



Mr Chris Brown
chrisb@roofbar.com.au

26 July 2018

Dear Mr Brown

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| Application No. | 1-6611503856 |
| Applicant | Port Surry Hills Pty Ltd |
| Application for | Removal of a packaged liquor licence |
| Licence number | LIQP700352132 |
| Proposed licence name | Porters Liquor Surry Hills |
| Current premises | The Pinnacle, Shop 2, 104 Pyrmont Street Pyrmont NSW 2009 |
| Proposed premises | Shop 34, 400-412 Elizabeth Street Surry Hills NSW 2010 |
| Proposed trading hours | Monday to Saturday 9:00 am – 11:00 pm Sunday 10:00 am – 8:00 pm |
| Legislation | Sections 3, 11A, 12, 29, 30, 31, 40, 45, 48 and 59 of the <i>Liquor Act 2007</i> |

**Decision of the Independent Liquor and Gaming Authority
Application for the removal of a packaged liquor licence – Porters Liquor Surry Hills**

The Independent Liquor and Gaming Authority considered the application above at its meeting on 16 May 2018 and, pursuant to section 59 of the *Liquor Act 2007*, decided to **refuse** the application.

A statement of reasons for this decision is attached at the end of this letter.

If you have any questions, please contact the case manager at
beatrice.pitpaiaac@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 12 December 2017, Port Surry Hills Pty Ltd (“the Applicant”) lodged an application (“Application”) with Liquor & Gaming NSW (“L&GNSW”), for determination by the Independent Liquor and Gaming Authority (“Authority”). The Application sought the removal of a packaged liquor licence (“Licence”) from the premises at The Pinnacle, Shop 2, 104 Pyrmont Street, Pyrmont (“Current Premises”) to the premises at Shop 34, 400-412 Elizabeth Street, Surry Hills (“Proposed Premises”).
2. The Authority considered the Application at its meeting on 16 May 2018 and decided to refuse the Application under section 59 of the *Liquor Act 2007* (“Act”).
3. In reaching this decision, the Authority has had regard to the relevant material before it and the legislative requirements under the Act and the Liquor Regulation 2008.

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. In accordance with the Authority’s Guideline 6, the Authority has also had regard to relevant L&GNSW liquor licensing records and data published by Bureau of Crime Statistics and Research (“BOCSAR”), NSW Health, and Australian Bureau of Statistics (“ABS”).
7. A list of the material considered by the Authority is set out in the Schedule.

Legislative framework

8. The Authority has considered the Application in the context of the following legislative provisions.

Objects of the Act

9. The objects of the Act, as set out in section 3, are to regulate the supply of liquor in line with the expectations, needs and aspirations of the community, and facilitate the balanced and responsible development of the liquor industry and related industries.
10. In the pursuit of these objectives, section 3 requires the Authority to, in exercising its powers under the Act, have due regard to the need to minimise harm associated with misuse and abuse of liquor, encourage responsible liquor supply practices, and ensure that the supply of liquor does not detract from the amenity of community life.

Removal of a liquor licence

11. Section 59 of the Act requires the Authority to determine an application to remove a licence to another premises as if it were an application for a licence at that premises, and provides that the provisions in respect of a licence application extend to a licence removal application.
12. Section 59 also provides that the Authority must not approve the removal application unless it is satisfied that practices will be in place following the removal and remain in place to reasonably ensure the responsible service of alcohol and to prevent intoxication on the premises to which the license is proposed to be removed.

Trading hours and 6-hour closure period

13. Section 12 of the Act sets out the standard trading period for various 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

14. Section 40 of the Act prescribes the minimum procedural requirements for a liquor licence application to be validly made to the Authority.
15. Section 59(2) of the Act prescribes the minimum procedural requirements for a valid application to remove a licence to another premises.

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

16. 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

17. Section 48 of the Act requires certain applications, including an application for a packaged liquor licence, to be accompanied by a CIS prepared in accordance with the relevant requirements.
18. Section 48(5) provides that the Authority may only grant the licence 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 brought to its attention.

Provisions specific to a packaged liquor licence

19. Further legislative provisions specific to a packaged liquor licence are set out in sections 29, 30 and 31 of the Act.
20. Section 29 prescribes the period and manner in which a licensee can sell or supply liquor.
21. Section 30 requires a separate liquor sales area to be set up on the licensed premises if its primary business is not to sell liquor for consumption away from the premises.
22. Section 31 sets out certain restrictions on the granting of the licence to general stores, service stations and take-away food shops.

