

STATEMENT OF REASONS

Decision

1. On 19 December 2018, the Independent Liquor and Gaming Authority (“the Authority”) received from the Applicant, through Liquor and Gaming NSW (“L&GNSW”), an application for a new full hotel licence (“the Application”), for the premises at the rear of 195 Parramatta Road, Homebush West (“Proposed Premises”), to be known as “Flemington Hotel”. The proposed Flemington Hotel is to be built next to the car park of the existing Wentworth Hotel, owned and operated by the Applicant’s parent company, Iris Group, which operates 30 gaming machines.
2. On 2 May 2019, the Applicant also lodged a gaming machine threshold increase (“GMT increase”) application under section 34 of the *Gaming Machines Act 2001* (NSW) (“the GM Act”), seeking a GMT increase of gaming machines to 20 (from zero).
3. The consideration of the hotel liquor licence application was delayed to allow the two applications to be considered together as a “package”. The applications were last considered by the Authority at its 15 July 2020 and 12 May 2021 board meetings.
4. On 30 June 2021, the Authority resolved to refuse the Application pursuant to section 45 of the *Liquor Act 2007* (“the Liquor Act”).

Background to the decision

5. There are ultimately two applications under consideration in connection with the Flemington Hotel:
 - (a) an application for a hotel licence pursuant to s 40 of the Liquor Act; and
 - (b) an application for a GMT increase pursuant to s 34 of the GM Act (which concurrently requires in the present circumstances a class 1 local impact assessment (“LIA”) to be approved under s 36 of the GM Act).
6. The grant of a hotel licence is a pre-condition for the gaming related authorisations. As the Application has been refused, it is not necessary to formally deal with the LIA and GMT increase application. The Authority, however, notes its substantial concerns with respect to the GMT increase application, with further discussion outlined with respect to it, at paragraphs 60 to 65 of this decision below.

Material considered by the Authority

7. The Authority has considered the Application, the accompanying community impact statement (“CIS”), and all submissions and reports received in relation to the Application.
8. The Authority is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding this decision.
9. 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”).
10. A list of the material considered by the Authority is set out in Schedule 1.

Legislative framework

11. The Authority has considered the application in the context of the following sections of the Liquor Act, and the associated clauses of the *Liquor Regulation 2018*:
 - (a) Section 3: Statutory objects of the Liquor Act and relevant considerations.
 - (b) Sections 11A and 12: Standard trading period for liquor licences and a mandatory 6- hour period during which liquor cannot be sold.
 - (c) Sections 14, 15, 15A and 17: Specific provisions in respect of a hotel licence.
 - (d) Section 40: Minimum procedural requirements for a liquor licence application to be validly made.
 - (e) Section 45: Criteria for granting a liquor licence.
 - (f) Section 48: Requirements in respect of a CIS, including a requirement that the Authority must not approve the application unless it is satisfied, having regard to the CIS and other available information, that the overall social impact of doing so will not be detrimental to the well-being of the local or broader community.
12. The Authority has also had regard to the following sections of the GM Act:
 - (a) Section 3: Statutory objects of the GM Act and relevant considerations, including the requirement to have due regard to the need for gambling harm minimisation when considering what is or is not in the public interest for the purposes of the GM Act.
 - (b) Section 11 of the GM Act, which provides that the maximum number of approved gaming machines that the Authority may authorise to be kept in any one hotel is 30.
 - (c) Part 4 of the GM Act entitled "*Gambling harm minimisation measures*", which sets out the power to apply for and obtain an increase in the gaming machine threshold. Section 32 gives power to the Authority to set the maximum number of approved gaming machines that may be authorised to be kept in a hotel.
 - (d) Section 35 requires that a threshold increase application under section 34 be accompanied by a LIA. A LIA is to be a class 1 LIA or a class 2 LIA as determined by the section.
 - (e) Section 36 sets out the requirements for the approval of a LIA by the Authority.
 - (f) Subclause 34(6) of the *Gaming Machines Regulation 2019*, which sets out the definition of "local community" for a class 2 LIA.
 - (g) Subsection 36A(2) of the GM Act provides that a community benefit payment by a venue (being a payment into the Responsible Gambling Fund) is to be taken into account by the Authority in the determination of a threshold increase application as if it were a contribution to the local community (thereby providing a positive contribution to the local community).
 - (h) Section 36C of the GM Act notes that guidelines can be set for threshold increase applications, noting that the Authority has published "*Class 1 Local Impact Assessment process guidelines*". The Authority has had regard to this Guideline.

