



Mr Jon Martin  
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7 March 2017

Dear Mr Martin,

**APPLICATION NO:** 1-4354464937  
**APPLICATION FOR:** Hotel Licence Removal  
**PROPOSED TRADING HOURS:** On premises:  
Monday to Saturday 10:00AM – 12:00AM  
Sunday 10:00AM – 10:00PM  
  
Take away:  
Monday to Sunday 10:00AM – 10:00PM

**APPLICANT:** Bayside Operations Pty Ltd

**PROPOSED LICENSED  
PREMISES NAME:** Star Hotel

**CURRENT PREMISES  
LOCATION:** 45 Cameron Street, WAUCHOPE NSW 2446  
(Current Premises).

**PROPOSED PREMISES  
LOCATION:** 1 Hay Street, PORT MACQUARIE NSW  
2444 (Proposed Premises)

**ISSUE:** Whether to grant or refuse an application  
for the removal of a hotel licence

**LEGISLATION:** Sections 3, 11A, 14, 40, 45, 46A, 48 and 59  
*Liquor Act 2007*

**INDEPENDENT LIQUOR AND GAMING AUTHORITY DECISION – APPLICATION  
FOR REMOVAL OF HOTEL LICENCE – STAR HOTEL**

The Independent Liquor and Gaming Authority has finalized its consideration of considered application number 1-4354464937 (Application) and, pursuant to section 59 of the *Liquor Act 2007* (Act), decided to **approve** the removal of the liquor licence LIQH400119224 subject to the following additional conditions:

**1. Trading Hours**

On premises:  
Monday to Saturday 10:00AM – 12:00AM  
Sunday 10:00AM – 10:00PM

Take away:  
Monday to Sunday 10:00AM – 10:00PM


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. Consumption on premises  
Good Friday 12:00 noon - 10:00 PM  
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, whichever is the later

Note: Trading is also allowed after midnight into the early morning of Good Friday and Christmas Day if authorised by an extended trading authorisation. Trading must cease at the time specified under the authorisation. The latest time that can be specified is 5:00 AM.

4. The Independent Liquor and Gaming Authority has granted the removal of the licence to 1 Hay Street PORT MACQUARIE 2444 on 25 January 2017, for a period of five years, subject to the voluntary suspension of the licence throughout that period.
5. The removal of the licence to 1 Hay Street PORT MACQUARIE does not take effect unless and until the Independent Liquor and Gaming Authority has approved a voluntary suspension of the licence for a period of five years pursuant to section 46A of the *Liquor Act 2007*.
6. The licence must not be exercised at 1 Hay Street PORT MACQUARIE 2444.
7. Six months prior to the end of the five-year voluntary suspension period, the licensee must notify the Independent Liquor & Gaming Authority of the status of the licence and the licensee's intentions with regard to the premises when the voluntary suspension period ends, or the licence will automatically be cancelled upon the expiry of that period.

If you have any enquiries about this letter please contact the case manager via email to the case manager via [santina.causa@justice.nsw.gov.au](mailto: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 application for the removal of a hotel liquor licence filed 15 April 2016 (Application), the accompanying community impact statement (CIS) and all submissions received in relation to the Application. As foreshadowed in Authority Guideline 6, the Authority has also had regard to relevant liquor licensing records and licence density data maintained by Liquor and Gaming NSW (LGNSW), Bureau of Crime Statistics and Research (BOCSAR) crime data and Australian Bureau of Statistics (ABS) socio-demographic data pertaining to the local and broader communities, sourced by licensing staff from publicly available sources. That material is listed and in some cases briefly summarised in the Schedule.
3. The Authority notes by way of background that in addition to this Application to remove a hotel licence from 45 Cameron Street, Wauchope (Current Premises) to 1 Hay Street, Port Macquarie (Proposed Premises), the Applicant has also made an application under section 34 of the *Gaming Machines Act 2001* to increase the gaming machine threshold at the Proposed Premises from 0 to 5 to facilitate a transfer of the gaming machine entitlements from the Current Premises to the Proposed Premises so that the Applicant may deal with those entitlements in due course.

