

Ms Angela Frost
Solicitor
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18 June 2018

Dear Ms Frost,

Application File No	1-6569782731
Application for	A new full hotel Licence Grant of extended trading authorisation Grant of minors area authorisation
Trading hours	<u>Consumption on premises – whole of premises</u> Monday to Saturday 10:00 AM – 12:00 Midnight Sunday 10:00 AM – 10:00 PM <u>Take Away Sales</u> Monday to Sunday 12:00 PM – 10:00 PM
Licence name	Broken Hill Outback Resort
Applicant	Curtin Raiser Pty Ltd
Premises	Barrier Highway, Mount Gipps NSW 2088
Issues	Whether to grant a new hotel licence Whether to approve extended trading and minors area authorisations
Legislation	Sections 3, 11A, 12, 14, 15, 15A, 17, 40, 45, 48, 49, 51 and 121 of the <i>Liquor Act 2007</i> (NSW)

Decisions of the Independent Liquor and Gaming Authority on Application for a hotel licence and related applications – Broken Hill Outback Resort, Mount Gipps

The Independent Liquor and Gaming Authority (“Authority”) considered application number 1-6569782731, seeking the grant of a new full hotel licence (“Application”) and has decided, pursuant to section 45 of the *Liquor Act 2007* (NSW) (“Act”), to **grant** the Application subject to 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 4:00 AM and 10:00 AM 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**

Consumption on premises

Good Friday	12:00 noon - 10:00 PM
Christmas Day	12:00 noon - 10:00 PM (liquor can only be served with or ancillary to a meal in a dining area)
December 31 st	Normal opening time until normal closing time or 2:00 AM on New Year's Day, whichever is the later

Note: Trading is also allowed after midnight into the early morning of Good Friday and Christmas Day if authorised by an extended trading authorisation. Trading must cease at the time specified under the authorisation. The latest time that can be specified is 5:00 AM.

3. **Restricted trading & NYE**

Takeaway sales

Good Friday	Not permitted
Christmas Day	Not permitted
December 31st	Normal trading

4. The premises is to be operated at all times in accordance with the Plan of Management dated 5 December 2017 as may be varied from time to time after consultation with 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.

5. **CCTV**

- 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.

6. **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.

7. The licensee must join and be an active participant in the local liquor accord.
8. Minors Area Authorisation: restaurant, casual dining room, verandah, yard, BBQ area, Lawn 1, Lawn 2, Lawn 3, Lawn 4.
9. Entry to the hotel after 11:00 PM is only permitted to guests staying overnight in the resort accommodation.
10. The licensee must notify the Barrier Police District via email when live entertainment is scheduled to be conducted on the premise.

The Authority has also decided to take the following action with respect to the following related liquor applications:

- **Grant** the application for a Minors Area Authorisation pursuant to section 121 of the Act.
- **Refuse** the application for an Extended Trading Authorisation pursuant to section 49(2) of the Act.

The enclosed statement of reasons has been prepared for the purposes of section 36C of the *Gaming and Liquor Administration Act 2007* (NSW) in respect of the Authority's decisions to grant the Application and refuse the Extended Trading Authorisation.

Section 36C does not require the publishing of reasons in respect of decisions to grant a Minors Area Authorisation. The Authority is satisfied that it is in the public interest to grant this authorisation, in respect to the area sought by the Applicant, noting that the hotel is a tourism focussed venue that may potentially accommodate minors accompanied by adults.

The enclosed statement of reasons does not restate every submission or contention made by the Applicant and interested parties. What follows has been prepared in the context of a high-volume liquor and gaming jurisdiction that requires the publication of statements of reasons as soon as practicable.

If you have any enquiries about this letter, please contact the case manager via email to beatrice.pitpaiaac@liquorandgaming.nsw.gov.au

Yours faithfully



David Armati
Deputy Chairperson
For and on behalf of the Independent Liquor & Gaming Authority