Key findings

Validity and procedural requirements

13. Having regard to the information before it and the relevant legislative requirements, the Authority makes the following findings in relation to the Application.
14. Pursuant to section 40 of the Liquor Act, the Authority is satisfied that the Application has been validly made and meets the minimum procedural requirements.
15. Pursuant to section 45 of the Liquor Act, the Authority is 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 Proposed Premises to facilitate the responsible serving of alcohol, having regard to the plan of management documentation for the Proposed Premises, and
 - (c) the requisite development consent is in force, based on the Development Approval DA2018/32 in respect of the Proposed Premises, issued by Strathfield Council.
16. Pursuant to section 48 of the Liquor Act, the Authority finds that the CIS submitted with the Application was prepared in accordance with the relevant requirements.

Community impact

Local and broader communities

17. 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 Homebush West, while the relevant "broader community" comprises the Strathfield Local Government Area (Strathfield LGA). The Authority has also taken into account that, as the Flemington Hotel includes 152 units of short-term mid-range hotel accommodation, the patrons of the Hotel are likely to include people who have travelled from outside the local or broader community.

Licence density

18. With regard to licence density, L&GNSW data, as at the time of application, establishes that both the local community of Homebush West (with a rate of 11.62 hotel licences per 100,000 persons) and the broader community of Strathfield LGA (with a rate of 12.40 hotel licences per 100,000 persons) have lower rates of hotel licences compared to New South Wales as a whole (which recorded a rate of 27.00 hotel licences per 100,000 persons).

Crime data

19. The relevant BOCSAR data indicates that, at the time of application, the proposed venue is in an area with lower than state-wide average rates of alcohol-related crime, and generally situated away from crime hotspots.

Alcohol-related health data

20. The HealthStats NSW data considered at the time of the Authority's decision indicates that Strathfield LGA recorded a lower than average level of alcohol-attributable deaths for the period 2016 – 2017, and a lower than average level of alcohol-attributable hospitalisations for the period 2016 – 2018.

SEIFA

21. The Authority notes that ABS Socio-Economic Index for Areas ("SEIFA") data as at the date of application indicates that Homebush and Strathfield were relatively advantaged compared to other suburbs and LGAs in NSW. The SEIFA data does not indicate that socio-economic disadvantage is a compounding factor of concern at the level of either community as a whole.

Overall social impact

22. Subsection 48(5) of the Liquor Act requires that the Authority must be satisfied that the "*overall social impact*" of granting a new hotel licence would not be detrimental to the well - being of the local or broader community, after having regard to:
- "(a) the community impact statement provided with the application, and*
- (a1) any published cumulative impact assessment that applies to the area in which the premises the subject of the application are located, and*
- (b) any other matter the Authority is made aware of during the application process (such as by way of reports or submissions)."*
23. The Authority has taken into account the CIS and other available information in making the below findings on the overall social impact of granting the Application upon the local and broader communities for the purposes of section 48(5) of the Liquor Act.
24. The Authority is also required, pursuant to the terms of subsection 45(7) of the Liquor Act, to take into account the extent to which granting the licence would provide employment in, or other opportunities for: (a) the live music industry, (b) the arts sector, (c) the tourism sector, (d) the community or cultural sector.

Whether the licence provides employment or potential employment opportunities

25. The Authority has considered the CIS provided by the Applicant which indicates that while low key entertainment will be provided from time to time, live rock bands will not perform.¹ Although the Application notes that it will meet an 'expectation' for hotel facilities and will address the growing demand for tourist accommodation in Western Sydney,² there is limited information provided by the Applicant regarding employment opportunities that the grant of the licence will provide.
26. Whilst the CIS notes that "*it is expected that the majority of the patrons of the Hotel will be a mixture of residents of the Flemington/Homebush West and surrounding suburbs together with employees and visitors who use the Flemington area in conjunction with travellers who will be utilising the 4 floors of short-term accommodation offered as part of this proposal*", the Applicant does not disclose how many jobs this hotel will maintain, let alone whether such persons will be sourced from within the local or broader community.
27. The Applicant, however, notes that the "*grant of the application - and the construction of the proposed hotel- will fulfil a need that cannot be provided by The Markets Hotel or Wentworth Hotel, namely[,] the need for 152 units of short-term mid-range hotel accommodation, together with ancillary facilities*". The Applicant relies on the Pitcher Partners Report noting that it "*demonstrates that the public benefits from the construction of the proposed accommodation hotel cannot be feasibly delivered without the grant of a*

¹ CIS B, Additional Information at [4.8].

² Applicant Submissions (Letter of 21 February 2020 and in particular Part B at pp 2-8).

hotel licence and 20 EGMs” and further noting that the report “finds that it is not economically feasible for Iris Group to construct the proposed accommodation hotel from the revenues projected to flow from the new hotel itself and from the additional marginal revenues projected to flow to the Wentworth Hotel from customers of the accommodation hotel, unless a separate hotel licence and 20 EGMs are granted for the proposed hotel”.

