

<b>Reference No.</b>	1-5607508306
<b>Application for</b>	Review of a decision made by a delegate of the Independent Liquor and Gaming Authority under section 45(1) of the <i>Liquor Act 2007</i> .
<b>Applicant</b>	Superintendent John Gralton NSW Police – Commander, Newcastle City Local Area Command of NSW Police
<b>Licence name</b>	Big Poppys LIQS220000081
<b>Premises</b>	Level 1, 6/23 Watt Street NEWCASTLE NSW 2300
<b>Date of decision</b>	7 August 2017
<b>Issue</b>	Whether to confirm, vary or revoke the decision made by a delegate of the Independent Liquor and Gaming Authority under section 45(1) of the <i>Liquor Act 2007</i> on 7 August 2017.
<b>Legislation</b>	Section 36A of the <i>Gaming and Liquor Administration Act 2007</i> and sections 3, 45 and 53 of the <i>Liquor Act 2007</i> .

19 January 2018

Dear Sir/Madam

**Application for review of decision by a delegate of the Independent Liquor and Gaming Authority – Big Poppys, Newcastle**

On 31 August 2017, the Independent Liquor and Gaming Authority (“Authority”) received an application for review (“Review Application”) under section 36A of the *Gaming and Liquor Administration Act 2007* (“GALA Act”) from Superintendent John Gralton of the Newcastle Local Area Command of NSW Police (“Review Applicant”).

The Review Applicant sought variation of a decision dated 7 August 2017 (“Reviewable Decision”) made by Mr Matt Weber, Acting Manager of Licensing (Business Licensing), in his capacity as a delegate of the Authority (“Delegate”).

In the Reviewable Decision, the Delegate decided, pursuant to section 45(1) of the *Liquor Act 2007* (“Liquor Act”) to grant a new small bar liquor licence number LIQS220000081 for premises proposing to trade under the licensed business name “Big Poppys”, located at Level 1, 6/23-Watt Street, Newcastle NSW 2300 (“Premises”).

In making the Reviewable Decision, the Delegate did not impose certain conditions upon the licence that had been proposed by NSW Police in submissions in response to the licence application.

The Review Applicant does not contest the grant of the licence, but seeks variation of the Reviewable Decision so that the conditions proposed by Police are imposed by the Authority.

The Authority has considered the Review Application, all material before the Delegate when making the Reviewable Decision and all further evidence and submissions that were provided during the course of this review.

The Authority has had regard to relevant legislation including its administrative review powers under section 36A of the GALA Act, the power to determine new licence applications under section 45 of the Liquor Act, the power to impose licence conditions under section 53 of the Liquor Act and the statutory objects and considerations prescribed by section 3 of the Liquor Act.

Pursuant to section 36A(4) of the GALA Act, the Authority has decided to **vary** the Reviewable Decision and impose the following additional conditions upon the licence:

- 1) The following drinks must not be sold or supplied at any time
  - a) Any drink commonly referred to as a “shot” that contains no more than 30ml of spirits or liqueur that is designed to be consumed rapidly.
  - b) Any drink containing alcohol is not to be mixed with an energy drink.
- 2) The following restrictions and conditions will apply upon the sale of alcohol after 10:00pm;
  - a) No mixed drinks with any more than thirty (30) mls of alcohol.
  - b) No RTD drinks with an alcohol volume greater than 5%
  - c) Not more than four drinks may be served to any one patron at one time.
- 3) The noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 07:00am and midnight.
- 4) The licensee or its representative must join and be an active participant in the Local Liquor Accord.

Pursuant to section 36C of the GALA Act, the Authority is required to publish a statement of reasons for decisions listed in clause 8 of the *Gaming and Liquor Administration Regulation 2016*. This statement of reasons has been prepared in the context of a high-volume jurisdiction and will be published to the Department’s website as soon as practicable.

