



Mr Dru Gillian
Service Industry Legal Services
Level 8, 65 York Street
SYDNEY NSW 2000
10 January 2017
dru@sil.s.com.au

Dear Mr Gillian,

APPLICATION NO: 1-4970957322
APPLICATION FOR: New Packaged Liquor Licence
PROPOSED TRADING HOURS: Monday to Friday 10:00AM – 7:00PM
Saturday 10:00AM – 5:00PM
Sunday 10:00AM – 3:00PM

APPLICANT: Mr Carl Koekemoer

**PROPOSED LICENSED
PREMISES NAME:** Biltong & Boerewors

PREMISES LOCATION: Shop 5 40 Panmure St
ROUSE HILL NSW 2155 (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*

**INDEPENDENT LIQUOR AND GAMING AUTHORITY DECISION – APPLICATION
FOR NEW PACKAGED LIQUOR LICENCE – BILTONG & BOEREWORS, ROUSE
HILL**

The Independent Liquor and Gaming Authority considered application number 1-4970957322 at its meeting on 14 December 2016 and, pursuant to section 45 of the *Liquor Act 2007* (Act), decided to **grant** the application subject to the following conditions:

- 1. Trading Hours**
Monday to Friday 10:00AM – 7:00PM
Saturday 10:00AM – 5:00PM
Sunday 10:00AM – 3:00PM
- 2.** 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 4:00AM and 10:00AM 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.

- 3. Retail Sales**
- | | |
|---------------------------|----------------|
| Good Friday | Not permitted |
| December 24 th | Normal trading |
| Christmas Day | Not permitted |
| December 31 st | Normal trading |
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. The premises are to be operated at all times in accordance with the Plan of Management dated July 2016 as may be varied from time to time after consultation with the Local Area Commander of NSW Police.
6. The licensee or its representative must join and be an active participant in the local liquor accord.
7. All staff must be provided with a copy of the plan of management and trained in regard to its operation.
8. The liquor sales area is to be adequately defined from the rest of the retail area by means of a fixed, solid and permanent barrier.
9. A separate sales area is to be appropriately signed "liquor to be purchased from this register only".
10. Only liquor products produced in the Republic of South Africa are to be sold pursuant to this licence.

If you have any enquiries about this letter please contact the case manager, Ms Santina Causa, via email to santina.causa@justice.nsw.gov.au.

Yours faithfully,



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 lodged on 30 September 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 the 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. LGNSW Environment and Venue Assessment Tool (EVAT) reference LA16/07572 dated 26 October 2016 which states that the venue risk for the Premises is assessed as “low” and the location risk “low to moderate”.
4. Submission from Leading Senior Constable and Licensing Officer, Michael Xuereb on behalf of The Hills Local Area Command Police (Police) dated 4 November 2016. Police do not object to the Application but seek the imposition of a licence condition that would require the licensee to install and maintain a CCTV security system with cameras covering the entrance and exit points and all sales points of the Premises.
5. Email from the Applicant via Mr Dru Gillian, Service Industry Legal Services, dated 30 November 2016 at 1:32PM. Mr Gillian submits that since the licensed business will only sell liquor products produced in the Republic of South Africa it will have “less potential for adverse impact upon the neighbourhood or community compared to other types of licensed business”. The Applicant consents to the imposition of several conditions including the daily 6-hour closure period, a requirement that the business on the Premises not operate with a greater overall level of social impact than disclosed during the application process, a requirement that the licensee or representative join and participate in the local liquor accord, a requirement that the Premises operate in accordance with Plan of Management dated July 2016 as may be varied in consultation with the Local Area Commander, a requirement that all staff of the business must be provided with training and a copy of the Plan of Management, a requirement that the liquor sales area must be adequately defined by a fixed, solid and permanent barrier, that a separate sales area will have signage “liquor to be purchased from this register only” and that only liquor products produced in the Republic of South Africa may be sold pursuant to the licence. A Certificate of Advertising for the Application, dated 18 November 2016 and signed by the Applicant, was also provided with this submission.
6. Email from Mr Gillian dated 30 November 2016 at 2:06PM. Attached is a Plan of Management dated July 2016 amended to include the CCTV provisions requested by the Police. The Applicant notes that the liquor will be stored separately to the other

products sold on the Premises and within close proximity of staff, with a dedicated cash register for liquor products.

