



Mr Matthew John Jeffrey
C/o Wilson & Co Lawyers
Suite 16A Eastpoint Commercial Centre
50 Glebe Road
THE JUNCTION NSW 2291

Paul.Jeffrey@wilsoncolawyers.com.au
office@thehopfactory.com.au

**Application for Primary Service Authorisation
The Hop Factory, Cooks Hill**

Dear Mr Jeffrey

The Independent Liquor and Gaming Authority (**Authority**) has completed its assessment of an application received on 29 August 2013 (**Application**) regarding the licensed premises located at 102 Darby St, Cooks Hill known as "The Hop Factory" (previously known as "The Bistro") (**Premises**).

The Premises currently has the benefit of an on-premises liquor licence (no LIQO600467105) whose designated primary purpose is that of a restaurant. The licence permits the sale or supply of liquor for consumption on the Premises from 05:00am to 01:30am the following day on Monday through Saturday and from 10:00am to 12:00 midnight on Sunday.

The Application made under section 24(3) of the *Liquor Act 2007* (**the Act**) seeks the grant of an authorisation under that section, commonly referred to as a "primary service authorisation" (**PSA**) in respect of the licence. If granted, the PSA would permit liquor to be sold or supplied for consumption on the Premises to individual patrons otherwise than with, or ancillary to, the designated product or service – in the case of this licensed business, with or without a meal.

The Authority considered the Application at its ordinary monthly meeting on 28 May 2014 and decided to refuse the Application pursuant to section 24(3) of the Act. This was by reason that the Authority was not satisfied that the Application satisfied the overall social impact test prescribed by section 48(5) of the Act.

Staff assisting the Authority informally notified you of the Authority's decision on 3 June 2014. This letter serves to provide a formal record of the decision.

Liquor applications comprise a high volume aspect of the Authority's jurisdiction, and this letter provides a concise summary only of the key points arising from the material before the Authority and the rationale for refusing the Application.

MATERIAL BEFORE THE AUTHORITY

The Authority had before it the Application, the accompanying Community Impact Statement (CIS), and further submissions and other relevant material:

- Application – 29 August 2013;
- CIS Document and Supporting Material – 23 August 2013;
- Plan of the Premises outlining the existing licensed area and the areas in which the proposed PSA would be exercised – ground floor casual dining area and the 1st floor function area – 5 November 2013;
- Copy of a Notice of Development Approval DA/2012/0334 issued by Newcastle City Council (Council) on 30 July 2012, disclosing that development consent has been granted for "Alterations and Additions to Restaurant" subject to 29 conditions specified in Schedule 1;
- Further submission from Council to the Authority dated 17 October 2013. The Community Safety Co-ordinator of Council makes the following observations on the Application:
 - Insufficient information was supplied with the Application for Council to complete a thorough assessment of its merits and possible risks;
 - Development consent has been issued for use of the Premises as a restaurant/café'
 - By reason that development consent was granted "many years ago" there are no restrictions currently in place limiting the "hours of operation" for planning purposes. However, in 2012 use of the outdoor courtyard of the Premises was restricted by Council to 10:00pm;
 - Council requests that the sale and supply of liquor without food be restricted to no later than 12:00 midnight Monday through Saturday and until 10:00pm Sundays;
 - Council observes that the Premises is in a location that has a "significant number of café/restaurants opening until late" and contends that "noise disturbances are an issue" that was recently raised with Council by the Newcastle Local Area Command;
 - Council advises that should the proposed use of the venue change from that of a café/restaurant once the PSA has been granted, a new development application for a change of use will be required.
- Further Submission from Council to the Authority dated 9 September 2013 confirming the following:
 - Development consent for use of the Premise was granted in DA 2012/334;

- Council requests “the Applicant take all reasonable steps to ensure that the quiet and good order of the neighbourhood in which the premises is situated will not be disturbed”;
 - Council submits that the Applicant should “comply with all relevant development consents relating to this Premises”.
- Report to the Authority by a delegate (**Delegate**) of the then Director General of the Department of Trade and Investment, Regional Infrastructure and Services (**Director General**) now known as the Secretary of the Department of Trade and Investment (**Secretary**) dated 9 September 2013. This document may be summarised as follows:
 - The Application was subjected to an “automated risk based assessment”;
 - Relying on the information provided, and in the absence of any request for specific inquiries by the Authority, the Delegate neither objects to nor recommends the Application;
 - The Application was assessed using the Automated Liquor Application Risk Matrix (**ALARM**) and was categorised as “lower risk”;
 - The Premises has not been referred for annual assessment by an OLGR Compliance officer;
 - The Office of Liquor Gaming and Racing (**OLGR**) do not intend to carry out any further assessment of this Application at this time.
- Submission from NSW Police (**Police**) – 23 August 2013: Newcastle City Local Area Command Licensing Unit advises that it has no objection to the Application, but requests that the following conditions be imposed upon the licence should the Application be granted:
 1. *30 minutes prior to closing, the manager shall ensure that the level of entertainment noise shall be reduced until it forms a background noise level at closure, to indicate to patrons that the premises will be closing*
 2. *The following restrictions and conditions will apply upon the sale of alcohol after 10:00pm*
 - a. *No mixed drinks with more than thirty (30) mls of alcohol*
 - b. *No RTD drinks with an alcohol by volume greater than 5%*
 - c. *No more than four drinks may be served to any patron at one time*
 3. *No Shots, no shooters or no slammers are to be served to any patron at any one time*
 4. *The licensee or its representative must join and be an active participant in the local liquor accord*
- Public Submission from Mr Tony Brown (a local Newcastle resident and liquor regulation activist) raising his concerns with the cumulative effect of multiple liquor applications pertaining to the Darby Street, Cooks Hill area. (The Authority notes that Mr Brown refers to this Application and a number of other applications considered by the Authority at the meeting of 28 May 2014). The content of this submission is set out in further detail below – 16 December 2013;
- Email from the Authority to the Applicant dated 30 October 2013. Staff assisting the Authority requested the Applicant to confirm on the plan the area to be subject to the operation of the PSA and provide a full copy of the current development consent for