If you have any questions about this letter, please contact the Authority Secretariat via email at [ilga.secretariat@liquorandgaming.nsw.gov.au](mailto:ilga.secretariat@liquorandgaming.nsw.gov.au)

Yours faithfully,



Philip Crawford  
Chairperson

For and on behalf of the Independent Liquor & Gaming Authority

## STATEMENT OF REASONS

### Background

1. Pursuant to section 36A of the *Gaming and Liquor Administration Act 2007* (“GALA Act”), the Independent Liquor and Gaming Authority (“Authority”) is authorised to review certain decisions made under the gaming and liquor legislation made by delegates of the Secretary of the New South Wales Department of Industry working within Liquor and Gaming NSW (“LGNSW”), as well as departmental officers exercising power delegated by the Authority itself.
2. On 31 August 2017, an application for review (“Review Application”) was lodged by Superintendent John Gralton of the Newcastle Local Area Command of NSW Police (“Review Applicant”) in relation to a decision made by a delegate of the Authority (“Delegate”) under section 45(1) of the *Liquor Act 2007* (“Liquor Act”) on 7 August 2017 (“Reviewable Decision”).
3. In the Reviewable Decision, the Delegate decided, pursuant to section 45(1) of the Liquor Act to grant a new small bar liquor licence in respect of licensed premises proposed to trade as *Big Poppys*, located at Level 1, 6/23 Watt Street Newcastle NSW 2300 (“Premises”). In doing so, the Delegate did not impose certain licence conditions that had been proposed by NSW Police and consented to (during the licence application process) by the licence applicant company itself, Rosekelly Property Holdings Pty Ltd (“Licence Applicant”) and the company director for the Licence Applicant, Mr Dallas Mark Rosekelly.
4. The new licence was granted to the Licence Applicant, Rosekelly Property Holdings Pty Ltd. It permits the sale or supply of liquor for consumption on the Premises during licensed trading hours from 12:00 noon to 12:00 midnight Monday to Saturday and from 12:00 noon to 10:00 pm Sunday.
5. During the licence application process, Crime Manager Steve Laksa of the Newcastle City Local Area Command of NSW Police had made a submission to licensing staff dated 28 March 2017 that if the new licence is granted, it should be subject to seven licence conditions (relating to the hours of operation, drinks not to be sold at any time, restrictions on the sale of alcohol after 10:00pm, noise level, patron numbers, membership of the local liquor accord and CCTV).
6. Newcastle City Local Area Command of NSW Police also provided a document dated 17 March 2017, which was signed by Mr Dallas Mark Rosekelly, the company director for the Licence Applicant dated 24 March 2017, consenting to the seven conditions requested by Police being placed on the licence.
7. In addition to this, the Licence Applicant’s solicitor, Mr Paul O’Sullivan of Bale Boshev Lawyers, sent an email to LGNSW licensing staff dated 1 August 2017 (during the licence application process) advising that the “Applicant consents to the Police conditions”.
8. As part of the Review Application, Police seek that the Reviewable Decision be varied with the following four conditions being imposed on the licence.
9. Police submitted that harm minimisation measures had been recently imposed with respect to a number of similar licensed premises in the Newcastle CBD including

venues operating in close proximity to the Premises. The four conditions proposed by Police for this licence ("Police Conditions") include:

Drink restriction conditions ("Drink Restriction Conditions")

- 1) The following drinks must not be sold or supplied at any time
  - a) Any drink commonly referred to as a "shot" that contains no more than 30ml of spirits or liqueur that is designed to be consumed rapidly.
  - b) Any drink containing alcohol is not to be mixed with an energy drink
- 2) The following restrictions and conditions will apply upon the sale of alcohol after 10:00pm;
  - a) No mixed drinks with any more than thirty (30) mls of alcohol
  - b) No RTD drinks with an alcohol volume greater than 5%
  - c) Not more than four drinks may be served to any one patron at one time.

Noise condition ("Noise Condition")

- 3) The noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 07:00am and midnight.

Liquor accord condition ("Liquor Accord Condition")

- 4) The licensee or its representative must join and be an active participant in the Local Liquor Accord.

10. In the Review Application, the Review Applicant contends that without these Police Conditions, there is an "extremely high potential" for the operation of the Premises to result in an increase in assaults which would place the community at risk. Police further contend that the uniform imposition of these conditions by licensing decision makers across multiple premises in the Newcastle CBD has been "instrumental" in the reduction of alcohol related crime, as part of the harm minimisation strategies which Police have sought to achieve over a number of years. Police submit that they are "extremely fearful" that without the uniform imposition of these conditions, there will be a rise in alcohol related crime in the Newcastle CBD.
11. In response to the Review Application the licensee's solicitor, Mr Paul O'Sullivan of Bale Boshev Lawyers, has advised in an email to the Authority Secretariat dated 29 September 2017 that the licensee is not in a position to object to the imposition of the Police Conditions by reason that while applying for the licence the licensee had consented to these measures in a document dated 24 March 2017, with such consent confirmed in a further email to licensing staff dated 1 August 2017.

