



Our ref: DOC23/168780

Mr Tony Schwartz
Back Schwartz Vaughan

By email to: tschwartz@bsv.com.au

1 August 2023

Dear Mr Schwartz

Application No.	1-8235049608
Applicant	Jimmy's on the Mall Pty Limited
Application for	Vary extended trading authorisation
Licence name	Babylon Restaurant and Garden Bar
Trading hours	<u>Consumption on premises – indoor areas</u> Sunday to Wednesday 09:00 AM – 12:00 AM Thursday to Saturday 09:00 AM – 03:00 AM <u>Consumption on premises – outdoor areas</u> Sunday to Wednesday 09:00 AM – 12:00 AM Thursday to Saturday 09:00 AM – 01:00 AM <u>Take-away sales</u> Monday to Sunday 09:00 AM to 10:00 PM
Premises	L7 188 Pitt Street, Sydney NSW 2000
Legislation	Sections 3, 11A, 12, 14, 15, 15A, 17, 40, 44, 45, 48, 49, 51 and 53 of the <i>Liquor Act 2007</i>

Decision of the Independent Liquor & Gaming Authority

Application to vary an extended trading authorisation – Babylon Restaurant and Garden Bar

The Independent Liquor & Gaming Authority (Authority) considered the application above and decided on 15 June 2022 to **approve** the application under sections 45 and 51 of the *Liquor Act 2007*, subject to imposing conditions as set out in Schedule 1.

Preliminary advice of this decision was provided on 6 July 2022.

Upon receipt of further information, the Authority decided on 19 August 2022 to impose an additional condition under section 53(1)(b) of the Act in relation to public holiday trading hours.

Statement of reasons

The statement of reasons will be published on the [Liquor & Gaming NSW website](#) in accordance with section 36C of the *Gaming and Liquor Administration Act 2007*.

If you're not happy with this decision

If the applicant, or a person who was notified of the application and made a submission, is unhappy with this decision, they may apply to [NCAT](#) for a review of the decision.

An application for review must be made no later 28 days after being notified that the decision is published on the [Liquor & Gaming NSW website](#). There is a fee to lodge the application.

For more information please contact the NCAT Registry at Level 10 John Maddison Tower, 86-90 Goulburn Street Sydney or visit the [NCAT website](#).

If you have any questions

Please contact the case manager, Wendy Yeung, at wendy.yeung.wye.kong@liquorandgaming.nsw.gov.au if you have any questions.

Yours sincerely

A handwritten signature in black ink that reads "Sarah Dinning". The signature is written in a cursive style with a large initial 'S' and 'D'.

Sarah Dinning

Deputy Chairperson

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

STATEMENT OF REASONS

Our decision

We **approve** the application under sections 45 and 51 of the *Liquor Act 2007* (NSW) (the Act).

Overall, we are satisfied that the social impact of approving the application will not be detrimental to the well-being of the local or broader community.

Our findings

Procedural and trading hour requirements

We are satisfied that:

- the application is valid and meets the Act's requirements for procedural fairness and trading period
- the proposed trading hours for the Premises meet the requirements under sections 11A, 12 and 14 of the Act in respect of trading and 6-hour closure periods.

The Community Impact Statement (CIS) meets the relevant requirements.

'Fit and proper person'

The applicant is a 'fit and proper person' to operate the business to which the proposed licence relates, as law enforcement agencies raised no concerns about their integrity.

Responsible service of alcohol

Procedures for the responsible service of alcohol will be in place at the premises from the start of licensed trading, under the plan of management and the conditions on the licence.

Development consent requirements

The necessary development consent is in force. City of Sydney Council approved the development application consent D/2016/1067/E for the premises on 11 February 2022.

Community impact

Local and broader communities

The relevant 'local community' is the community in the suburb of Sydney, and the relevant 'broader community' comprises the Local Government Area (LGA) of City of Sydney.

