

Mr Brandon Lynch
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30 November 2017

Dear Mr Lynch

Application No.	1-3746229621
Application for	Removal of a full hotel liquor licence
Trading hours	<u>Consumption on premises</u> Monday to Saturday 10:00am – 12:00am Sunday 10:00am – 10:00pm <u>Takeaway sales</u> Monday to Sunday 10:00am – 10:00pm
Licence name	Town & Country Hotel
Applicant	Mr Brandon Lynch
Current Premises	2 Unwins Bridge Road St Peters NSW 2044
Proposed Premises	220 Marrickville Road Marrickville NSW 2204
Issue	Whether to grant or refuse an application for the removal of a full hotel liquor licence
Legislation	Sections 3, 11A, 14, 15, 15A, 16, 17, 40, 45, 48 and 59 of the <i>Liquor Act 2007</i>

Decision of the Independent Liquor and Gaming Authority – Application for removal of a full hotel licence – Town & Country Hotel

The Independent Liquor and Gaming Authority (“Authority”) has considered application number 1-3746229621 seeking the removal of a full hotel liquor licence (“Application”) and has decided to **approve** the removal of the licence pursuant to section 59 of the *Liquor Act 2007* (“Act”) subject to the imposition of the following conditions:

1. Section 11A of the *Liquor Act 2007* applies to this licence. Liquor must not be sold by retail on the licensed premises for a continuous period of 6 hours between 4:00am and 10:00am during each consecutive period of 24 hours. The licensee must comply with this 6-hour closure period along with any other limits specified in the trading hours for this licence.
2. Restricted trading & NYE

Good Friday	12:00 noon - 10:00 PM (liquor can only be served with or ancillary to a meal in a dining area)
Christmas Day	12:00 noon - 10:00 PM (liquor can only be served with or ancillary to a meal in a dining area)
December 31st	Normal opening time until 2:00 AM on New Year's Day
3. The licensee or its representative must join and be an active participant in the local liquor accord.
4. The business authorised by this licence must not operate with a greater overall level of social impact on the well being of the local and broader community than what could be reasonably expected from the information contained in the Community Impact Statement, application and

other information submitted in the process of removing this licence to premises at 220 Marrickville Rd, MARRICKVILLE.

5. The premises is to be operated at all times in accordance with the Plan of Management dated 1 March 2016 as may be varied from time to time after consultation with the Local Area Commander of NSW Police. A copy of the Plan of Management is to be kept on the premises, and made available for inspection on the request of a police officer, council officer, Liquor and Gaming NSW inspector, or any other person authorised by the Independent Liquor and Gaming Authority.
6. LA10 noise restriction

The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5 Hz – 8 kHz inclusive) by more than 5dB between 7:00 AM and 12:00 midnight at the boundary of any affected residence.

The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5 Hz- 8 kHz inclusive) between 12:00 midnight and 7:00 AM at the boundary of any affected residence.

Notwithstanding compliance with the above, the noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 12:00 midnight and 7:00 AM.
7. A minimum of two (2) Licensed Security/Crowd Controller is to patrol the premises from 9.00pm to 30 minutes after close on Thursday, Friday and Saturday nights, or when live entertainment is being held.
8. An area radius of 20 metres surrounding the licensed premises is to be kept clean of rubbish and debris arising from the trading of the premises between the hours of 9.00pm to 30 minutes after close on all days of trade.
9. No strobe, intermittent or blinking lights are to be employed at the premises at any time.
10. At all times, the licensee shall consider the amenity of its neighbours and shall take all reasonable measures to ensure that adverse impacts to the surrounding area do not occur. The licensee will take all reasonable measures to ensure that the behaviour of staff and patrons when entering or leaving the premises does not detrimentally affect the amenity of the neighbourhood.
11. No queuing is to occur at the licensed premises at any time. In the event the premises is at capacity, the additional persons must be moved on from the immediate vicinity.
12. No more than four (4) alcoholic beverages may be served to a patron, in any single transaction.
13. Closed-circuit television system
 - 1) The licensee must maintain a closed-circuit television (CCTV) system on the premises in accordance with the following requirements:
 - (a) the system must record continuously from opening time until one hour after the premises is required to close (or, in the case of a premises that is not required to cease trading, continuously at all times),
 - (b) recordings must be in digital format and at a minimum of six (6) frames per second,
 - (c) any recorded image must specify the time and date of the recorded image,
 - (d) the system's cameras must cover the following areas:
 - (i) all entry and exit points on the premises,
 - (ii) the footpath immediately adjacent to the premises, and
 - (iii) all publicly accessible areas (other than toilets) within the premises.
 - 2) The licensee must also:
 - (a) keep all recordings made by the CCTV system for at least 30 days,
 - (b) ensure that the CCTV system is accessible at all times the system is required to operate pursuant to clause 1(a), by at least one person able to access and fully

operate the system, including downloading and producing recordings of CCTV footage, and

- (c) provide any recordings made by the system to a police officer or Liquor and Gaming NSW inspector within 24 hours of any request by the police officer or Liquor and Gaming NSW inspector to provide such recordings.

14. Crime scene preservation

Immediately after the person in charge of the licensed premises or a staff member becomes aware of any incident involving an act of violence causing injury to a person on the premises, the person in charge of the licensed premises and/or staff member must:

- 1) take all practical steps to preserve and keep intact the area where the act of violence occurred,
- 2) retain all material and implements associated with the act of violence in accordance with the crime scene preservation guidelines issued by NSW Police, as published from time to time on the Liquor & Gaming NSW website,
- 3) make direct and personal contact with the NSW Police Local Area Commander or his/her delegate, and advise the Commander or delegate of the incident, and
- 4) comply with any directions given by the Commander or delegate to preserve or keep intact the area where the violence occurred.

