



Ms Ellie Yoo
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23 December 2016

Dear Ms Yoo

APPLICATION NO: APP-1-4213545085
APPLICATION FOR: New Packaged Liquor Licence (limited to the sale or supply of alcohol by taking orders over the telephone, fax, mail order or through a website)
PROPOSED TRADING HOURS: 10:00am – 10:00pm Monday to Sunday
APPLICANT: Epic Pizza Leasing Pty Ltd
PROPOSED LICENSED PREMISES NAME: Epic Liquor
PREMISES LOCATION: 149 Illawarra Road
MARRICKVILLE NSW 2204 (Premises)
ISSUE: Whether to grant or refuse an application for a new packaged liquor licence.
LEGISLATION Sections 3, 29, 30, 31, 40, 45, 48 *Liquor Act 2007*
Clauses 6-12 *Liquor Regulation 2008*

**INDEPENDENT LIQUOR AND GAMING AUTHORITY DECISION – APPLICATION FOR
NEW PACKAGED LIQUOR LICENCE – EPIC LIQUOR**

The Independent Liquor and Gaming Authority considered application number APP-1-4213545085 at its meeting on 16 November 2016 and, pursuant to section 45 of the *Liquor Act 2007* (Act), decided to **refuse** the application.

If you have any enquiries about this letter please contact case manager via email to rochelle.hurst@justice.nsw.gov.au

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Philip Crawford', written in a cursive style.

Philip Crawford

Chairperson

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

STATEMENT OF REASONS

Material before the Authority

1. The following is a summary only of the material and submissions before the Independent Liquor and Gaming Authority (Authority) for the purposes of publication of a statement of reasons, as soon as practicable, in a high-volume jurisdiction.
2. In making this decision, the Authority has considered the packaged liquor licence application filed on 22 March 2016 (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 and licence density data maintained by Liquor and Gaming NSW (LGNSW), 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. That material is listed and in some cases briefly summarised in the Schedule.

Summary of Further Submissions

3. Report to the Authority dated 7 April 2016 from Compliance Branch of LGNSW advising that the Application was assessed using the Environment and Venue Assessment Tool (EVAT). This means that LGNSW have not performed any specific assessment of the Application. The EVAT report identifies risk factors for the Application including the type of licence sought, the local environment licence density and other matters. These risk factors are mostly assessed at “low” to “moderate” levels of risk, with the *radial density of licensed premises* and *proportion of all venues that are late night trading* rated as “high” risk factors.
4. Email from Mr Jeff Turner, Marrickville Council (Council) to the Authority dated 18 April 2016 attaching a completed Local Consent Authority Notice for the Application specifying that development consent is not required to permit the proposed activity.
5. Letter to the Authority from Acting Superintendent Jodi Radmore and Sergeant Carol Ray of the Marrickville Local Area Command (Marrickville LAC) of NSW Police (Police) dated 12 May 2016. In this letter, Police oppose the Application on the basis that the Applicant has not complied with the “strict requirements of the Application process”. In the alternative, the Applicant has not adequately explained the measures that this business will adopt to minimise the harm associated with misuse and abuse of liquor sold on the Premises or how the supply of liquor by the Applicant will not be detrimental to community life, noting that no plan of management was provided to Police with the Application.
6. Briefly, Police raise the following procedural concerns:
 - Police contend that they were first notified of the Application on **22 March 2016**. They contend that the copies of consultation notices provided to Police, the Local Consent Authority and the public were undated and for this

reason Police cannot determine whether the public, Police or Council have had 30 days to comment on the proposed Application before it was made.

- Police attach a copy of an email that was sent to them by Mr Stefano Galioto dated 10 May 2016. (The Authority notes that Mr Galioto is the Applicant's proposed approved manager for the Premises as named in the *Approved Manager Approval Form* lodged on 22 March 2016. He is also noted on the *Appointment of Manager Notice* form received by the Authority on 21 March 2016 and is the specified contact person for the Applicant on the initial Application form). This email states:

"The alcohol is going to be stored and be delivered from 149 Illawarra Road, Marrickville NSW 2204. From this address it will be delivered to our pizza stores (still waiting on final lease in two locations) and then onto customers."

