



Ms Angela M Frost
angelamfrost@bigpond.com

17 May 2018

Dear Ms Frost

Application No.	1-6347857018
Applicant	Railway Properties Pty Ltd
Application for	Full hotel licence with extended trading and minors area authorisations
Licence name	Mullane's
Trading hours	<u>Consumption on premises – internal proportion of lower ground floor café area</u> Monday to Saturday 7:00 AM – 12:00 midnight Sunday 10:00 AM – 10:00 PM <u>Consumption on premises – external proportion of lower ground floor café area</u> Monday to Saturday 7:00 AM – 10:00 PM Sunday 10:00 AM – 10:00 PM <u>Consumption on premises – all other areas</u> Monday to Saturday 10:00 AM – 12:00 midnight Sunday 10:00 AM – 10:00 PM <u>Take away liquor sales</u> Monday to Sunday 10:00 AM – 10:00 PM
Premises	Units 12 & 13, 34/36 Brookhollow Avenue BAULKHAM HILLS NSW 2153
Issue	Whether to grant a hotel licence with extended trading and minors area authorisations
Legislation	Sections 3, 11A, 12, 14, 15, 15A, 17, 40, 45, 48, 49, 51 and 121 of the <i>Liquor Act 2007</i>

**Decision of the Independent Liquor and Gaming Authority
Application for a full hotel liquor licence with extended trading and minors area
authorisations – Mullane's**

The Independent Liquor and Gaming Authority ('Authority') considered, at its meeting on 14 March 2018, the Applicant's application for a full hotel licence with an extended trading authorisation ('ETA') and a minors area authorisation ('MAA'). The Authority decided to **grant** the hotel licence and MAA pursuant to sections 45 and 121 of the *Liquor Act 2007* ('Act') subject to the following conditions, and **refuse** to grant the ETA under section 49 of the Act.

1. 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 1:00 AM and 7:00 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. Restricted trading & NYE (std) – Consumption on premises

Good Friday	12:00 noon – 10:00 PM
Christmas Day	12:00 noon – 10:00 PM (liquor can only be served with or ancillary to a meal in a dining area)
December 31 st	Normal opening time until normal closing time or 2:00 AM on New Year's Day, whichever is the later

Note: Trading is also allowed after midnight into the early morning of Good Friday and Christmas Day if authorised by an extended trading authorisation. Trading must cease at the time specified under the authorisation. The latest time that can be specified is 5:00 AM.

3. Restricted trading and NYE (std) – Take away sales

Good Friday	Not permitted
Christmas Day	Not permitted
December 31 st	Normal trading
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 reasonably be expected from the information contained in the Community Impact Statement, application and other information submitted in the process of obtaining this licence.
5. The premises is to be operated at all times in accordance with the Plan of Management dated 12 September 2017 as may be varied from time to time after consultation with NSW Police. A copy 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.
6. There is to be no sale or supply of liquor prior to 10:00 AM on any day.
7. Closed-circuit television system
 - 1) The licensee must maintain a closed-circuit television (CCTV) system on the premises in accordance with the following requirements:
 - (a) the system must record continuously from opening time until one hour after the premises is required to close,
 - (b) recordings must be in digital format and at a minimum of six (6) 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:
 - (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) on the premises.
 - 2) The licensee must also:
 - (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.
8. 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:
 - 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 & Gaming NSW website,
 - 3) make direct and personal contact with NSW Police to advise it of the incident, and
 - 4) comply with any directions given by NSW Police to preserve or keep intact the area where the violence occurred.

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 (e.g. crowd controller or bouncer) on or about the premises.
9. From 8:00 PM until close on Friday, Saturday, Christmas Eve and New Year's Eve, the licensee will engage one (1) staff member whose sole role and function will be that of an RSA marshal. The RSA marshal must hold a current RSA competency card and shall wear a uniform that prominently indicates that the person is an RSA marshal. The RSA marshal shall perform the following responsible service of alcohol supervisory duties:

- 1) Monitoring responsible service of alcohol practices by staff members who are selling, supplying or serving alcohol;
 - 2) Engaging with staff members and patrons on the premises to encourage responsible attitudes and practices in relation to the promotion, sale, supply, service and consumption of liquor;
 - 3) Monitoring alcohol consumption by patrons and their behaviour for signs of irresponsible, rapid or excessive consumption of alcohol and for signs of intoxication;
 - 4) Intervening at an early stage to assist in the prevention of intoxication and anti-social behaviour (such intervention may include suggesting that patrons moderate their alcohol consumption by consuming food or non-alcoholic beverages);
 - 5) Assisting in the resolution of disputes arising on the premises between patrons.
10. From 8:00 PM until closing on every Friday, Saturday, Christmas Eve and New Year's Eve, a minimum of two (2) uniformed licensed security personnel are to be on duty to patrol the entrance and the internal areas of the licensed premises.

A statement of reasons for this decision is attached at the end of this letter.

Readiness to trade and approved manager

Please note that the licence cannot be exercised unless and until:

- Liquor & Gaming NSW has been provided with evidence that the premises is complete and ready to trade
- Liquor & Gaming NSW has been notified of the appointment of an approved manager to the licence, or the licence has been transferred to an individual licensee.

Exemption under clause 70AB of the Liquor Regulation 2008

Please note that pursuant to section 12 of the *Liquor Act 2007*, the standard trading period during which liquor can be sold for consumption away from the licensed premises must end at 10 PM on all trading days. However, the exemption provision under clause 70AB of the Liquor Regulation 2008 permits takeaway liquor sales between 10 PM and 11 PM on days other than Sundays and restricted trading days.

If you have any questions, please contact the case manager at charles.rivers@liquorandgaming.nsw.gov.au.

Yours faithfully



Philip Crawford
Chairperson
For and on behalf of the Independent Liquor and Gaming Authority

Statement of reasons

Decision

1. On 27 September 2017, Railway Properties Pty Ltd (“Applicant”) lodged an application (“Application”) with Liquor & Gaming NSW (“L&GNSW”), for determination by the Independent Liquor and Gaming Authority (“Authority”). The Application sought a hotel liquor licence (“Licence”) with an extended trading authorisation (“ETA”) and a minors area authorisation (“MAA”) for the premises at Units 12 & 13, 34/36 Brookhollow Avenue, Baulkham Hills NSW (“Premises”).
2. The Authority considered the Application at its meeting on 14 March 2018 and decided to grant the Licence under section 45 of the *Liquor Act 2007* (“Act”) and the MAA under section 121 of the Act, and refuse to grant the ETA under section 49 of the Act.
3. In reaching this decision, the Authority has had regard to the relevant material before it, the legislative requirements under sections 3, 11A, 12, 14, 15, 15A, 17, 40, 45, 48, 49, 51 and 121 of the Act, and the relevant provisions of the Liquor Regulation 2008 (“Regulation”).

Material considered by the Authority

4. The Authority has considered the Application, the accompanying community impact statement (“CIS”), and all submissions received in relation to the Application.
5. The Authority is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding this decision, as all parties required to be notified of the Application were provided with the opportunity to make submissions.
6. In accordance with its *Guideline 6*, the Authority has also had regard to relevant L&GNSW liquor licensing records and data published by Bureau of Crime Statistics and Research (“BOCSAR”), NSW Department of Health, and Australian Bureau of Statistics (“ABS”).
7. A list of the material considered by the Authority is set out in the Schedule.

Legislative framework

8. The Authority has considered the Application in the context of the following legislative provisions.

Objects of the Act

9. The objects of the Act, as set out in section 3, are to regulate the supply of liquor in line with the expectations, needs and aspirations of the community, and facilitate the balanced and responsible development of the liquor industry and related industries.
10. In the pursuit of these objectives, section 3 requires the Authority to, in exercising its powers under the Act, have due regard to the need to minimise harm associated with misuse and abuse of liquor, encourage responsible liquor supply practices, and ensure that the supply of liquor does not detract from the amenity of community life.

Trading hours and 6-hour closure period

11. Section 12 of the Act sets out the standard trading period for liquor licences. Additionally, section 11A imposes a condition on all licences prohibiting the sale of liquor by retail on the licensed premises for a continuous period of 6 hours during each consecutive period of 24 hours.

Minimum procedural requirements for a licence application

12. Section 40 of the Act prescribes the minimum procedural requirements for an application for a liquor licence to be validly made to the Authority.