Statement of reasons

Decision

1. On 8 December 2017 the Independent Liquor & Gaming Authority (“the Authority”) received an application (“Application”) dated 7 December 2017 under section 45 of the *Liquor Act 2007* (NSW) (“Act”) from Curtin Raiser Pty Ltd (“Applicant”), for the grant of a new hotel licence for premises situated on the Barrier Highway at Mount Gipps (“Premises”), a location that is according to Google maps around 17kms North-East of the town centre of Broken Hill, New South Wales. The licensed business will trade primarily as an accommodation venue to be known as “Broken Hill Outback Resort”.
2. Accompanying the Application was an associated application (“ETA Application”) dated 8 December 2017 seeking the grant of an extended trading authorisation (“ETA”) pursuant to section 49(2) of the Act. If granted, this authorisation would enable the hotel to trade beyond the standard trading hours prescribed by section 12 of the Act in the restaurant, casual dining, gaming room and verandah areas of the Premises between the hours of Midnight and 1:00 am Monday through Saturday and between 10:00 pm and Midnight on Sunday.
3. Also accompanying the Application was an application under section 121 of the Act for a minors area authorisation (“MAA Application”) seeking to designate a specified part of the Premises as an area that may be used by minors, if accompanied by a responsible adult. This authorisation (“MAA”) would apply to the restaurant, casual dining room, verandah, yard, BBQ Area, lawn 1, lawn 2, lawn 3 and lawn 4 of the Premises.
4. Having considered together the positive benefits and negative impacts that the Authority considers 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 granting the Application would *not* be detrimental to the well-being of the local and broader communities. The Application is granted pursuant to section 45(1) of the Act.
5. The Authority is satisfied that it is in the public interest to grant the MAA Application in respect of the restaurant, casual dining room, verandah, yard, BBQ Area, lawn 1, lawn 2, lawn 3 and lawn 4. This authorisation is granted pursuant to section 121 of the Act.
6. However, the ETA Application is *refused* pursuant to section 49(2) of the Act by reason that the Community Impact Statement (“CIS”) accompanying that application does not comply with the minimum requirements of clause 10A of the *Liquor Regulation 2008* (NSW) (“Regulation”). The CIS contains insufficient evidence or information provided by the Applicant with respect to the proposed or potential gambling activities that may occur during the extended trading period to satisfy the Authority that the overall impact of granting this authorisation would *not* be detrimental to the well-being of the local and broader communities.
7. In making decisions on the Application and liquor-related applications, the Authority has had regard to all of the statutory objects prescribed by section 3(1) of the Act and all of the considerations to which it must have regard under section 3(2) of that Act.

Material considered by the Authority

8. The Authority has considered the applications, the CIS, and all submissions received in relation to the applications.

9. The Authority is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding the decisions, as all parties required to be notified were provided with a reasonable opportunity to make submissions.
10. In accordance with the Authority's *Guideline 6*, the Authority has also had regard to relevant Liquor and Gaming New South Wales ("LGNSW") liquor licensing records, Bureau of Crime Statistics and Research ("BOCSAR") crime data, HealthStats NSW data and Australian Bureau of Statistics ("ABS") socio-demographic data, sourced by LGNSW from publicly available sources.
11. The list of material considered by the Authority is set out in the Schedule.

Legislative framework

12. The Authority has considered the applications in the context of the following legislative provisions.

Objects of the Act

13. 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; 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 contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.
14. In the pursuit of these objectives, section 3(2) of the Act requires the Authority, when determining a liquor related application, to have due regard to the need to minimise harm associated with the misuse and abuse of liquor (including harm from violence and 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

15. Section 12 of the Act prescribes the standard trading period for liquor licences. Additionally, section 11A imposes a condition upon all licences that fall within the scope of that section, 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

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

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

17. Section 45(3) 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 proposed business is in force.

Community impact statement

18. Sections 48(2) and (3) of the Act require that certain “relevant applications” (including an application for a new hotel licence and an application for an extended trading authorisation in respect of a hotel) must be accompanied by a CIS that is prepared in accordance with the relevant requirements specified in the Act and Regulation.
19. Section 48(5) of the Act provides that the Authority may only grant an application 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 before it.

Provisions specific to a hotel licence

20. Further legislative provisions that are specific to a hotel licence are set out in sections 14 to 17 of the Act and in the Regulation.

Provisions specific to extended trading authorisations

21. The legal requirements for making a valid application for an ETA are provided by section 51 of the Act and the Regulation. Section 51(3) provides that when determining an application for a licence related authorisation, the Authority has the same powers in relation to the application as it has in relation to an application for a licence.
22. The power to grant an ETA is provided by section 49(2) of the Act. Section 49(8) of the Act provides that the Authority must not grant an extended trading authorisation in respect of licensed premises unless the Authority is satisfied that:
- practices are in place, and will remain in place, at the licensed premises that ensure as far as reasonably practicable that liquor is sold, supplied or served responsibly on the premises and that all reasonable steps are taken to prevent intoxication on the premises, and
 - the extended trading period will not result in the frequent undue disturbance of the quiet and good order of the neighbourhood of the licensed premises.
23. Relevantly to this matter, clause 10A of the Regulation requires that, in the case of an application for an extended trading authorisation in relation to a hotel licence, the matters to be addressed by a CIS are to include matters relating to gambling activities on the licensed premises during the period that the authorisation is proposed to be in force.