28. The Authority therefore considers that there is a risk that the construction would not be delivered as the Flemington Hotel may not be economically viable. It has taken this into account in placing limited weight on the potential employment opportunities the Flemington Hotel will provide.
29. The Authority does not consider that the Flemington Hotel will provide for employment or other opportunities for the live music industry, the arts sector, or the cultural sector, having regard to the factors set out under section 45(7) of the Liquor Act.

Whether the licence provides for employment or other opportunities for the tourism sector

30. The Authority has taken into consideration the fact that hotel accommodation with 152 rooms is likely to provide some employment in the tourism and hospitality sector, and that the provision of additional mid-priced accommodation in the Homebush area would likely support the tourism and hospitality sectors more broadly by providing affordable accommodation for people to visit from interstate to attend sporting events at the Sydney Olympic Stadium.
31. In considering this issue, the Authority has also taken into account the findings of the BIS Oxford Economics Report³, which states the following:

“Finally, the argument that the conditional provision (on the threshold increase) of short-term accommodation will provide a positive contribution that can offset some of the financial contribution is tenuous. If the accommodation units were to provide a public benefit, then there would need to be an undersupply of accommodation in the area compared to demand. In the case of an undersupply, the market would be economically incentivised to deliver that accommodation – and would not require the additional financial support from gaming. As such, the idea that the accommodation is only viable if the threshold application is approved contradicts the idea that the addition of accommodation units will provide a positive contribution and public benefit.”

32. The Authority therefore considers that while the hotel accommodation would likely support the tourism and hospitality sectors more broadly, the extent to which it will do so is not clear. The Authority has placed limited weight on this benefit.

Concerns relating to commercial viability

33. The Authority holds significant concerns about the commercial viability of the Flemington Hotel. By the Applicant’s own submissions, the business model will not be commercially viable if it does not obtain authorisation to permit it to operate 20 gaming machines from the premises. Noting the Applicant’s admissions that the hotel (on its own) would not be commercially viable, it is difficult for the Authority to see how the grant of the licence would contribute to the broader community, or how employment opportunities would be realised, noting the significant risk of the business failing or collapsing without the

³ BIS Oxford Economics’ report dated 15 December 2020 at p. 6, commissioned by the Authority assessing the Geotech Retail Gravity Model and the Applicant’s arguments to reduce mandatory financial contribution.

operation of gaming machines on its premises. Since the hotel licence itself carries no right to operate gaming machines (and noting that the Authority has reservations about the application to grant an increase to the GMT even if the grant of a hotel licence were considered to be appropriate in the circumstances) the Authority cannot be satisfied that the Flemington Hotel will be commercially viable and hence contribute to the local and broader community as suggested by the Applicant.

34. The Authority is required to weigh the potential employment (and other ancillary benefits likely to flow from the grant of a hotel licence) against the detrimental impacts stemming from the grant of a hotel licence.

Concerns around the clustering of venues – negative social impact and community harm

35. The Authority considers that granting an additional licence will result in a clustering of hotels in close proximity (where the new hotel will be co-located with an existing hotel owned by the same operator and owner which has in place an extended trading authorisation and 30 gaming machines) that would not further the objects of the Liquor Act, in particular, the balanced development of the liquor industry in the public interest.
36. While the Application does not include an application for an extended trading authorisation, the fact that the Proposed Premises is co-located with a venue with an extended trading authorisation and 30 gaming machines causes the Authority to harbour serious concerns arising from the potential flow of (up to 350) patrons from the Flemington Hotel (and the short-term accommodation guests) into the co-located Wentworth Hotel after close of the Flemington Hotel.
37. It is also noted that these conditions were not present at the time the Authority considered, and approved on 14 February 2018, the extended trading hours authorisation for the Wentworth Hotel.
38. The Authority is of the view that the two hotels, being located next to each other in a 'cluster', has the propensity to lead to greater risks of behavioural issues, property damage, violence and other noise disturbances due to flow-on effects of patrons moving from one hotel to the other. As currently proposed, following the closure of the proposed Flemington Hotel, patrons could access the Wentworth Hotel via a short pathway (noting also that the accommodation for patrons would be above the Wentworth Hotel), and continue to drink and participate in gaming activities. In this regard, the Authority has concerns about the clustering of the two venues, potential noise disturbances and patron capacity, which could result to an over-supply of alcohol and an over-consumption of alcohol. These concerns are similarly noted by the two public submissions received in relation to this application (discussed further below at paragraphs 49 - 52 below).
39. The Authority also notes that, to the extent patrons of the proposed Flemington Hotel may access the Wentworth Hotel and its gaming facilities after the closure of the Flemington Hotel, Parliament has identified that the availability of late-night gambling is of particular concern, as evidenced by subsection 48(7) of the Liquor Act and cll 27(4) and 28 of the *Liquor Regulation 2018*, and these concerns are captured by the Authority's Guideline 16, which the Authority has had regard to. The Authority has taken into account that granting the hotel licence in this case may cause some increase in late-night gambling at the Wentworth Hotel from patrons who were consuming alcohol at the proposed Flemington Hotel because of the clustering of the venues.

