

ENFORCEABLE UNDERTAKING

Liquor Act 2019
Section 159(3)

The commitments in this undertaking are offered to the Director of Liquor Licensing by:

BRADLEY MORGAN
DIRECTOR
For and on behalf of
THE MIDWAY BERRIMAH HOLDINGS PTY LTD
ACN: 657 398 117
644 STUART HIGHWAY BERRIMAH NT 0828

BACKGROUND:

1. The Liquor Commission (the Commission) is charged with various functions under the *Liquor Act 2019* (the Act), including the function of granting a transfer of a liquor licence to appropriate applicants.
 2. The Director of Liquor Licensing (the Director) is charged with conducting an investigation into an application as the Director considers appropriate, and the Commission has delegated the determination of applications for the grant of a liquor licence to the Director.
 3. On 4 May 2022 a delegate of the Director approved the transfer of the liquor licence 80100957 held by JTR Investments Pty Ltd, to SOL (No. 6) Pty Ltd for the premises now known as The Midway Berrimah, located at 644 Stuart Highway, Berrimah.
 4. There are 1000 shares issued in the company held by 10 shareholders.
 5. With reference to section 55(3) of the Act, four such shareholders meet the 15% control threshold ordinarily necessitating further examination of their probity and fitness to be an associate of the licensee company,
 6. Those shareholders are:
 - Mrs Michelle Dixon; and
 - Mr Brett Charles Dixon; and
 - Mr James Ewart Cooper; and
 - Mrs Adrienne Danielle Cooper
 7. Mr and Mrs Dixon collectively hold 25% of the shares in SOL (No. 6) Pty Ltd.
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8. Mr and Mrs Cooper are joint directors of Gulf Transport Co. Pty Ltd which holds 20% of the shares in Sol (No.6) Pty Ltd, with Mr Cooper being the sole shareholder in that entity.
9. On 29 June 2023, Sol (No.6) Pty Ltd changed the company name to The Midway Berrimah Holdings Pty Ltd.

THE DIRECTOR'S CONCERNS

10. The shareholders listed above in clause 6 through their links to The Midway Berrimah Holdings Pty Ltd are associates of the licensee and therefore equally subject to an examination of the executive officers of that corporation.
11. Mrs Dixon, Mrs Cooper and Mr Cooper have not provided materials for examination and have stated they are unlikely to take active roles in the conduct of the business.
12. The likelihood of those persons being actively engaged in the conduct of the business of the licence notwithstanding, the Act requires the decision maker to be satisfied as associates of the applicant, they are fit and proper persons.
13. As no probity materials have been provided for the named persons, no such determination may be made.
14. Mr Brett Dixon had provided some probity materials however not all, and other circumstances existed that prevented a complete consideration of Mr Dixon at the time.
15. Accordingly, the grant of the transfer of the liquor licence was conditional on The Midway Berrimah Holdings Pty Ltd as licensee, entering into an enforceable undertaking, pursuant to section 159(3) of the Act to the effect that the following persons are restricted as to their involvement with the day to day operation and management of the business conducted under the liquor licence:
 - Mr Brett Charles Dixon; and
 - Mrs Michelle Dixon; and
 - Mr James Ewart Cooper; and
 - Mrs Adrienne Danielle Cooper; and
 - Mr Matthew Keith Moss.
16. On 19 July 2022, the circumstances which had previously prevented the completion of considerations in relation to Mr Dixon and Mr Moss were resolved.

17. On 10 October 2022, counsel for the licensee wrote to the Director to advise of the change in circumstances and provided complete materials for the consideration of Mr Dixon.
18. The Director is now satisfied the issues surrounding Mr Dixon and Mr Moss no longer remain an impediment to their involvement in the operation of the licence.
19. Accordingly, the Enforceable Undertaking dated 26 April 2022 is to be replaced by this Enforceable Undertaking.

ACKNOWLEDGEMENT OF CONCERNS

20. The Midway Berrimah Holdings Pty Ltd acknowledges the Director's concerns and believes that they are reasonably held.

UNDERTAKING:

21. Under section 159(3) of the Act, The Midway Berrimah Holdings Pty Ltd has offered, and the Director has agreed to accept, as an alternative to the examination of those persons named, the undertaking set out in this Enforceable Undertaking.
22. The Midway Berrimah Holdings Pty Ltd undertakes the following persons:
 - Mrs Michelle Dixon; and
 - Mr James Ewart Cooper; and
 - Mrs Adrienne Danielle Cooper

in their roles as associates of The Midway Berrimah Holdings Pty Ltd will have no involvement whatsoever with the day to day management or operations of The Midway Berrimah.

23. The Midway Berrimah Holdings Pty Ltd also undertakes those persons listed in clause 24 will not be authorised to give any instruction or direction to the Nominee (Manager) of the liquor licence held by The Midway Berrimah Holdings Pty Ltd or any other staff member or agent employed at The Midway Berrimah.
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NON-COMPLIANCE

24. Should the Director believe that either party has failed to materially comply with the Enforceable Undertaking as described in clauses 23 and 24 he will write to the parties setting out the concerns regarding non-compliance.
25. The parties will have 14 days from the date of the Director's letter referred to in clause 25 to provide evidence satisfactory to the Director that it has remedied such non-compliance.
26. The provisions of clauses 25 and 26 notwithstanding, the Commission and the Director reserve the right to take disciplinary action against the licensee in accordance with the Act for any non-compliance with this undertaking.

ACKNOWLEDGEMENTS

27. The parties acknowledge that the Director, in accordance with section 159(6) of the Act, will record this Enforceable Undertaking in the Register of Enforceable Undertakings.
28. The parties also acknowledge, in accordance with section 159(7) of the Act that it may vary or withdraw this Enforceable Undertaking only with the consent of the Director.

COMMENCEMENT DATE:

29. This Enforceable Undertaking will commence operative force from the date it is accepted by the Director.

PROVISION OF DOCUMENTS:

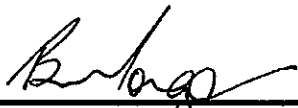
30. The address for providing the Director with any document or notice is:

The Director of Liquor of Licensing
GPO Box 1154
DARWIN NT 0801

31. The addresses for providing The Midway Berrimah Holdings Pty Ltd with any document or notice is:

The Midway Berrimah Holdings Pty Ltd
644 Stuart Highway
BERRIMAH NT 0828

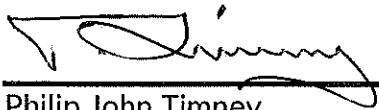
SIGNED BY:



Bradley Morgan, Director and Company Secretary
For and on behalf of The Midway Berrimah Holdings Pty Ltd (ACN 637 398
117)

Dated this 7th day of March 2024.

Accepted by the Director of Liquor Licensing under section 159(5) of the
Liquor Act 2019.



Philip John Timney
Director of Liquor Licensing

Dated this 8th day of March 2024.