Provisions specific to minors area authorisations

24. Section 121 of the Act provides that the Authority may, on application by a hotelier, grant an authorisation to enable the use by a minor of a specific part of the hotel while in the company of a responsible adult.
25. The legal requirements for a valid application for a MAA are provided by section 51 of the Act and the Regulation. Section 51(3) of the Act provides that when determining an application for a licence related authorisation, the Authority has the same powers in relation to the application as it has in relation to an application for a licence.

Key findings on the Application

26. Having regard to the information before it and the relevant legislative requirements, the Authority makes the following findings on the Application.

Validity, procedural and other requirements

27. The Authority is satisfied that the Application and accompanying CIS was validly made in that it meets the minimum content and consultation requirements of section 40 of the Act and clauses 6 through 11A of the Regulation.
28. This finding is made on the basis of the information provided in the Application form, the CIS form and a Certificate of Advertising signed and dated 9 April 2018 in relation to the Application.
29. The Authority is also satisfied, for the purposes of sections 51(2) and 40 of the Act that the MAA Application was validly made. These findings are made on the basis of the MAA Application form.

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

30. Pursuant to section 45(3)(a) of the Act, the Authority is satisfied that the Applicant company is a fit and proper person to carry on the business to which the proposed licence relates. This finding is made on the basis that no concerns regarding the Applicant's probity were raised upon consultation with relevant law enforcement agencies, including NSW Police ("Police") and the Compliance section of LGNSW.
31. Pursuant to sections 45(3)(b) of the Act, the Authority is satisfied that practices will be in place from the commencement of licensed trading at the Premises to ensure the responsible serving of alcohol and prevention of intoxication. This finding is made on the basis of the Applicant's Plan of Management dated 5 December 2017 and the conditions that have been consented by the Applicant (in submissions dated 10 April 2018, 30 April 2018 and 3 May 2018) to be imposed upon the licence should the Application be granted.
32. Pursuant to section 45(3)(c) of the Act, the Authority is satisfied that any development consent required for the conduct of the business or activity to which the licence relates (a hotel business providing accommodation and licensed entertainment) is in force with respect to the Premises. This finding is made on the basis of advice from Broken Hill City Council via telephone conversation with licensing staff on 30 April 2018 that since the Premises is located in the New South Wales Unincorporated Area Local Government Area ("Unincorporated LGA"), Broken Hill City Council is not the consent authority and on the basis of an email from Mr Shaun Barker, Acting Area Manager – Far West West Region, Crown Regional Services of the NSW Department of Industry – Crown Lands and Water dated 30 April 2018 who advised that the Premises is on freehold land, there is no local consent authority and no approval required from this department.

Community impact statement

33. The Applicant is required to submit a CIS by reason that the Application and the ETA Application are prescribed as "relevant applications" under section 48(2) of the Act.
34. While the Authority's usual policy position, as noted in Guideline 6, is to assess the local community by reference to the State suburb in which the licensed premises is situated, Mount Gipps is a place and not a State Suburb and the nearest suburb is Broken Hill, the centre of which is (according to Google maps) some 17 kms away. The Applicant proposes that the local community should comprise the "community" of the hotel. That formulation presents as too narrow and the Authority finds it more meaningful to assess the "local community" by reference to the location of Mount Gipps and the nearest State suburb of Broken Hill.

35. The CIS indicates that the venue will focus on accommodation services for tourists, but any hotel licensed premises must be open to the public. The operations disclosed by the CIS include dining, live entertainment, liquor and gambling services, all of which may potentially attract casual patronage from persons in the Broken Hill LGA.
36. The Authority accepts the Applicant's contention that in these circumstances the relevant "broader community" may include both parts of the Unincorporated LGA and the nearby Broken Hill local government area ("Broken Hill LGA"). However, by reason of the very large geographic area within the Unincorporated LGA (some 94,000 km² or 10% of the State), much of that population will be of no relevance to an assessment of social impact for this venue. The community of Broken Hill LGA provides the most logical analogue for a broader community that may be serviced and impacted by the operations of the hotel.