Legislative Framework

7. The legal requirements for the making of a valid application for a new liquor licence are provided by section 40 of *the Liquor Act 2007* (Act) and the *Liquor Regulations 2008* (Liquor Regulations). The power to grant an application for a liquor licence is provided by section 45 of the Act.
8. 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.*
9. 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.
10. 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.
11. 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”.
12. For the purposes of this decision and consistent with its longstanding practice and its position in *Guideline 6*, the Authority is satisfied that the relevant “local community” is the community within the State suburb of Rouse Hill, while the broader community comprises the relevant LGA, which at the time of this decision is The Hills Shire.

Analysis of Relevant Facts

13. The Authority is satisfied, on the basis of the Application and CIS material before it, that for the purposes of section 40 of the Act the Application has been validly made and the minimum procedural requirements with regard to the Application, CIS and community consultation have been satisfied.
14. The Authority is satisfied, for the purposes of section 45(3)(a) of the Act, that the Applicant is a fit and proper person to carry on the business of a packaged liquor

licensed venue of the kind proposed in the Application material. The Authority notes that no probity issues were raised with regard to the Applicant following consultation with law enforcement agencies including Police.

15. The Authority is further satisfied, for the purposes of section 45(3)(b) of the Act, that responsible service of alcohol practices will be in place upon the commencement of licensed trading on the Premises. This finding is made on the basis of the Applicant's amended Plan of Management dated July 2016.
16. The Authority is also satisfied, for the purposes of section 45(3)(c) of the Act, that the proposed use of the Premises that is the subject of this Application falls within the scope of the development consent that is currently in force with regard to the Premises. This finding is made on the basis of Applicant's Plan of Management dated July 2016 and the Development Consent 816/2016/HA dated 22 March 2016 issued by The Hills Shire Council (Council).

Social Impact – Positive Benefits

17. The Authority is satisfied, on the basis of the Application, CIS and additional material supplied by the Applicant that granting this new licence will provide some benefit of convenience and choice to those members of the local and broader community. The Premises will stock a comprehensive range of South African wines, beers and spirits for customers and will bolster the South African theme of the retail store.
18. The Council granted Development Approval No. 816/2016/HA dated 22 March 2016. To minimise the risk of any disturbance to the neighbourhood the Council attached conditions to the Development Consent regarding garbage collection, waste and recycling management, hours of operation and offensive noise.
19. The Authority accepts the Applicant's contention that it distributed the consultation notice to stakeholders and neighbouring premises and did not receive any adverse submissions. On this basis, the Authority is satisfied that granting this Application is consistent with the "expectations, needs and aspirations of the community" in respect of the local community of The Hills Shire, being an object of section 3(1)(a) of the Act.
20. The Authority is satisfied, on the basis of the CIS and additional material supplied by the Applicant, that this new packaged liquor facility will provide South African wines, beers and spirits to compliment the current range of products available. In this sense, given the speciality nature of the associated business, the liquor sold on the Premises may reasonably develop, in the public interest, the liquor industry serving the local and broader community, for the purposes of section 3(1)(b) of the Act.

Social Impact – Negative Impacts

21. Having reviewed all of the material before it, the Authority considers that over time there is a risk that the liquor sold from this new licensed business 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 customers who abuse packaged liquor.
22. The Authority notes that the Applicant seeks for the Premises to be licensed from 10:00AM – 7:00PM on Monday to Friday, 10:00AM – 5:00PM on Saturday and 10:00AM – 3:00PM on Sunday. The business will close considerably earlier in the evening than the usual 10:00PM latest closing time that is available for packaged liquor

businesses pursuant to the standard licensed trading hours prescribed by section 12 of the Act. This is an objective harm mitigation factor that has been given some considerable weight when considering the likely contribution to negative alcohol related social impacts from the operation of this licence.