## **Legislative framework**

12. Section 36A(1)(d) of the GALA Act prescribes a decision of a designated Public Service employee, or other Public Service employee, acting under a delegation given by the Authority in respect of an application made under a provision of the gaming and liquor legislation that is prescribed by the regulations to be a "reviewable decision".
13. Clause 6(a)(i) of the *Gaming and Liquor Administration Regulation 2016* ("GALA Regulation") prescribes a decision in respect of an application for the granting or

removal of a small bar licence that is made on or after 1 February 2016 to be a reviewable decision.

14. Under section 36A(2) of the GALA Act, subject to subsection (2A), any person who is aggrieved by a reviewable decision may, in accordance with the regulation and on payment of such fees as may be prescribed by the regulations, apply in writing to the Authority for a review of the decision.
15. Section 36A(2A) of the GALA Act, provides that an application for a review of a delegated decision may only be made by:
  - 1) an applicant for, or the holder of, a gaming or liquor licence, or
  - 2) a person:
    - a) who was required to be notified of the application the subject of the delegated decision, and
    - b) who made a submission to the Authority or the Secretary in respect of that application.
16. Section 36A(4) of the GALA Act provides that in determining an application for review, the Authority may confirm, vary or revoke the decision under review.
17. Under section 36C of the GALA Act, the Authority is required to publish statements of reasons with respect to those types of decisions prescribed by clause 8 of the GALA Regulation as requiring publication.
18. Clause 8(a) of the GALA Regulation prescribes, for the purpose of section 36C(1) of the GALA Act, a decision by the Authority under section 36A of the Act in relation to a reviewable decision within the meaning of that section, as requiring decisions to be published.
19. In determining the Review Application, the Authority has had regard to the objects and considerations provided by section 3 of the Liquor Act, which states:

### **3 Objects of the Act**

- (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 expectation, needs and aspirations of the community,*
  - (b) *to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practicable regulatory system with minimal formality and technicality,*
  - (c) *to contribute to the responsible development of related industries such as 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 the harm associated with the 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.*

## Material before the Delegate

20. The Delegate has provided the Authority with a bundle of all material that was before the Delegate at the time that the Reviewable Decision was made. In summary, that material comprises the following:
21. Letter from O'Sullivan Saddington Lawyers to the then Office of Liquor, Gaming and Racing, now LGNSW, dated 27 November 2015. Attached is a signed copy of Notice of Development Application lodged by Mr Dallas Mark Rosekelly (the company director of the Licence Applicant) dated 27 November 2015 and a letter from O'Sullivan Saddington to Newcastle Police dated 27 November 2015 also attaching this Notice.
22. Australian Securities and Investments Commission ("ASIC") Current Organisation Extract for the Licence Applicant, business owner and premises owner, Rosekelly Property Holdings Pty Ltd, dated 27 November 2015.
23. Notice of determination on application for development approval No. DA2015/10296 ("DA"), granted by the City of Newcastle on 7 July 2016, approving use of the Premises as a gym, small bar, and café between 10:00 am and 12:00 am from Monday to Saturday and between 10:00 am and 10:00 pm on Sunday.
24. Application for small bar liquor licence, lodged by Rosekelly Property Holdings Pty Ltd dated 22 February 2017.
25. Signed copies of the Application Notices including the Police notice, public consultation notice and local consent authority notice all dated 22 February 2017.
26. Newcastle City Local Area Command of NSW Police submission dated 17 March 2017, signed by Mr Dallas Mark Rosekelly, company director for the Licence Applicant dated 24 March 2017, recording the Licence Applicant's consent to the imposition of seven conditions sought by Police upon the licence.
27. Submission from Crime Manager of Newcastle City Local Area Command of NSW Police dated 28 March 2017, received on 4 April 2017, advising that Police have reviewed the licence application, and the applicant had agreed to 7 conditions (relating to the hours of operation, drinks not to be sold at any time, restrictions on the sale of alcohol after 10:00 pm, noise, patron numbers, membership of the local liquor accord and CCTV) being placed on the liquor licence. Police requested that the conditions be placed on the licence so the Premises does not impact on the community.
28. Email submission from the LGNSW Compliance Branch dated 7 June 2017 in response to an email from LGNSW licensing staff dated 6 June 2017, advising that LGNSW Compliance agree with the conditions proposed by Police and have no further comment.
29. Signed Certification of Advertising for the licence application, signed by the Licence Applicant (Rosekelly Property Holdings Pty Ltd) dated 14 June 2017.
30. ASIC Organisation Name Search extract for Big Poppy Pty Ltd, dated 1 August 2017.
31. Plan of Management for Big Poppy's Small Bar dated August 2017.
32. Email correspondence from LGNSW licensing staff to the Licence Applicant dated 6 June 2017 and 28 July 2017, requesting further information including the record of registration of business name issued by ASIC, a Plan of Management for the proposed