- Police compare this to the information provided in Part 6 of the Application form, which states:
"All deliveries and storage will take place from an external storage warehouse".
- Police submit that the information provided in the email of 10 May 2016 from Mr Galioto contradicts the information provided in the Application with regard to the mode in which liquor will be sold or supplied to the public by the proposed licensed business.
- Police further submit that no address for the proposed "external warehouse" has been specified by the Applicant. Police are concerned that if liquor *is* stored on the Premises, there will be a "great impact" upon neighbouring residents due to "incoming and outgoing traffic of constant deliveries" in an area without adequate parking creating an increased risk of theft at the Premises.

7. On the issue of overall social impact upon the local and broader community:

- Police refer to and provide data from a report *Last Place of Consumption April 2014 to April 2016* which provides information from the NSW Police database, the Alcohol Related Crime Information Exchange (ARCIE) indicating that the "majority of people" in the suburb of Marrickville consume their liquor in private residences, as **58%** of respondents (ie. persons engaged with by Police in alcohol related events) claimed to have last consumed liquor in a home/private residence. The data records **222** incidents of minors being intoxicated, with **67** of them found to have become intoxicated in a home/private residence. Police submit that the Applicant has not adequately explained how the risk of supply of liquor to minors or intoxicated persons will be mitigated in light of the proposal to sell liquor via the internet and telephone.
- Police contend that the Premises from which the new packaged liquor business will be conducted appears to be a "duplex townhouse" located in a "residential area" where there is restricted parking (two photographs of the frontage of the Premises are provided showing 'No Stopping' signs). Police

list and provide google maps for 15 packaged liquor licensed premises within the area of responsibility of the Marrickville LAC, contending that there are also 20 hotel licensed premises, 10 registered clubs, 68 on-premises licensed premises and 1 small bar within the Marrickville LAC area.

- Police express concern with regard to the proposed business model and the potential supply of packaged liquor to minors, in that they cannot be satisfied, noting the absence of a Plan of Management, that a courier or a delivery driver who is not *employed* by the Applicant's business yet delivering liquor to customers in private homes would have "the same obligation or commitment" to the responsible service of alcohol as employees of hotels, restaurants and bottle shops who have been adequately trained.
 - Police conclude that the Application should be rejected on the basis that it will increase the *availability* of alcohol in private residences when alcohol related crime, domestic violence and social health problems are "already significant issues" in the community.
8. Application Form for New On-Premises Licence filed with the Authority by the Applicant on 11 July 2016. This concerns separate premises that are proposed to trade as the licensed restaurant business "Epic Pizza", to be located at 134 Lyons Road, Drummoyne NSW 2047.
 9. Notice of Appointment of Manager Form filed with the Authority on 11 July 2016 regarding the liquor licenced business name "Epic Pizza" with Ms Yen Tran identified as the proposed approved manager of those premises.
 10. Email from licensing staff to LAS Lawyers & Consultants dated 20 July 2016 requesting that the Applicant furnish a signed Certificate of Advertising for the Application, respond to the Police submission, provide any amendments to the Plan or diagram of the Premises or the *Plan of Management* which the Applicant may deem necessary in response to the Police submission and provide photographs of the Premises showing that it is ready to trade. The Applicant was also invited to comment on the proposed imposition of standard licence conditions including a daily closure period between 4:00am and 10:00am, and requested to provide a copy of the Record of Registration of Business Name issued by Australian Securities and Investments Commission (ASIC) for the Applicant's business.
 11. Letter from Ms Ellie Yoo, LAS Lawyers & Consultants to licensing staff dated 23 August 2016. Ms Yoo attaches a copy of a Certificate of Advertising dated **2 August 2016** signed on behalf of the Applicant, a plan or diagram of the proposed licensed area of the Premises, identifying the streets around the Premises accompanied by photographs of the Premises and a copy of the ASIC Record of Registration of Business Name for "Epic Liquor" dated 15 August 2016. The Applicant consents to the conditions proposed by licensing staff on 20 July 2016.
 12. The Applicant submits through Ms Yoo that he is "unsure" why Police are concerned that insufficient time was provided for interested parties to make

comment on the Application. The Applicant contends that notices of intention to make the Application were distributed to “all required parties” on **20 January 2016** and again on **21 March 2016** to confirm that the Application had been lodged.

