



Our ref: LIQ0660031344

Your ref: AMW2120362

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Dear Mr Wennerbom

Application for Hotel (General Bar) Licence – The Wild Rover, Surry Hills

Introduction

The Independent Liquor and Gaming Authority has completed its assessment of an application lodged by your client Mr James Bradey, on 22 January 2013 (Application) for a Hotel (General Bar) licence for the above mentioned premises located at 75-77 Campbell Street, Surry Hills (the Premises).

The Premises is proposed to be licensed to trade during the standard licensed trading hours permitted by section 12 of the *Liquor Act 2007* (Act) - that is, from 10:00 am to midnight Monday to Saturday and from 10:00 am to 10:00 pm on Sunday.

The Application followed two previous applications for a hotel (general bar) licence for the Premises that were made by your client on 22 May 2012 and 11 October 2012. Both of those earlier applications (apparently made without legal assistance) were found by the Authority to be invalid for want of compliance with the advertising requirements prescribed by clauses 7 to 9 of the *Liquor Regulation 2008* (Regulation) respectively. As noted in the Authority's decision letter dated 7 December 2012, the second instance of non-compliance was of an inadvertent and temporary nature but one that the Authority found left it with no choice under the Act but to refuse the application.

By reason of the unfortunate antecedence to this matter and the financial pressure to which the Applicant business had become exposed (having fitted out the Premises and paid rent since June 2012 prior to securing a licence to operate) the Applicant requested the Authority to consider this Application out of session (that is, between monthly Authority meetings) after consultation on the Community Impact Statement (CIS) had been completed. On 20 March 2013, having acceded to that request, the Authority decided, under section 45 of the Act, to grant the Application. The Authority informally notified its decision by a short letter of that date.

The Authority does not usually provide or publish reasons when it grants a liquor application. However, by reason of the finely balanced nature of this decision, the Authority has decided to provide a concise account of why the Application was granted, in order to give notice to the community that the Authority is aware of recently emerging community concerns regarding the cumulative impact that the proliferation of licensed premises may be having in Surry Hills.

Material before the Authority

The Authority had before it the Application, the accompanying CIS, public submissions and other relevant material as follows:

- Submission from NSW Department of Health (as part of the CIS process) opposing the Application by reason of the high levels of alcohol related hospitalisations, ambulance call outs and chronic levels of alcohol abuse recorded in the Sydney LGA placing stress on the NSW Health System - 11 January 2013;
- Application Form and CIS document – 22 January 2012;
- Report from the Director General, Department of Trade and Investment, Regional Infrastructure and Services (Director General) noting the conditions in the DA and advising no objection to the Application – 8 February 2013;
- Email from NSW Police advising that it has reviewed the Application (among others) “with no objection” – 16 February 2013;
- Letter from City of Sydney Council providing a copy of the Development Approval for the Premises and making no objection to the Application – 20 February 2013;
- Submission from Dr C Mason, Surry Hills, opposing the Application – 21 February 2013;
- Submission from Mr K Shreeve, Surry Hills, opposing the Application – 21 February 2013;
- Submission from Ms C Zhang, Surry Hills, opposing the Application – 25 February 2013;
- Submission from Mr R Yee Ben, Surry Hills, opposing the Application – 25 February 2013;
- Submission from Applicant’s Solicitor responding to community submissions and providing a copy of the Plan of Management for the Premises - 28 February 2013;
- Socio demographic and licensing data for the City of Sydney Local Government Area (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 City of Sydney LGA, current as of 2011, and crime maps for the LGA based upon data from 2010, as published by the Bureau of Crime Statistics and Research (BOCSAR) and publically available on the BOCSAR website. The Authority also considered the 2011 BOCSAR Report on Crime by Local Government Area and Alcohol Related Status. (While more recent data has now been published by BOCSAR for 2012, the submissions on this matter preceded the release of that data.)

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 community impact statement 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 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 licensed premises to hospitals or health facilities, nursing homes, schools and places of worship.

REASONS

Local and Broader Communities

As noted in Authority *Guideline 6: Consideration of Social Impact*, the Authority will identify the relevant “local” community by reference to the locality in which the proposed licensed premises is situated, while the broader community will usually be the local government area in which the proposed licensed premises is situated.

The Authority is satisfied that the relevant “local community”, for the purposes of this Application, comprises the community located within the State suburb of Surry Hills. The relevant “broader community” is the City of Sydney LGA.

Scale, type and location of the licensed Premises

The Premises is located in the North Western part of the suburb of Surry Hills, among a developing cluster of nearby hotels and bars that are discussed below.