the Premises. The Authority also invited the Applicant to confirm in writing whether or not it would consent to the imposition of the following conditions, including standard conditions and conditions proposed by Police and Council:

1. *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 proves of obtaining the Primary Service Authorisation*
 2. *30 minutes prior to closing, the manager shall ensure the level of entertainment noise shall be reduced until it forms a background noise level at closure, to indicate to patrons that the premises will be closing*
 3. *The following drinks must not be sold or supplied on the licensed premises after 10:00pm:*
 - a. *Any ready to drink beverage with an alcohol by volume content of more than 5%. Ready to drink beverages are defined as an alcoholic mixed beverage that is prepared by the manufacturer*
 - b. *Any drink containing more than 30mls of alcohol*
 4. *From 10:00pm until the licensed premises ceases to trade, no more than four alcoholic drinks (whether or not the same kind) may be served to the same person*
 5. *No shots, no shooters or no slammers are to be served to any patron at any time*
 6. *The licensee or its representative must join and be an active participant in the local liquor accord*
 7. *The PSA may only be exercised between 10.00 am and 12.00 midnight from Monday to Saturday and from 10.00 am to 10.00 pm on Sunday.*
- Email from the Applicant to the Authority dated 5 November 2013. The Applicant makes the following submissions:
 - The Applicant “fully supports” and consents to the licence conditions proposed by Police and Council and communicated by the Authority;
 - The Applicant states that it had previously arranged for local licensing Police to attend the Premises and to discuss prior to lodging the Application;
 - The Applicant does not serve RTD or “shot” drinks at any time;
 - The Applicant submits that functions are regularly held on the first floor of the Premises and the extended trading hours which the Premises currently enjoys are more relevant to those function events; some of which operate past 12:00 midnight;
 - The functions are important to the venue which has been known as a “fine dining restaurant/function venue” for decades;
 - The Applicant contends that if the proposed standard trading hours are restricted to the PSA only (as distinct from the licence), the Applicant supports this;
 - The Applicant states that the Plan of Premises previously provided to the Authority is incorrect as it is intended that the PSA shall cover the rear section of the ground floor and the upstairs function area;

- The Applicant submits that the front area of the ground floor is not required to be covered by the PSA by reason that food will “always” be available to patrons in that area;
 - In response to Council’s submissions the Applicant requests that the Authority advise if the Applicant is required to lodge a Development Application to secure the PSA.
- Email from the Applicant to the Authority dated 7 November 2013. The Applicant makes the following further contentions or submissions:
 - There is no courtyard at all on the Premises;
 - There may be some confusion regarding the “outdoor courtyard” area as during 2012 the landlord obtained development approval to construct a courtyard, but this was never constructed;
 - (On the question of noise emissions) the whole of the building is double brick, to the whole of the perimeter, with only windows to the front street;
 - The Applicant specifically requested that the landlord not build a courtyard due to the potential noise issues for neighbouring properties located at the rear of the Premises;
 - Prior to the Application, the Applicant requested the Newcastle Local Area Command Licensing Sergeant to attend the Premises. During his attendance it was discussed that “this venue is not a noise venue”, nor is it encouraged to be and the construction of the building allows most noise to be retained;
 - The Applicant submits that the Premises will employ three (3) chefs and two (2) kitchen hands offering “high quality food”;
 - The Applicant submits that the purpose of the PSA is not to change the nature of the existing use but rather “genuinely offer patrons a quality beverage such as fine Hunter Valley Wine/Boutique Beer without having to partake in a meal at all times”;
 - The Applicant submits that if the PSA is granted, the focus for the venue will remain the provision of “high quality food matching with high quality beverage in a relaxing atmosphere”.
- Email from the Applicant’s legal representative Wilson and Co Lawyers to the Authority dated 24 February 2014. The email contains a copy of the following documents:
 - 2012 Development Approval DA 2012/0334 from Council incorporating the Courtyard area at the rear of the Premises;
 - 2013 Council Approval – Courtyard area replaced with solid wall;
 - Construction Certificate (No CN130201) and other documents relating to the Premises.
- Submission to the Authority from Newcastle Police dated 16 April 2014. In this brief submission Police state:
 - They have “no general issues” with the Darby Street Precinct generally, which is Newcastle’s major restaurant precinct, with Council approved footpath dining. Police note that most licensed premises in Darby Street over the years have