Positive social impacts from granting the Application

37. The Authority is satisfied, on the basis of the Application and the CIS material that granting this new licence will provide the benefit of increased choice and convenience to those members of the communities and tourists to Broken Hill seeking licensed entertainment services in the context of resort style facilities.
38. The Authority notes that no objections were received from the relevant communities or any of the public agencies consulted on the proposal. The Authority finds that the nature and scope of licensed entertainment described in the CIS will be consistent with the "expectations needs and aspirations of the community" in respect of the sale, supply and consumption of liquor in the local and broader communities, in furtherance of the statutory object in section 3(1)(a) of the Act.
39. Taking into account the out of the way location and the prevailing availability and density of licensed venues in Broken Hill, the Authority is satisfied, on the basis of the information provided in the CIS, that licensing this new accommodation-focussed venue will facilitate the *balanced* development, in the public interest, of the liquor industry serving the relevant communities, thereby advancing the statutory object in section 3(1)(b) of the Act.
40. The Authority accepts the information provided in Part 7 of the CIS that the hotel will serve tourists (both national and international) visiting Far West NSW and who wish to experience the Australian outback. The Authority accepts that although there are other hotels, motels and caravan/camping facilities in the Broken Hill region, this will offer a comprehensive desert resort style experience.
41. The Authority accepts the Applicant's contentions that the resort will comprise 24 self-contained luxury units, 66 powered caravan sites, 21 non-powered caravan/camping sites, a camp kitchen, four lawns, a swimming pool, a resort store, tourist information and food and beverage options in the form of a restaurant, casual dining, outdoor dining and a bar. Although the accommodation facilities are not included within the proposed licensed area of the Premises, the Authority has taken these services into account as an associated or indirect community benefit linked to the operation of the hotel business.
42. The Authority also accepts that the hotel will also provide varied entertainment "on occasions" although detailed information as to the type and frequency of entertainment has not been provided. The Authority further accepts that Tri State Safaris (a tour company operating in Unincorporated NSW and Broken Hill since 1992) is owned and operated by the owner/operator of the Broken Hill Outback Resort and that all guests will start their tour from the resort.

43. While the CIS material establishes that the resort will primarily be a destination for tourists, the licensed services of the hotel would also appear to be available to those in the local or broader communities who choose to patronise this hotel, whether casually or for the purpose of attending functions or live entertainment.
44. In this respect granting the Application will contribute to the responsible development of related local industries such as the live music, entertainment, tourism and hospitality industries, in furtherance of the statutory object in section 3(1)(c) of the Act.
45. The Authority has considered the Applicant's intention to employ 14 people on a roster, with 8 employed at any one time and an additional 6 staff to care for the gardens, caravan facilities and amenities. The Applicant contends that the Broken Hill Outback Resort will train staff for work in the hospitality industry. The Applicant anticipates that all employees will be living within the broader community and given the remote location of the venue the Authority accepts that locally sourced employment is likely to occur.

Negative social impacts from granting the Application

46. The Authority considers that over time there is a risk that liquor sold from this hotel 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 patrons who abuse liquor and engage in alcohol related misconduct.
47. Having regard to the usual social impact risk factors identified in Authority Guideline 6, the Authority notes that the licence *type* in question is a "full" hotel licence, as distinct from a general bar. Pursuant to section 14(1) of the Act, the licensee will have the authorisation to sell liquor by retail for consumption on and off the Premises. Section 15(1)(a) of the Act provides that the primary purpose of any hotel licensed business must, save for the exception provided by section 15A of the Act, be the sale of liquor by retail. While the CIS indicates that the venue will be tourist-focussed, section 17(2) of the Act requires that hotels be open to the general public.
48. By reason of these factors, a full hotel licence poses a relatively higher level of adverse social impact for the communities that it serves.
49. As for the *scale* of the venue, the proposed hotel is substantial, with a total licensed area of 1,050 square metres and a patron capacity of 217 within the hotel building (excluding the associated accommodation areas).
50. The scale of this venue will pose a further risk factor when assessing the capacity for the hotel to attract, accommodate and generate alcohol-affected patrons who may contribute to alcohol-related crime, anti-social conduct or otherwise impact adversely upon local amenity – albeit that the tourism focus may reduce the scope for such impacts.
51. With respect to the proposed *licensed trading hours*, the Applicant has sought to operate quite extensive hours across the course of the week, trading through most of the standard trading period. The Applicant seeks to trade between 10:00 am to 12:00 midnight Monday to Saturday and between 10:00 am to 10:00 pm Sunday for the whole of the licensed Premises. (The ETA Application, which would seek extended trading hours, is discussed below).
52. The Authority notes that the hotel does not propose to operate a separate bottle shop, although takeaway sales of liquor will be available over the bar from 12:00 pm to 10:00 pm Monday to Sunday. Through the operation of clause 70AB of the Regulation, the hotel will effectively be able to sell takeaway liquor until 11:00 pm, Monday through Saturday.

