

Submission by Liverpool City Council to Liquor and Gaming NSW about the evaluation of the Community Impact Statement (CIS).

Liverpool Council welcomes the opportunity to contribute to the evaluation of the Community Impact Statement (CIS) requirement for certain types of liquor licences and authorisations. Council's response to salient issues within the 'Key issues for comment' is prefaced by some general comments relating to recent experience within the Local Government Area (LGA).

General comments

Council's successful and lengthy involvement, joined with the Casula community group, opposing the Development Application (DA) for a proposed hotel in Casula in December 2016, created a significant legal precedent and underscored the important role for local government in promoting public safety and health through the assessment of social impacts in accordance with the Environmental Planning & Assessment Act 1979 (EP&A Act 1979).

Council's involvement ensured the voice and opposition of the community was effectively heard by the Land and Environment Court (LEC). Council's and the community's success has established an important benchmark for local government in NSW that should be promoted and shared by this Council with other similar organisations.

The enormous costs to the NSW community of primarily preventable alcohol related violence and associated harms are well established. The broad terms of reference for the inquiry consider the overlap between the planning and liquor licensing jurisdictions. Significant risks exist that this inquiry may be used as a vehicle by the alcohol industry to further reduce or eliminate Local Government's and the independent LEC's critical role in the alcohol outlet approval process.

This would be a substantial setback for particularly vulnerable communities opposing higher risk or potentially problematic outlets. As a result of industry lobbying, the current NSW licensing system has stripped the community of many of its rights to effectively object to licence applications and have the same fairly, objectively and impartially heard, as occurred in the LEC.

Current planning laws unfortunately exempt (complying development) high risk packaged liquor outlets from the DA assessment if they are located in a business/commercial zone. This anomaly needs correction.

Liverpool City Council strongly opposes any further weakening of the powers of local authorities to objectively assess and approve all liquor related applications, including those for all packaged outlets. Further, the latter should no longer be considered as complying development.

Consultation

Council, the applicant, government agencies and the community all have an important role in the identification and assessment of social impacts on the community.

The current system of publishing each CIS Liquor and Gambling NSW receives on an online application noticeboard prior to an application being determined is inadequate.

Under the current framework, Council's, along with other stakeholders (Police, Health etc.) are currently notified by the applicant by what is known as the 'Notice of Intention' via email or paper form. Often little information, apart from the basics, is provided along with the Notice to allow a proper assessment of the facts. This is generally accepted by ILGA as 'consultation' with relevant stakeholders. Where no response is received from stakeholders, applicants can and do make the assumption that no objections have been raised and is therefore supported. In our experience, applicants do not typically extend their efforts beyond the simple Notice.

The current regulations require also that category 2 applications notify residents within 100m of the proposed site. Given that the affected locality may be broader than a nominal 100m radius, increasing consultation and notification to a broader catchment area based on accepted literature should be considered as part of the review.

Therefore strengthening, not weakening community engagement with individuals and communities remains a critical phase of the CIS review process. The scale of community consultation that needs to be undertaken and the method used to consult depends on a number of factors, including:

- The community who are likely to be most affected;
- The significance of the potential social impacts;
- The duration of the impact;
- The likely beneficiaries of the proposed development; and
- Those likely to be most negatively affected.

Community engagement must be adequate, meaningful and take place at a reasonable period of time before a development application is submitted to Council. Community consultation must be undertaken by the applicant without reliance on the formal submission process through the noticeboard.

In contrast, where Council is in receipt of a development application, Council is responsible for notifying the community and, where appropriate, may seek our own responses from the community on the social impacts of a particular development. Depending on the nature of the proposed development, Council may also seek input from relevant government agencies, including, in the case of an application for a liquor outlet, from local Police and local health district on the proposed development. Furthermore, where serious concerns regarding the proposal are raised, Council will at its own cost engage an expert in social impact assessment to assist in the assessment of the proposal. This brings a higher degree of rigour than under the CIS model, whilst public notification and consultation is more

effective than the noticeboard model.

Cost impacts to industry

The populist appeal of “cutting red tape” should not be made at the expense of local communities impacted by any proposed development, and particularly where any putative benefits are significantly outweighed by the risk of adverse social impacts in relation to alcohol related harm posed by such proposals on socially disadvantaged and vulnerable communities.

The associated opportunity costs are significant but tend to be borne by individuals and families as well as the medical, policing and criminal justice agencies and other Public bodies rather than the Liquor industry.

As the Casula Hotel case demonstrates, any bias should be inclined towards the interests of the local community rather than those of the Liquor industry. Importantly, however, where meaningful consultation has demonstrated that risk of harm is minimised and that effective mitigation measures are in place, the administrative process should be as efficient as possible to facilitate timely determinations.