In this condition, 'staff member' means any person employed by, or acting on behalf of, the licensee of the premises, and includes any person who is employed to carry on security activities (eg. Crowd controller or bouncer) on or about the premises.

The Authority has determined that the hotel will be licensed to sell or supply liquor for consumption off the premises between 10:00am and 10:00pm Monday to Sunday. The Authority notes that pursuant to the operation of clause 70AB of the *Liquor Regulation 2008*, takeaway sales may continue until 11:00pm Monday to Saturday.

The Authority has approved the removal of the licence to 220 Marrickville Road, Marrickville on 30 November 2017. Notwithstanding this approval, the licence may not be exercised at the new address unless and until the Authority has been provided with evidence that the premises are complete and ready to trade.

The licence remains at 2 Unwins Bridge Rd, St Peters NSW 2044 subject to the same conditions and trading hours that were immediately in force before this approval was granted and until such time as the Authority is notified that the licence has been moved.

By reason of the imposition of a new condition requiring compliance with the latest Plan of Management dated March 2016, the Authority has decided, pursuant to section 53(2)(b) of the Act, to revoke the existing licence condition regarding the Plan of Management, with effect from transfer of the licence.

If you have any questions about this letter, please contact the case manager via email to mike.freeman@liquorandgaming.nsw.gov.au.

Yours faithfully



Philip Crawford
Chairperson

For and on behalf of the Independent Liquor & Gaming Authority

Statement of reasons

Decision

1. On 12 November 2015 the Independent Liquor and Gaming Authority (“Authority”) received from Mr Brandon Lynch (“Applicant”), through Liquor and Gaming NSW (“LGNSW”), an application for removal of a full hotel licence (“Application”) from premises located at 2 Unwins Bridge Road, St Peters NSW 2044 (“Current Premises”) to new premises at 220 Marrickville Road, Marrickville NSW 2204 (“Proposed Premises”).
2. Pursuant to section 59 of the *Liquor Act 2007* (“Act”), the Authority has decided to approve the Application.
3. In reaching this decision, the Authority has had regard to the material before it, the legislative requirements under sections 3, 11A, 14, 15, 15A, 16, 17, 40, 45, 48 and 59 of the Act, and relevant provisions of the *Liquor Regulation 2008* (“Regulation”).

Material considered by the Authority

4. The Authority has considered the Application and the accompanying Community Impact Statement (“CIS”), and all submissions received in relation to the Application.
5. The Authority is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding this decision, as all parties required to be notified of the Application were provided with the opportunity to make submissions.
6. As foreshadowed in the Authority’s *Guideline 6*, the Authority has also had regard to relevant LGNSW liquor licensing records, Bureau of Crime Statistics and Research (“BOCSAR”) crime data, NSW Department of Health data, and Australian Bureau of Statistics (“ABS”) socio-demographic data pertaining to the local and broader communities, obtained by LGNSW staff from publicly available sources.
7. The material considered by the Authority is listed in the Schedule and briefly described where appropriate.

Legislative framework

8. The Authority has considered the Application in accordance with the following legislative provisions.

Objects of the Act

9. The objects of the Act, as set out in section 3(1), are 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; to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimum formality and technicality; and to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.
10. In pursuit of these objectives, section 3(2) requires the Authority to have due regard to the need to minimise harm associated with the misuse and abuse of liquor (including harm arising from violence and other anti social behaviour); the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and

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

Trading hours and 6-hour closure period

11. Section 12 of the Act sets out the standard trading period for different types of liquor licences. Additionally, section 11A imposes a condition prohibiting the sale of liquor by retail on the licensed premises for a continuous period of 6-hours during each consecutive period of 24 hours.

Minimum procedural requirements

12. Section 40 of the Act and relevant provisions of the Regulation prescribe the minimum procedural requirements for a liquor licence to be validly made to the Authority.

Removal of liquor licence

13. Section 59 of the Act provides the minimum legal requirements regarding the removal of a licence to another premises.
14. Pursuant to section 59(3) of the Act, when determining an application for approval to remove a licence to other premises, the Authority is to deal with and determine the application as if it were an application for the granting of a licence in respect of those other premises. The Authority has the same powers in relation to the Application as the Authority has in relation to an application for a new licence.

Fit and proper person, responsible service of alcohol and development consent

15. Section 45 of the Act provides that the Authority may only grant a licence if it is satisfied that:
 - (a) the applicant is a fit and proper person to carry on the business to which the proposed licence relates,
 - (b) practices will be in place to ensure the responsible service of alcohol, and to prevent intoxication on the premises, and
 - (c) the applicable development consent required for use of the premises for the business to which the proposed licence relates is in force.

Community impact statement

16. Section 48 of the Act requires certain applications, including an application for the removal of a hotel liquor licence, to be accompanied by a CIS prepared in accordance with the relevant requirements.
17. Section 48(5) provides that the Authority may only grant a licence, authorisation or approval to which section 48 applies if it is satisfied that the overall social impact of doing so will not be detrimental to the well-being of the local or broader community, having regard to the CIS and any other matter the Authority becomes aware of during the application process.

Provisions specific to a hotel liquor licence

18. Further legislative provisions specific to hotel liquor licences are set out in sections 14-17 of the Act and in the Regulation.

Key findings

19. Having regard to the information before it and the relevant legislative requirements, the Authority makes the following findings in relation to the Removal Application.

