



Mr Warwick Caisley
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31 October 2017

Dear Mr Caisley

Application No.	1-5535314533
Application for	New on-premises (accommodation premises, catering service and restaurant) licence Extended trading authorisation Primary service authorisation
Trading hours	<u>Consumption on premises</u> Monday to Sunday: 8:00AM – 2:00AM
Licence name	Felix Hotel
Applicant	Baxter International Hotel (Operations) Pty Ltd
Premises	113-121 Baxter Road MASCOT NSW 2020
Issue	Whether to grant an application for an on-premises licence with an extended trading authorisation, a primary service authorisation and a different 6-hour closure period.
Legislation	Sections 3, 11A, 12, 21-28, 40, 45, 48, 49 and 51 of the <i>Liquor Act 2007</i>

Decision of the Independent Liquor and Gaming Authority
Application for an on-premises liquor licence with an extended trading authorisation, a primary service authorisation and a change of 6-hour closure period– Felix Hotel

The Independent Liquor and Gaming Authority (“Authority”) has considered an application by Baxter International Hotel (Operations) Pty Ltd for a new on-premises liquor licence with an associated application enabling late licensed trading until 2:00 am seven days per week and between 8:00am and 10:00am Sunday mornings (“Extended Trading Authorisation”) and a further authorisation enabling the service of liquor to individual patrons with or without the primary service delivered by the business operating on the premises (“Primary Service Authorisation”).

The Authority has decided, pursuant to section 45 of the *Liquor Act 2007* (“Act”), to **grant** the on-premises licence. The Authority has also decided, pursuant to section 49(2) of the Act, to grant the Extended Trading Authorisation, with the extended trading hours to apply to the rooftop on Level 12 of the premises between midnight and 2:00am on Monday through Sunday and between 8:00am and 10:00am on Sunday mornings. The Authority has also decided to grant the Primary Service Authorisation pursuant to section 24(3) of the Act in respect of the rooftop, Level 12 of the premises. Pursuant to section 11A(5) of the Act, the Authority has also approved the Applicant’s proposed 6-hour closure period with respect to the sale of liquor to operate between 2:00 am and 8:00 am.

The licence is granted 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 02:00 AM and 08:00 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. Consumption on premises: restaurant

Good Friday 12:00 noon – 10:00 PM (liquor can only be served with or ancillary to a meal in a dining area)

Christmas Day 12:00 noon – 10:00 PM (liquor can only be served with or ancillary to a meal in a dining area)

December 31st Normal opening time until normal closing time or 2:00 AM on New Year's Day, which is the later

Note: Trading is also allowed at other times on Good Friday and Christmas Day if authorised by an extended trading authorisation. Liquor can only be sold with or ancillary to a meal in a dining area after 5:00 AM on Good Friday and Christmas Day.

3. Consumption on premises: catering service

Good Friday Normal trading

Christmas Day Normal trading

December 31st Normal opening time until normal closing time or 2:00 AM on New Year's Day, whichever is later

4. 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 be reasonably expected from the information contained in the community impact statement, application and other information submitted in the process of obtaining this licence.

5. This licence authorises the sale of liquor for consumption on the licensed premises only – at any time on any day to a resident (or a guest of a resident while in the resident's company) or to an employee of the licensee. Liquor must not be sold to a guest of a resident or to an employee of the licensee for consumption on the licensed premises, or to a resident for takeaway from the premises, between the hours of 2:00AM and 8:00AM. Liquor sold to a resident between the hours of 2:00AM and 8:00AM must only be sold or supplied for consumption in the room in which the resident is residing or staying.

6. The premises is to be operated at all times in accordance with the Plan of Management dated July 2017 as may be varied from time to time after consultation with the Local Area Commander of NSW Police. A copy of the Plan of Management is to be kept on the premises, and made available for inspection on the request of a police officer, council officer, Liquor and Gaming NSW inspector, or any other person authorised by the Independent Liquor and Gaming Authority.

7. **Noise**

The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz – 8kHz inclusive) by more than 5dB between 07:00 am and 12:00 midnight at the boundary of any affected residence.

The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz – 8kHz inclusive) between 12:00 midnight and 07:00 am at the boundary of any affected residence.

Notwithstanding compliance with the above, the noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 12:00 midnight and 07:00 am.

Interior noise levels which, although restricted in accordance with the above condition, still exceed safe hearing levels, are in no way supported or condoned by the Authority.

8. **Crime Scene Preservation**

Immediately after the person in charge of the licensed premises or a staff member becomes aware of any incident involving an act of violence causing injury to a person on the premises, the person in charge of the licensed premises and/or staff member must:

- (1) Take all practical steps to preserve and keep intact the area where the act of violence occurred,
- (2) Retain all material and implements associated with the act of violence in accordance with the crime scene preservation guidelines issued by NSW Police, as published from time to time on the Liquor & Gaming NSW website,

- (3) Make direct and personal contact with the NSW Police Local Area Commander or his/her delegate, and advise the Commander or delegate of the incident, and
- (4) Comply with any directions given by the Commander or delegate to preserve or keep intact the area where the violence occurred.

