



Mr David Trinh
Approved Manager and Company Director, Koi Corp Pty Ltd
(or the person apparently in charge of the premises)
Replay Karaoke
Shop 16-17, Level 1, Little Saigon Plaza
462 Chapel Road
BANKSTOWN NSW 2200

By email

david@faminternational.com.au
david@replaykaraoke.com.au
gc@hatziscusack.com.au
sean.goodchild@justice.nsw.gov.au

5 May 2017

Dear Sir

**Notice of Short Term Closure Order under section 82 of the *Liquor Act 2007*
Replay Karaoke, Bankstown (Liquor Licence Number LIQO660033192)**

SUMMARY OF DECISION

1. Pursuant to section 82(1) of the *Liquor Act 2007*, the Authority orders that the on-premises licensed premises currently trading as "Replay Karaoke", located at Shops 16-17, Level 1, *Little Saigon Plaza*, 462 Chapel Road, Bankstown NSW 2200 be closed for a period of seventy-two (72) hours from **5:00pm on Friday 5 May 2017** until **5:00pm on Monday 8 May 2017**.

INTRODUCTION

2. At around 10:30am on Wednesday 3 May 2017, the Independent Liquor and Gaming Authority (**Authority**) received an application (**Application**) made to the Authority by Mr Sean Goodchild (**Applicant**), Director of Compliance, Liquor and Gaming NSW (**LGNSW**) in his capacity as a delegate of the Secretary of the New South Wales Department of Industry (**Secretary**).
3. The Application was made under section 82 of the *Liquor Act 2007* (**Act**) and seeks the issue of a Short-Term Closure Order in relation to the on-premises licensed premises currently trading as "Replay Karaoke", located at Shops 16-17, Level 1, *Little Saigon Plaza*, 462 Chapel Road, Bankstown NSW 2200 (**Premises**).
4. The Premises is authorised to only engage in the sale or supply of liquor ancillary to the provision of karaoke entertainment services for consumption on the Premises until 12:00 midnight on Monday through Saturday and until 10:00pm on Sunday. The Authority notes that the licence record for the Premises is subject to a number of conditions including, relevantly:

Condition 3010

No drinks commonly referred to as shots, shooters, slammers and/or bombs are to be sold or supplied at any time.

Condition 3020

No liquor must be sold, supplied or consumed in any karaoke room in which a minor is present, unless the minor is accompanied and in the presence of a responsible adult as defined under the Liquor Act 2007.

Condition 3050

The licensee must ensure surveillance cameras (with video recording facilities) are installed and maintained in the premises with coverage of the foyer, entrance and karaoke rooms and recording discs or hard drive recordings are retained for a period of no less than twenty-eight (28) days before being reused or destroyed. Times and dates must be automatically recorded and footage produced to police or special inspectors on request. All video equipment and cameras are to be of a high quality so as to facilitate identification and adjudication of patrons in incidents occurring within the premises. All equipment is to be maintained in good working order. There shall be adequate monitoring of the system by the licensee and his/her staff when the premises are trading to ensure, as far as practicable, that patrons do not (a) move the cameras so as not to give adequate coverage of the room or (b) cover or obstruct the cameras so as to prevent surveillance of the room.

Condition 3060

The premises are to be operated at all times in accordance with the Plan of Management dated November 2016 as may be varied from time to time in consultation with the Local Area Commander.

Condition 3110

The licensee must ensure liquor is only sold or supplied with or ancillary to karaoke performances. Liquor is only to be consumed by patrons within karaoke rooms. Patrons are not permitted to consume liquor in the hallways or foyer of the licensed premises.

Condition 3120

The licensee must ensure the sale, supply and consumption of full bottles of spirits is prohibited.