13. The Applicant states that the proposed external storage warehouse for liquor sold by the business is located at 2/4-6 Lilian Fowler Place, Marrickville, where 35 off-street car parking spaces are available as well as adequate area for loading and unloading liquor products.
14. The Applicant states that Mr Galioto was “incorrect” when he stated in his email to Police that liquor will be stored on the Premises. The Applicant states that “liquor will only be sent to corresponding Epic Pizza stores if the delivery of the liquor orders coincides with the delivery of pizza orders”. However, if liquor orders are placed without ordering food, the Applicant contends that all persons delivering their liquor products will “share the same commitment as police” to prevention of supply of liquor to minors and intoxicated persons.
15. With respect to Police concerns about the prevailing levels of alcohol consumption in private residences, the Applicant submits that Police have provided “no evidence” that consumption in private residences causes “any negative impact on society at large”. The Applicant submits that the supply of liquor to minors within a private residence is a matter that “comes down to parental responsibility” and “should not be considered” in determining this Application.
16. ASIC Record of Registration of Business Name for “Epic Liquor” dated 15 August 2016, provided as an attachment to Ms Yoo’s letter dated 23 August 2016.
17. Email from Ms Yoo to licensing staff dated 12 September 2016 attaching a Certificate of Advertising in relation to the Application signed and dated 2 August 2016.
18. Email from Ms Yoo to licensing staff dated 15 September 2016 confirming that the Applicant consents to the imposition of a condition on the proposed licence requiring the licensee or representative to participate in the local liquor accord.
19. Letter from Mr Justin Sammut, LAS Lawyers & Consultants to LGNSW dated 21 October 2016. In this letter, Mr Sammut explains that “Epic Liquor” and “Epic Pizza” are “two completely independent business operations subject to different primary purposes”. Epic Liquor is “solely concerned” with the sale and supply of packaged liquor via telephone, fax, mail and internet, whereas Epic Pizza is a “New-York style pizza shop”.
20. Mr Sammut advises that Mr Galioto has made a “misrepresentation” to Police regarding the proposed operation of the business, without authorisation from the Applicant, when he stated to Police that alcohol will be stored on the Premises.
21. Mr Sammut states that his instructions are that “orders received by Epic Liquor will not be delivered to Epic Pizza Stores”, which “do not provide any offerings with respect to liquor”. All orders will be processed at the Premises and dispatched from the external storage warehouse directly to customers and there will “not be any commonality between the delivery systems of the two businesses”.

22. Mr Sammut advises that the Epic Liquor business is intended to operate “no differently to any other limited packaged liquor licence” and that it will “draw its customer base from the general community, rather than customers of Epic Pizza”.
23. Document titled *Epic Liquor Chain of Delivery* provided with the Applicant’s submission of 21 October 2016. This flow chart outlines the proposed business operation for Epic Liquor as comprising the following:
- a customer selects and orders liquor on the “Epic Liquor” website;
 - the order is “received” at the proposed licensed Premises;
 - the order is sent to the external warehouse for “processing”;
 - the liquor ordered is prepared and dispatched from the warehouse to be located at 2/4-6 Lilian Fowler Place, Marrickville;
 - delivery of the ordered liquor is then made to the customer’s address - where the delivery driver will check the recipient’s identification to ensure that it corresponds with the details provided in the order and that the recipient is aged 18 years or above.
24. Email from Ms Yoo to licensing staff dated 28 October 2016 confirming that should the Application be granted the Applicant consents to the imposition of a condition on the licence requiring that all liquor sold and supplied pursuant to the licence is to be delivered from the warehouse in which it is stored, directly to the customer’s address.