Diversity and density of licensed outlets

L&GNSW Liquor & Gaming LiveData Report for Sydney shows:

- there are 677 authorised liquor licenses, of which 146 are authorised to sell packaged liquor. This includes 22 packaged liquor stores, 19 registered clubs and 105 hotel licences.
- saturation of hotel licences in Sydney is higher compared to the City of Sydney and higher compared to all of NSW.
- saturation of late-trading outlets in Sydney is higher compared to the City of Sydney and higher compared to all of NSW.

Crime data (annual rate per 100,000 residents)

BOCSAR data shows that, in the year to December 2021:

- the premises were located in hotspots for all categories usually considered by the Authority with higher incident rates in the suburb compared to the City of Sydney and all of NSW.

Alcohol-related health data (per 100,000 residents)

The most recent HealthStats NSW data available show that between 2018-2020:

- alcohol-related deaths in City of Sydney were slightly lower compared to the NSW average.
- alcohol-related hospitalisations in City of Sydney were higher compared to the NSW average.

ABS Socio-Economic Index for Areas (SEIFA)

Data as at 2016 shows that Sydney and the City of Sydney were advantaged in terms of household income and residents in skilled occupations compared to other suburbs and LGAs in NSW.

Business model

We note that the proposed business model involves the sale of liquor with a focus on quality dining.

Benefits proposed by the applicant

The applicant proposes that there would be these benefits:

- the premises will provide a safe and vibrant late-night venue where patrons can enjoy a drink and substantial meal
- patrons won't need to migrate to other licensed venues that are currently permitted to trade longer and may be noisy, overcrowded or not provide full meals
- the proposal supports activation of local night-time economy, tourism, and social activities within the Sydney CBD.

Stakeholder submissions

We considered the submissions from:

- NSW Police Force, dated 25 May 2022, which does not object to the application and supports the proposed conditions.
- L&GNSW Compliance, dated 26 May 2022, which notes no adverse findings in respect of the Premises and acknowledges the detailed plan of management and house policy, however, recommends the plan of management condition be amended to reflect the updated plan.
- City of Sydney Council, dated 14 December 2021, which does not object to the application.
- Transport for NSW, dated 22 December 2021, which does not object to the application, however, requests that education material on drink driving prevention and alternative transport is made available to patrons.
- five members of the public, between 21 December 2021 and 11 January 2022, which raise concerns in respect of the current noise disturbance to nearby residents that will likely be exacerbated should the application be granted. While it was noted that there is a certain level of disturbance expected as part of city living, the current trading limits this to weekends with the increased trading likely to have an impact on residents mid-week.

We also considered the Applicant's submission in response, to these submissions, which notes that:

- the plan of management includes policies and procedures for managing noise and the protection of community amenity
- City of Sydney Council deemed that noise related matters were satisfied with the policies and procedures in place
- due to the location of the Premises within the heart of the Sydney CBD, it is reasonable to expect that nearby residents should have a higher threshold for disturbance
- the requests made by Transport for NSW are agreed to.

Findings of concern

Sydney has a higher license density than the state average and alcohol-related domestic assault is also relatively high in this area.

There are also some alcohol-related health issues in the broader community.

If the licence is granted, there is a risk that liquor sold at or from the premises would lead to an increase in alcohol-related crime, health, and other social and amenity issues, worsening these problems.

The risks may be mitigated by the following:

- as there are no gaming facilities on the premises, granting the application would not result in any negative social impacts associated with gambling activities
- the premises will be operated by Mantle Group which has experience of an established hospitality business portfolio and no identified adverse compliance findings
- harm minimisation measures outlined in the plan of management and licence conditions set out in Schedule 1.

The material we considered

We considered all the material we received about the application, including:

Application Material

- completed certification of advertising dated 7 March 2022
- completed application dated 22 February 2022
- completed Category B Community Impact Statement (CIS) dated 21 February 2022
- plan of management documents for the premises, titled Tenancy Specific Plan of Management and dated 7 February 2022
- ASIC business records for the Applicant and associated companies
- floor plan for the premises indicating the proposed area to which the ETA will apply.

Under [Guideline 6](#), we have also considered: data published by Bureau of Crime Statistics and Research (BOCSAR), NSW Department of Health and Australian Bureau of Statistics (ABS), and relevant L&GNSW liquor licensing records.