40. The licence type that is the subject of this Application is a “full” hotel licence, which has a primary purpose of the sale of liquor by retail for consumption on and off the premises. The licence type increases the risk profile of the venue and its capacity to contribute to adverse liquor related social impacts over time. It is the Authority’s long-standing position that a full hotel licence is to be assessed as a high-risk establishment.
41. The Applicant proposes a full hotel licensed premises of a large physical scale (with a 152 room accommodation hotel, with a ground floor bar, dining room, sport bar and gaming room) totalling around 5,700sqm, with a maximum capacity of 350 patrons. The scale of the venue objectively increases its capacity to contribute to adverse alcohol related impacts in the local and broader communities over time.
42. With regard to licence density, data calculated by licensing staff from the L&GNSW licensed premises list as at 15 July 2020 establishes that both the local community of Homebush West (with a rate of **11.62** hotel licences per 100,000 persons) and the broader community of Strathfield LGA (with a rate of **12.40** hotel licences per 100,000 persons) have *lower* rates of *hotel* licences compared to New South Wales as a whole (which recorded a rate of **27.00** hotel licences per 100,000 persons).
43. This data records that the local community of Homebush West has **1** hotel licence while the broader community of Strathfield LGA has **5** hotels. This data also indicates that the broader community of Strathfield LGA has **3** club licences, **47** on-premises licences and **8** packaged liquor licences.
44. The Authority notes that licence density (in relation to hotel licences) is not a decisive factor, and the Authority also notes that the licence density in the local and broader community is lower than the hotel licences compared to New South Wales as a whole. However, the Authority is concerned that granting this Application would contribute to the creation of a cluster of two hotel licensed premises in the suburb, encouraging patron migration among those two venues operated by the same owner.
45. L&GNSW information indicates that there are already a range of hotels and clubs with the capacity to provide a range of mainstream liquor and/or gaming/gambling services within the local and broader community. The submissions and reports received and L&GNSW licensed premises information indicate that, at least, the following club and hotel licences are located within the suburb of Homebush and the Strathfield LGA, several of which are conveniently located to the proposed premises (and the Wentworth Hotel):
- Russian Club Limited, Strathfield
 - Strathfield Golf Club, Strathfield
 - Strathfield Recreation Club Limited (trading as the Strathfield Sports Club), Strathfield
 - Strathfield Hotel, Strathfield
 - Crossways Hotel, Strathfield South
 - Sydney Markets Industries Club, Homebush West
 - Markets Hotel, Homebush
 - Horse & Jockey Hotel, Homebush
 - The Homebush Hotel, Homebush
46. Whilst the Authority has considered the Applicant’s detailed Plan of Management prepared by Mecone dated August 2018, the Authority does not consider this to alleviate its reasonable concerns, from a compliance perspective, in having two commonly owned

hotels in a clustered environment, should negative social impacts arise and require investigation. The Authority is of the view that it would be difficult, for example, to identify, which of the two venues is linked to a patron who is intoxicated or engaging in a disturbance in public after moving between the two venues. Compliance and law enforcement is a reasonable concern for the Authority to take into account in circumstances where two venues are proposed to be clustered together.

Other community submissions – additional noise concerns

47. The Authority is also required to consider any submissions received by the Authority in relation to the Application (subsections 45(1), 48(5)). Two submissions were received in relation to the proposed new hotel – one from a local resident, who *“raised concerns regarding the parking, noise, privacy and design of the Hotel”*. The Authority has also had regard to the second submission from the Markets Hotel, which also incorporates the social impact assessment conducted as part of the Berg Report. The Authority notes and largely agrees with the commentary contained in the Berg Report⁴, regarding opposition from residents directly across Flemington Road from the site, which notes:

“Nearby residents

There are houses directly across Flemington Road from the site and more behind them in Welfare Street. Residents are opposed to the proposed development because the Wentworth Hotel already presents significant problems for neighbours, the greatest problem being noise.

Amplified music from the Wentworth Hotel is very loud in Flemington Road and residents say that they cannot get their children to sleep before very late on Friday, Saturday and Sunday nights.

After the music stops, there is ongoing intermittent noise disturbance until the early hours of the morning due to Wentworth Hotel VIP Lounge customers leaving, talking loudly and starting their cars parked in the street. Headlights shining directly into the houses as cars leave the carpark also bother some residents opposite.

“It’s hard to get my baby to sleep. The music is very loud.”

“I’m opposed. It’s already too noisy. The kids can’t sleep, especially on weekends. One o’clock in the morning and they’re still making noise. I call the Police, but they don’t come. Then there’s people leaving any time to 6 in the morning. The kids don’t get enough sleep over the weekend and then they have to go to school on Monday.”

“It’s a busy area. A lot of drunk people talking too loud in the street. Late. Not every night, but Friday and Saturday especially. It’ll be even worse with another one.”