licensed business, a Certificate of Advertising in respect of the licence application, food and drink menus for the proposed licensed business and documentation regarding appointment of an approved manager for the Premises. Licensing staff also invite the Licence Applicant to consent to conditions specifying the 6-hour closure period between 4:00am and 10:00am for the purposes of section 11A of the Liquor Act and a maximum patron capacity of 60, in addition to a response to the licence conditions proposed by Police.

33. Email correspondence from the Licence Applicant to licensing staff, in response to the request for further information, dated 14 June 2017 and 7 August 2017 [not provided but referred to in the Reviewable Decision].
34. Email correspondence dated 1 August 2017 from the Licence Applicant's legal representative to licensing staff, in which the Licence Applicant *inter alia* consents to the Police Conditions.
35. Plan/diagram of the Premises highlighting the proposed licensed area in green.
36. Licence Applicant's sample food and drink menu for the venue.

### **Review Application material**

37. The Review Application Form was signed by Superintendent John Gralton, Newcastle Local Area Command of NSW Police, on 31 August 2017 and filed on the same date. Attached is a five-page submission letter dated 28 August 2017 ("Review Letter") addressing Part 4 of this Form specifying why the Review Applicant is aggrieved by the Reviewable Decision. The following material was attached:
  - Email from LGNSW licensing staff to Police dated 8 August 2017 advising the outcome of the Reviewable Decision.
  - A OneGov record of liquor licence number LIQS220000081 as at 8 August 2017.
  - A copy of the Reviewable Decision dated 7 August 2017.
  - Attachment 2 to the Review Application, comprising OneGov records of other small bar licensed premises in the Newcastle CBD.
  - Attachment 3, comprising a submission from Police dated 17 March 2017 to licensing staff in response to the licence application.
38. In the Review Letter, the Review Applicant provides historical information (prior to 2007) pertaining to alcohol related assaults and anti-social behaviour occurring in and out of licensed premises which led Police to make an undue disturbance complaint during 2007 to the former Liquor Administration Board ("LAB") in relation to multiple late trading hotels in the Newcastle CBD under the former section 104 of the *Liquor Act 1982*. This complaint resulted in the imposition by the LAB of a number of conditions upon the licences of these late-night trading hotels during March 2008. The conditions included measures limiting the types of alcoholic drinks that may be made available after 10pm, the imposition of a lock out and earlier closing times.
39. The Review Applicant contends that since these conditions were imposed, Police have identified that certain on-premises licenced premises in Newcastle were acting as "feeder" venues to the later trading licensed premises, with patrons migrating from those venues to the late-night hotels.