Business process changes

It is Council’s responsibility under the EP&A Act 1979 and Local Government Act 1993, to consider social impact as part of the DA process where liquor will be sold, including hotels, on-licence premises and retail premises. Council is to assess the social impacts arising from but not limited to design, location, trading hours, access, signage, fit out, acoustic treatments and the sale of alcohol at an outlet and the consumption of alcohol.

To this end, Council remains steadfast in its commitment to the process of Social Impact Assessment as a means of considering social issues and impacts more comprehensively and consistently in its planning, policy making and decision making. This policy is grounded in the social justice principles of sustainability, community strengths, safe and healthy communities, evidence based approaches, access, equity, participation and partnership and human rights.

Demand for a greater focus on social impact has been driven by:

- A changing demographic profile and pressures arising from the growth and positioning of Liverpool as the regional city for South Western Sydney;
- Increasing awareness of planning authorities to apply social criteria in making decisions about development and land use; and
- Increasing emphasis by Council and the community in considering social issues; and
- Industry and community demand that local government have rigorous processes in place and great role in decisions that impact on a community.

Having a process to include SIA as part of the planning and development assessment process allows Council to:

- Enhance consistency and transparency;
- Ensure that the opportunity for positive impacts are maximised and that potential negative impacts are avoided, minimised or mitigated;
- Ensure community needs are met in an equitable and inclusive way and that the environmental, social and economic qualities of the local area are enhanced as a result of the development;
- Facilitate better community engagement and community feedback; and
- Create opportunities for greater understanding of certain planned development within the community.

Under this Policy, Council is committed to:

- Require SIA as a component of applications for specific types of development;
- Require SIA of significant new or revised strategic land use plans, including LEP and master plans;
- Require SIA of new or revised projects, policies, or plans that may trigger social change;
- Require the consideration of social impacts in Council's reporting processes to enhance Council policy and decisions;
- Review invitations from other government agencies for consideration of social impacts, for example, liquor and gaming applications and new planning policies and, where appropriate, make submissions; and
- Review policies, plans or projects of State or Federal government agencies that may have an impact on the community and make relevant submissions.

The determination of liquor and gaming machine licence applications is made by the Independent Liquor and Gaming Authority (ILGA), an authority of the OLGR. Council recognises its role in reviewing and making comment on liquor licence and gaming machine applications made to ILGA, which can affect the outcome of liquor licensing applications.

As a matter of routine, Council should be provided each year (without charge) the list of licensed premises within the LGA from OLGR. This data could usefully be mapped on GIS and referred to when a DA for a licensed premises is received or Council is notified of a liquor licence application.

Categorisation

The CIS process will not capture the full social impact assessment required under Section 79C of the EP&A Act 1979. For example, the proposed categorisation of development under two categories based on 'perceived risk' is not always a true reflection of the true risk associated with the development. A very relevant example would be the Casula hotel whereby the proposal included the removal of a license from one premise to another. The

Court dismissed the appeal on social impact grounds despite the fact that new licensing wasn't being introduced.

Often, the CIS process does not adequately identify the negative impacts or quantify the cost to the local community that would assist in robust decision making. Clubs, in particular, do not provide access to membership data that would allow a greater level of understanding of who is likely affected by any proposed changes. For example, a recent application by a local club suggested the local catchment for the premises was the suburb it was situated in, but by their own figures had 35,000 to 55,000 members – a population several times higher than the suburb population. Given that clubs operate on a not-for-profit basis, there are few reasons that would suggest that providing de-identified membership data is not warranted if all clubs operate under the same rules.

Therefore, development cannot reasonably be categorised on the assumption that risk will be low or high without a comprehensive social assessment. It is also worth noting that the other components of section 79 of the EP&A Act 1979 contribute to the overall assessment of the development with respect to the suitability of the site for the development and the broader public interest. A presumption about the risk of the development based on the proposal type and without consideration of the specific context, is not an appropriate mechanism to assess the true impacts of a licensed premises.

Transparency

Currently, ILGA publishes all liquor related applications on an online noticeboard. Council welcomes this initiative. Curiously not all written decisions by ILGA are posted online limiting public review of decision-making. Secondly, Councils are not notified of decisions, whether granted, rejected or withdrawn. These two issues should be fixed as a matter of urgency.

Conclusion

In welcoming the opportunity to contribute to the evaluation of the Community Impact Statement (CIS) requirement for certain types of liquor licences and authorisations, Liverpool City Council strongly opposes any further weakening of the powers of local authorities to objectively assess and approve all liquor related applications, including those for all packaged outlets.

Council reaffirms that Community engagement must be adequate, meaningful and take place at a reasonable period of time before a development application is submitted to Council.

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