5. The Application material provided by the Applicant comprises a 206-page bundle consisting of the following:

- Application Letter dated 3 May 2017;
- Statutory Declaration by the Applicant dated 3 May 2017;
- OneGov Licence Record for the Premises dated 27 April 2017 (Exhibit 01);
- Department of Industry *Three Strikes Disciplinary Scheme* Fact Sheet (Exhibit 02);
- Statement of Evidence by Mr Joel Carr (**Carr Statement**), LGNSW Compliance dated 2 May 2017 (Exhibit 03);
- Statement of Evidence by Ms Frances Arguelles (**Arguelles Statement**), LGNSW Compliance dated 1 May 2017 (Exhibit 04);
- Statement of Evidence by Mr Jian Sim (**Sim Statement**), LGNSW Compliance dated 2 May 2017 (Exhibit 05);
- Statement of Evidence by Ms Katie Cooke (**Cooke Statement**), LGNSW Compliance dated 2 May 2017 (Exhibit 06);
- Interview Transcript between LGNSW and Mr Alex Lee (**Lee Interview**) dated 1 May 2017 (Exhibit 07);
- Interview Transcript between LGNSW and Ms Jenny Phan (**Phan Interview**) dated 1 May 2017 (Exhibit 08);
- Advertising material for the Premises (Exhibit 09);
- Photographs of liquor competition held at the Premises (Exhibit 10);
- Report from Bankstown Police dated 14 March 2017 (Exhibit 11);

- Statement by Constable Nathan Dechaufepie of Bankstown Licensing Police dated 2 May 2017 (Exhibit 12);
- Email from Constable Dechaufepie to LGNSW dated 1 May 2017 (Exhibit 13);
- *Plan of Management* for the Premises dated December 2016 (Exhibit 14);
- 22 pages of screenshots of the “Replay Karaoke” website (Exhibit 15); and
- 6 pages of screenshots from Mr David Trinh’s personal Facebook page (Exhibit 16).

(Application Material).

6. The Applicant alleges, on the basis of the information provided in the Application Material, that recent contraventions of sections 9(1)(b), 11(2) and 73 of the Act have been detected in relation to the Premises.
7. The Applicant submits for the purposes of section 82 of the Act that serious breaches of the Act have occurred on the Premises, that there is an unacceptable risk of further serious offences occurring on the Premises and that closure of the Premises for 72 hours from 5:00pm this Friday 5 May 2017 is necessary to prevent or reduce the risk of a “significant threat or risk to the public interest” – being a threat to public safety arising from the operation of the Premises.
8. Under section 36C of the *Gaming and Liquor Administration Act 2007*, the Authority is required to produce and publish statements of reasons with respect to those types of decisions prescribed by clause 6 of the *Gaming and Liquor Administration Regulation 2008*. This letter has been prepared in the context of a high-volume liquor jurisdiction and in response to an application that requires expeditious determination by the Authority.

NOTICE OF APPLICATION

9. At 4:49pm on Wednesday 3 May 2017 a copy of a Notice of Application for Short Term Closure Order (**Notice**) was communicated by the Authority to the approved manager and director of the corporate licensee for the Premises, Mr David Trinh (**Approved Manager**) via an email to his solicitors at that time, Hatzis Cusack.
10. Included with the Notice was an electronic link to the entire Application Material. Mr Trinh was invited to provide the Authority with any written submissions or evidence in response to the Application by no later than 5:00pm on Thursday 4 May 2017.

SUBMISSIONS IN RESPONSE TO THE APPLICATION

No Submission from the Approved Manager or Business Owner

11. Neither the corporate licensee/business owner, Koi Corp Pty Ltd (**Koi Corp**) nor the Approved Manager Mr David Trinh have provided any submissions in response to the Application.

Submission from the Premises Owner received at 4:08pm on Thursday 4 May 2017

12. At 4:08pm on Thursday 4 May 2017 the Authority received via email a submission from Mr Tony Hatzis of Hatzis Cusack Lawyers, who act for PT Property Group Services Pty Ltd, the owner of the freehold in the Premises (**Premises Owner**). Mr Hatzis advises that Hatzis Cusack Lawyers no longer act for the licensee company Koi Corp Pty Ltd or the Approved Manager Mr David Trinh.
13. Briefly, the Premises Owner submits that it is taking steps to immediately terminate the lease for the Premises and to evict Koi Corp and the Approved Manager from the Premises, with a notice of termination to be served on Koi Corp on 5 May 2017. The Premises Owner

proposes to operate the Premises itself in its capacity as owner in possession of the freehold in the Premises, pending transfer of the licence to a “suitably qualified” manager.