Submissions

- submission from L&GNSW Compliance, dated 26 May 2022
- submission from NSW Police, dated 25 May 2022
- submission from a member of the public, dated 11 January 2022
- submission from a member of the public, dated 5 January 2022
- submission from a member of the public, dated 30 December 2021
- submission from a member of the public, dated 30 December 2021
- submission from Transport for NSW, dated 22 December 2021
- submission from a member of the public, dated 21 December 2021
- submission from City of Sydney, dated 14 December 2021.

Other relevant material

- correspondence between L&GNSW staff and the applicant between 5 April 2022 and 25 May 2022 in relation to the assessment of the Application
- Google map images extracted from the Google website showing the location and photos of the Premises in map view.

The law that applies

These sections of the *Liquor Act 2007* and clauses of the Liquor Regulation 2018 apply to this application:

- Section 3: Statutory objects of the Act and other relevant considerations
- Sections 11A and 12: Standard trading period for liquor licences and a mandatory 6-hour period during which liquor cannot be sold
- Sections 14, 15, 15A and 17: Specific provisions about a hotel licence
- Section 40: Minimum requirements to apply for a liquor licence
- Section 44: Submissions about licence applications
- Section 45: Criteria for granting a liquor licence
- Section 48: Requirements to apply for a Community Impact Statement (CIS), including making sure that it won't harm the local or wider community's well-being
- Section 49: General provisions about Extended Trading Authorisations (ETAs)
- Section 51: General provisions about licence-related authorisations
- Section 53: Authority may impose, vary or revoke licence conditions.

We also considered [Guideline 6](#) to assess the likely social impact to the local and broader community.

Yours sincerely



Sarah Dinning

Deputy Chairperson

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

**Schedule 1 – Licence conditions to be imposed
Babylon Restaurant and Garden Bar**

No.	Condition to be imposed	Description
1.	6-hour closure	Section 11A of the <i>Liquor Act 2007</i> applies to this licence. Liquor must not be sold by retail on the licensed premises for a continuous period of six (6) hours between 3:00 AM and 9:00 AM 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.
2.	Trial period for full set of hours	<p>The licensee must provide satisfactory evidence to Liquor & Gaming NSW that the licensed trading hours continue to be authorised by the local consent authority after the trial period specified in the relevant development consent ends on 11 February 2024 (or as may be extended from time to time), or the trading hours of the premises will revert to:</p> <p>Internal areas: 09:00 AM to 12:00 AM midnight Monday to Sunday External areas: 09:00 AM to 10:00 PM Monday to Sunday</p> <p>A copy of the relevant development consent is to be kept on the premises and made available for inspection on the request of a police officer, council officer, Liquor & Gaming inspector, or any other person authorised by the Independent Liquor & Gaming Authority.</p>
3.	Extended Trading	Extended Trading Authorisation: whole of the licensed premises.
4.	Minors Area	Minors Area Authorisation: whole of the licensed premises
5.	Social impact	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 reasonably be expected from the information contained in the Community Impact Statement, application and other information submitted in the process of varying this extended authorisation on 15 June 2022 .
6.	Plan of management	The premises is to be operated at all times in accordance with the Plan of Management dated 07 February 2022 as may be varied from time to time after consultation with NSW Police. A copy of the Plan of Management is to be kept on the premises, and made available for inspection on the request of a police officer, council officer, Liquor and Gaming NSW inspector, or any other person authorised by the Independent Liquor and Gaming Authority.
7.	Liquor Accord	The licensee or its representative must join and be an active participant in the local liquor accord.
8.	CCTV	<p>1) The licensee must maintain a closed-circuit television (CCTV) system on the premises in accordance with the following requirements:</p> <ul style="list-style-type: none"> (a) the system must record continuously from opening time until one hour after the premises is required to close (or, in the case of a premises that is not required to cease trading, continuously at all times), (b) recordings must be in digital format and at a minimum of ten (10) frames per second, (c) any recorded image must specify the time and date of the recorded image, (d) the system's cameras must cover the following areas:

No.	Condition to be imposed	Description
		<ul style="list-style-type: none"> (i) all entry and exit points on the premises, (ii) the footpath immediately adjacent to the premises, and (iii) all publicly accessible areas (other than toilets) within the premises. <p>2) The licensee must also:</p> <ul style="list-style-type: none"> (a) keep all recordings made by the CCTV system for at least 30 days, (b) ensure that the CCTV system is accessible at all times the system is required to operate pursuant to clause 1(a), by at least one person able to access and fully operate the system, including downloading and producing recordings of CCTV footage, and (c) provide any recordings made by the system to a police officer or Liquor and Gaming NSW inspector within 24 hours of any request by the police officer or Liquor and Gaming NSW inspector to provide such recordings.
9.	Incident register	<p>1) The licensee must maintain a register, in which the licensee is to record the details of any of the following incidents and any action taken in response to any such incident:</p> <ul style="list-style-type: none"> (a) any incident involving violence or anti-social behaviour occurring on the premises, (b) any incident of which the licensee is aware that involves violence or anti-social behaviour occurring in the immediate vicinity of the premises and that involves a person who has recently left, or been refused admission to, the premises, (c) any incident that results in a person being turned out of the premises under section 77 of the <i>Liquor Act 2007</i>, (d) any incident that results in a patron of the premises requiring medical assistance. <p>2) The licensee must, if requested to do so by a police officer or Liquor & Gaming NSW inspector:</p> <ul style="list-style-type: none"> (a) make any such incident register immediately available for inspection by a police officer or Liquor & Gaming NSW inspector, and (b) allow a police officer or Liquor & Gaming NSW inspector to take copies of the register or to remove the register from the premises. <p>3) The licensee must ensure that the information recorded in the incident register under this condition is retained for at least 3 years from when the record was made.</p>
10.	Crime scene preservation	<p>Immediately after the person in charge of the licensed premises or a staff member becomes aware of any incident involving an act of violence causing injury to a person on the premises, the person in charge of the licensed premises and/or staff member must:</p> <ul style="list-style-type: none"> 1) take all practical steps to preserve and keep intact the area where the act of violence occurred, 2) retain all material and implements associated with the act of violence in accordance with the crime scene preservation guidelines issued by NSW Police, as published from time to time on the Liquor and Gaming NSW website,

No.	Condition to be imposed	Description
		<p>3) make direct and personal contact with NSW Police to advise it of the incident, and</p> <p>4) comply with any directions given by NSW Police to preserve or keep intact the area where the violence occurred.</p> <p>In this condition, 'staff member' means any person employed by, or acting on behalf of, the licensee of the premises, and includes any person who is employed to carry on security activities (eg. crowd controller or bouncer) on or about the premises.</p>
11.	Security	<p>Security guards are to be provided at the premises on Monday to Sunday from 6.00pm at a minimum ratio of 1 security staff member to 100 patrons or part thereof.</p> <p>Security personnel shall remain at the premises for at least 30 minutes after closing and shall assist in ensuring that patrons leave quietly.</p>
12.	No gaming	<p>No gaming machine, TAB or Keno facilities may be operated on the licensed premises.</p>
13.	LA10 noise levels	<p>The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre (31.5Hz – 8 kHz inclusive) by more than 5dB between 07:00am and 12:00 midnight at the boundary of any affected residence.</p> <p>The LA10 noise level emitted from the licensed premise shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz – 8Khz inclusive) between midnight and 7:00am at the boundary of any affected residence.</p> <p>Notwithstanding compliance with the above, the noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 12:00 midnight and 07:00am.</p> <p>For the purposes of this condition the LA10 can be taken as the average maximum deflection of the noise emission from the licensed premises (A-weighted).</p>
14.	Public holiday trading hours – excluding restricted trading days	<p>Internal areas: Trading until 3:00 AM is permitted on the eve of a public holiday and until 3:00 AM on the morning following the public holiday.</p> <p>External areas: Trading until 1:00 AM is permitted on the eve of a public holiday and until 1:00 AM on the morning following the public holiday 'Public holiday' to mean any day that is designated to be a public holiday under the NSW <i>Public Holidays Act 2010</i>.</p>