23. The Authority is satisfied on the basis of the Application and CIS that the scale of the licensed area of the proposed new Premises (approximately 16 to 26sqm) is relatively very small. The packaged liquor licence will apply only to a small defined area of the existing Biltong & Boerewors and will be separated from the remainder of the store by fixed partitions. All liquor purchases will be paid for at a designated cash register within the sales area in accordance with section 30 of the Act. The speciality nature of the business established by the Application and CIS and reinforced by a licence condition restricting the business to South African products, is a further factor that suggests that the business will more likely service a specialty clientele and not be generally attractive as another source of mainstream liquor products.
24. With regard to licence density, the Authority further notes, on the basis of LGNSW liquor licensing records, that the State suburb of Rouse Hill currently has 4 packaged liquor licensed premises and The Hills Shire LGA has 55 packaged liquor licences.
25. With regard to prevailing crime data, BOCSAR Crime Maps for the period between July 2015 – June 2016 indicate that the Premises:
 - (a) Is *not* located inside a *hotspot* for incidents of *domestic assault*.
 - (b) Is *not located* inside a *hotspot* for incidents of *non-domestic assault*.
 - (c) Is located inside a low density *hotspot* for incidents of *malicious damage to property*.
26. The Authority derives considerable reassurance from the BOCSAR Report on NSW Recorded Crime Statistics July 2010 – June 2015 which records that during the 2014/15 financial year The Hills Shire LGA recorded lower rates per 100,000 persons of population for the occurrence of alcohol related assault police incidents, alcohol related non-domestic violence assault incidents, alcohol related domestic violence assaults and alcohol related offensive behaviour offences than NSW as a whole.
27. The Authority notes that Police do not object to the Application, but sought the imposition of a condition on the licence requiring the licensee to install and maintain a CCTV security system with cameras covering the entrance and exit points and all sales points of the Premises. The Plan of Management (July 2016) was amended to include the CCTV provisions requested by Police. The Applicant is required by a condition of the licence to comply with that Plan and the Authority is satisfied that compliance with the Plan will be sufficient for CCTV purposes, noting again the small scale of the licensed area.
28. The Authority notes, on the basis of the ABS SEIFA data, that both the suburb of Rouse Hill and The Hills Shire LGA are advantaged compared to other local government areas and State suburbs in NSW on the Index of Relative Socio-Economic Advantage and Disadvantage, with both Rouse Hill and The Hills Shire LGA ranked in the 10th decile on the Index (with a decile ranking of 10 being the most advantaged).

29. When making this decision Authority has had regard to the conditions to which the licence will be subject and the reasonably detailed measures set out in the Plan of Management and House Policy dated July 2016.

Conclusion

30. The Authority is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding the decision whether or not to grant the Application, as all of those required to be notified of the Application were provided with the opportunity to make written submissions and all submissions received were considered and helped inform this decision. The interested parties, including the Police and the Council, and all other parties were consulted as required by the legislation.
31. Having considered together the positive benefits and negative impacts that the Authority is satisfied are likely to flow from granting the Application, the Authority is satisfied for the purposes of section 48(5) of the Act that the overall social impact of granting this licence would not be detrimental to the well-being of these local and broader communities. The limited nature of the proposal overcomes the social impact concerns that may otherwise arise from the licence density and crime data pertaining to the relevant communities.
32. The Application is granted pursuant to section 45 of the Act.
33. 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: 14 December 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. Application Form for packaged liquor licence lodged 30 September 2016.
2. CIS form and supporting material dated 4 July 2016 and lodged on 30 September 2016 with the Application. The supporting material includes:
 - (a) List of stakeholders and special interest groups.
 - (b) Supplementary Material to the Application. This 15-page document provides information about the organisational overview, site and immediate surrounds, proposed licensed premises, type and scale of proposed licensed premises, hours of operation, manner of operation, development approval, completion of proposed licensed premises, commitment to the responsible service of alcohol, minors and packaged liquor licence, signage of packaged liquor licence, section 30 of the Act, alcohol free zones, community impact statement, local and broader community, summary of community consultation by the Applicant (nearby community buildings, facilities, special interest groups and stakeholders including Police and Council), social profile data and benefits.
 - (c) Aerial photograph of the Premises and photographs of the interior of the Premises.
 - (d) Record of Registration for Business name dated 4 February 2014.
 - (e) Public Consultation Site Notice, Police Notice and Local Consent Authority Notice signed 4 July 2016.
 - (f) Letter dated 24 August 2016 from Dru Gillian, solicitor at Service Industry Legal Services. An email from Mr Gillian dated 10 July 2016 is attached to this letter.
 - (g) Certification of Advertising Application dated 18 November 2016.
3. Development Consent 816/2016/HA dated 22 March 2016 issued by The Hills Shire Council. This five-page document lists a series of planning requirements as conditions of the development approval, including requirements regarding development occurring in accordance with submitted plans, a final occupation certificate, a fire safety schedule, adequate provision be made for the cleanliness and maintenance of all food preparation areas, separate applications for signs, garbage collection, waste and recycling management, hours of operation, work within building and offensive noise. Development Advisory Notes are attached.
4. 2011 Census QuickStats information downloaded from the Australian Bureau of Statistics (ABS) website on 12 May 2016.
5. Four Google Maps of the Premises and surrounding area dated 12 May 2016.
6. Applicant's Plan of Management dated July 2016. This 12-page document provides information regarding the implementation of the Plan, access, usage, hours of operation, relationship with Police, noise control, identification of the licensee/ approved manager, signage, measures to preserve the amenity of the neighbourhood, responsible service of alcohol procedures, prevention of underage drinking and secondary sales to minors, a school uniform procedure, smoke free environment requirements, incident reporting, NSW Police Crime Scene Prevention Guidelines,

