



Mr Brett Tobin
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4 April 2017

Dear Mr Cusack

APPLICATION NO: 1-4981442761
APPLICATION FOR: New On-Premises (Catering) Licence with Sale on Other Premises Authorisation

PROPOSED TRADING HOURS: Monday to Sunday 10:00am to 10:00pm

APPLICANT: Mr Leigh James Hudson

LICENSED PREMISES NAME: Sakeshop

PROPOSED PREMISES LOCATION: Shops 1 & 2, 105-107 Percival Road, Stanmore NSW 2048

ISSUE: Whether to grant or refuse an application to grant a new on-premises licence with sale on other premises authorisation.

LEGISLATION Sections 3, 11A, 21-28, 40, 45 of the *Liquor Act 2007*

INDEPENDENT LIQUOR AND GAMING AUTHORITY DECISION – APPLICATION FOR ON-PREMISES (CATERING) LICENCE WITH SALE ON OTHER PREMISES AUTHORISATION

The Independent Liquor and Gaming Authority considered application number 1-4981442761 for a new on-premises (catering) liquor licence with an associated sale on other premises authorisation (Application) at its meeting on 22 February 2017 and, pursuant to sections 45 and 25(6) of the *Liquor Act 2007*, decided to **grant** the Application subject to the following licence conditions:

1. Trading Hours

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. The sale on other premises authorisation can only be utilised for functions, occasions or events, which are by invitation only.
4. No drinks commonly referred to as shots, shooters, slammers and/or bombs are to be sold or supplied.
5. The business of providing the catering service must be for fee, gain or reward. Functions held pursuant to the catering service must be pre-booked. A catering service booking register must be maintained.
6. The premises are to be operated at all times in accordance with the Plan of Management dated August 2016 as may be varied from time to time after consultation with the Local Area Commander of NSW Police.
7. The licensee must ensure that the patron capacity for catering functions/events does not exceed 20.
8. CCTV cameras are to be installed so as to capture all areas of the licensed premises including the cash register as well as each entry point of the proposed licensed premises. The licensee must maintain a closed-circuit system in accordance with the following requirements:
 - a) The system is to operate from opening time until an hour after the premises is required to close.
 - b) Recordings must be in a digital format and at a minimum of 15 frames per second.
 - c) Any recorded image must specify the time and date of the recorded image.
 - d) The system's camera must cover the following areas:
 - I. All entry and exit points to the premises.
 - II. The footpath immediately adjacent to the licenced premises.
 - III. All publicly accessible areas (other than the toilets) on the premises.

The licensee must also:

- e) Keep all recordings made by the CCTV system for at least 30 days,
- f) Ensure that at least one staff member is on the premises at all times the system is operating who is able to access and fully operate the system, including downloading and producing recordings of CCTV footage; and
- g) Provide any recordings made by the system to a Police Officer or Inspector within 24 hours of any request by a Police Officer or Council or LGNSW Inspector to provide such recordings.

If you have any enquiries about this letter, please contact the case manager via email to Kieran.McSherry@justice.nsw.gov.au

Yours faithfully



Philip Crawford

Chairperson

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

STATEMENT OF REASONS

DECISION

1. The Independent Liquor & Gaming Authority (“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 lodged on 31 August 2016 (“the Application”) for a new on-premises licence with sale on other premises authorisation, as all of those parties 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.
2. The Application and its associated other premises authorisation are approved pursuant to sections 45 and 25(6) of the *Liquor Act 2007* (“the Act”).
3. 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) of the Act.

MATERIAL CONSIDERED BY THE AUTHORITY

4. In making this decision, the Authority has considered the Application 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 maintained by Liquor & 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. The Application material and submissions considered when making this decision are listed and, in some cases, briefly summarised in the Schedule.
5. The Authority notes by way of background that in addition to this Application to grant a new on-premises licence, the Applicant has simultaneously lodged an application for a new packaged liquor licence, which will occupy a separate part of the same building in which the Premises is located, and will facilitate a retail element of the same business. That application is dealt with in a separate correspondence.
6. The Authority also notes that the community identified for the Application, Inner West Council Local Government Area (“LGA”), has only recently been formed by amalgamation of a number of councils including Leichhardt, Ashfield and Marrickville councils. Prior to amalgamation the Premises was located in Marrickville LGA. Much of the socio demographic and crime data has not been reissued since this amalgamation and the Authority has relied on previous data in respect of the component former local government areas.