Key findings

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

Validity, procedural and trading hour requirements

24. The Authority is satisfied that:
 - a) the Application has been validly made and meets the procedural and trading period requirements under sections 11A, 12, 40 and 59 of the Act,
 - b) if the licence were to be granted, liquor would be sold and supplied in accordance with the authorisation conferred by the Licence pursuant to section 29 of the Act, and
 - c) sections 30 and 31 of the Act do not apply to the Application as the Proposed Premises is not intended to operate as is contemplated by the sections.

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

25. The Authority is satisfied that, for the purposes of section 45 of the Act:

- a) the Applicant is a fit and proper person to carry on the business to which the Licence relates, given that no concerns regarding the Applicant's probity were raised upon consultation with relevant law enforcement agencies, and
- b) the requisite development consent is in force, based on the Notice of Determination for development application D/2017/1682, issued by City of Sydney Council on 2 February 2018, in respect of the Proposed Premises.

26. The Authority notes that the Plan of Management provided with the Application is, as the Applicant stated, a 'pro forma' document that sets out some standard measures in respect of the responsible serving of alcohol and prevention of intoxication. The Authority accepts that if the Application were to be granted, the practices set out in the Plan of Management will be implemented at the Proposed Premises as required by sections 45 and 59 of the Act.

Community impact statement

27. Pursuant to section 48 of the Act, the Authority finds that the CIS submitted with the Application was prepared in accordance with the minimum procedural requirements. The Authority has taken into consideration the CIS and other available information in making the findings below about the social impact of the Proposed Premises on the local and broader communities.

28. 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 suburb of Surry Hills, and the relevant "broader community" comprises Sydney Local Government Area ("the LGA").

Positive social impacts

29. In accordance with section 59(3) of the Act, the Authority has considered the Application as if it were an application for a Licence in respect of the Proposed Premises.

30. The Authority accepts the Applicant's contention that the Proposed Premises, if granted a Licence, would likely provide local customers with additional convenience in purchasing packaged liquor and access to a variety of packaged liquor products.

31. The Authority also accepts that the Proposed Premises, if granted the Licence, would be operated under the brand name of Porters Liquor, and would benefit from the experience and established procedures of the chain operator in managing packaged liquor stores.

32. However, the Authority finds that the potential benefits above are significantly limited by:

- a) the existing availability of packaged liquor in the area, reflected by the high density of packaged liquor licences in Surry Hills and the LGA, and
- b) the absence of evidence showing community support for the Application.

Negative social impact

33. Relevant L&GNSW licensing records indicate that, as at 19 April 2018, the density of packaged liquor licences and hotel licences in both Surry Hills and the LGA is considerably higher than the NSW state average. Most of the hotel licences in Surry Hills are full hotel licences authorising the retail sale of take-away packaged liquor.

34. On the basis of the above, the Authority finds that there is a sufficient level of supply, if not an oversupply, of packaged liquor in the local community, even after taking into account the Applicant's contention about recent population growth and the restricted nature of some packaged liquor licences in the community. While the Authority accepts the Applicant's contention that many of the existing packaged liquor licences in Surry Hills are restricted to sale via telephone or the internet, it also notes the Applicant's own acknowledgement that take-away liquor can be conveniently purchased from a large number of local hotels.

35. The Authority also finds, on the basis of the following statistics, that Surry Hills and the LGA have been experiencing a high level of alcohol-related crime, social disturbances, and health issues.

