be allowed entry into, or be permitted to remain on the licensed premises.
14. The licensee will ensure all bags are searched upon entry.
15. The licensee must ensure that all alcoholic drinks are opened prior to serving to prevent stockpiling.
16. All patrons must produce an acceptable form of photo identification upon entry and any patron that looks under the age of 25 years of age must provide a second form of identification.
17. No glass permitted during any event outdoors in a public place event. Any drink (whether or not it contains liquor) must be served in either non-breakable plastic receptacles or cans.
18. For outdoor events, the licensee will provide a comprehensive site plan showing all relevant points such as the licensed area, bars, toilets, first aid, stages and entry/egress points.

This plan is to be submitted to the relevant stakeholders, NSW Police, Council and Liquor and Gaming NSW (LGNSW), not less than 30 days prior to the commencement of the event.

19. The premises is to be operated in accordance with its Plan of Management dated June 2016 as may be varied from time to time after consultation with the Local Area Commander of NSW Police.
20. A separate Plan of Management is to be prepared for any major event where the patron capacity exceeds 300.

Where the patron capacity of any given event exceeds 300, the licensee must advise the relevant Local Area Command, Local Council and LGNSW, no later than 30 days prior to the event taking place.

Where the patron capacity of any given event exceeds 1,000, the licensee must advise the relevant Local Area Command, Local Council and LGNSW, no later than 42 days prior to the event taking place.

For any major event the licensee must:

- a) Prepare a separate comprehensive Plan of Management and Security Management Plan in consultation with the Local Area Command that has jurisdiction over the area where the event will be held and,
- b) Provide a copy of the Plan of Management, Security Management Plan and Local Licensing Agreements (where applicable) to the Local Area Commander.

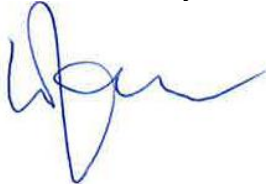
The licence cannot be exercised unless a copy of the Plan of Management, Security Management Plan and Local Licensing Agreements (where applicable), as agreed with the Local Area Commander, is provided to Liquor and Gaming NSW no later than two business days prior to the commencement of the event.

The Authority notes that in the absence of the licensee obtaining Police agreement in relation to the Plan of Management requirement with regard to events exceeding 300

persons, the Applicant may lodge an application for a limited (special event) licence pursuant to section 29 of the Act. Any such application must be lodged with the Authority no later than 15 business days prior to the commencement of the proposed event. It is open to the Authority to consider shortening the submission period, in an appropriate case, pursuant to clause 12(3) of the *Liquor Regulation 2008*.

If you have any enquiries about this letter please contact the case manager, Mr Kieran McSherry, via email to [Kieran.McSherry@justice.nsw.gov.au](mailto:Kieran.McSherry@justice.nsw.gov.au).

Yours faithfully,

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

Philip Crawford  
**Chairperson**

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

## STATEMENT OF REASONS

### Material before the Authority

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

### Summary of Further Submissions

3. Wollongong City Council (Council) submission dated 7 March 2016. Council submits that development consent is not required to operate the proposed licensed catering business by reference to the treatment of a “home business” that satisfies the requirements of the State Environmental Planning Policy (Exempt and Complying Codes) 2008, having specific regard to Subdivision 22 of that Code. Council does not object to the Application on the proviso that the following requirements are observed: that no liquor is permitted to be sold or stored at the premises in conjunction with the home business, separate development consent is obtained for events held where this licence applies, that the onus of responsibility is on the event organiser/ licensee to ensure that the appropriate consent is in place and the liquor trading hours must not exceed any hours of operation specified for the event function or occasion as identified in the relevant development consent.
4. Email from Mr Balunn Jones, Director of the corporate business owner, dated 9 June 2016. The Applicant amends the Application to reduce the proposed licensed trading hours (the Applicant having previously sought licensed trading until 1:30AM, instead of 11:00AM to 12:00AM Monday to Saturday and 11:00AM to 10:00PM Sunday).
5. Responding to communication from licensing staff, the Applicant consents to the 6-hour closure period being fixed, for the purposes of section 11A of the Act, between 4:00AM and 10:00AM. The Applicant also consents to a condition that the licence cannot be exercised until an approved manager has been appointed, and a condition requiring the licensed premises to operate at all times in accordance with the Plan of Management furnished by the Applicant. The Applicant accepts a requirement that the “sale on other premises” authorisation may only be utilised for functions, occasions or events which are by invitation only. The Applicant further accepts a condition prohibiting the service liquor in the form of shots, shooters, slammers and/or bombs and a requirement that the service of the catering business be for fee, gain or reward. The Applicant accepts a condition requiring that a catering service booking register be maintained and a condition requiring compliance with NSW Police Crime Scene Preservation Guidelines.