In this condition, 'staff' means any person employed by, or acting on behalf of, the licensee of the premises, and includes any person who is employed to carry on security activities (eg. Crowd controller or bouncer) on or about the premises.

9. Closed-circuit television system

- 1) The licensee must maintain a closed-circuit television (CCTV) system on the premises in accordance with the following requirements:
 - (a) the system must record continuously from opening time until one hour after the premises is required to close (or, in the case of a premises that is not required to cease trading, continuously at all times),
 - (b) recordings must be in digital format and at a minimum of six (6) frames per second,
 - (c) any recorded image must specify the time and date of the recorded image,
 - (d) the system's cameras must cover the following areas:
 - (i) all entry and exit points on the premises,
 - (ii) the footpath immediately adjacent to the premises, and
 - (iii) all publicly accessible areas (other than toilets) within the premises.
 - 2) The licensee must also:
 - (a) keep all recordings made by the CCTV system for at least 30 days,
 - (b) ensure that the CCTV system is accessible at all times the system is required to operate pursuant to clause 1(a), by at least one person able to access and fully operate the system, including downloading and producing recordings of CCTV footage, and
 - (c) provide any recordings made by the system to a police officer or Liquor and Gaming NSW inspector within 24 hours of any request by the police officer or Liquor and Gaming NSW inspector to provide such recordings.
10. The business of providing the catering service must be for fee, gain or reward. Functions held pursuant to the catering service must be pre-booked. A catering service booking register must be maintained.
11. The following drinks must not be sold or supplied after midnight:
 - (1) Any drink (commonly referred to as a shot, shooter, slammer or bomb) that is designed to be consumed rapidly.
 - (2) Doubles (does not apply to genuine cocktails).
 - (3) Ready to Drink (RTD) packaged beverages.
12. The venue's kitchen must remain open and operational at all times liquor is sold/supplied and be able to prepare meals of a substantial nature.
13. No live bands or DJs are to be engaged and no live entertainment to be provided after midnight.

If you have any questions about this letter, please contact the case manager via email to kieran.mcsherry@liquorandgaming.nsw.gov.au.

Yours faithfully



Philip Crawford
Chairperson
For and on behalf of the Independent Liquor and Gaming Authority

Statement of reasons

Decision

1. On 27 January 2017 the Independent Liquor and Gaming Authority (“the Authority”) received from Baxter International Hotel (Operations) Pty Ltd (“the Applicant”), through Liquor and Gaming NSW (“LGNSW”), an application under the *Liquor Act 2007* (“Act”) for the grant of a new on-premises (accommodation, catering and restaurant venue subcategories) liquor licence (“Licence Application”).
2. The Licence Application was accompanied by an application for an extended trading authorisation (“ETA”) pursuant to section 49(2) of the Act (“ETA Application”), an application for a “primary service” authorisation (“PSA”) pursuant to section 24(3) of the Act, enabling the sale or supply of liquor to individual patrons with or without provision of the primary service offered by the licensed business (“PSA Application”) and an application pursuant to section 11A(5) of the Act to fix the 6-hour liquor closure period to between 2:00 and 8:00 am daily (“Closure Period Application”).
3. The Licence Application, ETA Application, PSA Application and Closure Period Application (together, the “Applications”) are made with respect to a proposed new accommodation venue to be known as “Felix Hotel” located on premises at 113-121 Baxter Road, Mascot NSW 2020 (“the Premises”).
4. The Authority has decided to grant the Licence Application pursuant to section 45 of the Act.
5. The Authority also decided to grant the ETA Application pursuant to section 49(2) of the Act. For the purposes of section 49(6) of the Act, the extended licensed trading hours shall apply to the rooftop area on Level 12 of the building from 8:00am until 10:00am on Sunday mornings and from midnight until 2:00 am Monday through Sunday.
6. The Authority has also decided to grant the PSA Application pursuant to section 24(3) of the Act that shall also apply to the rooftop area on Level 12 of the building.
7. The Authority has also approved the Closure Period Application pursuant to section 11A(5) of the Act so that the sale of liquor must cease between the hours of 2:00am and 8:00am. This is subject to the exception provided by section 11A(9) of the Act for the sale or supply of liquor to residents for consumption in their accommodation rooms.
8. In reaching this decision, the Authority has had regard to the material before it, the legislative requirements under sections 3, 11A, 12, 21-28, 40, 45, 48, 49 and 51 of the Act, and relevant provisions of the *Liquor Regulation 2008* (“the Regulation”).

Material considered by the Authority

9. The Authority has considered the Applications, the accompanying community impact statement (“CIS”), and all submissions received in relation to the Applications.
10. The Authority is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding this decision, as all parties required to be notified of the Applications were provided with the opportunity to make submissions.
11. In accordance with the Authority’s *Guideline 6*, the Authority has also had regard to relevant LGNSW liquor licensing records, Bureau of Crime Statistics and Research (“BOCSAR”) crime data, HealthStats NSW data and Australian Bureau of Statistics (“ABS”) socio-demographic data, sourced by LGNSW from publicly available sources.