Fit and proper person, responsible service of alcohol, and development consent

13. Section 45 of the Act provides that the Authority may only grant a licence if it is satisfied that:
- a) the applicant is a fit and proper person to carry on the business to which the proposed licence relates,
 - b) practices will be in place to ensure the responsible service of alcohol and to prevent intoxication on the premises, and
 - c) the applicable development consent required for use of the premises for the proposed business is in force.

Community impact statement

14. Section 48 of the Act requires certain applications, including an application for a Licence and an application for an ETA in relation to a Licence, to be accompanied by a CIS prepared in accordance with the relevant requirements.
15. Section 48(5) provides that the Authority may only grant the licence if it is satisfied that the overall social impact of doing so will not be detrimental to the well-being of the local or broader community, having regard to the CIS and any other matter before it.

Provisions specific to hotel liquor licence

16. Further legislative provisions specific to hotel liquor licences are set out in sections 14 to 17 of the Act and in the Regulation.

Provisions specific to ETA and MAA

17. Section 51 of the Act prescribes the minimum procedural requirements for a licensee to make a valid application for a licence related authorisation. The section also provides that when determining an application for a licence related authorisation, the Authority has the same powers in relation to the application as it has in relation to an application for a licence.
18. Section 49 of the Act provides the Authority with the power to grant an ETA to a licensee to permit the sale or supply of liquor for consumption in the licensed premises during a specified period outside the standard trading hours.
19. Subsection 49(8) provides that the Authority may only grant the ETA if it is satisfied that:
- a) practices are and will remain in place to ensure the responsible service of alcohol and to prevent intoxication on the premises, and
 - b) the extended trading period will not result in undue disturbance of the quiet and good order of the neighbourhood of the premises.
20. Section 10A of the Regulation requires the CIS for an ETA in relation to a hotel licence to address matters relating to gambling activities on the licensed premises during the period that the Authorisation is proposed to be in force.
21. Section 121 of the Act provides that the Authority may grant an MAA to a hotel licensee to permit minors to use part of the hotel while in the company of a responsible adult.

Key findings

22. Having regard to the information before it and relevant legislative requirements, the Authority makes the following findings in relation to the Application.

Validity, procedural and trading hour requirements

23. The Authority is satisfied on the material before it that:
- a) the Application has been validly made and meets the procedural requirements under sections 40 and 51 of the Act,

- b) the proposed trading hours for the Premises meet the requirements under sections 11A and 12 of the Act in respect of trading and 6-hour closure periods,

Fit and proper person, responsible service of alcohol, and development consent

24. Pursuant to sections 45 and 49 of the Act, the Authority is also satisfied that:

- a) the Applicant is a fit and proper person to carry on the business to which the proposed licence relates, given that no concerns regarding the Applicant's probity were raised upon consultation with relevant law enforcement agencies,
- b) practices would be in place from the commencement of licensed trading at the Premises to ensure the responsible serving of alcohol and prevent intoxication on the premises, having regard to the Plan of Management dated 12 September 2017 for the Premises and the conditions to be imposed on the licence, and
- c) the requisite development consent is in force, based on the Notice of Determination of Development Application 1028/2017/HA in respect of the Premises, issued by The Hills Shire Council on 13 June 2017.

Community impact of proposed gambling activities

25. As the Application involves an application for an ETA in relation to a hotel licence, clause 10A of the Regulation applies. Accordingly, the CIS for the Application is required to address matters relating to gambling activities on the Premises during the period that the ETA sought is proposed to be in force, being the following hours on Sundays ("the ETA period"):

- a) 7 AM to 10 AM, and
- b) 10 PM to 12 midnight.

26. The Applicant stated in the CIS that Keno and TAB facilities and 30 gaming machines are intended to be made available on the Premises and accessible during the ETA period. The Applicant also acknowledged in the CIS that the social impact of the proposed gambling activities was not addressed in the CIS.

27. The Authority accepts that there were no gambling activities on the Premises at the time the Application was lodged, and that if the Licence and ETA were to be granted, gambling activities may not take place on the Premises immediately thereafter. The Authority however does not accept the Applicant's contention that these would justify a finding that matters relating to gambling activities during the ETA period need not or cannot be addressed in the current CIS.