6. Submission from Licensing Sergeant J. L. Davidson of the Wollongong Local Area Command Police (Police) dated 11 July 2016. Police “strongly object” to the Application. The key points may be summarised as follows:
- (a) Police submit that an on-premises licence with a caterer’s authorisation is not the appropriate licence for the nature of events and functions proposed to be catered by the Applicant and that the Application is “an attempt to circumnavigate the process of applying for a limited licence single function license” which the Applicant considers takes “too long”.
  - (b) Police submit the events and functions held by the Applicant are “high risk” in terms of community safety. Police maintain “significant concerns” given that a caterer’s authorisation only obliges the licensee to provide 14 days’ notice to Police and Police “will not be able to provide an appropriate policing response at such short notice”.
  - (c) Police contend that the Applicant has been authorised to conduct four limited-license single functions since March 2014, and Police argue that this suggests that Authority has “deemed” these types of licences to be “most appropriate”. Police advise that (at the time of this Police submission) the Applicant had an application on foot for a single function license-special event and nominated that there was no other more appropriate licence type for that event, despite now relying on the same information in support of this (caterer’s) Application.
  - (d) Police contend that between 2010-14 the Applicant owned and operated an on-premises license (restaurant) with primary service authorisation on Crown Street, Wollongong. The licensee, Mr Adam Smith (Applicant, Director of the corporate business owner), was the subject of three breaches detected over a 12-month period from 4 April 2011.
  - (e) With regard to licensed events/ festivals conducted by the Applicant business on 13 April 2014 (*The Farmer and The Owl Laneway Show*, McCabe Park, Wollongong) and 4 October 2014 (*Yours and Owls 4<sup>th</sup> Birthday*, Stuart Park, North Wollongong), Police contend that there was a “large issue generally with pre-loading and consuming alcohol in alcohol free zones”, one occasion involving six patrons being ejected for fence jumping, one occasion where four patrons were removed for intoxication, one instance of a female spraining her wrist falling while crowd surfing, incidences of juveniles carrying alcohol loitering around exterior fencing and intending to go to the festival, one incident of an unconscious male outside the entry point, one instance of a male failing to quit the area having previously been ejected due to intoxication and the general flow on effect of patrons into the central business district of Wollongong and the surrounding suburbs at the conclusion of the festival.
  - (f) With regard to licensed events conducted by the Applicant business that occurred on 2 - 4 October 2015 (*Yours and Owls Music and Arts Weekender-Blender Weekender*, Stuart Park, North Wollongong), Police contend that they detected a wine bar having no LGNSW approved “under 18 signage” with two staff who were unable to provide their RSA certification (the licensee, Mr Smith, did not have a copy either). One man was apprehended (three times throughout the night) trying to jump the fence, four minors were loitering along the fence who “appeared to be

about to climb it”, two young persons were detected carrying and consuming alcohol in an Alcohol-Free Zone and also attempting to jump the fence. Police also attended a large number of persons on 3 October 2015 attempting to gain entry by fence jumping.