Validity, procedural and trading requirements

20. The Authority finds that:
- (a) The Application has been validly made and meets the minimum procedural requirements under sections 40 and 59 of the Act. This finding is made on the basis of the Application and CIS material before the Authority.
 - (b) The proposed licensed trading hours for the Premises meet the requirements under sections 11A and 12 of the Act in respect of trading and 6-hour closure periods. This finding is made on the basis of the Application and CIS material provided by the Applicant.

Fit and proper person, responsible service of alcohol and development consent

21. Pursuant to section 45 of the Act, the Authority is satisfied that:
- (a) for the purposes of section 45(3)(a), the Applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates, on the basis that no issues of concern were raised regarding the probity of the Applicant (who has been licensee of the Current Premises since 17 May 2005) following consultation with law enforcement agencies including NSW Police ("Police") and LGNSW, including a further round of consultation during July 2017.
 - (b) for the purposes of section 45(3)(b), practices will be in place from the commencement of licensed trading at the Proposed Premises to ensure the responsible serving of alcohol and prevent intoxication, having regard to the Applicant's *Plan of Management* dated 1 March 2016 provided as part of the Application, and
 - (c) for the purposes of section 45(3)(c), the requisite development consent for use of the Proposed Premises as a full hotel licensed business is in force, on the basis of development application ("DA") no 201500516 determined by Marrickville Council ("Council") on 13 April 2016 to "carry out internal alterations and additions to the premises to use as a pub with dining and live entertainment, operating between the hours of 8.00am to 2.00am the following day Mondays to Saturdays and 10.00am to 12.00 midnight on Sundays".

Community Impact Statement

22. The Authority has taken into account the CIS and other available information in making the findings below about the social impact of the Proposed Premises on the local and broader communities.
23. Consistent with its position in *Guideline 6* and longstanding practice, the Authority is satisfied that the relevant "local community" is the community within the State suburb of Marrickville, and the "broader community" comprises the relevant local government area ("LGA"), which is the Inner West Council ("Inner West LGA").

24. The Authority notes that on 12 May 2016 the Minister for Local Government, Paul Toole, announced the newly formed Inner West Council, which merged the former Ashfield, Leichhardt and Marrickville councils.

Positive social impacts

25. The Authority is satisfied, on the basis of the Application, CIS and updated CIS provided by the Applicant that granting the Application will provide the reasonable public benefits of choice and convenience to members of the local community who seek licensed entertainment services at this new hotel.
26. Notwithstanding the objections received from Police (which are discussed below), the Authority is satisfied, noting very limited objection from residents in the communities, that granting the Application is broadly consistent with the “expectations, needs and aspirations of the community”, in furtherance of the object in section 3(1)(a) of the Act.
27. The Authority is satisfied, on the basis of the original Application and CIS and the updated CIS, that the Proposed Premises will offer a live entertainment venue for up and coming artists and more established bands and entertainers, a space for local artists to display their work and a “fine dining” experience. While the Authority accepts the Applicant’s specific representations with regard to live music, little information was provided regarding the dining facilities to be provided on the Proposed Premises and only limited weight can be given to the dining facilities on offer. The Authority nevertheless accepts that the hotel will provide an additional dining option for those seeking hotel bistro style dining in this part of the local community in association with the licensed entertainment to be provided that is typical of conventional hotels.
28. Taking into consideration prevailing licence density within the local community, the Authority is satisfied that removing the licence from the Current Premises to the Proposed Premises will further the balanced development, in the public interest, of the liquor industry servicing the local and broader community for the purposes of section 3(1)(b) of the Act. It will also further the responsible development of related industries such as the live music, entertainment and hospitality industries for the purpose of section 3(1)(c) of the Act.
29. The Authority also notes the Applicant’s contention in their submission dated 27 June 2017 that the Application will provide a source of employment and training for the local community in all areas of the hospitality industry. Although the Authority broadly accepts this positive benefit, without detailed evidence of the hotel’s hiring and training policies, the Authority cannot afford this contended benefit greater weight.

Negative social impacts

30. Having reviewed all of the material before it, the Authority considers that over time there is a risk that liquor sold from this licensed business will contribute to the prevailing levels of alcohol related crime, disturbance or adverse impact upon amenity in the local and broader communities from a minority of customers who abuse liquor.
31. The Proposed Premises is a medium scale venue, when compared to other licensed premises, with a patron capacity of 200 persons. The licensed area covers two different floors of the building and offers facilities to provide live entertainment and gaming. The Authority also acknowledges that the trading hours are extensive, from 10:00am to

12:00am Monday through Saturday and from 10:00am to 10:00pm Sunday. The Authority notes that the licensed hours to be exercised at the Proposed Premises are less than the Current Premises, which according to the Onegov liquor licence as at 18 May 2017, indicates that the Current Premises is permitted to trade from 5:00am until 12:00midnight Monday to Saturday. The reduced licensed trading foot print provides a factor in favour of granting the Application.

