



Our ref: 1-1585403682

Your ref:

Mr Bidyha Sagar Shreshtha
C/O Ms Joanna McClelland
BBC Consulting Planners
55 Mountain Street
BROADWAY NSW 2007

By email: Joanna.mcclellan@bbcplanners.com.au

11 January 2013

Dear Sir

Application for Removal of Hotel Licence No LIQH400102968 from 91 Illawarra Road, Marrickville (the Henson Park Hotel) to new licensed premises to be known as "Marrickville Ritz Hotel" located at 252-254 Illawarra Road, Marrickville ("the proposed new Premises").

Introduction

1. I refer to the above mentioned application made by you under section 59 of the *Liquor Act 2007* ("Act") that was received by the Authority on 8 August 2012 ("the **Application**"). The Authority considered this matter at its meeting of 13 December 2012 when it determined to grant the Application.
2. Liquor applications provide a high volume aspect of the Authority's jurisdiction. It is not the usual practice of the Authority to provide reasons when liquor applications are granted, but in light of the significant degree of community interest in this matter, what follows is a brief statement of the Authority's rationale for its decision to grant the Application. Although the rationale is briefly stated, the Authority will not be providing further reasons for its decision. To avoid doubt, the Authority has considered all of the material that was provided by the Applicant and third parties but for the purposes of this decision letter will only refer to several key points.

Legislation

3. Under section 59(3) of the Act, an application for the removal of a liquor licence is to be dealt with as if it were an application for a new licence at the proposed premises. Pursuant to subsection 48(2)(a) of the Act, an application for a hotel licence is one which requires consideration of community impact and must satisfy all the requirements of that section. Relevantly to this decision, section 48(5) states that:

- (5) The Authority must not grant a licence, authorisation 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, authorisation or approval being granted will not be detrimental to the well-being of the local or broader community.

4. The objects of the Act are set out under section 3(1) of the Act, and section 3(2) prescribes those statutory considerations to which the Authority must have regard when exercising its functions under the Act:

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.

Decision

5. When applying the overall social impact test that is prescribed by section 48(5), the Authority:
- (i) considers the relevant evidence, the submissions of the Applicant and interested stakeholders and other material before it;
 - (ii) makes findings on what it considers to be the likely positive benefits and negative impacts that will flow to the relevant local or broader community, should the licence or authorisation be granted; and
 - (iii) makes an overall assessment as to whether the Authority is satisfied that those positive and negative impacts, considered together, will or will not be detrimental to the well-being of either the local or broader community.
6. Determining positive and negative impacts involves a degree of speculation, albeit speculation that is informed, to the extent practicable, by relevant information about the proposed licensed business and the local and broader communities in question.
7. As noted in the Authority's *Guideline 6 on Consideration of Social Impact*, each licence application is considered on its merits. While the issues arising from an application will vary from community to community, the Authority will usually consider, as it has done in this instance, such factors as:
- (i) the *type* of licensed business that is proposed
 - (ii) the *scale* of the proposed licensed premises
 - (iii) the *trading hours* of the proposed licensed premises
 - (iv) the *location* of the proposed licensed premises, and
 - (v) any *specific measures* proposed by the applicant, above and beyond the minimum requirements of the legislation, that may tend to ameliorate the social detriment that may otherwise be expected to flow from the operation of this licensed business.

Communities

8. The Authority is satisfied for the purposes of this decision, that the relevant "local" community is the suburb of Marrickville and the relevant "broader" community is the Marrickville Shire Local Government Area ("**Marrickville LGA**").