14. The Premises Owner undertakes that the Approved Manager, Mr Trinh, will not be permitted to attend the venue in any capacity. Further, in order to “restore public confidence in the operation of the venue”, the Premises Owner states that it is prepared to subject itself and its manager to external scrutiny. Mr Patrick Paroz APM, the immediate past Commander of the Alcohol and Licensing Enforcement Command, has been engaged to undertake covert surveillance of the Premises under the Premises Owner’s new management and prepare a report on the operations of the venue, including any recommendations for additional safeguards or controls. The Premises Owner “welcomes” attendances from LGNSW compliance officers.
15. The Premises Owner does not wish to make any submissions opposing the Application and considers that the issue of a Short Term Closure Order will provide a “break” with past practices of Koi Corp and the Approved Manager, Mr Trinh.

LEGISLATION

16. The power pursuant to which the Authority may issue an order for the short-term closure of a licensed premises is provided by section 82 of the Act, which states, *inter alia*:

82 Short-term closure of licensed premises

- (1) *An authorised officer or the Authority may, by notice served on a licensee or a person apparently in charge of licensed premises, order the licensee to close the licensed premises from a time specified in the order until a later specified time.*
- (2) *An authorised officer or the Authority may only make an order under this section:*
 - (a) *on the application of the Secretary or the Commissioner of Police, and*
 - (b) *only if the authorised officer or the Authority (as the case requires) is satisfied that a serious breach of this Act has occurred, or is likely to occur, on the premises and that the closure of the premises is necessary to prevent or reduce a significant threat or risk to the public interest.*
- (3) *Without limiting the generality of subsection (2), circumstances in which there may be a significant threat or risk to the public interest include circumstances in which there is:*
 - (a) *a threat to public health or safety, or*
 - (b) *a risk of substantial damage to property, or*
 - (c) *a significant threat to the environment, or*
 - (d) *a risk of serious offences (having a maximum penalty of not less than 2 years imprisonment) being committed on the premises.*

....

17. When considering this Application the Authority has also considered relevant legislative provisions that are referred to in the Application including sections 9, 11 and 73 of the Act and section 26 of the *Gaming and Liquor Administration Act 2007*.
18. When determining this Application, the Authority has considered all of the statutory objects and considerations prescribed by section 3:

3 Objects of 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 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.*

REASONS FOR DECISION

- 19.** The Authority is satisfied, on the material before it and on the balance of probabilities, that serious breaches of section 9(1)(b) of the Act, which prohibits a licensee or employee or agent of a licensee from selling, supplying or causing or permitting liquor to be sold or supplied otherwise than in accordance with the authority conferred on the licensee by or under the Act, in that:
- Covert LGNSW inspectors were able to purchase alcoholic drinks on the Premises at 12:18am on Saturday 29 April 2017, despite the venue only being licensed to trade until 12:00 midnight Monday through Saturday and until 10:00pm on Sunday (Exhibit 03);
 - At around 12:45am on Saturday 29 April 2017, covert LGNSW inspectors observed patrons drinking in at least three karaoke rooms (Exhibit 06);
 - Employees of the Premises stated during formal interviews with LGNSW inspectors that the venue “regularly” sells or supplies liquor past 12:00 midnight under the instruction of the Approved Manager, Mr David Trinh (Exhibit 08); and
 - As at 3 May 2017, the venue’s public Facebook page continued to advertise that the Premises remains open until 2:00am every trading night (Exhibit 15).
- 20.** With regard to the above findings, the Authority notes in particular the evidence provided in paragraph 14 of the Carr Statement, paragraphs 46-47 of the Cooke Statement and page 3 of the Phan Interview.
- 21.** The Authority is also satisfied, on the material before it and on the balance of probabilities, that serious breaches of section 11(2) of the Act, which provides that a licensee must comply with any conditions to which a licence is subject, in that:
- During the covert inspection on 28-29 April 2017, LGNSW inspectors observed shots of liquor being openly provided by staff to patrons on the Premises (Exhibit 04, Exhibit 05);
 - Employees of the licensed business operating on the Premises stated during formal interviews with LGNSW inspectors that they regularly sold shots to patrons (Exhibit 07, Exhibit 08);
 - During the covert inspection on 28-29 April 2017, LGNSW inspectors purchased a full bottle of scotch whiskey, the entire contents of which were poured into one jug and served with no mixer content in that jug (Exhibit 04);