12. A list of material considered by the Authority is set out in the Schedule.

Legislative framework

13. The Authority has considered the Applications in the context of the following legislative provisions.

Objects of the Act

14. The objects of the Act, as set out in section 3(1), are 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; to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimum formality and technicality; and to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.
15. In the pursuit of these objectives, section 3(2) requires the Authority, when determining a liquor licence application, to have due regard to the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour); the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor; and the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.

Trading hours and 6-hour closure period

16. Section 12 of the Act sets out the standard trading period for different types of liquor licences. Additionally, section 11A imposes a condition on all licences prohibiting the sale of liquor by retail on the licensed premises for a continuous period of 6 hours during each consecutive period of 24 hours.

Minimum procedural requirements

17. Section 40 of the Act and relevant provisions in the Regulation prescribe the minimum procedural requirements for a liquor licence application to be validly made to the Authority.
18. Section 51 of the Act prescribes further the minimum procedural requirements for licence-related authorisations (including an ETA and PSA) to be validly made to the Authority.

Fit and proper person, responsible service of alcohol, and development consent

19. Section 51(3) of the Act provides that when determining an application for a licence related authorisation, the Authority has the same powers in relation to the application as the Authority has in relation to an application for a licence.
20. Section 45 of the Act provides that the Authority may only grant a licence if it is satisfied that:
- a) the applicant is a fit and proper person to carry on the business to which the proposed licence relates,
 - b) practices will be in place to ensure the responsible service of alcohol and to prevent intoxication on the premises, and
 - c) the applicable development consent required for use of the premises for the proposed business is in force.

Community impact statement

21. Section 48 of the Act requires that certain types of applications, including an application for an ETA for an on-premises licence enabling licensed trade between midnight and 5:00am, must be accompanied by a CIS that is prepared in accordance with the relevant requirements.
22. Section 48(5) provides that the Authority may only grant a relevant application on a licence or authorisation to which section 48 applies if it is satisfied that the overall social impact of doing so will not be detrimental to the well-being of the local or broader community, having regard to the CIS and any other matter before it.

Provisions specific to an on-premises liquor licence

23. Further legislative provisions that are specific to an on-premises liquor licence are set out in sections 21 to 28 of the Act and in the Regulation.

Provisions specific to primary service authorisations

24. The power to grant a PSA is provided by section 24(3) of the Act.
25. Clause 15(2) of the Regulation requires an application for an authorisation under section 24(3) of the Act to demonstrate to the satisfaction of the Authority that:
 - Practices are in place, and will remain in place, at the licensed premises to which the application relates that ensure, as far as reasonably practicable, that liquor is sold, supplied or served responsibly on the premises and that all reasonable steps are taken to prevent intoxication on the premises, and
 - If development is required to use the licensed premises in accordance with the licence-related authorisation concerned—the required consent or approval is in force.
26. Clause 19 of the Regulation provides further conditions to which a PSA is subject.

Provisions specific to extended trading authorisations

27. The legal requirements for making a valid application for an ETA are provided by section 51 of the Act. The power to grant an ETA is provided by section 49(2) of the Act.
28. Section 49(8) of the Act provides that the Authority must not grant an ETA in respect of licensed premises unless the Authority is satisfied that:
 - Practices are in place, and will remain in place, at the licensed premises that ensure as far as reasonably practicable, that liquor is sold, supplied or served responsibly on the premises and that all reasonable steps are taken to prevent intoxication on the premises, and
 - The extended trading period will not result in the frequent undue disturbance of the quiet and good order of the neighbourhood of the licensed premises.

Key findings

29. Having regard to the information before it and relevant legislative requirements, the Authority makes the following findings in relation to the Applications.

Validity, procedural and trading requirements

30. The Authority is satisfied that:

- a) The Applications have been validly made and meet the minimum procedural requirements under section 40 and (in the case of the licence related authorisations) section 51 of the Act. These findings are made on the basis of the information provided in the Applications, CIS material and Certificate of Advertising for the Applications signed by Mr Michael Smith (the contact person for the Applicant company) dated 3 February 2017 and signed by the Applicant's legal representative, Mr Warwick Caisley, dated 31 January 2017.
- b) The proposed licensed trading hours for the Premises meet the requirements of sections 11A, 12, 25 and 49 of the Act in respect of trading and 6-hour closure periods. This finding is made on the basis of the Applications, CIS material and additional submission provided by the Applicant dated 15 August 2017. The Authority notes that the Applicant initially sought licensed trading hours between 5:00 am and 3:00 am Monday to Saturday with a 6-hour closure period to operate between 3:00am and 9:00am, but in an email dated 15 August 2017 to licensing staff the Applicant amended the six-hour closure period to between 2am and 8:00 am Monday to Sunday and agreed to the hours being between 8:00am and 2:00am Monday to Sunday.
- c) The proposed designated primary purposes of the licensed business or activity to be conducted on the Premises, as evident from the Applications, CIS and additional submissions dated 31 July 2017 and 15 August 2017 are accommodation premises, catering service and restaurant. This satisfies requirements of section 23 of the Act.