- (g) Regarding *Yours and Owls New Year's Eve 2015* (Globe Lane, Wollongong), an event conducted by the Applicant's business, Police contend “very late notice” (early December) meant that “a number of last minute risk management strategies had to be implemented to ensure community safety”.
- (h) Police contend that the Applicant “does not intend to supply services, but to sell [alcohol] products” and that this does not meet the criteria for a catering service. Police contend that the business model proposed by the Applicant does not meet the primary purpose test in section 22(1) of the Act.
- (i) Police advise that they met with Mr Smith and Mr Jones in February 2016 and in this meeting raised the issue of late notice suggesting that the onus is upon the Applicant to make their applications in a time frame that allowed for “the proper license option to be considered and processed and together with Police a collaborative effort to minimise risks could be employed”. Police take issue with the Applicant's concern stated in the Application that it takes too long to get a single function licence approved on a case by case basis, submitting that this Application is an “attempt to circumnavigate the process of applying for a limited licence” and that in the Applicant's pending application for the *Yours and Owls Festival 2016* Mr Smith explains why no other form of liquor license is suitable. Police submit that this is “contradictory” to the position taken by the Applicant in the present Application.
- (j) Police contend that the 14 days' notice required to be provided to Police before a caterer services an event is not enough time, by reason that “significant Police resources go into managing events and are prepared months in advance” and that Police also have to manage issues arising from the influx of people staying in the area (outside the specific timing of the festival each day). Police also contend that “rostering wise, it would be virtually impossible to provide the resources required”. Police may also request additional resources for festivals (e.g. Police horses and drug dogs) and these requests must be made “months” in advance.
- (k) Police submit that granting a limited licence single-function license on a case by case basis for the events proposed to be conducted by the Applicant is the “appropriate license” and that granting this Application “sets a dangerous precedent” for NSW should similar applications be granted. This type of licence, it is submitted, will allow the sale of alcohol, in a “bar environment”, at an “unlimited number of function types” with “an unlimited patron capacity, anywhere in NSW”.
- (l) Alternatively, should the Application be granted, Police request the imposition of licence conditions including requirements that the business not operate with a greater overall level of social impact than disclosed in the Application, that the licence be exercised at all times in accordance with a Plan of Management, that the licensee be restricted as to the type of liquor sold (no shots, shooters, slammers and/ or bombs, doubles or ready to drink packaged beverages exceeding 5% alcohol by volume), that the licensee be required to participate in

the local liquor accord, that no alcohol be supplied unless food of a nature and quantity consistent with the responsible sale, supply and service of alcohol is made available and that further conditions be imposed requiring that for any function or event exceeding 300 patrons, the licensee must advise Police, the local consent authority and LGNSW not fewer than 28 days in advance of the event, that the licensee must prepare a separate Plan of Management and Security Management Plan for each catered event in consultation with Police and provide a copy of the Plan and any local licensing agreement (where applicable) to Police. Police also request a condition requiring compliance with NSW Police Crime Scene Preservation Guidelines.

- (m) Police seek the imposition of a condition requiring the Applicant to employ fully licensed security guards for events exceeding 100 patrons (two for the first 100 patrons and one additional for every additional 100 patrons), that security guards' license details be visible, that all bags are searched upon entry to an event, that all alcoholic drinks are to be opened prior to serving to prevent stockpiling, that patrons must produce ID and that patrons who look under 25 years of age must provide a second form of ID. Police also seek a condition that no glass be permitted during any event outdoors in a public place. For outdoor events, the licensee will provide a comprehensive site plan (submitted 28 days prior) and the business of providing the catering service must be for fee, gain or reward and a catering service booking register must be maintained.
  - (n) Police further request a condition that no person wearing any form of clothing, jewellery or other accessory, displaying or indicating by form or wording, colours, logo, symbol or otherwise that they are members of or are in any way associated with; (Bandidos, Black Uhlands, Coffin Cheaters, Comanchero, Finks, Fourth Reich, Gladiators, Gypsy Jokers, Highway 61, Life & Death, Lone Wolf, Mobshitters, Nomads, Odins Warriors, Outcasts, Outlaws, Phoenix, Rebels, Hells Angels, Scorpions, Notorious) shall be allowed entry into, or be permitted to remain on the licensed premises.
7. Additional submissions from Detective Inspector Ainsworth, Crime Manager, Wollongong Local Area Command (dated 11 July 2016) and Wollongong Local Area Command Commander, Superintendent Cassar (dated 20 July 2016). Detective Inspector Ainsworth agrees with the comments of Licensing Sergeant Davidson, contends that "the primary purpose test on the Application fails" and that "separate applications" are the "preferred option". Superintendent Cassar fully supports Sergeant Davidson's comments and contends that granting this Application would cause "significant risk to local community members".
8. Letter from Mr Jones to licensing staff dated 6 September 2016 in which the Applicant responds to Sergeant Davidson's Police submission. Briefly:
- (a) The Applicant contends that the primary purpose of the proposed licensed business is the provision of entertainment at ticket events, and the Police concern regarding the Applicant not meeting the primary purpose test may be "dismissed".
  - (b) In response to Police concerns regarding the "high risk" nature of events/ functions and the 14 days' notice required, the Applicant contends that, by maintaining control over the license, they have "ensured adequate planning and liaison with