The Premises has received development consent from the City of Sydney to lawfully accommodate up to 120 patrons. Although this is well above the 60 person threshold for a “small venue” licence under the Act, in relative terms the Premises may be regarded as a “small-to-medium” sized general bar.

The type of licence at issue here is a hotel licence - albeit one with the designation of a “general bar” under section 16 of the Act. While the primary purpose of a general bar, like a “full” hotel licence, is the sale or service of liquor by retail, general bars may be distinguished from “full” hotels in that they are prohibited by section 16(3) of the Act from keeping gaming machines and prohibited by section 16(4) of the Act from selling takeaway liquor. Furthermore, under clause 17 of the Regulation, a general bar

cannot provide other forms of gambling services that may be offered by hoteliers - such as a TAB facility or a public lottery facility, including Keno.

In the scheme of licence types provided by the Act, general bars offer a means of diversifying the available hospitality options beyond the traditional mode of a “full” hotel in that they offer a (potentially) more intimate and cosmopolitan option to the larger hotels that have traditionally dominated the night time economy in Sydney. General bars not only provide the benefit of responding to consumer choice, but by their smaller size offer greater opportunity for effective surveillance of intoxication levels, a (potentially) more “female friendly” environment and (potentially) an ambience and quality of fit out that research suggests is less associated with a risk of on premises violence.

With its mix of commercial and residential premises, the Authority considers that a general bar in an inner city location like Surry Hills is likely to be utilised by local residents, workers and visitors to the City of Sydney LGA alike. To the extent that the development of general bars remains consistent with local and community expectations, a new venue of this kind may be said to advance the statutory objects of section 3(1)(a) and (c) of the Act.

Community Demand for General Bars

There has been some evidence over recent years of some community demand for new general bars in Surry Hills. The demand is apparent from the number of applications for development consent granted by the City of Sydney and the related liquor licence applications that have come before this Authority. While applications for licensed premises in Surry Hills may also have been influenced by the prescription by the Act of “freeze” precincts in nearby areas of Oxford Street and Sydney CBD, the Authority does not consider it likely that this trend towards the development of general bars would have been so pronounced were it not for some reasonable demand within the local and broader communities to accommodate such new businesses.

The Authority has granted the majority of general bar applications since July 2008, to the extent that those applicants have only sought to trade within the standard trading hours prescribed by section 12 of the Act.

However, over approximately the last year, the Authority has noted an increase in both Police and community concern and opposition relating to applications for new licensed premises in Surry Hills, including applications for new general bars. Opposing submissions have identified concerns as to the increasing density of licensed premises within parts of Surry Hills, adverse impacts that the venues and migrating patrons are having upon local amenity (by way of noise and public intoxication), the capacity of Police to manage unruly behaviour when it occurs and the contribution that an increasing number of licensed premises is making towards the recorded incidences of alcohol related violence and offensive conduct within Surry Hills and the City of Sydney LGA generally.

With respect to this Application, the City of Sydney has granted development approval (DA) for the proposed use of the Premises. The DA commenced effect on 12 May 2012 and is subject to numerous enforceable conditions which the Authority is satisfied are likely to mitigate the adverse social impact that the proposed licensed business would otherwise have upon the local community. They include:

- a maximum of up to 120 persons and 9 staff on the Premises at any one time.
- confining the permitted hours of commercial use of the Premises to between 7:00 am and only 10:00 pm, Monday through Sunday, although trading between 10:00 pm and midnight has been permitted on a trial basis for 12 months from the date that a certificate of occupation was issued (in July 2012). Should adverse disturbance events arise, Council will have the capacity to not extend the trial hours in the near future, or impose a further trial period.

- a requirement that the Premises operate in accordance with its Plan of Management dated March 2012, which includes, *inter alia*: a requirement to use licensed security staff from 7:00 pm onwards from Thursday to Saturday evenings; use of “wind down” procedures 30 minutes before closing; detailed specifications for CCTV coverage of all public areas (other than toilets) and a 15 metre radius outside entry and exit points; and a requirement that no noise from the Premises shall be audible from inside *any* internal room of any residential property after midnight.

License Density

The Authority’s licensing records indicate that as of March 2013 some 189 licensed premises were recorded within the suburb of Surry Hills. While some of those premises may no longer be active as licensed businesses, and a great many of these licences pertain to restaurants, there is no doubt that licence density is very high for the local and broader communities that are the subject of this Application.

In Surry Hills the venues are spread across a fairly broad but walkable geographic area, either located along or branching off roads like Campbell, Commonwealth, Forster and Riley Streets in the North Western part of the suburb (where this Premises is located), or Elizabeth, Albion, Kippax and Foveaux Streets to the South, or Crown and Bourke Streets to the East.

