



Mr Paul Allen Shelley
10 Saunders Street
Narrabri NSW 2390
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11 April 2017

Dear Mr Shelley,

APPLICATION NO: 1-4965956555; 1-5054537735
APPLICATION FOR: Extended Trading Authorisation and
Change of Boundaries

CURRENT TRADING HOURS: Consumption on premises – Theatrical
Performances
Monday to Saturday 10:00AM – 12:00AM
Sunday 10:00AM – 10:00PM
Consumption on premises – Function,
Occasion or Event
Monday to Sunday 10:00AM to 12:00AM
Sunday 10:00AM – 10:00PM

APPLICANT: Mr Paul Allen Shelley

LICENCED PREMISES NAME: The Crossing Theatre

PREMISES LOCATION: 117 Tibbereena St
NARRABRI NSW 2390

ISSUE: Whether to grant or refuse an application for
an extended trading authorisation and
whether to change the boundaries of the
licensed area of the Premises.

LEGISLATION Sections 3, 11A, 45, 48, 49, 51, 94 *Liquor Act
2007*

**INDEPENDENT LIQUOR AND GAMING AUTHORITY DECISION – APPLICATION FOR
EXTENDED TRADING AUTHORISATION AND CHANGE OF BOUNDARIES – THE
CROSSING THEATRE**

The Independent Liquor and Gaming Authority considered application number 1-5054537735 at its meeting on 25 January 2017 and, pursuant to section 49(2) of the *Liquor Act 2007* (Act), decided to **grant** the application for an extended trading authorisation subject to the following further conditions, in addition to those with respect to which the licence is already subject:

1. Trading Hours

Consumption on premises – Theatrical Performances

Monday to Saturday 10:00AM – 01:30AM
Sunday 10:00AM – 10:00PM

Consumption on premises – Function, Occasion or Event

Monday to Saturday 10:00AM to 01:30AM
Sunday 10:00AM – 10:00PM

2. The premises are to be operated at all times in accordance with *the Plan of Management* dated May 2016, as submitted to LGNSW on 12 January 2017 and as may be varied from time to time after consultation with the Local Area Commander of NSW Police.
3. The business authorised by this licence must not operate with a greater overall level of social impact on the wellbeing of the local and broader community than what could be reasonably expected from the information contained in the community impact statement, application and other information submitted in the process of obtaining the extended trading authorisation.

The Authority has also decided to grant, pursuant to section 94 of the Act, an accompanying application to change the boundary of the licensed area of the Premises. Enclosed is a statement of reasons in relation to the decision to grant the extended trading authorisation, which was notified informally to you by licensing staff on 31 January 2017.

If you have any enquiries about this letter, please contact the case manager via email to trudy.tafea@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 an extended trading authorisation (ETA) filed on 27 October 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.

Legislative Framework

3. The legal requirements for the making of a valid application for an extended trading authorisation are provided by section 51 of the *Liquor Act 2007* and the *Liquor Regulation 2008* (Liquor Regulation). The power to grant an extended trading authorisation is provided by section 49(2) of the Act.
4. 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.*
5. 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.

6. An application for an extended trading authorisation in respect of an on-premises licence is a “relevant application” within the meaning of section 48(2) of the Act for which a Category B CIS is required.
7. 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”.
8. 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 Narrabri, while the “broader community” comprises the responsible local government area (LGA), the Narrabri Shire Council.

Analysis of Relevant Facts

9. The Authority is satisfied, based on the Application and CIS material before it, that for the purposes of Section 51(2) of the Act, the Application has been validly made and minimum procedural requirements with regard to the Application, CIS and community consultation have been satisfied.
10. The Authority notes section 51(3) of the Act, which 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.
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 licenced venue of the kind proposed in the Application. The Authority notes that no probity issues were raised regarding the Applicant following consultation with law enforcement agencies, including Police and LGNSW.
12. The Authority is also satisfied, for the purposes of section 45(3)(c) of the Act, that the proposed extended trading hours do not require further development consent from the consent authority. This finding is made on the basis of the Notice of Application to the consent authority, endorsed by Mr Trent Bruinsma of Narrabri Shire Council (Council), dated 30 September 2016.
13. The Authority is satisfied, for the purposes of section 49(8) of the Act, that responsible service of alcohol practices are in place and will remain in place and that the extended trading period will not result in the frequent undue disturbance of the quiet and good order of the neighbourhood of the Premises. This finding is made on the basis of the *Plan of Management* dated May 2016 that was provided by the Applicant on 12 January 2017, noting the absence of evidence of any prevailing undue disturbance occurring on or near the Premises.

