



Our Ref: 1-2987653451
Your Ref:

Ms Christina K Tulloch
Tulloch Cellar Door
638 De Beyers Road
POKOLBIN NSW 2320

christina.tulloch@tullochwines.com

Dear Ms Tulloch

**Application to revoke liquor licence condition –
Tulloch Cellar Door, Pokolbin**

I refer to an application made by you to the Independent Liquor and Gaming Authority seeking the revocation of a condition that was previously imposed upon the liquor licence for premises located at Lot 11, De Beyers Rd, Pokolbin NSW 2320 known as Tulloch Cellar Door. The condition required that no sales of beer or spirits be made pursuant to this licence.

On 27 January 2016, after careful consideration of the Application and other material before it in relation to the Application, the Authority determined, pursuant to section 53(2)(a) of the *Liquor Act 2007*, to *grant* the application.

Staff assisting the Authority informally notified the Authority's decision by email dated 2 February 2016. This letter serves to provide a formal record of the decision.

Under section 36C of the *Gaming and Liquor Administration Act 2007*, the Authority is required to produce and publish statements of reasons with respect to those decisions prescribed by clause 6 of the *Gaming and Liquor Administration Regulation 2008*.

This letter has been prepared in the context of a high volume liquor jurisdiction that requires the publication of statements of reasons as soon as practicable. The actual conditions to which the licence is subject are set out in the *OneGov* record of the liquor licence, which was provided to you on 2 February 2016.

Please contact case manager Ms Santina Causa via santina.causa@ilga.nsw.gov.au if you have any enquiries about this letter.

Yours faithfully

Micheil Brodie
Chief Executive

24 MAR 2016

STATEMENT OF REASONS

INTRODUCTION

1. On 25 February 2015 the Independent Liquor and Gaming Authority (**Authority**) received an application (**Application**) made by Ms Christina Tulloch (**Applicant**) with respect to licensed premises known as Tulloch Cellar Door located at Lot 11, De Beyers Rd, Pokolbin NSW 2320 (**Premises**).
2. The Application seeks the removal of Condition 200 which attaches to the packaged liquor licence no. LIQP724003532 in respect of the Premises which requires that:

No sales of beer or spirits will be made under the licence

(the **Condition**).

3. The Authority considered the Application at its meeting on 27 January 2016 when it decided to grant the Application pursuant to section 53(2)(a) of the *Liquor Act 2007* (**Act**).
4. Under section 36C of the *Gaming and Liquor Administration Act 2007*, the Authority is required to produce and publish statements of reasons with respect to those types of decisions prescribed by clause 6 of the *Gaming and Liquor Administration Regulation 2008*.
5. This letter has been prepared in the context of a high volume liquor jurisdiction that requires the publication of statements of reasons as soon as practicable. The actual conditions to which the licence is subject are set out in the *OneGov* record of the liquor licence, which was provided to you on 2 February 2016.

MATERIAL BEFORE THE AUTHORITY

6. **Application Form for the change of a liquor licence condition filed with the Authority on 25 February 2015.** This document discloses that Ms Christina Tulloch is the licensee and seeks removal of the Condition.
7. In this form, the Applicant contends that the Condition is “in contravention of the Trade Practises Act” and constitutes a “restriction of free trade”. The Applicant states that she wishes to expand the business at the Premises to “be better aligned with emerging consumer tastes and demands”; that there are “no harm minimisation consequences relevant to the proposed variation” of the licence conditions; and that the proposed change “will not result in an increase in alcohol consumption”.
8. **Notice of intention to apply for a liquor licence or a licence authorisation dated 13 August 2015.** This notice sets out the condition that the Applicant seeks to have removed from the licence for the Premises and states that the proposed expansion of the product range at the Premises would include “boutique and craft products” and would be “presented in a responsible and premium manner”.
9. **Copies of consultation notices dated 12 February 2015** with respect to the Application signed by the Applicant.
10. **Google Maps** image showing the location of the Premises in relation to the centre of Pokolbin; and a hand drawn map showing the location of the Premises as well as the

locations of other wineries, packaged liquor and other businesses in the suburb of Pokolbin.