### Summary of Further Submissions

4. Report to the Authority dated 21 September 2016 from Compliance Branch of LGNSW advising that the Application was assessed using the Environment and Venue Assessment Tool (EVAT). This means that LGNSW have not performed any specific assessment of the Application.
5. Correspondence from Port Macquarie-Hastings Council (Council) planning staff, dated 27 September 2016, supplied by the Applicant. This email correspondence notes that Development Application (DA) 2010/141 provided for alterations to a tourist facility, and a subsequent modification to this approval included a bar in the ground floor of the Proposed Premises.
6. Submission from the Applicant's solicitor, Mr Jon Martin of JDK Legal dated 11 October 2016. In this submission Mr Martin provides additional information requested by Authority staff including an attached Certificate of Advertising, the Applicant's consent to the imposition of a licence condition fixing the 6-hour daily closure period required by section 11A of the *Liquor Act 2007* (Act) at between 4:00 am and 10:00 am, consent to a condition preventing the use of the licence on the Proposed Premises, and clarification of the boundaries of the licensed area and the intended use of the Proposed Premises.

7. File note dated 2 November 2016, regarding a telephone conversation between licensing staff and Sergeant John Lawrie of Mid North Coast Local Area Command (LAC) of NSW Police (Police), advising that Police have no concerns regarding the Application given that the licence will be held on the Proposed Premises in a dormant capacity.
8. Submission from the Applicant's solicitor dated 3 November 2016. In this submission Mr Martin confirms the Applicant's consent to the removal of existing licence conditions numbered 200, 350, 360, and 370 from the licence record and the imposition of a new condition requiring that the licence cannot be exercised unless the Authority has granted a transfer of the licence to a qualified person or a manager is approved and appointed to the licence for the Proposed Premises.
9. Submission from the Applicant's solicitor dated 21 November 2016. In this submission Mr Martin confirms the Applicant's consent to a requirement that the licence be subject to a voluntary suspension on the Proposed Premises and the Applicant anticipates that the licence would remain suspended for up to 5 years.
10. Submission from the Applicant dated 25 January 2017, consenting to the imposition of conditions upon the licence preventing the removal of the licence from taking effect until the Authority has approved the voluntary suspension of the licence for a period of five years, prohibiting the exercise of the licence on the Proposed Premises, and requiring the Applicant to consult with the Authority regarding the future of the Proposed Premises as the period of suspension ends.

### **Legislative Framework**

11. An application for the removal of an existing hotel liquor licence from its current location to another location is made under section 59 of the Act.
12. Pursuant to section 59(3) of the Act, an application to remove a licence to another premises is to be dealt with and determined by the Authority as if it were an application seeking the grant of a new licence in respect of those other premises.
13. Accordingly, the provisions of Division 1 of the Act extend to an application for the removal of a licence to other premises as if it were an application for a licence.
14. 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.*

15. 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.
16. An application for under section 59 for approval to remove a hotel licence is a “relevant application” within the meaning of section 48(2) of the Act for which a CIS is required.
17. 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”.
18. 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 Port Macquarie while the “broader community” comprises the responsible Local Government Area (LGA), the Port Macquarie-Hastings LGA.

### **Analysis of Relevant Facts**

19. The Authority is satisfied, based on the Application and CIS material before it, that for the purposes of Section 59 and section 40 of the Act, that the Application has been validly made. The Applicant has met minimum procedural requirements for the Application, the CIS and community consultation.
20. 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 hold a licence, on the basis of the material provided with the Application and the absence of any adverse information provided by agencies with a law enforcement capacity including Council, NSW Police or LGNSW.
21. The Authority is satisfied, for the purposes of section 45(3)(b) of the Act, that the licence will not be exercised on the Proposed Premises. This finding is made on the basis of the Applicant’s consent to a condition requiring the voluntary suspension of the licence for the five-year term of the licence on the Proposed Premises.
22. The Authority is also satisfied, for the purposes of section 45(3)(c) of the Act, that the proposed activity that is the subject of the Application (a hotel licence) will fall within permissible use for the Proposed Premises for planning purposes, based on DA No. 2010/141 approved 8 July 2010 and amended 4 May 2011 and the submission provided by Council planning staff dated 27 September 2016.

