

Mr Vaughan Merheb
Premises Owner and Representative
154 Kendal Street
COWRA 2794
vautek@gmail.com

19 September 2017

Dear Mr Merheb

Application No.	1-5635878940
Application for	Extended trading authorisation for an existing full hotel licence LIQH400111738
Trading hours	<u>Consumption on Premises</u> Monday to Thursday: 10:00 am to 12:00 am Friday and Saturday: 10:00 am to 2:00 am Sunday 10:00 am to 10:00 pm
Licence name	Railway Hotel
Applicant	Mr Jason Harris
Premises	154 Kendal Street Cowra NSW 2794
Issue	Whether to grant or refuse an application for an extended trading authorisation
Legislation	Sections 3, 11A, 45, 48, 49 and 51 <i>Liquor Act 2007</i>

**Decision of the Independent Liquor and Gaming Authority
Application for an extended trading authorisation – Railway Hotel**

The Independent Liquor and Gaming Authority (“the Authority”) has considered your application for an extended trading authorisation in respect of an existing full hotel licence number LIQH400111738 (“the Application”). The Authority has decided, pursuant to section 49(2) of the *Liquor Act 2007* (“the Act”) to **refuse** the Application.

If you have any questions, please contact the case manager at trudy.tafea@liquorandgaming.nsw.gov.au.

Yours faithfully



David Armati
Deputy Chairperson
For and on behalf of the Independent Liquor and Gaming Authority

Statement of reasons

Decision

1. On 3 March 2017 the Independent Liquor and Gaming Authority (“the Authority”) received from Mr Jason Harris (“Applicant”), through Liquor and Gaming NSW (“LGNSW”), an application for an extended trading authorisation (“ETA”) in relation to the full hotel licence LIQH400111738 located at 154 Kendal Street Cowra NSW 2794 (“Premises”) known as the Railway Hotel, Cowra (“the Application”).
2. Pursuant to section 49(2) of the *Liquor Act 2007* (“the Act”), the Authority has decided to *refuse* the Application.
3. In reaching this decision, the Authority has had regard to all the material before it, the legislative requirements under sections 3, 11A, 45, 48, 49 and 51 of the Act, and relevant provisions of the *Liquor Regulation 2008* (“the Regulation”).

Material considered by the Authority

4. The Authority has considered the Application, the accompanying Community Impact Statement (“CIS”), and all submissions received in relation to the Application.
5. 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 Application were provided with the opportunity to make submissions.
6. As foreshadowed in 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, NSW Department of Health data, and Australian Bureau of Statistics (“ABS”) socio-demographic data pertaining to the local and broader communities, obtained by LGNSW staff from publicly available sources.
7. The material considered by the Authority is listed in the Schedule, with a summary where appropriate.

Legislative framework

Objects of the Act

8. 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 and to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.
9. In order to secure the objects of the Liquor Act, section 3(2) requires each person who exercises functions under the Act (including a licensee) to have due regard to the need to minimise harm associated with the misuse and abuse of liquor (including harm from violence and 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.

Minimum procedural requirements

10. Section 51 of the Act prescribes the minimum procedural requirements for an ETA to be validly made to the Authority.

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

11. 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.
12. Section 45 of the Act provides that the Authority may only grant a licence if it is satisfied that:
 - the applicant is a fit and proper person to carry on the proposed business,
 - practices will be in place to ensure the responsible service of alcohol and to prevent intoxication on the premises, and
 - if any applicable development consent is required to use the premises for business or activity to which the licence relates, such consent is in force.

Restrictions on granting extended trading authorisation

13. Section 49(8) of the Act provides that the Authority must not grant an extended trading authorisation 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.

Community Impact Statement

14. Section 48 of the Act requires certain applications, including an application for an ETA in relation to a hotel licence, to be accompanied by a CIS prepared in accordance with the relevant requirements.
15. Section 48(5) provides that the Authority may only grant the authorisation 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 the Authority becomes aware of during the application process.

Matters relating to gambling activities

16. Section 10A of the Regulation requires, in the case of an application for an ETA in relation to a hotel licence, the CIS to address matters relating to gambling activities that will be conducted on the premises during the proposed extended trading period.