11. **Copy of the OneGov packaged liquor licence record for LIQP724003532 for the Premises as at 2 March 2015.** This document records, *inter alia*, that the licensee of the Premises is Ms Christina Tulloch; that the current licensed trading hours are from 5:00am to 10:00pm Monday to Saturday and from 10:00am to 10:00pm Sunday and that the licence is subject to the Condition.
12. **Submission to the Authority from a delegate of the Secretary of the NSW Department of Justice within the Compliance Branch of the Office of Liquor, Gaming & Racing (OLGR) sent by email from an OLGR officer dated 17 April 2015.** This brief submission states that the Application has been categorised by OLGR as “lower risk” and that accordingly OLGR “does not intend to carry out any further assessment” or make any comment with respect to the Application.
13. **Email from Mr Richard Forbes, Team Leader of Development Services within Cessnock City Council (Council) to the Authority and copied to the Applicant dated 5 June 2015.** In this email, Mr Forbes advises that Council “has no objection” to the removal of the Condition and that “development consent is not required” as consent for the relevant use of the Premises “is already in place”.
14. **Email from Mr Samuel Newman, Planning Assessment Officer within Cessnock City Council (Council) to the Applicant dated 27 August 2015.** In this email, Mr Newman states that the Premises was “originally consented to by Council under consent DA8/2003/141/1” however the use of a “Cellar Door Premises as defined by the Cessnock Local Environmental Plan” does not permit the sale of any alcohol product other than wine from such premises. Mr Newman states that on this basis Council “cannot support” the Application.
15. **Email from the Applicant to Mr Samuel Newman dated 27 August 2015.** In this email, the Applicant states that given that “approval” of the Application has already been “sought and received” from Council, she is “not sure of the grounds on which you are now advising that you do not support the change”.
16. **Email from Mr Samuel Newman to the Applicant dated 4 September 2015.** In this email, Mr Newman states that Council’s response is “the same as per Richard Forbes correspondence dated 5 June 2015”. Mr Newman states however that it “should be noted” that the intention of a “Cellar Door Premises” is to “predominantly sell wine to tourists” and to provide “the ancillary display and purchase of wholly Hunter produce” including food and beer. Mr Newman states that a “Cellar Door Premises” may also sell ancillary items produced outside the Hunter region however these products “should not make up more than 5% of the total stock in the store”.
17. **Category B Community Impact Statement (CIS) filed with the Authority on 17 September 2015.** This CIS was filed by the Applicant in response to a letter from the Authority to the Applicant dated 31 July 2015 in which the Authority advised that it requests the Applicant to furnish a Category B CIS to accompany the Application. The letter states that this request is made on the basis that granting the Application will allow any type of liquor to be sold at the Premises, which could have a significant impact on the local community.
18. The Applicant submits in this document that “I do not believe there will be any impact on the local community as a result of this change to my liquor licence”.

19. **NSW Bureau of Crime Statistics and Research (BOCSAR) crime mapping data for October 2014 to September 2015.** This data discloses that the Premises is not located within any hotspots for the concentration of *domestic assault, non-domestic assault or malicious damage to property* offences within the Cessnock Local Government Area (LGA).
20. **Authority licensing records** indicating that within the suburb of Pokolbin, there are **5** on-premises licences, **1** hotel licence, **6** packaged liquor licences, and **15** producer wholesale licences.
21. **Authority licensing data** indicating that:
 - a) liquor licence density for packaged liquor licences in the Cessnock LGA is **25.58** per 100,000 persons, below the rate for NSW as a whole at **32.85**. T
 - b) hotel licence density in the LGA is **19.68** per 100,000 persons, also below the NSW rate of **30.36**.
 - c) on premises licence density in the LGA is **21.65** per 100,000 persons well below the rate for NSW as a whole at **121.31**.
 - d) producer wholesaler licences in the Cessnock LGA is **39.36**, above the NSW rate of **28.76**.
22. **BOCSAR Report on Crime by LGA and Alcohol Related Status for the period from July 2014 to June 2015.** This report records rates of *alcohol related* offences which occurred in each LGA in NSW, and on average across NSW. It indicates that between July 2014 and June 2015:
 - a) the rate per 100,000 persons of *alcohol related domestic assault* incidents in the Cessnock LGA was **192.8**, compared to the NSW rate of **122.6** per 100,000 persons
 - b) the rate of *alcohol related non-domestic assault* incidents in the LGA was **156.4** compared to the rate of **144.0** per 100,000 persons across NSW as a whole
 - c) the rate of *alcohol related assault police* incidents in this LGA was **16.4** compared to **18.2** per 100,000 persons recorded across NSW as a whole
 - d) the rate of *alcohol related offensive behaviour* incidents in this LGA was **60.0** per 100,000 persons compared to **88.2** for NSW as a whole.
23. **Socio Economic Index for Areas (SEIFA) data published by the Australian Bureau of Statistics (ABS)** indicating that the State suburb of Pokolbin ranked in the 9th decile for suburbs within the State on the Index of Relative Socio-Economic Advantage and Disadvantage (with a decile ranking of 10 being the most advantaged); postcode 2320 ranked in the 6th decile for postcodes; and the Cessnock LGA ranked in the 2nd decile for LGAs within the State.