Fit and proper person, responsible service of alcohol, and development consent

31. Pursuant to section 45(3) of the Act, the Authority is satisfied that:

- a) For the purposes of section 45(3)(a) of the Act, the Applicant company is a fit and proper person to carry on the business to which the proposed licences relate. This finding is made on the basis that no concerns regarding the Applicant's probity were raised upon consultation with relevant law enforcement agencies, including NSW Police ("Police") and LGNSW. The Authority notes that the proposed approved manager for the licence, Mr Michael Smith, has previously been licensee of LIQH400103832 for Menzies Hotel, 14 Carrington Street Sydney for 11 years to March 2016.
- b) For the purposes of section 45(3)(b) of the Act and clause 15(2)(a) of the Regulation, practices will be in place from the commencement of licensed trading at the Premises to ensure the responsible serving of alcohol and that all reasonable steps are taken to prevent intoxication on the Premises. This finding is made on the basis of the Applicant's *Plan of Management* ("POM") dated July 2017, the undated *House Policy* submitted on 1 September 2017 and the licence conditions consented to by the Applicant.
- c) For the purposes of section 45(3)(c) of the Act and clause 15(2)(b) of the Regulation, the requisite development consent required for the conduct of the business or activity to which the licence relates (a licensed accommodation venue with a sky lobby bar, lounge, restaurant and outdoor terrace) is in force. This finding is made on the basis of the orders made by the Land and Environment Court of New South Wales in *The Baxter International Hotel Pty Ltd v City of Botany Bay Council* dated 25 May 2015 regarding development approval ("DA") number 14/306 and DA number 2014/306/02 which modified development consent number 14/306. DA 2014/306/02 was determined

by NSW Government Planning Panels, Sydney Central Planning Panel on 17 May 2017.

Provisions specific to extended trading authorisations

32. Pursuant to section 49(8) of the Act, and on the basis of the Applicant's *POM* dated July 2017, the undated *House Policy* submitted on 1 September 2017 and the conditions consented to by the Applicant (including the "LA10" noise emissions restriction), the Authority is satisfied that practices are in place, and will remain in place, at the licensed Premises that ensure as far as reasonably practicable, that liquor is sold, supplied or served responsibly on the Premises and that all reasonable steps are taken to prevent intoxication on the Premises, and that the extended trading period will not result in the frequent undue disturbance of the quiet and good order of the neighbourhood of the licensed Premises.

Community impact statement

33. The Applicant is required to submit a CIS by reason that the ETA Application constitutes a "relevant application" under section 48(2) of the Act.
34. The Authority is satisfied that the CIS submitted by the Applicant has been prepared in accordance with relevant legislative requirements. The Authority has taken into consideration the CIS and other available information and submissions before the Authority when making the findings below on the overall social impact of granting the Licence Application and the ETA in respect of the local and broader communities.
35. For the purpose of this decision and consistent with its position in *Guideline 6*, the Authority is satisfied that the relevant "local community" is the community within the State suburb of Mascot, while the relevant "broader community" at the time of this decision comprises the local government area ("LGA") of Bayside Council ("the Bayside LGA"). The Authority notes that the Bayside LGA was proclaimed on 9 September 2016 following the conclusion of legal action by Botany Bay City Council in the New South Wales Supreme Court Court of Appeal. The newly formed Bayside LGA is the amalgamation of the former Botany Bay and Rockdale City Council areas.

Positive social impacts

36. The Authority is satisfied that the Applicant has demonstrated a substantial positive case for the operation of a new, accommodation focussed on-premises liquor licenced premises with an ETA and PSA within the suburb of Mascot. The location is notable by reason of its close proximity to the Sydney Kingsford Smith Domestic and International Airport. This finding is made on the basis of the Application forms, the CIS and additional submissions made by the Applicant dated 31 July 2017, 15 August 2017 and 12 September 2017.
37. The Authority is further satisfied on the basis of these documents that granting an on-premises liquor licence with the accompanying ETA and PSA will provide substantial additional benefits persons in the local and broader community who may wish to consume alcohol during their stay at the hotel, or during events or functions hosted at the hotel. This may benefit residents of the communities seeking local temporary accommodation but will primarily provide amenity to international and interstate visitors who are temporarily in the communities while in transit and when utilising the nearby international and domestic airports. The extended hours will enable travellers to obtain licensed hospitality services during hours that are convenient to persons in transit or who are used to different time zones.

