



Mr Jon Martin  
JDK Legal  
GPO Box 3758  
SYDNEY NSW 2001  
jmartin@jdklegal.com.au

2 June 2017

Dear Mr Martin

**APPLICATION NO:** 1-529449170  
**APPLICATION FOR:** Removal of a Packaged Liquor Licence  
**TRADING HOURS:** Monday to Saturday 9:00am – 10:00pm  
Sunday 10:00am – 10:00pm  
**LICENSEE:** Mr Darren Raymond Kime  
**LICENSED PREMISES NAME:** Red Bottle Pitt Street  
**CURRENT PREMISES:** 382 Pitt Street  
SYDNEY NSW 2000  
**PROPOSED PREMISES:** Shop 1, Century Tower,  
343-357 Pitt Street  
SYDNEY NSW 2000  
**ISSUE:** Whether to grant or refuse an application to  
remove a packaged liquor licence  
**LEGISLATION** Sections 3, 29, 30, 31, 40, 45 47F(3), 48 and  
59 *Liquor Act 2007*

**INDEPENDENT LIQUOR AND GAMING AUTHORITY DECISION – APPLICATION FOR  
THE REMOVAL OF A PACKAGED LIQUOR LICENCE –  
RED BOTTLE PITT STREET**

The Independent Liquor and Gaming Authority considered application number 1-529449170 (“the Application”) at its meeting on 19 April 2017 and, pursuant to section 59 of the *Liquor Act 2007*, decided to **approve** the Application subject to the following conditions:

1. Section 11A of the *Liquor Act 2007* applies to this licence. Liquor must not be sold by retail on the licensed premises for a continuous period of 6 hours between 3.00 AM and 9.00 AM during each consecutive period of 24 hours. The licensee must comply with this 6-hour closure period along with any other limits specified in the trading hours for this licence.

2. Retail sales

Good Friday	Not permitted
December 24th	Normal trading Monday to Saturday, 8:00 AM to 10:00 PM Sunday
Christmas Day	Not permitted
December 31st	Normal trading

3. The business authorised by this licence must not operate with a greater overall level of social impact on the wellbeing of the local and broader community than what could reasonably be expected from the information contained in the Community Impact Statement, the application and other information submitted in the process of removing this licence to premises at Shop 1, Century Tower, 343-357 Pitt Street SYDNEY NSW 2000.
4. The licensee or its representative must join and be an active participant in the local liquor accord.
5. The Independent Liquor and Gaming Authority approved the removal of the licence to Shop 1, Century Tower, 343-357 Pitt Street SYDNEY NSW 2000 on 19 April 2017.
6. The liquor licence remains at 382 Pitt St SYDNEY NSW 2000 subject to the same conditions and trading hours that were immediately in force before this approval was granted until such time as the Independent Liquor and Gaming Authority is notified that the licence has been moved.
7. The premises must be operated at all times in accordance with the Plan of Management dated 23 May 2017 as may be varied from time to time after consultation with the Local Area Commander.

If you have any enquiries about this letter, please contact the case manager via email to [michael.fabits@justice.nsw.gov.au](mailto:michael.fabits@justice.nsw.gov.au).

Yours faithfully



Philip Crawford

**Chairperson**

For and on behalf of the **Independent Liquor & Gaming Authority**

## **STATEMENT OF REASONS**

### **DECISION**

1. The Independent Liquor & Gaming Authority (“the Authority”) is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding the decision whether or not to grant the application lodged 11 November 2016 (“the Application”) for the removal of a packaged liquor licence, as all of those required to be notified of the Application were provided with the opportunity to make written submissions and all submissions received were considered and helped inform this decision.
2. Having considered together the positive benefits and negative impacts that the Authority is satisfied are likely to flow from granting the Application, the Authority is satisfied that the overall social impact of granting the Application would not be detrimental to the well-being of the local and broader communities.
3. The Application is granted pursuant to section 59 of the Act.
4. In making this decision the Authority has had regard to all of the statutory objects prescribed by section 3(1) of the Act and all of the considerations to which it must have regard under section 3(2).

### **MATERIAL CONSIDERED BY THE AUTHORITY**

5. In making this decision, the Authority has considered the Application, the accompanying Community Impact Statement (“CIS”) and all submissions received in relation to the Application. As foreshadowed in Authority *Guideline 6*, the Authority has also had regard to relevant liquor licensing records maintained by Liquor & Gaming NSW (“L&GNSW”), Bureau of Crime Statistics and Research (“BOCSAR”) crime data and Australian Bureau of Statistics (“ABS”) socio-demographic data pertaining to the local and broader communities, sourced by licensing staff from publicly available sources. The material considered pursuant to the making of this decision is listed and, in some cases, briefly summarised in the Schedule.