53. As for the suitability of the *location* from a social impact perspective, licensed premises information sourced by licensing staff on 19 April 2018 indicates that there are currently **18** hotel licences in the nearest suburb of Broken Hill, **19** in the Broken Hill LGA and **3** in the Unincorporated LGA.
54. Licence density calculations performed by licensing staff on the basis of LGNSW records as at 19 April 2018 and population data from the 2016 ABS Census indicate that there is some cause for concern in relation to licence density. This data recorded that:
- The rate of hotel licences in the suburb of Broken Hill is **101.04** per 100,000 persons, compared to a rate of **107.30** for the Broken Hill LGA, a rate of **284.09** for the Unincorporated LGA and a rate of **28.37** for NSW.
 - The rate of packaged liquor licences in the suburb of Broken Hill is **39.29** per 100,000 persons, compared to a rate of **45.18** for the Broken Hill LGA, a rate of **0.00** for the Unincorporated LGA and a rate of **34.16** for NSW.
 - The rate of club licences in the suburb of Broken Hill is **39.29** per 100,000 persons, compared to a rate of **39.53** for the Broken Hill LGA, a rate of **0.00** for the Unincorporated LGA and a rate of **17.46** for NSW.
55. Although licence density gives rise for some cause for concern, this is somewhat ameliorated by the information in Part 7 of the CIS, the Google street photographs sourced by licensing staff on 30 April 2018 and Google Maps indicating that the Premises is around 17 kilometres to the North-East of Broken Hill (the Applicant claims that the venue is 15kms away). The venue is situated separately from the town of Broken Hill.
56. As for prevailing alcohol related crime and other anti-social conduct, BOCSAR crime data for the period from January 2016 to December 2017 indicates that during the twelve months ending December 2017 Broken Hill and Broken Hill LGA recorded higher than State wide rates per 100,000 persons for incidents of *alcohol related domestic assault* (**375.0** for Broken Hill, **377.2** for Broken Hill LGA and **114.4** for NSW), *alcohol related non-domestic assault* (**336.4** for Broken Hill, **338.4** for Broken Hill LGA and **130.7** for NSW) and *alcohol related offensive conduct* (**126.8** for Broken Hill, **127.6** for Broken Hill LGA and **42.8** for NSW). The suburb of Broken Hill recorded a higher rate per 100,000 persons of *malicious damage to property* compared to NSW (**1,996.3** for Broken Hill and **788.7** for NSW), with the Broken Hill LGA rate recorded as not calculated. This data also indicates, across all of these categories, that the rate per 100,000 persons for the Unincorporated LGA is not calculated.
57. While these crime rates are adverse to the Applicant, the Authority is reassured by the BOCSAR hotspot crime maps between January 2017 to December 2017, sourced by the Authority Secretariat, which indicate no localised concentrations of crime in the area where the hotel will operate.
58. The location of the site being somewhat removed from Broken Hill, and the nature of the proposed hotel as a destination venue reduce the scope for this new licence to exacerbate any adverse social impacts from the clustering of licensed venues in the Broken Hill CBD.
59. Socio-economic index for areas (“SEIFA”) data from the 2016 Census in respect of the Index of Relative Socio-Economic Advantage and Disadvantage indicates that the suburb of Broken Hill and the Broken Hill LGA ranked in only the **1st** decile and the Unincorporated LGA ranked in the **8th** decile (in comparison to other state suburbs and LGAs within NSW).