Legislative Framework

25. The legal requirements for the making of a valid application for a liquor licence are provided by section 40 of the *Liquor Act 2007* (Act) and the *Liquor Regulation 2008* (Regulation). The power to grant an application for a new liquor licence is provided by section 45 of the Act.
26. Any person exercising functions under the Act must also have regard to the objects and considerations set out in section 3 of the Act which states:
- (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.*

27. Section 40(4) of the Act provides that:

- (4) *An application for a licence must:*
- (a) *be in the form and manner approved by the Authority, and*
 - (b) *be accompanied by the fee prescribed by the regulations and such information and particulars as may be prescribed by the regulations, and*
 - (c) *be advertised in accordance with the regulations, and*
 - (d) *comply with such other requirements as may be approved by the Authority or prescribed by the regulations.*

Note : *See also section 48 which requires a community impact statement to be provided with certain licence applications.*

28. An application for a new packaged liquor licence is a “relevant application” within the meaning of section 48(2) of the Act for which a CIS is required. Section 48(3) of the Act requires a “relevant application” to be accompanied by a CIS.

29. Section 48(5) of the Act requires the Authority, in certain circumstances, to consider a CIS (as well as any other matter the Authority is made aware of during the application process) in order to ensure that the overall impact of the licence, authorisation or approval being considered will not be detrimental to the local or broader community.

30. Section 48(5) of the Act requires that the Authority must not grant an application unless satisfied 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”.

31. Relevantly, clauses 6 to 12 of the Regulation are as follows:

6 Definitions

(1) *In this Division:*

“application” means any of the following:

- (a) *an application for a licence,*
- (b) *an application by a licensee for the revocation or variation of a condition of the licence or a condition of a licence-related authorisation (other than a revocation or variation that would result in reduced trading hours),*
- (c) *an application to vary the business or activity, or the kind of premises, specified in an on-premises licence,*
- (d) *an application for approval to remove a licence to other premises,*
- (e) *an application by a licensee for a licence-related authorisation or for the variation of a licence-related authorisation (other than a variation that would result in reduced trading hours),*
- (f) *an application to carry on business on temporary premises.*

“neighbouring premises” , in relation to an application, means:

- (a) *any building situated on land that is within 50 metres of the boundary of the premises to which the application relates, or*
- (b) *if a category B CIS (as referred to in clause 10 (3)) is required to accompany the application-any building situated on land that is within 100 metres of the boundary of the premises to which the application relates, or*
- (c) *any building situated on land adjoining the boundary of the land on which the premises to which the application relates are or will be situated (or that would be land adjoining that boundary if it were not for a road separating the land).*

- (2) *In this Division, a reference to the premises to which an application relates is, in the case of an application for approval to remove a licence to other premises, a reference to the premises to which it is proposed to remove the licence.*

7 Occupiers of neighbouring premises to be notified of application

- (1) *The occupier of neighbouring premises must be notified by an applicant of the making of an application.*
- (1A) *The notice may be given before the making of the application but must be given no later than 2 working days after the application is made.*
- (2) *The notice must be in the form, and be given in the manner, approved by the Authority.*

8 Other persons to be notified of application

- (1) *Each of the following must be notified by an applicant of the making of an application:*
- (a) *the local police,*
 - (b) *the local consent authority,*
 - (c) *if the premises to which the application relates are, or will be, situated within 500 metres of the boundary of another local government area-the local consent authority for that other area,*
 - (d) *if the premises to which the application relates are, or will be, situated on Crown land within the meaning of the Crown Lands Act 1989 -the Minister administering that Act,*
 - (e) *if the application is a relevant application as referred to in section 48 (2) of the Act-each of the other relevant stakeholders referred to in clause 11 (2) or (3) (as the case requires),*
 - (f) *any other person or body (including any class of person or body) that the Authority has advised the applicant must be notified.*
- (1A) *The notice may be given before the making of the application but must be given no later than 2 working days after the application is made.*
- (2) *The notice must be in the form, and be given in the manner, approved by the Authority.*

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.*
- (5) *This clause applies in relation to a licence-related authorisation only if it is:*
- (a) *an extended trading authorisation, or*
 - (b) *a drink on-premises authorisation, or*
 - (c) *an authorisation under section 24 (3) of the Act.*
- (6) *This clause does not apply in relation to an application for a limited licence.*

