

Our Ref: L 169
Your Ref: BA 08/428

2 July 2009

Mr David Sylvester
Archbold Legal Solutions
Suite 5A
77-79 Lilyfield Road
LILYFIELD NSW

**Application for Review under section 153 of the *Liquor Act 2007* (“Act”)
regarding the Tea Gardens Hotel, Bondi Junction**

Dear Sir

I refer to the application for review (“**Application**”) made under section 153 of the *Liquor Act 2007* (“**Act**”) regarding a decision of the Director of Liquor and Gaming (“**Director**”) dated 22 April 2009 (“**Decision**”) to impose two new conditions upon licence number LIQH400105967 for the premises known as the Tea Gardens Hotel (“**Hotel**”) located at Bondi Junction. A copy of the Decision is annexed.

Determination

The Authority convened to review the Application on 25 June 2009. After considering all the material that was before the Director when the Decision was made, the Application, the Applicant’s supplementary submissions, NSW Bureau of Crime Statistics and Research (“**BOCSAR**”) data, the Director’s submission dated 18 May 2009 and relevant provisions of the Act (including the statutory objects and considerations set out under section 3) the Authority has decided:

To **vary** Conditions 1 and 2 of the Decision to provide:

1. From 9.30 pm each Friday and Saturday, and from 7.00 pm each Sunday, until the premises ceases trading any drink (whether or not it contains liquor) sold or supplied for consumption on the premises must not be served or supplied in a glass or breakable plastic container. Permitted containers include but are not limited to polycarbonate drinking vessels.
2. From 9.30 pm each Friday and Saturday, and from 7.00 pm each Sunday, the licensee or person in charge of the premises shall commence removing glass drink containers from patrons and the public areas of the premises as soon as they are emptied and shall ensure that by 10.00 pm each Friday and Saturday and by 7.30 pm each Sunday all glass is removed from public areas.

Comment

The Authority notes that during December 2008 the Parliament of New South Wales considered it necessary to impose, under Schedule 4 to the Act, general conditions upon 48 licensed premises (“**Declared Premises**”) that had the highest levels of assault linked to those premises, as recorded in data compiled by BOCSAR.

The Hotel is not a Declared Premises.

The imposition of general conditions upon Declared Premises does not prevent the Director or the Authority from imposing specific conditions upon either a Declared Premises or a licensed premises that is not a Declared Premises, provided that such conditions are not inconsistent with the Act.

The Authority considers that Schedule 4 to the Act provides a relevant benchmark in cases where the imposition of restrictions upon the service or supply of liquor is warranted as an appropriate harm reduction measure.

Police have submitted evidence to the Director that has satisfied the Authority that numerous assaults have taken place on or near the Hotel throughout the 2005 to 2008 period. The Authority is satisfied that in seven (7) of those instances, the presence of glass contributed to the seriousness of each incident.

The Authority notes that a submission was sent by facsimile from the Applicant's lawyers to the Director on 20 March 2009 advising that the Applicant would agree to commence removing glass from public areas of the Hotel from 9 pm on Friday and Saturday evenings and from 7 pm on Sunday evenings, on condition that the Hotel be granted 60 minutes to give effect to the removal of glass and that glass restrictions not apply to the "Circa Restaurant and Bar" area of the Hotel. The Applicant later adjusted this position in the Application dated 12 May 2009, by proposing that glass restrictions commence at midnight on Friday and Saturday evenings and at 10 pm on Sunday evenings.

While the Authority acknowledges that the Hotel has taken the initiative in introducing voluntary measures designed to reduce the risk of glassing assaults, and that there have been no reported glassing assaults at the Hotel since September 2008, the Authority considers it reasonable and necessary to impose enforceable licence conditions regarding the use of glass on Friday, Saturday and Sunday evenings, when there is a demonstrably higher risk of assaults taking place.

The Authority finds that the commencement times for glass restrictions that were proposed by the Applicant in its submission dated 20 March 2009 are the preferable commencement times on the basis of all the material before the Authority. The Authority considers that 30 minutes is an appropriate period of time to complete the removal of glassware from public areas of the premises. The Authority has decided that it is not necessary to exempt the Circa Restaurant and Bar from the operation of the glass restrictions by reason that the trading hours of the restaurant cease on or before the commencement of the restrictions.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Chris Sidoti', with a small flourish at the end.

Chris Sidoti
Chairperson

Mr Shane Gordon Stewart Lester
Licensee
Tea Gardens Hotel
2 – 4 Bronte Road
BONDI JUNCTION NSW 2022

22 April 2009

Reference: Order to impose conditions on licence. SEB X09-0277.

Dear Mr Lester

I refer to my correspondence dated 13 February 2009 concerning proposed conditions that may be imposed on your licence under section 54 of the *Liquor Act 2007*.

Your submission dated 20 March 2009 has been reviewed.

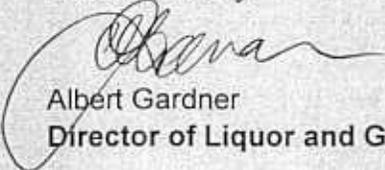
On the information, and other evidence and submissions before me, I have determined that the public interest is best served by imposing the conditions on your licence as set out in *Schedule 1*.

These conditions will take effect on 13 May 2009. I expect absolute compliance with the conditions and intend to monitor your venue. Failure to comply with a licence condition carries a maximum penalty of \$11,000 and/or imprisonment for 12 months.

Should you be aggrieved by this decision, you may seek a review by the Casino, Liquor and Gaming Control Authority (The Authority) by application within 21 days of the date of this notice accompanied by payment of the prescribed fee. Your application should include the grounds of your review together with a copy of this correspondence. The Authority can be contacted on phone no. (02) 8234 8800.

The case officer is Jeffrey Etto, who may be contacted on phone no. (02) 9995 0315.

Yours sincerely


Albert Gardner
Director of Liquor and Gaming

Encl
CC: Local Area Commander
CC: Commander ALEC

Schedule 1.

**Conditions imposed on the licence by the
Director of Liquor and Gaming under Section 54 of the *Liquor Act 2007***

Tea Gardens Hotel No.LIQH400105967

Effective Date: 13 May 2009

1. From 9.00pm until close of business, any drink (whether or not it contains liquor) sold or supplied for consumption on the premises must not be served or supplied in a glass or breakable plastic container.
2. From 9.00pm the licensee shall remove all glass drink containers from patrons and the public areas of the premises, so that by 9.30pm no patron has in their possession, or has access to, any glass drink container.

