



Ms Justine Dougherty
Licensee
(or the person apparently in charge of the Premises)
Jacks Bar
98 Keen Street
LISMORE NSW 2480

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Dear Ms Dougherty

**Notice of Short Term Closure Order under section 82 of the *Liquor Act 2007*
Jacks Bar, Lismore (LIQH400114605)**

INTRODUCTION

1. On Thursday 3 March 2016, the Independent Liquor and Gaming Authority (Authority) received an application (Application) made to the Authority by Detective Chief Inspector Cameron Lindsay (Applicant), Crime Manager of the Richmond Local Area Command (LAC) of NSW Police (Police) in his capacity as a delegate of the New South Wales Commissioner of Police.
2. The Application was made under section 82 of the *Liquor Act 2007* (Act) and seeks the issue of a Short Term Closure Order in relation to the “full” hotel licensed premises currently trading as “Jacks Bar”, located at 98 Keen Street, Lismore NSW 2480 (Premises).
3. The material provided by the Applicant in relation to the Application comprises:
 - a) 3-page Statutory Declaration signed by the Applicant dated 3 March 2016 (Statutory Declaration).
 - b) 13-page Application Letter approved by the Applicant and dated 3 March 2016 (Application Letter). [The Authority notes that some parts of the Application Letter contain information that has been provided by the Applicant to the Authority on a confidential basis, and that the Applicant requests that the Application Letter not be published or released to any third party.]
 - c) 58-page bundle of further evidence or material provided by the Applicant in support of the Application (Brief of Evidence). [The Authority notes that this Brief of Evidence contains information that has been provided by the Applicant to the Authority on a confidential basis, with a request that it not be published or released to any third party.](collectively referred to as the Application Material).

4. In the Statutory Declaration, the Applicant alleges, on the basis of the material provided in support of the Application, that there are reasonable grounds for believing that a serious breach of the *Liquor Act* has occurred on the Premises and that the closure of the Premises is necessary to prevent or reduce a significant threat or risk to the public interest for the purposes of section 82 of the Act.
5. The Applicant contends that the relevant significant threat or risk to the public interest includes a threat to public health or safety and a risk of serious offences (having a maximum penalty of not less than 2 years' imprisonment) being committed on the Premises.
6. Briefly, the Applicant contends, on the basis of the information and other material contained in the Application, that there is a strong indication that management, staff and the licensee are aware of the supply and possession of prohibited drugs on the Premises and that the business operator and licensee have actively assisted some persons in possession of prohibited drugs at the Premises to avoid detection by NSW Police.
7. The Applicant contends that there is sufficient evidence to substantiate the occurrence of serious offences pursuant to section 74(2) of the *Liquor Act 2007*, in that the licensee permitted the Premises to be used for the sale or supply of prohibited drugs and/or permitted the possession or use of prohibited drugs within the Premises. The Applicant contends that these offences have occurred as recently as 30 January 2016.
8. Further, the Applicant contends that on 26 February 2016, Police executed a search warrant at Jacks Bar and located prohibited drugs and drug paraphernalia in the private upstairs area of the Premises.
9. The Applicant contends that a large event ["Standing Together for Our Right to Party"] will be held at the Premises from 9:00pm on Friday 4 March 2016. The Applicant submits that this event is likely to create a significant threat or risk to the public interest with an increased risk of a serious offence being committed on the Premises in the form of prohibited drug use and/or supply on the Premises.
10. The Applicant seeks the closure of the Premises for a period of thirty (30) hours from **9:00pm on Friday 4 March 2016** until **3:00am on Sunday 6 March 2016**.
11. Under section 36C of the *Gaming and Liquor Administration Act 2007*, the Authority is required to produce and publish statements of reasons with respect to those types of decisions prescribed by clause 6 of the *Gaming and Liquor Administration Regulation 2008*.
12. This letter has been prepared in the context of a high volume liquor jurisdiction and in the context of an application that requires expeditious determination by the Authority. This letter has also been prepared in circumstances where much of the evidence relied upon by the Applicant has been provided to the Authority on a confidential basis (discussed in more detail below).

NOTICE OF APPLICATION

13. A copy of a Notice of Application for Short Term Closure Order (Notice) was communicated by the Authority to the licensee of the Premises, Ms Justine Dougherty (Licensee) via email at 7:09pm on Thursday 3 March 2016.