STATUTORY OBJECTS AND CONSIDERATIONS

24. The power to vary or revoke a licence condition that was previously imposed by the Authority is contained in section 53 of the Act. Section 53 provides as follows:

53 Authority may impose, vary or revoke licence conditions

(1) *Without limiting any other provision of this Act, the Authority may at any time:*

- (a) *on application by the Secretary or the Commissioner of Police, or*
 - (b) *on the Authority's own initiative,*
- impose conditions on a licence.*

(1A) *The conditions that may be imposed by the Authority on a licence under this section include, but are not limited to, conditions:*

- (a) *prohibiting the sale or supply of liquor on the licensed premises before 10 am or after 11 pm (or both), and*
- (b) *restricting the trading hours of, and public access to, the licensed premises.*

(2) *The Authority may at any time:*

- (a) *on application by the licensee, the Secretary or the Commissioner of Police, or*
 - (b) *on the Authority's own initiative,*
- vary or revoke a condition of a licence that has been imposed (or taken to have been imposed) by the Authority under this Act.*

(3) *An application under subsection (1) or (2) must:*

- (a) *be in the form and manner approved by the Authority, and*
- (b) *in the case of an application by a licensee—be accompanied by the fee prescribed by the regulations, and*
- (c) *be accompanied by such information and particulars as may be prescribed by the regulations, and*
- (d) *if required by the regulations to be advertised—be advertised in accordance with the regulations, and*
- (e) *comply with such other requirements as may be approved by the Authority or prescribed by the regulations.*

(4) *The Authority must not impose a condition on a licence after it has been granted, or vary or revoke a condition that has been imposed (or taken to have been imposed) by the Authority, unless the Authority has:*

- (a) *given the licensee a reasonable opportunity to make submissions in relation to the proposed decision, and*
- (b) *taken any such submissions into consideration before making the decision.*

(5) *Any person may, subject to and in accordance with the regulations, make a submission to the Authority in relation to an application under this section to vary or revoke a condition to which a licence is subject.*

(6) *If any such submission is made to the Authority, the Authority is to take the submission into consideration before deciding whether or not to vary or revoke the licence condition.*

25. Under section 48(5) of the Act, the Authority *must not* grant a licence, authorisation or approval of a kind prescribed by section 48(2) of the Act unless the Authority is satisfied, having regard to the CIS and any other matter the Authority is made aware of during the Application process, that the overall social impact of the licence, authorisation or approval in question being granted *will not be detrimental* to the local or broader community.

26. Section 48(5) of the Act states:

48 Community impact

(1) *The object of this section is to facilitate the consideration by the Authority of the impact that the granting of certain licences, authorisations or approvals will have on the local community, in particular by providing a process in which the Authority is made aware of:*

- (a) *the views of the local community, and*

(b) *the results of any discussions between the applicant and the local community about the issues and concerns that the local community may have in relation to the application.*

(2) *In this section:*

relevant application means any of the following:

- (a) *an application for a hotel licence, club licence, small bar licence or packaged liquor licence,*
 - (b) *an application under section 59 for approval to remove a hotel licence, club licence, small bar licence or packaged liquor licence to other premises,*
 - (c) *an application for an extended trading authorisation in relation to a hotel licence, club licence, small bar licence or packaged liquor licence,*
 - (d) *an application for an extended trading authorisation in relation to an on-premises licence (but only if the authorisation will result in trading at any time between midnight and 5 am),*
 - (e) *an application for an extended trading authorisation in relation to a producer/wholesaler licence (but only if the authorisation will result in retail trading at any time between midnight and 5 am),*
 - (f) *any particular application (or class of application) that is required by the Authority to be accompanied by a community impact statement,*
 - (g) *any other application of a kind prescribed by the regulations or made in such circumstances as may be prescribed by the regulations,*
- but does not include any application for an extended trading authorisation in relation to a special occasion (as referred to in section 49 (5) (b) or (5A) or 49A (3) (b)).*

(3) *A relevant application must be accompanied by a community impact statement.*

...

(5) *The Authority must not grant a licence, authorisation or approval to which a relevant application relates unless the Authority is satisfied, after having regard to:*

- (a) *the community impact statement provided with the application, and*
- (b) *any other matter the Authority is made aware of during the application process (such as by way of reports or submissions),*

that the overall social impact of the licence, authorisation or approval being granted will not be detrimental to the well-being of the local or broader community.

27. This Application is an application that is prescribed by section 48(2)(f), as the Authority requested the Applicant to provide a Category B CIS in its email to the Applicant dated 31 July 2015.