10 Categories of CIS

- (1) *A community impact statement ("CIS") that is required to accompany a relevant application (as referred to in section 48 (2) of the Act) is to be a category A CIS or a category B CIS as determined in accordance with this clause.*
- (2) *A "category A CIS" is required if the relevant application is:*
- (a) *an application for a packaged liquor licence that is limited to the sale of liquor only by means of taking orders over the telephone or by facsimile or mail order, or through an Internet site*

11 Preparation of CIS-consultation requirements

- (1) *In preparing a CIS, the applicant must provide each relevant stakeholder with a notice, in the form and manner approved by the Authority, containing information about the relevant application and the process by which the stakeholder is able to consult with the applicant on the relevant application.*
- (2) *In the case of a category A CIS, the relevant stakeholders are as follows:*
 - (a) *the local consent authority,*
 - (b) *if the premises to which the relevant application relates are, or will be, situated within 500 metres of the boundary of another local government area-the local consent authority for that other area,*
 - (c) *the local police,*
 - (d) *such other stakeholders as are determined by the Authority.*

12 Submissions in relation to applications

- (1) *Any person may make a submission to the Authority in relation to any application that is made to the Authority under the Act.*
- (2) *Any such submission must:*
 - (a) *specify details of the application to which the submission relates, and*
 - (b) *be made within 30 days of the date on which the application was made, or such shorter period as the Authority may determine in any particular case.*
- (3) *In the case of an application for:*
 - (a) *a limited licence, or*
 - (b) *a special occasion extended trading authorisation, or*
 - (c) *an authorisation under section 14 (6) of the Act (relating to hotel functions on other premises), or*
 - (d) *a drink on-premises authorisation that is, in the opinion of the Authority, of a temporary nature,**submissions must be made within 14 days of the date on which the application was made, or such shorter period as the Authority may determine in any particular case.*
- (4) *Despite subclauses (2) and (3), the Authority may, in such cases as the Authority thinks fit, extend the period in which persons may make submissions in relation to any particular application or class of applications.*

32. For the purposes of the overall social impact test in section 48(5) and consistent with its longstanding practice and Authority *Guideline 6*, the Authority is satisfied that relevant “local community” is the community within the State suburb of Marrickville where the Premises are situated. The broader community is, at the time of this decision, the community within the relevant local government area, which is now the newly amalgamated Inner West Local Government Area (LGA). This council was proclaimed on 12 May 2016 and combines the former Ashfield, Leichhardt and Marrickville local government areas.

33. However, by reason of the basis upon which the Authority has refused this Application, discussed below, it has not been necessary to consider whether the Applicant satisfies the overall social impact test for the purposes of section 48(5) of the Act.

Analysis of Relevant Facts

Community Not Consulted on Application Now Before Authority

34. Consultation with the community, particularly those individuals and agencies for which consultation is mandated by the liquor legislation, must be conducted in an accurate and transparent manner so that stakeholders may make an *informed* response to the nature of the licensed business that is proposed by an applicant to be conducted on the relevant premises.