“We don’t want any high rise. As it is, there’s too much noise and (traffic) congestion. There should be a tonnage limit on the road. Already it rumbles when trucks go down to Park Street. It will be a lot worse during excavation and construction.”

48. The Authority disagrees with the Applicant’s assertion that the submission received from the local resident relates to only *“town planning issues rather than issues relevant to the grant of the licence”*. The Authority is required to have due regard to the need to ensure *“the operation of licensed premises, contributes to, and does not detract from, the amenity of community life”* (s 3(2)(c)). The Authority’s Guideline 6 specifically states that *“members of the local and broader communities may express their observations or opinions regarding the social impact of a proposed licensed premises without providing*

⁴ Page 8 of the Berg Report, Annexure A to the Markets Hotel submission.

expert or statistical evidence in support of those submissions", and the Authority is of the view that the resident's submission in relation to noise, privacy, parking and design of the hotel should be taken into account, notwithstanding the approval of development consent by local council.

49. The Markets Hotel Submission raises a number of similar concerns, which the Authority has considered and largely agrees with, and has taken into account in making its determination, as noted below:
- (a) The Development Application proposes that basement parking of the Proposed Premises will provide separate car parking access for use of the existing Wentworth Hotel (at [8.10]) and that the plans show a direct pedestrian link between the existing Wentworth Hotel and the proposed development (at [8.11]). These facts presumably support the contention that "if granted, there would be two full hotel licences operating from essentially a common parcel of land" (at [7](c)). Grouping of two full hotels in such close proximity to each other, given the size of the premises, has the potential to increase anti-social behaviour (at [8.44]);
 - (b) In relation to patron numbers, the Flemington Hotel could potentially accommodate up to 350 patrons, in addition to the existing seating for 300 patrons at the existing Wentworth Hotel. There are 152 accommodation rooms proposed in the 4 levels above the Flemington Hotel (at [7](e), [8.12] and [8.18]). This represents a significant increase in population for the premises at 195 Parramatta Road, Homebush; and
 - (c) In relation to crime statistics, whilst there is little evidence of alcohol-related incidents, any proliferation of licences carries the potential for alcohol-related offences and anti-social behaviour in the local and broader communities. To the extent the business proposed relates to new visitors, historical figures may not accurately reflect the future risk of alcohol-related incidents. The assault (domestic and non-alcohol related) rates for Homebush West are substantially higher than the NSW average (at [8.25]).
50. The Authority is mindful that the Markets Hotel is a commercial competitor with respect to the provision of licensed services to the local and broader community, which the Applicant similarly notes in its submissions. The Authority has taken that into account in assessing the concerns raised in the Markets Hotel Submission.
51. Touching on the issue of noise, as raised by the two submissions, the Authority has taken into account the Applicant's submissions that the grant of the Application is more likely to reduce the potential for disturbance to nearby residents because the proposal involves relocating the existing above ground carpark to an underground carpark under the proposed Flemington Hotel. This will therefore reduce the potential for disturbance through patrons raising their voices, light spill and slamming car doors. The Authority has also taken into account the patron/music recommendations contained in the Applicant's Development Application Acoustic Assessment.
52. The Authority is satisfied, on balance, however, that *another* substantial hotel licensed premises in *this* location increases the scope for patron migration between licensed venues which will in turn contribute to a range of likely adverse amenity impacts over time.
53. Disturbance from migrating patrons affected by liquor to varying degrees will likely take a number of forms - from patrons congregating outside the two venues, to smoking near

the venues, talking in groups, arguing, yelling or causing significant noise as they move through neighbouring streets in or nearby residential areas. This conduct is likely to occur, regardless of the Applicant's submissions that the potential disturbance would be reduced as the carpark would be located underneath the Proposed Premises.

54. The Applicant does not seek to trade during late hours, but by reason of its location, the venue will be well placed to contribute to the movement of patrons between the proposed venue, and the Wentworth Hotel, which is authorised to trade until 3am.
55. Having regard to the above, the Authority is not satisfied that the operation of another full hotel licensed venue of the kind disclosed in the Application and CIS in this location will provide substantial benefits to the local or broader community as a whole.
56. While another hotel will, by definition, increase the choice in hotels, there is little firm evidence or material establishing how the licensed entertainment services provided to the local and broader community will be substantially different to those already on offer in those communities. The Authority considers that the nature and scope of relevant benefits that are likely to flow to those communities are quite limited, and also has difficulty in understanding how the proposed venue will actually advance community expectations, in light of the findings of the economic feasibility of the business model without gaming machines as contained in the Pitcher Partners Report.
57. In conclusion, the Authority finds that granting one more "full" hotel licence in a location next door to an existing full hotel licence, operated by the same business owner, provides a negligible increase in benefit for the communities, with only a modest increase in convenience by way of another choice of venue. Given that the Applicant has itself indicated that the business model is not commercially feasible without the operation of poker machines on the premises, the Authority is not satisfied that the hotel is financially viable nor does it have the sufficient financial resources to establish a sustainable business to satisfy the interests of the community and industry.
58. The Authority has had regard to all of the conditions to which the new licence may be subject and the reasonably detailed measures set out in the Applicant's Plan of Management. The Applicant has provided for a number of harm minimisation and management measures.
59. As noted above, however, the Authority nevertheless considers that the new hotel creates a clustering effect in the local and broader community, and contributes to the scope for adverse liquor related social impacts through patron migration via the clustering of the venues. Accordingly, the Authority cannot be satisfied that the grant of the hotel licence will positively contribute to the development of the liquor and related industries in the local community now and in the foreseeable future.