32. Granting the removal Application will not make any difference to the number of hotels in the broader community, but will increase the number of hotels in the suburb of Marrickville. The Authority has considered licence density calculations provided by the Authority Secretariat calculated on the basis of LGNSW licensed premises information as at 18 May 2017 and 2016 ABS *Quickstats* population data for Inner West LGA, the State suburb of Marrickville and the State of New South Wales. The Authority is satisfied that there is some cause for concern arising from prevailing licence density in the local community of Marrickville.
33. The Authority is satisfied, on the basis of the LGNSW records for all club, hotel, packaged liquor and small bar venues sourced by licensing staff on 18 May 2017, that there are currently 7 hotel licences situated within the State suburb of Marrickville and 68 hotel licences in the Inner West LGA.
34. When calculating all hotel, packaged liquor, club and small bar licences disclosed in LGNSW records against 2016 Census population data, the broader community of Inner West Council recorded a lower rate of such licences at 50.54 per 100,000 persons while the Marrickville suburb recorded a higher rate of 109.06 per 100,000 persons when compared to the New South Wales average rate of 80.01 per 100,000 persons of population.
35. The Authority notes, on the basis of the Google geographical map sourced by the Authority Secretariat on 17 November 2017, that the distance on foot between the Current Premises and the Proposed Premises is approximately 2 kilometres.
36. Noting that the Applicant is seeking to relocate the hotel licence from St Peters to Marrickville, BOCSAR Crime Maps based upon data from July 2016 to June 2017 indicate that the licence is being moved:
 - (a) from the Current Premises which is *not* located within any hotspots for incidents of alcohol related assault, to the Proposed Premises which is situated in a low-density hotspot;
 - (b) from a medium density hotspot for incidents of domestic assault to a low-density hotspot for such events;
 - (c) from a site that is not within any hotspots for non-domestic assault to a location within a low-density hotspot;
 - (d) from a low/medium density hotspot for incidents of malicious damage to property to a high-density hotspot for such events.
37. The Authority derives some comfort from BOCSAR crime data for the year to June 2017 indicating that the local community of Marrickville recorded lower rates per 100,000 persons of population than the State of New South Wales for:

- *alcohol related assault* (**204.6** compared to the New South Wales rate of **265.8**)
 - *alcohol related domestic assault* (**100.4** compared to the New South Wales rate of **116.2**)
 - *alcohol related non-domestic assault* (**78.1** compared to the New South Wales rate of **134.3**).
38. The local community of Marrickville recorded a moderately higher rate per 100,000 persons than the state of New South Wales for incidents of *malicious damage to property* (**844.3** compared to the New South Wales rate of **817.3**).
39. By comparison, BOCSAR crime data for the year to June 2017 indicates that the suburb of St Peters (in which the Current Premises is located) recorded higher rates per 100,000 persons of population than the state of New South Wales for incidents of *alcohol related assault* (**321.0** compared to the New South Wales rate of **265.8**), *alcohol related non-domestic assault* (**233.4** compared to the New South Wales rate of **134.3**) and *malicious damage to property* (**1079.7** compared to the New South Wales rate of **817.3**). The Authority notes that the suburb of St Peters recorded a lower rate per 100,000 persons of population than the state of New South Wales for incidents of *alcohol related domestic assault* (**87.5** compared to the New South Wales rate of **116.2**).
40. The Authority has also considered the BOCSAR crime data for the former LGAs of Ashfield, Leichhardt and Marrickville for the year ending June 2017. This data (calculated per 100,000 persons of population) indicates that:
- the former Ashfield LGA recorded lower rates for incidents of *alcohol related assault* (**92.1** compared to the New South Wales rate of **265.8**), *alcohol related domestic assault* (**42.7** compared to the New South Wales rate of **116.2**), *alcohol related non-domestic assault* (**40.4** compared to the New South Wales rate of **134.3**), and *malicious damage to property* (**570.3** compared to the New South Wales rate of **817.3**);
 - the former Leichhardt LGA recorded lower rates for incidents of *alcohol related assault* (**195.7** compared to the New South Wales rate of **265.8**), *alcohol related domestic assault* (**76.6** compared to the New South Wales rate of **116.2**), *alcohol related non-domestic assault* (**100.4** compared to the New South Wales rate of **134.3**), and *malicious damage to property* (**663.8** compared to the New South Wales rate of **817.3**),
 - the former Marrickville LGA recorded higher rates for incidents of *alcohol related assault* (**294.3** compared to the New South Wales rate of **265.8**), *alcohol related domestic assault* (**119.9** compared to the New South Wales rate of **116.2**), *alcohol related non-domestic assault* (**147.1** compared to the New South Wales rate of **134.3**), and *malicious damage to property* (**899.5** compared to the New South Wales rate of **817.3**),
41. On the basis of this data, the Authority is satisfied that the licence is being removed from a suburb that performs relatively less favourably (compared to NSW wide rates) than the suburb to which the licence will be removed, in most of the usual categories

against which the Authority will assess relevant incumbent social impacts. This is another factor that favours removing the licence.

42. The ABS Socio-Economic Indexes For Areas (“SEIFA”) data sourced from the 2011 Census ranks the former Ashfield LGA in the **8th** decile, the former Leichhardt LGA in the **10th** decile and the former Marrickville LGA in the **9th** decile compared to other local government areas in NSW on the Index of Relative Socio-economic Advantage and Disadvantage (with a decile of 10 being the most advantaged). This data also indicates that the suburb of Marrickville is ranked in the **5th** decile and the suburb of St Peters is ranked in the **9th** decile compared to other state suburbs in NSW on the Index of Relative Socio-economic Advantage and Disadvantage. Socio economic disadvantage is not a compounding risk factor with respect to the impact of alcohol related harm in the local and broader communities.
43. The Authority also notes the NSW Department of Health, *Health Stats* data on *alcohol attributable deaths and hospitalisations* for the former Ashfield, Leichhardt and Marrickville LGAs, which indicate:
 - (a) a higher rate of smoothed standardised separation ratio of **140.5** in the former Ashfield LGA, **127.9** in the former Leichhardt LGA and **141.2** in the former Marrickville LGA compared to a NSW average of **100**.
 - (b) a lower rate of smoothed standardised mortality ratio of **89.5** in the former Ashfield LGA, **94.9** in the former Leichhardt LGA and **92.7** in the former Marrickville LGA compared to a NSW average of **100**.
44. This alcohol related hospitalisation data for the broader community of the Inner West LGA is an adverse factor. However, there is insufficient evidence to indicate whether removing the licence between suburbs within the same LGA will involve any escalation of risk in terms of alcohol hospitalisation rates in these two areas.
45. The Authority has taken into consideration three submissions from NSW Police, two of which object to the Application. The first submission dated 29 October 2015 was made in response to a development application in respect of the Proposed Premises. Constable Heath advised that Police have no objection to the use of the Proposed Premises as a “pub” with dining and live entertainment, but to reduce the risk of violence, alcohol-related crime and anti-social behaviour, Police recommend that the hotel comply with a number of additional conditions should consent be granted.
46. The Authority has also taken into consideration the concerns expressed by Police in their second submission dated 25 January 2016. In this nine-page submission Police criticise the adequacy of the information provided in the CIS with respect to the location of sensitive facilities in Marrickville, including the Marrickville Health Centre, which is known for providing a needle and syringe exchange, drug and alcohol referrals, and support for homeless and mental health patients. Police further contend that within this 1-kilometre radius are three local pharmacists who participate in a Methadone Treatment Program.
47. Police refer to their proposals, raised during the DA process, as to staggered closing times, a requirement for a lockout, earlier ceasing of liquor sales, noise emissions, the risk of patrons throwing objects from a balcony overlooking Marrickville Road, the need