35. This, in turn, informs the Authority's assessment of the overall social impact of granting the application for the purposes of section 48(5) of the Act and its overarching consideration of the statutory objects and considerations prescribed by section 3 of the Act.
36. Sections 48(2) and (3) of the Act provide that an application for a new packaged liquor licence is a "relevant application" that must be accompanied by a CIS. Clause 10(2)(a) of the Regulation requires an application for a packaged liquor licence that is limited to the sale of liquor by means of taking orders over the telephone, by facsimile or mail order, or through an internet site must be accompanied by a Category A CIS. The requirements for preparing and consulting on a Category A CIS must be observed when making this Application.
37. Section 40(4)(d) of the Act requires that a liquor applicant must "comply with such other requirements as may be approved by the Authority or required by the regulations".
38. Clause 11 of the Regulation requires a relevant applicant to provide each relevant stakeholder with a notice, in the form and manner approved by the Authority, containing information about the application and the process by which the stakeholder is able to consult with the applicant on the application.
39. The Authority is satisfied, having considered all of the material before it, noting in particular the initial Application and CIS, the Police submission dated 12 May 2016 and the further submissions from the Applicant's lawyers dated 23 August 2016 and 21 October 2016, that the business model for the proposed packaged liquor licensed business that the Applicant now proposes is different to the business model that was disclosed in the initial Application and CIS.
40. The *current* proposal, as amended by the Applicant in its later submissions to the Authority, falls outside the scope of the proposal that was likely known or knowable to stakeholders during the 30 days' pre-Application CIS consultation process and/or the 30-day post Application consultation and submission period provided by the Liquor Regulation.
41. While the Application as initially framed stated that granting this Application will permit the Applicant to "expand its business operations by enabling members of the general public to purchase liquor in conjunction with pizza food products via the internet and telephone" [Authority emphasis] subsequent advice from the Applicant's solicitors on 21 October 2016 is to the contrary.
42. The letter from the Applicant's solicitor dated 21 October 2016 states that the licensed business the subject of this Application is "solely concerned with the sale and supply of packaged liquor", and that the Epic Pizza and Epic Liquor businesses "are not interdependent with respect to their operations". The Epic Liquor business is intended to "draw its customer base from the general community, rather than customers of Epic Pizza".
43. Having assessed all of the Application material and submissions, the Authority is *not* satisfied that the Applicant has complied with consultation requirements provided by the Act and Regulation and specified by the Authority - denying the

community a meaningful opportunity to respond to the actual licensed business that the Applicant proposes to operate.

Pre-Application Consultation Requirement Not Complied With

44. The Authority has imposed a requirement, communicated to applicants in its guideline published on the LGNSW website *How to Prepare a Category A CIS* (Guideline) and in its *Notice of Intention to Apply for a Liquor Licence* (Notice), that a licence application involving a CIS should not be lodged with the Authority until 30 days after the date of the Notice.
45. This pre-application consultation period is a “requirement” of the Authority for the purposes of section 40(4)(d) of the Act. This measure, combined with the requirement in clause 12 of the Regulation that any person may make a submission to the Authority within 30 days of the date on which an application was made to the Authority, pre-supposes that an application and CIS filed by a liquor applicant discloses the **actual** proposal that will be considered by the Authority.
46. Having regard to section 40(4) of the Act, the Authority considers that the notification, consultation and submission provisions in clauses 6- 12 of the Regulation impose conditions on the exercise of the Authority’s statutory power to grant a licence.
47. The principles governing the circumstances in which failure to comply with conditions regulating the exercise of a statutory power will lead to invalidity were set out by the High Court of Australia in *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355 (Project Blue Sky). A majority of the High Court (McHugh, Gummow, Kirby and Hayne JJ) observed the following, at 388-389 [91]:

...an act done in breach of a condition regulating the exercise of a statutory power is not necessarily invalid and of no effect. Whether it is depends upon whether there can be discerned a legislative purpose to invalidate any act that fails to comply with the condition. The existence of the purpose is ascertained by reference to the language of the statute, its subject matter and objects, and the consequences for the parties of holding void every act done in breach of the condition. Unfortunately, a finding of purpose or no purpose in this context often reflects a contestable judgment.
48. Their Honours also observed that, where “public inconvenience would be a result of the invalidity of the act”, it is “unlikely that it was a purpose of the legislation that an act done in breach of a statutory provision should be invalid” (at 392 [97]).
49. The Applicant has claimed, through its solicitor’s letter dated 23 August 2016, that the Notice of Intention was provided to stakeholders prior to 23 February 2016. However, no supporting evidence was provided for that assertion, in the face of a challenge by Police as to the timing of this Notice.
50. The copy of the Notice that is in evidence before the Authority is dated **23 February 2016** yet the Application was filed with the Authority on **22 March 2016**.
51. The Authority accepts the Police advice as to the date that they were notified of the Application and finds, on the material before it, that the 30-day pre-application consultation period which runs *from the date of the Notice*, was not observed by the

Applicant. There is insufficient evidence before the Authority to substantiate, in the face of the advice from Police, that all relevant parties were provided with the Notice in January 2016.