In this Application, concerns about adverse social impact and licence density were articulated in submissions from local residents Mr K Shreeve, Mr R Yee Ben, Ms C Zhang and a particularly detailed submission from Dr C Mason. Dr Mason identifies the current hotels and bars operating close to the Premises within this north-western part of Surry Hills, contending that they are having a cumulative adverse impact upon the occupants of commercial and residential premises in the suburb:

- Bar “H” (80 Campbell Street)
- Fan Tan Bar (72 Campbell Street)
- Triple Ace Bar (Corner Campbell and Elizabeth Streets)
- Porters House Bar (Corner Campbell and Riley Streets)
- Longrain Restaurant and Bar (Corner Commonwealth and Hunt Streets)
- Macquarie Hotel Bar (Corner Commonwealth and Goulburn Streets)
- Travelodge Hotel (27-33 Wentworth Avenue)
- Royal Albert Hotel (140 Commonwealth Street)
- Hollywood Hotel (Corner Forster and Hunt Streets)
- Cambridge Hotel (212 Riley Street)
- Baccomatto Osteria (212 Riley Street).

Dr Mason does not oppose the grant of new licences outright but considers that a maximum patron capacity of 60 (as now prescribed by the Act for the “small venue” licence category) is more appropriate for Surry Hills, in light of the number and size of the incumbent licensed venues. Dr Mason also proposes that new licences should not be permitted to trade the full standard hours permitted under section 12 of the Act, but should rather be required to cease the provision of liquor at 10:00 pm, when patrons can leave for late night entertainment precincts such as Kings Cross if they wish.

While the Authority does not accept the proposition advanced in Dr Mason’s submission that Surry Hills is presently at risk of becoming “another Kings Cross”, the Authority does accept as credible the observations relayed in her submissions regarding people being clearly drunk on the streets and creating a sense of unease for local residents. The Authority accepts that there is a correlation between a high density of on licensed premises in a suburb and adverse impact on residential amenity.

While each application must be determined on its merits, the number of licensed premises is now reaching a point whereby each additional liquor licence for Surry Hills will require close scrutiny, and very close scrutiny if the type of licence involves a hotel or general bar.

Dr Mason has attached to her submission a copy of a Police submission dated 20 October 2012 made by Sgt Darrin Thompson of the Surry Hills Local Area Command (LAC) in relation to another matter – an application for a general bar licence for the Fan Tan Bar (at 72 Campbell Street, as noted in Dr Mason’s list of licensed venues).

The Police submission on the Fan Tan Bar that was provided by Dr Mason made observations on the intoxication of patrons in Surry Hills, licence density, BOCSAR crime data for the City of Sydney LGA and some additional internal Police data for the Surry Hills LAC.

While detailed, evidence based submissions and observations from experienced Police officers will usually be given considerable weight when the Authority assesses overall social impact, the Authority has given less weight to the Police material provided by Dr Mason because Police did not actually intervene on *this* Application. Police do not always intervene when consulted on liquor applications and have not elected to provide a submission addressing the *particular facts and circumstances of this Application* which would have involved considering the nature of the Premises proposed and the conditions imposed by the DA in order to address the *overall* social benefit of *this* Premises. That is no criticism of Police, who like other interested agencies must make resourcing decisions as to when to intervene in a regulatory matter.

It is notable that none of Police, the City of Sydney and the Director General has made objection to this Application nor has any of them identified any concerns as to the localised adverse impacts that are likely to flow from granting this licence. In providing his report, the Director General’s delegate has noted the key conditions of the DA that are of interest from an alcohol related impact perspective. In the Authority’s view these measures are likely to reduce the adverse local impacts occurring on or in the vicinity of the Premises.

The New South Wales Department of Health has opposed the Application, citing very high rates of alcohol related hospitalisation, ambulance call outs and chronic alcohol abuse occurring within the broader City of Sydney LGA when compared to the State average, no doubt reflecting the very high number of licensed premises in the City and the influx of workers and visitors to the LGA.

The brief NSW Health submission appears to be a “standard form” submission and does not shed further light on the demographic profile of the *local community vis a vis* alcohol related hospitalisations or ambulance callouts arising from within Surry Hills (which could have been of greater assistance). Nor does this submission focus on the contribution that a venue of this type, location and scale is likely to make towards these well-known rates of alcohol related health impacts occurring across the broader City of Sydney LGA.

While the Health data for the broader community presents an argument against granting any new hotel licences in the LGA, without more, the NSW Health Submission does not, of itself, provide a decisive basis for rejecting *this* Application.