- applied for and been granted extensions to alter their licensed boundaries to cover the footpath. Police observe that this allows patrons to consume liquor "whilst partaking in a meal".
- Police submit that the Darby Street dining precinct is "well lit, patrolled regularly by Police and very well patronised by the community and visitors to the area"
 - Police submit they work with Council to ensure that this area is a safe and friendly area that encourages families to visit. Furthermore, Police contend the area is a designated Newcastle City Council "Safe Walk" route.
 - Police refer to an attached list of proposed licence conditions. In conclusion, Police request that the attached conditions (as outlined in the Material before the Authority section of this letter), be placed upon the liquor licence. Furthermore, Police request that these conditions apply to all new applications made for licensed premises within the Newcastle City Command.
- Applicant's submission to the Authority in response to submissions on social impact made by Mr Tony Brown. This submission is set out in detail further below – 28 April 2014;
 - Email from Applicant to the Authority dated 6 May 2014. The Applicant makes the following final submissions:
 - The Applicant asks the Authority to consider the Application favourably as "it is reasonable" and is "in response to patrons' needs";
 - The PSA Application "will not change the use of The Hop Factory as a restaurant" and "food will always be available";
 - The Applicant rejects the submission that his establishment is a venue that is "open to or supports pre loading and binge drinking".
 - Government Licensing System (**GLS**) liquor licence record for the Premises obtained by staff assisting the Authority as at 13 May 2014;
 - Historical licensing and socio demographic data for the Newcastle Local Government Area (Newcastle **LGA**) contained in the 2009 *Social Profile Report* published by the Office of Liquor, Gaming and Racing (**OLGR**);
 - Crime and alcohol related crime data for the Newcastle LGA current to 2013 and crime maps for the suburb of Cooks Hill showing the location of the Premises and the proximity of high, medium and low concentration "hotspots" for the recorded occurrence of domestic assault, non-domestic assault, alcohol-related assault and malicious damage to property data – as published by the Bureau of Crime Statistics and Research (**BOCSAR**) and publically available on the BOCSAR website; and
 - Liquor Licence information held by the Authority for the Newcastle LGA obtained by staff assisting the Authority. This material, which is publically available for purchase from OLGR, indicates the nature and location of other incumbent hotel, club and other liquor licenses in this LGA.

LEGISLATION

48 Community impact

- (5) *The Authority must not grant a licence, authorization or approval to which a relevant application relates unless the Authority is satisfied, after having regard to:*
- (a) *the community impact statement provided with the application, and*
 - (b) *any other matter the Authority is made aware of during the application process (such as by way of reports or submissions), that the overall social impact of the licence, authorization or approval being granted will not be detrimental to the well-being of the local or broader community.*

Statutory Objects and considerations

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

3 Objects of Act

- (1) *The objects of this Act are as follows:*
- (a) *to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community,*
 - (b) *to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality,*
 - (c) *to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.*
- (2) *In order to secure the objects of this Act, each person who exercises functions under this Act (including a licensee) is required to have due regard to the following:*
- (a) *the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),*
 - (b) *the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,*
 - (c) *the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.*

COMMUNITY IMPACT TEST

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

An application for the grant of a primary service authorisation to a licensed premises that does not have such an authorisation in effect is one of the types of application prescribed by section 48(2) of the Act as requiring a CIS.

The CIS provides the Authority with information about the views of relevant stakeholders and other aspects of the local community in which the proposed licensed premises is to be

located. This includes, for example, the proximity of the licensed premises to hospitals or health facilities, nursing homes, schools and churches.

OTHER CONSIDERATIONS

Section 51(3) of the Act provides that in determining an application for any licence related authorisation, the Authority has the same powers as it has in relation to an application for a licence. Relevantly the Authority must be satisfied, per section 45(3) of the Act, that the applicant is a fit and proper person, that practices are and will remain in place to ensure, as far as reasonably practicable, that liquor is sold or supplied responsibly on the premises and that all reasonable steps are taken to prevent intoxication on the premises and that is development consent is required for the proposed use of the premises under planning legislation, that such consent is in force.

Applicant Submissions on Overall Social Impact

In the CIS document the Applicant submits that:

- The “Bistro Restaurant” has long been a well-respected and well run establishment on the site of the Premises;
- The “primary purpose” of the existing on-premises restaurant licence “will not change” if the PSA is granted;
- The Applicant submits that the PSA is sought to “fill the void” outside of customary and traditional meal times as the trend in Newcastle generally, and particularly Darby Street Cooks Hill, is for “meals to be spread outside of these traditional times” and for patrons to “linger”;
- Darby Street Cooks Hill is a well-known restaurant precinct;
- The Applicant contends that the licensed business will “maintain strict controls” to “ensure” that the sale and supply of liquor is not the primary purpose and will “ensure” that food is always made available at all hours of trading;
- The maximum number of patrons on the Premises at any given time will not exceed 120 persons;
- The Applicant submits that the business intends to offer patrons a wide range of options to compliment the restaurant business, including the “opportunity to learn about matching wine and beer with food” and the ability to “offer a unique range of craft and boutique beer without the provision of a meal. Further, the Applicant submits that the Premises will “strongly support Hunter Valley wines”;
- The Applicant submits that the beers are a “classic case of quality rather than quantity” and will “encourage patrons to taste what we have on offer both before and after meals”;
- The Applicant contends that the aim of the business is to go well beyond the minimum requirements of Responsible Service of Alcohol (**RSA**) guidelines;

- The Applicant submits that the “intent for the restaurant is to be a fine place not just to eat but also to relax and socialise whilst enjoying the atmosphere”.

