



30 August 2018

**Review of licence conditions for 14 Newcastle hotels
Decision by the Independent Liquor & Gaming Authority**

As you know, the Independent Liquor & Gaming Authority (“Authority”) has conducted a review of the conditions imposed by the former Liquor Administration Board in 2008 on the liquor licences of 14 hotel venues in Newcastle (“Newcastle conditions”).

Decision

Having regard to the information before it and to all of the statutory objects and considerations prescribed by s 3 of the *Liquor Act 2007* (“Act”), the Authority has decided to make the following changes to the Newcastle conditions, on its own initiative under s 53(2)(b) of the Act:

- revoke the condition in respect of shared radio network,
- vary the conditions in respect of:
 - Plan of Management,
 - supervision of alcohol service and consumption after 11 pm,
 - drinks restrictions after 10 pm, and
 - notification of conditions to staff.

The Authority has also decided to make no changes to:

- the existing lockout and closing hours,
- the conditions in respect of:
 - the cessation of liquor supply 30 minutes before closing, and
 - the prohibition on the stockpiling of drinks.

Details of the changes are set out at **Annexure A**.

The relevant background, the material considered by the Authority, and the Authority’s reasons for this decision are summarised below.

Background

On 14 March 2008, the former Liquor Administration Board imposed the Newcastle conditions on the liquor licences of the following 14 hotel venues in Newcastle, after consideration of complaints about undue disturbances of the quiet and good order of the neighbourhood of those venues:

1. Cambridge Hotel (Licence number LIQH400117205)
2. Civic Hotel (Licence number LIQH400118090)
3. Clarendon Hotel (Licence number LIQH400117256)
4. Crown & Anchor Hotel (Licence number LIQH400117418)
5. Customs House (Licence number LIQH400117922)

6. Ducks Nuts (Licence number LIQH400117485, now trading as Family Hotel Newcastle)
7. Fanny's of Newcastle (Licence number LIQH400117108, now trading as Argyle House)
8. Grand Hotel (Licence number LIQH400117574)
9. Great Northern Hotel (Licence number LIQH400117590)
10. Hotel CBD Newcastle (Licence number LIQH400117248)
11. King Street Hotel (Licence number LIQH400117434)
12. Lucky Country Hotel (Licence number LIQH400117914, now trading as The Lucky Hotel Newcastle)
13. M J Finnegans (Licence number LIQH400118163)
14. Queens Wharf Brewery Hotel (Licence number LIQH400118147)

On 21 November 2017, the Authority announced its decision to review the Newcastle conditions, after considering a request from the Australian Hotels Association NSW ("AHA NSW") on behalf of the 14 hotels to change or revoke those conditions.

The Authority commissioned Mr Jonathan Horton QC to conduct the review independently and in consultation with the Newcastle community. The review was conducted between November 2017 and February 2018 by way of public consultation, personal interviews and consideration of written submissions. On 16 March 2018 Mr Horton QC provided to the Authority a report on the review ("Horton Report").

On 23 April 2018, the Authority met to consider the Horton Report and the written submissions received, and formed a preliminary view that it would be appropriate to vary or revoke some of the Newcastle conditions, on the Authority's own initiative, under s 53(2)(b) of the Act.

The Authority published its preliminary view and the proposed changes, and wrote to the 14 affected hotels on 9 May 2018, by email and post, inviting their comments by 30 May 2018.

Submissions from 12 of the 14 hotels were received by 31 May 2018, and were considered by the Authority at its meeting on 13 June 2018, at which the final decision was made.

Material before the Authority

A list of the material considered by the Authority in making its final decision is as follows:

- Decision of the former Liquor Administration Board on 14 March 2008 to impose the Newcastle conditions.
- Written submissions received during the public consultation period between November 2017 and February 2018 in respect of the Authority's review of the Newcastle conditions.
- The Horton Report dated 16 March 2018.
- Submission from NSW Police on 27 April 2018 in respect of the Authority's proposed changes to the Newcastle conditions.
- Submissions from Argyle House, Cambridge Hotel, Clarendon Hotel, Crown & Anchor Hotel, Customs House Hotel, Family Hotel Newcastle, Grand Hotel, Great Northern Hotel, King Street Hotel, M J Finnegans, Queens Wharf Brewery Hotel and The Lucky Hotel Newcastle, between 9 and 31 May 2018, in respect of the Authority's proposed changes to the Newcastle conditions. As at the date of this decision, no submission was received from Civic Hotel or Hotel CBD Newcastle.

