

Fairfield City Council  
Submission to L&GNSW

**Evaluation of the  
Community Impact Statement  
Requirement for Liquor Licence  
Applications**

26 July 2017

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## FAIRFIELD LOCAL GOVERNMENT AREA

Fairfield City Council is located in the south west region of Sydney. In the 2016 Census, there was a usual residential population of 198,817 people. Most of the population increase in Fairfield is the result of immigration; the majority of which are people entering Australia on humanitarian visas. During 2017, over 6,000 refugees settled in the Fairfield Local Government Area (LGA) and have not been included in the 2016 census population statistics.

The majority of residents in Fairfield were born in countries where English is not the first language and in 2016, 21.6% of the population stated that they did not speak English very well or at all while 24.8% of the population speaks only English.

In 2011, Fairfield had a SEIFA ranking of 854, making it the most disadvantaged area in Sydney and the third most disadvantaged area in NSW.

In 2013, Council adopted the *Reducing the Harm from Drugs* policy that aims to reduce the health, economic and social harm associated with drug use. This policy includes tobacco, alcohol and medicines, as well as illegal drugs. Council's policy recognises that harm is caused not only to the people who use drugs, but also to those around them and the impact of drug use can be reduced with a proactive and strategic approach.

In 2013, Council also adopted a policy for the *Supply and Sale of Alcohol on Council Owned Sportsfields*. This policy seeks to ensure that Council's sportsfields and parks provide a safe and inclusive environment for event participants and the general public. The sale and supply of alcohol on Council's sportsfields and parks is not permitted unless exceptional circumstances exist. In the case of exceptional circumstances, approval for a liquor licence can only be granted by a resolution of Fairfield City Council. The objectives of Fairfield City Council's policy for the *Supply and Sale of Alcohol on Council Owned Sportsfields* are to:

- Minimise harm from alcohol and the negative impacts of alcohol
- Encourage alcohol-free sporting, cultural and community events
- Promote the normalisation of an alcohol-free culture at community events
- Reduce the exposure of children, young people and the general community to alcohol in parks and sportsfields
- Restrict alcohol to exceptional circumstances

Between 2008 and 2013, the number of liquor licences in the Fairfield LGA increased by over 40%. In 2015, data shows there were 193 liquor licences in the Fairfield LGA. Research shows that increased access to alcohol increases consumption levels of individuals and consumption by people at a younger age.

Council's experience with the Community Impact Statement (CIS) process within the context of a culturally and linguistically diverse and highly disadvantaged community with poor health outcomes, provides the context for the submission provided.



# **1 ARE COMMUNITY STAKEHOLDERS BEING APPROPRIATELY CONSULTED?**

## **1.1 Are the Right Community Stakeholders Being Invited to Provide Feedback on Proposed Liquor Applications Via the CIS Process?**

Category A CIS stakeholders invited to provide feedback on proposed liquor applications should be expanded to include occupants of neighbouring buildings, agencies funded by NSW Government to provide early intervention services and special interest groups (including schools, health facilities, etc) to assess the possibility of negative impact on vulnerable communities that other agencies within the NSW State Government are seeking to assist. Some of the types of licences in Category A may not be low risk in all contexts.

Some types of liquor licences contained in Category A, such as Primary Service Authorisations, can effectively operate as bars during some trading hours. Therefore, agencies and individuals who may be impacted by the operation of a bar should be included and engaged in the notification and consultation process.

Standard trading hours for Sundays were developed in line with community expectations of the role of Sunday in family and community life. Effective removal of the earlier cessation of trading on Sundays that occurs with the inclusion of extended Sunday trading hours into Category A, should have wider discourse and assessment of the probable negative or positive impacts on the community.

## **1.2 Do Community Stakeholders have the Information, Time and Knowledge They Need to Provide Informed Feedback About a Proposed Application?**

The general community and agencies that do not specialise in liquor licensing are unlikely to be aware of liquor licence applications and cannot be expected to have information they require to make a credible objection to a proposal. These sectors may have anecdotal evidence of possible impact on particular communities of an increase in liquor licenses but do not have access to the level of evidence required to influence the decision of the consent authority.

The time restriction of 30 days for responses to a proposal is too short to enable meaningful engagement within the community, gather evidence and to provide a submission. In addition to the time restriction for submissions relating to the impact of a proposal, the community or the agency who may wish to assess and possibly object to a proposal, becomes responsible for the resources required to source and analyse appropriate research. Gathering of evidence, analysis of the proposal and the application of evidence to the specific venue requires a range of resources and skill that most communities do not have in place at all times. Resources required include technical skill, financial resources, specialist knowledge and access to evidence. The available timeframe of 30 days does not enable this process to occur.