Positive benefits

9. The Authority is satisfied, on the basis of submissions provided by the Applicant's consultant, BBC Planning, that were the Application to be granted, the proposed new Premises is likely to confer the following positive benefits upon the local and broader communities:
10. **Consumer benefits** the Authority is satisfied, on the basis of the material provided by the Applicant, that the proposed new business will provide persons in the local and broader communities seeking liquor, gaming and other hospitality services (including dining facilities) with a new, attractive, well appointed, family friendly, modern hotel located in the centre of the commercial precinct in Marrickville. The hotel will provide a new night time entertainment option for those communities. The Authority notes and accepts the Applicant's submission that entertainment options in Marrickville have diminished in recent years with the demise of such venues as the Marrickville RSL and Anzac Club.
11. **A modest improvement in security in the immediate vicinity of the proposed new Premises** - the Authority is satisfied, on the basis of the material provided by the Applicant's consultant, that there will be some modest benefit to the local and broader communities by way of improved night time security for those who pass by the immediate vicinity of the proposed new Premises, thanks to the improved lighting and the presence of the Applicant's staff during the Hotel's proposed trading hours.

Crime data for the Marrickville LGA and crime maps for the suburb of Marrickville

12. The Authority is satisfied, based upon the NSW Bureau of Crime Statistics and Research ("**BOCSAR**") crime data for the Marrickville LGA for 2011 and crime maps compiled on the basis of crime data from 2010 that the broader community is currently exposed to rates of crime and disturbance that are below the rates encountered by the State of NSW as a whole.
13. During 2011, the rate of domestic violence assault incidents reported in the Marrickville LGA per 100,000 persons of population was **367.4**, slightly below the State-wide rate of **370.7**. The rate of non domestic violence assault incidents was **449.4** per 100,000 persons, below the State-wide rate of **512.5**.
14. BOCSAR crime mapping data shows a low intensity "hotspot" for the concentration of *alcohol related violence* events in the area around the intersection of Illawarra and Marrickville Roads in the suburb of Marrickville, although that location accounts for only 2.3% of these incidents occurring across the LGA as a whole. A medium to high intensity hotspot for the occurrence of domestic violence assault incidents extends across much of the suburb of Marrickville.
15. The BOCSAR report on *Alcohol Related Crime for Each NSW Local Government Area: Numbers, proportions, rates, trends and ratios (2011)* discloses that the rate of *alcohol related assault police events* recorded in the LGA was **20.2** per 100,000 persons, below the State wide rate of 22.7. The rate of *alcohol related non-domestic violence assault* was **176.7** per 100,000 persons compared to a NSW rate of 209.5. The rate of *alcohol related domestic violence assault* was

146.4 per 100,000 persons, compared to 144.6 for NSW as a whole. The rate of *alcohol related offensive behaviour incidents* was 61.9 per 100,000 persons, considerably below the rate of 148.1 per 100,000 persons for NSW as a whole.

Socio-economic data

16. The ABS socio demographic data from 2006 provided by the Applicant with regard to the Marrickville LGA indicated that the local and broader community was then neither relatively advantaged nor disadvantaged on the whole compared to the Australian average – with a mix of both advantaged and disadvantaged persons.
17. In any event, the proposed removal is from one location within the suburb of Marrickville to another. The material before the Authority does not give rise to particular concerns referable to the relative vulnerability of the communities in question to alcohol related harm that would be exacerbated by the proposed removal of the licence to the proposed new Premises. The extent of adverse social impacts that are likely to flow from the grant of the Application are discussed further below.