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 Act and the *Liquor Regulation 2008* (Regulation). 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. When considering the grant of an on-premises licence with a catering service, the Authority will consider whether the proposed administrative action is in the public interest, informed by the statutory objects and considerations prescribed by section 3 of the Act. The Authority will consider the public interest in respect of the relevant community that is likely to be serviced by and impacted by the licence. On the material before it the Authority is satisfied that this community will predominantly comprise the community within the Inner West Council LGA.

KEY FINDINGS

10. The Authority is satisfied, based on the Application material before it, that for the purposes of Section 40 of the Act, the Application has been validly made and minimum procedural requirements have been satisfied.
11. 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 licensed venue of the kind proposed in the Application. The Authority notes that no probity issues were raised with regard to the Applicant following consultation with law enforcement agencies, including NSW Police (“Police”) and LGNSW.
12. 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 with the commencement of licensed trading. This finding is made on the basis of the *Plan of Management* dated August 2016.
13. The Authority is also satisfied, for the purposes of section 45(3)(c) of the Act, that the 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 development application DA201600197 (“DA”)

and its modification DA201600197.01 approved by Inner West Council (“Council”) on 4 July 2016 and 28 November 2016.

Analysis of Relevant Facts

14. Noting the absence of any community opposition to the Application (with the exception of local Police, discussed below) the Authority is satisfied that granting the Application is broadly consistent with the “expectations, needs and aspirations of the community”, furthering an object of section 3(1)(a) of the Act.
15. The Authority is satisfied, on the basis of the information provided by the Applicant, that the grant of the Application will allow for the provision of varied events, on and away from the Premises, including educational classes focused on liquor appreciation and Japanese cooking. The proposed catering service will contribute to the reasonable development, in the public interest, of related industries including the hospitality and entertainment industries, in the community. In this respect, granting the Application will advance the statutory object of section 3(1)(c) of the Act.
16. The Authority has given careful consideration to all of the statutory considerations in section 3(2) of the Act, particularly the considerations in sections 3(2)(a) and (c).
17. The Authority has had regard to the submission made by NSW Police in relation to the absence of toilet facilities for patrons and sound barriers in the atrium area of the Premises. With respect to these concerns the Authority is satisfied that noise issues will be constrained by the addition of glass barriers to the atrium area of the Premises as is evidenced by the DA modification provided by the Applicant (DA201600197.01). With respect to the provision of toilet facilities, the Authority is satisfied by the Applicant’s submission that the existing facilities will be made available to guests during classes and functions and that these facilities will be sufficient given the Applicant’s acceptance of a condition limiting the number of patrons to 20 during these classes and functions. Given these measures the Authority is satisfied that granting this licence will not detract from the amenity of community life as is required by section 3(2)(c) of the Act.
18. As for prevailing licence density in the relevant community, LGNSW licensing records indicate that the Marrickville LGA has a higher rate of on-premises liquor licences per 100,000 persons than NSW as a whole. While this factor is of concern to the Authority it is ameliorated to some extent by the condition accepted by the Applicant, limiting the licence to 20 patrons at events and classes, which significantly limits the scale of the proposed business.
19. With regard to prevailing crime data in the relevant community, BOCSAR Crime Maps for the period between October 2015 – September 2016 indicate that the Premises:
 - (a) Is located within a medium density *hotspot* for incidents of *domestic assault*.
 - (b) Is not located within a density *hotspot* for incidents of *non-domestic assault*.
 - (c) Is located within a high-density *hotspot* for incidents of *malicious damage to property*.