40. The Review Applicant submits that the Drink Restriction Conditions are sought to be imposed upon the licence of the Premises now under review by reason of the following factors. First, Police have identified that patrons in some on-premises licensed venues in the Newcastle CBD were consuming shots and high strength alcoholic drinks. The availability of these drinks led to a “higher percentage” of patrons attending these on licensed venues, “pre-fuelling” on shots and high strength drinks before leaving those venues to attend late trading hotels. Second, Police contend that this “pre-fuelling” conduct has increased the number of Fail to Quit offences recorded at the entry points to the later trading venues and has given rise to a “noticeable proportion” of hotel patrons showing signs of intoxication after consuming only one drink after entering the later trading premises. Third, Police submit that the “no shots at any time” licence condition proposed for this licence is a “consistent” measure that has been imposed by the Newcastle CBD Liquor Accord, which all participating venues abide by.
41. The Review Applicant submits that the Noise Condition is sought by reason of a rise in residential noise complaints made to Police in relation to other small bars (including the Kitami Japanese Restaurant and the Basement on Market street). The Review Applicant contends that residential and commercial premises are situated “within close proximity” to the Premises and this proximity supports the imposition of the noise control condition for this venue.
42. The Review Applicant submits that the Liquor Accord Condition is requested so that all venues are made aware of any prevailing liquor management issues in the Newcastle CBD and any upcoming events that may impact their licensed premises.
43. The Review Applicant contends that Computerised Operational Policing System (“COPS”) records for the year 2007/2008 indicate that there were 80 assaults occurring between the hours of 10:00 pm and 1:00 am on Friday and Saturday nights in Newcastle and Newcastle West. However, following the imposition of the LAB licence conditions in 2008 and the imposition of similar conditions to those now under consideration upon the licences of licensed premises in the Newcastle CBD, this figure was reduced to only 30 such assaults for the year 2016/2017.
44. Nevertheless, the Review Applicant submits that Bureau of Crime Statistics and Research (“BOCSAR”) crime mapping data for the period from April 2015 to March 2017 indicates that for the 12 months ending March 2017, the State suburb of Newcastle recorded a rate of **2,366.9** incidents of *alcohol related non-domestic assault* per 100,000 persons of the population which was “well above” the NSW rate of **133.9** per 100,000 persons.
45. The Review Applicant specifies 5 other small bar licenced premises in the Newcastle CBD with similar conditions to the Police Conditions sought in this matter. They are: Kitami Japanese Restaurant, Itch Social, Basement on Market Street, Jokers and Thieves and Coal and Cedar. The Review Applicant specifies the location of these venues, their proximity to the Premises and the dates upon which those licences were granted, ranging from 28 May 2014 to 23 December 2016.
46. The Review Applicant submits that Police have liaised with the licensee of the Premises who signed and consented to the imposition of seven (7) conditions upon the licence should the licence application be granted. These include the four Police Conditions under consideration. This consent was evidenced in a document forwarded



by Police to licensing staff on 28 March 2017 as part of the Police submission in response to the licence application.

47. Police submit that they have no objection to the grant of the new licence but request that the Police Conditions be imposed by the Authority upon the licence, to reduce adverse impact from the operation of the new venue upon the community.

## **Consultation on Review**

48. On 12 September 2017, the Authority Secretariat sent an email to LGNSW Compliance and the Licence Applicant, enclosing a copy of the Review Application and all material before the Delegate and inviting any further written submission or evidence in response to the Review Application. On 12 September 2017, the Secretariat also provided the Review Applicant with a bundle of all material before the Delegate and invited any further written submissions or evidence on the review.
49. No further submission was made by the Review Applicant.

### Submission on Review from LGNSW dated 28 September 2017

50. On 28 September 2017, Mr Paul Newson, Deputy Secretary of the NSW Department of Industry submitted a three-page letter to the Authority. While the Deputy Secretary does not purport to engage with the specific merits of the Reviewable Decision he writes to provide information pertaining to the organisational and legislative background to assist the Authority with its deliberations ("LGNSW Submission").
51. Briefly, the Deputy Secretary advises that on 27 September 2017, a legislative change was announced in response to the *Callinan Review* of the lockout and related measures that had been introduced to the Act during February 2014. Under these changes, certain drink restriction conditions (similar to the Drink Restriction Condition at issue on this matter) that had been in force with respect to certain licensed premises in the Kings Cross and Sydney CBD entertainment precincts will no longer apply to small bars within those precincts.
52. From 1 October 2017, those small bars in the Kings Cross and Sydney CBD precincts that are trading after midnight will no longer be subject to conditions preventing the sale of spirits neat, or on the rocks, nor will they be prevented from serving cocktails that are not listed on a menu. Other restrictions, including the prohibition of the service of "shots" of liquor after midnight and limits on the number of drinks that may be sold at any one time to an individual patron will no longer apply to those small bars.
53. The LGNSW Submission advises that the Government's position is that "blanket" drink restrictions on small bars fail to recognise the lower risk profile of the small bar business model and it would not be reasonable for small bars generally to be burdened with more restrictive conditions than those that apply to small bars within declared precincts - absent evidence to the contrary, or evidence as to any potential risks pertaining to an individual venue.
54. In the LGNSW Submission the Deputy Secretary makes a number of policy observations, advising that as part of a licensing transformation project, LGNSW has identified the reduction of administrative burden (both for the regulator and industry) arising from the imposition of unnecessary conditions upon low risk licences as a key area for process improvement.