52. Moreover, the substantial change in the Applicant's proposal between the date of lodgement and final submissions to the Authority has effectively deprived submitters, including those persons and agencies who must be consulted pursuant to clauses 6-11 of the Regulation, from the ability to make an informed submission to the Authority which is implicit in the statutory right to participate in the CIS process per clause 11 of the Regulation and make submissions to the Authority per clause 12 of the Regulation.
53. The Authority considers the community consultation requirements in the Act and Regulation to be of fundamental importance to the operation of the licensing scheme.
54. On the other hand, the extent of inconvenience that would flow from the Authority finding that an application that does not comply with the stakeholder notification requirements is invalid will primarily flow to the private interests of the applicant, and that inconvenience is confined to having to remake the application, observing the advertising and notification requirements. The Authority is not satisfied that there is any significant *public* inconvenience that will flow to the community from the invalidation of a non-compliant application.

Conclusion

55. The Authority considers that this Application is invalid for want of compliance with section 40(4) of the Act and clauses 11 and 12 of the Regulation.
56. The Application is refused pursuant to section 45 of the Act for that reason.
57. 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) – including (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; and (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 Date: 16 November 2016



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.justice.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. Category A CIS dated 18 March 2016.
2. Approved Manager Approval Form dated 20 March 2016 in relation to Mr Stefano Galioto. The Form discloses that Mr Galioto does not currently hold a Responsible Service of Alcohol (RSA) competency card but does hold an interim RSA certificate number 10000746623.
3. ASIC Current Organisation Extract dated 21 March 2016 for Epic Pizza Leasing Pty Ltd naming the company directors as Matthew Richard John and Damian Kalvin Thompson.
4. *Plan of Management – Epic Liquor* dated 21 March 2016. This 3-page document provides the internal business plan for the proposed new liquor business. It states, *inter alia*, that the Premises consists of one office which is “fully lockable”; that the sale of liquor by the business will be limited to internet, telephone, facsimile and mail orders; that the licensee will be responsible for the general operation of the Premises, including the enforcement of liquor licence conditions and ensuring staff apply responsible service of alcohol policies and complete RSA courses; that the business will not apply “extreme discounts” to liquor; that all mandatory signage is properly displayed; and that all liquor “will be securely stored in a separate warehouse outside the licensed premises and dispatched after an order has been received”.
5. The Plan states that the responsible service of alcohol will be promoted by refusing to sell or supply liquor to persons under the age of 18 years, enforced by checking with each person his or her date of birth at the time an order is placed (for first time customers) or by reference to the licensee’s records (for return customers). The Plan states that the person delivering alcohol must ensure that the person accepting delivery is over the age of 18 years by checking identification; that alcohol must not be sold if there is reason to believe it will be provided to persons under the age of 18 years; and that sensitive premises such as hospitals and rehabilitation centres are excluded by the business as potential delivery locations.
6. Application Form lodged online on 22 March 2016 on behalf of Epic Pizza Leasing Pty Ltd, naming Mr Stephen Galioto as the contact person for the Applicant entity.
7. Material provided in support of the CIS and Application comprising:
 - Copies of letters from LAS Lawyers & Consultants to the former Marrickville Council and to Police dated 23 February 2016 enclosing the Applicant’s Notice of Intention to Apply for a Liquor Licence dated 23 February 2016. This Notice states that the application for a liquor licence cannot be lodged until 30 days from the date of the Notice.
 - Applicant Notice to Local Consent Authority (undated and signed apparently by Mr Damian Thompson, director of the Applicant entity).