20. The BOCSAR Report on NSW Recorded Crime Statistics July 2010 – June 2015 records that during the 2014/15 financial year Marrickville LGA recorded lower rates per 100,000 persons of population for the occurrence of *alcohol related domestic violence assaults* and *alcohol related offensive behaviour offences* than NSW as a whole, although the rate of *alcohol related non-domestic violence assault* and *assault police* incidents were above the State-wide rate.
21. The same report indicates that Ashfield LGA recorded lower rates per 100,000 persons of population for the occurrence of *alcohol related assaults (both domestic violence related and non-domestic violence related)*, *alcohol related assault police*, and *alcohol related offensive behaviour offences* than NSW as a whole. Similarly, Leichhardt LGA recorded lower rates per 100,000 persons of population for the occurrence of *alcohol related assaults (both domestic violence related and non-domestic violence related)*, and *alcohol related offensive behaviour offences* than NSW as a whole. Leichhardt LGA recorded slightly higher rates per 100,000 persons of population for the occurrences of *alcohol related assault Police* offences than NSW as a whole.
22. While the presence of *hotspots* for the concentration of *malicious damage to property* and *domestic violence* as well the rates of alcohol related crime in the Marrickville LGA are of significant concern to the Authority, the scale of the Application is a mitigating factor that will serve to minimise alcohol related harm and the misuse and abuse of liquor as the number of patrons present at events serviced by the licensee are limited to a maximum of 20. Additionally, the licensed trading hours sought by the Applicant are within standard hours - from 10:00am to 10:00pm Monday to Sunday and the Applicant consents to the 6-hour closure period condition (between 4:00AM to 10:00AM).
23. The Authority notes, on the basis of the ABS Socio-Economic Indexes For Areas (SEIFA) data, that both the Marrickville LGA and the suburb of Stanmore are relatively advantaged compared to other LGAs and suburbs in NSW on the Index of Relative Socio-Economic Advantage and Disadvantage, ranking in the 9th decile on the index (with a decile ranking of 10 being the most advantaged). The Authority is aware from its recent recourse to SEIFA data for the Ashfield and Leichhardt LGAs that the population in those communities are also quite socio-economically advantaged. In this respect, the Authority is satisfied that social disadvantage does not pose an additional complicating factor when considering the scope for adverse social outcomes in relation to the consumption of liquor.
24. When making this decision the Authority has had regard to all of the conditions to which the licence will be subject and the detailed and enforceable measures set out in the Plan of Management dated August 2016.

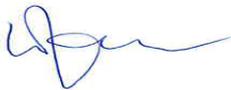
Conclusion

25. 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 Police and Council, and all other parties were consulted as required by the legislation.

- 26.** 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.
- 27.** The Application is granted pursuant to section 45 of the Act. The sale on other premises authorisation is granted with respect to the catering service pursuant to section 25(6) of the Act.

Decision Date: 22 February 2017



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. ABS SEIFA data sourced from the 2011 Census for Marrickville LGA and the state suburb of Stanmore.
2. 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 Marrickville LGA was **25.2** per 100,000 persons, 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 Marrickville LGA was **212.3** 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 Marrickville LGA was **112.8** per 100,000 persons, below the New South Wales rate of **122.6** per 100,000 persons;
 - (d) the rate of *offensive behaviour* offences recorded by NSW Police as alcohol related across the Marrickville LGA was **78** per 100,000 persons, below the State-wide rate of **88.2** per 100,000 persons.
3. 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 Ashfield LGA was **9.0** per 100,000 persons, below 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 Ashfield LGA was **74.2** per 100,000 persons, below 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 Ashfield LGA was **80.9** per 100,000 persons, below the New South Wales rate of **122.6** per 100,000 persons;
 - (d) the rate of *offensive behaviour* offences recorded by NSW Police as alcohol related across the Ashfield LGA was **18.0** per 100,000 persons, below the State-wide rate of **88.2** per 100,000 persons.
4. 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 Leichhardt LGA was **18.9** per 100,000 persons, slightly 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 Leichhardt LGA was **108.4** per 100,000 persons, below 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 Leichhardt LGA was **72.2** per 100,000 persons, below the New South Wales rate of **122.6** per 100,000 persons;
 - (d) the rate of *offensive behaviour* offences recorded by NSW Police as alcohol related across the Leichhardt LGA was **67.1** per 100,000 persons, below the State-wide rate of **88.2** per 100,000 persons.