60. Some cause for concern arises from NSW Department of Health HealthStats data on alcohol attributable deaths within the Broken Hill LGA and the Unincorporated LGA for the period between 2012 and 2013 which indicates that Broken Hill LGA had a smoothed estimate of standardised mortality ratio at **124.8** compared to **118.6** for the Unincorporated LGA, with the NSW level fixed at **100**. By contrast, the smoothed estimate of standardised separation ratio (alcohol attributable hospitalisations) for the period between 2013 to 2015 was **85.4** for Broken Hill LGA and **78.0** for Unincorporated LGA.
61. Again, while the Authority expects that the hotel may attract some local patronage over time, concerns that may otherwise arise from alcohol-related mortality rates and low socio-economic status in Broken Hill are somewhat ameliorated by reason of the location and touristfocussed nature of the business.
62. The Authority has considered a range of conditions sought by Police to be imposed upon the liquor licence and the Applicant's response dated 3 May 2018. The Authority has decided to grant the licence subject to the conditions that are outlined above in this letter and has utilised the Authority's standard policy on the wording of conditions requiring participation in the liquor accord, CCTV and a requirement to comply with a Plan of Management. The Authority has not seen fit to impose Police proposed conditions regulating lighting maintenance and a courtesy bus.
63. The nature of the resort proposal, as apparent from Part 7 of the CIS, discloses a substantial hotel working in the context of an accommodation venue that is reasonably expected to maintain adequate lighting for its patrons. The enforceable Plan of Management requires that adequate lighting be provided at each entry point and that the hotel will be appropriately illuminated during trading hours. There is insufficient information before the Authority to warrant imposing a condition mandating the use of a courtesy bus at all times that the hotel is trading. Notwithstanding these findings, should the operation of the business prove that conditions regulating these matters be required, it would be open to local Police to make an evidence-based application under section 53 of the Act.
64. The Authority has also had regard to all of the conditions to which the Applicant has consented and to which the licence will be subject (including minimum requirements as to CCTV, crime scene preservation, participation in the local liquor accord, restricting entry to the hotel after 11:00 pm to only guests staying overnight and a requirement to notify Police when live entertainment is scheduled). The Authority has also taken into account the harm minimisation measures and information provided in the Applicant's Plan of Management dated 5 December 2017, which will become enforceable through the operation of a licence condition. The Plan includes measures in relation to maximum patron numbers, access to the hotel, signage, the provision of entertainment, surveillance on the Premises, responsible service of alcohol, staff training and the amenity of the neighbourhood.
65. These measures further reduce the scope for adverse alcohol related impacts from persons attending the hotel, whether to utilise the accommodation, the other licensed entertainment, or to attend functions, as the case may be.

The Extended Trading Authorisation

66. Clause 10A of the Regulation requires a CIS accompanying an extended trading authorisation in respect of a hotel to address matters relating to gambling activities on the licensed premises during the period when the authorisation will be in force.

67. The Authority notes that in Part 7 of the CIS form the Applicant made only limited reference to what is an apparent intention to provide gambling service, by deferring the issue until a later time. The Applicant states:

“It is intended to introduce gaming machines into the hotel, up to a maximum of 30”

“The impact of gaming machines will be considered by the Independent Liquor and Gaming Authority when it receives applications to establish a gaming machine threshold on the hotel licence of Broken Hill Outback Resort. Consequently, it is not addressed in this CIS. Despite that, it is intended that the conduct of gaming in Broken Hill Outback Resort will be undertaken responsibly in accordance with all relevant legislation and policies of relevant organisations.

The applicant is seeking an extended trading authorisation to enable the hotel to close at 1.00 am each day and to close at midnight on Sunday. Clause 10A of the Liquor Regulation 2008 requires that a CIS which deals with an application for an extended trading authorisation, address ‘matters relating to gambling activities during the period of that authorisation is proposed to be in force’.

It is anticipated that the hotel will ultimately keep 30 gaming machines. Those machines will be accessible to any adult who wishes to play during the period during which the extended trading authorisation would apply. In addition, the hotel may provide TAB facilities and Keno which would also be available during that period.”

“The primary purpose of the business carried out at the hotel will at all times be the sale of liquor by retail and the keeping or operation of gaming machines will not detract unduly from the character of the hotel or from the enjoyment of persons using the hotel otherwise than for the purposes of gambling. The gaming machines will be located in a dedicated area separated from the remainder of the hotel by floor to ceiling partitions and as outlined above, the focus of the hotel will not be on gaming.”