deliveries and waste disposal, fire and other safety measures, CCTV provisions, restrictions on certain drink promotions and provisions for variations to the Plan. The House Policy on the sale or supply of liquor is included as Schedule 1 to the Plan.

7. LGNSW Environment and Venue Assessment Tool (EVAT) reference LA16/07572 dated 26 October 2016.
8. NSW Police Submission from Leading Senior Constable and Licensing Officer, Michael Xuereb, on behalf of The Hills Local Area Command Police dated 4 November 2016.
9. Email from Mr Gillian to licensing staff dated 30 November 2016 at 1:32PM.
10. Email from Mr Gillian to licensing staff dated 30 November 2016 at 2:06PM.
11. NSW Department of Health *HealthStats* Selected Reports for The Hills Shire dated 4 December 2016.
12. Plan or diagram of proposed licensed premises.
13. BOCSAR Report on NSW Recorded Crime Statistics July 2010 – June 2015. This report indicates that for July 2014 – June 2015:
 - (a) the rate of *alcohol related assault Police* incidents recorded by NSW Police recorded across The Hills Shire LGA was **3.7** per 100,000 persons, below the State-wide rate of **18.2** per 100,000 persons.
 - (b) the rate of *alcohol related non-domestic violence* assault incidents recorded across The Hills Shire LGA was **38.9** per 100,000 persons, significantly below the State-wide rate of **144.0** per 100,000 persons;
 - (c) the rate of *alcohol related domestic violence* assault incidents recorded across The Hills Shire LGA was **21.8** per 100,000 persons, significantly below the NSW rate of **122.6** per 100,000 persons; and
 - (d) the rate of *alcohol related offensive behaviour offences* recorded across The Hills Shire LGA was **8.5** per 100,000 persons, significantly below the State-wide rate of **88.2** per 100,000 persons.
14. BOCSAR Crime Maps based upon data from July 2015 – June 2016 detailing hotspots for the concentration of offences near the location of the Premises. This data, which is publicly available on the BOCSAR website, indicates the Premises is *not* located within any hotspot for incidents of *domestic assault* or for incidents of *non-domestic assault*. The Premises is located within a low density hotspot for incidents of *malicious damage to property*.
15. LGNSW liquor licensing records indicating that the suburb of Rouse Hill currently has 4 packaged liquor licenced premises, while The Hills Shire LGA has 55 packaged liquor licenced premises.
16. ABS Socio Economic Index For Areas (SEIFA) data prepared on the basis of the 2011 census indicating that the suburb of Rouse Hill ranked in the 10th decile and The Hills Shire LGA ranked in the 10th decile, on the Index of Relative Socio-Economic Advantage and Disadvantage (with a decile ranking of 10 being the most advantaged).