5. BOCSAR Crime Maps based upon data from October 2015 to September 2016 detailing hotspots for the concentration of offences near the location of the Premises.
6. LGNSW liquor licence records as of 5 January 2017, indicating that density of on-premises liquor licences per 100,000 persons in NSW is **114.11** compared to the suburb of Stanmore which is **64.91** and Marrickville LGA which is **151.63**.
7. Documents relating to the Applicant, including a National Police Certificate dated 24 June 2016, a LGNSW Competency Card, Drivers Licence, Medicare Card and Australian Passport.
8. DA number DA201600197 issued by Council on 4 July 2016.
9. Floor plans of the Premises indicating the boundaries of the proposed on-premises and packaged liquor licence areas dated 10 July 2016.
10. Applicant *Plan of Management* dated August 2016.
11. Occupation Certificate for the Premises issued by Benchmark Building Certifiers on 18 August 2016.
12. Local Consent Authority Notice, Public Consultation Site Notice and Police Notice. Signed by the Applicant on 30 August 2016.
13. Application Form lodged on 31 August 2016.
14. Submission from Sergeant Carol Ray of NSW Police Marrickville Local Area Command dated 28 September 2016. Police raise concerns that at the time of inspection, the atrium area of the Premises was not enclosed and that there was only one toilet facility, which was designated for staff use only. Police contend that these factors may negatively impact local amenity if not addressed.
15. Email from the Applicant's solicitor Mr Brett Tobin to Licensing Staff dated 11 November 2016, providing additional information and accepting the conditions proposed by licensing staff in an email from staff dated 9 November 2016.
16. DA modification number 201600197.01 issued by Council, dated 28 November 2016.
17. NSW Health Stats Reports, dated 16 January 2017 for Marrickville LGA indicating the following:
 - The Smoothed Estimate of Standardised Separation Ratio for alcohol attributable hospitalisations for 2013-2015 was 142.2, compared to the NSW average set of 100.
 - The Smoothed Estimate of Standardised Mortality Ratio for alcohol attributable deaths for 2012-2013 was 92.7, compared to the NSW average set of 100.
18. Submission from LGNSW Compliance Operations dated 24 January 2017 including the results from the application of the automated Environment and Venue Assessment Tool and advising that LGNSW does not intend to carry out any further assessment.
19. Submission from the Applicant's solicitor Mr Tobin dated 30 January 2017 responding to the Police submission dated 28 September 2016. The Applicant

advises that the toilet will not be for staff use only and that construction has begun to enclose the atrium area with glass.

- 20.** Submission from the Applicant's solicitor Mr Tobin dated 30 January 2017, attaching revised boundary plans indicating the proposed licensed area of the Premises as well as the proposed area of the associated packaged liquor licence.
- 21.** Submission from Mr Jeff Norman, Town Planner, Council, dated 31 January 2017. Council advises that the Premises were approved to host classes and events limited to 1 event per week with up to 15-20 patrons attending.
- 22.** Email from licensing staff dated 1 February 2017, requesting the Applicant's consent to conditions restricting functions/classes to one per week and with a maximum capacity of 20.
- 23.** Response from the Applicant's solicitor Mr Tobin, to licensing staff dated, 8 February 2017, advising that the Applicant consents to a condition limiting patron capacity to 20 but not a condition limiting function/classes to one per week. The Applicant submits that the operational details that were submitted to Council in the Statement of Environmental Effects for DA 201600197 advised that one function/class per week was 'anticipated'. The Applicant proposes the condition that "catering functions/classes are limited to an average of one per week at the venue".