28. In determining the Application, the Authority also considered relevant provisions of the Act, including the objects and considerations that are prescribed by section 3, which states:

3 Objects of Act

(1) *The objects of this Act are as follows:*

- (a) *to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community.*
- (b) *to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality,*
- (c) *to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.*

(2) *In order to secure the objects of this Act, each person who exercises functions under this Act (including a licensee) is required to have due regard to the following:*

- (a) *the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),*
- (b) *the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,*
- (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.*

REASONS

Overall Social Impact

- 29. With regard to the overall social impact test prescribed by section 48(5) of the Act, the Authority is satisfied that the local community comprises the state suburb of Pokolbin and the broader community comprises the Cessnock LGA.
- 30. Applying the overall social impact test requires a degree of speculation, albeit speculation informed by the particular proposal and the prevailing circumstances in the relevant local and broader community.

Positive Benefits

- 31. While the Applicant did not provide submissions in any great level of detail with the Application, nor as part of the CIS provided upon the request of the Authority, the Applicant contends in the Application Form that removal of the Condition is intended to allow the business operated on the Premises to “be better aligned with emerging consumer tastes and demands”.
- 32. In the absence of any evidence of local or broader community opposition to the proposal, noting that the Applicant has complied with the relevant consultation requirements of the Act, the Authority is satisfied that granting the Application may be said to modestly advance the statutory objects of section 3(1)(a) to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community.
- 33. The Authority is further satisfied, on the basis of the Application material and submissions, that removing the Condition with respect to this established business will, to a modest extent, assist in the balanced development of the liquor industry in the local and broader community which is an object of section 3(1)(b) of the Act.

Negative Impacts

- 34. The Authority accepts that over time there will more likely than not be some contribution from the increased range of liquor products sold from this packaged liquor business to alcohol related crime, disturbance or impact on amenity from a minority of customers who abuse packaged liquor purchased from the Premises.
- 35. The Authority notes that BOCSAR data reveals that alcohol related crime in the broader community is occurring at a comparable rate to average rates of alcohol related crime across NSW as a whole.
- 36. However, this potential concern is offset by the fact that the Authority received no submissions opposing the Application, including from Police, OLGR or Council or local residents. The licensed business has an established trading history and there have been no apparent issues raised with adverse social impacts in the area where the Premises is located or the local or broader community that it serves.

37. The Authority rejects the Applicant's submission that the Condition contravenes the "Trade Practices Act 1974" and is a "restriction on free trade". First, the Authority notes that the former Trade Practices Act is now the *Competition and Consumer Act 2010*.
38. More substantially, the objects and regulatory provisions contained in the *Liquor Act 2007* are aligned with National Competition Policy, agreed in April 1995 by the Council of Australian Governments following publication of the Hilmer Report.
39. The Hilmer Report found that the imposition of regulation in various sectors, including "licensing arrangements", is not prohibited by the [*Trade Practices Act*]. The Report recommended that State and Territory governments ensure that regulatory restrictions on competition do not exceed what is justified in the public interest, which would involve "acceptance of the principle that any restriction on competition must be clearly demonstrated to be in the public interest" (*National Competition Policy Review Report*, Professor Frederick Hilmer, 25 August 1993, p. xxix.)
40. While the former *Liquor Act 1982* was amended during 2004 to better conform with national competition policy (including by removing the previous "needs" test which previously provided a basis for objection and refusal of a liquor licence) the power under section 53 of the *Liquor Act 2007* to impose licence conditions upon specific licensed premises is informed by the statutory objects and considerations provided by section 3 of the Act. These include harm minimisation consideration and also the balanced development of the liquor industry and responsible development of related industries.
41. When assessing a "relevant application" within the meaning of section 48(2) of the Act, the Authority must have regard to the overall social impact prescribed by section 48(5) of the Act upon the relevant local or broader community of taking the proposed administrative action. This social impact test is consistent with regulation of the liquor industry, in the public interest as foreshadowed by the Hilmer Report.

CONCLUSION

42. On the material before it the Authority is satisfied that the overall social impact of granting this Application will not be detrimental to the well-being of the local or broader community for the purposes of section 48(5) of the Act. The Authority is otherwise satisfied that it is in the public interest to revoke the Condition pursuant to section 53(2)(a) of the Act.
43. In making this decision the Authority has had regard to all of the statutory objects of section 3(1) and has taken into account all of the considerations prescribed by section 3(2) and section 53 of the Act.

Yours Sincerely,



Micheil Brodie

Chief Executive

for and on behalf of the Independent Liquor and Gaming Authority

DATED: 24 MAR 2016