### **Social Impact – Positive Benefits**

23. While this Application will, broadly speaking, provide little benefit to the local and broader community, given that it is a requirement of the conditions imposed upon the licence that it not be exercised at the Proposed Premise, the Authority accepts that granting the Application will facilitate the Applicant's commercial dealings with regard to the gaming machines associated with the licence. This will facilitate the responsible development of the hospitality and gaming machine industry in the relevant communities, which is an object of section 3(1)(c) of the Act.
24. The Authority is further satisfied, noting the absence of any opposition to the Application from within the local or broader community, that granting this Application will not be inconsistent with the "expectations, needs and aspirations of the community" in respect of the local and broader communities, which is an object of section 3(1)(a) of the Act.

### **Social Impact – Negative Impacts**

25. At the level of the local community, BOCSAR Crime Maps between July 2015 and June 2016 indicate that the Proposed Premises:
  - (a) Is located inside a *high-density hotspot* for incidents of *domestic assault*
  - (b) Is located inside a *high-density hotspot* for incidents of *non-domestic assault*
  - (c) Is located inside a *high-density hotspot* for incidents of *malicious damage to property*
26. The BOCSAR Report on *NSW Recorded Crime Statistics July 2010 – June 2015*, for July 2014 – June 2015, records that the Port Macquarie-Hastings LGA has alcohol related crime rates that are of significant concern to the Authority. The broader community rates of alcohol related *non-domestic assault*, *domestic violence assault*, *offensive behaviour* and *assault police* ranging from slightly to moderately above the rates for New South Wales as a whole.
27. The prevailing crime data for the broader community, the Port Macquarie-Hastings LGA, is of significant concern to the Authority as a prevailing negative social impact (particularly with regard to alcohol related domestic violence).
28. However, the Authority does not consider that there is any risk that granting *this* Application will contribute to the prevailing levels of alcohol related crime, disturbance or adverse impact upon amenity in the local and broader communities by reason that the Applicant does not intend to exercise the licence on the Proposed Premises and consents to conditions ensuring this.
29. As the Applicant seeks removal of the licence to a location within the same LGA, granting the Application will not increase the number of licensed premises in the broader community. Since the licence will be voluntarily suspended on the Proposed Premises, the licence will be unable to contribute to any negative social impact from increased licence density in the local community.
30. On the basis that the Applicant only requires the removal of the licence for a period of five years, to enable it to deal with the relevant gaming machine entitlements from premises that it controls, the removal has been granted for a fixed term of 5 years only, pursuant to section 46(1) of the Act,