14. The Notice and a further email from the Authority to the Licensee advised that the Applicant had provided the Application Letter and the Brief of Evidence to the Authority confidentially and that those parts of the Application Material are not to be released to any third party, on the basis that they contain privileged Police records including but not restricted to current Police investigations and criminal matters still before the Courts.
15. The Authority has not released that information by reason of the public interest in not disclosing material provided by law enforcement agencies in confidence, which includes criminal intelligence forming part of a current criminal investigation. The Authority further relies upon the secrecy provisions contained in sections 17(8)(a)(i), (ii) and (iii) of the *Gaming and Liquor Administration Act 2007*.
16. However the 3-page Statutory Declaration comprising part of the Application Material was *not* provided by the Applicant on a confidential basis. Lismore Licensing Police served the Licensee with a copy of the Statutory Declaration *only* on the morning of Friday 4 March 2016.

Further Statutory Declaration from the Applicant dated 4 March 2016

17. The Authority notes that the Applicant provided a further brief statutory declaration which was communicated to the Authority at approximately 12:00 midday on 4 March 2016 (Further Statutory Declaration), advising that the scheduled start time of the event referred to in the Application has changed from 9:00pm to 8:00pm on Friday 4 March 2016. The Applicant advises that the commencement time of the period of closure sought by the Application was intended to coincide with the start time of this event.
18. If the Application is granted and a Short Term Closure Order is issued, the Applicant requests that the commencement time of the Order be brought forward by one (1) hour to coincide with the new start time of the event – that is, that the Licensee be ordered to close the Premises for a period of thirty-one (31) hours from 8:00pm on Friday 6 March 2016 until 3:00am on Sunday 6 March 2016 (Relevant Period).
19. Out of an abundance of caution, the Authority served the Licensee, the business owner on the record, Mr Darren Barry (Business Owner) and the premises owner on the record, Mr Donald Yung (Premises Owner) with a copy of the Notice of Application, the Statutory Declaration and the Further Statutory Declaration via email on Friday 4 March 2016.
20. The Licensee, Business Owner and Premises Owner were requested to provide the Authority with any submissions in response to the Application via email by no later than 4:00pm on Friday 4 March 2016.

SUBMISSIONS IN RESPONSE TO THE APPLICATION

Advice from the Licensee received at 2:55pm on 4 March 2016

21. The Licensee, Ms Justine Dougherty advised the Authority via email that she did not propose to make a submission in response to the Application.

No Submission from the Business Owner or Premises Owner

22. The Business Owner and Premises Owner did not provide the Authority with any submissions or advice in response to the Application by 4:00pm on 4 March 2016.

LEGISLATION

23. Section 82 of the Act in provides as follows:

82 Short-term closure of licensed premises

- (1) *An authorised officer or the Authority may, by notice served on a licensee or a person apparently in charge of licensed premises, order the licensee to close the licensed premises from a time specified in the order until a later specified time.*
- (2) *An authorised officer or the Authority may only make an order under this section:*
 - (a) *on the application of the Secretary or the Commissioner of Police, and*
 - (b) *only if the authorised officer or the Authority (as the case requires) is satisfied that a serious breach of this Act has occurred, or is likely to occur, on the premises and that the closure of the premises is necessary to prevent or reduce a significant threat or risk to the public interest.*
- (3) *Without limiting the generality of subsection (2), circumstances in which there may be a significant threat or risk to the public interest include circumstances in which there is:*
 - (a) *a threat to public health or safety, or*
 - (b) *a risk of substantial damage to property, or*
 - (c) *a significant threat to the environment, or*
 - (d) *a risk of serious offences (having a maximum penalty of not less than 2 years imprisonment) being committed on the premises.*
- (4) *An order may not require the closure of premises for a period longer than 72 hours.*
- (5) *Subject to subsection (4), an order may require the closure of premises until specified conditions are met.*
- (6) *A licensee must not fail to comply with an order made under this section.*
Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.
- (7) *More than one order closing the same premises may not be made under this section in any period of one week.*