Advertising requirements

17. Clause 6(1)(e) of the Regulation defines an “application”, for the purposes of the advertising requirements in Part 3, Division 1 of the Regulation, as including an application by a licensee for a licence related authorisation. Clause 6(1) defines “neighbouring premises” for the purposes of this Division as “any building situated on land that is within 100 metres of the boundary of the premises to which the application relates” in the case of an application requiring a Category B CIS. Clause 10(3)(e) of the Regulation requires a Category B CIS in the case of an application for an ongoing extended trading authorisation in respect of a hotel.
18. Clause 7 of the Regulation requires that the occupier of neighbouring premises must be notified by an applicant of the making of an application and this must be in the form and manner approved by the Authority. Clause 7(1A) provides that such notice may be

given prior to the making of an application but must be given no later than 2 days after an application is made.

Key findings

19. Having regard to the information before it and the relevant legislative requirements, the Authority makes the following findings in relation to the Application.
20. Section 51(2)(c) of the Act requires that if an application is required to be advertised, that the application is advertised in accordance with the regulations.
21. The Authority is *not* satisfied, on the material before it, that the Applicant has satisfied the requirement of clause 7 of the Regulation to notify all occupants of “neighbouring premises” within 100 metres from the boundary of the Premises in the prescribed manner and form approved by the Authority.
22. Three submitters (in official LGNSW online or paper based forms) state categorically that they live within 100 metres of the Premises yet did not receive a notice of the Application and only learned of the Application indirectly, by word of mouth or through the LGNSW Liquor and Gaming electronic noticeboard. They are: Mr Edwards of Fitzroy Street (submission dated 27 April 2017); another male resident of Fitzroy Street who requested that his name not be disclosed (submission dated 24 April 2017) and Ms Christians of Fitzroy Street (submission dated 29 April 2017). The Authority is satisfied that these submitters live within the 100 metres consultation zone specified by clause 6 of the Regulation and were not notified as required by clause 7.
23. Several further residential and commercial submitters state that they occupy premises within 100 metres from the Premises and only received notice of the Application by “word of mouth”, through the LGNSW Liquor and Gaming electronic noticeboard, or by “sheer luck”, the clear implication being that they were not directly notified in accordance with clause 7. They are: Kendal Street Medical Centre on Kendal Street (submission dated 4 April 2017); Breakout Motor Inn on Kendal Street (submission dated 23 April 2017) Mr Kain of Liverpool Street (submission dated 25 April 2017), a female resident of Fitzroy Street who requests that her name not be disclosed (submission dated 26 April 2017), a male resident of Fitzroy Street who requests that his name not be disclosed (submission dated 28 April 2017), Mr Hegarty of Liverpool Street (submission dated 27 April 2017), Mr Christians of Fitzroy Street (submission dated 29 April 2017) and another female resident of Fitzroy Street who requests that her name not be disclosed (submission dated 4 May 2017).
24. The Authority has considered a Certificate of Advertising dated 27 January 2017 that is signed by Mr Vaughan Merheb and the Applicant’s response to community submissions in an email dated 27 June 2017 in which the Applicant contends that the notifications were letter box dropped to all residents and businesses with a 100-metre radius of the hotel and that the Applicant knocked on doors and spoke to many of the residents and business owners that were there.
25. The Applicant also provided a map depicting the notification zone and the specific street numbers in which the notification was delivered to and contends that the required notice was distributed on 28 and 29 January 2017. The Applicant contends that all residents within 100 metres of the hotel were given notice with the Applicant personally speaking to some residents (who were home) on Fitzroy Street. This included a letter box drop with a letter placed under the door of the Medical Centre. The Authority accepts the Applicant’s specific claim that a copy of a notice was placed under the door of the Medical Centre during this process.
26. Nevertheless, given the unequivocal terms in which three local residents have stated that they did not receive any direct notice of the Application and given the number of

local complaints made by other residents as to how they were notified of the Application, the Authority finds, on the balance of probabilities, that not all occupants of neighbouring premises within a 100 metres radius received the required notice of the Application in accordance with clause 7 of the Regulation.

