

Mr Lachlan Archer
JDK Legal

By email to: l.archer@jdklegal.com.au

22 January 2024

Dear Mr Archer

Application No.	1-8757021336
Applicant	Harvest Pub Operations Pty Ltd
Application for	Amendment – hotel (full) – new extended trading authorisation (ETA)
Decision Date	15 November 2023
Licence name	Railway Hotel
Licence No.	LIQH400108214
Proposed trading hours	Consumption on premises: Ground floor - Bistro, Gaming room and Public Bar; First floor - Deck, Accommodation, Function area and Bar Monday to Saturday 10:00 AM – 2:00 AM Sunday 10:00 AM – 12:00 midnight Consumption on premises: All other areas of the licensed premises Monday to Saturday 10:00 AM – 12:00 midnight Sunday 10:00 AM – 10:00 PM Take away Monday to Saturday 10:00 AM – 12:00 midnight Sunday 10:00 AM – 10:00 PM
Current trading hours	Consumption on premises Monday to Saturday 5:00 AM – 12:00 midnight Sunday 10:00 AM – 10:00 PM Take away Monday to Saturday 5:00 AM – 12:00 midnight Sunday 10:00 AM – 10:00 PM
Premises	450 Smollett Street Albury NSW 2640
Legislation	Sections 3, 11, 12, 14, 15, 40, 44, 45, 48 and 49 of the <i>Liquor Act 2007</i>

**Decision of the Independent Liquor & Gaming Authority
Application for a new ETA – Railway Hotel**

We **refuse** the application under section 49 of the *Liquor Act 2007* (Act).

Statement of reasons

Overall, we are concerned that the social impact of approving the application is likely to be detrimental to the well-being of the local or broader community.

We are concerned that the proposed additional 12 hours per week of post-midnight trading would, over time, contribute to an increase in alcohol-related crime, health and other social and amenity issues. We are not satisfied that the proposed extension is in the public interest given the objections from the NSW Police Force, Local Council and local community.

Our findings

Procedural requirements

We are satisfied that:

- the application is valid and meets the Act's requirements for procedural fairness
- 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

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. Albury City Council approved the development application B/50-993 for the premises on 28/04/1948. The Council also granted the modification application 10.2021.38556.1 on 20 September 2021.

Community impact

Local and broader communities

The relevant 'local community' is the suburb of Albury, and the relevant 'broader community' comprises the Local Government Area of Albury.

Diversity and density of licensed outlets

L&GNSW Liquor & Gaming LiveData Report for the suburb of Albury shows:

- there are 85 authorised liquor licenses, of which 25 are authorised to sell packaged liquor. This includes 8 packaged liquor licences, 5 registered club licences, 11 hotel licences and 1 Producer/Wholesaler.
- saturation of hotel licences in the suburb is significantly higher compared to both the LGA and all of NSW

Crime data (annual rate per 100,000 residents)

BOCSAR data shows that, in the year to June 2023:

- the premises were located in high density hotspots for alcohol-related non-domestic assault and malicious damage to property and medium density hotspots for alcohol-related assault
- All crime rates usually considered by us were significantly higher in the suburb of Albury compared to both the LGA of Albury and all of NSW. This includes alcohol-related domestic and non-domestic assault, alcohol-related offensive conduct as well as malicious damage to property.

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

HealthStats NSW data showed that:

- alcohol-related deaths in the LGA of Albury were higher compared to the NSW average.
- alcohol-related hospitalisations in the LGA were lower compared to the NSW average.

ABS Socio-Economic Index for Areas (SEIFA)

The suburb of Albury and the LGA were ranked as a community with an average level of relative socio-economic advantage in terms of household income and residents in skilled occupations compared to other suburbs and LGAs in NSW.

Business model

We note that the primary purpose of the existing licence is the retail sale of liquor on the licensed premises for consumption on and away from the licensed premises. Accommodation is also provided at the venue. The class of licence is appropriate for the existing business model.