Transferring the responsibility for the provision of evidence regarding the social and economic impact on a community is a significant impost and further excludes and disadvantages communities who are not familiar with 'the system', educated, wealthy and articulate. The cost of a social impact assessment should be the responsibility of the



applicant, not the general community. The consent authority does not expect to fund any part of the proposal or information required to make decisions, so it is not reasonable that private individuals or agencies provide resources to complete a social impact assessment of the proposal.

The Independent Liquor & Gaming Authority (ILGA) can only make decisions based on evidence relating to the specific proposal at the specific location. Hence, the requirement to produce objections based in evidence relating to a unique location is most usually beyond most communities. In relation to highly disadvantaged, culturally and linguistically diverse communities, this systemic barrier to engagement in the approval process effectively excludes the community from participation in the process.

The CIS forms are not a full assessment of the impact of a proposal. The CIS form and process only seeks the applicant's opinion of the impact of the proposal and does not require evidence or informed analysis. While there is a description of the immediate community, there is no information on the economic, social or cultural demographic required. There is no data relating to crime, alcohol related incidents, linking data, health, addiction, alcohol related disease or associated statistics such as domestic violence. Lack of data and evidence of the vulnerabilities of the local community ensures that the community is not receiving relevant information relating to the proposal that can be used to develop well informed conclusions.

Reliance on descriptive information and opinion of the applicant on the impact of the proposal, rather than a requirement to provide professional and rigorous assessment of the probable social and economic impact of the proposal on the community, does not provide an assessment of the impact of the proposal on the health and wellbeing of the local community.

It is not reasonable that provision of evidence and research to prove a detrimental impact that is likely to result from a specific application in a specific community, rests with individuals and agencies with core businesses other than liquor licensing. This is not reasonable due to capacity and resourcing available compared to the resources and capacity of applicants who often engage solicitors, consultants and specialists with experience in liquor licensing to prepare and lodge applications. The result is that it is very difficult for the community and community organisations to provide sufficient evidence to successfully assess the impact on the community and/or mount an argument against a proposal.

Most staff in agencies which are not related to liquor or academia does not have this specialised knowledge or 'know how' to efficiently acquire the information. Specialist consultants need to be engaged to assess and identify evidence to support any objection. This results in significant costs for the community sector. It is probable that the lack of resourcing and capacity is the reason that departments and agencies are providing standard submissions with no evidence, or argument, to support claims of negative community impact.

The community and agencies within the community must retain the right and the ability to provide feedback and raise issues of concern with any proposal that may cause unplanned negative impacts. Transparency of proposals and decision-making, and the right to engage in decision-making, is an essential principle in a democracy, however, these principles should not be interpreted to shift responsibility and cost of the provision of

evidence and formal assessment of social, economic and environmental impacts to the community.

### **1.3 Is the CIS, Once Submitted by an Applicant to L&GNSW, Being Promoted by L&GNSW in an Effective and Appropriate Way to Provide Background on Community Consultation Conducted by the Applicant and Reflect Feedback from Community Stakeholders?**

Reliance on the noticeboard on the L&GNSW website is a passive system and is not accessible to individuals who do not have access to the internet or who do not regularly scan the noticeboard. There have also been instances of incorrect listing on the noticeboard.

### **1.4 How Can Consultation and Notification Processes be Improved?**

Notification of all proposals needs to be provided in more formats than the website. Use of local area social media networks and newspapers should also be considered.

Consultation processes should enable issues regarding a proposal to be raised directly with the Independent Liquor and Gaming Authority (ILGA) rather than the applicant. These issues should be publicly available and ILGA must apply independent and specialist knowledge regarding proposed mitigation strategies.

The ILGA should also ensure all applications are independently assessed by specialists with acknowledged skills and experience in social impact assessment without links to the alcohol, hotel or club industry. These specialists should use issues and feedback from the community of concern, as well as the proposal from the applicant as local knowledge to inform their analysis. This would ensure and assist proposals to provide the positive impact on the community that they seek to provide.

The capacity to prove positive or negative social impact, or lack of detriment, should be the responsibility of the ILGA. The current system does not provide an assessment of social impact and therefore liquor license applications are not being appropriately assessed.

## **2 DOES THE CIS CAPTURE LOCAL COMMUNITY CONCERNS AND FEEDBACK?**

### **2.1 Does the Process Give Sufficient Opportunity for Community Stakeholders to Express Any Concerns or Provide Positive Feedback on a Proposed Application?**

Concerns raised by agencies and communities are documented and reported to the consent authority by the applicant. This raises a number of issues:

- Willingness of the stakeholders to raise all issues of concerns to the applicant, particularly if the applicant is likely to become a neighbour.
- The applicant reports the issues of concern raised by stakeholders. There is no system to ensure that all issues raised have been included or, if the issues are



included, are accurate and fully outlined. The stakeholders may, or may not, agree with the presentation of the issues.