68. The CIS material contained little or no information detailing the nature and scope of late night gambling operations, any planning or training material for Responsible Conduct of Gambling or any other measures to manage adverse gambling related impacts - whether from gaming machines or other gambling services that may be offered by hotels (including TAB wagering or Keno). There is no submission addressing the sources of potentially relevant data in respect of which applicants are placed on notice in Annexure B to the Authority’s Guideline 6.
69. On the material before it, the Authority is *not* satisfied that the Applicant has met the minimum content requirements in clause 10A of the Regulation for the preparation of a CIS in respect of proposed gambling activities during the extended trading period.
70. The ETA Application does not comply with sections 51(2) and 40(4) of the Act. Having considered the central importance of the consultation provisions for “relevant applications” and the consequences of a non-compliant application being found invalid, the Authority finds that compliance with clause 10A is a condition to the valid exercise of the power to grant an extended trading authorisation. The ETA is invalid and must be refused.
71. Although the Applicant provided additional information on gambling activities in a submission dated 26 April 2018, the requirement of clause 10A is that the information be addressed in *the* CIS and not via later submissions. The CIS provides a mechanism whereby public agencies and the relevant community are placed on notice of an applicant’s intentions with respect to matters that go to an assessment of the overall social impact of the proposal in question. When a CIS does not adequately address clause 10A of the Regulation, those stakeholders are left in the dark about the applicant’s intentions

and the Authority is deprived of submissions that may otherwise have been made on an informed basis from the community on this aspect of the ETA Application.

72. In the alternative, were the information provided by the Applicant **with the CIS** sufficient to meet the minimum requirements of clause 10A, the information is inadequate for the Authority to be satisfied as to whether the overall social impact of granting the ETA would not be detrimental to the local or broader community in respect of this aspect of the Applicant's licensed business model.
73. If the Applicant seeks to exercise extended trading hours, a fresh ETA application and CIS is required observing all statutory content, advertising and community consultation requirements. This will enable the Authority to assess the overall social impact of granting this authorisation in light of the entire services to be provided on the Premises during extended trading hours. Given the SEIFA and ABS population data for the Broken Hill area, it would behove an applicant to address the data identified in Annexure B to Guideline 6 in respect of gambling activities, in addition to any relevant information about the profile of patrons of the venue – whether they be guests of the venue or casual patrons of the hotel attending a function or utilising the restaurant, liquor or gambling facilities on the Premises.
74. The ETA Application is refused pursuant to section 49(2) of the Act.

Overall social impact

75. Having considered the positive and negative impacts that are likely to flow from granting the licence, the Authority is satisfied, for the purposes of section 48(5) of the Act, that the overall social impact of granting the Application will not be detrimental to the well-being of the local or broader communities.
76. The Application is granted pursuant to section 45(1) of the Act.
77. The MAA Application is granted pursuant to section 121(1) of the Act.
78. The ETA Application is refused pursuant to section 49(2) of the Act.



David Armati
Deputy 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 on the liquor and gaming 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

1. New Hotel Licence Application Form (“Application”) lodged by Curtin Raiser Pty Ltd (“Applicant”), on 8 December 2017. A Site Notice and Notice to Police are attached, along with a diagram of the proposed licensed areas on the Premises.
2. Extended Trading Authorisation (“ETA”) Application Form lodged by the Applicant on 8 December 2017. A Site Notice and Notice to Police accompany this document.
3. Minors Area Authorisation (“MAA”) Application form lodged by the Applicant on 8 December 2017. A Notice to Police accompanies this document.
4. ASIC Extract for the Applicant company, Curtin Raiser Pty Limited, as at 30 November 2017 lodged by the Applicant on 8 December 2017.
5. Category B Community Impact Statement (“CIS”) form lodged by the Applicant on 8 December 2017 accompanied by the following documents:
 - (a) An 18-page document responding to Part 7 of the CIS form. This document was prepared by the Applicant’s legal representative dated 5 December 2017.
 - (b) A geographical map depicting the location of the Unincorporated NSW local government area (“Unincorporated LGA”) and the Broken Hill local government area (“Broken Hill LGA”) in relation to the location of the premises (“Premises”).
 - (c) Site Plan of Mount Gipps Resort (Broken Hill Outback Resort) dated 14 November 2017.
 - (d) Broken Hill Outback Resort Restaurant Menu.
 - (e) Broken Hill Outback Resort Bar Menu.
 - (f) Demographic data sourced from the Australian Bureau of Statistics (“ABS”) 2016 Census QuickStats for the Unincorporated NSW LGA, Broken Hill LGA and NSW.
 - (g) Bureau of Crime Statistics and Research (“BOCSAR”) crime statistics for July 2015 to June 2017 for incidents of domestic assault, non-domestic assault, malicious damage to property and alcohol related assault for NSW and the Unincorporated Far West LGA.
 - (h) BOCSAR hotspot maps for the Broken Hill LGA between July 2016 to June 2017 for domestic and non- domestic assault, malicious damage and alcohol related assault.
 - (i) BOCSAR crime statistics for July 2015 to June 2017 for incidents of domestic assault, non-domestic assault, malicious damage to property and alcohol related assault for NSW and the Broken Hill LGA.
6. Email from the Applicant’s solicitor, Ms Angela Frost, to Liquor and Gaming New South Wales (“LGNSW”) dated 10 April 2018 enclosing a Certificate of Advertising dated 9 April 2018 and a Plan of Management dated 5 December 2017.
7. Email from Ms Angela Frost to LGNSW dated 17 April 2018 providing additional information on clause 10A of the *Liquor Regulation 2008* (NSW) (“Regulation”).
8. Licence density calculations performed by licensing staff on the basis of LGNSW licensed premises information as at 19 April 2018 and population data from the ABS 2016 Census.
9. LGNSW licensed premises records for the suburb of Broken Hill, the Unincorporated Far West LGA and the Broken Hill LGA sourced by licensing staff on 19 April 2018.
10. Email from Ms Angela Frost to LGNSW dated 26 April 2018 discussing the Police response and enclosing a submission on clause 10A of the Regulation.