LIA/GMT increase application

60. As noted above at paragraph 6 of this decision, the determination of the LIA and GMT increase do not formally arise for determination as the hotel licence has not been granted and therefore the Authority has not determined whether to approve the LIA or the GMT increase. The Authority has an open mind as to determination of the LIA and GMT increase. The Authority nevertheless notes that, at present, it would be inclined to reject the LIA and refuse the application for the GMT increase because the Authority currently is of the view:

- (a) That the Applicant has not satisfied the obligation in subsection 36(3)(c)(i) of the GM Act that the GMT increase will provide a positive contribution toward the local community, noting that the Applicant proposes a community benefit payment of \$3,705,000 payable over five years, which is approximately \$1 million less than the minimum level of financial contribution specified in the Class 1 LIA Guidelines, and the Authority does not consider that additional positive contributions warrant a reduction in the community benefit payment; and
 - (b) It is not otherwise appropriate that the LIA be approved pursuant to subsection 36(3)(e) of the GM Act, taking into consideration the statutory objects in subsection 3(1) of the GM Act (including relevantly, (a) to minimise harm associated with the misuse and abuse of gambling activities, (b) to foster responsible conduct in relation to gambling, (c) to facilitate the balanced development, in the public interest, of the gaming industry and (d) to ensure the integrity of the gaming industry, specifically, having regard to the concerns that arise from the clustering of 50 gaming machines between two adjacent co-owned properties, where the adjacent venue already has an extended trading authorisation in place, as detailed above).
61. While the application for a GMT increase at the Flemington Hotel does not involve an increase in the number of gaming machines available after hours, it would not be unreasonable for the Authority to take into consideration the possible impact that granting the GMT increase may have in terms of providing an additional funnel to the gaming machines at the Wentworth Hotel. The BIS Report notes that (at p 2):
- “There would likely be some influence on gaming profit from locating in near proximity to an existing gaming venue. This creates a more attractive group destination, relative to other venues in the area, with the result benefiting both venues.”*
62. Having considered the information available, the Authority considers that the substantial purpose of this Application is to expand the Applicant’s local *gaming machine* operations, by situating another hotel licensed premises immediately next door to its existing premises. The Authority notes that the Wentworth Hotel is operating at the maximum gaming machine threshold (of 30) that is permitted by section 11 of the GM Act in respect of any individual hotel.
63. Further, the Authority notes the lack of any persuasive evidence of local or broader community support for another hotel with up to 20 gaming machines in this particular location. On this basis, the Authority is concerned that placing a new full hotel licence in a location close to other hotel and club licensed premises will facilitate a further concentration of gaming machine venues, calling into question whether this would serve the responsible development of this related industry.
64. The fact that the broader community of Strathfield LGA is a Band 2 area, is subject to relatively positive crime statistics at present, and with relatively lower social impact does not overcome the Authority’s current *prima facie* concern, which goes to the suitability of the licence type and clustered location in respect of this proposal.
65. As identified at paragraph 45 of this decision, the range and types of venues and the liquor and gaming services provided by them within the Strathfield LGA reduce the benefits offered by granting this application, while also giving rise to concerns as to the potential for a substantial new hotel to contribute to adverse local amenity impacts.

Overall social impact

66. Having considered the positive benefits and negative impacts that are likely to flow from the granting of the application, the Authority **is not satisfied** for the purposes of section 48(5) of the Liquor Act that the overall social impact of granting this new full hotel licence would not be detrimental to the well-being of the relevant local and broader community.
67. Accordingly, the Authority has decided to refuse to grant the licence under section 45 of the Liquor Act.