Social Impact – Positive Benefits

14. The Authority notes that Applicant did not receive any adverse comments or complaints from the communities in question. Police do not object to the Application, but propose two licence conditions. On this basis, and noting that the

Premises has been operating as a theatre on a longstanding basis with a liquor licence commencing 8 August 2006, the Authority is satisfied that granting this Application is consistent with the “expectations, needs and aspirations of the community” in respect of the local community, being an object of section 3(1)(a) of the Act.

15. The Authority is satisfied, based on the information provided in the CIS and additional submissions from the Applicant that the extended licensed hours will provide some additional benefit, by way of convenience to those members of the local and broader community who wish to enjoy the licensed facilities of the venue beyond the current closing time of midnight. Granting the Application will also give the venue flexibility to host a greater number and variety of events, furthering the object of section 3(1)(a) of the Act.
16. On the basis of the information provided in the Application and CIS, the Authority is also satisfied that extending the hours to 1:30 am will also allow greater capacity for the venue to attract commercial touring artists and performers to the town, and provide additional economic and cultural opportunities to both visitors and residents.
17. The Authority has noted ABS Socio-Economic Indexes For Areas (SEIFA) data based on the 2011 Census indicating that the State suburb of Narrabri ranked in the 3rd decile and the Narrabri Shire Council ranked in the 4th decile compared to other local government areas and state suburbs in NSW on the Index of Relative Socio-Economic Advantage and Disadvantage (with a decile ranking of 10 being the most advantaged).
18. Publicly available licensing records as per LGNSW indicate that Narrabri Shire Council currently has within that broader community:
 - i) 8 *registered club licences*
 - ii) 14 *full hotel licences*
 - iii) 12 *on-premises licences*
 - iv) 4 *packaged liquor licences*.
19. Noting that the Premises is the only licenced theatre venue in the Narrabri Shire, the Authority finds that granting the Application will also reasonably develop, in the public interest, the liquor industry in respect of the local and broader community in furtherance of the statutory object in section 3(1)(b) of the Act by diversifying the options for late night licensed entertainment. As a type of business that is also likely to serve visitors to the area it will also advance, to a modest extent, the responsible development of related tourism and hospitality industries in the local and broader community for the purposes of section 3(1)(c) of the Act.

Social Impact – Negative Impacts

20. The Authority considers that there is a risk that any on-premises licensed premises when operating during extended trading hours may cause adverse social impacts upon the community over time, including amenity impacts upon the neighbourhood and local community.

21. The Authority notes that there is cause for concern arising from the BOCSAR Crime Maps for October 2015 to September 2016, which indicate that the Premises:
- i) is located near a *low-density hotspot* for incidents of *domestic assault*
 - ii) is located near a *medium-density hotspot* for incidents of *non-domestic assault*
 - iii) Is located within a *medium-density hotspot* and close to a *high-density hotspot* for incidents of *malicious damage to property*.
22. There is also cause for concern with respect to the broader community arising from the BOCSAR crime data for 2014-2015, which indicates that the Narrabri Shire Council recorded significantly higher rates per 100,000 persons than NSW as a whole for incidents of alcohol-related *domestic violence related assault*, alcohol-related *non-domestic violence related assault*, and alcohol-related *offensive behaviour*.
23. However, the licence type - whose designated business purpose is operation as a cinema and theatre venue, not the supply of liquor, provides a substantial mitigating factor when assessing the scope for negative social impact. The supply of liquor will be ancillary to the designated primary purpose of this licensed premises. The Authority is reassured by the absence of any objection from within the communities, particularly those agencies with a law enforcement capacity, including Council, Police and LGNSW.
24. The Authority has also had regard to the harm minimisation and operational measures set out in the *Plan of Management* as submitted to LGNSW on 12 January 2017 that will be enforceable through a licence condition, including measures that were proposed by Police.
25. The evidence and material before the Authority satisfies it that the Premises is the site of a longstanding licensed venue of substantial benefit to the local and broader community. Extending licensed service for an additional hour and thirty minutes, six nights per week, will increase the convenience and amenity of the licence and advance the primary purpose of the venue, with limited negative risks apparent from this type of licensed enterprise.