27. The Authority considers that the notice requirement prescribed by clause 7 of the Regulation is a condition to the exercise of the Authority's power to grant a licence or licence related authorisation, including an extended trading authorisation. The Authority is satisfied, given the centrality of the community impact assessment process to the licensing regime, that non-compliance with clause 7 renders an application *invalid* and the Authority does not have jurisdiction to entertain a non-compliant application. The Application must be refused on this basis.
28. In the alternative, the Authority is not satisfied, having regard to section 51(3) of the Act, that the Application complies with the requirement in section 45(3)(c) of the Act with regard to development consent for the proposed use of the Premises. The Applicant has not provided any evidence or material capable of satisfying the Authority as to whether development consent is required to enable 2:00 am trading, and if so, that such consent is in force.
29. The Authority will usually require evidence of a development consent determination issued by the relevant consent authority or, in the alternative, a Complying Development Certificate from a qualified certifier.
30. In an email dated 27 June 2017 the Applicant has referred to and extracted an (undated) email from Cowra Shire Council ("Council") in the following terms:

"Council currently does not have any Development Applications in regards to the opening hours for The Railway Hotel. In regards to your application to Liquor and Gaming to extend your trading hours – responses to any submissions should be made directly to Liquor and Gaming however, you are welcome to arrange an appointment with the Mayor, Bill West to discuss this issue".
31. The Applicant also states in that email that "I have tried contacting the mayor he has not contacted me as of yet". That does not satisfy the Authority as to the requirements of section 45(3)(c) in relation to this application.

Overall Social Impact test

32. While the Authority notes that there was significant local opposition to the Application on social impact grounds, the Authority has refused the Application by reason of non-compliance with clause 7 of the Regulation and, in the alternative, failure to establish that development consent is in force for the proposed use of the Premises of the purposes of section 45(3)(c) of the Act.
33. Accordingly, the Authority has not needed to make a finding on whether the overall social impact of granting the Application would be not be detrimental to the local community of Cowra or the broader community of the Cowra local government area ("LGA"), for the purposes of section 48(5) of the Act.
34. The Authority notes with concern the fact that the hotel is presently for sale, and it would be difficult to give weight to the harm reduction measures or any other undertakings made by the current licensee or business ownership in circumstances when those parties may not be responsible for the Premises should the sale go ahead.



David Armati
Deputy 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 <http://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 Socio-Economic Indexes For Areas (“SEIFA”) data based on the 2011 Census for the Cowra LGA.
2. HealthStats NSW data showing alcohol-related deaths and hospitalisations in the Cowra LGA for the period 2012-13.
3. BOCSAR data for the local community of Cowra for the period October 2015 to September 2016.
4. BOCSAR data for Cowra LGA and NSW in 2016 depicting the proportion of incidents by offence type, day of week and time of day.
5. BOCSAR crime maps for incidents of alcohol related assault, domestic assault, non-domestic assault and malicious damage to property between April 2016 to March 2017.
6. Certificate of Advertising signed by the premises owner, who is also the Applicant’s representative, Mr Vaughan Merheb and dated 27 January 2017.
7. ETA application form date stamped as received by LGNSW on 3 March 2017, signed by the Applicant and dated 31 March 2017. [The Authority notes that the original application form was lodged on 3 March 2017 with the signature of the business owner and that the licensee later provided substituted pages dated 31 March 2017]. This document is accompanied by the notice to local consent authority, notice to Police and the site notice all signed by the Applicant and dated 31 March 2017.
8. Category B CIS form lodged with the ETA Application, signed by the Applicant and dated 31 March 2017.
9. Submission from Mrs M Wood on behalf of Kendal Street Medical Services Pty Ltd which leases the premises at 165-169 Kendal Street, Cowra to LGNSW dated 4 April 2017 opposing the Application.
10. Submission from Ms L Kopiszke, on behalf of The Breakout Motor Inn located on Kendal Street Cowra, to LGNSW dated 23 April 2017 opposing the Application.
11. Submission from local resident (who wishes to remain anonymous) of Fitzroy Street Cowra to LGNSW dated 24 April 2017 opposing the Application.
12. Submission from local resident (who wishes to remain anonymous) of Fitzroy Street Cowra to LGNSW dated 24 April 2017 opposing the Application.
13. Submission from a local resident of Liverpool Street Cowra (who wishes to remain anonymous) to LGNSW dated 24 April 2017 opposing the Application.
14. Submission from local residents, Mr and Mrs Cribb of Fitzroy Street Cowra to LGNSW dated 25 April 2017 opposing the Application.
15. Submission from local resident, Mr R Kain of Liverpool Street Cowra to LGNSW dated 25 April 2017 objecting to the Application.
16. Submission from a local resident of Fitzroy Street Cowra (who wishes to remain anonymous) to LGNSW signed and dated 26 April 2017. In this nine-page submission, the resident opposes the Application attaches a map depicting the 100-metre notification zone for the hotel, a copy of the notice of intention and a petition containing 33 signatures.