Public Submission from Mr Tony Brown on Social Impact

In a submission to the Authority dated 16 December 2013, Mr Brown makes the following submissions on the social impact:

Mr Brown requests the Authority to give substantial weight to the “collective cumulative impact” of licence applications that are currently before the Authority and that if granted would operate within a small area that is “adjacent to one of the highest alcohol risk precincts in New South Wales” (being the Newcastle late night trading entertainment precinct). Mr Brown provides a list of the incumbent licensed premises operating in Darby Street and a map illustrating their location.

Mr Brown submits that since 30 August 2013 there have been eight (8) liquor licence related applications made within approximately 300-metre block of Darby Street, Cooks Hill. The Applications included two (2) primary service authorisations and four (4) applications for new on premises licences and two (2) change of boundary applications.

The BOCSAR Crime Map provided for the October 2012 to September 2013 period supports that Darby Street is a key pedestrian gateway to Newcastle’s Central Business District (CBD) and the first hotel greeting intending patrons is M J Finnigans – previously listed in May 2012 as the most violent premises in NSW during Round 7 of the Scheme for “declared premises” administered by the Secretary through the OLGR under Schedule 4 to the Act. Mr Brown contends that during May 2012 the hotel was ranked as the third most violent premises during Rounds 6 and 8 of the Scheme.

Mr Brown contends that insufficient attention has been given to the role of “feeder premises” – venues in proximity to later trading venues that have no cover charges. Mr Brown submits that consideration should be given to their contribution to the “complex mosaic process of preloading, binge drinking and consequential (but primarily preventable) alcohol related harms”. Mr Brown is not suggesting that all of the eight (8) recent Applications in Cooks Hill “necessarily fit this description” of a feeder premises.

Mr Brown refers to the research by Professor Peter Miller, who observed that “preloading on cheaper alcohol is the biggest predictor of alcohol fuelled violence in the night time economy”.

(While the Authority notes that Mr Brown does not properly cite the sources of this research, the Authority understands this to be a reference to Australia’s largest study in patron behaviour, “*Patron Offending and Intoxication in the Night Time Entertainment Districts*”, or POINTED.)

Mr Brown submits that the latest surveys indicate “around 60% of patrons engage in dangerous levels of preloading before allowed entry into late trading licensed premises despite existing entry and RSA requirements”. (The Authority notes that Mr Brown does not specify where this 60% figure comes from).

Mr Brown contends from “visual observations” that some licensed premises in Cooks Hill are “well frequented by younger persons” who walk down Darby Street at the midnight closure to Newcastle’s nearby late trading licensed premises.

Mr Brown submits that the six (6) licence applications under consideration by the Authority for Cooks Hill warrant closer “collective scrutiny” particularly in relation to their “cumulative negative social impact” and their potential roles as a “feeder premise”.

Mr Brown criticises the current OLGR and Newcastle Council’s assessment processes for liquor applications and is of the opinion that “very little consideration” is given to the “cumulative impact” of the grant of further liquor applications in a given area. Mr Brown acknowledges a number of the Authority’s “decisions of interest” specifically relating to the problematic central Sydney area.

On the issue of liquor licence density in Newcastle, Mr Brown submits the Authority would be aware of the research concerning “liquor outlet density” and its contribution to alcohol related harms. Mr Brown contends the “significant increase in liquor outlet density on Darby Street Cooks Hill is of “prima facie concern” and that an “appreciable risk exists” that “increased competition for patrons can result in a deterioration of compliance standards” and a consequential escalation in undue disturbance as the community has unfortunately experienced in Newcastle.

With regard to the use by OLGR of the “EVAT” environmental assessment tool, Mr Brown submits a number of the Authority’s decisions have “exposed fundamental failures” in the method that OLGR applies with the EVAT system. Mr Brown notes a decision on the Mojo Record Bar (in Sydney CBD), when the then Director General of the Department of Trade and Investment through the OLGR compliance section did not oppose the license variation yet the Authority refused the application. Mr Brown notes that in that instance, OLGR had supported the application despite the EVAT system rating the external risk factors as “high to extreme risk” with the market factors as “low to extreme” and observed “it would appear that the application would have a significant impact to the community”.

Mr Brown contends that one basis of OLGR’s position on this Application was regard to the venue’s compliance history - notwithstanding OLGR’s acknowledgement that it has not conducted any inspections of the Premises.

Mr Brown makes the general submission that most individual applications before the Authority regarding Cooks Hill “appear reasonable” - however they differ in the quality and detail provided. He notes that the majority of applications appear to be supported by both Local Licensing Police and Council on the basis of an Applicant’s consent to a number of “standard conditions”. Mr Brown questions the continuing adequacy or sufficiency of these conditions in actually reducing and preventing the risk of “oversupply and availability” of alcohol in the “neighbouring problem area” of Newcastle (the late trading precinct).