Philip Crawford

Chairperson

For and on behalf of the Independent Liquor and Gaming Authority

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 & Gaming NSW website

<https://www.liquorandgaming.nsw.gov.au/Pages/ilga/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 before the Authority

Licensing Paper

1. Submission from a member of the public, Mr Alan Lukic, dated 27 March 2018 to the Applicant's legal representative objecting to the Application and expressing concerns regarding multiple issues including parking, noise and requesting a group meeting.
2. Email from Chris Thompson, Principal, Gwynne Thompson Solicitors, to the Applicant's legal representative dated 24 April 2018 objecting to the Application on multiple grounds, including on the basis that it would not appear that there are any benefits to the local or broader community and the significant size of the proposal.
3. Applicant's Plan of Management prepared by Mecone dated August 2018.
4. Letter from Strathfield Council to Wentworth Freehold Pty Ltd regarding a determination made on 1 November 2018 for deferred commencement consent for Development Application No. DA/2018/032.
5. Application form for the new hotel licence dated 18 December 2018, accompanied by public consultation site notice, local consent authority notice and Police notice all signed and dated by the Applicant on 18 December 2018; Australian Securities and Investment Commission (ASIC) Current & Historical Organisation Extract for the Applicant TOURIST ACCOMMODATION PTY LTD as at 10 January 2020; and ASIC search showing that the business name 'Flemington Hotel' is available as at 10 January 2020.
6. Submission from Aboriginal Affairs, Department of Education received during the initial CIS process dated 7 January 2019 addressed to the Applicant's legal representative, Mr Brett Tobin, stating that they have no objection to the Application provided that the Applicant has notified the NSW Land Council and the Local Aboriginal Land Council (the appropriate agencies for consultation).
7. Submission from Roads and Maritime Services to the Applicant's legal representative dated 11 January 2019 making recommendations for the operation of the premises and that a condition requiring participation in the local liquor accord be imposed on the licence if granted.
8. Certificate of Advertising signed by the Applicant's legal representative Mr Brett Tobin dated 5 February 2019.
9. A public submission relating to the Application completed by Mr Geoffrey Jansen accompanied by a 297-page submission from Gwynne Thompson Solicitors dated 6 February 2019. The submission objects to the Application on number grounds including that the Application and CIS cannot reasonably satisfy the Authority that the overall social impact of granting a full hotel licence would not be detrimental to the wellbeing of the local and broader communities. The submission is accompanied by a number of annexures including:
 - a. Social impact assessment of Dr Rigmor Berg, December 2018;
 - b. Supplementary report of Dr Rigmor Berg, February 2019;
 - c. Notice of Intention to vary trading hours 2017 (Wentworth Hotel);
 - d. Accompanying CIS for the Application to vary trading hours 2017 (Wentworth Hotel);
 - e. Notice of Intention for the Application dated March 2018;
 - f. Development Application 2018 and associated papers; and
 - g. Notice of Application December 2018.

10. Report by Acoustic Group Pty dated 14 February 2019 reviewing the DA Acoustic Assessment of the Wentworth Hotel, 195 Parramatta Rd, Homebush submitted by Gwynne Thompson Solicitors
11. Harm minimisation and community impact data compiled by L&GNSW licensing staff, as of 9 March 2020 which includes the following information:
 - a. Outlet Density for Strathfield Council.
 - b. Premises lists for the suburb of Homebush West.
 - c. NSW Bureau of Crime Statistics and Research – Hotspot maps – Alcohol Related Assault for the suburb of Homebush West.
 - d. NSW Bureau of Crime Statistics and Research – Hotspot maps – Incidents of Assault (Domestic Assault) for the suburb of Homebush West.
 - e. NSW Bureau of Crime Statistics and Research – Hotspot maps – Incidents of Assault (Non-domestic assault) for the suburb of Homebush West.
 - f. NSW Bureau of Crime Statistics and Research – Hotspot maps – Incidents of Malicious damage to property for the suburb of Homebush West.
 - g. Google maps – Map View, location of the proposed licensed premises.
 - h. Google maps – Earth View, location of the proposed licensed premises.
 - i. Google maps – Street view, location of the proposed licensed premises.
 - j. NSW Crime Statistics for July 2017 to June 2019.
 - k. NSW Recorded Crime Statistics July 2018 to June 2019 – Number of Alcohol-related incidents by offence type, day of week and time of day.
 - l. NSW Recorded Crime Statistics 2018 - Number and proportion of selected offences flagged as alcohol related by NSW Police Force.
 - m. NSW SEIFA Statistics – Suburb and LGA.
12. Letter from Senior Constable Stephanie Crowley of Auburn Police Area Command, dated 12 March 2019 stating that Police have conducted probity checks and have no objections, however, do request the imposition of CCTV, local liquor accord and crime scene preservation conditions.
13. Certificate of Advertising signed by the Mr Warwick David Arnaout dated 5 June 2019.
14. Email from the Applicant's legal representative, Mr Brett Tobin, responding to L&GNSW licensing staff dated 19 March 2020 regarding the consultation period for renotifying all appropriate stakeholders and submitting a new CIS as the original was completed over one year before it would be considered by the Authority.
15. Letter from the Applicant's legal representative to L&GNSW licensing staff dated 24 April 2020 providing the second Category B Community Impact Statement (CIS), a list of stakeholders and special interest groups, a plan of the Proposed Premises and additional information regarding the Application and CIS. The additional information provided includes background, proposed manner of operation, density of licensed premises, census data and addresses responses received during the CIS consultation period. A Plan of Management prepared by Mecone dated March 2018 was also provided.
16. Plan of the Proposed Premises, including proposed boundary of the licensed area and the minors area authorisation (undated).
17. HealthStats NSW Alcohol Related Health Statistics as of 23 June 2020 for Strathfield LGA and NSW.
18. Email from the Applicant's legal representative Mr Brett Tobin dated 25 June 2020 responding to L&GNSW licensing staff request to mark the gaming room on the premises plan.
19. Letter from Transport for NSW dated 1 April 2020 proposing measures to prevent and decrease the likelihood of alcohol involvement in road crashes.