Benefits proposed by applicant

The applicant proposes that there would be these benefits:

- increased convenience and choice within the local community
- additional employment opportunities with increased hours of work for staff
- exemplary record of compliance at the Hotel
- experienced operator of regional Hotels across NSW

We believe that these proposed benefits are limited by the lack of concrete evidence of community support for the application and objections raised by members of the community.

Stakeholder submissions

We considered the submissions from:

- NSW Police Force, dated 3 October 2023, objecting to the proposal noting difficulties in dealings with the newly appointed manager in previous times, reporting incidents at the hotel since 201 and raising concerns about the premises being located in a residential area and the potential increase of noise disturbances
- Local Council, dated 27 March 2023 and 7 August 2023, objecting to the proposal raising concerns about the potential increase of noise disturbances
- L&GNSW Compliance, dated 28 September 2023, which notes adverse findings on the new manager and several compliance notices and a penalty notice that were issued to the current manager over the last 4 years with a recommendation to update the hotel's plan of management
- L&GNSW Gaming, dated 26 July 2023, which notes that the gaming plan of management (GPOM) meets the minimum standard requirements with a recommendation to impose additional conditions on the licence
- Transport for NSW, dated 2 March 2023, which notes recommendations to implement additional measures and strategies, e.g. participation in the local liquor accord
- 13 members of the public, dated between 18 February 2023 and 11 August 2023, objecting to the proposal, with common concerns about the potential increase of problem gambling, noise disturbances and anti-social behaviour in the area

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

- an updated liquor plan of management has been provided and will ensure responsible service of alcohol outlining practical noise mitigation measures
- their consent to most of the proposed conditions requested by the agencies, except for the proposed security condition
- that concerns relating to the hotel moving away from its community focus and favouring entertainment instead, are not supported by evidence and should be given little weight

Findings of concern

We are concerned that if the application were granted it may increase the harm associated with the misuse and abuse of gaming activities or fail to facilitate the balanced development, in the public interest, of the hospitality industry due to:

- the proposal seeking to increase trade post-midnight by a total of 12 hours per week
- history of non-compliance and incidents at the venue
- the venue being located in a high-density crime hotspot for non-domestic assault and malicious damage to property as well as in a medium-density crime hotspot for alcohol-related assault
- high crime rates in both the suburb and LGA for all categories usually considered by us
- high licence saturation for hotel licences in the suburb and LGA
- the venue being located in a SA2 band 2 area

The risks may be mitigated by the:

- below average gaming intensity at the venue compared to comparable venues in NSW
- fact that if the application was granted, take away hours would be reduced by a total of 30 hours per week
- possibility that crime statistics and licence densities may be skewed due to the venue being located within the district where visitation occurs from other suburbs within the LGA and beyond
- harm minimisation measures outlined in the plans of management

However, on balance, we are concerned that the likelihood of adverse social impact from approving the application outweighs any benefit to the local or broader community and accordingly, approval of the application is not in the public interest.

The material we considered

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

Application Material

- completed application dated 13 July 2023
- completed Category B Community Impact Statement (CIS) dated July 2023
- completed certification of advertising dated 26 September 2023
- plans of management documents for the premises, titled Liquor Plan of Management Railway Hotel LIQH400108214 and dated 1 September 2023 as well the Gaming Plan of Management Brady's Railway Hotel LIQH400108214 and dated 22 June 2023
- ASIC business records for the Applicant and associated companies
- floor plan for the premises, dated 30 August 2021, indicating the proposed area to which the ETA will apply.

Under [Guideline 6](#), we 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.

Other relevant material

- submissions received

- correspondence between L&GNSW staff and the applicant between 13 July 2023 and 26 October 2023 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.

This decision 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, Glenn Barry, at Glenn.Barry@liquorandgaming.nsw.gov.au if you have any questions.

Yours sincerely



Caroline Lamb

Chairperson

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