Summary of reasons

Shared radio network

The Authority has decided to revoke the condition requiring a shared radio network, agreeing with the advice in the Horton Report that this communication technology is now obsolete.

The Authority notes that there is no opposition to this change from the affected hoteliers or any community stakeholders.

Plan of Management

The Authority notes, based on the observations in the Horton Report and the submissions received, that a Plan of Management is generally accepted by the affected parties as a useful tool to assist a hotel's operation in compliance with its obligations under the Act, though the quality of the Plans of Management appears to vary across hotels.

The Authority also notes the mixed views in the information before it in respect of the requirement for periodic audits of the Plan of Management, including the:

- submissions from hoteliers that the requirement is onerous and disproportionate to its benefits,
- strong view of NSW Police against any relaxation of the requirement, and
- suggestion in the Horton Report that it may be beneficial to reduce the frequency of audits.

For the following reasons, the Authority has decided to vary the two conditions in respect of Plans of Management with a resultant condition requiring a revised Plan of Management to be prepared in consultation with NSW Police, complied with at all times subject to any future variation in consultation with NSW Police, and kept on the premises for inspection on request:

- It is timely to review and update the Plans of Management as they were first required to be prepared more than a decade ago.
- Input from NSW Police would help to ensure that the Plans of Management adequately address the local alcohol-related challenges which law enforcement officers deal with firsthand and on a daily basis.
- Where an existing Plan of Management is already operating effectively to ensure the responsible service of alcohol and minimisation of alcohol-related harm, a review would unlikely require significant changes.
- An ongoing requirement to comply with a Plan of Management and to consult with NSW Police before varying it:
 - addresses the observation in the Horton Report that there is currently no ongoing requirement for the hoteliers to liaise with NSW Police as to any changes to the Plan of Management,
 - aligns with the standard Plan of Management condition routinely imposed by the Authority on a range of liquor licences including hotel licences, and
 - is likely a more effective use of public and industry resources to monitor and ensure the compliant operation of the hotels, compared to periodic audits without clear reasons or practical benefits.
- Notwithstanding the removal of the periodic audit requirement, it remains open to law enforcement officers to inspect the Plan of Management at any time.

Supervision of liquor service and consumption after 11 pm

The Authority is satisfied on the available information that the condition requiring a dedicated staff member to be engaged after 11 pm to supervise the service and consumption of liquor is a helpful harm minimisation measure, particularly at late trading hotel venues.

The Authority nevertheless accepts the contention by a number of hoteliers that, for hotels that do not trade beyond midnight, the cost of compliance with this condition is disproportionately burdensome compared to its benefits, noting that:

- the dedicated employee retained to perform the specified duties between 11 pm and midnight must be paid for a minimum of two hours pursuant to the relevant industry award, and
- the hotels in these circumstances would only be serving alcohol until no later than 11:30 pm pursuant to the condition requiring the sale and supply of alcohol to cease 30 minutes before closure.

Accordingly, the Authority considers it appropriate to vary the condition so that it only applies when the hotel trades beyond 12 midnight.

Drinks restrictions after 10 pm

The condition restricting the sale of certain types of alcoholic beverages after 10 pm was the subject of numerous submissions from the affected hoteliers and other community stakeholders.

The Authority has considered the arguments for and against relaxing the restrictions imposed by this condition in the context of the potential social impacts that might result from any changes to the condition, and the statutory objects and considerations under s 3 of the Act.

The Authority accepts that there are benefits in relaxing the restrictions in terms of meeting the modern needs and expectations of certain groups of consumers, and contributing to the development of the liquor industry in Newcastle. The Authority has also had regard to Mr Horton's opinion in the Horton Report that it may be open to the Authority to consider some relaxation of the restrictions.

However, the Authority has also had regard to the strong opposition by Newcastle Police and local health professionals against any relaxation of these restrictions, and has given weight to their local and firsthand knowledge and experience in managing the consequences of alcohol misuse and abuse, and maintaining public order and safety in Newcastle.

The Authority is satisfied, on the available information, that:

- the restrictions imposed by this condition, operating in tandem with the lockout and early closure requirements, have contributed markedly to the reduction of alcohol-related harm and improvement in the late night amenity of the Newcastle community, in furtherance of the objects of the Act, and
- the condition as a whole, through limiting the range and volume of alcohol that may be sold or supplied after 10 pm, has provided a substantial means of reducing patron intoxication levels and alcohol-related violence and other misconduct during higher risk times of the day.