Police to minimise risks”. The Applicant contends that, if the license is not granted, liquor will be supplied by a third party, who is not familiar with local Police and does not have the restrictions on the licence that are proposed as conditions for this Application, and this will pose “an increased risk to community safety”.

- (c) Regarding the Police submission that authorising for limited-license single functions is the most appropriate license type, the Applicant submits that the current Application is the “only suitable license class” and that a catering service is “most adept to safely provide alcohol at these events is one licensed to Mr Smith” as he “has the experience and the skill set that meets the needs of the business”.
  - (d) The Applicant has no objections to any of the licence conditions proposed by NSW Police.
- 9.** Submission from the LGNSW Compliance Section dated 27 October 2016. LGNSW expresses concern that the “business model is high risk” and that the “risk profile for each event will vary”. LGNSW submit that a premises licence is “not appropriate given the intended business activity proposed”, but should the Application be granted, LGNSW seek the imposition of conditions requiring the licence to be exercised in accordance with the Plan of Management and that a separate Plan be prepared in relation to any major event that 500 or more patrons will attend. LGNSW also requests that where the patron capacity of any function/ event/ occasion exceeds 500, the licensee must advise the relevant Local Area Command of NSW Police, the local consent authority and LGNSW not fewer than 30 days prior to the event, prepare a comprehensive Plan of Management and Security Management Plan in consultation with the Local Area Command, provide a copy of the Plan of Management, Security Management Plan and Local Licensing Agreements to the Local Area Commander and that any conditions proposed by Police form part of the venue’s liquor licence.
- 10.** Email from Mr Jones to licensing staff dated 1 November 2016. Mr Jones notes the classification of the Application as “high risk” by reason of “varying venues and capacities rather than any particular concern with the licensee or alcohol management plan”. He submits that the Applicant is consenting to a number of licence conditions to reduce risk. Mr Jones submits that should the Application *not* be granted, a third party will be contracted to provide the sale of liquor at the events and that this third party would use a pre-existing license (of the same type as sought by the Applicant in this Application) but would do so “without the additional conditions and level of control proposed for this license”.
- 11.** Applicant Security Management Plan dated 20 November 2016. This Plan provides information about the Applicant and addresses pre-event strategies promoting a safe event (including promoting positive drinking culture with zero tolerance for violence, no tolerance policy for anti-social behaviour and intoxication and not promoting the need for alcohol as a means of having fun), operational procedures and patron safety (included trained, experienced and highly visibly security staff, crowd management, a physical barricade around the bar, and protocols including that patrons cannot stand in line whilst holding/ consuming alcohol), strategies to minimise intoxication (including a four limit drink per person, per transaction, roving security/ RSA marshals, low and mid strength alcohol options will be economically priced and promoted, free and bottled water, non-alcoholic beverage alternatives and food will be available, no glass will be served, bag checks and security will monitor exit points to prohibit drinks from leaving

the declared area) and crowd movement and dispersal of patrons from the licensed Premises. The document also contains a preliminary risk review process to occur prior to each event where alcohol will be served and addresses “generic risk identification relative to Alcohol Management, Environmental Health and Safety, Workplace Health and Safety and Public Safety”. A list of stakeholders to be consulted in the planning stages of each licensed event is also included.