Negative impacts

18. The Authority has taken into account the numerous submissions from members of the local community, including a submission from the Hon Carmel Tebbutt MP, State Member of Parliament for the Marrickville electorate, expressing opposition to the Application on the basis of adverse social impact. The range of concerns expressed by members of the local community include an increase in noise, anti-social behaviour and littering, vomiting, a worsening of parking and congestion in the town centre of Marrickville, concern over trading hours, an increase in vandalism and general concerns that the proposed new Premises is not a suitable site for the location of a Hotel. Ms Tebbutt questions the need for another licensed premises within the shopping precinct of Marrickville and raises concerns regarding the potential impact of the proposed new Premises upon local traffic congestion.
19. The Authority is satisfied that the operation of the Hotel is likely to give rise to some alcohol related disturbance to the local and broader communities, principally through the conduct of patrons migrating to or from the proposed new Premises.
20. However, the proposed new Premises will, in the Authority's assessment, be likely to have a lesser adverse social impact than is currently the case with the Henson Park Hotel which is located only 850 metres south from the proposed location within the suburb of Marrickville.
21. As this is a removal application and not an application for a new licence, there will be no net increase in the number of licences in the local or broader communities should the Application be granted. The Henson Park Hotel will close if the Application is granted.
22. The Authority is satisfied, based upon the submissions of the Applicant, that the licence will be removed to a site within the Marrickville town centre that is, if anything, less residential and more commercial in character than the current site. The Authority accepts the Consultant's submissions that the proposed new Premises are well served by public transport, including busses, trains and night buses.
23. Most importantly, the licence currently authorises the Henson Park Hotel to trade with the benefit of an extended trading authorisation. As noted by the Applicant's consultant, the

Henson Park Hotel trades until 1.30 am after Wednesday and Thursday evenings, until 2 am after Friday and Saturday evenings and until midnight on Sunday evenings.

24. By contrast, once the licence is removed to the proposed new Premises, the new Hotel will only be licensed to trade during the standard trading hours that are prescribed by section 12 of the Act. That is, it will not be licensed to trade beyond midnight from Monday through to Saturday evenings nor past 10 pm on Sunday evenings. The Applicant has stated to the Authority that it will not operate its first floor balcony after 10 pm on any day of the week in order to minimise evening noise impacts from the operation of that part of the proposed new Premises.
25. The Authority notes that the Applicant has not applied for an extended trading authorisation and this has been an important factor in the Authority's decision to grant the Application. This significant reduction in licensed trading hours during higher risk times of the day and week for alcohol related disturbance provides a sound basis for the Authority to find that the adverse liquor or gaming impacts posed by the present Hotel to the local and broader communities will more likely than not be reduced if the licence is removed to the proposed new Premises and operates in accordance with standard trading hours.
26. The Authority has not received any objection from local Police, Council or the Director General. The Authority notes that development consent was granted on 24 June 2011 following a successful appeal to the NSW Land and Environment Court. That consent was granted subject to numerous conditions and Police submit that they are satisfied with those conditions. Police are also satisfied with the Plan of Management that has been prepared by the Applicant business with respect to the conduct of the proposed new Premises.
27. Having considered together the likely positive benefits and the extent of adverse impacts found by the Authority in this case, the Authority is satisfied that the overall social impact of granting the Application to remove the licence will not be detrimental to the local or broader community.
28. As the Authority is satisfied that all other requirements of the Act have been satisfied by the Applicant, the Application to remove the licence to the proposed new Premises is granted. In making this decision the Authority has had regard to all of the objects and statutory considerations prescribed by section 3 of the Act, and has given weight to section 3(2)(a) of the Act - the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour and section 3(2)(c) of the Act - the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.

Effective Date of Licence Removal

29. Pursuant to section 59 (7)(b) of the Act, the approval to remove the licence will take effect when the Authority endorses the licence to the effect that the proposed new Premises are the premises to which the licence relates.
30. This decision to approve the removal of the licence was made subject to a requirement that the Applicant provide the Authority with evidence that the proposed new Premises are complete and ready to trade. The Authority notes the Applicant's provision of that evidence on 8 January 2013 along with advice from the Applicant's consultant of the Applicant's intention to commence trading on 14 January 2013. Accordingly, the Authority has today endorsed the

Government Licensing System (GLS) record of the licence, identifying the proposed new Premises.

31. A copy of the amended GLS licence record is enclosed, which records the conditions to which the licence is now subject. As the licence removal is now in effect, trading must cease at the Henson Park Hotel premises. Please contact the case manager for this Application via mike.freeman@olgr.nsw.gov.au if you have any further advice or enquiries.

Yours faithfully



Chris Sidoti
Chairperson
Independent Liquor and Gaming Authority