## Conclusion

31. The Authority is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding the decision whether 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 include NSW Police, the Applicant, Council, neighboring occupiers and all other parties required to be consulted under the legislation.
32. 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 removing this licence would not be detrimental to the well-being of these local and broader communities.
33. As noted above, this Application was lodged with a related application for gaming machine threshold increase for the Proposed Premises. The Authority is satisfied that the gaming machine threshold application meets all requirements of the *Gaming Machines Act 2001* and the *Gaming Machines Regulation 2010*, and the Authority has granted that application pursuant to section 34(4) of the *Gaming Machines Act 2001*.
34. Removal of the licence is approved pursuant to section 59 of the Act.
35. 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 behavior); (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: 30 January 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. Plan of diagram indicating the proposed licensed area of the Proposed Premises, dated June 2010.
2. Notice of Determination –Council DA No. 2010/141 approved 8 July 2010, and modification to DA 2010/141 determined 4 May 2011.
3. Copy of a *Current Company Extract* for the Applicant corporation, Bayside Operations Pty Ltd issued by the Australian Securities and Investments Commission (ASIC) on 21 December 2015.
4. CIS document and supporting material dated 11 April 2016 and lodged with the Authority on 15 April 2016. The Applicant provides information about the Application, advising that the Applicant seeks to remove an existing hotel licence to the Proposed Premises, which is within the same local government area as the Current Premises, to be held in a dormant capacity until a suitable site for the licence to be removed and reactivated is identified. The Applicant also provides notices of the Application that were sent to various public agencies and other stakeholders, a list of stakeholders and special interest groups consulted by the Applicant and advice that no written submissions were received from any of the stakeholders notified.
5. Application Form for Removal of Licence lodged with the Authority on 15 April 2016.
6. Record of licence for LIQH400119224 dated 14 September 2016.
7. Certification of Advertising Application dated 19 September 2016 and signed by the Applicant's agent, Mr David Mattick.
8. LGNSW submission dated 21 September 2016, including an automated EVAT Assessment Report of that date.
9. Submission from the Applicant to the Authority attaching correspondence from Council planning staff, dated 27 September 2016.
10. Response to licensing staff from the Applicant's solicitor, Mr Jon Martin of JDK Legal, dated 11 October 2016.
11. File note dated 2 November 2016, regarding a telephone conversation between licensing staff and Sergeant John Lawrie of Mid North Coast LAC of Police.
12. Response from the Applicant's solicitor to licensing staff dated 3 November 2016.
13. Response to licensing staff from the Applicant's solicitor dated 21 November 2016 advising the Applicant's acceptance of the proposed voluntary suspension.
14. Response from the Applicant to licensing staff dated 25 January 2017, consenting to the condition proposed by licensing staff on 24 January 2017.

15. Publicly available BOCSAR Crime Maps based upon data from July 2015 to June 2016 detailing hotspots for the concentration of offences near the location of the Proposed Premises.
16. Report on *NSW Recorded Crime Statistics July 2010 – June 2015* obtained from published BOCSAR sources, for July 2014 – June 2016. This data indicates that:
  - (a) the rate of *assault Police* incidents recorded by NSW Police as alcohol related across the Port Macquarie-Hastings LGA was **21.9** per 100,000 persons, just above the State-wide rate of **18.2** per 100,000 persons.
  - (b) the rate of *non-domestic violence related assault* incidents recorded by NSW Police as alcohol related across the Port Macquarie-Hastings LGA was **191** per 100,000 persons, above the State-wide rate of **144** per 100,000 persons;
  - (c) the rate of *domestic violence related assault* incidents recorded by NSW Police as alcohol related across the Port Macquarie-Hastings LGA was **139.4** per 100,000 persons, above the New South Wales rate of **122.6** per 100,000 persons;
  - (d) the rate of *offensive behavior* offences recorded by NSW Police as alcohol related across the Port Macquarie-Hastings LGA was **154.9** per 100,000 persons, well above the State-wide rate of **88.2** per 100,000 persons.
17. NSW Health Stats Reports, dated 21 November 2016 indicating:
  - (a) the Smoothed Estimate of Standardised Separation Ratio for alcohol attributable hospitalisations for Port Macquarie-Hastings LGA 2013-2015 was 78.9 (with NSW being 100).
  - (b) the Smoothed Estimate of Standardised Mortality Ratio for alcohol attributable deaths for Port Macquarie-Hastings LGA 2012-2013 was 116.7.
18. ABS Socio-Economic Indexes For Areas (SEIFA) data sourced from the 2011 Census which indicates that:
  - (a) the Port Macquarie-Hastings LGA ranked in the 5th decile compared to other local government areas in the state on the Index of Relative Socio-Economic Advantage and Disadvantage (IRSEAD) - with a decile ranking of 10 being the most advantaged.
  - (b) the state suburb of Port Macquarie ranked in the 4<sup>th</sup> decile compared to other state suburbs in NSW on the IRSEAD.