12. Email from Mr Jones to licensing staff dated 7 December 2016. In response to communication from licensing staff dated 5 December 2016 following preliminary consideration of the Application by the Authority, Mr Jones submits that a proposed requirement of security staff at the rate of two guards for the first 100 patrons and an additional guard for every 100 thereafter is “not consistent with the intention of the licence” and requiring security staff at this rate would “outweigh the risk” and “prove to be counterproductive to effective crowd management”.
13. Mr Jones contends that “unusually high security presence has been known to have an antagonistic effect” and cause “increased anxiety” and an “increased likelihood of aggressive or antisocial behaviour”. Mr Jones proposes a condition that a Plan of Management be approved by Police prior to each event and submits that an “emphasis on planning rather than the blanket application of a rule” will lead to “more appropriate and informed crowd management” and a “higher chance of minimising risks” for each event. He cites Prenzler, T and Sarre, R, ‘Regulating Private Security in Australia’ (1998) 98, *Australian Institute of Criminology: trends & issues in crime and criminal justice* in this regard.
14. Mr Jones also questions the utility of a proposed condition requiring each catered function or event to be by “invitation only” would defeat events such as twilight Christmas market events where guests need not be invited to attend.

### **Legislative Framework**

15. The legal requirements for the making of a valid application for a new liquor licence are provided by section 40 of *the Liquor Act 2007* (Act) and the *Liquor Regulation 2008* (Regulation). The power to grant an application for a liquor licence is provided by section 45 of the Act.
14. Any person exercising functions under the Act must also have regard to the objects and considerations set out in section 3 of the Act which states:
  - (1) *The objects of this Act are as follows:*
    - (a) *to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community,*
    - (b) *to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality,*
    - (c) *to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.*
  - (2) *In order to secure the objects of this Act, each person who exercises functions under this Act (including a licensee) is required to have due regard to the following:*
    - (a) *the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),*

- (b) *the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,*
- (c) *the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.*

15. In making its decision, the Authority has considered whether or not granting the Application would be in the public interest. The relevant public interest is informed by the statutory objects in section 3(1) of the Act and the statutory considerations to which the Authority must have regard in section 3(2) of the Act.
16. The relevant community referred to by the Authority when assessing those statutory objects and considerations is the community most likely to be serviced by and impacted by the licence. On the material before it that Authority is satisfied that this community predominantly comprises the community within the Wollongong City Council LGA.

### **Analysis of Relevant Facts**

17. The Authority is satisfied, on the basis of the Application and the material before it, that for the purposes of section 40 of the Act, the Application has been validly made and the minimum procedural requirements with regard to the Application and community consultation have been satisfied.
18. The Authority is satisfied, for the purposes of section 45(3)(a) of the Act, that the Applicant is a fit and proper person to carry on the business of an on-premises liquor licensed venue of the kind proposed in the Application material.
19. The Authority is further satisfied, for the purposes of section 45(3)(b) of the Act, that responsible service of alcohol practices will be in place upon the commencement of licensed trading on the Premises. This finding is made on the basis of the Applicant's Plan of Management dated 20 November 2016.
20. The Authority is also satisfied, on the basis of the Council submission dated 7 March 2016, that development consent is not required to operate the business as a "home business" where the business satisfies the requirements of the State Environmental Planning Policy (Exempt and Complying Codes) 2008, having specific regard to Subdivision 22.
21. Noting the scale of previous recent events conducted by the Applicant and the absence of any local and broader community opposition to the Application (with the notable exception of local Police, discussed below) the Authority is satisfied, on balance, that granting the Application is broadly consistent with the "expectations, needs and aspirations of the community" in respect of the local community of Mount Saint Thomas where the business is based and the broader community of the Wollongong City Council LGA, furthering an object of section 3(1)(a) of the Act.
22. The Authority is satisfied, on the basis of the material supplied by the Applicant, that granting the licence with the catering service will substantially contribute to the reasonable development, in the public interest, of related industries including hospitality, music, tourism and the arts in the local and broader community. In this respect, granting the Application will advance the statutory object of section 3(1)(b) of the Act.

