



Our ref: APP- 0000204554
Your ref:

Mr Peter Cordina
24 Boolarong Street
PYMBLE NSW 2073

5 February 2013

Via Email: [personal email address not published]

Dear Mr Cordina

Application for producer/wholesaler licence – Australian Liquor and Food Pty Ltd

I am writing to you about your application to the Independent Liquor and Gaming Authority that was received on 7 August 2012 (“Application”).

The Application seeks the grant of a new producer/wholesaler licence in respect of a business to be known as Australian Liquor and Food Pty Ltd that will be located at 24 Boolarong Street, Pymble 2073 (“the Premises”).

The Authority considered the Application at its meeting of 24 January 2013, when the Authority decided, under section 45(1) of the *Liquor Act 2007* (Act), to refuse to grant the Application. This decision has been made by reason that the Application did not comply with clause 9 of the *Liquor Regulation 2008* (“Regulation”).

Liquor applications comprise a high volume aspect of the Authority’s jurisdiction, and this letter provides a concise summary only of the material before the Authority and the Authority’s rationale for its decision.

MATERIAL BEFORE THE AUTHORITY

The Authority had before it the Application and the following submissions and other relevant material:

- Application and Category ‘A’ Community Impact Statement (CIS).
- Information from NSW Police. Police have provided no written submission but have verbally advised the Applicant that they do not object to the Application.
- Information from the Ku-ring-gai Council - 18 September 2012. Council advises that the proposed business will be consistent with the definition of a “home business” under the Ku-ring-gai Planning Scheme Ordinance and that the business will not require any further development consent. Council notes that no stock or deliveries will be hosted from the Premises and that Council Rangers have been notified of the proposed business, in the

event that complaints are made by local residents. Council do not otherwise object to the Application.

- Report from the Director General of the Department of Trade & Investment (Director General) - 14 August 2012. The Report advises that the Director General has assessed the risk posed by the Application and does not object.
- Applicant's submissions – dated 16, 21, 22 and 31 October 2012, 13 December 2012, and 4 January 2013.
- Sixteen (16) objections to the Application made by local residents - various dates.
- Three (3) submissions made by local residents advising that they do not object to the Application – various dates.
- Data contained in the 2009 *Social Profile Report* for the Ku-ring-gai Local Government Area (LGA) published by the Office of Liquor, Gaming and Racing (OLGR).
- Crime data and crime maps (dated from 2010 to 2012) relating to general and alcohol related crime rates in the Ku-ring-gai LGA, as published by the NSW Bureau of Crime Statistics and Research (BOCSAR).

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.

The Authority notes a Category “A” CIS accompanied the Application, even though this was not required by the Act. Section 48(2) of the Act only requires the provision of a CIS in relation to a producer/wholesaler licence application when an extending trading authorisation is sought that would enable trade between midnight and 5 am. In this case, the Applicant’s proposed trading hours are from 10 am to midnight. Accordingly, neither the requirement to provide a CIS, nor the requirement to satisfy the social impact test, apply to this Application.

The CIS document 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 licenced premises to hospitals or health facilities, nursing homes, schools and churches.

The Application form discloses that the proposed licensed Premises will comprise the place of business where liquor sales transactions shall take place, but no warehousing or distribution of liquor products will actually be conducted from the Premises. The CIS document indicated that no adverse issues were raised directly with the Applicant in response to the CIS process.

However, after the Application and CIS documents were filed, the Authority received sixteen (16) objections directly from residents of Boolarong Street, Pymble. Copies of those submissions were sent to the Applicant for comment before the Application was determined.

Several objections were to the effect that local residents had not been given fair warning of the making of the Application and/or that the operation of a liquor licence was an inappropriate activity for premises located in a residential area. Some objectors submitted that, by reason of the Applicant’s non-compliance with the notice provisions, there is doubt as to whether the Applicant may be expected to comply with regulatory requirements, should the licence be granted. Some contend that the Applicant may be expected to “push the envelope” from a regulatory perspective.

ADVERTISING REQUIREMENTS

The Applicant was required to advertise the making of the Application in accordance with section 40(4)(c) of the Act and clauses 7, 8 and 9 of the Regulation.

Relevantly, clause 9 of the Regulation states:

9 Notice relating to application to be fixed to premises

- (1) If an application is made to the Authority, a notice relating to the application that is in the form approved by the Authority must, within 2 working days of making the application, be fixed by the applicant to the premises to which the application relates.
- (2) The notice must be fixed to the premises until such time as the application is determined by the Authority.

- (3) If premises have not been erected, the requirement to fix a notice relating to an application may be satisfied by fixing the notice to a notice board erected on the land on which it is proposed to erect the premises.
- (4) A notice is not fixed to premises or land in accordance with this clause unless:
 - (a) it is fixed to the premises or land in such a position that it is legible to members of the public passing the premises or land, and
 - (b) if the Authority has directed that it also be fixed in another specified position—it is also fixed in that other position.

Numerous local residents, particularly a close neighbour of the Applicant, Ms R Whetmore and another resident, Ms J Fielding, contend that the required notice was not actually in view of members of the public who may have passed by the property after the Application was made. The Authority accepts that those persons were well placed to assess this.

In a submission dated 13 December 2012 the Applicant responded to the adverse submissions made by local residents in an unsworn letter. The Applicant acknowledges that from 5 August 2012 until “early September” the A4 sized notice was posted on the front door of his home, on the assumption that this was adequate by reason that his home is the building where the proposed licensed Premises are situated.

The Applicant states that from early September to 16 October 2012, the notice was moved to near the letterbox, close to the front gate of the property. The Applicant further acknowledges that from 16 October 2012 to the date of this submission (13 December 2012) the notice was moved to another position on the front fence of the property, where it has remained affixed.

The Applicant disputes the contention made in a submission by Ms R Whetmore dated 16 October 2012 that the notice was partially obscured by vegetation after it was moved to the fence facing the street. The Applicant contends that while this may have been apparent from the perspective of the person taking a photograph that accompanied this submission, the notice was visible from the street from other perspectives (the Applicant provides a photograph to demonstrate the visibility of the notice from another angle).

REFUSAL OF APPLICATION

The Authority notes that the Application was received by the Authority on 7 August 2012 and determined by the Authority on 24 January 2013 (“the Relevant Period”).

The Authority has critically examined the Application and all of the material before it and finds that the Applicant failed to comply with the advertising requirement requiring affixation of the prescribed site notice, not later than 2 working days after the Application was made and until the Application is determined, as required by clause 9 of the Regulation.

The Authority accepts the Applicant’s statement that from 5 August 2012 until “early September” 2012 the site notice was placed on the front door of the Applicant’s home. The Authority is satisfied that the front door of the Applicant’s home is set back some distance from the adjacent street.

The Authority finds that during this part of the Relevant Period the notice was not visible, let alone legible, to passers-by. Clause 9(4)(a) of the Regulation makes clear that the notice must be “fixed to the premises or land in such a position that it is legible to members of the public passing the premises or land” for the entirety of the Relevant Period.

By virtue of section 40(4)(c) of the Act, the Authority considers that satisfaction of the advertising requirement in clause 9 of the Regulation is a condition of the exercise of the Authority’s power to grant an application. In the particular circumstances of this matter, that condition was not satisfied. Accordingly, the Application must be refused.

Please contact the case manager, Mr John Bannister via john.bannister@olgr.nsw.gov.au if you have any enquiries about this letter. Arrangements will be made for the refund of any refundable component of the Application fee.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'D Greenhouse', is positioned above the printed name.

David Greenhouse

Chief Executive

for the Independent Liquor and Gaming Authority