for crowd control, the risk of patrons loitering or lingering at the Proposed Premises, the need for a self-exclusion scheme, the risk of irresponsible consumption of liquor, the need for CCTV coverage and compliance with NSW Police Crime Scene Preservation guidelines. Police were also concerned that the Applicant has not supplied a Plan of Management (which has been addressed by the Applicant).

48. Police note that the Applicant, Mr Lynch, was the licensee of the Town & Country Hotel licence since 17 May 2005. During this time, the Applicant was the subject of regulatory action in the form of one Penalty Notice, one Compliance Notice and two verbal warnings in respect of four separate licensing offences detected by Police. On 13 July 2013, Police reminded Mr Lynch of his obligation to prevent persons from becoming intoxicated on the licensed premises after two intoxicated females were located outside the Current Premises.
49. The Authority notes that Police have not provided any evidence with regard to these Penalty Notices or the Compliance Notice. While accepting that adverse compliance issues were detected, the Authority cannot give great weight to these incidents in the absence of supporting material.
50. Police also contend, and the Authority accepts, on the basis of an extract of Computerised Operational Policing System (“COPS”) Report number E58710704 that is provided, that the Applicant permitted a group of approximately 40 to 50 members of the Bandidos outlaw motorcycle gang (“OMCG”), wearing gang colours, to attend the Current Premises at about 2:00pm on 29 August 2015. Police submit that it is “unacceptable” that a licensee would allow any person wearing gang colours into a licensed venue as the presence of gang members may intimidate people and cause fear within the community. Police also submit that this conduct was in contravention of the Marrickville Local Liquor Accord.
51. Police further submit, on the basis of BOCSAR crime data from October 2014 to September 2015 that the [former] Marrickville LGA is classified by Police as a “medium to high risk area” for incidents of non-domestic assault. In 2015 Police attended to 267 assaults that were not domestic violence related, but contained an alcohol factor. Police contend that in 2015, 678 business inspections were conducted in Marrickville, 140 intoxicated people were dealt with, 83 licensing legislation offences were detected, 1,466 people were moved on for their behaviour or intimidating presence, 3,188 people were searched for suspicion of illicit drugs/stolen goods/offensive implements/dangerous articles and 4,784 people were charged for alcohol related traffic matters.
52. With regard to the overall social impact of granting the Application, Police contend that a new “full” hotel operating at the Proposed Premises will result in increased alcohol availability in an area where alcohol related crime, street offences, anti-social behaviour and public drinking are already a significant issue; adding more hotels to Marrickville Road will contribute to crime in terms of patron migration; the site is in close proximity to alcohol related crime hotspots, existing hotels, small bars and licensed restaurants which already provide the same services as the Applicant, residential premises which will be impacted with the environmental effects and medical facilities frequented by vulnerable persons; the incident on 29 August 2015 suggests that gang members will be permitted to attend the new hotel wearing gang colours,

causing fear to the Marrickville community, and that there are currently sufficient existing liquor outlets to meet the needs of the relevant community.

53. The Authority accepts that Police resources are expended responding to incidents involving alcohol related crime, licensing offences and intoxicated persons. The Authority's analysis of the BOCSAR data is discussed above. On the whole, subject to some concern with respect to the location of low-density crime hotspots and a high-density hotspot for malicious damage to property, granting the Application will remove the licence to a suburb that is exposed to relatively lower crime rates (except in the category of alcohol related domestic assault) than the current suburb. The Authority notes that the rate of malicious damage to property in the suburb of Marrickville is the only incident category, on the material before the Authority, for this suburb that is above the NSW rate per 100,000 population.
54. In a 5-page submission dated 30 July 2017, Police reiterate their objection to the Application raising concerns about the proximity of the Proposed Premises to a designated alcohol-free zone, licensed premises saturation within the Marrickville LGA, alcohol related crime and proximity to residential dwellings in Marrickville.
55. Police also raise concerns with the proximity of the Proposed Premises to "numerous late- night trading licensed premises" including Lazy Bones Lounge Bar, The Royal Exchange Hotel, The Ritz Hotel, The Marrickville Tavern, as well as numerous other clubs, bars and licensed restaurants. Police contend that granting the removal of this licensed venue with gaming, entertainment and a large patron capacity of 200, will add more pressure to the community, which is already saturated by licensed premises.
56. The Authority accepts that a new hotel may make some contribution to patron migration and amenity impacts upon the community. The Authority has given weight to the Applicant seeking to trade solely within standard hours which will constrain the scope for this new venue to contribute to such problems. A certain amount of adverse impact upon local amenity is to be expected from the operation of licensed and non-licensed businesses during the evening. That impact becomes less acceptable the later in the evening that it occurs.
57. The Authority notes that Police have not provided evidence of disturbance to the quiet and good order of the community from Mr Lynch's operation of the licence on the Current Premises. This provides further comfort to the Authority when assessing the negative impacts of granting this Application.
58. Police refer to the 2009, then Office of Liquor Gaming and Racing ("OLGR") now LGNSW, Social Profile Report for the [former] Marrickville LGA. The Authority has given little weight to this material, which is now well out of date and of historical interest only. *Authority Guideline 6* provides clear guidance to applicants and submitters as to the probative information and evidence that will be applied when considering the social impact test. The Authority has considered current evidence with respect to socio demographic, crime and licence density data for the relevant communities, as disclosed in the Schedule.
59. The Authority has considered the 19 conditions proposed by Police to be imposed on the licence if granted (relating to crime scene preservation, CCTV, membership of the local liquor accord, footpath seating, number of alcoholic beverages served in a single