- 23.** The Authority accepts, on the information provided by the Applicant about its recent events and the modelling data provided by Wollongong Council, that major cultural events are an important feature of Wollongong’s cultural and social fabric. The Authority is aware, through licensing information, as to the current distribution of licence types in Wollongong and accepts the Applicant’s submission that catering for cultural and entertainment events of the kind conducted by the Applicant will diversify the licenced entertainment options in Wollongong. The Authority further accepts, on the information provided by the Applicant, that this cultural shift coincides with Wollongong Council’s major event strategy which seeks to boost the profile of Wollongong by encouraging out of town visitations.
- 24.** The Authority also accepts the Applicant’s contention, on the information provided in the supporting documentation provided with the Application, that previous events conducted by the Applicant have received broader coverage in the Sydney Morning Herald, a number of global music blogs, and that the “In the Mix” (Australian dance music) website described their first event as “Australia snags the best NYE party ever”. This media evidences the capacity of events conducted by the Applicant to attract tourism to Wollongong in addition to servicing the Wollongong community.
- 25.** The evidence provided by the Applicant indicates that an economic impact analysis of the latest “Yours and Owls” event was conducted by Council utilising REMPLAN Economic Modelling software, with the total economic impact upon the Wollongong and regional economy from that event estimated at \$552,000. The Authority accepts the Applicant’s submission that granting the licence will facilitate in the Applicant business contributing to economic benefits for the local and broader community by way of the responsible development of liquor and related industries, including hospitality, music and tourism, which is an object of section 3(1)(c) of the Act.
- 26.** The Authority notes that Destination Wollongong was “delighted to support” the Application and submitted that the Applicants have “proven themselves to be extremely professional operators who consistently execute highly successful events”. This lends objective support to the Applicant’s claims about the benefits of cultural development and tourism in Wollongong from these types of events.
- 27.** The Authority has given careful consideration to all of the statutory considerations in section 3(2) of the Act, particularly the considerations in sections 3(2)(a) and (c).
- 28.** The Authority accepts the Police information about Mr Smith’s compliance record and notes with interest information that during recent events conducted by the Applicant some alcohol related misconduct on the part of patrons (e.g. fence jumping, intoxicated patrons, loitering minors) was detected by Police, along with two staff members who could not produce their RSA. Those incidents are adverse to the Application and have prompted careful scrutiny. Some of the incidents at events involved misconduct by patrons, or would be patrons, attempting to enter events without the licensee’s permission. The evidence is not sufficiently serious to undermine the probity of the Applicant and in so far as it concerns the management of previous events does not establish substantial or systemic compliance failure by the Applicant.
- 29.** As for prevailing licence density in the relevant community, LGNSW licensing records indicate that the Wollongong LGA has a rate of 86.27 on-premises liquor licensed premises per 100,000 of population, which is lower than the NSW rate of 111.02.

Licence density *per se* is not an adverse factor when assessing this Application, although the importance of this factor is somewhat diminished given the mobile nature of the catering service.

30. With regard to prevailing crime data in the relevant community, BOCSAR Crime Maps for the period between July 2015 – June 2016 indicates that the Premises:
  - (a) Is not located within a density *hotspot* for incidents of *domestic assault*.
  - (b) Is not located within a density *hotspot* for incidents of *non-domestic assault*.
  - (c) Is not located within a density *hotspot* for incidents of *malicious damage to property*.
31. Again, the location of the Applicant's licensed premises (its business office) is not particularly probative in the sense that the catering service proposed will involve supplying liquor on the site of events conducted by the business. Nevertheless - crime, licence density and socio demographic data pertaining to the Wollongong LGA is relevant given the locations that are likely to be serviced by the Applicant.
32. The Authority derives reassurance from the BOCSAR Report on NSW Recorded Crime Statistics July 2010 – June 2015 which records that during the 2014/15 financial year the Wollongong City Council LGA recorded lower rates per 100,000 persons of population for the occurrence of *alcohol related assault police*, *alcohol related domestic violence assaults* and *alcohol related offensive behaviour offences* than NSW as a whole. The rate of *alcohol related non-domestic violence assault* incidents was only slightly above the State-wide rate.
33. The licenced trading hours sought by the Applicant are within standard hours - from 11:00AM to 12:00AM Monday to Saturday and 11:00AM to 10:00PM Sunday and the Applicant consents to the 6-hour closure period condition (between 4:00AM to 10:00AM).
34. The scale of the events is potentially substantial and this potentially increases the scope for adverse amenity impacts, but the Authority is reassured by the procedures required by the Plan of Management dated 20 November 2016
35. The Authority is particularly reassured by a condition requiring the Applicant to provide a separate Plan of Management and Security Management Plan for any major event. This substantially addresses Police concerns that harm reduction measures should be tailored to each event, notwithstanding that separate licence applications will not be required.
36. In addition, the Authority is reassured by the numerous enforceable licence conditions proposed by Police and accepted by the Applicant and the detailed Plan of Management dated 20 November 2016 which will also be enforceable through a licence condition. The Authority is satisfied that these measures will reduce the risk that is otherwise manifest with large scale events. The Authority does not consider that the risk of alcohol related misconduct can be eliminated with larger scale events, but requires regulatory measures to be commensurate with the risk.
37. In response to the submission by Police regarding the "very late notice" of planned events, conditions that have been imposed upon this licence will require a separate Plan of Management and Security Management Plan be prepared for any major event,