### **LEGISLATIVE FRAMEWORK**

6. The legal requirements in respect of an application for the removal of a liquor licence are provided by section 59 of the Act and the *Liquor Regulation 2008* (“the Regulation”).
7. Any person exercising functions under the Act must also have regard to the objects and considerations set out in section 3, which prescribes the regulation of the supply of liquor in a way that is consistent with the expectations and needs of the community, alongside the facilitation of the balanced development of the liquor industry and related industries. Section 3 also requires attention to be paid to harm minimisation and the need to ensure that the sale of liquor does not detract from the amenity of community life.
8. Section 48 of the Act requires a Category B Community Impact Statement (“CIS”) to be lodged with an application for the removal of a packaged liquor licence, and that the Authority, in making its decision, consider the CIS (as well as any other

matter the Authority is made aware of during the application process) in order to determine the impact of the removal.

9. Section 48 further prescribes that the Authority must not grant an application unless satisfied that the “overall social impact [...] **will not** be detrimental to the well-being of the local or broader community”.
10. For the purposes of this decision and consistent with its longstanding practice and its position in *Guideline 6*, the Authority is satisfied that the relevant “local community” is the community within the suburb of Sydney while the “broader community” comprises Sydney Local Government Area (“the LGA”).

## KEY FINDINGS

11. The Authority is satisfied, based on the Application and CIS material before it, that for the purposes of section 59(2) of the Act, the Application has been validly made and minimum procedural requirements have been satisfied.
12. Section 59(3) of the Act prescribes that when determining an application to remove a licence to other premises, the Authority is to deal with the application as if it were an application for the granting of a new licence.
13. To that end, the Authority is satisfied, for the purposes of section 45(3)(a) of the Act, that the Applicant is fit and proper to carry on the business of the kind proposed in the Application. The Authority makes this finding on the basis that no issues of concern were raised regarding the probity of the Applicant following consultation with relevant enforcement agencies.
14. The Authority is satisfied, for the purposes of section 45(3)(c) of the Act, that the proposed use of the Proposed Premises falls within the scope of the relevant development consent. This finding is made on the basis of development consent D/2016/1211/A, issued by City of Sydney Council on 11 November 2016.
15. Noting that both the Current Premises and Proposed Premises are located within the same Sydney CBD Entertainment Precinct, the Authority has considered the restriction provided by section 47F(3) of the Act. On the information provided in the Application and CIS regarding the nature and scale of the business to be conducted on the Proposed Premises, the Authority is satisfied that the grant of this Application is not likely to result in an increase in the number of people who enter the freeze precinct for the purpose of consuming liquor.

## Social Impact – Positive Benefits

16. The Authority accepts the Applicant’s contention that it distributed the consultation notice to stakeholders and neighbouring premises and received only one objection. Given this, the Authority is satisfied that the removal will serve the “expectations, needs and aspirations” of the local and broader communities, pursuant to section 3(1)(a) of the Act.
17. The Authority is satisfied that granting the removal of the packaged liquor licence from the Current Premises to the Proposed Premises (a distance of some 250 metres, in the same main street of Sydney CBD) will allow the Applicant to offer a more conveniently located, modern and secure bottle shop facility, enabling the

commercial development of its well established business. On this basis, the Authority is satisfied that granting the Application will reasonably develop, in the public interest, the liquor industry in respect of the local community – albeit to a modest extent given the number and variety of incumbent licences in the area.

18. The Authority is satisfied that the removal of the licence to the Proposed Premises will offer particular convenience to residents of the multi-storey Century Tower, given that the Proposed Premises is situated on the ground floor of that building.
19. The Authority is satisfied that NSW Police is not opposed to the Application.
20. The Authority acknowledges the amenity concerns raised in the objection submitted by a local resident, but is satisfied that the detailed provisions of the Plan of Management will ensure that the Proposed Premises will not cause undue disturbance to the amenity of the neighbourhood. The Authority notes that the granting of the application will not result in the addition of a further liquor outlet, but will merely relocate an existing liquor outlet from one location in Pitt Street to another only 250 metres away.
21. On this basis, the Authority is satisfied that granting the Application will reasonably develop, in the public interest, the liquor, tourism and hospitality industries in respect of the local and broader communities.