17. Submission from local residents, Mr J Hegarty of Liverpool Street Cowra to LGNSW dated 27 April 2017 opposing the Application.
18. Submission from local resident, Mr R Edwards of Fitzroy Street Cowra to LGNSW dated 27 April 2017 objecting to the Application.
19. Letter from Licensing Coordinator J Bootland of Canobolas Local Area Command of NSW Police to LGNSW dated 28 April 2017 objecting to the Application.
20. Submission from local resident of Fitzroy Street Cowra (who wishes to remain anonymous) to LGNSW signed and dated 28 April 2017. This nine-page submission is the same as the one above opposing the Application and attaching a map depicting the 100-metre notification zone for the hotel, a copy of the notice of intention and a petition containing 33 signatures.
21. Submission from local resident, Mrs S Clements of Darling Street Cowra to LGNSW dated 28 April 2017 opposing the Application.
22. Submission from local resident, Mr W Christians of Fitzroy Street Cowra to LGNSW dated 29 April 2017 opposing the Application.
23. Submission from local resident Mrs J Christians of Fitzroy Street Cowra to LGNSW dated 29 April 2017 opposing the Application.
24. Submission from a local resident of Fitzroy Street Cowra (who wishes to remain anonymous) to LGNSW dated 4 May 2017 opposing the Application.
25. Email from the Applicant's representative, Mr Vautek dated 27 June 2017 in response to an email from licensing staff dated 13 June 2017. In this email, the Applicant *inter alia* responds to a number of questions from licensing staff, extracts an undated email from Council regarding development consent and consents to a number of conditions being imposed on the licence. The following documents were provided:
 - three photographs depicting the site notice affixed to the Premises;
 - hours of operation [the hours of operation were incorrectly noted in this document];
 - the management/house policy for the Premises dated 14 June 2017;
 - map depicting the neighbouring premises in which notification of the Application was dropped in letterboxes;
 - the notice of intention to apply for a liquor licence or a licence authorisation;
 - a table depicting all street offences recorded on Kendal Street Cowra between 1 August 2015 and 1 September 2016 which appears to be extracted from a NSW Police Force Submission [The Authority notes that this was not provided as part of the Police submission for this Application and is unclear where the Applicant has sourced this material from];
 - plan/diagram depicting the upstairs area of the hotel (which the Authority notes is not licensed);
 - a two-page document responding to the submissions received from local residents and businesses;
 - a NSW Government Cowra "Making Your Night Out Safer" sign depicting no entry or re-entry after midnight, no entry if seen drinking or with open alcohol on approach and no entry to any person wearing gang colours;

- plan/diagram of the Premises highlighting the current licensed boundaries in blue, the current minors area authorisation in yellow and the proposed ETA in red;
26. LGNSW licensed premises information as at 13 July 2017 for club licences, hotel licences, small bar licences, on-premises licences and packaged liquor licences with liquor trading past 12 midnight in Cowra LGA and the suburb of Cowra.
 27. Licence density calculations for NSW, Cowra LGA and the suburb of Cowra performed by licensing staff based on the LGNSW licensed premises information as at 13 July 2017 for club licences, hotel licences, small bar licences, on-premises licences and packaged liquor licences with liquor trading past 12 midnight and ABS *Quickstats* population data sourced from the 2016 census data.
 28. LGNSW Compliance Detail Report for the Railway Hotel for the period between 1 July 2008 and 18 July 2017, provided by licensing staff.
 29. Onegov licence document depicting the key liquor licence details for the Railway Hotel as at 21 July 2017.
 30. Google maps showing the location of the Premises, extracted from the Google website by licensing staff on 21 July 2017.
 31. Website pages extracted by licensing staff which depict the hotel, the subject of this Application, as for sale with expressions of interest closing (if not sold prior) on Friday 18 August 2017.