Mr Brown urges the Authority to consider the above liquor applications pertaining to the location of Darby Street Cooks Hill in a “holistic interdependent fashion”. Further, Mr Brown contends it is time to reconsider modestly strengthening the conditions to which these licensed premises are subject to better prevent intoxication which is the primary precursor of the majority of harm and high public costs.

On the question of liquor licence density, Mr Brown provides statistics calculated using the Authority's GLS licensed premises data and the resident population for the suburb of Newcastle and the Newcastle LGA from the Australian Bureau of Statistics (ABS) Census Data 2011.

Level Name	Postcode 2300	Newcastle LGA
Population Count	10,097	148,542
Rate of Club licence per 100,000 persons	29.71	3.37
Rate of Full Hotel Licences per 100,000 persons	79.23	6.73
Rate of On-Premises Licences per 100,000 persons	257.50	7.41
Rate of Packaged Liquor Licences per 100,000 persons.	39.62	8.75

Mr Brown submits that Darby Street is within close proximity to many other "problematic" late trading premises including Argyle House – formerly known as Fanny's hotel, M J Finnigans Hotel, the Queens Wharf Brewery and the King Street Hotel.

Applicant Response to Public Submissions

In a submission to the Authority dated 28 April 2014, the Applicant makes the following submissions:

The Applicant submits Mr Brown's submission appears to be "generic" and whilst the Hop Factory is mentioned, the submission is not specific to the Premises the subject of this Application. The Applicant rejects the submission that The Hop Factory is a "feeder" premises for "preloading" and "binge drinkers".

The Applicant submits that the licensed business is a "locally owned family run small business". As licensee, the Applicant operates the business together with his mother and father. The Applicant submits he understands his obligations as Licensee, particularly relating to RSA matters and notes his previous experience managing two packaged liquor retailers in East Maitland and Warners Bay and a hotel bottle shop in Merewether.

The Applicant submits that the licensed business is a "family friendly business" which regularly caters for significant family events such as anniversaries, birthdays and engagement dinners. During the past week, the business catered for two (2) Newcastle University After Graduation Dinners, a 50th birthday party dinner and a "shower tea" luncheon. Furthermore, the Applicant submits the business has hosted various other family functions on the Premises in the past six (6) months all of which were run professionally and responsibly with no issues.

In addition, the Applicant submits that the licensed business caters for families by providing a "family friendly" menu. The Applicant submits that the business caters for a wide age group from 25-60 years and whilst younger people do attend this the venue, the Applicant argues that the business is not *specifically* viewed locally as a "young people's place".

The Applicant accepts that the Premises is located "only a short distance" from Newcastle's late night trading precinct. Furthermore, the Applicant identifies with the concerns raised by Mr Brown and with responsible community minded people in Newcastle generally.

In relation to trading hours, the Applicant submits that the Premises does not actually trade beyond 12:00 midnight on any trading day notwithstanding that the on-premises licence permits it to do so until 1:30am.

The Applicant submits that it is "not his intention" to trade beyond 12:00 midnight in the future. In practice, the licensed business is closed on Monday, trades until 10:00pm on Tuesday through to Thursday and does trade until 12:00 midnight on Friday and Saturday nights when the demand for patronage is higher. The licensed business currently closes at 9:00pm on Sunday evenings.

The Applicant submits the previous business operating on the Premises was known as "The Bistro" which had a reputation over many decades for fine dining. The Applicant contends that the management of The Hop Factory "have continued this reputation" ensuring that dining is an "essential part of this business" not simply because the Premises is licensed as a restaurant.

The Applicant submits the business and its dining is "enhanced" by the "current notoriety of draught micro brewed craft beers" with an emphasis on matching these beers with food, complementing the various flavours and styles. The Hop Factory currently offers patrons small tasting glasses i.e. 200ml of these beers together with standard glass sizes. The Applicant submits that the beer provided to its patrons is "not cut price alcohol designed to fuel excessive or binge drinking" as the wholesale cost of these types of craft beers is typically "far more expensive" than the cost of more conventional mainstream beer brands sold in hotels. For example, the average cost of a 200ml glass of beer is approximately \$3.50-\$4.00 and a 365ml glass \$7.00-\$8.00, compared to \$13.00 for a 365 mls glass of craft beer. The Applicant submits that the craft beer credo is one concerned with quality over quantity and as a genuine craft beer restaurant the licensed business advocates that approach.

The Applicant submits the Premises offers light and mid strength alcohol together with standard strength beers and a broad range of wines (supporting Hunter Valley wines) as well as the provision of soft drink beverages and water. The Applicant states that the Premises does not serve discounted alcohol nor does it engage in "happy hour" promotions. The licensed business "refrains" from serving "shots", "shooters" or cocktails.

The Applicant submits that the licensed business does not cater "exclusively" for younger people although it acknowledges that younger people do attend the Premises.

The Applicant contends that the operation of this licensed business "does not increase the liquor outlet density" in Darby Street. The operation of the licensed business on the Premises has simply replaced another restaurant that has been in operation on the site for "many decades".