38. The Authority is satisfied, on the basis of the CIS and additional information submitted with the Applications as well as the Applicant's further submission dated 31 July 2017, that the Premises will comprise a 4-star accommodation venue comprising 150 rooms and various facilities including a sky lobby with bar, lounge and a restaurant with an outdoor terrace.
39. The Authority is satisfied, on the basis of the Applications, CIS and additional submissions dated 31 July 2017, 15 August 2017, 1 September 2017 and 12 September 2017 provided by the Applicant, that granting an on-premises licence with the proposed extended trading hours and PSA will provide substantial positive benefits to the local and broader community, as well as visitors from intrastate, interstate and overseas who wish to stay in close proximity to the busy Sydney Kingsford Smith Airport.
40. The Authority is satisfied given the layout and services provided on the Premises that the supply of liquor will be an ancillary service to primary purpose of providing accommodation. The ETA will maximise the convenience and choice of licensed services that will be available to persons in transit while the PSA Application will provide additional benefits of convenience for those visiting or staying on the Premises who wish to consume liquor without a meal.
41. On the basis of the Applications, CIS and additional material provided by the Applicant and noting the absence of any submissions from the communities in opposition to the Applications (save for the submissions from Police and LGNSW that are discussed below) the Authority is satisfied that granting the Applications will serve the "expectations, needs and aspirations" of the relevant communities, advancing the statutory object in section 3(1)(a) of the Act.
42. The Authority is further satisfied, on the basis of the Applications, CIS and additional material provided by the Applicant dated 31 July 2017, 15 August 2017 (which provides an article from The Australian regarding demand for accommodation in Sydney), 1 September 2017, 11 September 2017 and 12 September 2017, that a new 4-star hotel (comprising an on-premises licence with extended trading hours and a PSA) will meet demand for such services within the suburb of Mascot. Granting the Applications, subject to the conditions, will significantly contribute to the *balanced* development of the liquor industry serving the relevant communities and advance the statutory object in section 3(1)(b) of the Act.
43. The Authority is satisfied, on the basis of the information provided in that material that this new venue will target international and domestic visitors seeking this level of accommodation within the relevant communities. Granting the Applications will substantially contribute to the responsible development of related tourism and hospitality industries in the communities, in furtherance of the statutory object in section 3(1)(c) of the Act.

Negative social impacts

44. Having reviewed all the material before it, the Authority considers that over time there is a risk that liquor sold from this on-premises licensed Premises will contribute to the prevailing levels of alcohol related crime, disturbance or adverse impact upon amenity in the local and broader communities from a minority of patrons who abuse liquor.
45. The licence type under consideration is an on-premises licensed venue with the designated primary purposes of providing accommodation, catering and a restaurant, not the supply of liquor *per se*. That is a moderating risk factor given the nature and purpose of the clientele that this type of venue will usually service.
46. The proposed licensed trading hours sought by the Applicant are extensive, between 8:00am and 2:00am Monday to Sunday. Exercising a licence until 2:00am seven days per week will

mean that the Premises is engaging in licensed trade during the highest risk period of the week for alcohol related crime and alcohol related disturbance, whether or not such conduct rises to the level of criminality. The nature and scope of the business model requires careful consideration before late trading hours are granted.

47. The Authority further notes, on the basis of the CIS and additional material provided by the Applicant dated 1 September 2017, that the new hotel will comprise 150 rooms with a patron capacity of 300 and an additional patron capacity of 170 for the rooftop level 12 of the building that houses the restaurant and lobby.
48. The extensive trading hours sought by the hotel, its scale and patron capacity are factors that objectively increase the scope of this business to contribute, along with other licensed premises to prevailing adverse alcohol related social impacts in the local and broader community.
49. When considering the cumulative impact of adding another licence to the local and broader community, the Authority has considered the licence density data calculated by licensing staff from the LGNSW licensed premises list as at 28 August 2017 and ABS *Quickstats* population data based on the 2016 Census for Bayside LGA (calculated by combining the populations of the former Botany Bay LGA and Rockdale LGA), the State suburb of Mascot and the State of New South Wales.
50. The Authority is satisfied that there is some cause for concern arising from this data which indicates that the suburb of Mascot has a higher rate of on-premises licences compared to NSW (**155.70** compared to the NSW rate of **106.94** per 100,000 persons). However, the broader community has a lower rate of on-premises licences compared to NSW (**62.16** compared to the NSW rate of **106.94** per 100,000 persons).
51. Although licence density is high in the local community, this reflects the large number of on-premises venues (23 in the suburb of Mascot) serving the many residents, workers and visitors that frequent the suburb of Mascot, particularly as a result of the suburbs proximity to the Kingsford Smith Airport. The Authority is further satisfied that as an accommodation hotel located close to the airport, the business will substantially focus on the needs of travellers passing through the communities. That is, it is not simply a venue for the provision of liquor services, but a substantial accommodation hotel.
52. The BOCSAR crime maps for the local community, derived from data from the period July 2016 to June 2017, indicate that the Premises:
 - Is *not* located within any hotspots for incidents of alcohol related assault
 - Is located on the edge of a low density hotspot for incidents of domestic assault
 - Is *not* located within any hotspots for incidents of non-domestic assault
 - Is located within a medium density hotspot for incidents of malicious damage to property
53. BOCSAR crime data for the year to June 2017 indicates that the former Botany Bay LGA and former Rockdale LGA recorded significantly lower rates per 100,000 persons of population than the state of New South Wales for incidents of *alcohol related domestic assault* (**88** for Botany Bay LGA and **77.4** for Rockdale LGA compared to the New South Wales rate of **116.2**), *alcohol related non-domestic assault* (**68.7** for Botany Bay LGA and **39.1** for Rockdale LGA compared to the New South Wales rate of **134.3**) and *malicious damage to*

property (**723.4** for Botany Bay LGA and **587.1** for Rockdale LGA compared to the New South Wales rate of **817.3**).