36. The relevant NSW BOCSAR data indicates that:

- a) for the year to December 2017, the Proposed Premises was located within high density hotspots for incidents of alcohol-related assault, domestic assault, non-domestic assault and malicious damage to property,
 - b) for the two years to December 2017, Surry Hills and the LGA recorded very high rates of alcohol related assault (both domestic and non-domestic), malicious damage to property and alcohol-related offensive conduct, ranging from 1.4 to 9.5 times the state average, and
 - c) although Surry Hills recorded a two year downward trend on alcohol-related non-domestic assault, malicious damage to property and alcohol-related offensive conduct, the rates of these incidents remained 2 to 7 times higher than the state average in the year to December 2017.
37. The most recent HealthStats NSW data available at the time of the Authority's consideration indicates that the LGA recorded:
- a) for the period 2012-13, a smoothed standardised rate of alcohol attributable deaths just above the NSW state average, and
 - b) for the period 2013-15, a smoothed standardised rate of alcohol attributable hospitalisations 30 percent higher than the state average.
38. The Authority further finds the concerns arising from these statistics to be exacerbated by the submissions received from NSW Police, two members of the community and a commercial competitor of the proposed bottle shop opposing the granting of the Licence.
39. NSW Police strongly opposed the granting of the Licence, contending that an additional packaged liquor store would adversely affect the prevailing level of alcohol-related crime and impose significant harm on the amenity of the neighbourhood. In support of the contention, Police pointed to the high density of liquor licences and level of alcohol-related crime in the area, the relatively large size of the Proposed Premises (approximately 178 square metres), and the presence of housing and other facilities for disadvantaged members of the community near the Proposed Premises.
40. NSW Police also contended that the Applicant:
- a) failed to provide sufficient information about the potential social impact or proposed harm minimisation measures of the proposed bottle shop, and
 - b) did not consult with Police prior to the lodgement of the Application, and incorrectly claimed that Police had no objections.
41. The other three submitters raised similar concerns in respect of the lack of adequate information in the Application and CIS, the current over-supply of packaged liquor in the area, the existing local alcohol and drug related problems, the scale of the Proposed Premises and its location near disadvantage parts of the local community. The Authority notes that one of these submitters is a commercial competitor of the proposed bottle shop, and has taken this factor into account in considering this submitter's contentions.
42. The Authority has also considered the Applicant's response to the submissions, including, for example, the Applicant's contentions that:
- a) there are other packaged liquor facilities closer to the public housing area,
 - b) there has been an ongoing increase in socio-economically advantaged population in the local community,
 - c) the Proposed Premises will not operate as a discount liquor chain store, and will focus on selling higher end liquor products which would not appeal to the disadvantaged members of the community, and
 - d) alcohol-related crime rates have been stable for over 10 years, and are not affected by the increase in packaged liquor facilities.
43. The Applicant did not dispute, and the Authority finds, that Surry Hills and the LGA presently have a very high level of alcohol-related crime, health issues and social disturbances,

notwithstanding any recent improvement in the relevant statistics. The Authority has had regard to the 10 year trend data provided by the Applicant on packaged liquor licences and alcohol-related violence in NSW, but gives more weight to the localised statistics and other information in respect of the availability of packaged liquor and prevailing alcohol-related problems in Surry Hills and the LGA.

44. The Authority also finds that despite demographical changes in the local community in recent years, pockets of socio-economic disadvantage continue to be present in the area. In so finding the Authority has taken into account the ABS Socio-Economic Indexes for Areas ("SEIFA") data that as at 2016, Surry Hills and the LGA were among:
 - a) the most advantaged suburbs and Local Government Areas in NSW on the Index of Relative Socio-economic Advantage and Disadvantage, and
 - b) the most disadvantaged on the Index of Economic Resources, indicating an extreme lack of access to economic resources.
45. The Authority finds that the Proposed Premises is within a relatively short distance from a variety of housing and other facilities that are frequented by, and cater to the needs of, disadvantaged members of the community who either suffer from or are susceptible to harm associated with alcohol abuse or misuse.
46. Noting the location of and the 'considerable variety' of liquor products proposed to be offered at the Proposed Premises, the Authority does not accept the Applicant's contention that granting the Licence would have no effect on the drinking behaviour of any of these disadvantaged members of the community, or their exposure to alcohol-related harm.
47. Having regard to the available information, the Authority considers that there is a real risk that granting the Licence would:
 - a) contribute to an increase in the level of alcohol-related crime and health problems, social disturbances and amenity issues in the community, and
 - b) expose those members of the local community who are more susceptible to harm associated with liquor misuse and abuse to a higher level of such harm.
48. The Authority is not satisfied that the risk identified above can be sufficiently mitigated by the Applicant's proposed measures and adherence to licence conditions. The Authority agrees with the submissions made by all objectors that the Applicant provided little detail in the Application and CIS to inform those consulted of the potential social impact of granting the Licence and the proposed harm mitigation measures.
49. Given that the Licence held at the Current Premises has been dormant since 2010, the Authority considers that the removal of the Licence from the Current Premises would unlikely result in material changes to the prevailing level of alcohol-related issues. Accordingly, the Authority gives little weight to the removal in considering the potential social impacts associated with granting the Licence for the Proposed Premises.
50. In light of the local circumstances, the Authority considers that any exacerbation of the already high level of alcohol-related harm experienced by the community, particularly the disadvantaged members of the community, can be detrimental to the well-being of the community.

Overall social impact

51. Having considered the positive and negative social impacts that are likely to flow from granting the Licence, the Authority is not persuaded that the legislative test under section 48(5) of the Act is met, as the Applicant has not satisfied the Authority that the overall social impact of granting the Licence will not be detrimental to the well-being of the local or broader community.
52. The Authority also finds that granting the Licence would be inconsistent with the objects of the Act to meet the expectations, needs and aspirations of the community and facilitate the responsible development of the liquor industry.