The Applicant argues that the grant of the PSA "will not alter the fact that The Hop Factory is a restaurant". The Applicant submits that the PSA will allow the Premises to provide patrons with the "opportunity to try exceptionally good quality micro brewed beers without the requirement of food".

The Applicant emphasises that it always intends that food will be available for consumption as the trading hours of the Premises are designed to ensure that the kitchen remains open at all times.

The Applicant submits that the Premises is currently configured to accommodate patrons in a traditional restaurant area - offering full wait service, a more relaxed area offering of meals without wait service and a separate area hosting functions and degustation dinners - including beer and food pairings to be conducted on a regular basis.

The Applicant submits that his family are "dedicated, caring and socially conscious people" who have invested a great deal of time, effort and funds into a business that the City of Newcastle "truly desires".

The Applicant submits that the business is a "unique venue" on Darby Street, which is known as a designated restaurant and cultural area. The Applicant observes that there is a Council sign located at the entrance of Darby Street which reads "Darby Street – Eat, Shop, Enjoy" and emphasises that it precisely what most people do.

The Applicant submits that Darby Street is "not a violent street". Rather, it is a street frequented by people of all ages and is openly regarded as a "safe area". The Applicant submits that there are numerous residences along Darby Street, as much of the street consists of above shop residential accommodation. The Applicant contends that access to transport does not pose a problem, as there are regular buses on a designated bus route and a large taxi rank located approximately 60 metres South of the Premises.

The Applicant accepts that there is "no doubt that later at night a lot of younger people chose to move into the late night precinct because that is what younger people do". The Applicant states that he is aware of this but for this reason the business closes earlier than its licence permits.

The Applicant submits that "The Hop Factory is not about people drinking, it is about people eating, drinking and enjoying themselves" in a responsible fashion.

The Applicant acknowledges that Newcastle, like every major city, has its "element of violence and crime, which no doubt at times is fuelled by alcohol". The Applicant submits that the Hop Factory is a "desirable and unique establishment" that is contributing to the strong movement to change social attitudes and habits away from a culture of "binge drinking" to an "acceptance, re-education and understanding that artfully brewed beer particularly, can be enjoyed in moderation".

In conclusion, the Applicant submits that the site of the Premises has operated "without any problems for more than fifty (50) years" and that it is the Applicant's intention to ensure that this continues.

REASONS

Local and Broader Community

For the purposes of this decision, the Authority is satisfied that the relevant "local community" is the community within the suburb of Cooks Hill within Newcastle, (postcode

2300), while the relevant "broader community" comprises of the City of Newcastle LGA (Newcastle LGA).

Authority Findings on Crime Data

The submissions before the Authority included observations on crime rates during 2013. For the sake of completeness, the latest annual published BOCSAR *Crime Report for Newcastle LGA* and the latest BOCSAR *Crime Report by Local Government Area and Alcohol Related Status* covers calendar year 2013. The published crime data illustrates the very high relative rates of crime and alcohol related crime to which the local and broader communities are exposed. This is no doubt a function of Newcastle's status as a regional centre, with a high density of liquor licensed premises serving local residents, city workers and visitors throughout the year.

The BOCSAR Crime Report for the Newcastle LGA discloses for 2013 that the rate of *domestic violence assault* occurring across the Newcastle LGA was **435.1** per 100,000 persons of population. This rate is substantially higher than the NSW rate of **388.1**. This Crime Report discloses that in 2013 **36.1%** of all domestic assault incidents were flagged by reporting Police officers as alcohol related.

This report also discloses that the rate of *non-domestic assault* occurring across the Newcastle LGA during 2013 was **679.7** per 100,000 persons of population. This rate is well above the NSW rate of **463.6** per 100,000 persons of population. The Crime Report discloses that in 2013 **48.9%** of incidents were flagged as alcohol related.

This report further discloses that the rate of *malicious damage to property* incidents occurring across the Newcastle LGA during 2013 was **1,431.0** per 100,000 persons of population. This rate is well above the NSW rate of **1,043.2**. The Crime Report discloses that **11.3%** of incidents were flagged as alcohol related, while BOCSAR caution that it is difficult to discern the level of involvement of alcohol in property crimes when no offender has been identified.

The BOCSAR Crime Report for Newcastle LGA further discloses that during 2013 the approaching peak time of the week for the occurrence of *alcohol related assault* is between 6:00pm and 12:00 midnight on Friday, Saturday and Sunday evenings. Further, there also is an elevated proportion of alcohol related assault occurring between 12:00 midnight and 06:00am on Saturday and Sunday mornings.

The separate BOCSAR Report on Crime by LGA and Alcohol Related Status for 2013 focuses upon the proportion of crime reports in certain offence categories that happen to have been flagged by individual reporting Police officers as "alcohol related". This report discloses annual crime data for the categories of *alcohol related assault police*, *alcohol related domestic assault*, *alcohol related non-domestic assault* and *alcohol related offensive conduct*.

This report discloses that the rate of *alcohol related domestic violence* recorded across the Newcastle LGA during 2013 was **157.2** per 100,000 persons of population. This rate is substantially higher than the New South Wales rate of **137.3** in 2013. Furthermore, this report discloses that during 2013 **36.1%** of all domestic violence assault incidents were flagged by Police as "alcohol related".