54. This data also indicates that the local community of Mascot recorded lower rates per 100,000 persons of population than the state of New South Wales for incidents of *alcohol related domestic assault* (**88.7** compared to the New South Wales rate of **116.2**) and *alcohol related non-domestic assault* (**112.9** compared to the New South Wales rate of **134.3**). The suburb of Mascot recorded a higher rate per 100,000 persons of population compared to NSW for incidents of *malicious damage to property* (**871.1** compared to the New South Wales rate of **817.3**).
55. The concentration of crime (in relation to domestic assault and malicious damage to property) and the higher rate of incidents of malicious damage to property in the local community of Mascot is a negative factor that warrants consideration, however, on the basis of the NSW crime statistics for the year ending June 2017, published by BOCSAR, the Authority is reassured that the Premises is located with a broader community that performs relatively well and is not experiencing high rates of alcohol related crime and disturbance.
56. The Authority has also taken into account NSW Department of Health data on *alcohol attributable deaths and hospitalisations* for the former Botany Bay LGA and former Rockdale LGA. This data indicates a slightly higher smoothed standardised separation ratio of **106.90** and a lower smoothed standardised mortality ratio of **92.00** in the Botany Bay LGA compared to the NSW average of **100**. The former Rockdale LGA has a lower smoothed standardised separation ratio (**77.30**) and smoothed standardised mortality ratio (**87.70**). The alcohol related health data for both communities does not give rise to any particular social impact concerns.
57. ABS Socio-Economic Indexes For Areas ("SEIFA") data based on the 2011 Census establishes that the local and broader communities are relatively advantaged, with both the suburb of Mascot and the Botany Bay LGA ranking in the 7th decile and the Rockdale LGA ranking in the 8th decile compared to other suburbs and local government areas in New South Wales on the Index of Relative Socio-Economic Advantage and Disadvantage (with a ranking of 10 being the most advantaged). The Authority is satisfied on this basis that socio-economic disadvantage is not a factor of concern when assessing the vulnerability of these communities to adverse alcohol related social impacts.
58. In a 6-paragraph email submission from Police dated 17 March 2017, Police raise concerns about the potential for noise complaints to arise from use of the roof top area, that is proposed to offer entertainment in the form of live music and DJs. Police are concerned that this area may be utilised more like a nightclub.
59. Police contend that there is no development consent in place for the proposed use of the site and that no CIS was provided with the Application to Police.
60. In an undated 6-paragraph submission sent via email on 31 July 2017, the Applicant refers to the mode of business operation being a 4-star hotel and the unusual layout of the Premises, requiring the entry of patrons and guests via the ground floor who will be directed to the roof top restaurant and reception area.
61. The Authority also accepts the Applicant's contention that the top floor will not be utilised in the mode of a nightclub by reason that guest rooms are immediately below it. The Authority accepts the Applicant's contention that there will be no live bands and live entertainment will be a low priority, with no DJ or any live entertainment after midnight. The Applicant refers to

clause 3.2 of the Plan of Management noting that the restaurant area is adjacent to the hotel reception desk, meaning that noise levels must be kept at “lounge” levels at all times.

62. With regard to Police concerns regarding development consent, the Authority is satisfied that the required consent is in force on the basis of the orders made by the Land and Environment Court of New South Wales in *The Baxter International Hotel Pty Ltd v City of Botany Bay Council* dated 25 May 2015 relating to DA number 14/306. The Authority also has before it DA number 2014/306/02, which modified development consent number 14/306 and was determined by Sydney Central Planning Panel on 17 May 2017.
63. The Authority notes that extended licensed trading hours and the PSA are only sought in respect of the rooftop Level 12, which has a maximum patron capacity of only 170 persons. While the proposed licensed hours are extensive across the week, the publicly accessible licensed areas to which 2:00am trading shall apply (that is, other than the accommodation rooms) comprises a single space with a moderate patron capacity, enabling the ready supervision of patrons, who will primarily be diners and/or hotel guests.
64. The Authority is satisfied, on the basis of the Applicant’s submission in response to Police, that a substantial proportion of customers will be people arriving in Sydney via air travel. The Authority is satisfied that many customers will be familiar with a different time zone and may require meals and liquor or to socialise or meet at odd hours.
65. The Authority has considered Police concerns that they did not receive a copy of the CIS but is satisfied, on the basis of an email from the Applicant’s solicitor dated 1 September 2017 and the accompanying material, including an acknowledgement from Police dated 17 March 2017, that Police were put on notice of the Applications and have had a reasonable opportunity to make submissions on the Applications.
66. The Authority has considered an email submission from LGNSW Compliance Operations (“LGNSW Compliance”) to licensing staff dated 23 February 2017, seeking the imposition of licence conditions restricting noise emissions and prohibiting (after midnight) the service of certain drinks designed to induce rapid intoxication. In a further email submission from LGNSW Compliance dated 6 September 2017, the agency sought the imposition of a condition prohibiting the engagement of live bands or djs and prohibiting any live entertainment after midnight.
67. In an email from the Applicant’s legal representative to licensing staff dated 12 September 2017 the Applicant responds to the LGNSW Compliance submission by contending that the Premises is designed to cope with the irregular movement of travellers and this is expected to be the main source of patronage; the unusual configuration of the reception and restaurant on the top floor provides a single means of access and control of this rooftop trading area; that 2:00am trading is sought in part to cater for the irregular arrival and departure of travellers and the use of the Premises by businesses and residents; that the Premises will comprise a 4 star hotel, conducted by an experienced operator, operating pursuant to a substantial POM; there are to be no live bands or DJs and no live entertainment after midnight; that the accommodation rooms are located immediately beneath the restaurant, which is adjacent to reception, so any disturbance to patrons could not be tolerated. The Applicant submits that the proposed conditions restricting the service of certain drinks after midnight, requiring the use of CCTV and imposing noise controls should ameliorate any concern the Authority might have as to the adverse impact of later trading.
68. The Authority finds that the accommodation focus of the venue not only establishes the substantial positive public interest benefits that are described above but also reduces the