28. The Authority finds that, given the Applicant's stated intention to facilitate gambling activities on the Premises during the ETA period at some point in the future, the CIS must comply with the requirement under clause 10A of the Regulation.

29. The Authority does not accept the Applicant's contention that it would be more appropriate to address the social impact of the proposed gambling activities in a future application directly associated with those activities, such as an application for gaming threshold increase. The Authority notes that:

- a) to do so would be inconsistent with the requirement under clause 10A of the Regulation,
- b) an application for gaming machine threshold increase may or may not require the social impact of the proposed gaming machines to be addressed, depending on the circumstances of that application, and
- c) the commencement of Keno or TAB services on the Premises would not require any separate approval from the Authority, and the social impact of these services during the ETA period may not be able to be considered if not addressed in the current CIS.

30. Having regard to the above, the Authority finds that the Applicant's CIS in relation to the ETA fails to meet the requirement under clause 10A of the Regulation and, accordingly, has not

been prepared in accordance with the regulations and requirements of the Authority, as required by section 48(4) of the Act.

31. The Authority also finds that the Applicant has failed to provide sufficient information to enable a full assessment under section 48(5) of the Act of whether the overall social impact of granting the ETA would be detrimental to the community's wellbeing. The Authority considers the proposed gambling activities during the ETA period to be an important aspect of the operation of the ETA sought. The Authority also notes that the kinds and sources of information relevant to its consideration of social impact under section 48(5) of the Act, including the social impact of gambling activities, are set out in its *Guideline 6*.
32. For these reasons, the Authority refuses to grant the ETA.

Other aspects of the community impact statement

33. Apart from the issue identified above in respect of matters relating to gambling activities on the Premises during the ETA period, the Authority finds that the CIS was prepared in accordance with the relevant requirements pursuant to section 48(4) of the Act.
34. The Authority has taken into consideration the CIS and other available information in making the findings below about the overall social impact of granting the Licence and MAA on the local and broader communities.
35. For the purpose of this decision and consistent with its position in *Guideline 6*, the Authority is satisfied that the relevant "local community" is the community within the suburb of Baulkham Hills, and the relevant "broader community" comprises The Hills Shire Local Government Area ("the LGA").

Positive social impacts

36. The Authority notes that there is only one hotel licence in Baulkham Hills, and that the density of hotel licences in both Baulkham Hills and the LGA is considerably lower than the NSW state average.
37. The Authority accepts that Baulkham Hills and the surrounding area are undergoing substantial commercial and mixed use development, and associated population growth. The Authority also accepts that the anticipated population growth will likely create further demand for the facilities and services of a hotel, including liquor services.
38. The Authority notes that the Premises is located within a large business park and opposite the proposed Norwest Railway Station currently under construction. The Authority also notes that the Premises comprise a fine dining restaurant and a distillery, which the Applicant claims would distinguish the Premises from other hotels in the broader community.
39. Having regard to the available information, the Authority finds that granting the Licence would benefit the local business community, as well as residents and visitors to the area, by catering to their increasing demand for hotel services and providing additional and unique food and liquor choices.
40. The Authority also finds, taking into consideration the information provided by the Applicant, that granting the MAA would enable the hosting of family friendly events and functions at the Premises and help to attract weekend patronage.
41. The Authority considers the proposed social benefits above to be somewhat limited by the lack of evident community support for the Application. The only indication of any such support is the fact that no submissions in opposition to the Application were received from the community.
42. The Authority is nonetheless satisfied that granting the Licence and the MAA would be in line with the expectations, needs and aspirations of the community, and contribute to the balanced

and responsible development of the liquor industry and the related restaurant and catering industry.

Negative social impact

43. The Authority notes from the BOCSAR data that:

- a) for the year to September 2017, the Premises was not located within any hotspots for incidents of alcohol related assault, domestic assault, non-domestic assault or malicious damage to property, and
- b) for the two years to September 2017, the rates of alcohol related assault (domestic and non-domestic) and malicious damage to property in both Baulkham Hills and the LGA were significantly lower than the corresponding NSW figures.