30 days' advance notice to relevant Local Area Command, Local Council and LGNSW if patron capacity exceeds 300. A requirement to give Police 42 days' notice will apply if patron capacity will exceed 1,000. A comprehensive Site Plan is required for outdoor events and must be submitted to Police 30 days prior to the event. These notice requirements are more onerous than the requirements that would ordinarily apply to a licenced caterer servicing an event on an ad hoc basis.

38. While a limited licence will often be the appropriate licence type for the conduct of many ad hoc events, limited licences are not the only option. An ongoing licence of the type proposed by this Application may be appropriate, depending on the trading history and capacity of the applicant and provided that it is properly structured to respond to the regulatory risk of each catered event.
39. The Authority notes that it remains open to persons conducting a range of functions to rely upon liquor supplied by third party hotels or caterers. By contrast, this Application proposes an enforceable regime that goes above and beyond the framework that ordinarily governs licenced caterers.
40. Licensing this Applicant on an ongoing basis will provide regulatory consistency and certainty as to responsibility for the sale or supply of liquor at each event conducted by the Applicant business, rather than a variety of unrelated third parties assuming responsibility for different events on a temporary basis. Notably, if the protocols for consultation between the Applicant and Police required by the conditions of this licence prove ineffective, the Applicant may always seek a limited licence, on a case by case basis.
41. The Authority is satisfied that the risk of underage drinking will be managed by a condition of the licence that ID must be produced and any patron who looks under 25 years of age must provide a second form of identification. Security guards (two for the first 100 patrons, and an additional one for every additional 100 patrons) will also be present and visible. The Authority is further reassured that conditions limiting the types of drinks available, requiring food be served, requiring drinks be opened prior to serving to prevent stockpiling and requiring no glass will reduce the negative impacts from events.
42. The Authority notes, on the basis of the ABS Socio-Economic Indexes For Areas (SEIFA) data, that the Wollongong LGA is relatively advantaged compared to other LGAs in NSW on the Index of Relative Socio-Economic Advantage and Disadvantage, ranking in the 7<sup>th</sup> decile on the index (with a decile ranking of 10 being the most advantaged). The suburb of Mount Saint Thomas ranked in the 4<sup>th</sup> decile.
43. When making this decision the Authority has had regard to all of the conditions to which the licence will be subject and the detailed and enforceable measures set out in the Plan of Management dated 20 November 2016.

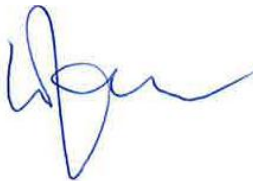
## **Conclusion**

44. The Authority is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding the decision whether or not to grant the Application, as all of those required to be notified of the Application were provided with the opportunity to make written submissions and all submissions received were considered and helped

inform this decision. The interested parties, including Police and Council, and all other parties were consulted as required by the legislation.

45. In making this decision the Authority has had regard to all of the statutory objects prescribed by section 3(1) of the Act and all of the considerations to which it must have regard under section 3(2) – including (a) the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour); (b) the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor; and (c) the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.
46. The Application is granted pursuant to section 45 of the Act. The sale on other premises authorisation is granted pursuant to section 25(6) of the Act.