transaction to a patron, the social impact of operating the business, queuing, amenity of neighbours, strobe/intermittent/blinking lights, cleaning rubbish and debris, security, the closure of windows and doors, operating in accordance with a Plan of Management, LA10 Noise level, ceasing music, ceasing the sale of liquor, and trading hours). Many of these measures have been imposed as licence conditions when granting the Application, and several of these measures will be enforceable through a condition mandating compliance with the Plan of Management.

60. In response to Police submissions regarding the risk of patron migration, liquor in nearby Alcohol Free Zones and proximity of the venue to residential premises, the Authority notes that the venue will be subject to an LA10 noise emissions condition on the licence which will need to be carefully managed by the licensee when conducting live entertainment. The enforceable Plan of Management addresses the behaviour of patrons and harm minimisation and contains measures targeting loitering by persons seeking admittance to the Proposed Premises. Security personnel will also monitor and patrol the “immediate vicinity” of the Proposed Premises.
61. In a submission from the Applicant dated 1 March 2016 the Applicant contends that only one of the three nearby pharmacists actually participates in a Methadone Treatment Program, that all three existing hotels are closer to this chemist than the Proposed Premises and that this submission by Police is “irrelevant as well as incorrect”.
62. The Authority does not accept the Applicant’s characterisation of Police concerns about sensitive facilities as irrelevant. It notes that no submission was made from any such facility. While Police raise concerns that other hotels were not consulted, there is no evidence that any resident or business within the statutory consultation area has not been consulted in accordance with the legislation, which includes a consultation area of properties within 100 metres from the boundary of the Proposed Premises.
63. The Authority also accepts that Police received a full copy of the application on the basis of the Applicant’s submission that on 31st December 2015 at 12.02pm the Applicant received a text message “thanking me for my time today as the email I had sent with the full application in November 2015 had been found”.
64. On the Applicant’s record, the Authority accepts the Applicant’s contention that he has been the licensee of the (Town and Country) hotel for almost 11 years. The Applicant does not have a problematic record when considered over that period of operation in the industry.
65. With regards to the allegation regarding permission of gang colours on the Current Premises on 29 August 2015, the Applicant contends that this was a “family event” celebrating a 32-year reunion of members from Victoria, NSW and Queensland. The Applicant contends (and the Authority accepts in the absence of any evidence provided by Police) that no adverse incidents occurred and none of the OMCG members tested positive for intoxication. The Police note that no licence condition was operational prohibiting the wearing of gang colours on the Current Premises. The Authority is satisfied that the conduct has not been repeated.
66. In response to Sergeant Ray’s submission that Police resources would need to be redirected to the new hotel trading on the Proposed Premises, the Applicant submits

that on the basis of his “proven record” at the Current Premises this new hotel would be “of little inconvenience” to Marrickville Police.

67. The Authority accepts that the Applicant has a good record with respect to management of the licence on the Current Premises and that this record, considered in the context of standard trading hours, the enforceable Plan of Management and licence conditions will serve to minimise the scope for demand upon Police resources. The evidence does not suggest that the licence will be relatively more problematic on the Proposed Premises than the Current Premises.
68. The Authority is satisfied that the Plan of Management and conditions of the development consent will operate to mitigate liquor and planning related impacts raised by Police.
69. The Authority has considered a brief submission from a resident, Ms Baldwin, dated 5 July 2015 in which concerns were raised about noise, disturbance and smoke pollution impacts. The Authority has also considered the Applicant’s response dated 6 July 2015. The Authority accepts the Applicant’s representations that there will be no patron access to the rear of the site, where the office space for the proposed hotel is located, or to Marrickville Lane. Patrons will be directed to leave the Proposed Premises via Marrickville Road only and smokers will be directed to the balcony on the first floor, fronting Marrickville Road to smoke.
70. The Authority has also considered a brief submission from Mr Hancock, the leaseholder of premises near the Proposed Premises, raising concerns regarding noise, the inadequacy of the parking and delivery area on the site, and the number of currently existing hotels on Marrickville Road. Mr Hancock contends that “many” people visit the “loan” business operating on the ground floor of his building, seeking loans “as a result of addiction to either drugs, alcohol or gambling or all the above”.
71. The Authority is satisfied that the concerns relating to parking, smoke and traffic are credible and have all been considered by Council during the assessment of the DA. These are primarily concerns of a planning nature. The Authority finds credible the potential impact of patron noise upon neighbouring residents but is satisfied that the Plan of Management, licence conditions and standard trading hours are mitigating and enforceable harm reduction factors.
72. The Authority finds credible the Police and resident contentions that vulnerable persons may seek drug treatment from nearby facilities or access short term loans in the neighbouring building, but notes that no objection has been made by the facilities in question. It is difficult to assess the extent of likely interaction of any vulnerable persons using those facilities and the licensed services provided by the new hotel. As such, the Authority cannot give substantial weight to these concerns on the information before it.
73. The Authority is satisfied that the harm reduction measures specified in the Plan of Management dated 1 March 2016 should be made enforceable through a licence condition. This will ensure that staff members are trained with respect to the harm minimisation measures specified in the Plan, while the licensee is obliged consistently maintain the hotel operations in a manner that reduces the adverse social impacts.