- The issues of concern raised are not transparent.
- Strategies to mitigate issues of concern may, or may not, have been accepted by the stakeholders. There is no system for stakeholders to confirm that the statements made by the applicants are accurate, complete or truthful.
- Applicants have a motive to under represent issues of concern. Their motive is to promote their own objectives, not to protect the public good.
- The ILGA may not be adequately informed of issues and feedback raised. There is no transparency or checks and balances to ensure that the information provided is complete or accurate.

## **2.2 Are the Feedback and Concerns of Stakeholders Being Reported by Applicants Via the CIS in a Reliable and Accurate Manner?**

There is no system, or process, to know this. There is no transparency or checks and balances. Lack of basic processes can only result in a system that is not robust or credible. I have less than positive experience in relation to this aspect of the process in the past.

## **2.3 Does the CIS Process Meet the Needs of People from Culturally Diverse Backgrounds or People with a Disability, Including Applicants and Community Stakeholders?**

It appears that the ILGA takes notice of communities who 'strongly oppose' applications. Participation in community action is not the same in all communities and is influenced by the socio-economic, linguistic and cultural background of the community. Communities with high levels of people from culturally and linguistically different backgrounds, particularly those with high levels of humanitarian settlers who are recent arrivals to the community, are less likely to engage in a system which requires opposition to proposals by businesses to government agencies. Communities which also experience high levels of disadvantage are also less likely to participate in this system.

Barriers to participation in the consultation and CIS process include:

- Low levels of English language proficiency
- Lack of familiarity with Australian consultation systems, processes and rights
- Lack of knowledge of Australian legislation
- Fear of government agencies and authority
- Exclusion from government and social processes
- Perception of power and feeling of disempowerment
- Lack of research and analysis skills
- Lower levels of education
- Focus for many people is their immediate problems and needs
- Lack of time

Strong community opposition is most likely found in communities with higher levels of engagement, education, ability to articulate arguments, understanding of Australian legislation coupled with sufficient time and other resources to enable opposition to be developed and articulated.

#### **2.4 Does the CIS Ensure Applicants Consult and Respond to Feedback Received from Community Stakeholders Prior to Submitting an Application?**

There is no process to ensure that applicants consult or respond to feedback. This is dependent on the applicant and, in some cases, feedback is dismissed as 'not significant' or having 'no merit' without any evidence being offered to justify this assessment. In many cases, consultation within the CIS process is passive with forms being sent to agencies with no other engagement.

#### **2.5 Do Community Stakeholders Have Confidence That the ILGA and Delegated Officers Will Take Their Feedback into Account When Making a Decision on an Application?**

The consent authority can only base decisions on evidence that address the specific proposal at the specific venue. The Act does not facilitate 'opinion' or 'concern' to be used as the basis of a decision. There is no transparency to inform external parties as to how decisions are made or when additional research or assessment is undertaken by L&GNSW or ILGA. There is no feedback provided to community groups, Councils or other agencies that have raised issues or concerns.

### **3 IS THE INFORMATION COLLECTED DURING THE CIS PROCESS USEFUL?**

#### **3.1 Does the CIS Help to Identify the Risks to the Community of a Proposed Liquor Licence or Authorisation, Including with Respect to Alcohol-Related Violence and Anti-Social Behaviour?**

Mapping the local agencies, services and open space can provide a helpful context, however, the radius of mapping should be related more closely to the type and scale of the proposal. Use of a 100 metre area does not take into account large proposals or proposals that service communities of interest, rather than geographic regions.

The CIS relies on local agencies to identify risks. This process transfers responsibility and cost of the identification of risk onto agencies and groups that are not the consent authority or the applicant. These agencies and groups are not resources for this work and have no process available to recoup the cost of the provision of this information.

#### **3.2 Does the CIS Help to Identify the Benefits to the Community of a Proposed Liquor Licence or Authorisation?**

The CIS provides the opinion of the applicant only. It does not provide evidence or require an informed process to assess benefit. Often the benefits listed relate to private benefit and not public good.



### **3.3 Are There Any Categories of Information Currently Missing from a CIS That Would Help to Identify the Aforementioned Risks and/or Benefits?**

Information that should be provided should include, but not limited to, linking data, alcohol related incidents in the area, employment tenure and growth, alcohol related injury, alcohol related crime and assault, including domestic and family violence, and alcohol related chronic disease. Assessment of benefits and detriment in the short and long term also needs to be considered. Short and long term cost to judicial and health systems, as well as benefit to community safety, street activation and employment, must be included in assessments, particularly when considering the cumulative impact of applications.