11. LGNSW Compliance Reports between 30 April 2008 to 30 April 2018 for the following licensed venues associated with the Applicant: Alma Hotel, located in Broken Hill – LIQH400110057; The Argent Broken Hill, located in Broken Hill – LIQH400110138; Copper City Hotel, located in Cobar – LIQH400110782; Ivanhoe Hotel Motel, located in Ivanhoe – LIQH400115741; Copper City Motel Cobar, located in Cobar – LIQO600466443; White Cliffs Dugout Motel, located in White Cliffs – LIQO624002449.
12. LGNSW Compliance Report for Curtin Raiser Pty Limited generated on 30 April 2018.
13. Email from Mr Shaun Barker, Acting Area Manager – Far West West Region, Crown Regional Services, NSW Department of Industry – Crown Lands and Water to LGNSW dated 30 April 2018.
14. Email from Ms Angela Frost to LGNSW on behalf of the Applicant dated 30 April 2018 in response to an email from licensing staff dated 30 April 2018.
15. Email/ file note from licensing staff dated 30 April 2018 noting a telephone conversation with Broken Hill City Council.
16. Email from Ms Angela Frost to LGNSW dated 30 April 2018 advising that the hotel is on two freehold land titles, both owned by the Applicant. Enclosed are NSW Land Registry title searches for 1/757307 and 4/864275 dated 30 April 2018.
17. BOCSAR hotspot crime maps for the location of the Premises between January 2017 and December 2017 recording concentrations of alcohol related crime sourced by licensing staff on 30 April 2018 and the Authority Secretariat on 14 May 2018.
18. Google geographical maps depicting the location of the Premises sourced by licensing staff on 30 April 2018.
19. Google street images depicting the location of the Premises sourced by licensing staff on 30 April 2018.
20. BOCSAR crime data for January 2016 to December 2017 for incidents of alcohol related crime in the suburb of Broken Hill, Broken Hill LGA, Unincorporated Far West LGA and NSW sourced by licensing staff on 30 April 2018.
21. BOCSAR crime data for 2017 for crime events by time of day/week for Unincorporated Far West LGA and Broken Hill LGA sourced by licensing staff on 30 April 2018.
22. Socio-Economic Indexes For Areas data on the basis of the 2016 ABS Census data for the suburb of Broken Hill, the Unincorporated NSW LGA and Broken Hill LGA, sourced by licensing staff on 30 April 2018.
23. NSW Department of Health *HealthStats* data for the Unincorporated NSW LGA and the Broken Hill LGA for alcohol attributable deaths (between 2012 and 2013) and hospitalisations (between 2013 and 2015) sourced by licensing staff on 30 April 2018.
24. Email from Senior Constable Mitch McKenny, Barrier Police District Licensing Officer of NSW Police to LGNSW dated 2 May 2018 attaching a three-page submission.
25. Email from Ms Frost to LGNSW dated 3 May 2018 responding to the Police submission.
26. Extract from the Broken Hill Resort website, sourced by licensing staff (undated) at <http://www.brokenhilloutbackresort.com.au/about-us/>.