74. The Applicant has consented to the imposition of a number of substantial conditions regarding compliance with the LA10 noise emissions restrictions prior to midnight, the use of security guards, cleaning rubbish and debris, no strobe/intermittent or blinking lights, measures designed to preserve local amenity for neighbours, no patron queuing, no more than 4 alcoholic beverages served to a patron in a single transaction, the use of CCTV and compliance with NSW Police Crime Scene Preservation guidelines. These measures will deter or reduce the scope for adverse impact upon patron amenity.

Overall social impact

75. Having considered the positive and negative impacts that are likely to flow from granting the Application, the Authority is satisfied for the purposes of section 48(5) of the Act that the overall social impact of approving the removal of the full hotel liquor licence would not be detrimental to the well-being of the local and broader communities.
76. The Application is granted pursuant to section 59 of the Act.



Philip Crawford
Chairperson

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 in the liquor and gaming website <http://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

1. ABS SEIFA data sourced from the 2011 Census for the suburbs of Marrickville and St Peters and the former LGAs, Ashfield, Leichhardt and Marrickville sourced by the Authority secretariat on 17 November 2017.
2. NSW Department of Health, *Health Stats* data obtained by licensing staff on *alcohol attributable deaths and hospitalisations* for the former LGAs, Ashfield, Leichhardt and Marrickville for 2013 sourced by the Authority secretariat on 17 November 2017.
3. Commercial lease agreement between the Applicant and the Premises Owner in respect of the Current Premises dated 4 June 2015, to remain in effect for a term of 6 months commencing on 18 June 2015.
4. Submission dated 11 June 2015 from Mr John Hancock, the leaseholder of [what the Authority assumes to be] commercial premises near the Proposed Premises, objecting to the Application and raising certain concerns about the hotel's impact.
5. Submission dated 29 June 2015 from Mr Graham Burgess, Deputy Director and Senior Environmental Health Officer of the Sydney Local Health District Public Health Unit, acknowledging receipt of notification of the proposed development.
6. NSW BOCSAR Crime Statistics for July 2015 to June 2017 for the State suburb of Marrickville, St Peters and the former LGAs comprising the new Inner West LGA (Ashfield, Leichhardt and Marrickville) compared to NSW sourced by the Authority secretariat on 17 November 2017.
7. Submission from Ms N Baldwin dated 5 July 2014 [which the Authority assumes to be 2015] raising concerns and questioning the need for the hotel.
8. Submission from Sarah George Consulting Social Planning Consultants on behalf of the Applicant ("Consultant") to Ms Baldwin dated 6 July 2015 responding to her concerns expressed in her submission dated 5 July 2014.
9. Letter from Council to the Applicant dated 22 September 2015 acknowledging receipt of DA 201500516.
10. Submission dated 29 October 2015 from Constable Alyssa Heath, Crime Prevention Officer at Marrickville Police Station in response to a DA in respect of the Proposed Premises to Council advising no objection to the use of the Proposed Premises as a pub with dining and live entertainment.
11. Application Form and CIS received by the Authority on 12 November 2015.
12. Social Impact Assessment ("SIA"), prepared by the Applicant's Consultant, that accompanied the application for development consent for the Current Premises that was lodged with Council. The following documents were attached:
 - (a) Letter dated 11 June 2015 from the Consultant sent to local residents and nearby retail and commercial premises advising of the development application and inviting comments and/or submissions on potential social impact.
 - (b) Geographical map depicting the area in which the letter dated 11 June 2015 was distributed.
 - (c) List of properties and stakeholders notified of the proposed hotel development by way of letter dated 11 June 2015.