24. Relevantly to this Application, section 74 of the Act provides as follows:

74 Sale of stolen goods and possession, use or sale of drugs on licensed premises

- (1) *A licensee must not permit the licensed premises to be used for the sale of:*
 - (a) *any goods that the licensee suspects of being stolen, or*
 - (b) *any substance that the licensee suspects of being a prohibited plant or a prohibited drug.**Maximum penalty: 50 penalty units.*
- (2) *A licensee must not permit the possession or use on the licensed premises of any substance that the licensee suspects of being a prohibited plant or a prohibited drug.*
Maximum penalty: 50 penalty units.
- (3) *An employee or agent of a licensee or a person (other than the licensee) in charge of licensed premises must not permit the licensed premises to be used for the sale of:*
 - (a) *any goods that the employee, agent or person suspects of being stolen, or*
 - (b) *any substance that the employee, agent or person suspects of being a prohibited plant or a prohibited drug.**Maximum penalty: 50 penalty units.*
- (4) *An employee or agent of a licensee or a person (other than the licensee) in charge of licensed premises must not permit the possession or use on the licensed premises of any substance that the employee, agent or person suspects of being a prohibited plant or a prohibited drug.*
Maximum penalty: 50 penalty units.
- (5) *It is a defence to a prosecution for an offence under this section if it is proved that the goods concerned were not stolen or that the substance concerned was not a prohibited plant or a prohibited drug.*

25. In determining the Application, the Authority has also considered the statutory objects and considerations prescribed by section 3 of the Act, which states as follows:

3 Objects of Act

- (1) *The objects of this Act are as follows:*

- (a) *to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community.*
 - (b) *to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality,*
 - (c) *to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.*
- (2) *In order to secure the objects of this Act, each person who exercises functions under this Act (including a licensee) is required to have due regard to the following:*
- (a) *the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),*
 - (b) *the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,*
 - (c) *the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.*

DECISION

26. The Authority is satisfied, on the basis of the Application Material, that the Short Term Closure Order should be issued to close the Premises for a period of 31 hours from 8:00pm on Friday 4 March 2016 to 3:00am on Sunday 6 March 2016.
27. The Authority is satisfied, on the material before it and on the balance of probabilities, that a serious breach of section 74(2) of the Act in relation to *licensee permit possession or use of prohibited drugs on the licensed premises* has occurred.
28. The Authority is further satisfied, on the material before it and on the balance of probabilities, that there is, at this time, a likelihood of the occurrence of serious breaches of section 74(2) of the Act in relation to *licensee permit possession or use of prohibited drugs on the licensed premises* and that the closure of the Premises is necessary to prevent or reduce a significant threat or risk to the public interest for the purposes of section 82 of the Act.
29. The Authority notes the Licensee's advice to the Authority that she would not be providing a submission in response to the Application.
30. The Authority notes that neither the Business Owner nor the Premises Owner provided a response to the Application by 4:00pm on 4 March 2016.
31. The Authority notes that only the Statutory Declaration dated 3 March 2016 and the Further Statutory Declaration dated 4 March 2016 have been provided to the Licensee, Business Owner and Premises Owner for the purposes of this Application.
32. The Authority notes that the Application Letter and the Brief of Evidence were provided by the Applicant to the Authority confidentially and that the Applicant requested that those parts of the Application Material not be released to any third party, on the basis that they contain privileged Police records including but not restricted to current Police investigations and criminal matters still before the Courts.
33. The Authority has not released that material to the interested parties pursuant to the secrecy provisions in sections 17(8)(a)(i), (ii) and (iii) of the *Gaming and Liquor Administration Act 2007*.

34. The Authority acknowledges that the interested parties have not been provided with a copy of the Application Letter and the Brief of Evidence and have not been given an opportunity to address that confidential material in their submissions.
35. However, noting the gravity of the subject matter of that material and the seriousness of the allegations contained within that material, the Authority has relied upon the information contained in the Application Letter and the Brief of Evidence to support a finding that a serious breach of the Act has occurred and/or is likely to occur and that the Premises should be closed for a period of thirty-one (31) hours from 8:00pm on Friday 4 March 2016 until 3:00am on Sunday 6 March 2016, for the protection of the public.
36. The Authority is satisfied that the gravity of that part of the Application material that has been provided by the Applicant on a confidential basis to the Authority (being the Application Letter and the Brief of Evidence) justifies the issue of the Short Term Closure Order.
37. In the alternative, the Authority is satisfied that the issue of the Short Term Closure Order is justified on the basis of that part of the Application Material that has been provided to the Licensee, Business Owner and Premises (being the Statutory Declaration).

ORDER

38. Pursuant to section 82(2)(b) of the Act, the Authority orders that the "full" hotel licensed premises currently trading as "Jacks Bar", located at 98 Keen Street, Lismore NSW 2480 be closed for a period of **thirty-one (31) hours from 8:00pm on Friday 4 March 2016 until 3:00am on Sunday 6 March 2016.**

TIME OF ORDER

6:00pm on Friday 4 March 2016.

Yours faithfully



Micheil Brodie

Chief Executive

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

4 March 2016