53. As the requirements for granting a Licence have not been met, the Authority refuses to grant the Application under section 59 of the Act.



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 Application and who made a submission to the Authority or the Secretary in respect of the 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 considered by the Authority

1. Statement of reasons dated 17 June 2013, for the Authority's decision on 27 March 2013 to refuse an application for a Licence for Nomad, Surry Hills.
2. HealthStats NSW data showing that:
 - a. for the period 2012-13, the LGA recorded a smoothed standardised mortality ratio of 101.8 compared to the state average of 100, and
 - b. for the period 2013-15, the LGA recorded a smoothed standardised separation ratio of 130.1 compared to the state average of 100.
3. ABS SEIFA data based on the 2016 Census, indicating that Surry Hills and the LGA ranked in:
 - a. the 10th and 9th decile respectively on the Index of Relative Socio-Economic Advantage and Disadvantage on a scale of 1 to 10, with the 10th decile being the most advantaged, and
 - b. the 1st decile on the Index of Economic Resources on a scale of 1 to 10, with the 1st decile being the most disadvantaged.
4. Completed application for the removal of the Licence, signed on 8 December 2017, and supporting documents in respect of the Applicant's company information.
5. Category B Community Impact Statement dated 8 December 2017.
6. Completed applications to transfer the Licence and change the name of the Licence, signed on 8 December 2017 with relevant supporting documents attached.
7. Copy of the police notice, local consent authority notice and public consultation site notice, dated 11 December 2017, in relation to the Application.
8. BOCSAR crime maps for the year to December 2017, indicating the location of the Current Premises and the Proposed Premises relative to hotspots for alcohol related assault, domestic assault, non-domestic assault, and malicious damage to property.
9. NSW crime statistics published by BOCSAR indicating that:
 - a. for the year to December 2016:
 - i. the rate of alcohol-related domestic assault in the LGA and Surry Hills were 179.3 and 213.0 respectively, compared to the NSW average of 113.9,
 - ii. the rate of alcohol-related non-domestic assault in the LGA and Surry Hills were 702.5 and 666.9 respectively, compared to the NSW average of 133.7,
 - iii. the rate of malicious damage to property in the LGA and Surry Hills were 1224.7 and 1866.2 respectively, compared to the NSW average of 811.6,
 - iv. the rate of alcohol-related offensive conduct in the LGA and Surry Hills were 338.1 and 448.3 respectively, compared to the NSW average of 47.3,
 - b. for the year to December 2017:
 - i. the rate of alcohol-related domestic assault in the LGA and Surry Hills were 196.2 and 201.7 respectively, compared to the NSW average of 114.4,
 - ii. the rate of alcohol-related non-domestic assault in the LGA and Surry Hills were 674.4 and 465.1 respectively, compared to the NSW average of 130.7,
 - iii. the rate of malicious damage to property in the LGA and Surry Hills were 1109.7 and 1614.0 respectively, compared to the NSW average of 788.7, and
 - iv. the rate of alcohol-related offensive conduct in the LGA and Surry Hills were 283.7 and 308.2 respectively, compared to the NSW average of 42.8.
10. NSW Recorded Crime Statistics 2017 setting out the proportion of incidents by offence type, day of week and time of day in the LGA.
11. Notice of determination dated 2 February 2018, issued by City of Sydney Council, approving development application D/2017/1682 in relation to the Proposed Premises.
12. Premises plan for the Proposed Premises, dated 2 February 2018.
13. Submissions from members of the community on 16 and 23 February 2018.

14. Submissions from NSW Police on 19 and 23 February 2018 in relation to the Application.
15. Submissions from a commercial competitor on 19 and 26 February 2018.
16. Liquor Licensing records from L&GNSW as at 26 February 2018 showing the key licence details of the Licence held at the Current Premises.
17. Certification of Advertising signed on 14 March 2018.
18. Liquor licensing records from L&GNSW as at 19 April 2018 outlining the density of various types of liquor licences in Surry Hills, the LGA and NSW, and listing all packaged liquor licences in the LGA, and all packaged liquor licences and hotel licences in Surry Hills.
19. Correspondence between the Applicant and L&GNSW Licensing staff between 26 February and 30 April 2018 in relation to the Application.
20. Google map images extracted from the Google website on 26 April 2018, showing the location and photos of the Proposed Premises in map view, earth view and street view.
21. Plan of management for the Proposed Premises dated 27 April 2018.