13. Submission from Mr Benjamin Harkham, the company director and authorised person for the owner of the Current Premises Two Unwins Pty Ltd ("Premises Owner") dated 30 November 2015 objecting to the Application.
14. Submission from Sergeant Carol Ray and Acting Superintendent A Liouthakis of Marrickville Local Area Command ("LAC") of Police dated 25 January 2016 objecting to the Application.
15. Notice to vacate the Current Premises issued to the Applicant by the Premises Owner of the Current Premises on 26 February 2016, stipulating that the Applicant's "last effective date" is to be Thursday 31 March 2016.
16. Submission from the Applicant dated 1 March 2016 in response to the submission from the Current Premises Property Owner dated 30 November 2015. The following documents are attached to this submission:
 - (a) Submission from the Applicant dated 1 March 2016 in response to the Police submission by Sergeant Ray dated 25 January 2016.
 - (b) Submission dated 25 February 2016 from Koutzoumis Lawyers (on behalf of the Applicant) in response to the submission from the Premises Owner dated 30 November 2015. The following documents are attached to this submission:
 - Extracts of the Business Sale Agreement dated 25 November 2004 for the sale of the Current Premises by GE Commercial Finance Australia Pty Ltd to the Applicant.
 - Email correspondence dated 6 March 2015 between the agents for the Applicant and Two Unwins Pty Ltd regarding the sale of the freehold in the Premises from the Applicant to Two Unwins Pty Ltd, stating that the terms included "\$1,800,000.00 for the freehold property (hotel licen[c]e and gaming licen[c]e not include)".
 - Metro commercial trust account receipt for the sum of \$90,000.00 received from Benima Pty Ltd for the Current Premises.
 - Sales Advice issued to Koutzoumis Lawyers by Metro Commercial on 6 March 2015.
 - Copy of the advertising notice affixed to the site by the Premises Owner in relation to the sale of the Current Premises in March 2015.
 - Copy of the front page and special conditions of the contract for the sale of the Current Premises dated 20 March 2015.
 - Email correspondence between the Applicant and his legal representative at Koutzoumis Lawyers dated 13 March 2015 regarding the impending sale of the freehold in the Current Premises, whether or not the hotel licence is included in the sale of the Current Premises and zoning.
 - Commercial lease agreement between the Applicant and the Premises Owner of the Current Premises in respect of the pub area and the ground floor of the Current Premises dated 4 June 2015, to remain in effect for a term of 6 months commencing on 18 June 2015.
 - Letter from the Applicant's legal representative, Koutzoumis Lawyers, dated 3 December 2015 regarding the sale of the Current Premises and reiterating that the sale of the liquor licence was never part of the negotiations between the Applicant and Two Unwins Pty Ltd.
 - Letter from the Premises Owner's solicitor, Ms Ellen Louie of Louie Legal, dated 4 December 2015 to the Applicant's legal representative Koutzoumis Lawyers regarding the Premises Owner of the Current Premises' assumption that the hotel liquor licence remained with the property.

- (c) Email correspondence between the Applicant and the Premises Owner's representative, Mr Simon Stern (of the Current Premises), between October 2015 and February 2016 concerning information requests in relation to a new application to replace the existing hotel licence number LIQH400106076 with a new hotel licence and investigation by Mr Stern into the permitted usage of an on-premises licence.
 - (d) Cheque banking confirmation on 9 February 2016 for the amount of \$1250.00.
 - (e) Advertising sign placed on the Current Premises indicating that it is for lease.
 - (f) Internet advertisement indicating that the Current Premises is for lease.
 - (g) Note taken from Simon Stern during the supposed meeting with Mr Mike Freeman.
 - (h) Plan/diagram highlighting the proposed licensed area.
 - (i) *Plan of Management* dated 1 March 2016. (The Authority notes that the reference to Sunday trading hours will require amendment in this document)
17. DA 201500516 issued by Council on 13 April 2016 including the principal certifying authority agreement.
 18. Email from the Applicant to LGNSW staff dated 18 April 2016 attaching the complete Business Sale Agreement from 2004 and associated documents for the sale of the Premises by GE Commercial Finance Australia Pty Ltd to the Applicant.
 19. BOCSAR Crime Maps based upon data from July 2016 to June 2017 detailing hotspots for the concentration of offences in the suburb of Marrickville sourced by the Authority secretariat on 17 November 2017.
 20. Onegov liquor licence record as at 4 August 2016 for LIQH400106076, Town & Country Hotel.
 21. Letter from Koutzoumis Lawyers (the Applicant's legal representative) to licensing staff dated 21 September 2016 advising of the Applicant's intention to bring proceedings for declaratory and injunctive relief in the Supreme Court of New South Wales in respect of the dispute as to the ownership of the beneficial interest in licence number LIQH400106076 for the Town & Country Hotel and requesting that the Authority refrain from making a decision on the Application until 1 November 2016.
 22. Statement of Reasons issued by the Authority on 12 October 2016, refusing this Application to remove the licence on the basis that Mr Lynch was no longer the licensee.
 23. Letter from Mr Benjamin Harkham, Director of Two Unwins Pty Ltd to the then OLGR dated 5 April 2017 advising that, as owners of the property comprising the Current Premises, they *withdraw* application 1-4294269739 lodged on the 7 April 2016 which had sought transfer of the licence to Two Unwins.
 24. Decision of the Supreme Court of New South Wales on 3 May 2017 in *Brandon Lynch v Independent Liquor & Gaming Authority* [2017] NSWSC 513.
 25. Onegov liquor licence record as at 18 May 2017 for LIQH400106076, Town & Country Hotel.
 26. Licence density calculations provided by Authority secretariat calculated on the basis of LGNSW licensed premises information as at 18 May 2017 and 2016 ABS *Quickstats* population data for Inner West LGA, the State suburb of Marrickville and the State of New South Wales.

27. LGNSW records listing all club, hotel, packaged liquor and small bar liquor licensed premises in the Inner West LGA and the State suburb of Marrickville sourced by licensing staff on 18 May 2017.
28. Email from licensing staff to the Applicant dated 19 June 2017 seeking further information regarding the associated gaming machine threshold application and updated submissions on the CIS.
29. Document provided by the Applicant on 27 June 2017 to licensing staff supplementing the original CIS. In this three-page document the Applicant discusses updated BOCSAR data, contended community benefits and changes that have occurred since lodging the Application in 2015.
30. Submission from Sergeant Mark Bazevski and Detective A/Superintendent Michele Ledden of Marrickville LAC of Police to LGNSW dated 30 July 2017 objecting to the Application.
31. Submission from the Applicant to LGNSW dated 17 October 2017 responding to the Police submission dated 30 July 2017.
32. Google geographical map sourced by the Authority secretariat on 17 November 2017 highlighting the distance on foot between the Current Premises and the Proposed Premises.