Decision Date: 25 January 2017



Philip Crawford  
Chairperson

**Important Information:**

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

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

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

## SCHEDULE

### Material before the Authority

1. ASIC Current Company Extract for The Serious Business Group Pty Ltd dated 9 February 2016.
2. Local Consent Authority Notice, Public Consultation Site Notice and Police Notice all dated 11 February 2016.
3. Submission from Mr Mark Sleigh, General Manager, for Destination Wollongong dated 17 February 2016.
4. Application Form for on-premises licence received 26 February 2016.
5. Wollongong City Council submission dated 7 March 2016.
6. Email from licensing staff to Mr Adam Smith, Director of the corporate business owner, dated 9 June 2016.
7. Email from Mr Balunn Jones, Director of the corporate business owner, dated 9 June 2016.
8. Wollongong Local Area Command Police (Police) submission from Licensing Sergeant J. L. Davidson dated 11 July 2016. Attached are additional Police submissions from Crime Manager, Detective Inspector Ainsworth (dated 11 July 2016) and Commander, Superintendent Cassar (dated 20 July 2016).
9. Email from licensing staff to Mr Smith dated 27 July 2016.
10. Email from licensing staff to Mr Smith dated 31 August 2016.
11. Letter from Mr Jones to licensing staff dated 6 September 2016.
12. List of conditions imposed on the Limited Licence LIQL550026735 Yours and Owls Festival 2016 which took place on 1 October 2016.
13. Secretary submission dated 27 October 2016. LGNSW EVAT reference LA16/06540 dated 18 October 2016 is attached.
14. Email from Mr Jones to licensing staff dated 1 November 2016.
15. Extract from the Yours and Owls website downloaded 16 November 2016.
16. Yours and Owls Alcohol & Security Management Plan dated 20 November 2016.
17. Email from licensing staff to Mr Jones and Mr Smith dated 5 December 2016.
18. Email from Mr Jones to licensing staff dated 7 December 2016. Attached to the email is the Article: Prenzler, T and Sarre, R, 'Regulating Private Security in Australia' (1998) 98, *Australian Institute of Criminology: trends & issues in crime and criminal justice*.
19. Google Map and photographs of the Premises and surrounding area.
20. Plan or diagram of the licensed Premises.
21. NSW Crime Statistics for July 2014 to June 2016 for Mount Saint Thomas and NSW, downloaded 21 November 2016.
22. NSW Department of Health *HealthStats* Selected Reports for Wollongong LGA dated 21 November 2016.



23. 2011 Census *QuickStats* information for Mount Saint Thomas and Wollongong, downloaded from the ABS website on 21 November 2016.
24. BOCSAR Report on NSW Recorded Crime Statistics July 2010 – June 2015. This report indicates that for July 2014 – June 2015:
  - (a) the rate of *alcohol related assault Police* incidents recorded by NSW Police recorded across the Wollongong City Council LGA was **17.9** per 100,000 persons, below the State-wide rate of **18.2** per 100,000 persons.
  - (b) the rate of *alcohol related non-domestic violence* assault incidents recorded across the Wollongong City Council LGA was **151.8** per 100,000 persons, above the State-wide rate of **144.0** per 100,000 persons;
  - (c) the rate of *alcohol related domestic violence* assault incidents recorded across the Wollongong City Council LGA was **108.8** per 100,000 persons, below the State-wide rate of **122.6** per 100,000 persons; and
  - (d) the rate of *alcohol related offensive behaviour offences* recorded across the Wollongong City Council LGA was **75.4** per 100,000 persons, below the State-wide rate of **88.2** per 100,000 persons.
25. BOCSAR Crime Maps based upon data from July 2015 – June 2016 detailing hotspots for the concentration of offences near the location of the Premises.
26. LGNSW liquor licensing records for the suburb of Mount Saint Thomas and the Wollongong City Council LGA.
27. ABS SEIFA data for the Wollongong City Council LGA and the suburb of Mount Saint Thomas prepared on the basis of the 2011 census.