### **3.4 Does the CIS Generate New and Additional Information Beyond What is Provided by Community Stakeholders Via the Development Application (DA) Consultation Process?**

The *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, has removed the requirement for development consent for new businesses in many instances where development approval has previously been granted. Existing development consent for retail outlets under past regimes would not have considered the provision of alcohol. Therefore, the consultation process associated with the DA process cannot be assumed to have included consultation on the provision of alcohol. As alcohol is a restricted substance and can be related to increases in assaults and injury, it cannot be considered to be equivalent to other, non-restricted retail items.

The Code SEPP enables restaurants with up to 50 seats to operate under pre-existing development consent for retail. It also permits food halls with over 50 seats to operate with no additional development application. In each of these examples, an On Premise Licence could be provided without the community being consulted or informed.

In the current context, there is an assumption that the consent authority for liquor licensing, L&GNSW, has the responsibility to hold appropriate consultation and assessment when considering applications for liquor licences for any property.

The current planning regime does not necessarily result in duplication of consultation in relation to liquor licences.

### **3.5 Is the Feedback and Information Collected Via the CIS of the Nature That is Useful to Inform Decision-Making with Respect to the Consideration of Applications?**

The CIS process is not a social impact assessment and therefore does not meet the requirements of the *Environmental Planning and Assessment Act* or the *Liquor Act*. The information and feedback provided in the proposal, and from the community, can only provide local knowledge and proposed operating plan to be used in a social impact assessment of the application.

### **3.6 Do the Benefits of the CIS Justify the Costs or Time Impositions Placed on Businesses, Local Residents and Other Stakeholders to Participate in This Requirement?**

The assessment of the social impact of a proposed liquor licence is required to meet the objectives of the *Act*. Meeting the objectives of the *Act* must be paramount to the short term cost of the process. If the objectives of the *Act* are not met, any long term cost of negative impact will be borne by government and the community. It is a false economy or a transfer of cost for social impact assessment not to be undertaken.

## **4 ARE THERE OPPORTUNITIES TO CUT RED TAPE AND MINIMISE DELAYS FROM THE CIS PROCESS?**

The NSW Regulatory Policy Framework Review Panel, chaired by the Hon Nick Greiner AC, states that reduction of red tape does not necessarily result in reduced compliance nor does it necessarily result in the correct outcomes being achieved. An attempt to reduce 'red tape' to 'increase business certainty' or 'make doing business easier' cannot be reasons to reduce requirements that are necessary to ensure the objectives of the *Act* are achieved.

### **4.1 What Enhancements Could be Made to the CIS Process to Reduce Costs and Regulatory Burden for Applicants and Other Stakeholders, and Shorten Completion Timeframes?**

Independent social impact assessments undertaken by appropriately qualified and experienced professionals with no links to the alcohol, hotel or club industries, would be the most efficient and effective method to provide credible assessment of proposals that achieve the objectives and requirements of the *Act*.

## **5 ARE THERE OPPORTUNITIES TO MINIMISE OVERLAPS IN COMMUNITY CONSULTATION PROCESSES ACROSS LOCAL AND STATE GOVERNMENT?**

The use of independent and experienced experts to conduct community consultation for liquor licensing would provide consistency across NSW for businesses and communities. This information could be provided to local government to provide consistent information on the social impact of the proposal while assessing the development.

The current land use planning regime enables private certifiers to approve development applicants. Private certifiers do not offer transparency, have no checks and balances and have a potential conflict of interest with their clients. In addition to these issues, land use planners and private certifiers are generalist staff with no specialist knowledge in the assessment of liquor licences.

There is no requirement in the *Environmental Planning and Assessment Act 1979* to undertake notification or consultation on any application. Notification and consultation regarding development proposals is subject to the policy of each Council. While this



facilitates policies that are responsive to the differing context of each local government area, it also results in different processes in each local government area.

L&GNSW can provide a standardised consultation and notification process for liquor licences which is appropriate for a product that is restricted to use by adults and is known to have causal links to increases in chronic disease, injury and violence if incorrectly supplied and consumed. As the consent authority, the ILGA can provide specialist knowledge and experience in the assessment process.

## **6 ARE THE SEPARATE CIS CATEGORIES (A&B) NECESSARY AND APPROPRIATE?**

All applications should be subject to an independent social impact assessment so that the particular communities, proposals and venues can be considered. Presumably, low risk proposals will result in an impact assessment that is quicker and cheaper than proposals in areas of high vulnerability and risk. Social impact assessment for all applications ensure communities retain their right to engage in decision-making and ensures that assessment of risk is undertaken by appropriately qualified people and based on individual proposals.