While the Authority will make its own assessment of overall social impact for the purposes of section 48(5) of the Act, the lack of opposition to the Application by these three public agencies (who are well placed to comment on overall social impact) suggests they may not be particularly moved by the adverse social impact posed by this particular business.

BOCSAR crime data

While the 2012 data was not yet published at the time of making this decision, the Authority notes that in BOCSAR's *Report on Crime by Local Government Area and Alcohol Related Status for 2011*, the City of Sydney LGA recorded considerably higher rates of alcohol related violence and offensive conduct per 100,000 persons than the rate for the State as a whole. The Authority notes that the Premises will be located within a hotspot for the occurrence of alcohol related violence, non domestic assault and domestic assault - albeit a hotspot that extends over much of the Sydney CBD.

Clearly, the BOCSAR crime data indicate that both the local and broader community are over exposed to alcohol related crime and other forms of disturbance, including alcohol related offensive conduct. This is of great concern. An application for a new licensed premises in any area that is identified as a "hotspot" for alcohol related crime will warrant careful deliberation.

The submission by Dr Mason satisfies the Authority that there is now a bunching of bars and hotels occurring in this part of Surry Hills. Increasing the licensed premises in a suburb enables and encourages patron migration within that suburb, which can adversely affect local amenity.

On the material before the Authority in this case, there is cause for concern as to the adverse impact that this new general bar may have upon the local community. This primarily arises from the local resident submissions but is reinforced by the BOCSAR crime data for the City of Sydney LGA.

However, in the absence of a detailed Police Submission (or other expert analysis) providing a practical, localised assessment of the social impacts *this* business is likely to have on the amenity in Surry Hills and in light of the planning controls to which *this* Premises will be subject, the Authority is satisfied on the material before it that the grant of *this* Application is not likely to have an overall social impact that is detrimental to the local or broader community for the purposes of section 48(5) of the Act.

CONCLUSION

Positive Benefits

The Authority accepts that the proposed new general bar will increase consumer choice and convenience for the local residents, workers and visitors to this inner city suburb. The Premises will offer a smaller and probably safer alternative to larger venues operating in the local community. The Authority also accepts the Applicant's contention made within the CIS document that the Premises will offer those local workers "a social outlet closer to their place of work and usual mode of public transport home".

Negative Impacts

The Authority does not accept the Applicant's unexplained and unsubstantiated contention that "there will not be any impact for local stakeholders". The Authority finds the concerns expressed by local residents to be credible and reasonable. The Authority cannot discount the prospect that the operation of this general bar will contribute to alcohol related disturbance and crime recorded in the local and broader communities.

In a practical sense, adding another general bar will contribute to what is now a cluster of licensed premises in this area of Surry Hills, contributing to night time patron migration among licensed venues in the various parts of Surry Hills and to and from other parts of the Sydney CBD and its environs.

There is recent support in criminological research conducted within the City of Sydney LGA (Burgess M and Moffatt S: “The Association between alcohol outlet density and assault on and around licensed premises”, BOCSAR, 2011) for the proposition that assaults tend to occur in proximity to licensed premises and that each additional licensed premises in the City of Sydney LGA can be expected to result, *on average*, in 4.5 additional assaults per annum. That research is qualified by the authors’ observations that the estimated effect on assault rates will not necessarily be constant for all alcohol outlets, in that the type of licence, patron numbers, trading hours, patron demographics, type of beverages consumed and environmental factors can be expected to affect the outcome of adding an additional licence.

Nevertheless, in light of the lack of opposition to or adverse social impact analysis of the Application by Police, Council and the Director General, and noting in particular the conditions of the DA that will mitigate harm occurring on or in the vicinity of the Premises, the Authority is satisfied that those adverse impacts that are likely to occur either on or close to this Premises will be relatively constrained by those conditions.

There remains the question as to what other localised impacts arising from patrons migrating to or from the Premises may have outside the vicinity of the Premises but within Surry Hills. However, there are insufficient submissions addressing this aspect of the Application before the Authority in this instance to justify refusing the Application on that basis.

In conclusion, having considered the likely positive benefits and negative impacts apparent from the submissions, the Authority is, *on balance*, satisfied that the overall social impact of granting the Application will not be detrimental to the local community. In making this decision the Authority has considered all of the statutory objects and considerations prescribed by section 3 of the Act, but has given weight to 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.

Please contact the case manager via Trudy.tafea@olgr.nsw.gov.au if you have any enquires about this letter.

Yours sincerely



David Greenhouse
Chief Executive