#### **Social Impact – Negative Impacts**

22. Having reviewed all the material before it, the Authority considers that over time there is a risk that liquor sold from this licensed business will contribute to the prevailing concerning levels of alcohol-related crime and disturbance in the local and broader communities. However, noting that this Application concerns the removal of an existing active licence 250 metres from the Current Premises within the same suburb and on the same street, the Authority is satisfied that granting the Application will not increase the density of packaged liquor licences in the local or broader community and thereby be unlikely to result in any increase in alcohol-related harm in the area.
23. The Authority notes that the licensed trading hours sought in the Application are reasonably extensive across the course of the week, with trading until 10:00pm daily. However, the Authority notes, on the basis of its licensing records, that the licensed hours sought to be exercised on the Proposed Premises are less extensive than those approved with respect to the Current Premises, providing a modest reduction in the scope for harm generated by this licence at its new location. The Authority is further reassured that NSW Police has not raised any concerns with regard to the compliance history of the licensee.
24. The Authority is satisfied, on the basis of the Application and the plan of the Proposed Premises, that the scale of the licensed area of the Proposed Premises is similar to the Current Premises and similar in scale to many other standalone packaged liquor licensed premises across New South Wales.
25. Sydney suburb and LGA each recorded very high rates of relevant alcohol-related crimes in the year ending September 2016, with rates per 100,000 of population significantly higher than corresponding NSW rates for the offence categories of alcohol-related domestic assault, alcohol-related non-domestic assault and

malicious damage to property. Furthermore, the Proposed Premises is located in high density alcohol-related crime hotspots. However, the Authority is satisfied that granting the application will not result in the licence being removed to a location that is more problematic in respect of the localised incidence of alcohol-related crime. Notably, neither NSW Police nor L&GNSW has expressed any concerns in this respect.

26. The Authority is further satisfied, on the basis of ABS Socio-Economic Indexes For Areas (SEIFA) data, that both the suburb of Sydney and Sydney LGA are relatively advantaged by comparison to other state suburbs and LGAs in New South Wales on the Index of Relative Socio-economic Advantage and Disadvantage.
27. The Authority has had regard to the very detailed harm minimisation measures set out in the Plan of Management last updated on 23 May 2017, and the licence conditions to which the Applicant has consented, which, together with the support of NSW Police, mitigate any concerns stemming from the statistical data outlined above.
28. Having considered the positive benefits and negative impacts that are likely to eventuate as a result of the removal, the Authority has determined to grant it.



Philip Crawford  
**Chairperson**

**Important Information:**

In accordance with section 13A of the *Gaming and Liquor Administration Act 2007* a relevant person (the Applicant or a person who was required to be notified of the prescribed Application and who made a submission to the Authority or the Secretary in respect of the prescribed Application) who is aggrieved by this decision may apply to NCAT for an administrative review under the *Administrative Decisions Review Act 1997*.

An application to NCAT must be made within 28 days of notice of this decision being published on the liquor and gaming website <https://www.liquorandgaming.nsw.gov.au/Pages/ilga/decisions-of-interest/decisions-of-interest.aspx> and be accompanied by the fee prescribed by the regulations.

For more information please contact the NCAT Registry at Level 10 John Maddison Tower, 86-90 Goulburn Street Sydney. The NCAT website is at <http://www.ncat.nsw.gov.au/>