44. The Authority also notes from the most recent HealthStats NSW data available at the time of its consideration that the LGA recorded a lower than average level of alcohol attributable deaths for the period 2012-13, and a higher than average level of alcohol attributable hospitalisations for the period 2013-15.

45. The Authority finds these statistics to raise no immediate concern in respect of the prevailing level of alcohol related crime in the community, but some concern in respect of hospitalisations associated with liquor consumption in the LGA.

46. The Authority notes that neither NSW Police nor the local health authority opposed the granting of the Licence or the MAA, though Police did not support the granting of the ETA.

47. The Authority accepts that if the Licence were to be granted, there may be a risk that liquor sold or supplied at the Premises, over time, would contribute to an increase in alcohol related crime, health and other social issues in the community.

48. The Authority is nevertheless satisfied that this risk would be adequately mitigated by the Applicant's adherence to the practices and procedures in the Plan of Management and the proposed licence conditions in respect of the responsible service of alcohol and prevention of intoxication on the Premises.

49. The Authority also notes that no objection in relation to the Application was received from any member of the community or the other stakeholders consulted.

Overall social impact

50. The Authority has had regard to the ABS data available at the time of its decision that as at 2011, Baulkham Hill was among the most advantaged suburbs, and the LGA among the most advantaged Local Government Areas, in NSW on the Index of Relative Socio-economic Advantage and Disadvantage. The Authority notes that this data is seven years old and does not draw any specific inferences from it, other than to note that it does not raise any apparent concerns.

51. Having considered the positive and negative social impacts that are likely to flow from granting the Licence, the Authority is satisfied that the overall social impact of granting the Licence and the MAA would not be detrimental to the well-being of the local and broader communities.

52. The Authority is also satisfied that a decision to grant the Licence and the MAA would be consistent with the objects of the Act to regulate liquor supply and facilitate responsible industry development in line with community expectations and needs.

53. Accordingly, the Authority has decided to grant the Licence under section 45 of the Act, and grant the MAA under section 121 of the Act.



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.nsw.gov.au/Pages/lga/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 considered by the Authority

1. ABS SEIFA data based on the 2011 Census for Baulkham Hill and the LGA on the Index of Relative Socio-Economic Advantage and Disadvantage.
2. HealthStats NSW data showing alcohol-attributable deaths in the LGA for the period 2012-13 and alcohol-attributable hospitalisations in the LGA for the period 2013-15.
3. NSW Recorded Crime Statistics 2016 outlining the proportion of offences in the LGA by day of week and time of day.
4. Notice of determination issued by The Hills Shire Council on 13 June 2017 approving the development application 1028/2017/HA in relation to the Premises.
5. Completed application forms for the Licence, ETA and MAA, and variation of the standard 6 hour closure period, signed dated 12 September 2017.
6. Copy of the public consultation site notice, police notice and local consent authority notice signed by the Applicant on 12 September 2017.
7. Completed Category B Community Impact Statement dated 12 September 2017.
8. Plan of Management for the Premises dated 12 September 2017.
9. BOCSAR crime maps for the year to September 2017, indicating the location of the Premises relative to hotspots for alcohol related assault, domestic assault, non-domestic assault, and malicious damage to property.
10. NSW crime statistics for the two years to September 2017, published by BOCSAR, showing the counts, rates and two year trends of alcohol related assault (domestic and non-domestic) and malicious damage to property in Baulkham Hills and the LGA.
11. Submission from NSW Police dated 27 October 2017 in relation to the Application.
12. Certification of Advertising signed and dated 16 November 2017.
13. Submission from the Applicant's legal representative on 18 December 2017 in relation to the assessment of the Application.
14. L&GNSW liquor licensing records as at 15 January 2018, outlining the density of hotel liquor licences in Baulkham Hill, the LGA and NSW, and listing all hotel licences in Baulkham Hill and the LGA.
15. Google map images extracted from the Google website on 22 January 2018, showing the location and photos of the Premises in map view, earth view and street view.
16. Email from L&GNSW staff on 17 April 2018 summarising the verbal submission made by the Applicant's legal representative in relation to the Authority's decision on the ETA application.
17. ASIC business records in relation to the Applicant.
18. Undated premises plan for the Premises.
19. An undated copy of The Hills Corridor Strategy prepared by The Hills Shire Council.