The rate for *alcohol related non-domestic violence related assault* occurring across the Newcastle LGA during 2013 was **332.2** per 100,000 persons of population. This rate is well above the New South Wales rate of **181.0** per 100,000 persons in 2013. Furthermore, the report discloses that **48.9%** of *all non-domestic violence related assault* incidents were flagged by reporting Police as alcohol related.

The rate for *alcohol related assault police* incidents occurring across the Newcastle LGA during 2013 was **33.9** per 100,000 persons of population. This rate is well above the New South Wales rate of **22.6** in 2013. During 2013 **73.6%** of all assault police events were flagged by reporting Police as alcohol related.

The rate for *alcohol related offensive behaviour* incidents occurring across the Newcastle LGA during 2013 was **265.1** per 100,000 persons of population. This rate is also well above the New South Wales rate of **116** per 100,000 persons of population. This report discloses that during 2013 **80.3%** of all offensive behaviour incidents were flagged by Police as alcohol related.

BOCSAR crime maps enable to Authority to discern, within a given LGA, where there is a relative concentration of events occurring in particular offence categories in the relevant broader and local community. Crime maps provide data for offence categories such as domestic assault, non-domestic assault, alcohol related assault and malicious damage to property.

Drilling down to Cooks Hill in Newcastle, the BOCSAR crime maps for the Newcastle LGA for the period of June 2012 to July 2013 reveal that, the Premises is located within in a high density "hotspot" for the concentration of *malicious damage to property* incidents and within a medium density "hotspot" for the concentration of *domestic assault, non-domestic assault* and *alcohol related assault* events. Furthermore, the Premises is also in reasonably close (walking distance) proximity to high density "hotspot" areas for *domestic assault, non-domestic assault* and *alcohol related assault* events.

Overall Social Impact

Determining the overall social impact upon a local and broader community of granting an new liquor application requires a degree of speculation about what is likely to occur should the application be granted – the likely benefits and the likely negative impacts - albeit speculation that is informed by what is known about the Applicant's proposal and relevant information concerning the local and broader communities in question.

Positive Benefits

The Authority is satisfied that should the PSA be granted, it will provide some additional convenience for those patrons attending this licensed business who wish to consume liquor, including the range of craft beers and Hunter Valley wines on offer, without a meal, on the Premises both during the day and late at night.

However, the primary purpose of the business is designated by *this* liquor licence is that of a restaurant. An on-premises licence has already been granted in respect of the Premises and this licence substantially achieves the advancement of that primary purpose in that it enables the sale and supply of liquor that is ancillary to the provision of the identified restaurant service.

Diners at the Premises may already enjoy the benefits of the restaurant, including its specialist beer and wine list, pursuant to the existing liquor licence. Diners who wish to “linger” on the Premises or dine between traditional peak dining hours – a stated rationale of this Application - may already consume liquor, on the Premises, with a meal, pursuant to the current licence.

While there may well be some benefits to the *business* in granting this Application in enabling the Premises to operate to some extent in the mode of a bar, the likely benefits that will flow to the local and broader *communities* are relatively modest given the fact that the primary purpose of *this* business is already served by the on premises liquor licence and in light of the numerous licensed premises in the local and broader community whose primary purposes is the sale of liquor by retail (such as Hotels and General Bars) or those other on licensed venues who may already operate to some extent in the mode of a bar (through the grant of a primary service authorisation).

Negative Impacts

The BOCSAR data noted by the Authority above satisfies the Authority that the suburb of Newcastle and the Newcastle LGA are already exposed to relatively high prevailing rates of alcohol related crime, including assaults and offensive conduct.

The location of the Premises is of particular cause for concern when assessing the likely impact of granting the PSA. It is apparent that the Premises is situated in or near a high density “hotspot” for the concentration of malicious damage to property events and a medium density “hotspot” for the concentration of domestic violence related assault, non-domestic violence related assault and alcohol related assault events in this broader community.

The scale of the Premises is also a cause for concern when assessing the likely overall social impact of granting the PSA. The Authority is satisfied that should the Application be granted this medium sized licensed premises with a patron capacity of 120 will have the capacity to trade in some respects in the mode of bar as well as a restaurant – in that it will be able to sell or supply liquor to individual patrons whether or not they consume a meal.

Notwithstanding the Applicant’s intent to maintain a kitchen at all times while the venue is trading (which the Authority accepts) the Authority considers it more likely than not that a licensed premises with a PSA, located within easy walking distance of a range of other licensed premises, at a venue that places (according to the Application and indeed the name of the Premises) a prominent emphasis on beer sales is more likely than not to attract a significant minority of patrons who will migrate to or from the Premises, during the evening, seeking just another venue to drink. That is particularly likely to be the case outside of traditional peak lunch and evening dining hours.

The hours with respect to which the PSA is sought to operate provides a further cause for concern as to likely negative impact, in combination with the location and scale of the Premises. As noted in the BOCSAR crime data for the Newcastle LGA the proportion of alcohol related assault peaks in this broader community between 6:00pm and 12:00 midnight on Friday and Saturday evening (when the PSA is proposed to operate).