- Employees of the licensed business stated during formal interviews with LGNSW inspectors that they sold full bottles of spirits to patrons (Exhibit 07, Exhibit 08); and
 - The venue failed to comply with certain harm minimisation measures specified in the Premises' *Plan of Management* updated in December 2016, in contravention of Condition "3060" on the licence (Exhibit 14).
22. With regard to the above findings, the Authority particularly notes the evidence or material provided in paragraphs 22 and 35 of the Arguelles Statement, paragraph 12 of the Sim Statement, pages 3 and 4 of the Phan Interview, page 3 of the Lee Interview and the *Plan of Management* for the Premises updated in December 2016.
 23. The Authority is also satisfied, on the material before it and on the balance of probabilities, that a serious breach of section 73(1) of the Act, which requires that a licensee must not permit intoxication on licensed premises, has recently occurred on the Premises.
 24. The Authority is satisfied that during the covert inspection on 28-29 April 2017, LGNSW inspectors observed a female patron in the lounge area of the Premises vomiting into a bucket that was provided by venue staff. The patron was displaying various signs of advanced intoxication, including vomiting and being unable to stand unassisted.
 25. While the Authority acknowledges that evidence of an intoxicated person being detected on licensed premises is not necessarily evidence of *permission* of intoxication, the Authority is satisfied on the uncontested evidence before it that venue staff intervened to clean up the vomit and a security guard was in close proximity to the intoxicated patron yet the patron was not asked to leave by security or venue staff while she was observed by LGNSW officers.
 26. No submissions have been provided by the licensee addressing whether the defence available under section 73(4) and (5) of the Act may apply to this incident and the Authority is satisfied that licensee permitted, through the conduct of its staff responsible for the Premises at the relevant time, intoxication on the Premises on this date.
 27. With regard to the above findings, the Authority particularly notes the evidence or material provided in paragraphs 19-30 of the Arguelles Statement.
 28. Having considered these findings on a cumulative basis, the Authority is satisfied, on the balance of probabilities, that serious breaches of section 9(1)(b), 11(2) and 73 of the Act *have* occurred and/or are at least *likely* to occur - having regard to the laxity in controls over the sale or supply of liquor on the Premises that has been very recently detected by LGNSW officers and admitted to further by staff of the licensed business.
 29. The Authority is satisfied that breaches of the licensed trading hours are inherently serious matters that go to the heart of regulatory controls on the Premises. The sale or supply of liquor outside of licensed hours are not, on the evidence or material available, isolated failings by individual staff members but is ongoing conduct that is permitted or tolerated by the Approved Manager and owners of the business.
 30. The substantial risk to public health and safety, by way patron intoxication arising through the inadequate control over the sale and supply of liquor on the Premises, is compounded by the multiple recently detected breaches of licence conditions designed to manage patron intoxication levels among patrons, notably prohibitions against the service of shooters and whole bottles of spirits.
 31. The extent of risk is underscored when the designated primary purpose of this licensed business involves the participation of patrons in live entertainment (Karaoke) in semi-private

rooms, where patron disinhibition through the consumption of liquor is traditionally associated with this mode of entertainment.

32. When assessing the risk of further serious offences being committed on the Premises, the Authority notes with concern the Approved Manager's refusal to produce, when required to do so pursuant to a statutory notice, CCTV footage requested by LGNSW officers.
33. This conduct indicates that the corporate licensee, Approved Manager and licensed business owners are less than transparent with regard to their compliance with its licensing requirements. Regulatory officers are unable to assess compliance if they cannot readily access CCTV footage when reasonably requested.
34. The Authority is satisfied that it is necessary to close the Premises for a period of 72 hours this weekend to prevent or reduce a significant threat or risk to the public interest, being a risk to public health and safety arising through the poorly controlled sale or supply of liquor to patrons on the Premises.

ORDER

35. Pursuant to section 82(1) of the Act, the Authority orders that the on-premises licensed premises currently trading as "Replay Karaoke", located at Shops 16-17, Level 1, *Little Saigon Plaza*, 462 Chapel Road, Bankstown NSW 2200 be closed for a period of seventy-two (72) hours from **5:00pm on Friday 5 May 2017** until **5:00pm on Monday 8 May 2017**.
36. The Authority notes that section 82(6) of the Act provides that failure to comply with an order made under this section may expose the licensee to a maximum penalty of 50 penalty units, 6 months' imprisonment, or both.

TIME OF ORDER: 10:00AM on 5 May 2017

Yours faithfully



Philip Crawford
Chairperson
Independent Liquor and Gaming Authority