55. The Deputy Secretary submits that while precautionary controls can be appropriate where the identified risks and associated impacts are “severe” or in circumstances when inaction is considered imprudent, “contemporary regulatory practice” anticipates “evidence based intervention” that is proportionate to the assessed risk for a venue.
56. The Deputy Secretary submits that in the absence of any threshold evidence or compelling circumstances, escalated regulatory intervention should be targeted to those cases where the risks are greatest, and not imposed on a uniform basis across a given licence type.
57. While the negotiation and consent of licence conditions with a licensee may assist in determining whether to impose additional conditions, any determination to impose conditions should be evidence based and proportionate to the level of regulatory risk posed by that particular venue.
58. The Deputy Secretary submits that according to BOCSAR data for the year to June 2017, the suburb of Newcastle has remained “stable” in respect of the occurrence of all *non-domestic alcohol-related assaults* by comparison to the previous year, having experienced only a slight 1.45% increase (from 69 to 70 incidents). The suburb of Newcastle has also experienced a 20.83% *increase* (24 to 29 incidents) in the number of *non-domestic alcohol-related assaults* that occurred *on licensed premises* in the 2016-2017 year compared to the previous year.
59. The Deputy Secretary further submits that “alcohol related violence” has declined across New South Wales *as a whole* at around 7.5% per annum over the past 5 years. The Government seeks to minimise the regulatory burden on responsible industry participants and enable a diverse and thriving industry that will continue to grow and contribute to the social and economic development of the State.
60. The Deputy Secretary notes that there are five small bars situated in the suburb of Newcastle (which the Authority notes are the same venues specified by Police) and no assaults have been recorded as having occurred on the premises of those venues.
61. The NSW Government has signalled its support for small bars through the relaxation of stricter regulatory controls. The aim is to encourage their development in high risk precincts as a lower risk alternative and contribute to a more diverse drinking culture and night-time economy.

#### Submission on Review from Licensee dated 29 September 2017

62. On 29 September 2017, Mr Paul O’Sullivan of Bale Boshev Lawyers, on behalf of the licensee, sent an email submission to the Authority Secretariat simply advising that the licensee is “not in a position to object to the imposition of conditions which they consented to in the document dated 24 March 2017”, with such consent “further confirmed” in an email to licensing staff dated 1 August 2017 to LGNSW.

#### **Reasons**

63. The Authority has considered the Review Application, the material before the Delegate and all further submissions, evidence or other material provided during the review process.
64. The Authority is satisfied, on the basis of the Review Application material, the original Police submission dated 28 March 2017 and the email from LGNSW licensing staff to

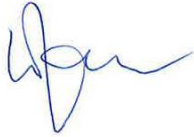
Police dated 8 August 2017 notifying Police of the Reviewable Decision, that the Review Application was validly made pursuant to section 36A of the GALA Act, which (relevantly) requires that an application for review of a delegated decision be made by a person who was required to be notified of the application the subject of the delegated decision and who made a submission to the Authority or Secretary in respect of that application.