The Authority is not persuaded that the benefits of relaxing this condition outweigh the countervailing considerations in relation to harm minimisation, having regard to the:

- history of alcohol-related disturbance that gave rise to the imposition of this condition,
- persistence of elevated, albeit improving, rates and concentrations of alcohol-related crime and other misconduct,
- weight of submissions from health and law enforcement agencies as to the significance of the condition, as part of a scheme of harm minimisation measures, in maintaining public order and safety, and
- statutory objects of the Act and considerations under s 3(2) of the Act to minimise harm associated with liquor misuse and abuse, encourage the responsible service of liquor, and ensure the sale and supply of liquor does not detract from the amenity of community life.

In respect of the restriction on mixed drinks with more than 30 mls of alcohol, the Authority has considered the request by most hoteliers and AHA NSW on their behalf to make an exemption or partial exemption for cocktails. As already noted, the Authority considers this restriction, like other restrictions imposed by the condition, to form an integral part of the scheme of measures to reduce patron intoxication levels and the risk of harm associated with alcohol misuse and abuse. Noting that cocktails can contain a high volume of alcohol and multiple nips of different types of liquor, the Authority is not persuaded that there is a sufficiently strong case for making an exemption for this class of drinks at this time.

Having regard to the material before it, the Authority considers it prudent and appropriate to retain all of the restrictions imposed by this condition.

The Authority nevertheless considers it appropriate to:

- remove the requirement for free water stations on every bar, as this is now a statutory requirement under clause 51 of the Liquor Regulation 2008, and
- clarify, in response to the apparent confusion among some submitters, that:
 - the restriction on drinks designed to be consumed rapidly, such as shots, does not apply to neat spirits or liqueurs served in a format that is not designed to be consumed rapidly, and
 - the restriction on serving more than four drinks to one patron at one time does not apply to the serving of a single bottle of wine to any patron at one time.

Staff notification

In light of the proposed changes to the Plan of Management condition, the Authority considers it appropriate to vary the condition in respect of staff notification to ensure that all people working for the hotels are adequately informed of the updated Plan of Management and licence conditions.

The Authority is satisfied that this variation is in furtherance of the statutory consideration under s 3(2)(b) of the Act to encourage responsible attitudes and practices among staff members in selling and serving liquor, and in monitoring patron behaviour in consuming liquor.

The Authority notes but is not persuaded by the submission from one hotelier that this revised requirement would be too onerous to comply with. The Authority notes that no other hoteliers raised any objections or issues with this proposal.

Hours and conditions that remain unchanged

Having regard to the available information and the objects of the Act, the Authority is not persuaded that it should, at this stage, vary the trading and lockout hours for any of the hotels, or the two conditions requiring alcohol sale to cease 30 minutes before closure and prohibiting drinks stockpiling.

Notwithstanding some controversy among submitters as to which aspect of the current scheme of regulatory measures is most effective, the Authority repeats its previous findings in respect of:

- the cumulative effect of the early closure time, lockout requirements and other restrictions imposed by the Newcastle conditions, as part of the scheme, on the reduction of alcohol-related crime and social issues, and improvement of the amenity of the local community, and
- the weight it places on the submissions from local law enforcement officers and health professionals in respect of the benefit of the current harm minimisation measures, including the early closure and lockout requirements.

The venues that are the subject of these restrictions, in the Authority's view, posed a greater risk of attracting and generating alcohol-related disturbance by reason of their licence type, scale and authorised trading hours. Maintaining the current measures will prevent these venues from

attracting and generating patrons affected by alcohol at times of the night when there is an elevated risk of alcohol-related violence and greater scope for adverse impact on local amenity.

The Authority notes and agrees with the unanimous proposition accepted by all submitters and emphasised in the Horton Report that a return to the pre-2008 level of alcohol-related violence and anti-social behaviour must be avoided.

On the basis of the above, the Authority does not consider it appropriate to relax or revoke any of these measures.

The Authority has also considered, but is not persuaded by, the body of opinion that the measures should be further strengthened, as seen in the submissions from NSW Police, NSW/ACT Alcohol Policy Alliance, and a number of other research bodies, medical professionals and local residents.

The Authority acknowledges the efforts of the hotels over the past years in adopting measures and working with local authorities to reduce alcohol-related crime and disturbance and improve local amenity, and on this basis does not consider the imposition of further restrictions on the hotels to be warranted.

The Authority notes that its decision to leave these measures as they are is largely consistent with the advice in the Horton Report. In the circumstances, the Authority considers that time should be given to assess the effect of the current changes to the Newcastle conditions and the prevailing environment for alcohol-related crime and disturbance, before any changes are considered in the future.

