



Our Ref: DOC19/071491

Your Ref:

Mr Tony Hatzis

Hatzis Cusack Lawyers

th@hatziscusack.com.au

24 April 2019

Dear Mr Hatzis

**Decision under Section 53(2)(b) of the Liquor Act 2007 (NSW) – Customs House Hotel,
Newcastle**

Background

1. On 12 March 2019 the Independent Liquor and Gaming Authority (Authority) sent a letter of that date by email to you as legal representative of Customs House Hotel (Hotel), Licence No (LIQH400117922) giving notice that the Authority was considering varying, of its own initiative, under section 53(2)(b) of the *Liquor Act 2007* (NSW) (Act), a licence condition which then read:

1) The following drinks must not be sold or supplied on the premises at any time between 10.00 pm and close of trade:

- (a) Any drink (commonly referred to as a "shot", a "shooter", or a "bomb") that is designed to be consumed rapidly,*
- (b) Any drink containing more than 50% spirits or liqueur;*
- (c) Any ready-to-drink beverage with an alcohol by-volume content of more than 5%;*
- (d) Any drink prepared on the premises that contains more than 30 ml of spirits or liqueur.*

(2) Subject to sub-condition (3), this condition does not prevent the sale or supply of any alcoholic drink commonly known as a "cocktail" that contains spirits or liqueur (or both) mixed with other ingredients and that is not designed to be consumed rapidly.

(3) The preceding sub-condition (2) only applies if:

- (a) The alcoholic drink is listed on a document prepared by the licensee that is displayed on the subject premises and itemises the cocktails that may be sold or supplied on the premises during trading hours and the amount payable for each such cocktail throughout or during any particular period during those trading hours (the "Cocktail List"); and*
- (b) No alcoholic drink listed on the Cocktail List is sold or supplied on the subject premises after 10.00 pm (or such earlier time at which the premises are required to cease serving liquor) at less than the amount specified on the Cocktail List;*
- (c) After 10.00 pm until close of trade on any night, no more than:*
 - (i) Four (4) alcoholic drinks (whether or not of the same kind), or*
 - (ii) The contents of one bottle of wine,**may be sold or supplied on the premises to the same person at any one time."*

(Amended Drinks Condition).

2. The Authority proposed to restore this condition to the form previously imposed by the Authority in a decision with reasons dated 30 August 2018 (Authority Decision):

The following restrictions and conditions will apply upon the sale of alcohol after 10:00 pm:

- a) No drinks commonly known as shots, shooters, slammers or bombs or any other drinks that are designed to be consumed rapidly;*

- b) No mixed drinks with more than 30 mls of alcohol;*
- c) No RTD drinks with an alcohol by volume greater than 5%;*
- d) No more than four (4) drinks, or one bottle of wine, may be served to any patron at one time.*

(Authority Drinks Condition)

3. On 30 October 2018 the licensee had applied to vary the Authority Drinks Condition in a manner that would permit the sale or supply of cocktails between 10:00 pm and closing, Monday through Sunday. In response to strong opposition from local Police, the licensee amended this proposal to permit the sale or supply of cocktails between 10:00 pm and midnight.
4. On 28 February 2019 a licensing officer determined to vary the Authority Drinks Condition by replacing it with the Amended Drinks Condition, with effect from 28 February 2019 (Delegate Decision).
5. Ordinarily, an application to vary a licence condition that had only recently been determined by the Authority would be elevated to the Authority itself and not determined under delegation. This did not occur in this case. The Authority placed the licensee on notice of the apparent administrative oversight in an email dated 6 March 2019.

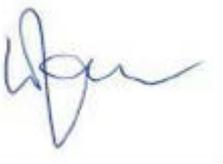
DECISION

6. The Authority has considered the licensee's application which gave rise to the Delegate Decision and its further submissions in relation to the Authority's proposal to restore the Authority Drinks Condition. The Authority is not required to publish a statement of reasons for this type of decision but is able to provide the following summary of the rationale for this decision, made in the context of a high-volume liquor jurisdiction.
7. Having considered all of the statutory objects and considerations in section 3 of the Act, on the evidence and material now before it, the Authority is satisfied that it is in the public interest to vary the Amended Drinks Condition, of its own initiative, pursuant to section 53(2)(b) of the Act, by replacing it with the wording specified in the Authority Drinks Condition noted above.
8. This variation will commence effect from 6pm on 24 April 2019.
9. The Authority refers to the findings and evidence, specified in the Authority Decision, which only recently moved the Authority to impose the Authority Drinks Condition with respect to this Hotel. The Authority Decision followed an extensive course of community consultation on whether a set of conditions imposed by the former Liquor Administration Board during 2008 upon the licence of this and 13 other late trading hotels in the Newcastle Central Business District (CBD) should be maintained, varied or revoked.
10. The Authority accepts the licensee's contentions in their submission dated 28 February 2019 that liberalising the Authority Drinks Condition to enable the service of cocktails may advance the statutory object in section 3(1)(a) by meeting community expectations with respect to the service of restricted drinks. This may also advance the object in 3(1)(b) of facilitating the balanced development of the liquor industry and the section 3(1)(c) object of contributing to the responsible development of related industries, such as tourism.
11. The Authority notes, however, that the Authority Drinks Condition does not apply to all licensed venues in the Newcastle CBD. There is actual availability of the restricted drinks after 10:00 pm in Newcastle albeit in venues that do not have the scale, patron capacity and risk profile of the 14 CBD hotels.
12. In any event, the Authority has given weight to the statutory consideration in section 3(2)(a) – the need to minimise harm associated with the misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour) and section 3(2)(c) – the need to

ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.

13. The licensee contends that alcohol related violence and adverse amenity impacts are more closely associated with conduct occurring after midnight. While accepting that the post-midnight trading period is of particular concern, the Authority remains satisfied that the Authority Drinks Condition provides a more robust means of reducing intoxication levels and adverse amenity impacts by patrons drinking later into the evening.
14. The Authority Drinks Condition forms part of a prophylactic approach which, in combination with conditions requiring a patron lockout and consistent closing times, provide a practical means of reducing patron intoxication levels and misconduct in the CBD throughout the week - particularly while patrons are migrating among larger licensed venues.
15. The Authority accepts the licensee's contentions that this Hotel is not currently a "declared premises" under Schedule 4 to the Act, nor subject to a strike under Part 9A of the Act. The Authority further accepts that the venue conducts function services in a heritage building and that the 2018 report prepared for the Authority by Mr Jonathan Horton QC left open the prospect of relaxing this licence condition, to permit the sale of cocktails until midnight. Nevertheless, the Authority is not satisfied that the circumstances prevailing in the Newcastle CBD have sufficiently changed since the Authority last considered this matter to warrant relaxing this control at this venue.
16. Restoring the condition to the form in which it was last determined by the Authority provides a more prudent means of managing patron intoxication levels and patron generated disturbance and misconduct, given the substantial scale, patron capacity and late trading hours of this venue. Maintaining regulatory consistency with the other 13 CBD hotels also avoids the prospect of encouraging patron migration through differential licensing controls at this venue.
17. Please contact the Authority Reviews and Secretariat Unit if you have any enquiries about this letter via ilga.secretariat@liquorandgaming.nsw.gov.au

Yours faithfully



Philip Crawford

Chairperson

for and on behalf of the **Independent Liquor and Gaming Authority**