65. On the basis of a document provided by Police dated 17 March 2017, signed by Mr Dallas Mark Rosekelly, the company director for the now corporate licensee, dated 24 March 2017 and an email from the Licence Applicant's solicitor Mr Paul O'Sullivan of Bale Boshev Lawyers to LGNSW licensing staff dated 1 August 2017, the Authority is satisfied that the licensee has consented to the imposition of seven conditions upon the licence. They include the Police Conditions the subject of this review, and further conditions regarding the hours of operation, a limit of 100 patrons on the Premises, seating in accordance with the approved plans and minimum CCTV coverage.
66. The Authority notes the LGNSW Submission dated 28 September 2017 detailing the legislative change in response to the *Callinan Review* and the efforts of LGNSW to reduce administrative burden (both for the regulator and industry) in relation to unnecessary licence conditions on low risk licences, unless there is indication of potential risk (such as poor compliance history).
67. The Authority has had regard to Government policy, which is to not impose licence conditions upon small bars on a "blanket" basis, as a means of encouraging the development of small bars as a lower risk type of venue. Government policy does not purport to restrict the Authority's discretion to impose conditions on a case by case basis. The LGNSW Submission acknowledges that the position taken by an individual licensee may be taken into account when deciding whether conditions are appropriate.
68. The Authority accepts the submission in the Review Letter that during March 2008 a number of licence conditions, including substantial drink restrictions, were imposed by the former LAB in the Newcastle CBD. It is a matter of public record that a range of regulatory measures, from earlier closing to lockouts to drink restrictions and other harm reduction measures were imposed by the LAB on 15 late trading hotels.
69. The Authority accepts, on the basis of the crime data in the Review Applicant's submission dated 28 August 2017, that there has been a substantial reduction in the rate and number of alcohol related assault incidents recorded in the Newcastle CBD since the imposition of the LAB conditions in 2008. The Authority considers it likely that the LAB's strong regulatory response to the unacceptable crime rates and anti-social conduct evident in the Newcastle CBD at that time played a significant role in that reduction in crime. Other factors, such as improved risk management by venues and a broader State-wide decline in non-domestic assault rates may have also played a role.
70. The Authority accepts that Police maintain generally credible concerns that standard trading venues with more liberal licence conditions operating in proximity to other later trading venues have the potential to act as "feeder" venues for the later trading venues in the Newcastle CBD. The Authority further notes Police submissions to the effect that the 5 small bars that are operating in reasonable proximity to the Premises within the CBD are encumbered with similar conditions to the Police Conditions.

71. The Authority notes that NSW Government policy is not to impose conditions upon small bars on a uniform basis by reference to the licence category alone. The Authority has taken into account Government's policy intent not to burden venues with licence conditions without a reasonable evidentiary basis and it is not the Authority's practice to do so. On the information and material before it (which includes some adverse crime data about adverse alcohol related assaults on licensed premises in Newcastle by comparison to New South Wales as a whole) and giving weight to the licensee's *consent* to the Police Conditions, the Authority is satisfied that the correct and preferable decision with respect to this review is to impose the Police Conditions upon the licence.
72. At the time of making this decision the Authority is in the process of considering the broader regulatory environment in which late trading Newcastle CBD venues operate given the prevailing circumstances in 2018. The Authority has yet to form a view on this broader question and is in the process of seeking submissions from the public.

## Conclusion

73. In accordance with section 36A(4) of the GALA Act, the Authority has decided to **vary** the reviewable decision made by the Delegate and impose the following licence conditions that shall operate in addition to the conditions imposed by the Delegate:
- 1) The following drinks must not be sold or supplied at any time
    - a) Any drink commonly referred to as a "shot" that contains no more than 30ml of spirits or liqueur that is designed to be consumed rapidly.
    - b) Any drink containing alcohol is not to be mixed with an energy drink.
  - 2) The following restrictions and conditions will apply upon the sale of alcohol after 10:00pm;
    - a) No mixed drinks with any more than thirty (30) mls of alcohol.
    - b) No RTD drinks with an alcohol volume greater than 5%
    - c) No more than four drinks may be served to any one patron at one time.
  - 3) The noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 07:00am and midnight.
  - 4) The licensee or its representative must join and be an active participant in the Local Liquor Accord.
74. In determining this review, the Authority has had regard to the statutory objects and considerations prescribed by sections 3(1) and 3(2) of the Liquor Act. The Authority has given weight to the considerations in section 3(2)(a) of the Liquor Act regarding the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour) and section 3(2)(c) of the Liquor Act regarding the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.



Philip Crawford

Chairperson

For and on behalf of the Independent Liquor & Gaming Authority