Conclusion

26. 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 include NSW Police, the Applicant, Council, RMS, neighbouring occupiers, NSW Health and Department of Community Services and all other parties required to be consulted under the legislation.
27. 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

granting this authorisation would not be detrimental to the well-being of these local and broader communities.

28. The Application is **granted** pursuant to section 49(2) of the Act. For the purposes of section 49(6) the extended licensed trading hours granted pursuant to this authorisation are between midnight and 1:30AM Monday through Saturday. These extended hours apply to the whole of the Premises.
29. The Authority has determined, pursuant to section 94 of the Act and on the information provided in the Application and CIS, that varying the licensed area of the Premises, encompassing additional lobby and cinema facilities, is in the public interest, having regard to the nature of the liquor licensed Premises and the service that it provides to the relevant community. The boundary of the licensed area is varied in accordance with the diagram of the Premises provided by the Applicant on 10 January 2017.
30. In making these decisions 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.

Decision Date: 25 January 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. Application Form to change boundaries of licensed premises, lodged 28 September 2016, number 1-4965956555.
2. Notice of Application to the consent authority, received on 30 September 2016 and endorsed by Mr Trent Bruinsma, Venue Manager of Council, indicating that development consent is not required to permit the proposed activity.
3. Application Form for ETA lodged on 27 October 2016.
4. CIS lodged 27 October 2016. The Applicant provides additional material in the CIS in support of the Application, indicating that consultations were held with stakeholders, with no objections and issues raised except by Police. The Applicant contends that should the ETA be granted, it will allow for greater capacity of the venue to provide additional opportunities to attract local and touring performers, thereby providing additional opportunities to residents and visitors. The Applicant also contends that it would allow for a broader range of events to be hosted at the Premises. A diagram of the vicinity of the Premises was also provided, showing nearby amenities.
5. Submission from Mr Henry Trow of the Licensing Division of Barwon LAC, referred to as Police, dated 5 December 2016, indicating no objections, but outlining two proposed conditions to be attached to the license. The Applicant was informed via email by LGNSW that the Police had proposed such conditions to be imposed, requesting a response.
6. Email submission by the Applicant, dated 10 January 2017, which attaches a coloured marked map indicating the boundaries of relevant licensed areas.
7. Copy of LGNSW extract of key liquor licence details recorded as at 10 January 2017 for Licence number LIQO624014382 in the trading name of The Crossing Theatre.
8. Report to the Authority dated 11 January 2017 from Compliance Branch of LGNSW advising that the Application was assessed using the EVAT, which shows a moderate risk assessment.
9. Email submission from the Applicant dated 12 January 2017, in which a response is provided to LGNSW's request (of the same date) to provide evidence that NSW Health, the Department of Community Services, RMS, and the Local Aboriginal Land Council have been consulted as stakeholders as part of the Application's CIS (Category B), prior to the lodgement of the Application.
10. The Applicant's *Plan of Management*, dated May 2016, as submitted to LGNSW on 12 January 2017.
11. 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.

12. Publicly available licensing records as per LGNSW for Narrabri Shire Council.
13. Report on *NSW Recorded Crime Statistics July 2010 – June 2015* on crime by local government area and alcohol related status, indicating that across Narrabri Shire Council during July 2014 to June 2015:
 - (a) the rate of alcohol related *assault Police* incidents recorded by NSW Police was **14.5** per 100,000 persons, below the State-wide rate of **18.2** per 100,000 persons.
 - (b) the rate of alcohol related *non-domestic violence related assault* incidents recorded by NSW Police was **334.2** per 100,000 persons, substantially above the State-wide rate of **144** per 100,000 persons;
 - (c) the rate of alcohol related *domestic violence related assault* incidents recorded by NSW Police was **225.2** per 100,000 persons, well above the New South Wales rate of **122.6** per 100,000 persons;
 - (d) the rate of alcohol related *offensive behaviour* offences recorded by NSW Police was **334.2** per 100,000 persons, substantially above the State-wide rate of **88.2** per 100,000 persons.
14. ABS SEIFA data based on the 2011 Census for the State suburb of Narrabri and the Narrabri Shire Council.