Individual circumstances of the hotels

The Authority notes from the submissions made by many hoteliers that they should not be subject to the same conditions as other hotels, given the significant changes in their management practices, trading period and business model since the conditions were first imposed in 2008.

While the Authority's current decision applies to all 14 hotels, it is open to each of the hotels to make its own application to the Authority for variation of the conditions applicable to it. Such an application will be assessed on its merits, having regard to the individual circumstances of the hotel as well as the broader regulatory scheme in Newcastle.

If you have any questions, please contact the ILGA Secretariat at ilga.secretariat@liquorandgaming.nsw.gov.au.

Yours faithfully



Philip Crawford
Chairperson
For and on behalf of the Independent Liquor and Gaming Authority

Changes to Newcastle conditions

1. Radio network

| Condition imposed in 2008 | Change |
|--|---------|
| That within a period of 3 months the licensee shall have, whether under the provisions of a uniform Plan of Management or otherwise, entered into an agreement with each of the other licensees the subject of the imposition of these conditions an arrangement for the sharing of a radio network to be used by management and security for the purposes of communicating with each of the other premises. | Revoke. |

2. Plan of Management

| Condition imposed in 2008 | Change |
|---|---|
| That the licensee produce to the Board a Plan of Management within a period of six weeks. The contents of that Plan of Management will be settled in conjunction with the two complainants. | 1) The licensee must file with the Independent Liquor and Gaming Authority ("the Authority"), by not later than two (2) months after 30 August 2018, a revised version of the Plan of Management for the premises that has been reviewed in consultation with NSW Police. This plan shall be marked on its front page as "Revised plan of 2018". |
| The licensee shall ensure that at least every 3 months a compliance audit of the premises is carried out by a person who is not employed or in an ongoing financial arrangement with the hotel so as to ensure continuous compliance with the Plan of Management. | 2) The premises is to be operated at all times in accordance with the Plan of Management as revised pursuant to clause 1 above, and as may be varied from time to time after consultation with NSW Police. 3) 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 & Gaming NSW Inspector, or any other person authorised by the Authority. |

3. Supervision of liquor service and consumption after 11 pm

| Condition imposed in 2008 | Change |
|--|---|
| That from 11.00pm until closure the licensee will retain an employee whose sole function shall be that of a supervisor of responsible service of alcohol practices at the bar and to observe the responsible consumption of alcohol throughout the premises. | If the premises trades after 12:00 midnight, from 11:00 pm until closure the licensee will retain an employee whose sole function shall be that of a supervisor of responsible service of alcohol practices at the bar and to observe the responsible consumption of alcohol throughout the premises. |

4. Restrictions on the sale of liquor after 10 pm

| Condition imposed in 2008 | Change |
|--|--|
| <p>The following restrictions and conditions will apply upon the sale of alcohol after 10.00pm:</p> <p>a. No shots</p> <p>b. No mixed drinks with more than 30mls of alcohol</p> <p>c. No RTD drinks with an alcohol by volume greater than 5%</p> <p>d. Not more than 4 drinks may be served to any patron at the one time</p> <p>e. That free water stations be placed on every bar.</p> | <p>The following restrictions and conditions will apply upon the sale of alcohol after 10:00 pm:</p> <p>a) No drinks commonly known as shots, shooters, slammers or bombs or any other drinks that are designed to be consumed rapidly;</p> <p>b) No mixed drinks with more than 30 mls of alcohol;</p> <p>c) No RTD drinks with an alcohol by volume greater than 5%;</p> <p>d) No more than four (4) drinks, or one bottle of wine, may be served to any patron at one time.</p> |

5. Staff notification

| Condition imposed in 2008 | Change |
|--|--|
| <p>That within 14 days the licensee shall cause every member of staff to be notified in writing of these conditions and to be advised of the need to apply responsible service of alcohol practices.</p> | <p>Within 14 days of revising the Plan of Management the licensee shall cause every current member of staff (including employees and contractors) to be notified in writing of that Plan along with a current licence record maintained by Liquor and Gaming NSW. In the case of new staff, notification of the most recently updated version of the Revised Plan and the licence record shall be provided within 14 days of the commencement of employment or engagement, as the case may be.</p> |

Conditions to which no change will be made

- That the sale and supply of alcohol shall cease 30 minutes prior to closing time.
- That the licensee shall ensure, by adequate supervision methods throughout the premises, that no patron is stockpiling drinks. For this purpose stockpiling shall mean that any one patron has more than 2 unconsumed drinks at any one time (a patron may purchase up to 4 drinks at the one time).
- The lock out and early closure hours imposed on each of the venues.