- Applicant Public Consultation – Site Notice (undated and signed apparently by Mr Damian Thompson, director of the Applicant entity). This notice states that the Application is for a packaged liquor licence trading from 10:00am to 10:00pm at 149 Illawarra Rd, Marrickville, and that “no patrons will be permitted to attend the premises”.
 - Applicant notice to Police (signature illegible and undated).
 - Planning Certificate under section 149 of the *Environment Planning and Assessment Act 1979* issued by Marrickville Council dated 17 February 2016 with respect to the Premises.
 - Maps showing Alcohol Free Zones within the Marrickville LGA.
 - Google Map showing the location of the Premises and surrounding area.
8. Three-page submission provided by the Applicant filed with the CIS. The Applicant states that while the Premises is categorised as a “home occupation” and is located in a Low Density Residential Zone pursuant to the Marrickville Local Environment Plan 2011, the proposed licensed business will be operated solely on the basis of telephone, fax and internet orders and there will be no public access to the Premises. The Applicant states that the proposed business will trade within the “standard trading period only” and all liquor will be stored and dispatched from an “additional factory premises”.
 9. The Applicant contends that all staff employed by the business will have completed a RSA course; that the Premises will be operated in accordance with the Plan of Management; and that Socio-Economic Indexes For Areas (SEIFA) and BOCSAR data reveal that granting the Application is unlikely to have a negative impact on the local community. The Applicant submits that the proposed licence, if granted, will allow the Applicant to “expand its business operations” to enable consumers within the “wider community” to access “a variety of different beverages with their pizza order”.
 10. Plan or diagram of the Premises showing the licensed area as a room marked as “Bedroom 2” on the first floor of a semi-detached residential property, between two other bedrooms and a bathroom.
 11. Publicly available statement of reasons for the Authority’s refusal of an application for a packaged liquor licence in respect of premises trading as *Hurricane’s Express Bondi Beach* dated 31 March 2016 provided by licensing staff.
 12. Report to the Authority dated 7 April 2016 from Compliance Branch of LGNSW.
 13. Email from Marrickville Council to the Authority dated 18 April 2016.
 14. Letter from Marrickville LAC Police to the Authority dated 12 May 2016.
 15. Application Form for New On-Premises Licence filed on 11 July 2016 in respect of separate premises to trade as “Epic Pizza” to be located at 134 Lyons Rd, Drummoyne.

16. Notice of Appointment of Approved Manager form filed on 11 July 2016 in respect of the proposed Drummoyne Epic Pizza premises.
17. Email from licensing staff to LAS Lawyers & Consultants dated 20 July 2016 requesting further material and seeking the Applicant's consent to certain standard conditions.
18. Letter from Ms Ellie Yoo, LAS Lawyers & Consultants to licensing staff dated 23 August 2016 responding to an email from licensing staff dated 20 July 2016.
19. Certificate of Advertising Application signed apparently by Damian Thompson, director of the Applicant entity, and dated 2 August 2016.
20. ASIC Record of Registration of Business Name "Epic Liquor" dated 15 August 2016.
21. Email from Ms Ellie Yoo, LAS Lawyers & Consultants to licensing staff dated 12 September 2016 attaching a Certificate of Advertising in relation to the Application.
22. Email from Ms Yoo to licensing staff dated 15 September 2016 providing consent to an additional licence condition.
23. Letter from Mr Justin Sammut, LAS Lawyers & Consultants to licensing staff dated 21 October 2016 attaching the document titled *Epic Liquor Chain of Delivery*.
24. Email from Ms Yoo to licensing staff dated 28 October 2016 providing consent to an additional licence condition.
25. BOCSAR Crime Maps based upon data from July 2015 to June 2016 detailing hotspots for the concentration of offences within the local community.
26. Liquor licence density data from LGNSW for the State suburb of Marrickville, NSW as a whole and the Inner West LGA.
27. Liquor licensing records from LGNSW for the suburb of Marrickville.
28. BOCSAR Report on *Crime by Local Government Area and Alcohol Related Status* for July 2010-June 2015.
29. Data on alcohol related crime obtained from published BOCSAR sources for the period between July 2014 and June 2015.
30. ABS SEIFA data prepared on the basis of the 2011 Census for the State suburb of Marrickville and the former Marrickville LGA, former Ashfield LGA and the former Leichhardt LGA (Ashfield, Marrickville and Leichhardt have now been amalgamated into the Inner West LGA).
31. NSW Department of Health *HealthStats* data prepared on the basis of the 2011 Census.
32. Photographs of the proposed licensed office area at the Premises provided by the Applicant.