apparent risk profile of the Premises when assessing the scope for negative impacts arising from extended trading. The Authority accepts that many of those served liquor on the Premises will be staying on the Premises for tourism or business purposes. While the venue will have the capacity to accommodate local residents and conduct local functions, the accommodation serve distinguishes the premises from bars, hotels and other premises who are primarily frequented by casual drinkers.

69. The Authority has also taken into account the operational and harm reduction measures detailed in the *POM* dated July 2017 and the undated *House Policy* (which was provided by the Applicant on 1 September 2017) which form part of the Application and which will be enforceable through the operation of a licence condition. The *POM* details the responsible service of alcohol, noise control, complaints and the incident register, security, CCTV requirements, crime scene preservation and drugs and drink spiking.
70. The Authority notes that in response to the concerns of Police and LGNSW Compliance the Applicant has consented to the imposition of a number of additional conditions being imposed upon the licence mandating CCTV coverage, restricting the service of higher risk liquor products after midnight and requiring the kitchen to be open for meals at all times that liquor is sold. In response to Police concerns about the rooftop area, the Authority has imposed a condition mandating compliance with the "LA10" noise emissions restriction. This is the standard noise control measures imposed by the Authority and the Secretary upon licensed premises in New South Wales that are at risk of causing undue disturbance to the quiet and good order of the neighbourhood. That risk is apparent from the rooftop operations and the LA10 condition provides an appropriate risk management measure. Finally, the Authority notes the imposition of a licence condition that will prevent the engagement of live bands or DJs at any time and other entertainment after midnight. That measure will capture much of the extended trading period on Monday through Saturday and part of the extended trading hours on Sunday evening.
71. The Authority accepts the Applicant's information that Eight Hotels Management Pty Ltd, the proposed management company for the hotel, is an experience operator of licensed hotel accommodation premises (including Diamant Hotel Sydney, Diamant Hotel Canberra, Kirketon Hotel Sydney, Cosmopolitan Hotel Melbourne, Limes Hotel Brisbane, Pensione Hotel Sydney, Pensione Hotel Melbourne and Hotel Altamont Sydney), and there is no adverse information before it as to the record of the proposed licensee or approved manager to responsibly conduct the liquor aspect of the hotel's operations.

Overall social impact

72. Having considered the positive and negative impacts that are likely to flow from granting the licence, the Authority is satisfied on the material before it that the overall social impact of granting the Licence Application with the PSA and ETA in the terms sought by the Applicant will not be detrimental to the well-being of the local and broader communities.
73. Accordingly, the Authority has decided to grant the Applications.