The Applicant has agreed to the imposition of some meaningful harm reduction measures should the PSA be granted – including a condition requiring cessation of the PSA at midnight, and conditions restricting the service of certain types of liquor such as “shots”, “shooters” or “slammers” but such proposed restrictions do not prevent the business from serving a great many types of liquor products to patrons and groups of patrons who are not looking to dine but to utilise the Premises as another place to drink.

The Authority accepts that the business is a family run enterprise and that there is nothing in the material before the Authority indicating that the Applicant or the staff have a problematic record from a licensing perspective. The Authority notes that while the Applicant accepts that the Premises does attract younger adults, the Applicant emphasises other age groups who attend the Premises as well. However, the Authority considers it more likely than not that younger adults, migrating between licensed venues, as distinct from families or older customers, will be attracted to the Premises outside of peak dining hours - particularly later in the evening.

The Applicant notes the automated submission from a Delegate of the Secretary for the Department of Trade and Investment's agency, OLGR, and the brief observations provided by Police to the effect that Darby Street itself not of particular concern to Police. However, neither of those submissions have given close examination to the practical impact of granting a PSA to this venue in this location, of this scale and with these trading hours.

Contrary to the Applicant's submissions, the Authority is satisfied that the granting the Application is more likely than not to change the character of the venue, particularly outside of peak dining hours and will enable the business to operate in some respects in the mode of a bar in those parts of the Premises to which the PSA is intended to apply. Not granting the PSA, by contrast, will mean that the business may still deliver its stated primary purpose of a restaurant which the Authority considers to be the substantive benefit offered by this business to the local and broader community. This change of character will occur within or near an established hotspot for alcohol related violence and offensive conduct.

While any licensed premises may be subject to a minority of patrons who elect to abuse alcohol, that risk is substantially elevated in a venue that has the capacity serve liquor without a meal compared to a licensed restaurant only. A licensed restaurant will attract diners seeking the Premises as a destination in and of itself. A licensed restaurant with bar facility is likely to attract not only diners but also a more transient clientele seeking another place to drink as they migrate among licensed premises - especially within a densely licensed restaurant precinct that is in close walking distance to a later trading entertainment precinct.

The Authority is satisfied that granting the Application will enable the Premises to accommodate a minority of patrons who are likely to have consumed alcohol alone over a longer period of time that would otherwise be the case, either on the Premises or elsewhere prior to migrating to the Premises. It is that minority of patrons who are more likely than not to contribute to alcohol related crime and anti-social conduct over time in the local and broader community.

Whether or not those patrons contribute to the current relatively high rates of alcohol related crime, patrons of the Premises are, in the alternative, likely to engage in a range of conduct that falls short of criminality yet adversely impact local amenity in a number of ways over time - for example, groups of patrons talking loudly amongst themselves, laughing, arguing, yelling, littering and/or making noise when moving through streets of Cooks Hill and Newcastle to and from the Premises while utilising public or private forms of transport.

The Authority has taken into account that permission granted by the Council to use the site until as late as 1:30am Monday through to Saturday and that although it is not the business owner's practice to trade to the limit of its licence it may trade beyond midnight for functions.

The Authority has taken into account the conditions proposed by Police and agreed by the Applicant as relevant mitigating factors, including drink restrictions and a proposed cessation of the PSA at midnight, in addition to management plans for the Premises. Such measures and plans provide a potential source of guidance as to harm minimisation measures for the licensee and staff but do not satisfy the Authority that staff occupied with their duties will be able to adequately monitor the alcohol related impacts of patrons on the

Premises when migrating to or from the Premises in neighbouring streets particularly during evening hours towards midnight.

The Authority accepts that some degree of alcohol related disturbance and anti-social conduct is inevitable with the operation of any licensed premises. However, the granting of the PSA significantly increases the scope for patrons of *this* Premises to either contribute to alcohol related crime or otherwise have a negative impact upon the amenity of *this* local and broader community as they move to and from the Premises, towards and around midnight, by feeding into later trading areas or simply moving through residential streets in Cooks Hill and neighbouring areas of Newcastle at times when most other licensed and non-licensed businesses are closing and the streets are becoming relatively quiet.

Conclusion

Having considered the likely positive and negative impacts of granting the PSA Application for this licensed premise, the Authority is *not* satisfied, for the purposes of section 48(5) of the Act that the overall social impact of granting the PSA Application would not be detrimental to the well-being of the local and broader community. For this reason the Authority has decided to refuse the PSA Application.

In making this decision, the Authority has had regard to all of the objects and considerations prescribed by section 3 of the Act, but has given weight to the statutory consideration prescribed by subsection 3(2)(a) – the need to minimise harm associated with the misuse and abuse of liquor including harm arising from violence and other anti-social behaviour, and the consideration prescribed by subsection 3(2)(c) – the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.

Arrangements will now be made for the refund of the refundable component. If you have any enquiries about this matter please contact the case manager, Stephanie Salviejo at stephanie.salviejo@ilga.nsw.gov.au.

Yours sincerely



Micheil Brodie
Chief Executive
For the Independent Liquor and Gaming Authority

23 July 2014