## SCHEDULE

### Material before the Authority

1. ABS SEIFA data based on the 2011 Census indicating that Sydney LGA ranked in the 9<sup>th</sup> decile compared to other local government areas in NSW on the Index of Relative Socio-Economic Advantage and Disadvantage (with a decile ranking of 10 being the most advantaged).
2. HealthStats NSW data relating to alcohol attributable deaths by local government area, Sydney LGA, NSW 2001-2002 to 2012-2013, indicating that the Smoothed Estimate of Standardised Mortality Ratio was 101.8 for the period 2012-2013.
3. HealthStats NSW data relating to alcohol attributable hospitalisations by local government area, Sydney LGA, NSW 2001-2003 to 2013-2015 indicating that the Smoothed Estimate of Standardised Separation Ratio was 130.1 for the period 2013-2015.
4. Statement of Environmental Effects for the proposed relocation of the bottle shop, prepared by John Coady Consulting Pty Ltd and Mike George Planning Pty Ltd and dated March 2016.
5. ASIC Current Company Extract for BOTTLE SHOT PTY LIMITED ACN 119 286 636 dated 9 May 2016.
6. BOCSAR Crime Maps for the year ending September 2016 detailing hotspots for the concentration of offences in the vicinity of the location, indicating that the Proposed Premises is located within high density hotspots for non-domestic assault, domestic assault and malicious damage to property.
7. NSW crime statistics for the year ending September 2016, published by BOCSAR. This data indicates that:
  - (a) the rate of *alcohol-related domestic assault* incidents recorded by NSW Police for Sydney suburb was **323.8** per 100,000 persons, and Sydney LGA, **204.2** per 100,000 persons, significantly above the State-wide rate of **118.1** per 100,000 persons.
  - (b) the rate of *alcohol-related non-domestic assault* incidents recorded by NSW Police for Sydney suburb was **2943.6** per 100,000 persons, and Sydney LGA, **770.4** per 100,000 persons, significantly above the State-wide rate of **137.9** per 100,000 persons; and
  - (c) the rate of *malicious damage to property* incidents recorded by NSW Police for Sydney suburb was **2371** per 100,000 persons, and Sydney LGA, **1383.5** per 100,000 persons, significantly above the State-wide rate of **838.1** per 100,000 persons.
8. Notice of intention to apply for a liquor licence or a licence authorisation dated 19 September 2016.
9. A letter from City of Sydney Council to the Applicant dated 29 September 2016, advising that it considered the Application “premature” given that D/2016/1211 was, at that point in time, still being assessed.

10. Letter from a neighbouring occupier to the Applicant dated 19 October 2016, raising the following concerns in respect of the proposal:
  - The size of the proposed store has the potential to attract backpacker and hostel guests who may choose to use the adjacent laneway for the purposes of consuming alcohol;
  - A further outlet is “not desirable” given that there is “no shortage” of liquor outlets in the area; and
  - The use of the laneway to facilitate deliveries may result in “overuse” of the laneway.
11. D/2016/1211 approving the fitout and use of Shop 1 as a takeaway liquor store, issued by City of Sydney Council on 26 October 2016.
12. Community Impact Statement Category B dated 3 November 2016, advising that adverse submissions had been received from City of Sydney Council and an occupier of a neighbouring premises. In the Applicant’s view, on the basis of the short distance that the licence is sought to be removed, and given that only one local resident (of the approximately 2000 served) lodged an objection, the granting of the removal will not result in any negative impact on the local community.
13. Application form for the removal of a packaged liquor licence, lodged 11 November 2016.
14. Plan of the proposed licensed area lodged with the Application on 11 November 2016.
15. House Policy lodged with the Application on 11 November 2016.
16. D/2016/1211/A issued 11 November 2016, modifying the hours of operation approved by D/2016/1211 as follows:
  - From Monday to Friday, 9:00am – 10:00pm and Saturday, 10:00am – 10:00pm;
  - To Monday to Saturday, 9:00am – 10:00pm and Sunday, 10:00am – 10:00pm.
17. 2011 Census QuickStats for Sydney suburb and Sydney LGA, last updated 12 January 2017.
18. Email from L&GNSW to Ms Nicole Beath making various requisitions and requesting consent to various conditions, dated 20 January 2017.
19. Email from Ms Nicole Beath to L&GNSW responding to various requisitions and providing consent to various conditions, dated 25 January 2017.
20. Certificate of Advertising Application signed by Mr Darren Raymond Kime dated 25 January 2017.
21. Email from Ms Nicole Beath to L&GNSW confirming that the floor space of the existing licensed premises is 115 square metres, dated 16 February 2017.



- 22.** A Plan of Management for the Proposed Premises, dated March 2017.
- 23.** An email from Sydney City Local Area Command advising that NSW Police has no objection to the proposal, dated 10 March 2017.
- 24.** Liquor licensing records from L&GNSW as at 12 March 2017 indicating that Sydney suburb had 42 packaged liquor licences and Sydney LGA had 171 packaged liquor licences.
- 25.** Google maps indicating the location of the Proposed Premises, dated 17 March 2017.
- 26.** Emails between L&GNSW and Ms Nicole Beath making and responding to further requisitions, dated 29 March 2017.
- 27.** An email from L&GNSW to Ms Nicole Beath requesting revisions to the Plan of Management, dated 20 April 2017.
- 28.** Key Liquor Licence Details in respect of the existing licence, dated 8 May 2017.
- 29.** An email from Ms Nicole Beath to L&GNSW responding to its further requisition, dated 23 May 2017.
- 30.** An updated Plan of Management for the Proposed Premises, dated 23 May 2017.