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, ranking the suburb of Mascot and the former Botany Bay LGA and Rockdale LGA on the Index of Relative Socio-Economic Advantage and Disadvantage.
2. NSW Department of Health *HealthStats* data showing alcohol related deaths and hospitalisations in the former Botany Bay LGA and Rockdale LGA for the period 2012-13.
3. BOCSAR crime maps between July 2016 and June 2017, indicating the location of the Premises relative to hotspots for alcohol related assault, domestic assault, non-domestic assault, and malicious damage to property.
4. Licence Application form, PSA Application form, ETA Application form and a Closure Period Application form all signed by Mr Felix Milgrom (the sole director and secretary of the Applicant company) and dated 18 January 2017 with copies of signed notices (including public consultation site notices, Police notices and local consent authority notices relating to the Licence Application, ETA, PSA and change to a 6-hour closure period).
5. Category B CIS signed by Mr Felix Milgrom (the sole director and secretary of the Applicant company) and dated 18 January 2017. The following documents accompanied this CIS:
 - An aerial map depicting the location of the Premises and the neighbouring premises notified of the Applications.
 - A document outlining the proposal.
 - Google geographical map depicting the location of the Premises.
 - An artist's impression of the completed proposal.
 - Order of the Land and Environment Court in *The Baxter International Hotel Pty Ltd v City of Botany Bay Council* on 25 May 2015 approving development consent number 14/306. This document also includes DA number 2014/306/02 which modified development consent number 14/306 and was determined by Sydney Central Planning Panel on 17 May 2017.
 - List of premises managed by Eight Hotels Management Pty Ltd (the company that will manage the Premises).
6. Email from LGNSW Compliance to licensing staff dated 23 February 2017 attaching a copy of an automated Environmental Venue Assessment Tool ("EVAT") Assessment Report in respect of the Application and seeking the imposition of a number of licence conditions.
7. Email from Mr Adam Tomlin, Botany Bay Licensing, Mascot Police Station of Police to LGNSW dated 17 March 2017 attaching a copy of the Police notice signed by Mr Tomlin certifying that the notice was received on 13 February 2017.
8. NSW crime statistics for the two years to June 2017 published by BOCSAR, showing the rates of alcohol related domestic and non-domestic assault and malicious damage to property in the suburb of Mascot, the former Botany Bay LGA and the former Rockdale LGA.
9. Email from the Applicant's legal representative, Mr Warwick Caisley of Lands Legal, to licensing staff dated 10 July 2017 requesting a copy of the submission from LGNSW.

10. Letter from the Applicant's legal representative dated 31 July 2017 in response to an email from licensing staff dated 13 June 2017 providing details of the proposed business and attaching the following documents:
 - Certificate of Advertising for the Applications signed by Michael Smith (the contact persons for the Applicant company) dated 3 February 2017 and signed by the Applicant's legal representative, Mr Caisley, dated 31 January 2017.
 - Undated document from the Applicant responding to the Police submission.
 - Australian Securities and Investments Commission ("ASIC") current company extract for the Applicant company, BAXTER INTERNATIONAL HOTEL (OPERATIONS) PTY LTD, and the company that will manage the Premises, EIGHT HOTELS MANAGEMENT PTY LTD, as at 21 November 2016.
11. Email from the Applicant's legal representative to Bayside Council ("Council") dated 2 August 2017 seeking clarification as to the development consent in place.
12. Email from the Applicant's legal representative to licensing staff dated 9 August 2017 providing a copy of an email from Council dated 7 August 2017 and advising that the active development consent for the Premises is DA 2014/306/02 which is approved and in force.
13. Email from the Applicant's legal representative to licensing staff dated 14 August 2017 regarding payment of fees for the Applications.
14. Email from the Applicant's legal representative to licensing staff dated 15 August 2017 addressing questions about payment of fees for the Applications, the proposed 6-hour liquor closure period, the proposed provision of entertainment, use of the open area of the rooftop and the need for accommodation services. The email attaches an article from *The Australian* newspaper dated 3 August 2017 on the demand for accommodation in Sydney.
15. LGNSW records listing all on-premises licensed premises in the Bayside LGA and the suburb of Mascot, sourced by licensing staff on 28 August 2017.
16. Licence density data provided by licensing staff calculated on the basis of LGNSW licensed premises information as at 28 August 2017 and ABS *Quickstats* population data based on the 2016 Census for Bayside LGA (calculated by combining the populations of the former Botany Bay LGA and Rockdale LGA), the State suburb of Mascot and the State of New South Wales.
17. Email from the Applicant's legal representative dated 1 September 2017 in response to an email from licensing staff dated 29 August 2017. The Applicant responds to Police concerns and attaches:
 - Applicant's POM dated July 2017 and undated *House Policy*.
 - Letter from the Applicant's legal representative to Botany Bay Local Area Command ("LAC") of Police dated 17 October 2016 notifying Police of the Applications.
 - Letter from the Applicant's legal representative to Botany Bay LAC of Police dated 25 January 2017 providing Police with a copy of the Applications.
18. Email from LGNSW Compliance to licensing staff dated 6 September 2017 requesting a further condition be imposed upon the licence restricting live entertainment.
19. Email from the Applicant's legal representative to licensing staff dated 6 September 2017 regarding the allocation of this matter for an Authority Board meeting.

20. Email from the Applicant's legal representative to licensing staff dated 11 September 2017 consenting to the imposition of conditions (requiring drink restrictions after midnight, requiring the catering service be conducted for reward and the kitchen be open while liquor is sold).
21. Email from the Applicant's legal representative to licensing staff dated 12 September 2017 providing a response to the LGNSW Compliance submission.
22. Appointment of Manager notice signed by Felix Milgrom (the sole director and secretary of the Applicant company) dated 14 September 2017, appointing Mr Michael Philip Smith as the approved manager to the proposed licence.
23. Maps and street view images extracted by licensing staff from the Google website on 10 October 2017, showing the location of the Premises.
24. Image of the proposed Premises extracted by licensing staff from the Destination NSW website on 10 October 2017, showing how the Premises is proposed to look upon completion of construction.
25. Plans/diagrams of the Premises highlighting the licensed area in blue (levels 1-7) and the area subject to the ETA and PSA in yellow (level 12).