20. Submission from Aboriginal Affairs, Department of Education received during the second CIS process dated 2 April 2020 addressed to the Applicant's legal representative, Mr Brett Tobin, stating that they have no objection to the Application provided that the Applicant has notified the NSW Land Council and the Local Aboriginal Land Council (the appropriate agencies for consultation).
21. Email from Strathfield Council dated 11 January 2019 attaching completed local consent authority notice, confirming development consent DA2018/032 in required and in place
22. Licensing Paper (DOC20/97553) regarding the Application for a new licence, including proposed hours and conditions approved by Director of Licensing, L&GNSW 6 July 2020.

Board Paper

23. Submission from the Applicant's legal representative Mr Tony Hatzis dated 23 April 2019 enclosing an application for gaming machine threshold increase accompanied by a Class 1 Local Impact Assessment (LIA). The submission proposed a community benefit payment of \$1,000,000, asserting that amount derived from the usual formula set out in the Class LIA Guidelines was excessive.
24. Application for gaming machine threshold increase where LIA required, seeking a gaming machine threshold increase of 20 (from zero) for a yet to be granted hotel licence dated 30 April 2019, including the Class 1 LIA dated April 2019.
25. Submission from Ms Karen Lennox the Applicant's legal representative dated 6 June 2019, enclosing copy of the Notices as evidence of compliance with the consultation and advertisement requirements with the Class 1 LIA for the venue including letters to stakeholders, photographs confirming the Notice is displayed at the Proposed Premises, a copy of the Notice on display at the Proposed Premises, copy of the tear sheet from Inner West Weekly dated 7 May 2019 and statutory declaration as required.
26. Submission from the Applicant's legal representative dated 21 February 2020 – enclosing, among other documents that have previously been referred to above, the following:
 - a. Pitcher Partners report dated 19 December 2019 examining the feasibility of constructing 152 rooms of short stay accommodation with or without the revenue flow expected from 20 EGMs.
 - b. Geotech Information Services report dated June 2019 providing an estimate of likely gaming profits for the new hotel, and the proportion those profits that might represent expenditure transferred from existing local venues.
27. Email correspondence between L&GNSW licensing staff and the Office of Responsible Gambling between 2 and 6 July 2020, commenting on the Applicant's proposed harm minimisation measures.
28. Email correspondence between L&GNSW licensing staff and Strathfield Council between 5 August 2020 and 30 September 2020 requesting information on similar projects, and whether the Council had identified a need for additional hotel style accommodation at the Authority's request. The Council advised the information was not available for public viewing and there is no date as to when this information will be available to the public.
29. Email from the Authority to BIS Oxford Economics dated 2 November 2020 requesting a quote to assess the Geotech Retail Gravity Model and the Applicant's arguments.
30. BIS Oxford Economics' report dated 15 December 2020 commissioned by the Authority assessing the Geotech Retail Gravity Model and the Applicant's arguments to reduce mandatory financial contribution.
31. Submission from the Applicant's legal representative Mr Tony Hatzis regarding the BIS Oxford Economics' report dated 24 March 2021, which includes:

- a. Reply by Geotech, dated January 2021 addressing the suggested shortcomings of the approach used to estimate gaming profit and transferred vs new product at the proposed subject venue.
 - b. Reply by Pitcher Partners dated 3 March 2021, reiterating the first report and including a recalculation of the projected returns on investment. It is submitted that the project is not commercially viable without the approval of 20 gaming machines and the revenue that would be generated from such.
 - c. General observations on the BIS report.
32. L&GNSW licensing comments on the BIS Oxford Economics' report, the Geotech reports and the Pitcher Partners reports and the applicant's submissions dated 3 May 2021. Board Paper (DOC21/078545) prepared for the board meeting on 12 May 2021, regarding the Application for a hotel licence with a minors area authorisation and application for a gaming machine threshold increase with Class 1 LIA.

Documents before the Authority at meeting on 30 June 2021

33. Memorandum of advice by Rob Davies of counsel dated 30 June 2021 (privileged).